



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF  
APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 28 March 2024

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

*Walter Eleazar Cyril and Another v The Commissioner for the South African Revenue Service*  
(Case no 186/2023) [2024] ZASCA 32 (28 March 2024)

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Today the Supreme Court of Appeal struck from the roll an appeal with costs of two counsel. The two appellants are accused of conduct which allegedly contravened various sections of the Customs and Excise Act 9 of 1964 (the CEA). In *Gaertner and Others v Minister of Finance and Others* [2013] ZACC 38, the Constitutional Court found that sections 4(4)(a)(i)-(ii), 4(4)(b), 4(5) and 4(6) of the CEA are inconsistent with the Constitution. It suspended the declaration of invalidity to afford Parliament the opportunity of amending the CEA. Paragraph 2 of the order of the Constitutional Court read that ‘The declaration of invalidity is not retrospective.’

Prior to that judgment, the Commissioner for the South African Revenue Service (SARS) had conducted an inspection of premises of a company associated with the appellants. In the prosecution, the Director of Public Prosecutions sought to introduce into evidence the results of that search. This was challenged and, after a trial within a trial was conducted, the magistrate ruled the evidence admissible. The appellants argued that *Gaertner* invalidated inspections conducted by SARS in terms of s 4(4) of the CEA in ‘all matters that had not yet

been finalised prior to the declaration of invalidity'. The appellants applied to the Gauteng Division of the High Court, Johannesburg to review and set aside that ruling. SARS sought leave to intervene in the review application, which leave was granted by Mahalelo J. The high court granted the appellants leave to appeal.

The Supreme Court of Appeal rehearsed the test for the appealability of judgments, including that of the interests of justice. It held that the appellants had not satisfied two out of the three criteria in the early judgment of *Zweni v Minister of Law and Order* [1992] ZASCA 197. It held, further, that the interests of justice militated against the judgment being appealable and that a piecemeal approach to litigation (also evidenced by the review application being brought when the criminal trial remained pending) was undesirable. As a result, the appeal was struck from the roll.