
SOUTH AFRICA / JUDGMENT

Distell Limited v The Commissioner for the South African Revenue Service (56295/11) [2015] ZAGPPHC 798 (2 December 2015)

[2015] ZAGPPHC 798

COURT

North Gauteng High Court, Pretoria

BEFORE

S. Potterill

CASE / FILE NUMBER

56295/11

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: 56295/11

DATE: 2/12/2015

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

In the matter between:

DISTELL LIMITED (“DISTELL”) Applicant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN

REVENUE SERVICE (“SARS”) Respondent

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

- [1] The applicant is applying for leave to appeal against my finding not to extend the year period in terms of section 96(1)(c)(ii) of the Customs and Excise Act, 91 of 1964, within which an appeal should be prosecuted and that the applicant must pay the costs including the costs of two counsel.
- [2] The applicant is not appealing against my finding that the period of delay in itself was inexcusable. The applicant is also not appealing the decision that for some periods of the delay no reasons were provided and the reasons for the periods provided were unreasonable. In oral argument it was pointed out that the Act provides that the court can grant condonation and that therefore the court should grant condonation. Condonation is required when an Act or Rule sets out a time frame and it is not adhered to. This Act is thus not an exception and the normal principles pertaining to condonation is applicable. In *PricewaterhouseCoopers Inc and Others v Van Vollenhoven NO and Another* [2010] 2 All SA 256 (SCA) the court found that when the explanation for the delay did not comply with the three requirements laid down in *Van Wyk v Unitas Hospital and Another*
- [2007] ZACC 24; 2008 (2) SA 472 (CC) [paragraph 22] the applicant for condonation had failed to prove that it would be in the interest of justice to grant condonation and condonation must be refused.
- [3] The applicant is seeking leave to appeal the finding that the applicant also had no prospects of success. The ground of the appeal is that the founding and supplementary affidavits are not contradictory, but that the supplementary affidavit just sets out the wider evidence basis rather than the narrow evidence basis in the founding affidavit for the interpretive grounds. In oral argument it was submitted that the second argument was a better argument than the first. It was also argued that the court should have done the three step legal interpretation to ascertain the applicable tariff as it would have been in the interest of justice to do so.
- [4] An applicant in an application cannot in its founding affidavit rely on the fact that Amarula and the 15 products in the Distell 2 matter are the same and then in the supplementary affidavit change their stance and aver factually that the products are not the same. Furthermore an applicant cannot widen the facts in the supplementary affidavit contrary to the facts in the founding affidavit. This is simply so because then the court is faced with contradictory facts on which it must make a legal conclusion. This is in itself prejudicial to the respondent and no further prejudice is required.
- [5] A court cannot proceed with the three step legal interpretation for tariff determination if the facts are contradictory on which this legal conclusion must be based.
- [6] I am of the opinion that no leave to appeal must be granted as the appeal would not have a reasonable prospect of success.
- [7] I accordingly make the following order:

7.1 The application for leave to appeal is dismissed.

7.2 The applicant is to carry the costs including the costs of two counsel.

S. POTTERILL

JUDGE OF THE HIGH COURT

CASE NO: 56295/11

HEARD ON: 27 November 2015

FOR THE APPLICANT: ADV. S.A. CILLIERS SC

ADV. C. LOUW SC

INSTRUCTED BY: Mr. F. van Rooyen of Shepstone & Wylie Attorneys

FOR THE RESPONDENT: ADV. J.A. MEYER SC

ADV. K. KOLLAPEN

INSTRUCTED BY: Ms. C. Cory of State Attorney, Pretoria

DATE OF JUDGMENT: 2 December 2015

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2015/798.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/distell-limited-v-the-unknown-topic-agpphc-2015>

Prepared on 11 October 2026 · Esheria