

Explanatory Note

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

The matter involved a challenge to s 74(3) of the Income Tax Act 58 of 1962 which empowers certain persons acting under written authorization of the Commissioner of Inland Revenue, to enter any premises in order to search for and seize any documents material to the assessment of a person's tax liability, and to retain such documents for any assessment or any criminal or other proceedings under the Act. The appellant was subjected to such a search and seizure during October 1993 and April 1994. After the coming into operation of the Constitution, the appellants challenged the validity of these activities on the grounds that they did not comply with the common law requirements of administrative justice, and alternatively, that section 74(3) violated the appellants' constitutional right not to be subject to searches or seizures. The Appellate Division referred the constitutional challenge to section 74(3), as well as the question of its jurisdiction to determine the common law challenge, to the Constitutional Court.

The Court found that the searches and seizures had been completed on 22 April 1994, before the coming into operation of the interim Constitution. In accordance with the principle established in *Du Plessis and Others v De Klerk and another* CCT 8/95 (15 May 1996) that the Constitution did not operate retroactively, the Court held that the Constitution did not apply to the facts of this case. A determination of the constitutionality of s 74(3) was therefore irrelevant.

With regard to the jurisdiction of the Appellate Division to determine the common law grounds of invalidity, the Court held that because the interim Constitution did not apply to the authorization, search or seizure in the present case, the Appellate Division was competent to determine the appeal on such grounds. No view was expressed on what the position would have been had the interim Constitution applied to the matter.

The case was remitted to the Appellate Division to dispose of the appeal in accordance with its own powers and procedures.

The judgment of the Court was delivered by Ackermann J and was concurred in by the other members of the Court.