


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.


25/8/2025

APPEAL CASE NO: A104/2024
COURT A QUO CASE NO.12905/2024

In the appeal of:

LA GROUP (PTY) LTD

Appellant

(Fourth Respondent in the court *a quo*)

and

UNITED STATES POLO ASSOCIATION

First Respondent

(First Applicant in the court *a quo*)

STABLE BRANDS (PTY) LTD

Second Respondent

(Second Applicant in the court *a quo*)

THE MINISTER OF POLICE

Third Respondent

(First Respondent in the court *a quo*)

SERGEANT NDLOVU

Fourth Respondent

(Second Respondent in the court *a quo*)

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Fifth Respondent

(Third Respondent in the court *a quo*)

JUDGMENT

SK HASSIM J

[1] This appeal comes before the court with the leave of the Supreme Court of Appeal to appeal the judgment of Labuschagne AJ (as he then was) in the court *a quo*.

[2] The first and second respondents in the appeal, United States Polo Association (“USPA”) and Stable Brands (Pty) Ltd (“**Stable Brands**”), successfully applied to the court *a quo* for an order releasing to them a consignment of imported goods detained by the Border Police under the provisions of s.88(1)(A) and (1)(B) of the Customs and Excise Act (“**the Customs and Excise Act**”), s13(8) of the Police Act, Act 55 of 1995 (“**the Police Act**”) and s 11(1)(A) of the Drug and Drug Trafficking Act 140 of 1992 (“**the Drug Trafficking Act**”).

[3] USPA and Stable Brands (the first and second applicants respectively, in the application) applied for final relief releasing the imported goods from detention (prayer 2 of the notice of motion), which was granted. They also sought interim relief to operate pending the finalisation of the relief claimed in Part B of the notice of motion. Prayer 2 of the notice of motion reads:

“Directing the first and second respondents [the Minister of Police and Sergeant Ndlovu, respectively] to immediately release the second applicant’s consignment of goods, including handbags and luggage imported through Durban Harbour in container number SUDU 753 693, and penalty held under detention by the authority of the first and second respondents, to the second applicant.”

[4] The interim relief was to restrain the appellant, LA Group (Pty) Ltd (“**LA Group**”), the fourth respondent in the court *a quo* (i) from lodging complaints in terms of the Counterfeit Goods Act, No. 37 of 1997 (“**the Counterfeit Goods Act**”) in respect of goods imported for or on behalf of USPA and Stable Brands. And to restrain the Minister of Police, the first respondent in the court *a quo*, and Sergeant Ndlovu ¹, the second respondent, from acting upon any complaints lodged in terms of the Counterfeit Goods Act in respect of such goods.

¹ Sergeant Ndlovu, a police official contemplated in the definition of “inspector” in section 1 of the Counterfeit Goods Act, No. 37 of 1997, effected the detention.

[5] LA Group opposed the application and counter applied. The Minister of Police, and Sergeant Ndlovu, did not oppose the application, nor did the third respondent, the Commissioner of the South African Revenue Service. They delivered notices abiding the court's decision. They do not participate in the appeal.

[6] The counter application was struck from the roll. The Minister of Police and Sergeant Ndlovu were directed to release the imported goods from detention. No interim relief was granted. The liability for the costs of Part A of the application was held over for determination with Part B of the notice of motion in the application.

[7] LA Group appeals the judgment and paragraphs 2 and 3 of the court *a quo*'s order which read as follows:

- "2. The first and second respondents [the Minister of Police and Sergeant Ndlovu] are directed in terms of Section 10(1)(b) of Counterfeit Goods Act, 37 of 1997 to release the second applicant's [Stable Brands'] consignment of handbags and luggage imported through Durban Harbour in Container Number SUDU753693, and currently held under detention by the authority of the first and second respondents, to the applicant.
3. The costs of Part A are to be heard with Part B."

[8] LA Group seeks the following orders –

- (a) The appeal be upheld with costs.
- (b) Paragraphs 2 and 3 of the court *a quo*'s order be set aside and replaced with the following:

"In part A proceedings:
The application is dismissed with costs."

[9] LA Group on the one hand and USPA and its licensee, Stable Brands have been embroiled in litigious trade mark infringement disputes for several years over their respective trademarks.² In my view, the appeal rests on narrow legal issues. As a result, I am not required to engage with the history to the disputes, the extensive litigation, nor the claims of infringement. Nor is a detailed narrative of the facts leading to the

² The registered trademarks are identified in the judgment of the court *a quo*.

application in the court *a quo* needed. A precis of the facts to give context to the application follows.

[10] On 21 September 2023, Stable Brands' shipping agent³ received from the Border Police at Durban Harbour notice that a pre-stop verification was to be undertaken in terms of section 88(1)(a) and (1)(b) of the Customs and Excise Act, section 13(8) of the Police Act and section 11(1)(A) of the Drug Trafficking Act in respect of container SUDU 753 6930 carrying the imported goods. Stable Brands was requested to provide the documents listed in the notice. On 27 September 2023, the shipping agent received from the Border Police a document captioned "DETENTION OF CONTAINER FOR PHYSICAL EXAM" in the following terms:

"The container and the contents thereof is detained by a SAPS officer in terms of:

1. section 88 (1)(A) [sic] and (1)(B) [sic] [of the] Customs and Excise Act
2. section 13 (6) of the Police Act, Act 66 of 1995.
3. Section 11(1)(A) of the Drug and Drug Trafficking Act 140 of 1992.

NOTE: SARS RELEASE SAD 500... IS TO BE EMAILED TO THE OFFICE AS SOON AS POSSIBLE FOR THE EXAM TO BE CONDUCTED. IF NO DISCREPANCY CONTAINER WILL BE RELEASED. IF DISCREPANCY IS/ARE FOUND CONTAINER WILL BE DETAINED FOR FURTHER INVESTIGATION."

[underlining appears in the quoted text]

[11] The Border Police physically examined the container on 4 October 2023. On 5 October 2023, the container was fully unpacked at the request of the Border Police who inspected two cartons in the container after which they indicated that the container may be repacked. Stable Brands expected the container to be released after the physical inspection. However, it was not. They followed up with the Border Police from 6 to 10 October 2023 regarding the release. On or about 10 October 2023, the Border Police informed Stable Brands that the imported goods were to be detained to determine whether they were counterfeit. On the same day the Border Police sent photographs of samples of the imported goods to LA Group's attorneys, Adams & Adams.

[12] On 11 October 2023, the Border Police sent an e-mail to Stable Brands' shipping agent with the request to

³ SCT Supply Chain.

“...place the container for exams [sic] as the brand protection [sic] attorney (in copy) requests samples of the products for verification.
Container will be reinspected and samples extracted” ⁴

[13] On 13 October 2023, LA Groups’ attorneys, Adams & Adams asserted in a letter to USPA and Stable Brands attorneys, Spoor & Fisher that (i) the imported goods carry a device trade mark which in terms of sections 34 (1)(a) and (c) of the Trade Marks Act infringes upon LA Group’s “POLO and POLO PLAYER” device trademarks registrations in class 18; and (ii) amount to passing off under the common law. They demanded (i) that the imported goods be delivered to LA Group; and (iii) an undertaking that Stable Brands would in the future not import into, and/or distribute in, South Africa goods “falling in class 18 ⁵ bearing the infringing mark or any other mark incorporating POLO and/or a device of a polo player/s on horseback”. In reply, Spoor & Fischer denied that Stable Brands was infringing LA Group’s trademark rights and/or passing off its goods as those of LA Group.

[14] On 3 November 2023, LA Group lodged a complaint in terms of section 3 read with section 2 of the Counterfeit Goods Act against Stable Brands regarding the imported goods.

[15] The application was launched on or about 12 November 2023. Labuschagne AJ issued the order on 1 December 2023.

[16] LA Group applied for leave to appeal. In response, USPA and Stable Brands applied to the court *a quo* under section 18 of the Superior Courts Act, No. 10 of 2013 for leave to execute the court *a quo*’s decision.

[17] LA Group’s application for leave to appeal was refused. And USPA and Stable Brands’ application for leave to execute the court *a quo*’s decision was granted.

⁴ Appeal Record: Vol 2: CL 22-123: Annexure FA-3 to FA.

⁵ International Trademark Class 18 covers the following goods: "Leather and imitations of leather, and articles made from these materials and not included in other classes; skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery."

[18] On appeal to it by LA Group in terms of section 18(4)(ii) (“**the section 18 appeal**”), the Full Court on 4 March 2024 set aside the order granting leave to USPA and Stable Brands leave to execute the court *a quo*’s decision.

[19] At the heart of the appeal is the legal question whether it was competent for the court *a quo* to order the release of the imported goods in circumstances where the imported goods had been detained under section 88(1)(a) and 1(b) of the Customs and Excise Act.

[20] In my view, for the reasons discussed below, the appeal must succeed. It was not competent for imported goods detained under section 88 (1)(a) and (b) of the Customs and Excise Act to have been released in the circumstances of this case. Consequently, I do not have to decide the legal question whether USPA and Stable Brands’ failure to comply with the notification provisions in section 96(1) ⁶ of the Customs and Excise Act was fatal to the application. Nor do I have to consider whether the imported goods are counterfeit or infringe LA Group’s trademark rights.

[21] I turn to the dispositive issue in the appeal. Was it competent for the imported goods to have been released from detention? This issue confronted the Full Court in the section 18 appeal.

[22] Section 88(1)(a) and (b) ⁷ of the Customs and Excise Act authorise amongst others, an officer, as defined therein, or a member of the police to detain any goods “for the purpose of establishing whether [those] goods are liable to forfeiture thereunder”.

⁶ 96. Notice of action and period for bringing action—

(1)(a)(i) No process by which any legal proceedings are instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act may be served before the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as the “litigant”) and the name and address of his or her attorney or agent, if any.

⁷ 88. Seizure—

(1)(a) An officer, magistrate or member of the police force may detain any ship, vehicle, plant, material or goods at any place for the purpose of establishing whether that ship, vehicle, plant, material or goods are liable to forfeiture under this Act.

(b) Such ship, vehicle, plant, material or goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer,

[23] Ms Cirone, appearing with Mr Petersen, for LA Group argued before us, as was argued in the appeal under section 18(4)(ii) of the Superior Courts Act, that the application before the court *a quo* was premature because a party is only entitled to demand the release of goods which have been seized. She submitted that the distinction between goods that have been detained and those that have been seized determines the scope and nature of the relief that may be claimed by a person who seeks their return. It was argued that a person has no right to demand the return of goods that are detained, as opposed to goods that are seized. Therefore, the court *a quo* erred in not distinguishing between goods detained under section 88(1)(a) and (b) and goods which have been seized.

[24] Mr Bowman SC, appearing with Ms Joubert SC, for USPA and Stable Brands submitted that the imported goods had “initially [been] detained in terms of section 88(1)(a) of the Customs and Excise Act, section 13(8) of the Police Act and section 11(1)(a) of the Drug Trafficking Act, [however] since October 2023 remained in detention purely on the basis that [they] constitute[d] ‘alleged counterfeit goods’ [sic]”.⁸ It was argued that the Border Police inspected the container carrying the imported goods on 4 and 5 October 2024 and therefore at the time the application was launched Sergeant Ndlovu had finalised her investigation. And that it was only on 10 October 2023 that the Border Police informed Stable Brands that the goods were being detained for purposes of determining whether they constituted counterfeit goods. With the finalisation of Sergeant Ndlovu’s investigation, so the argument goes, the continued detention was no longer justified, and the imported goods had to be released. In this

magistrate or member of the police force, at the cost, risk and expense of the owner, importer, exporter, manufacturer or the person in whose possession or on whose premises they are found, as the case may be.

- (bA) No person shall remove any ship, vehicle, plant, material or goods from any place where it was so detained or from a place of security determined by an officer, magistrate or member of the police force.
- (c) If such ship, vehicle, plant, material or goods are liable to forfeiture under this Act the Commissioner may seize that ship, vehicle, plant, material or goods.
- (d) The Commissioner may seize any other ship, vehicle, plant, material or goods liable to forfeiture under this Act.

⁸ Respondents’ HoA: CL 21-59, paragraph 138.

regard the following passage in Commissioner for the South African Revenue Service v Trend Finance (Pty) Ltd⁹ was relied on:

“[29]... the goods were detained in terms of s.88(1)(a) of the Act. In terms of the words of that section, such detention is ‘for the purpose of establishing whether... goods are liable to forfeiture under this Act’. The limitation must be read into that section to the effect that the right to detain goods only endures for a period of time reasonable for the investigation which the section contemplates to be made, but no longer. There is no sufficient reason for the continued deprivation of the property once the purpose for the deprivation (to investigate whether the property is liable to forfeiture under the Act) is no longer justified and the continued deprivation would accordingly be arbitrary as meant by s25 of the Constitution.”

[25] The decision in Trend Finance does not assist USPA and Stable Brands. They have not demonstrated that a period of time reasonable for establishing whether the imported goods were liable for forfeiture under the Customs and Excise Act had passed. Nor have they established that the Border Police had completed their investigations.

[26] USPA and Stable Brands disclosed no facts to support a conclusion that the investigation was complete or as rhetorically expressed in the heads of argument “[b]asic on the chronology the questions may be reasonably asked what was there left for Sgt Ndlovu to investigate? We contend nothing”. The high-water mark of the case that there was nothing further to investigate is Stable Brands’ expectation that the imported goods would be released. This flows from the following averments in the founding affidavit:

“42. On 4 October 2023, the Border Police conducted the physical examination of container SUDU 753 6930 The Border Police official broke the seal of the container and opened one carton which contained genuine USPA bags. After inspecting the contents of the carton, the Border Police requested a full unpacking of the container.

43. On 5 October 2023, container SUDU 753 6930 was fully unpacked as requested by the Border Police official. After inspecting two cartons, Border Police official indicated that the container may be repacked. Stable Brands, accordingly expected the Border Police to issue a release of container SUDU 753

⁹ 2007 (6) SA 117 (SCA).

6930 to enable Stable Brands to uplift the container and deliver the genuine imported USPA goods to its customers.”

[27] Furthermore, LA Group had lodged a complaint contemplated in section 3 of the Counterfeit Goods Act read with section 2 thereof. Section 3(1) entitles “[a]ny person who has an interest in protected goods, whether as the owner or licensee of an intellectual property right in respect of the protected goods or as an importer, exporter or distributor thereof (including the duly authorised agent or representative or the attorney of any such person), who reasonably suspects that an offence referred to in section 2 (2) has been or is being committed or is likely to be committed by any person, may lay a complaint to that effect with any inspector.”¹⁰ The information which a complainant must furnish to an inspector is set out in section 3(2)(a) and (b). Section 3(3) enjoins the inspector to take “appropriate steps”, and section 3(4) empowers an inspector to take “appropriate steps” on his or her own initiative.

[28] The salient portions of section 3 read

Laying a complaint.—

- (1) Any person who has an interest in protected goods, whether as the owner or licensee of an intellectual property right in respect of the protected goods or as an importer, exporter or distributor thereof (including the duly authorised agent or representative or the attorney of any such person), who reasonably suspects that an offence referred to in section 2 (2) has been or is being committed or is likely to be committed by any person, may lay a complaint to that effect with any inspector.
- (2) ...
- (3) In relation to a complaint that has been laid, an inspector must take appropriate steps in terms of and subject to section 4 (1), if reasonably satisfied—
 - (a) that the person having laid the complaint, *prima facie* is a person who, in terms of subsection (1), is entitled to do so; and
 - (b) that—
 - (i) the goods claimed to be protected goods, *prima facie* are protected

¹⁰ “Inspector” is defined in the Counterfeit Goods Act to mean

“any person who under or by virtue of section 22 has been appointed as or designated to be an inspector for the purposes of this Act, as well as—

- (a) any police official as defined in section 1 (1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), holding the rank of sergeant or a higher rank;
- (b) the Commissioner for Customs and Excise and any official contemplated in section 15 (9), in performing their functions in the circumstances contemplated in section 15 (4);

- goods; and
 - (ii) the intellectual property right, the subject matter of which is alleged to have been applied to the offending goods, *prima facie* subsists; and
 - (c) that the suspicion on which the complaint is based, appears to be reasonable in the circumstances.
- (4) The preceding provisions of this section do not preclude an inspector from taking any appropriate steps in terms of section 4 (1) on his or her own initiative in relation to any act or conduct believed or suspected to be an act of dealing in counterfeit goods, provided the requirements of that section are met.”

[29] Section 3(3) envisages an investigation by the Border Police for them to be reasonably satisfied amongst others that (i) the goods claimed to be protected goods, *prima facie* are protected goods; and (ii) the intellectual property right, the subject matter of which is alleged to have been applied to the offending goods, *prima facie* subsists; and (iii) the suspicion on which the complaint is based, appears to be reasonable in the circumstances. Only if the Border Police are satisfied that the requirements of section 3(3) are satisfied may the Border Police act in terms of section 4 and 5. Section 4(1) confers amongst others powers of entry to premises to inspect goods, collect evidence, seize suspected counterfeit goods, seize and detain such goods, remove them for purposes of detention, collect and obtain evidence relating to the suspected counterfeit goods, or the relevant act of dealing in counterfeit goods. Section 5 expands upon those powers. The powers conferred by sections 4 and 5 may however only be exercised under the authority of a warrant issued by a judge of the high court or a magistrate under the provisions of section 6 if it appears that there are reasonable grounds for believing that an act of dealing in counterfeit goods has taken place, is taking place or is likely to take place.

[30] The provisions of the Counterfeit Goods Act are dependent on an investigation process to establish whether the suspicion on which the complaint lodged in terms of section 2 and 3 thereof is based appears to be reasonable in the circumstances. It is only then that action may be taken under ss 4 to 6 of the Counterfeit Goods Act.

[31] When USPA and Stable Brands launched the application on or about 12 November 2023, due to the complaint by LA Group, the Border Police were obliged in

terms of section 3(3) of the Counterfeit Goods Act to take appropriate steps. They also had the power sourced in section 3(4) read with section 4(1), to take on their own initiative appropriate steps concerning any act or conduct believed or suspected to be an act of dealing in counterfeit goods.

[32] There is nothing on the papers to show that when the application was launched that the Border Police had completed an investigation into whether there were “reasonable grounds to suspect that an offence contemplated in section 2(2) [of the Counterfeit Goods Act had] been or [was] being committed or [was] likely to be committed, or to believe that an act of dealing in counterfeit goods [was] taken or [was] taking place or [was] likely to take place”. Before the Border Police could make such an assessment, and if so warranted, act in terms of the powers conferred in sections 4, 5 and 6 of the Counterfeit Goods Act to apply for a warrant to seize the imported goods, USPA and Stable Brands launched the urgent application for the immediate release of the imported goods.

[33] In the section 18 appeal, the Full Court ¹¹ comprehensively dealt with whether it was competent for detained goods to be released from detention. The following findings of the Full Court, with which we agree, are apposite:

“27. ...the urgent application was premature in that it was launched in the urgent court at a time when the officials acting in terms of the Customs and Excise Act were still investigating the matter, the court *a quo* also usurped the discretion of the officials to determine whether there exists reason to suspect that the imported goods are counterfeit at a time when the Counterfeit Goods Act has not yet found application. ... Peculiarly the court *a quo* acknowledges in the main judgment that the decision whether the imported goods are counterfeit is still under investigation, but nonetheless went ahead to decide the issue:...

28. It is not in dispute that the goods were merely "detained" under the provisions of section 88(1)(a) and (1)(b) of the Customs and Excise Act as opposed to having been "seized" in terms of the Counterfeit Goods Act. This was the position from 3 November 2023 when LA Group delivered its complaint in terms of the provisions of section 3 (read with section 2) of the Counterfeit Goods Act until 13 November 2023 when the urgent application was issued. ...

¹¹ LA Group (Pty) Ltd v United States Polo Association and Stable Brands (Pty) Ltd unreported case no 2023/118082 (4 March 2024).

29. Goods are thus detained under the Custom and Excise Act pending an investigation which, may or may not result in an application for a warrant to seize the goods under the Counterfeit Goods Act. Only once the goods have been "seized" will the Counterfeit Goods Act come into play. In terms of section 3 of the Counterfeit Goods Act, any person who has an interest in the protected goods and who *reasonably suspects* that an offence as referred to in section 2 of the Counterfeit Goods Act is being or has been committed or likely be committed may lay a complaint with any inspector. Section 4 and 5 of the Counterfeit Goods Act set out the inspector's powers relating to the suspected counterfeit goods. In brief, the inspector may, if she has reasonable grounds to suspect that the goods are counterfeit (as contemplated in section 2(2) of the Counterfeit Goods Act), apply for a warrant to, *inter alia*, seize the goods. The warrant as contemplated in section 4(2) read with section 5 must be issued by a judge of the High Court or a magistrate who has jurisdiction in the area (section 6). Only once the goods have been seized, can any person who is prejudiced by the seizure of the goods, apply to a court on notice of motion for a determination that the seized goods are not counterfeit goods and for an order that they be returned to that person (section 7(4)).
30. A distinction (which was overlooked by the court *a quo*) must therefore be drawn between the "*detention*" and the "*seizure*" of goods. Goods may only be "*seized*" *after* the inspector has *investigated* the matter and has exercised a discretion that she reasonably suspects that the detained goods may be counterfeit and only after she has applied for a warrant in order to "*seize*" the goods in terms of the Counterfeit Goods Act.
31. In the present matter the urgent court was approached for a release order *before* the inspector has even been able to investigate the matter and determine whether, on the strength of the information at her disposal, there are reasonable grounds to suspect that an offence has been committed as contemplated in section 2(2) of the Counterfeit Goods Act. The investigation process is not a mere formality. In this regard the Supreme Court of Appeal in *Commissioner, South African Revenue Service v Trend Finance (Pty) Ltd and another* held that the purpose of detaining goods under section 88(1)(a) of the Customs and Excise Act is to establish whether the goods were liable to forfeiture. The court, moreover, confirmed that the relevant official has the *right* to detain the goods and that her right to investigate endures for a reasonable period of time. I should mention in passing that it was not the case for Stable Brands that the inspector had sufficient time to investigate the matter. In any event, having regard to the events, it would not have been able to argue that in light of the fact that the complaint was delivered on 3 November 2023 whereafter the urgent application was launched on 13 November 2023.

32. A party is furthermore only entitled to demand the release of goods that have been "seized". In *SNT (Pty) Ltd v Commissioner, South African Revenue Service And Others* [2007 BIP 189 (T) ad paras [36] - [40]] the court held as follows:

'It is important to emphasize that the goods were only detained and not seized. In my view, the application was made prematurely and there were no exceptional circumstances warranting to bring this application at this stage. In, **The Commissioner for the South African Revenue Service & Another v Sterling Auto Distributors CC** (delivered on 13 October 2005 under TPD case number A1796/04) Smit J stated that:

"It is not the role of customs authorities to make a finding on whether the goods are counterfeit or not, the only question being whether it was reasonable for Barath to rely on confirmatory affidavits to detain the container pending further investigation ...to the extent that the court *a quo* required from Barath to go further and undertake an enquiry into the complicated field of intellectual property law and the authorities in relation to the "range of statutory and common law defences" it clearly, with respect, was wrong. No such duty is placed on a customs inspector in terms of the CGA, nor to customs officers in particular as the framework of the CGA is based on the premise that the true debate as to whether the goods are counterfeit or not must be determined by a court of law at a later stage."

33. The effect of the urgent application (and the resultant release order) was to short-circuit the well-established procedures of investigating goods that have been detained under the Custom and Excise Act before a determination is made to apply for a warrant in order to "seize" the goods in terms of the Counterfeit Goods Act. Furthermore, that a party is not entitled to demand the release of goods that have been detained and that it may only do so once the goods have been seized was also confirmed by the court in *Commissioner South African Revenue Service v Trend Finance (Pty) Ltd and Another*."
34. Consequently, the court *a quo* could therefore not have made the determination that the goods were counterfeit and could therefore not have ordered the release of the detained goods."

[emphasis appears in quoted text]

[34] I agree with the Full Court that the application was prematurely launched and that the court *a quo* usurped the discretion of the officials acting in terms of the Customs and Excise Act.

[35] I am of the view that it was not competent for the court *a quo* to have ordered the release of the imported goods. In view of this finding, I do not have to consider the further grounds of appeal ¹² relied upon by the appellant.

[36] LA Group seeks costs of two counsel in the event of a successful appeal. I am satisfied that costs on Scale C are warranted. The issues in the appeal are complex. The voluminous heads of argument prepared by both parties are on their own indicative of the complexity of the matter. The respondent instructed two senior counsel to resist the appeal. This self-evidently demonstrates the complexity, and importance of the matter.

[37] In the result, I propose the following order:

(a) The appeal is upheld, with costs including the costs of two counsel on Scale C.

(b) Paragraphs 2 and 3 of the court order issued by Labuschagne AJ on 1 December 2023 are set aside and substituted with the following order:

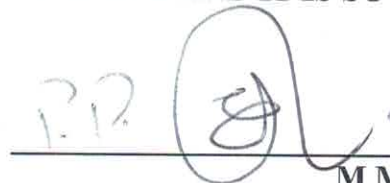
“In Part A proceedings:
The application is dismissed with costs.”



S K HASSIM

Judge of the High Court of South Africa
Gauteng Division, Pretoria

I AGREE AND IT IS SO ORDERED

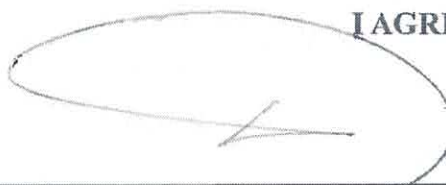


M MBONGWE

Judge of the High Court of South Africa
Gauteng Division, Pretoria

¹² Whether the Full Court finally adjudicated the issues arising in the appeal (re judicata or issue estoppel) or whether the court *a quo* erred in ordering the release of the consignment in terms of section 10(1)(b) of the Counterfeit Goods Act.

I AGREE

A handwritten signature in dark ink, consisting of a large, sweeping loop followed by a short horizontal stroke and a small upward tick.

BLESUFI

Acting Judge of the High Court of South Africa
Gauteng Division, Pretoria

Appellant's Counsel:

Adv P Cirone

Adv C Petersen

First and Second Respondents' Counsel Adv L Bowman SC

Adv I Joubert SC

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 25 August 2025.