

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 1 October 2004
Status: Immediate

METLIKA TRADING LIMITED, HAWKER AIR SERVICES (PTY) LIMITED, HAWKER AVIATION SERVICES PARTNERSHIP AND CARMEL TRADING COMPANY LIMITED v THE COMMISSIONER OF THE SOUTH AFRICAN REVENUE SERVICE

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.

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The Supreme Court of Appeal today dismissed an appeal by Metlika Trading Limited, Hawker Air Services (Pty) Ltd, Hawker Aviation Services Partnership and Carmel Trading Company Limited against a judgment of the Transvaal Provincial Division of the High Court. In terms of the judgment Hawker Aviation Services Partnership was ordered at the instance of the Commissioner for the South African Revenue Service ('SARS') to take all necessary steps necessary to procure the return of an aircraft to South Africa. The order was stated to be an interim order pending the finalisation of an action by SARS against Metlika Trading Ltd, Ben Nevis Holdings Ltd and David King for an order that various assets previously held in the name of Ben Nevis were in fact owned by King or Ben Nevis..

The main issues, which arose for decision in the appeal, were first whether the court order, insofar as it constituted an interim interdict, was appealable and second whether the High Court had jurisdiction to order that steps be taken to procure the return of the aircraft, which had been traced to Switzerland, to South Africa.

In respect of the first issue the SCA held that the order of the High Court was final in effect and therefore appealable.

In respect of the second issue the SCA rejected an argument that the High Court would not have been able to enforce its order and that it, for that reason, did not have jurisdiction to grant the order. The SCA held that it was within the power of the partnership, which owns the aircraft, and Hawker Air Services (Pty) Ltd, which is a partner in the partnership and the operations manager of the aircraft, to procure the return of the aircraft to South Africa. It held, furthermore, that the order could be enforced by contempt of court proceedings against the directors of Hawker Air Services (Pty) Ltd should it not be complied with.

