



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Michael Hermann Armbruster and Another v The Minister of Finance and Others**

**Case CCT 59/06  
Medium Neutral Citation [2007] ZACC 17**

**Date of Judgment: 25 September 2007**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

More than three years ago Mr Armbruster was caught red-handed at OR Tambo International Airport trying to take out of the country foreign currency with the value of over R100 000 which was unlawfully in his possession. The money was immediately seized and forfeited to the State in terms of certain foreign currency regulations. Mr Armbruster made representations before the State decided not to return any of the currency to him. After unsuccessfully applying, on various grounds to the High Court to set aside the forfeiture, Mr Armbruster applied to this Court for leave to appeal against the decision of the High Court.

In this Court Mr Armbruster contended that the discretion not to return the money was so wide that it could be exercised properly only if there were guidelines on how to do so.

In a unanimous judgment of this Court, Mokgoro J held that, according to the regulations, the currency was not forfeited immediately upon seizure. It was forfeited only after the official had decided that some or none of the money should be returned to any affected person. That decision had to be taken consciously after the affected person made representations.

Mokgoro J further held that although the discretion was indeed wide, the regulation seeks to mitigate undue hardship and injustice, and that, while forfeiture of currency did have a punitive element, it did not amount to a criminal penalty. She concluded that the regulations did not violate the right of access to court guaranteed in the Constitution. She dismissed Mr Armbruster's claim that the official who decided not to return the currency was performing a judicial function in a way inconsistent with the Constitution. Rather, it was held that the official performed an administrative function.

The Court concluded that the regulation did not allow arbitrary deprivation of property contrary to the Constitution, because the link between the purpose of the deprivation, the owner and the property could hardly have been closer. Accordingly the application for leave to appeal was granted but the appeal was dismissed.