

**IN THE TAX COURT  
(HELD IN PORT ELIZABETH)**

**CASE NO. IT13726**

In the matter between:

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

**Appellant**

and



**Respondent**

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**NOTICE OF INTENTION TO APPEAL IN TERMS OF SECTION 134 OF THE TAX  
ADMINISTRATION ACT 28 OF 2011 (“the TAA”)**

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**BE PLEASED TO TAKE NOTICE** that abovementioned appellant intends to appeal against the judgment and order of Justice Revelas, sitting as President of the Tax Court (“The Court”) which was delivered on 8 February 2018 and which was notified to the parties on 12 February 2018.

**BE PLEASE TAKE NOTICE** that the appellant requests that the appeal be heard by the Supreme Court of Appeal in terms of section 135 of the TAA.

**KINDLY TAKE NOTICE** that for the purpose of preparing the record of appeal, a transcript is required of the arguments made at the hearing of the case by the Tax Court.

**KINDLY TAKE NOTICE** that the following are the grounds and the rulings of law on which the intended appeal is based.

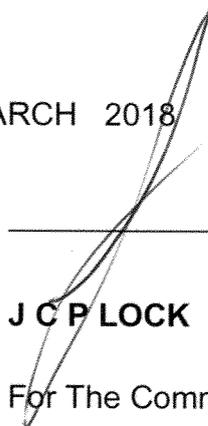
1. The Court erred in finding that:
  - 1.1 the defects found to be present in the additional assessment in terms of section 40 and 42 of the TAA, affected the validity of the assessment, and accordingly rendered it invalid;
  - 1.2 the letter together with the type of severance or “separation package” in actual fact paid to the respondent, indicates that the respondent’s services were terminated as part of a retrenchment exercise or it was least treated as such by the respondent in that the package paid to the respondent was equal to a package calculated in the course of a retrenchment, and in accordance with clause 14.2 of the relevant contract of employment;
2. The respects in which the Court erred in not reaching the findings set out above are the following:
  - 2.1 The Court failed to take cognisance of section 254(2) of the TAA, in that a notice of assessment or other notice or document issued under a tax Act is not to be considered invalid or ineffective by

reason of defects if it is, in substance and effect, in conformity with this Act, and the person assessed or affected by the notice or document is designated in it according to common understanding;

2.2 The appellant was deprived of the opportunity to respond to any of the issues raised, particularly the question of the circumstances surrounding the respondent's resignation and the nature of the lump sum paid to him, or to lead evidence in accordance to the issue;

3. **AND KINDLY TAKE NOTICE** that the appellant requests the President of the Court to make an order in terms of section 135 of the TAA, granting leave to appeal against the decision of the Tax Court, to the Supreme Court of Appeal.

DATED AT PRETORIA THIS 8th DAY OF MARCH 2018



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**J C P LOCK**

For The Commissioner :SARS

271 Bronkhorst Street

Khanyisa Building, Ground Floor

Nieuw Muckleneuk

**PRETORIA**

0181

Ref: IT14240

E-mail: [JLock@sars.gov.za](mailto:JLock@sars.gov.za)

**TO: THE REGISTRAR OF THE TAX COURT**

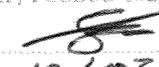
**KHANYISA BUILDING, FIRST FLOOR**

**271 BRONKHORST STREET**

**NIEUW MUCKLENEUK**

**PRETORIA**

**0181**

REGISTRAR TAX COURT BELASTING HOF PO BOX / POSBUS 402, PRETORIA 0001
SIGN: 
DATE: 12/03/2018 TIME: .....

Received a copy hereof on this

\_\_\_\_\_ day of \_\_\_\_\_ 2018

**AND TO: JUSTICE E REVELAS**

**EASTERN CAPE LOCAL DIVISION OF**

**THE HIGH COURT OF SOUTH AFRICA**

Private Bag x 1, Port Elizabeth, 6000

2 Bird Street, Port Elizabeth, 6001

Registrar: Ms N Ndlebe

E-mail: [NNdlebe@judiciary.org.za](mailto:NNdlebe@judiciary.org.za)

Tel: 041 502 6600 / Fax: 041 582 2625

**AND TO: APPELLANT**

**C/O STROMBECK PIETERSE**

Attention: S Pieterse

7 Bird Street

Port Elizabeth

E-mail : [schalk@strombeckpieterse.co.za](mailto:schalk@strombeckpieterse.co.za)

**133. Appeal against decision of tax court.**-(1) The taxpayer or SARS may in the manner provided for in this Act appeal against a decision of the tax court under [sections 129](#) and [130](#).

(2) An appeal against a decision of the tax court lies-

(a) to the full bench of the Provincial Division of the High Court which has jurisdiction in the area in which the tax court sitting is held; or

(b) to the Supreme Court of Appeal, without an intermediate appeal to the Provincial Division, if-

(i) the president of the tax court has granted leave under [section 135](#); or

[[Sub-para. \(i\)](#) substituted by [s. 54](#) of [Act No. 39 of 2013](#) deemed to have come into operation on 1 October, 2012.]

Wording of Sections

(ii) the appeal was heard by the tax court constituted under [section 118 \(5\)](#).

**134. Notice of intention to appeal tax court decision.**-(1) A party who intends to lodge an appeal against a decision of the tax court (hereinafter in this Part referred to as the appellant) must, within 21 business days after the date of the notice by the 'registrar' notifying the parties of the tax court's decision under [section 131](#), or within a further period as the president of the tax court may on good cause shown allow, lodge with the 'registrar' and serve upon the opposite party or the opposite party's attorney or agent, a notice of intention to appeal against the decision.

(2) A notice of intention to appeal must state-

- (a) in which division of the High Court the appellant wishes the appeal to be heard;
- (b) whether the whole or only part of the judgment is to be appealed against (if in part only, which part), and the grounds of the intended appeal, indicating the findings of fact or rulings of law to be appealed against; and
- (c) whether the appellant requires a transcript of the evidence given at the tax court's hearing of the case in order to prepare the record on appeal (or if only a part of the evidence is required, which part).

(3) If the appellant is the taxpayer and requires a-

- (a) transcript of the evidence or a part thereof from the 'registrar', the appellant must pay the fees prescribed by the Commissioner by public notice; or
- (b) copy of the recording of the evidence or a part thereof from the 'registrar' for purposes of private transcription, the appellant must pay the fees prescribed by the Commissioner in the public notice.

(4) A fee paid under [subsection \(3\)](#) constitutes funds of SARS within the meaning of [section 24](#) of the SARS

Act.

**135. Leave to appeal to Supreme Court of Appeal against tax court decision.**-(1) If an intending appellant wishes to appeal against a decision of the tax court to the Supreme Court of Appeal, the 'registrar' must submit the notice of intention to appeal lodged under [section 134 \(1\)](#) to the president of the tax court, who must make an order granting or refusing leave to appeal having regard to the grounds of the intended appeal as indicated in the notice.

[[Sub-s. \(1\)](#) substituted by [s. 62](#) of [Act No. 21 of 2012](#).]

Wording of Sections

(2) If the president of the tax court cannot act in that capacity or it is inconvenient for the president to act in that capacity for purposes of this section, the Judge-President of the relevant Division of the High Court may nominate and second another judge or acting judge to act as president of the tax court for that purpose.

(3) Subject to leave to appeal to the Supreme Court of Appeal in terms of [section 17](#) of the Superior Courts Act, 2013 ([Act No. 10 of 2013](#)), an order made by the president of the tax court under [subsection \(1\)](#) is final.

[[Sub-s. \(3\)](#) substituted by [s. 54](#) of [Act No. 23 of 2015](#).]

Wording of Sections

**136. Failure to lodge notice of intention to appeal tax court decision.**-(1) A person entitled to appeal against a decision of the tax court, who has not lodged a notice of intention to appeal within the time and in the manner required by [section 134](#), abandons, subject to any right to note a cross appeal, the right of appeal against the decision.

(2) A person who under [section 134](#) lodged a notice of intention to appeal against a decision of the tax court but who has subsequently withdrawn the notice, abandons the right to note an appeal or cross-appeal against the decision.

**137. Notice by registrar of period for appeal of tax court decision.**-(1) After the expiry of the time allowed under [section 134 \(1\)](#) for the lodging of a notice of intention to appeal, the 'registrar' must-

- (a) give notice to a person who has lodged a notice of intention to appeal which has not been withdrawn, that if the person decides to appeal, the appeal must be noted within 21 business days after the date of the 'registrar's' notice; and
- (b) supply to the person referred to in paragraph (a) a certified copy of an order that the president of the tax court made under [section 135](#) which is the subject of the intended appeal.

(2) The 'registrar' may not give notice under [subsection \(1\) \(a\)](#) until the order has been made or the transcript has been completed if-

- (a) it appears that the president of the tax court will make an order under [section 135](#); or
- (b) an intending appellant requires a transcript of evidence given at the hearing of the case by the tax court as envisaged in [section 134 \(2\) \(c\)](#).

(3) If the opposite party is not also an intending appellant in the same case, the 'registrar' must provide to the opposite party copies of the notice and any order referred to in [subsection \(1\) \(a\)](#) and [\(b\)](#).

**138. Notice of appeal to Supreme Court of Appeal against tax court decision.**-(1) If a person has-

- (a) appealed to the Supreme Court of Appeal from a court established under [section 118 \(5\)](#);
- (b) been granted leave to appeal to the Supreme Court of Appeal under [section 135](#); or
- (c) successfully petitioned to the Supreme Court of Appeal for leave to appeal,

the appeal which a party must note against a decision given in the relevant case must be noted to that Court.

(2) If the notice of intention to appeal was noted to the High Court or leave to appeal to the Supreme Court of Appeal has been refused under [section 135](#), the party who lodged the notice of intention to appeal must note an appeal to the appropriate Provincial Division of the High Court.

(3) The notice of appeal must be lodged within the period referred to in [section 137 \(1\) \(a\)](#) or within a longer period as may be allowed under the rules of the court to which the appeal is noted.

(4) A notice of appeal must be in accordance with the requirements in the rules of the relevant higher court.