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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Fikile Ntayiya v South African Revenue Service (848/2023) [2025] ZASCA 183 (1 December 2025)

Today the Supreme Court of Appeal (SCA) dismissed, with costs, an appeal against the judgment of the Eastern Cape Division of the High Court, Mthatha, Shene AJ sitting as court of first instance (the high court).

In 2014, SARS conducted an audit on the tax affairs of the appellant, the sole director and shareholder of a law practice in Mthatha. The audit concerned the six-year tax period between 2008 and 2013, resulting in a 2014 assessments. For each of these years, the appellant, assisted by MNG Business Consultants (MNG), filed nil returns, suggesting that he had not earned any taxable income. The 2014 assessments revealed that the appellant's tax liability was actually in the amount of R3 600 000, inclusive of interest and penalties for the understatement of income (USP). The appellant lodged an objection to the assessments in terms of the Tax Administration Act 28 of 2011 (the TAA). SARS disallowed the objection, whereafter the appellant noted an appeal against the disallowance. SARS also dismissed the appeal. It compared the money deposited in the business and private accounts of the appellant with the submitted nil return financial statements and concluded that the appellant had grossly understated his income. Consequently, SARS imposed a USP on the basis that the appellant's conduct amounted to intentional tax evasion. Upon receipt of this response, the appellant launched an application against SARS in the high court, to review and set aside SARS' assessment. The high court held that the appellant had failed to notify the Commissioner of SARS of his intention to institute proceedings in the high court, and dismissed the appellant's review application with costs.

The appellant appealed to the full court of the same division (the full court), where the appeal was upheld and the matter referred back to the high court for the determination of the merits. The full court in *obiter*, drew the parties' attention to the option of exploring the alternative dispute resolution (ADR) process provided for in s 105 of the TAA. The parties pursued the ADR process and agreed to terms of engagement that were outlined by SARS in an email in February 2018, which included that annual financial statements had to be submitted. The appellant had enlisted the assistance of new accountants, APAC Accounting and Tax Specialists (APAC). APAC, on behalf of the appellant and in response to SARS' invitation, submitted revised annual financial statements to SARS. On 20 November 2019, SARS responded with revised calculations, but they did not result in a substantial decrease of the appellant's tax liability. In December 2019 SARS attached the appellant's law firm's business bank account as security for the tax debt. An amount of R1 200 000 in the account was frozen. In the light of this, the appellant returned to the high court. In that court, he delivered an amended version of the notice of motion. The dispute between the appellant and SARS had morphed into a review of SARS's 2014 assessment, declaratory relief and a claim for repayment by SARS of a specified amount. At the commencement of the hearing in the high court, the appellant however abandoned three paragraphs of the amended notice of motion, which, importantly, including a prayer to have the 2014 assessments declared incorrect as well as a prayer that attacked the validity of his nil returns, and only sought an order for the repayment of a specified amount. The high court, applying the *Plascon-Evans* principle, concluded that there were disputes of fact between the parties and therefore dismissed the appellant's application with costs.

The issues before the SCA were two-fold. Firstly, prior to the hearing of the appeal, the appellant delivered an application to lead new evidence on appeal. The new evidence was premised on an affidavit deposed to by a Functional Specialist at SARS. The essence of her statement was that she did not authorise SARS officials to

attach the law firm's business bank account at First National Bank, but the appellant's personal bank account at Standard Bank. Secondly, the appellant sought the reversal of the order of the high court dismissing his application for an order against SARS to pay back R762 335.08, taken from his firm's bank account, with interest from 13 December 2019 to date of payment.

The SCA, in regards with the further evidence, emphasised that the proposed new evidence concerned money attached from the law firm's bank account, and not the appellant's bank account. With reference to *P A F v S C F* the SCA therefore found that, considering the relief sought by the appellant in this appeal, the proposed new evidence would not be practically conclusive and final in its effect. Furthermore, the SCA found that, since the appellant in his calculations has impermissibly conflated the law firm's money attached by SARS with his personal amounts to pray for a set off in settlement of his personal tax liability, it would thus be a contradiction in terms for the appellant to contend that SARS should be ordered to pay back the amount attached from the law firm's account, while simultaneously pleading that the Court must allow SARS to keep that amount for the purposes of the calculation justifying a set off.

The SCA, in respect of the reversal of the high court order, identified that the appellant's case hinged on the determination of two issues, namely the 150% USP and the 10% tax on the use of motor vehicles. The Court held that the 2014 assessments remained final and binding on the parties, until set aside by a competent authority. The SCA pointed out that the appellant erroneously assumed that SARS had abandoned or waived the 2014 assessments for the period 2008 to 2013. There was no evidence of such withdrawal or waiver by SARS, neither were there any objections or appeals pending wherein the validity of the 2014 assessments was assailed. No evidence of a settlement agreement concluded between the appellant and SARS, pursuant to the ADR, existed. Since the prayer to have the 2014 assessments declared incorrect, reviewed and set aside, was abandoned by the appellant in the high court, the SCA held that the high court correctly found that the issues had become academic.

The SCA held, in respect of the USP, that it is was in no better position than the high court to deal with the USP of 150%, as the penalty was inextricably linked to the nil returns that resulted in the 2014 assessments. It was the appellant's case that the calculations that resulted in submission of nil returns were incorrect, but resulted from a 'bona fide' errors made by his accountants at the time. The SCA found that because the appellant abandoned the prayer in which he attacked the validity of his nil returns, this impeded the high court to consider the factual circumstances and evidence, if any, in regard to whether there was an inadvertent *bona fide* error that resulted in the submission of the nil returns. After applying ss 221 to 223 of the TAA as well as the cases of *Commissioner for Inland Revenue v McNeil* and *ABC Holdings (Pty*) *Ltd v Commissioner for SARS,* the SCA held that this ground of appeal was without merit and had to fail.

The SCA, with regards to the 10% tax on the use of motor vehicles, pointed out that the 10% tax on the private use of the motor vehicle was not included in the 2014 assessments, but instead, according to SARS, the purchase of the motor vehicles was disclosed in the documents submitted by APAC for the ADR, and revealed for the first time that the appellant had purchased several motor vehicles. The appellant failed to produce documentation to substantiate his contention that the motor vehicles were used to service clients in the course of earning income. The SCA held that there was no merit in the appellant's contention that a 100% deduction from gross income for business travel should be made. It was not supported by any documentation that he ought to have produced when requested to do so by SARS. Moreover, the SCA held that the 10% tax was proposed by the auditors acting on the appellant's behalf.

The SCA found that the decision to abandon the three paragraphs of the amended notice of motion, proved to be fatal to the appellant's case, both in the high court and on appeal. The SCA therefore held that the appellant failed on both the grounds of appeal that he raised.

As a result, the SCA dismissed the application to present new evidence as well as the appeal with costs, including the cost of two counsel.