

CONSTITUTIONAL COURT OF SOUTH AFRICA

Schabir Shaik and Others v The State

Case No CCT 86/06

Medium Neutral Citation [2008] ZACC 7

Date of Judgment: 29 May 2008

MEDIA SUMMARY

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

Today the Constitutional Court handed down judgment in the appeal by Mr Schabir Shaik and two of his companies, Nkobi Holdings (Pty) Ltd and Nkobi Investments (Pty) Ltd, against a confiscation order granted by the Durban High Court on 31 January 2006 and upheld in large part by the Supreme Court of Appeal on 6 November 2006. The confiscation order was issued in terms of the Prevention of Organised Crime Act, 121 of 1998 (POCA), after Mr Shaik and 10 companies were convicted in June 2005 of corruption and other charges relating to payments made to Mr Jacob Zuma. Mr Shaik is currently serving a 15-year prison sentence and his companies had to pay substantial criminal fines.

The appeal before the Constitutional Court contested the validity of the confiscation order as it related to two particular benefits which the High Court had held to constitute proceeds of crime in terms of POCA. The first benefit was Nkobi Investments' 25 % shareholding in Thint (Pty) Ltd (Thint). At the time the benefit was received, Thint held 80% of the shares in African Defence Systems (Pty) Ltd (ADS), a company which formed part of the consortium that won the bid in the arms deal to provide combat munitions suites for the Navy's new corvettes. Nkobi Investments thus gained an effective 20% share in ADS, and Nkobi Holdings, as the holding company of Nkobi Investments, gained the same share indirectly. Mr Shaik, as 92% shareholder of Nkobi Holdings, gained a slightly smaller indirect interest in ADS. The High Court found, and the SCA agreed, that the appellants had received their shareholdings in Thint as a result of the corrupt payments made to Mr Zuma; the value of the shares (R21 018 000) thus constituted proceeds of unlawful activities and was subject to confiscation under POCA.

The second benefit was the accumulated dividends received by Nkobi Investments from Thint and received in turn by Thint from ADS between 2001 and 2006. The total amount of the dividends was R12 797 331. The dividends were used to pay for the 25% shareholding in Thint.

In a judgment delivered this morning O'Regan ADCJ, writing for a unanimous Court, dismissed the appeal by Mr Shaik and his two companies. After analysing the parties' factual and legal arguments, she concluded that the state had established, as a matter of fact, that both benefits flowed to Mr Shaik and the Nkobi companies as a result of Mr Zuma's support for Mr Shaik and his companies, as evidenced at least by his intervention on 2 July 1998. That intervention led to the appellants obtaining a stake in ADS, from which considerable financial benefits flowed.

O'Regan ADCJ also conducted an analysis of the purposes of chapter 5 of POCA, finding that its main purpose is to ensure that no person benefits from his or her wrongdoing. She held that corruption is inimical to the values of our constitutional order and that South Africa is obliged, in terms of its international legal commitments, to fight it. Corruption, according to O'Regan ADCJ, is a serious crime and closely related to the type of criminal conduct targeted by POCA. She found that POCA permits that all benefits that have arisen from the commission of a crime, whether directly or indirectly, may be confiscated by the trial court after it has convicted an accused; and that the trial court has a discretion to determine the appropriate amount in any given case.

She concluded that in this case the appellants have neither shown that the High Court improperly exercised its discretion to determine the amount to be confiscated nor that the order confiscating both the shareholding and the dividends was disturbingly inappropriate.