



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The Commissioner of South African Revenue Service v Danwet 202 (Pty) Ltd (399/2017) [2018] ZASCA 38 (28 March 2018)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Gauteng Tax Court, Johannesburg. The issues on appeal were (1) whether a Tax Court had the necessary jurisdiction to entertain and thereafter grant an application for condonation of the late filing of an appeal against an assessment; (2) if so whether the appellant had a discretion to extend the period within which an appeal against an assessment may be lodged beyond the prescribed period of 30 days as set out in s 107 of the Tax Administration Act 28 of 2011 (the Act) and (3) if the answer to the second issue was in the affirmative, whether good cause was shown by the respondent to justify the order in its favour. The tax court answered these questions in favour of the respondents.

The issues on appeal arose within the context of the following facts: The appellant conducted an audit on the respondents business. The appellant later did a further assessment that represented a significant increase from the initial assessment. The respondent then rejected the further assessment however filed for the condonation late. The appellant refused to grant condonation on the basis of its interpretation of s 107(2) (a) and 2(b) of the Act. The respondent applied for condonation for the late filing of the appeal before the Tax Court, Johannesburg where leave was granted to the respondent to file its notice of appeal.

The appellants argued before the SCA that the Tax Court did not have jurisdiction to entertain the respondent's application for condonation. The SCA held that had the respondent objected to the decision to refuse an extension of time, as it was obliged to do by s 104(3) of the Act, the Tax Court

would have had the power to order that an extension should be granted in terms of s 117(3) of the Act.

The SCA held that the Tax Court, subject to compliance with the procedures set out in s 104(3), had the jurisdiction to determine an application for condonation for the failure by a taxpayer to lodge an appeal timeously. It follows that had the respondent objected to the decision to refuse an extension of time, as it was obliged to do by s 104(3), the Tax Court would have had the power to order that an extension should be granted in terms of s 117(3) of the Act read with Rule 53.

The SCA thus concluded that s 104(3) obliged the respondent to object to the decision taken by the appellant to invalidate its appeal. It failed to do so. It follows that there was no valid application before the tax court which, accordingly, did not have jurisdiction to hear the application.