CONSTITUTIONAL COURT OF SOUTH AFRICA

Organisation Undoing Tax Abuse v Minister of Transport and Others

CCT 19/22

Date of hearing: 15 November 2022

Date of Judgment: 12 July 2023

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting on this case but the note is not binding on the Constitutional Court or any member of the Court.

This morning the Constitutional Court handed down its judgment in a matter concerning the constitutional invalidity of the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (AARTO Act) and the Administrative Adjudication of the Road Traffic Offences Amendment Act 4 of 2019 (AARTO Amendment Act). The two Acts will be referred to collectively as the AARTO legislation. That is the matter of the Organisation Undoing Tax Abuse (OUTA) v Minister of Transport and Others.

The AARTO Act is the legislation that was passed by Parliament in 1998 that seeks to introduce the demerit system in terms of which motorists who break traffic laws will lose certain points and, once they have lost a certain number of points, will have their driving licenses suspended or cancelled. The legislation also introduces a new system of administrative adjudication of cases of traffic infringement. In 2019 Parliament passed the AARTO Amendment Act in terms of which, among others, it created an Appeals Tribunal which will adjudicate appeals from decisions of the Road Traffic Infringement Authority.

OUTA instituted an application in the Gauteng Division of the High Court, Pretoria, against the Minister of Transport and Road Traffic Infringement Agency (RTIA) and sought an order declaring the AARTO legislation constitutionally invalid. Despite the Minister's opposition and the opposition of the RTIA, the High Court granted an order of constitutional invalidity in respect of the AARTO legislation. It declared the legislation invalid on the bases that:

(a) the AARTO Act fell within the exclusive legislative competence of the provincial sphere of government and Parliament had no competence to pass it, and,
(b) that the AARTO Act usurped certain executive or administrative functions of the local sphere of government which it gave to national organs of state.

After the High Court had granted the order of constitutional invalidity, OUTA applied to the Constitutional Court for the confirmation of that order on the same grounds on which the High Court had found in its favour. The Minister of Transport and the RTIA appealed to the Constitutional Court against the order of the High Court. The Road Traffic Management Corporation (RTMC) was admitted as one of the respondents in the Constitutional Court. The City of Cape Town was admitted as a friend of the court. The Minister, the RTIA and the RTMC all opposed the confirmation of the order of invalidity granted by the High Court. OUTA opposed the appeal by the Minister, the RTIA and the RTMC.

For all intents and purposes the parties presented the same argument before the Constitutional Court that had been presented before the High Court. The main bone of contention was whether the subject matter of the AARTO Act fell within the functional area described as "road traffic regulation" in Part A of Schedule 4 to the Constitution or the functional area described as "provincial roads and traffic" which appears in Part A of Schedule 5 to the Constitution or the functional areas described as "municipal roads" or "traffic and parking" in Part B of Schedule 5 to the Constitution.

If the subject matter of the AARTO Act fell under "road traffic regulation" this would mean that the subject matter of the AARTO Act fell within the concurrent legislative competence of both the national and provincial spheres of government. This would mean that Parliament had the competence to pass the AARTO Act. This was the contention advanced by the Minister, the RTIA and the RTMC. If the subject matter of the AARTO Act fell within the functional area described as "provincial roads and traffic" this would mean that Parliament did not have the competence to pass the AARTO Act because legislation that falls under the functional areas listed in Part A of Schedule 5 falls within the exclusive legislative competence of the provincial sphere of government.

If the AARTO Act fell within a functional area under Part B of Schedule 5, this would also mean that Parliament did not have the competence to pass the AARTO Act. If the AARTO Act fell under Part A of Schedule 5 the only basis upon which Parliament may have had power to pass the AARTO Act would have been under the specific circumstances prescribed in section 44(2) of the Constitution. Under that provision Parliament is only empowered to intervene in what is otherwise a functional area falling under the provincial sphere of government if the requirements of that provision are satisfied.

In its unanimous judgment written by Chief Justice Zondo the Constitutional Court has upheld the contentions advanced by the Minister of Transport, the RTIA and the RTMC that the subject matter of the AARTO Act falls within the functional area described as "road traffic regulation" in Part A of Schedule 4 to the Constitution which is within the concurrent legislative competence of Parliament and the provincial legislatures. Accordingly, the Constitutional Court concluded that Parliament had the competence to pass the AARTO Act. That conclusion made it unnecessary for the Constitutional Court to consider the submissions made by the City of Cape Town as amicus curiae because it only made submissions that would be relevant if the Court concluded that Parliament could only have competently passed the AARTO legislation

under section 44(2) of the Constitution. The Court also rejected OUTA's contention that the AARTO Act usurped certain executive or administrative functions of municipalities and gave them to national organs of state.

The Constitutional Court also rejected OUTA's contention that the provisions of section 17 of the AARTO Amendment Act which, once in force, would permit service of notices, enforcement orders and other documents on an alleged infringer by modes of service other than personal service or service by registered mail such as electronic service were unconstitutional. The Court said that, irrespective of the method of service used to serve any notice or document under the AARTO Act on an alleged infringer, the RTIA would have to show that the alleged infringer probably received the notice or document. This is the same approach that the Constitutional Court took in two previous cases that came before it which dealt with notices to be served by credit providers on defaulting debtors under section 129 of the National Credit Act. Those were the cases of *Sebola* and *Kubyana*.

The Court refused to confirm the order of invalidity made by the High Court, upheld the Minister's appeal and set aside the order of the High Court and replaced it with an order dismissing OUTA's application. The Court also made a declaratory order to the effect that the provisions of section 17 of the AARTO Amendment Act which permit the service of notices and other documents under the AARTO Act on an alleged infringer by modes of service other than personal service and service by registered mail will not be inconsistent with the Constitution once they come into operation. The Court did not make any costs order against OUTA.