



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 22 July 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal

Independent Regulatory Board for Auditors and Others v East Rand Member District of Chartered Accountants and Others (Case no 945/2022 and 40/2023) [2024] ZASCA 114 (22 July 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal by the Independent Regulatory Board for Auditors (the Board) against an order of the Gauteng Division of the High Court, Pretoria (the High Court). The appeal was partially successful.

The Board is a statutory body established under the Auditing Profession Act 26 of 2005 (the Act) to regulate the auditing profession. In 2019 and 2020 the Board prescribed fees payable by registered auditors, including a percentage-based fee model for Category C assurance work; tax practitioner fees for auditors registered with the Board as their controlling body; annual registration and reinstatement fees; and it withdrew a 50% fee concession previously granted to auditors over the age of 65 (the impugned decisions).

The East Rand Member District of Chartered Accountants (the respondent), a voluntary association of registered auditors, applied to the High Court for an order reviewing and setting aside the impugned decisions, and directing the Board to pass credits in respect of fees paid by registered auditors, which the Board was not authorised to prescribe. The High Court granted the order, which was the subject of the appeal before the SCA.

The SCA upheld the High Court's finding that the Board was not empowered under the Act to prescribe a percentage-based fee model for Category C assurance work. The Board purported to do so in terms of section 8(2)(b) of the Act, which allows it to prescribe fees payable for inspections or reviews of the practice of auditors undertaken by the Board under section 47, and to recover those fees from the auditor concerned. The Category C assurance fees bore no relation to the costs of those inspections. Consequently, the Board was ordered to repay or pass credits to the respondent's members in respect of Category C assurance fees for the 2020 and 2021 financial years.

The SCA set aside the High Court's order directing the Board to pass credits to all registered auditors regarding amounts paid in respect of tax practitioner fees; annual registration and reinstatement fees; and the fee concession granted to auditors over the age of 65. The SCA held that these decisions involve policy questions; and that the High Court should have remitted them to the Board for it decide these matters afresh. The SCA therefore remitted the determination of tax practitioner fees, annual registration and reinstatement fees, and the withdrawal of the fee concession to the Board, which was ordered to take the decisions afresh by 31 March 2025, after granting registered auditors and tax practitioners the right to procedurally fair administrative action, as envisaged in the Promotion of Administrative Justice Act 3 of 2000.

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