IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED: NO

(4) DATE: 02 Febuary 2026

(5) SINGATURE: _____

Case Number: 18187/2022

In the matter between:

AFRINERGY HOLDINGS (PTY) LTD Applicant

and

THE COMMISSIONER, SOUTH AFRICAN REVENUE SERVICES First Respondent

SAKHILE SHIBA Second Respondent

DAVID MABUZA Third Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 02 February 2026.

JUDGMENT

COLLIS J

INTRODUCTION

1] The present application is a review of the decision by the Commissioner for the South African Revenue Service ("the Commissioner" / "the second respondent" or "SARS") to seize fuel in terms of the Customs and Excise

Act ("the Act")[1] which was purportedly being transported into the Republic of South Africa.

2] In the founding papers it as alleged that the decision to seize the applicant's truck, trailer and diesel fuel took place in terms of sections 88(1)(c) read together with sections 87 and 102 of the Act.

3] The grounds of review are premised on the provisions of the Promotion of Administrative Justice Act ("PAJA")[2] alternatively on the basis that the Commissioner's decision is unlawful and stand to be set aside. In the matter of **Portland Cement Co Ltd and Another v Competition Commission and Others**[3] the Supreme Court of Appeal held that a review is aimed at the maintenance of legality and not at correcting a decision on the merits.

4] Central to the adjudication of the dispute is whether Afrinergy Holdings (Pty) Ltd ("Afrinergy") or ("the applicant") contravened sections of the Act which would cause the invocation of provisions of the Act namely the seizure of the fuel.

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[1] No 91 of 1964.
[2] No 3 of 2000.
[3] 2003 (2) SA 385 (SCA).

5] As such, in this application, this Court was called upon to determine the following issues:

5.1 Whether the Answering Affidavit constitutes hearsay evidence?

5.2 Has the applicant complied with section 89 of the Customs Act?

5.3 Has the applicant complied with section 96 of the Customs Act?

5.4 Has the applicant made out a case for condonation in section 96 of the Customs Act and whether this Court can grant condonation given the factual matrix?

5.5. Has the applicant satisfied the requirements for the grant of the review which it seeks?

DOES THE ANSWERING AFFIDAVIT CONSTITUTE HEARSAY?

6] The answering affidavit was deposed to by Mr. Sakhile Shiba ("Shiba") an Operations Manager based in Mpumulanga. In this regard the applicant contends that albeit that he is technically authorised to depose to an affidavit on behalf of the Commissioner by virtue of his employment, it is denied that Mr. Shiba can properly depose to the answering affidavit. This they say so, as Mr Shiba was not at the border on the day the alleged

contravention took place, nor does his affidavit contain confirmatory affidavits from any of the SARS's officials who were involved in controlling and operating the customs control area on the day the alleged contravention took place. The facts thus deposed to are accordingly hearsay.

7] Hearsay evidence is defined in section 3(4) of the Law of Evidence Amendment Act, No. 45 of 1988 as "evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence". It is trite that section 3 of the same Act regulates the exception to this rule.

8] On behalf of the applicant it was argued that the respondent failed to rely on the exception to this rule and as such the entire answering affidavit constitutes hearsay evidence.

9] It is common cause that the Commissioner can only execute his duties through its functionaries and that these duties at times are executed by different personnel at various intervals.

10] Herein before the decision to seize was taken, the applicant was engaged at various intervals and at no stage during this engagement was the point ever taken that the functionaries of the Commissioner relied on hearsay evidence or was any documents relied upon ever disputed. So too it was not disputed that these officials found the truck abandoned, detained the truck and its consignment of fuel and found certain invoices and documents inside the truck on inspection. In fact, the circumstances under which the truck was detained all seem common cause between the parties. The applicants own case is also based on the aforesaid facts. As such I cannot conclude that the Answering affidavit constitutes hearsay evidence as defined in section 3(4) of the General Law Amendment Act.

BACKGROUND

11] As a point of departure, it will be apposite to give some background information to this dispute. On 10 July 2019 a consignment of fuel purportedly went through Oshoek Border Post ("OBP"). As a result of this SARS Focused Investigations: Tactical Intervention Unit ("TIU") conducted an investigation into the incident.

12] This investigation was aimed at determining whether due entry had been made on the fuel and whether provisions of the Act had been complied with.

13] Pursuant to the investigation so conducted by SARS, officials had found that a Mercedes Benz Truck bearing registration numbers and letters J[...] ("the truck") and a trailer bearing registration numbers and letters J[...]2 ("the trailer") which were used to convey 39 892 litres of fuel, had been abandoned at OBP. The driver had also absconded.

14] Inside this truck an invoice was found which informed the officials that the fuel was being conveyed by the truck and trailer for import into the Republic of South Africa. In addition to the above, Eswatini declarations documents were also found inside this truck.

15] As a result of this discovery members of TIU deemed it necessary to detain the vehicle and the fuel on 11 July 2019, in terms of section 88(1)(a) of the Act, this to conduct further investigation into the purported importation of the fuel.

16] A detention notice,[4] was thereafter issued to the applicant. In the said notice, Afrinergy was informed that the vehicles and fuel would be detained and removed to the state warehouse. In addition, the applicant was informed that the vehicle and goods may be released on condition of the applicant submitting to SARS the SAD, DA500, DA550, CCA1 customs declaration forms (as applicable) as well as the commercial invoice and packing list. Further payment of the fuel levy as well as possible penalties also had to be made.[5]

17] In addition to the above, a request for information was also sent to the applicant's representatives during August 2019, more specifically proof of ownership of the vehicle, the identity document of the owner of the vehicle, movement tracking records of the vehicle and an explanation of the movement of the vehicle from the time it left South Africa for Mozambique until the date of detention on 11 July 2019. In response, and on 15 August 2019, Afrinergy submitted only some of the requested information.[6]

[4] Record of proceedings, Item 11, Detention Notice, 006-36.
[5] Record of proceedings, Item 11, Detention Notice, 006-37.
[6] Record of proceedings, Item 8, Letter from Afrinergy, 006-41.

18] Thereafter and on 5 September 2019, SARS addressed further correspondence to the applicant, informing them that certain requested information had been received however additional information was required *inter alia*, proof of fuel purchases from Mozambique as well as all import and export entries between Mozambique, South Africa and Eswatini.[7] On 29 September 2019, the Applicant submitted an invoice for the diesel fuel detained.

19] Some eight (8) months later and on 14 May 2020, Afrinergy submitted its notice of intention to institute legal proceedings against SARS[8] in which the cause of action was stated to be the release of the Afrinergy vehicle (truck, trailer) and fuel.

20] Thereafter on 8 July 2020, SARS issued to Afrinergy a notice of intent to seize[9]. The letter sets out the preliminary findings of the SARS investigation, informing Afrinergy of SARS conclusions, *inter alia*:

> 20.1 The fuel was brought into the country without payment of duties and absent import declaration;

[7] Record of proceedings, Item 8, Letter from SARS, 006-105-107.
[8] Record of proceedings, Item 20, Section 96 Notice, 006-126.
[9] Record of proceedings, Item 22, Letter of Intent to Seize, 006-131.

20.2 According to the truck tracker, there were movements of the truck between South Africa, Mozambique and Eswatini between the 28th June 2019 and 10 July 2019;

20.3 Invoices submitted on 29 September 2019, reflect a different amount and value from the invoice used to declare the consignment in Eswatini; and

20.4 Offences were accordingly committed in terms of the Act and under section 87(2)(a)(b) and (c), the vehicles and fuel are liable to forfeiture.

21] On 16 July 2020, Afrinergy responded to the notice of intent to seize.[10] In the said response, the applicant denied that it breached sections of the Act nor that it failed to make, due entry of the fuel. In addition, the applicant provided an explanation for the position of the truck when it was found and a purported explanation as to why the driver abandoned the vehicle.

[10] Record of proceedings, Item 24, Letter from Pahad Attorneys, 006-140

22] Thereafter, on 13 August 2020, SARS responded to the applicant's explanation of events and drew to its attention the discrepancies in (i) the trip/tracker report of the vehicle between 28 June and 10 July 2019 and (ii) the invoices dated 8 July 2019 purporting to reflect the fuel consignment. SARS therefore remained of the view that Afrinergy failed to declare goods, submitted false information and, thus, has committed an offence under section 88 of the Act.[11]

23] SARS thereafter issued the Seizure Notice in respect of the vehicles and fuel under section 88(1) (c) of the Act.[12]

24] This prompted the applicant to file an Internal Administrative Appeal ("IAA") on 19 November 2020 against SARS decision to seize.[13]

25] The IAA Committee considered Afrinergy's submissions on appeal and upheld the decision to seize.[14] On 12 March 2021, following further

[11] Record of proceedings, Item 26, SARS Letter to Pahad Attorneys, 006-148.
[12] Record of proceedings, Item 27, Seizure Notice, 006-151.
[13] Record of proceedings, Item 28, IAA, 006-155.
[14] Record of proceedings, Item 32, Letter from Pahad Attorneys, 0060114.

correspondence between the parties, Afrinergy was given additional reasons why the appeal was refused.

26] The applicant also referred the matter to alternative dispute resolution ('ADR') on 14 April 2020. On 28 September 2021 SARS terminated the ADR proceedings on the basis that the seizure of the applicants detained assets was correctly stated by the Internal Administrative Appeal Committee and as a result the Commissioner has decided to terminate ADR proceedings.

27] At the hearing the applicant applied for an amendment to the Notice of Motion for an order in the following terms:

"1. Reviewing and setting aside the Second Respondent's decision of dated 13 August 2020, seizing the Applicants truck, tanker trailer and diesel fuel, which decision was confirmed by the Third Respondent, as Chairperson of the Internal Appeals Committee, alternatively the Penalty Review Committee.

2. To the extent necessary, condoning the applicant's non-compliance (if any) with the provisions of section 89 of the Customs and Excise Act, No 91 of 1964 ("the Act").

3. Ordering that the First Respondent, pay the Applicant's costs, if the application is opposed.

4. Further and/or alternative relief."

28] The application for an amendment was not opposed by the first respondent as the affidavits in the main application by then had already been filed in the matter and the notice to amend was first applied for during the filing of the Replying Affidavit.

29] At the hearing the Court proceeded to grant the application as there was no opposition taken by the respondent, nor did the respondent raise any prejudice on its part.

HAS THE APPLICANT COMPLIED WITH SECTION 89 OF CUSTOMS AND EXCISE ACT?

30] In the application, first respondent had raised a *point in limine*, i.e. in relation to the provisions of section 89 of the Customs Act which reads as follows:

> 89. Notice of claim by owner in respect of seized goods.—
>
> (1) Whenever any proceedings are instituted to claim any ship, vehicle, container or other transport equipment, plant, material, or goods (in this section, section 43 and section 90 referred to as "goods"), which have been seized under this Act, such claim must be instituted by the person from whom they were seized or the owner or the owner's authorised agent (in this section referred to as "the litigant")
>
> (2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96 (1) (a)—
>
> (a) within 90 days after the date of seizure;

(b) in the case of an internal administrative appeal, where such appeal is unsuccessful, within 90 days from the date contemplated in section 77F.

(3) Any proceedings must be instituted within 90 days of such notice

(4) Whenever goods are seized and in consequence of the seizure—

(a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted;

(b) no internal administrative appeal contemplated in Part A of Chapter XA is lodged or is lodged and is not successful;

(c) any dispute is not resolved as contemplated in Part B of Chapter XA or not settled as contemplated in Part C of that Chapter;

(d) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal, the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited.

(5) The provisions of section 96(1)(c) shall apply mutatis mutandis to any period contemplated in subsections (2) and (3).”

31] In terms of this peremptory provisions of the Act, the respondent contends that it is required that any party who lays claim to seized goods must meet two requirements in that; the notice in terms of section 96 must be given within 90 days of the seizure and secondly any intended proceedings must be instituted within 90 days of the service of the section 96 Notice on the Commissioner.

32] In terms of the section quoted above, the Notice of intended litigation (“section 96 Notice”) must therefore be served on the Commissioner within 90 (ninety) days of the date of seizure alternatively within 90 (ninety) days of the outcome of an Internal Administrative Appeal. In addition, the

envisaged proceedings must be instituted within 90 (ninety) days of the date of service of the Notice of intended litigation.

33] This much is clear from a plain reading of the text of the section.

34] Herein, the Notice of Seizure, was issued to Afrinergy on 9 October 2020. Thereafter, the Applicant was informed on 12 March 2021 that its Internal Administrative Appeal ("IAA") was unsuccessful, and the decision was made to uphold the seizure.

35] On this basis the respondent contends that in terms of section 89(2)(b), the Section 96 Notice should have been served by no later than 12 June 2021 and the envisaged proceedings should have been instituted no later than 12 September 2021.

36] Given that the section makes no provision for Alternate Dispute Resolution Proceedings, the applicant was mandated to utilise the date of communication of the outcome of the IAA as the effective date from when its dies started to run.

HAS THE APPLICANT COMPLIED WITH SECTION 96 OF THE ACT?

37] The applicant served its first section 96 Notice on 14 May 2020, this prior to any seizure having taken place,[15] and in the said notice it formulated its cause of action as one for the release of its truck, trailer and fuel.

38] It served a second section 96 Notice on 25 February 2022. This, some eleven months after it was informed that its IAA appeal was unsuccessful. The application for review was thereafter issued on 28 March 2022, this without any request which was made to the Commissioner to extend the period as envisaged in section 96(1) (c) nor was condonation sought from the Commissioner for the late filing of this section 96 Notice.

39] Section 96(1) permits a Court to condone the late filing of the Notice, only in such circumstances where the Commissioner was requested to condone the late filing and unreasonably refused such request.

40] In the present instance, counsel for the respondent had argued that the applicant has neither sought condonation from the Commissioner or

[15]Founding Affidavit annexure "SA3"

from this Court and that the time period for instituting the application has therefore prescribed.

41] On behalf of the applicant the argument advanced in respect of the *point in limine*, was that Section 89 of the Act, is not applicable as the applicant's claim as per its Notice of Motion, is for the setting aside and review of the decision to seize the applicant's truck, trailer and fuel, in terms of section 8 of the Provisions of the Promotion of Administrative Justice Act No 3 of 2000 ("PAJA").

42] This notwithstanding of the fact that the applicant in terms of PAJA read together with the Act, has provided the respondents with sufficient notice in terms of Section 96(1)(a) of the Act and has brought its application within the 180-day period afforded to it by PAJA.

43] In addition, counsel for the applicant had argued that in terms of the section relied upon by the respondent, it does not account for all the steps taken by the applicant, which steps included continually issuing notices in terms of Section 96(1)(a) of the Act to keep the matter moving along where the respondents continuously delayed in finalising their decisions,

which delays resulted in additional or further decisions being taken (albeit based on the same information and facts) or taking unreasonably long periods to do so. The respondents were at all times aware that the applicant intended to either apply for the review and setting aside of the decision to detain or the decision to seize the truck, trailer and fuel, and that the applicant's application in terms of PAJA would be in terms of the same facts, with the necessary order requested in terms of PAJA.

44] Counsel had further argued that the applicant attempted to resolve the matter by exhausting all internal remedies available to it in terms of the Act, prior to launching this application in terms of PAJA.

45] In addition, the section 89 notice does not provide for any time limits within which to institute proceedings if the applicant makes an application for alternative dispute resolution such as in the present instance in terms of Section 77I of the Act and the rules and regulations in regard thereto.

46] On this basis it was submitted that the applicant could not have, under any reasonable or logical circumstances, issued a notice in terms of Section 96(1)(a) of the Act until such time as it had completed the alternative dispute resolution process. Had the applicant done so it would have

negated the purpose of alternative dispute resolution – which is to resolve a dispute without litigating.

47] In terms of Section 96, extinctive prescription, so counsel had argued would run from the date the Commissioner or any of his functionaries delivered the outcome of the alternative dispute resolution process. This was 28 September 2021. Thus, under no circumstances could the applicant possibly have been expected to institute proceedings by 12 September 2021, as alleged by the respondents.

48] For these reasons counsel submitted that the applicant has brought its application both within the timelines as set out in terms of PAJA and in terms of Section 89 of the Act, despite that the present application is not one being brought in terms of Section 89. Based purely and *ex abundante cautela,* the applicant therefore delivered an amended notice of motion and requested condonation from this Court if at all necessary.

49] As previously mentioned, two requirements are to be met by a party who lays claim to seized goods. Firstly, the notice in terms of section 96 must be given within 90 days of the seizure and secondly any intended

proceedings must be instituted within 90 days of the service of the section 96 Notice on the Commissioner.

50] In the present matter it is common cause that the applicant had served several section 96 notices on the Commissioner. The first notice dated 14 May 2020 and the second notice dated 25 February 2022. In respect of the first notice, it is important to note that the notice predated the notice of seizure whereas the second notice of 25 February 2022 specifically dealt with the application to review and set aside the Commissioners decision to seize.

51] The service of the first section 96 notice dated 14 May 2020, took place before the intention to seize had taken place. No cause of action had arisen at that stage as no seizure by then had taken place. The notice was thus delivered prematurely and at best it was a nullity.

52] Support for this reasoning is found in the matter of **The Commissioner for the South African Revenue Service and Others v Dragon Freight (Pty) Ltd and Others**[16] where the Supreme Court of

[16] [2022] 3 All SA 311 (SCA) (7 June 2022).

Appeal dealt with a situation similar to what is before the Court where there are different section 96 Notices sent:

> "The impugned decision had not been taken when the February notice was delivered to SARS. It was thus impossible for the respondents to set out any cause of action in that notice: there was none. Section 96(1) (a) (i) of the Act does not permit a notice in anticipation of a decision not yet taken, by the functionaries referred to in that provision. Such a construction would nullify its purpose and render the sanction of invalidity in s 96(1) (a) (iii), nugatory.
>
> What is more, when the February notice was delivered, no 'administrative action' as defined in the Promotion of Administrative Justice Act 3 of 2000 (PAJA), had been taken. That definition includes a decision taken by an organ of state when exercising a public power or performing a public function in terms of any legislation 'which adversely affects the rights of any person and which has a direct, external legal effect'. This merely reinforces the absence of any cause of action when the February notice was delivered."

53] The second notice was served on the respondent on 25 February 2022, this after the applicant was informed by the respondent that the IAA was unsuccessful on 12 June 2021.

54] This second notice having regard of the provisions of the Act was served outside of the 90-day period provided for in the section and as such it was not served timeously on the Commissioner.

55] The second notice also never sought condonation from the Commissioner for its late service on the Commissioner neither did it seek an extension of the time period in respect of which it should have been served.

56] Absent such a request having been directed to the Commissioner, this Court simply cannot condone the applicants' failure to have acted within the prescribed time period as provided for in the Act and as such this Court must then conclude that the proceedings were instituted prematurely in the absence of condonation having been requested, considered and either granted or refused by the Commissioner. Consequently, it is found that there has also been non-compliance with section 96 of the Act.

57] In the matter of **The Commissioner for the South African Revenue Service v Prudence Forwarding (Pty) Ltd**[17] the Court held as follows:

> 'It was therefore incumbent upon [the respondents] to serve the relevant notice and to obtain the agreement of the Commissioner or the sanction of the court to reduce the one-month period in respect of the new cause of action involving a review of the seizure decision. This was not done. The respondents could not rely on the notice they served to obtain the release of the goods from detention. Section 96(1)(a)(i) of the Act makes it plain that the notice must relate to a specific cause of action, which is required to be set forth "clearly and explicitly" in the written notice. And section 96(1) (a) (iii) provides that no notice shall be valid unless it complies with the requirements prescribed in the section. Thus, since no notice was delivered in respect of the review, and neither the Commissioner or the court agreed to a reduced period, the jurisdictional conditions precedent were not fulfilled, and the court accordingly lacked jurisdiction to grant the final relief it granted, in the form of an order setting aside

[17] 2015 JDR 2545 (GP).

the seizure of the goods. For that reason alone, the appeal must succeed.'[18]

58] Consequently, this Court must conclude that the applicant has failed to comply with the provisions of section 89 of the Customs and Excise Act and as a result the *point in limine* is upheld with costs.

HAS THE APPLICANT COMPLIED WITH SECTION 93 OF THE ACT?

59] In addition to the above, the respondent further avers that the applicant lacked the necessary locus standi to have launched the present proceedings, if one considers the provisions of section 93 of the Act. The section reads as follows:

93. Remission or mitigation of penalties and forfeiture—

(1) The Commissioner may, on good cause shown by the owner thereof, direct that any ship, vehicle container or other transport equipment, plant, material or other goods detained or seized or forfeited under this Act be delivered to such owner, subject to—

[18] Ibid para 28.

(a) payment of any duty that may be payable in respect thereof.

(b) payment of any charges that may have been incurred in connection with the detention or seizure or forfeiture thereof; and

(c) such conditions as the Commissioner may determine, including conditions providing for the payment of an amount not exceeding the value for duty purposes of such ship, vehicle container or other transport equipment, plant, material, or goods plus any unpaid duty thereon.

60] Herein the respondent avers that the applicant has not provided the Commissioner with proof that he was the owner of the seized goods and would therefore have the necessary locus standi to claim back the seized goods.

61] Absent proof of ownership to the truck, there has also been non-compliance with the provisions of section 93 of the Act.

HAS THE APPLICANT MET THE REQUIREMENTS FOR THE REVIEW OF THE COMMISSIONER'S DECISION?

62] In respect of the merits of the review it is the applicant's case that on 10 July 2019 when its truck passed through the OBP, it was not adequately manned and that it intended to make the necessary declaration once its consignment of fuel entered the country and remained in the appropriate customs control area.

63] The applicant contends that this it was permitted to do so in terms of Section 38(1)(a) of the Act which provides that "every importer of goods shall within seven days of the date on which such goods are, in terms of section ten deemed to have been imported except in respect of goods in a container depot as provided for in section 43 (1) (a) or within such time as the Commissioner may prescribe by rule in respect of any type of cargo, means of carriage or any person having control thereof after landing, make due entry of those goods as contemplated in section 39."

64] Accordingly, counsel had argued that it was allowed in terms of the Act, to enter the Republic with its cargo, and that the cargo had to remain

with SARS, in a customs control area at the border until such time as the declaration was to be made within the seven-day period allowed for in the section.

65] As a result of an error on the part of its driver, the truck proceeded beyond the customs control area and then it exited the border in order to turn the truck around. This error, so counsel contends, was allowed to occur because of a lack of control over the area by SARS officials, with both the entry and exit gates being unmanned. Had SARS officials properly carried out their duties, this would have been avoided.

66] The respondent denies that the OBP on the day on question was not adequately manned by its officials. They say so, as the applicant had failed to produce evidence at the very least by its driver to support this contention.

67] The deponent to the founding affidavit further bears no personal knowledge of what exactly had transpired when its' driver drove through the OBP. In addition, the truck was found turned around, abandoned and

unattended and facing the border some metres away with also no explanation proffered by the applicant in this regard.

68] In the present matter, it is common cause that the driver of the truck had not deposed to an affidavit explaining why he went through the OBP without declaring the goods he was transporting.

69] This Court considers it at best opportunistic by the applicant to apportion blame on the side of the SARS officials employed at the border for its failure to make a declaration as it always was and remained the applicant's obligation to declare such goods when it entered the border post or within seven days as provided for by section 38 of the Act.

70] In the absence of such evidence being placed before this Court, I cannot conclude that the OBP was not adequately manned on the day of the incident.

71] Upon making the finding of the abandoned truck containing the fuel, the Commissioner issued a notification of its intent to seize the abandoned

truck containing the fuel and informed the applicant of its decision to seize. It thereafter requested certain information from the applicant which could potentially prove that the provisions of the Act had not been contravened.

72] The applicant provided some of the requested information and documentation, but this documentation did not prove that there was due compliance with the Act.

73] The applicant was also provided with an opportunity to provide explanations and supporting documentation to explain the discrepancies picked up by SARS. Upon receipt of the explanations coupled with the information at its disposal, the decision was then made by the Commissioner to seize the fuel and the truck.

74] The applicant as mentioned, relies on the provisions of section 38 of the Act, namely that it had a period of 7 (seven) days to make due entry of the goods. However as a result of its driver absconding the vehicle, they could not make due entry of the fuel.

75] Fuel is an incredibly risky commodity which carries a high customs duty and the duty incumbent on transporters, importers, exporters etc. is even higher given the ease with which fuel can be unlawfully moved around without duty having been paid thereon.

76] Given the factual matrix and the absence of evidence by the driver who absconded, this Court cannot conclude that the decision taken by the Commissioner for the subsequent seizure of the goods under section 88 was unwarranted, unlawful and without merit. The decision taken by the Commissioner was made upon engagement with the applicant and upon assessment of the explanations provided by the applicant in respect of the invoices, movements of the truck as well as documents reflecting legitimate import of the fuel.

77] A review is specifically concerned with the process undertaken to reach the decision under attack and more importantly whether such decision is lawful. In **Liberty Life Association of Africa v Kachelhoffer**[19] the court held that the correctness or otherwise of the decision is confined to the enquiry in an appeal. In the present matter this Court is of the view that the decision taken by the Commissioner was lawful and that the applicant

[19] 2001(3) SA 1094 (C).

has failed to meet the requirements to have the decision so taken set aside.

ORDER

78] In the result the following order is made:

78.1 The respondents *point in limine* is upheld with costs.

78.2 The application is dismissed with costs, including the costs of two counsel, in accordance with Scale C of Rule 67A (as amended) of the Uniform Rules of Court.

COLLIS J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES:

Counsel for the Applicant: Adv. G.Y. Benson

Instructing Attorney: PAHAD ATTORNEYS

Counsel for the Respondent: Adv. K. Kollapen & S. Kazee

Instructing Attorney: YAMMIN HAMMOND INC.

Date of Hearing: 13 November 2024

Date of Judgment: 02 February 2026