IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable / ~~Reportable~~

Case no: 4438/2023

In the matter between:

DITSOANE TRADING AND PROJECT CC — **APPLICANT**

and

THE COMMISSIONER FOR SARS — **RESPONDENT**

Neutral citation: *Ditsoane Trading and Project CC v CSARS* (4438/2024) [2025] ZAFSHC 300 (18 September 2025)

Coram: Mbhele AJP *et* Daffue J

Heard: In chambers

Delivered: 18 September 2025

Summary: Application for leave to appeal decision taken in terms of s 222 and 223(3) of the Tax Administration Act 28 of 2011 (the TAA) – objection of this nature to be referred to the tax board or tax court as a default position – no automatic access to the High Court for appeals and objections emanating from decisions taken in terms of ss 222 and 223 of the TAA.

ORDER

The application for leave to appeal is dismissed with costs including costs of two Counsel at scale C.

JUDGMENT

Mbhele AJP

Introduction

[1] This is an application for leave to appeal against our judgment that was delivered on 29 January 2025 in which we declined an application to declare the respondent's (SARS) constitution of an Understatement Penalty Committee unconstitutional as well as review and set aside the committee's imposition of understatement penalties on the applicant.

[2] The reasons for not granting the relief can be gleaned from our written judgment. In reaching the conclusion that we reached, we took into consideration case law dealing with situations where a taxpayer disputes an assessment made by SARS. We found that this court has no jurisdiction to review the decision of SARS unless there has been an application and an order for deviation, as contemplated in s 105 of the Tax Administration Act 28 of 2011 (the TAA). Section 105 of the TAA provides that '[a] taxpayer may only dispute an assessment or "decision" as described in section 104 in proceedings under Chapter [9], *unless a High Court otherwise directs*'. (Emphasis added.)

[3] Section 104(2) determines decisions that may be objected to as follows:

'(a) a decision under subsection (4) not to extend the period for lodging an objection;

(b) a decision under section 107(2) not to extend the period for lodging an appeal; and

(c) *any other decision that may be objected to or appealed against under a tax Act.*' (Emphasis added.)

[4] The applicant's leave to appeal application is predicated on the premise that we made a material error of law when we found that this court has no jurisdiction based on the fact that the application concerned a legality review of the exercise of public power by the respondent. They submit that this court has powers to adjudicate any matter, including a constitutional matter, provided that such matter is not assigned to another court by operation of law.

[5] The applicant failed to appreciate that the gravamen of this application is its objection to a decision by SARS and the consequent Understatement Penalty levied in terms of s 222 and 223(3) of the TAA and that such objections are subjected to proceedings under chapter 9 of the TAA. Chapter 9 of the TAA prescribes that objections and appeals are to be referred to the tax board or tax court as a default position.[1] There is, therefore, another forum assigned by operation of law to deal with the applicant's issue in circumstances where this court did not direct otherwise.

[6] In *Commissioner for the South African Revenue Service v Rappa Resources (Pty) Ltd* the SCA held:

'[20] The purpose of s 105 is clearly to ensure that, in the ordinary course, tax disputes are taken to the tax court. The high court consequently does not have jurisdiction in tax disputes unless it directs otherwise. In *Wingate-Pearse* it was put as follows:

'Tax cases are generally reserved for the exclusive jurisdiction of the tax court in the first instance. But it is settled law that a decision of the Commissioner is subject to judicial intervention in certain circumstances . . . In its amended form s 105 thus makes it plain that "unless a High Court otherwise directs", an assessment may only be disputed by means of the objection and appeal process.'"[2]

It follows that there is no automatic access to the High Court for appeals and objections emanating from decisions taken in terms of ss 222 and 223 of the TAA.

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[1] Section 107 of the TAA provides:
'Appeal against assessment or decision
(1) After delivery of the notice of the decision referred to in section 106(4), a taxpayer objecting to an assessment or 'decision' may appeal against the assessment or 'decision' to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the "rules".'

[2] *Commissioner for the South African Revenue Service v Rappa Resources (Pty) Ltd* 2023 (4) SA 488 (SCA) par. 20; See also *United Manganese of Kalahari (Pty) Ltd v Commissioner for the South African Revenue Service* (1231/2021) [2023] ZASCA 29 (24 March 2023); *The Commissioner for the South African Revenue Service v Absa Bank Limited and Another* 2024 (1) SA 361 (SCA).

[7] Applications for leave to appeal are regulated by s 17(1) of the Superior Courts Act 10 of 2013. It reads as follows:

'(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.'

[8] In *Smith v S*,[3] the Supreme Court of Appeal, relying on *S v Mabena and Another*,[4] remarked:

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

[9] The argument by the applicant that this court was enjoined to adjudicate and pronounce on the relief sought by the applicant purely because the issue before us was a legality review is not in conformity with established legal principles that, where jurisdiction is in dispute, a ruling on this issue must precede all other rulings. In *Competition Commission of South Africa v Standard Bank of South Africa Limited; Competition Commission of South Africa v Waco Africa (Pty) Limited and Others*,[5] the Constitutional Court remarked as follows:

'Where the jurisdiction of the court before which a review application is brought is contested, a ruling on this issue must precede all other orders. This is because a court must be competent to

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[3] *Smith v S* [2011] ZASCA 15; 2012(1) SACR 567 SCA para 7.

[4] *S v Mabena and Another* [2006] ZASCA 178; [2007] 2 All SA 137 (SCA); 2007 (1) SACR 482 SCA para 22.

[5] *Competition Commission of South Africa v Standard Bank of South Africa Limited; Competition of South Africa v Waco (Pty) Limited and Others* 2020 ZACC 2; 2020 (4) BCLR (CC) para 200 -201.

make whatever orders it issues. If a court lacks authority to make an order it grants, that order constitutes a nullity. Scarce judicial resources should not be wasted by engaging in fruitless exercises like making orders which cannot be enforced.'

It is clear from the above *dictum* that, once it is found that a court lacks jurisdiction, that finding is dispositive of the matter. It became unnecessary for us to pronounce ourselves on the review after making a finding that this court lacks jurisdiction absent an order as envisaged in s 105 Of the TAA.

[10] We already found that there is no genuine constitutional issue raised by the applicant. Its reliance on *Biowatch* is without merit. The *Biowatch* protection is available to litigants who are raising genuine constitutional issues not vexatious and frivolous disputes.

[11] Having concluded that none of the grounds of appeal enjoy reasonable prospects of success, whether taken singly or cumulatively, the application for leave to appeal must fail.

Order

[12] The application for leave to appeal is dismissed with costs including costs of two Counsel at scale C.

N M MBHELE

ACTING JUDGE PRESIDENT OF THE HIGH COURT

I concur:

J P DAFFUE

JUDGE OF THE HIGH COURT

Heads of argument prepared by

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