

SOUTH AFRICA / JUDGMENT

Maize Board v Epol (Pty) Ltd (9874/2007) [2008] ZAKZHC 99; 2009 (3) SA 110 (D); 71 SATC 236 (18 December 2008) [2008] ZAKZHC 99

COURT

High Courts - Kwazulu Natal

BEFORE

Tshabalala JP

CASE / FILE NUMBER

9874/2007

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IN THE HIGH COURT OF SOUTH AFRICA REPORTABLE DURBAN AND COAST LOCAL DIVISION

CASE NO: 9874/2007

In the matter between THE MAIZE BOARD Plaintiff and EPOL (PTY) LTD Defendant _____

JUDGMENT

Delivered:

18 December 2008

TSHABALALA JP INTRODUCTION [1] The Maize Board (the “Plaintiff”) seeks to recover levies from Epol (Pty) Ltd (the “Defendant”) in the amount of R1 532 531.55 for the year 1995. The levies in question are a general levy referred to in section 41 of the now repealed Marketing Act 59 of 1968 (the “Act”) and section 23 of the Maize Marketing Scheme (the “Scheme”), and a special levy in terms of section 44 of the Act and section 24 of the Scheme. The Plaintiff is a control board contemplated in section 25 of the Marketing Act charged with the responsibility of administering the Scheme. [2] It is common cause that summons was issued by the plaintiff more than three years after its claim arose but less than thirty years. The defendant raised a special plea of prescription to the claim and alleged that a three year prescription period in terms of section 11(d) of the Prescription Act was applicable in this matter resulting in the plaintiff’s claim having prescribed. Plaintiff, on the other hand, argued that the levy and special levy constituted “a debt in respect of any taxation imposed or levied” within the meaning of section 11 (a) (iii) of the Prescription Act and that a thirty year prescription period accordingly applied. [3] In terms of Rule 33(4) of the Uniform Rules of Court, the parties requested this Court to separate the issues

and that the issue of prescription be dealt with first. The court acceded to the request. Although defendant bore the onus in the case, the Court held that it had established a prima facie case and that the plaintiff ought to be heard first. ISSUE[4] The issue to be decided is whether the levies in question constitute “taxation” for the purposes of section 11 (a) (iii) of the Prescription Act. The parties have agreed that if this Court finds that the levies are a tax and a thirty year prescription period applies then it should dismiss the defendant’s special plea with costs, including the costs occasioned by the employment of two counsel. However if the levies are found not to be a tax then a three year prescription period would apply and the plaintiff’s claim would have prescribed and ought to be dismissed with costs, including the costs occasioned by the employment of two counsel.

RELEVANT LEGISLATIVE PROVISIONS

[5] I set out herein below the applicable legislative provisions of the Prescription Act:

5.1. Section 10 - Extinction of debts by prescription

- (1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt.

5.2 Section 11 - Periods of prescription of debts

The periods of prescription of debts shall be the following:

- (a) thirty years in respect of- (i) any debt secured by mortgage bond; (ii) any judgment debt; (iii) any debt in respect of any taxation imposed or levied by or under any law;

any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;

- (b) the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);
- (c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b); (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt. PLAINTIFF’S CASE[6] Counsel for the plaintiff argued that the ordinary meaning of the word “tax” must be firstly ascertained in the context of the Act and the Scheme. Reference can also be had to dictionary meanings. Counsel referred to a number of cases, including *The Master v IL Back & Co Ltd and Others* 1983 (1) SA 986 (A), *Commissioner of Customs and Excise v Tayob and Others* 2002 (6) SA 86 (T) and *City Treasurer and Rates Collector, Newcastle Town Council v Shaikjee and Others* 1983 (1) SA 506 (N). I do not consider it necessary to focus on all the case law that was referred to. Counsel for the plaintiff settled that the meaning to be ascribed to the word tax should be “a pecuniary charge imposed by the legislator or other public authority on a

person or property for a public purpose”.^[1]^[7] During argument counsel submitted that it was unnecessary to consider foreign case law since there were sufficient South African cases that could assist in the interpretation process. Reference was made to *Ex parte Speaker of the KwaZulu-Natal Provincial Legislature: In re KwaZulu-Natal Amakhosi and Iziphakanyiswa Amendment Bill of 1995*; *Ex parte Speaker of the KwaZulu-Natal Provincial Legislature: In re Payment of Salaries, Allowances and Other Privileges to the Ingonyama Bill of [1996]* ZACC 15; 1995 1996 (4) SA 653 (CC); 1996 (7) BCLR 903 where the Court, per Chaskalson P, decided to focus on the Act and what it was saying, and counsel used this to argue that it was unnecessary to look beyond South Africa for guidance.^[8] It was submitted that the levies imposed were for public purposes. Some of the factors that would assist one in reaching this conclusion were:^[2]

8.1 the structure of the Act is to control and regulate the production and sale of agricultural products throughout the Republic for the purpose of benefiting the public by stabilising the production and prices of agricultural products with a view of ensuring stability in the marketplace;

8.2 the failure to pay the levies results in a criminal sanction. Offences of this type are enacted to give effect to some government policy that is thought to be in the public interest or to advance public welfare or some favoured economic, social or political programme; 8.3 the Act has wide ranging implications for the public since maize is the staple diet of our country's population; 8.4 the implementation of the Act falls under the control of the Minister of Agriculture who acts on behalf of the government, which is only able to act in the public interest ; 8.5 on discontinuance of the Scheme all assets of the Board shall be handed to the Minister to be utilised by the Minister at his discretion for the advancement of the maize industry; 8.6 the objects of the Board display a public character and are for public purposes; 8.7 the Board is entitled, with the approval of the Minister, to assist financially with various public objectives; 8.8 the Act and Scheme apply throughout the Republic; and 8.9 the accounts of the Board are audited by the Auditor-General which emphasizes the public character of the Act;^[9] Plaintiff submitted that the decision in *Maize Board v Tiger Oats*^[3] (“Tiger Oats”) was firstly wrong and secondly that it was distinguishable from the matter at hand.^[4] The distinguishing factor between the two cases is that there is a difference in the type of scheme applicable to each case. In 1995 there was a drastic amendment to the scheme which resulted in a change from a controlled marketing scheme to a ‘free market scheme’ which applied in the Tiger Oats case. Thus what follows is that the test to be employed in this case will be different as compared to the one adopted in Tiger Oats. It was further argued that the Tiger Oats decision was wrong for the following

reasons:

1. The court incorrectly applied the requirements of a tax as set out in *Nyambirai v National Social Security Authority and Another* 1996 (1) SA 636 (ZS); (1995 (9) BCLR 1221). The third and fourth requirements in that test are in dispute.

2. There is no requirement in the definition of ‘tax’ that it be imposed on the public or a substantial sector of the public. However the sellers and buyers of maize could be said to constitute the public in the requisite sense as the question of who the public is must be viewed in context. Spoelstra J was wrong in stating that only a few farmers were affected by the levy. Furthermore it is for the benefit of the public at large to have an orderly market system.³ The revenue obtained was to be utilised for public purposes. There is a difference between “public purposes” and “in the public benefit and to provide a service in the public interest” as found to be a requirement in Nyambirai. The fact that part of the levy could be used to enable the plaintiff to perform its functions does not mean that the levy does not qualify as revenue utilised for public purposes. The levies were to fund the system established for public purposes. [10] Finally counsel for the plaintiff submitted that each case must be determined in accordance with its facts. When one looks at the facts of this case and the purpose of the levies, it would indicate that the levies constituted a tax. DEFENDANT’S CASE [11] The starting point in establishing the meaning of taxation would be to consider the man on the street and his understanding of whether the levies constitute a tax. Thereafter one can look at dictionary definitions which say that tax is an “impost to raise revenue for government”. The dictionary definition does not support the notion that these levies are a tax. Foreign cases are important to consider, and such an approach is supported by the constitution which reminds us that foreign law may be considered. In this instance it was necessary to look at foreign case law since none of the South African cases dealt directly with the charges in this case. Also, the foreign cases referred to provide support for the Tiger Oats decision. It was also submitted that although the Tiger Oats decision emanates from a different division it still holds persuasive authority. Counsel for the defendant submitted that there was no difference between the present case and that of Tiger Oats. The only possible difference between the two cases is that in the Tiger Oats case the plaintiff did institute action just over three years after the levies were due, however in this matter it took the plaintiff almost 12 years to issue summons. Much was mentioned of the amendments which took place in 1995. Whilst plaintiff argued that this should be used to distinguish the Tiger Oats case from the case at hand, counsel for the defendant submitted that the amendments were minor amendments and the various amendments were discussed by defendant’s counsel. It was concluded that the schemes are fundamentally the same scheme.^[5] The basis of charging the levy remains the same.^[12] After a review of all the case law (both national and foreign), counsel for the defendant submitted that the following relevant factors can be used to ascertain what constitutes a tax:^[6](a) the charge must be compulsory and not voluntary or optional;(b) the charge must be imposed by the legislature or other competent authority
- (c) The charge must be levied upon the public as a whole or a substantial sector thereof;
 - (d) The purpose of the charge must ordinarily be the raising of public revenue;
 - (e) The revenue accruing from the charge must be used for the public benefit and to provide a service in the public interest;

- (f) The charge must not be either a service charge or fee payable in respect of the provision of specific charges;(g) The charge must not be a regulatory charge raised as part of the administration of a regulatory scheme[13] It was concluded by the defendant that the levies in issue did not satisfy the requirements of a tax because: [7]

13.1 they are not imposed upon the public as a whole or in a substantial sector thereof;

13.2 the revenues collected are not utilized for the public benefit;13.3 the levies are not intended to raise public revenue; and13.4 the levies are imposed as part of a regulatory scheme.

- [14] Another argument raised by counsel during argument was that one does not pay VAT on taxes. A person pays VAT according to the Value Added Tax Act 89, specifically section 7 (1) which reads as follows:

“(1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax-

- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him...”

Counsel argued that VAT is only payable on a supply of goods or services and taxes do not involve the supply of goods and services. Supply is defined in section 1 of the Vat Act as follows: “supply’ includes performance in terms of a sale, rental agreement, instalment credit agreement and all other forms of supply...”Services means “anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage...”It was argued that the plaintiff was supplying a service to the people who, in turn, paid the levy. The service that was supplied was making an advantage available to them. Vat is not payable on rates, transfer duty, income tax or even other taxes. If you have Vat on tax it would mean that you are having tax on tax. In this case Vat was payable thereby indicating that it could not be a tax but simply services for which a fee was paid.[15] In its papers counsel for the defendant attempted to bring into play a constitutional dimension to its case. The argument went as follows: at the time that the scheme was in operation the interim constitution was in force. The power to impose taxation was strictly restricted to the legislature. The Scheme was not a part of the legislature and the Minister of Agriculture is a part of the executive, not the legislature. Counsel submitted that the levies were imposed by a statutory body made up of private individuals. It was further submitted that if the levies constitute taxation, then the Marketing Act and the Scheme would be in conflict with the constitution. The issue would be one of legality.[16] To surmise, defendant submitted that the levies were not taxation and accordingly a three year prescription period applied.PLAINTIFF’S REPLY[17] In reply counsel for the plaintiff argued that there were three marked changes after the amendment in 1995. Firstly a Board was no longer the only purchaser of maize. Secondly in 1994 the Board determined the price at which the maize was sold but in 1995 the producer could sell it at any price. Thirdly there have been changes made in the definition section. Therefore the amendments could not be considered to be minor, as alleged by the defendant.[18] Relating to the proper interpretation, the defendant’s submission

that one must consider the meaning given to the word 'tax' by the ordinary man on the street is incorrect. The steps to be followed were firstly to interpret the word in the context of the statute and then to look at South African case law for guidance. Reference was once again made to the decision of *Natal Amakhosi supra* to help substantiate its line of reasoning.[19] When dealing with the issue of legality that had been raised, according to plaintiff's counsel, what in fact happened was that an elected National Parliament passed the Marketing Act and the details of the levy were to be determined by the Board and the Minister. There is nothing wrong in the procedure, so there can be no question of legality.[20] Other submissions made included the fact that in *Tiger Oats* it was agreed between the parties that the *Nyambirai* test would be applied, but in this case neither of the parties agreed to it. Finally it was submitted that the levy was not a regulatory fee as there was no benefit in return for payment. APPLICATION OF THE LAW[21] Since there is no definition of the word 'taxation' in the Prescription Act one would have to look up its possible meaning. Both parties referred this Court to case law, both local and foreign. Cases do provide assistance when trying to interpret specific legislation. I am in agreement with both parties that to consider whether the levies are taxation the levies must be given its ordinary meaning and must be considered in the context of the legislation in which it appears. Our Courts have held that the context in which the words are used is of paramount importance, and must be taken into account (see *Jaga v Donges*, *Bhana v Donges* 1950 (4) SA 653 (1)).

In *Poswa v Member of the Executive Council for Economic Affairs, Environment and Tourism, Eastern Cape* 2001 (3) SA 582 (SCA) at para 10, Schutz JA quoted with approval the dictum of Bhyat v Commissioner for Immigration 1932 AD 125 where it was held:

'The cardinal rule of construction of a statute is to endeavour to arrive at the intention of the lawgiver from the language employed in the enactment . . . in construing a provision of an Act of Parliament the plain meaning of its language must be adopted unless it leads to some absurdity, inconsistency, hardship or anomaly which from a consideration of the enactment as a whole a court of law is satisfied the Legislature could not have intended.' (Per Stratford JA at 129)

The Shorter Oxford Dictionary describes 'tax' as a compulsory contribution to the support of government, levied on persons, property, income, commodities, transaction etc.[8][22] In *Nyambirai v National Social Security Authority and Another* 1996 (1) SA 636 (ZS) at 643C-D it was held that the following characteristics of a tax emerged:

- (i) it was a compulsory and not an optional contribution, (ii) imposed by the Legislature or other competent public authority, (iii) upon the public as a whole or a substantial sector thereof,

the revenue from which was to be utilised for the public benefit and to provide a service in the public interest."

The question remains should the abovementioned test be applied? Plaintiff argued that it should not be applied as the third and fourth requirements are in dispute. I do not think that this Court is bound by the test but it can be used to assist the Court. The Courts approach should not be dismissed because it formulated the test after having regard to all authorities, both local and

foreign.[23] This case is on all fours with the decision of *Tiger Oats*, a judgment delivered in the Transvaal Provincial Division. The brief facts of the case are as follows: The Plaintiff (Maize Board) sued *Tiger Oats* (the Defendant) for payment of levies. Defendant took a special plea of prescription, with the Plaintiff alleging that the levies sought to be recovered constituted taxation under section 11(a) (iii) of the Prescription Act. Spoelstra J held that the levies did not constitute taxation and the special plea of prescription accordingly succeeded. This Court is not bound by the decision since it is from a different province and the general rule is that a single judge is not bound by a decision of another single judge in another High Court.[9] However it can be considered to be persuasive. It is fair to say that each case would depend on its facts. However, I think the manner in which one should deal with this case would be the manner in which Spoelstra J decided the *Tiger Oats* case, and that is as follows:

“It seems to me that, in order to constitute a tax, the nature of the payment must be determined according to the applicable canons of construction...The question of whether or not the plea is a good plea therefore simply hinges on the interpretation of the nature of levies which the board is entitled to impose”.(page 6 of judgment)

[24] It is necessary to consider the various provisions of the Act and the Scheme to determine the actual nature of the levies. The purpose of the Act is to consolidate the laws providing for the regulation of the production and sale of agricultural products; for the establishment of certain boards in connection therewith; for the establishment of a national mark; for the grading and standardization of agricultural products and for matters connected thereto. Section 2 makes provision for the establishment of a National Marketing Council. One of its core functions appears to be the control of a scheme. In terms of section 8 any proposed scheme may be submitted to the Minister by any association of producers or any agricultural co-operative or special farmers' co-operative or any control board. The final decision to either accept or reject a scheme lies with the Minister and therefore the Minister has wide ranging powers in regard to schemes. In terms of section 18 a scheme shall specify its name, the product to which it relates and the area or areas in which it applies. Section 20 deals with provisions relating to the area in which a scheme applies. Subsection (a) states that a scheme may provide that any provision thereof shall apply only in one or more areas in which the scheme otherwise applies or only in a specified portion of any area in which the scheme otherwise applies. Subsection (b) states that it may also provide that any requirement or prohibition imposed or decision taken by its control board relating to any area in which the scheme applies, or any portion of any such area, may differ from any such requirement or prohibition or decision which relates to any other area in which the scheme applies or any other portion of any such area, as the case may be; it shall apply only to one or more of the areas in which the scheme applies or only to a specified portion of any area in which the scheme applies. Section 21 of the Act requires that a scheme shall define the persons or classes of persons (if any) producing or dealing in the course of trade with any product to which the scheme relates or any class or grade of such product, and to whom any provision of the scheme applies. In terms of section 23 a scheme may provide for a fine not exceeding R5000 or for imprisonment for a period not exceeding two years or for both such

fine and such imprisonment, by way of a criminal sanction for the purpose of enforcing the provisions of such scheme. A scheme shall provide for the establishment of a Board to administer the scheme.[10] In terms of section 28 the Board may not exceed thirteen members. Section 41 allows a scheme to provide for the imposition of a levy and section 44 allows the scheme to provide for the imposition of a special levy. Section 42 provides for the manner in and times at which and persons by whom the levy shall be payable whilst section 43 provides for the amount of the levy. Section 46 governs the establishment of a general fund, a reserve fund and a special fund. All monies received by the Board must be paid into one or more of these funds. All administrative expenses of the Board are to be paid out of the general fund. Section 46A empowers the Minister to impose a general levy on any product or on any such product of a particular class, grade or standard of quality, or on any such product, class, grade or standard of quality thereof produced or sold in a particular area or at a particular place. The proceeds of the general levy, in terms of section 46C, are to be paid into a special account. Section 51 makes provision for the accounts of a Control Board to be audited annually by the Auditor-General.[25] The Scheme relates to maize and maize products produced within the Republic, and offered in the commercial market.[11] The Scheme applies in the Republic[12] and it applies to all persons producing or dealing in the course of trade with maize.[13] In the definition section of the Scheme maize does not include seed maize, green mealies for human consumption or maize utilized as silage. A Maize Board is constituted in terms of section 6 of the scheme and in terms of section 8 the members shall be appointed by the minister. In terms of section 7 the Board consists of thirteen members, eight of which are representatives of producers of maize; and one each from the agents of the Board; the end consumers of white maize products; the end consumers of yellow maize and yellow maize products; the millers of maize and the persons dealing in the course of trade with maize. In terms of section 20 the Board may establish an information service about marketing conditions in general or about the condition of any particular market. In addition the Board may advise the Minister as to the conditions, regarding grades, standards of quality, methods of packing, and the marking of maize and maize products or of any receptacle or cover containing it, subject to which maize or maize products may be sold or imported for sale; the prohibition, control or regulation of the importation or export of maize and maize products and all matters relating to the marketing and processing of maize and maize products. In terms of section 21 the Board may take such steps as may be approved by the Minister for fostering or stimulating the demand, whether within or outside the Republic, for maize. [26] Section 23 authorises the Board, with the approval of the Minister, to impose a levy on maize whilst section 24 provides for the imposition of a special levy by the Board. Sections 25, 26 and 27 of the Scheme make provision for the establishment of a general, reserve and stabilisation fund. Special levies had to be paid into the stabilization fund. The scheme describes how the monies in the funds were to be used, namely:

Money in the general fund was to be used to pay all the administrative expenses of the board, and the board (with the approval of the Minister) may utilize the money for any other object which in the opinion of the board would be to the advantage of persons interested in maize and maize products;^[14]

Reserve fund money was to be spent in a manner approved by the Minister;^[15] and

Money in the stabilization fund was to be used to support the delivery price to producers of maize received by the board in a pool referred to in section 37.^[16] Section 37 states that the Board shall conduct an export pool for the sale of such grades and/or classes of maize as the Board may determine and that is delivered to the Board for that purpose. The levies in this matter were introduced by way of Government Notice dated 28 April 1995.^[17] ^[27] After an analysis of the levies in question I have come to the conclusion that the levies do not constitute a tax for the following reasons: 27.1 they were not imposed upon the public as a whole or in a substantial sector thereof. The levies were restricted in terms of the products to which they related; the areas of production and their application to certain persons dealing or producing in the course of trade with maize. Furthermore the definition of maize was also restricted which indicates that not all farmers would be paying the levies. 27.2 the revenues collected were not utilized for public benefit as only a select few seem to benefit. The levies were not intended to raise public revenue since they were not used to support government activities in general. I concur with the reasoning of Spoelstra J in *Tiger Oats* that “the fact that a consumer or even the public at large as consumers may reap some benefit from the functions of the maize board, in my view, does not suffice to constitute the levies as a tax or to qualify them as revenue which is utilised for the public benefit or to provide a service in the public interest”. (see page 18 of the judgment) Paragraph 3 of the Government Notice provides as follows:^[18] Amount of levy and special levy

3. (1) The amount of the levy referred to in clause 2 (1) and 2 (2) shall be R10,51 R9,22 + 14% VA per ton of maize, which amount is made up as follows (VAT excluded):
 - (a) Board's administration cost and capital expenditure: R6,43;
 - (b) promotional services: R0,64;
 - (c) product development and maize grain research: R0,08;
 - (d) foreign visits and entertainment of foreign visitors: R0,20;
 - (e) image-building program: R0,20;
 - (f) operational budget of National Maize Producers Organisation: R0,97; and
 - (g) contribution to Summer Grain Centre by National Maize Producers Organisation: R0,70.
- (2) The amount of the special levy referred to in clause 2 (2) shall be R52,63 (R46,17 + 14% VAT) per ton of maize, which amount shall be utilized as contemplated in section 27 of the Scheme.

It seems that a large amount of the levy was being used to cover administrative costs, whilst the special levy was going to benefit those involved in the export pool. Therefore only a few people would in fact be benefitting, I can not see how this could be said to be benefiting the public.^{27.3} A very good point was made by defendant's counsel that there can be no tax on tax, and since Vat is applicable to the levy and special levy they can not be a tax.

[28] Other points to briefly mention include the fact that that the Board, although it consists of members appointed by the Minister, there are no representatives from the Minister's office itself. Finally even if one were to accept plaintiff's definition of the word 'tax' that it is a 'pecuniary charge imposed by the legislator or other public authority on a person or property for a public purpose', one of the requirements would be public purpose and that requirement has not been satisfied in this case.^[29] It must also be stated that although the defendant raised a constitutional dimension to its case, it is not necessary to delve into that. Plaintiff sought to distinguish the case from the present matter and went further to state that the decision in Tiger Oats was wrong. There is nothing to suggest that the levies would have been affected by the 1995 amendment and I am of the view that the nature of the levies remained the same. I see no major differences between Tiger Oats and this case and therefore I made plaintiff put its case first although defendant bore the onus. This Court agrees with the conclusion reached by Spoelstra J in Tiger Oats. Plaintiff has not submitted good enough reasons as to why this Court should not follow that case. It is this Courts conclusion that the levies imposed by the Plaintiff were not tax. Accordingly the claim has prescribed. ORDER [30] It is ordered that:^{30.1}. Defendant's special plea is upheld.

30.2. Plaintiff's claim is dismissed with costs, such costs to include those consequent upon the employment of two counsel.

TSHABALALA JP _____ Date of Hearing: 4 November 2008 Date of Judgment: 18 December 2008 Counsel for Plaintiff: Mr. B.W. Burman, SC with him Mr. N.D. Hollis, SC Instructed by: Rudman Attorneys Counsel for Defendant: Mr. M.J.D. Wallis, SC with him Mr. A. Stokes, SC Mr. M.D.C. Smithers Instructed by: Knight Turner

[1] See Plaintiffs' heads of argument, para 12.[2] See Plaintiffs' heads of argument, para 16.[3] Unreported judgment delivered on 8 June 2000, Case No 16436/98, TPD.[4] See page 3 of transcript.[5] Transcript page 39.[6] Defendant's heads of argument, para 50.[7] Defendant's heads of argument, para 51.[8] Saner, Prescription in South African Law, 3-28[9] LAWSA volume 5(2), Second Edition, para 170.[10] Section 25 of the Marketing Act.[11] Section 3(1) of the Scheme.[12] Section 4(1) of the Scheme.[13] Section 5 of the Scheme.

[14] Section 25(2) and (3) of the Scheme.

[15] Section 26(2) of the Scheme.

[16] Section 27(3) of the Scheme.[17] Government gazette 16398, No. R. 654.[18] Government gazette 16398, No. R. 654.

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