



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: 31 March 2023

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 judgments of the Supreme Court of Appeal

Unica Iron and Steel (Pty) Ltd and Another v The Minister of Trade and Industry and Another (1332/21)
[2023] ZASCA 42 (31 March 2023)

Today the Supreme Court of Appeal (SCA) handed down judgment with an order which struck the appellants appeal from the roll with costs, including the costs of two counsel. The appeal was against an order of the Gauteng High Court granted in favour of the respondents.

The respondents had issued summons to recover amounts paid to Unica Iron and Steel (Pty) Ltd in terms of an incentive grant programme. The Minister of Trade and Industry (DTI) had mandated Rudman & Associates Incorporated (Rudmans) to act on their behalf. The appellants filed a Notice in terms of Rule 7 of the Uniform Rules of Court disputing the mandate of Rudmans to act on the respondent's behalf.

The respondents applied to the high court for a declarator that Rudmans had been and were authorised to represent them in the matter. The appellants submitted that it was not legally permissible for the State Attorney to appoint private attorneys to act on its behalf in a district where the State attorney has an office. The high court rejected this contention and accepted that Rudmans had been instructed by the State Attorney, as its correspondent.

Before the SCA, the parties agreed in terms of rule 8(8) of the Rules regulating the conduct of the proceedings of the SCA that the appeal hinged on a question of law which they formulated by agreement as follows:

'Does the State attorney, pursuant to, inter alia, the State Attorneys Act 56 of 1957, have the power and authority to appoint and instruct an attorney from the private sector, in the same district as that in which the State attorney is based or has an office, to act as the primary attorney in a matter involving the State or an organ of State?' (the question of law)

The SCA stated that the high court order was based upon the supposition that it was the State Attorney, as opposed to the DTI, who had instructed Rudmans, when this was factually incorrect. Based upon this reasoning, the parties formulated the question of law.

The SCA held that the high court order was an interlocutory order and not an appealable 'decision' in terms of s 16(1)(a) of the Superior Courts Act 10 of 2013. The order was neither final nor definitive of the rights of the parties and did not dispose of any portion of the relief claimed in the main proceedings.

The question remaining was whether the order should, nevertheless in the interests of justice, be regarded as appealable. The SCA held that was not in the interests of justice that the appeal should be entertained because the agreed question of law bore no relation to the facts of the case. There was no evidence that the State Attorney instructed Rudmans; on the facts presented in the matter, Rudmans was mandated by the DTI and not the State Attorney.

The SCA held that the question of law raised an abstract and academic issue which the SCA does not determine.

In the result, the matter was struck off the roll with costs, including the costs of two counsel.

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