THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case no: 659/05
NOT REPORTABLE

In the matter between:

CLEARING AGENTS, RECEIVERS & SHIPPERS **APPELLANT**

and

THE MEMBER OF THE EXECUTIVE COUNCIL: TRANSPORT, KWAZULU-NATAL **1ST RESPONDENT**

THE MINISTER OF TRANSPORT **2ND RESPONDENT**

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **3RD RESPONDENT**

Before: Scott, Nugent, Lewis, Jafta et Cachalia JJA

Heard: 13 March 2007

Delivered: 28 March 2007

Summary: All motor vehicles must be registered and licensed in accordance with the National Road Traffic Act 93 of 1996. Regulation 84, which is one of the regulations promulgated in terms of the Act, provides for unregistered and unlicensed vehicles to be operated on a public road temporarily under a temporary or special permit. It is intended as an interim measure, to permit unregistered and unlicensed motor vehicle users to operate their vehicles pending their registration and licensing in terms of the Act. It cannot be used to facilitate the transport of vehicles, using their own power, from a South African port to a neighbouring country.

Neutral citation: This judgment may be referred to as *Clearing Agents v MEC Transport* [2007] SCA 35 (RSA)

JUDGMENT

CACHALIA JA

[1] The appellant is a *universitas* whose members describe themselves as clearing and forwarding agents and motor vehicle importers. The first and second respondents are the Member of the Executive Council: Transport, Kwazulu-Natal who is responsible for the administration of transport in that province and the Minister of Transport to whom the administration of the National Road Traffic Act 93 of 1996 ('the Act') has been entrusted. I refer to them together as 'the respondents'. The third respondent has no interest in these proceedings.

[2] There are three appeals before us. The main appeal arises in the following circumstances. There is a large market for imported second-hand motor vehicles in South Africa's neighbouring countries apparently because they are more expensive when purchased in South Africa. The appellant's members exploit this market by sourcing the vehicles from foreign countries, and then ship them to Durban from where they are driven to neighbouring countries. The vehicles thus sourced are not intended for use in this country.

[3] The appellant's members have been engaged in this business since at least October 2002 when the first and third respondents' officials amended the relevant rules of the Customs and Excise Act 91 of 1964 to facilitate the removal in bond of the imported vehicles on South African roads to foreign destinations. They use the procedures provided for in reg 84 to achieve this result. Thus once the vehicles were physically offloaded from a ship, the appellant's members applied for three-day 'special permits' to enable them to be driven to a roadworthy testing centre to obtain certificates of roadworthiness. Thereafter twenty-one day 'temporary permits' were issued to facilitate their being driven to foreign destinations on South African roads.[1]

[4] In February 2005 the National Department of Transport, which reports to the second respondent, was advised that reg 84 does not permit the issue of

[1] See reg 84 below para 8.

temporary and special permits to facilitate the transportation of these vehicles from the port of entry to foreign countries. The Department's Director-General accordingly issued a directive in May 2005 that the practice be discontinued. Following this directive the first respondent issued a circular, MLB Circular No 29/2005, instructing all registering authorities to discontinue issuing 'special' and 'temporary permits' for such vehicles with effect from 1 July 2005. In response the appellant sought a declaratory order in the court below that reg 84 authorises 'the issue of temporary and special permits in respect of imported second hand motor vehicles intended to be driven in transit on South African roads, for the purposes of export'. The application was dismissed by Koen AJ in the Durban High Court. The appellant approaches this court with leave of the court below. The main question in this appeal is whether reg 84, properly construed, authorises the issue of temporary and special permits for the purpose of enabling vehicles to be driven on South African roads from the port of entry to our neighbouring countries.

[5] There are two further subsidiary appeals. The first is against an order of Koen AJ that the appellant furnish security for costs. The second is against an order of Combrinck J interdicting the respondents from acting upon the directive pending the determination of the main appeal. It is convenient to dispose of these appeals immediately. Counsel for the parties agree that the determination of this dispute hinges on the outcome of the main appeal and that the two other appeals will have no practical effect or result. It is not suggested that there are any exceptional circumstances that warrant their consideration.[2] Those appeals ought thus to be dismissed with costs. I turn to consider the main appeal.

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[2]Section 21A of the Supreme Court Act 59 of 1959 **Powers of court of appeal in certain civil proceedings**
(1) 'When at the hearing of any civil appeal to the Appellate Division or any Provincial or Local Division of the Supreme Court the issues are of such a nature that the judgment or order sought will have no practical effect or result, the appeal may be dismissed on this ground alone.
(2) . . .
(3) Save under exceptional circumstances, the question whether the judgment or order would have no practical effect or result, is to be determined without reference to consideration of costs.'

[6] A ‘regulation’ is defined in the Act to mean a regulation in terms of the Act. Regulation 1 provides that in the regulations, an expression defined in the Act has that meaning unless the context indicates otherwise. Regulations are subordinate legislation but the principles of statutory interpretation are equally applicable to them. The proper approach to be followed when interpreting any statutory provision or regulation was formulated by Wessels AJA in *Stellenbosch Farmers’ Winery Ltd v Distillers Corporation (SA) Ltd*[3] as follows:

‘In my opinion it is the duty of the Court to read the section of the Act which requires interpretation sensibly, i.e. with due regard, on the one hand, to the meaning or meanings which permitted grammatical usage assigns to the words used in the section in question and, on the other hand, to the contextual scene, which involves consideration of the language of the rest of the statute as well as the “matter of the statute, its apparent scope and purpose, and, within limits, its background”. In the ultimate result the Court strikes a proper balance between these various considerations and thereby ascertains the will of the Legislature and states its legal effect with reference to the facts of the particular case which is before it.’

[7] The regulations must accordingly be considered in conjunction with and in the context of the Act. The Act’s object is ‘to provide for road traffic matters which shall apply uniformly throughout the Republic and for matters connected therewith’. Its underlying purpose is to regulate the use of motor vehicles in the Republic. Section 4 of the Act requires all motor vehicles to be registered and licensed unless exempt by regulation. Regulation 5 sets out the types of motor vehicles that fall within the exemption.[4] Subject to these exemptions every motor vehicle in the Republic, whether or not operated on a public road, must be registered by a title holder thereof with the appropriate registering authority in accordance with the provisions of Part 1 under Chapter 111 of the Regulations.

[3]1962 (1) SA 458 (A) at 476E-G.
[4]These include motor vehicles propelled by electrical power derived from overhead wires, have crawler tracks, belong to the Department of Defence or are self-propelled lawnmowers.

[8] Regulation 84, which we are concerned with for present purposes, provides for those circumstances where unregistered and unlicensed motor vehicles may be operated on a public road under a temporary or special permit. It reads thus:

'(1) A person who desires to operate on a public road a motor vehicle which has not been registered and licensed or not licensed, and may not otherwise be so operated, may –

(a) if he or she is the owner of such motor vehicle, obtain a temporary permit in respect of such motor vehicle in order to operate such motor vehicle on a public road as if it is registered and licensed, if such motor vehicle is to be –

(i) delivered by or to such owner, who is a motor dealer; or

(ii) registered and licensed in terms of this Chapter, but only during the period permitted for such registration and licensing; or

(b) obtain a special permit in respect of such motor vehicle in order to operate such motor vehicle on a public road as if it is registered and licensed for purposes of –

(i) testing such motor vehicle;

(ii) proceeding to or returning from a place where repairs are to be or have been effected to such motor vehicle;

(iii) reaching an examiner of vehicles or mass measuring apparatus; or

(iv) repossessing such motor vehicle, as contemplated in regulation 69(2).

(2) . . .

(3) The owner of a motor vehicle which is licensed and who cannot comply forthwith with the provisions of regulation 35 or 36, may obtain a temporary permit in order to operate the motor vehicle on a public road.

. . .

[9] Regulation 84 allows for a temporary permit to be issued 'if a motor vehicle is to be registered and licensed in terms of this Chapter' (Chapter IV). The vehicles in the present case are not intended to be registered under the regulations, whether a regulation falling within this chapter or under any other regulation. Counsel for the appellants submitted that reg 87[5] (contained in this

[5]Regulation 87 **Manner of issue of temporary or special permit** '(1) On receipt of the application referred to in regulation 85(1) or (2), the registering authority may, and if the applicant so requires, shall issue an assessment

chapter) contemplates a register being kept of permits that are issued under reg 84 and that the recordal of permits in that register constitutes the registration of the vehicles concerned. Once permits were issued to members of the appellant, so it was submitted, and the permits were recorded in that register, that would constitute registration of the vehicles concerned under the provisions of this chapter. It follows, the submission continued, that the vehicles concerned were indeed 'intended to be registered' under this chapter. There is no merit in the submission. The recordal of permits under reg 87 does not constitute the registration of the vehicles concerned.

[10] The clear purpose of reg 84 is to allow for vehicles to be driven on the roads pending their registration in accordance with the regulations (the reference in reg 84(1)(a)(ii) to 'this chapter' is probably erroneous). The vehicles that are now under consideration are not intended to be registered under the regulations, whether under this chapter or at all, and on that ground alone the appellants are not entitled to permits. It is not necessary in the circumstances to consider the other grounds upon which they were said not to fall within the terms of the regulation.

The following order is accordingly made:

(i) The main appeal (against the order of Koen AJ) is dismissed with costs including those costs consequent upon the employment of two counsel;

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showing the appropriate fees as determined by the MEC of the province concerned and if applicable, the penalties and arrear fees referred to in regulations 57 and 59.
(2) On submission of the assessment and upon payment of the fees and penalties referred to in subregulation (1), the registering authority shall, subject to the provisions of regulation 59(2), and if satisfied that the application is in order –
(a) record the particulars pertaining to –
(i) the applicant; and
(ii) if applicable, the date, number and place of issue of a certification of roadworthiness, referred to in regulation 85(3)(c);
in the register of motor vehicles; . . .'

(ii) the second appeal (against the security of costs order of Koen AJ) is dismissed with costs;

(iii) the third appeal (against the order of Combrinck J) is dismissed with costs.

A CACHALIA

JUDGE OF APPEAL

CONCUR:

SCOTT JA

NUGENT JA

LEWIS JA

JAFTA JA