



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

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Status: Immediate

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Commissioner for the South African Revenue Service v Virgin Mobile South Africa (Pty) Ltd (1303/2023)
[2025] ZASCA 77 (04 June 2025)

Today the Supreme Court of Appeal (SCA) upheld an appeal with costs including the costs of two counsel against an order of the Gauteng Division, Pretoria (the high court). The appeal was against the majority judgment and order of the high court, in which it dismissed an appeal against a judgment of that court, sitting as the tax court (the tax court). The tax court had dismissed an application in terms of Rule 30(1) of the Uniform Rules of Court in which the appellant, the Commissioner for the South African Revenue Service (SARS), sought an order to set aside a default judgment application against it by the respondent, Virgin Mobile South Africa (Pty) Ltd (the taxpayer), as an irregular step.

SARS issued an additional assessment against the taxpayer for the 2014, 2015 and 2016 tax years. The taxpayer filed a notice of appeal against the assessment on 22 May 2019. In terms of Rule 31, SARS was then obliged to file a statement within 45 days in response to the appeal. SARS failed to file its statement. Despite compliance reminders being sent to SARS, it remained in default and, on 13 October 2020, the taxpayer filed a notice in terms of Rule 56(1)(a) calling upon SARS to remedy its default within 15 days, failing which, it would apply for default judgment against it. On 20 October 2020 (five days after the notice was served) SARS complied with the notice and filed its Rule 31 statement. Notwithstanding SARS' compliance with the notice, the taxpayer applied for default judgment, on 30 November 2020.

On 14 December 2020, SARS filed a notice in terms of Rule 30 of the Uniform Rules, read with Rule 42, calling upon the taxpayer to withdraw the default judgment application, failing which, it would launch an application to set it aside as an irregular step. SARS contended that it had complied with the taxpayer's notice, thereby curing its default. The taxpayer disagreed, prompting SARS to launch the Rule 30 application, which the tax court dismissed with costs. SARS, in turn, appealed against the tax court's order to the high court, the majority of which dismissed the appeal with costs.

In adjudicating the matter, the SCA first decided the appealability issue before determining the merits as, before the hearing, the SCA requested the parties to file supplementary heads of argument on whether the high court's order is appealable. On the point of appealability, the SCA stated that the issue to be determined, was whether the dismissal of an application in terms of Rule 30 of the Uniform Rules of Court was a decision as contemplated in s 129(2) of the TAA.

In addressing this issue, the SCA pointed out that, if the Rule 30 application filed by the taxpayer was a procedural matter relating to that dispute, then the decision of the tax court was appealable. Highlighting that the better approach would be that, an application in a procedural matter relating to a dispute under Chapter 9 of the TAA was appealable provided that it was in the interests of justice to consider the appeal, the SCA held that the application in terms of Uniform Rule 30(1) to remove the irregular step, was an application in a procedural matter as contemplated in the TAA and thus, it would be in the interests of justice to hear and determine the appeal.

The issue on the merits before the SCA therefore related to the proper interpretation of Rule 56(1) of the tax court Rules. In addressing this issue, the SCA stated that, if a party fails to comply with Rules 31, 32 or 33, it may approach the tax court with a condonation application and request a further period within which it may deliver the statement, this being a voluntary application by a party who has failed to comply with the Rules. Rule 56(1), on the other hand, is coercive in that the innocent party endeavours to force the defaulting party to comply on pain of a final order being made against it. The Court went on to state that the Rule 56(1) notice serves the purpose of a compliance notice and is a procedural mechanism which assists an innocent party to advance the appeal, either by ensuring compliance or by securing a default judgment. Absent compliance, the innocent party may, after giving the defaulter notice of its application, apply for default judgment. Since a final order under s 129(2) can be drastic, sufficient notice should be given before it is sought. However, the underlying objective of the Rule 56(1) notice procedure is not punitive – it is aimed at facilitating finality of the dispute by coercing compliance. Once compliance has been achieved, the Rule will have served its purpose. It is for this reason that, after compliance with the notice, there is no need for the defaulter to apply for condonation.

The Court went on to state that, viewed in this manner, Rule 56(1) is self-contained: its purpose was achieved when SARS complied with the demand that it files its rule 31 statement within the period specified in the notice. Lastly, the SCA found that compliance with a Rule 56(1) notice is akin to complying with a notice of bar in terms of Rule 26 of the Uniform Rules of Court. If a party was served with a notice of bar, it was enjoined to file the required pleading in the five days set out in the notice. If such party complies, the bar is automatically lifted by dint of compliance with the notice. Consequently, a condonation application was therefore not necessary.

Holding that the high court ought to have held that a party who was served with a Rule 56(1) notice need not apply for condonation after complying with the notice and should have found that the default judgment application was an irregular step and granted the Uniform Rule 30 application, the SCA upheld the appeal and set aside and substituted the order of the high court.

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