

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Motsepe v CIR

Case CCT 35/96

Decided on 27 March 1997

Media Summary

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

The case involved a challenge to the constitutionality of ss 92 and 94 of the Income Tax Act 58 of 1962 (the Act). The case came before the Constitutional Court by way of a referral from the Transvaal Provincial Division in terms of s 102(1) of the interim Constitution. The applicant also requested direct access to challenge the constitutionality of s 91(1)(b) of the Act.

Section 92 prevents taxpayers from questioning the correctness of any assessment (filed in terms of s 91(1)(b)) in any proceedings other than the particular objection and appeal proceedings provided for in the Act. Section 94 provides that 'the production of any document under the hand of the Commissioner purporting to be a copy of or an extract from any notice of assessment shall be conclusive evidence of the making of such assessment and, except in the case of proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct'. The applicant's complaint against these sections was that, because they prohibit the taxpayer from challenging the correctness of any assessment in sequestration or other proceedings, they leave the taxpayer defenceless. This was, it was contended, a violation of the taxpayer's constitutional rights.

The Commissioner for Inland Revenue had investigated the financial affairs of the applicant and her husband, and assessed the tax liability of the joint estate at an amount of approximately R6m. Pursuant to s 91(1)(b) the Commissioner filed a certified statement confirming that the applicant and her husband owed the assessed amount. This was entered into the judgment book so that it would have all the effects of a civil judgment. On the basis that the liabilities of the joint estate exceeded its assets the Commissioner launched sequestration proceedings against the applicant and her husband. The applicant responded by arguing that ss 92 and 94 of the Act were unconstitutional. The Transvaal Provincial Division referred the sections to the Constitutional Court and postponed the sequestration proceedings pending the Constitutional Court's decision.

The Court held that the referral was incompetent and that there was therefore no need to decide upon the constitutionality of the provisions. It is one of the requirements for a valid referral that the issue referred must be decisive for the case. The Court held that the

issue of the constitutionality of ss 92 and 94 was not decisive for the case; even if the sections of the Act in question were assumed to be invalid and the barriers which they presented ignored, the applicant would not have been in a better position to resist the sequestration of the estate. This was because the applicant had not raised any genuine reasons why the assessments should not stand and she had supplied no facts that would ground a defence against the assessments.

The Court reiterated the principle that where it is possible to decide any case without reaching a constitutional issue, that course should be followed. It was held that the referral was defective because the applicant failed to exhaust her non-constitutional remedies before approaching the Constitutional Court. She failed to follow the objection and appeal procedures set out in the Act and she did not ask for a postponement of the sequestration proceedings pending the outcome of those procedures. The Court also held that a litigant cannot by refusing to pursue a non-constitutional remedy compel a referral. It would not be in the interests of justice to allow such a device to succeed.

In respect of the challenge to section 91(1)(b) of the Act the Court declined to grant direct access. The Court held that even if direct access had been granted and section 91(1)(b) had been invalidated this would have had no bearing on the sequestration application. The Commissioner would still have had his claim based on the assessments and he would still have been able to sequester the estate.

The Court held that it should be cautious in awarding costs against litigants who seek to enforce their constitutional rights against the state lest it deter bona fide and reasonable litigants. However litigants should not feel free to challenge the constitutionality of statutory provisions no matter how spurious the grounds for doing so or how remote the possibility of success. In this case the endeavour to engage the Court was little more than a delaying tactic and Mrs Motsepe's conduct was of such a nature that it warranted an award of costs against her.

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