IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: A093307-2023

DATE: 26.05.2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES : YES / NO
(3) REVISED

[redacted]

SIGNATURE 26 May 2026

In the matter between

CFP Appellant

and

SOUTH AFRICAN REVENUE SERVICES Respondent

J U D G M E N T *EX TEMPORE*

WILSON, J (with whom MOTHA J and MAHOMED J agree):

This is an appeal against a judgment of the Tax Court. The essence of the appeal, as encapsulated very helpfully by Ms Dreyer who appears for the appellant, is that the Tax Court failed in its duty of consideration as outlined by the Constitutional Court in *Vodacom (Pty) Ltd v Makate* 2025 (6) SA 352 (CC), such that the failure to fulfil the duty of consideration was, in essence, a violation of the right of access to court.

If that is the essence of the case, and we have no reason to doubt that it is, that would perforce require the

Full Court to consider most, if not all, of the material that was placed before the Tax Court, and to evaluate the extent to which the Tax Court failed in its duty of consideration. The material placed before the Tax Court was substantial. It amounted to some 6,543 pages of documents. That excludes, of course, the heads of argument filed by both parties on appeal, which are themselves substantial.

The record of the proceedings before the Tax Court was finally made available in full to us just a week ago on Tuesday, 19 May 2026. This need not have been a difficulty since until last Thursday, 21 May 2026, we were under the impression that the material in the appeal record had been compressed to a three-volume core bundle, which was uploaded to CaseLines on 13 April 2026. That material was placed before us in hardcopy, albeit a few days late. However, last Friday, 22 May 2026, a 32-volume core bundle, describing itself as the appellant's core bundle, was uploaded to CaseLines. That bundle runs to 3,862 pages. It accordingly multiplied by several times the volume of material we had until that point been told that the parties expected us to absorb before the appeal was called today, on Tuesday, 26 May 2026.

Given that the essence of the appeal is that the Tax Court failed in its duty of consideration, Ms Dreyer quite rightly asserted in her practice note, which was provided at

the request of the court on Saturday, 23 May 2026, that all of the material in the 3,862 page core bundle would have to be absorbed by the court in advance of this hearing.

As should be abundantly clear by now, it was impossible for the court to absorb that material in the time between the material being uploaded and this appeal being called. Ms Dreyer adverted to the fact that in an earlier version of the appellant's practice note, there is a list of material that the court was expected to read before the appeal was called and that we would have been in a position to read that material much earlier than last Thursday. There are two difficulties with that submission. The first is that we were entitled to assume, and we did assume, that the relevant material had been compressed into the three-volume core bundle that had been uploaded to CaseLines in April of this year. The second difficulty is that the entire record itself, to which the material contained in the appellant's earlier practice note referred, was not uploaded until last Tuesday.

Ms Dreyer advanced various explanations of why the complete record was not uploaded before last Tuesday and made the submission that the amount of material actually uploaded last Tuesday was relatively small. But the explanation Ms. Dreyer advanced is not supported on affidavit by the appellant's attorneys, and we cannot, for

that reason, have regard to it.

Simply put, on CaseLines, the final volumes of the record were only uploaded last Tuesday, and the impression created was that this was the date on which the full record was made available to us. As I have already said, that need not have been a problem. Had the core bundle in this appeal really been the three-volume core bundle we were led to believe it was until last Thursday, we would doubtless have been in a position to absorb it. But, as it turns out, we were actually expected to absorb a further 32 volumes, which were only made available to us last Friday electronically and in hardcopy yesterday.

For all those reasons, we cannot fairly entertain the appeal today. It would not be fair to the appellants, whose case depends on us being fully conversant with a large quantity of material with which we are not conversant. Nor would it be fair to the respondents, who have quite understandably been left to wonder which material the court will have to engage with and which material on the record is going to be discussed at the hearing.

There may be cases in which it is appropriate for court to sit back and let counsel's submissions wash over us, but this is not one of those cases. In order to fairly prepare for this case and to give both parties a fair hearing, it would have been necessary for us to read the information that was

going to be referred to by counsel well in advance and to have formulated sensible questions about it. For the reasons I have given, that material has not been read and we have no sensible questions about it. Plainly, the appeal must be postponed.

On the question of costs, it seems to me inarguable that the failure to place the court in possession of the material it needs is the failure of the appellant and his attorneys. The failure to place us in possession of that material is the cause of the postponement that has to be ordered today. On that basis alone, the appellant should pay the wasted costs.

We do not accept Ms Dreyer's submission that the court that ultimately hears this appeal on its merits is better placed than we are to make an order as to the wasted costs of today. The lateness of the material which we were expected to absorb bit us hardest and is more keenly felt and understood today than it will be by the court that ultimately hears the merits of the appeal. Given that we are intimately acquainted with the prejudice that has been caused to us and to the respondent, we are in the best position to decide where the costs of undoing that prejudice should fall.

Finally, the parties were agreed that before a date for the hearing of this appeal is applied for again, a joint core

bundle to be relied on by both parties should be prepared. The parties were agreed that this can be achieved by taking the appellant's core bundle of 33 volumes and adding to it only that material in the respondent's core bundle of three volumes that is not already contained in the appellant's core bundle. When we direct, as we shall, that a new core bundle be prepared before an appeal date is applied for again, we mean no more than that this process should be followed.

Although it is up to the parties, we also consider that they might want to revisit the question of how long this appeal will take to argue. It seems to us that a sensible estimate might be two days rather than one. We of course leave that in the parties' hands. For all those reasons, we make the following order –

1. The appeal is postponed *sine die*.
2. The costs wasted by the postponement are to be paid by the appellants. They will include the costs of two counsel, which may be taxed on scale C.
3. Before the appellants apply for a new hearing date, they are to produce one consolidated core bundle and to make that core bundle available on CaseLines, and, if directed to do so by the senior presiding judge appointed to the full court that will hear the merits of the appeal, in hardcopy.

[redacted]

WILSON, J
JUDGE OF THE HIGH COURT
26 May 2026