



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 18 March 2011
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Polonyfis v The Minister of Police
(64/2010) [2011] ZASCA 26 (18 March 2011)

The Supreme Court of Appeal (SCA) dismissed an appeal against an order of the Northern Cape High Court, Kimberley. The appellant, Mr Elefterios Polonyfis, who owns 'The Entertainment Centre' in Colesberg, appealed against the judgment of the high court in which its application to set aside a search warrant was dismissed with costs. The warrant was issued by a Colesberg magistrate since the police believed that illegal gambling was being conducted on the premises.

The appellant attacked the lawfulness of the search and seizure operation on four grounds, namely (1) the warrant did not indicate which sub-section of s 20 of the Criminal Procedure Act 51 of 1977 was applicable; (2) the address of the premises to be searched was vaguely described in the warrant; (3) that the fourth respondent failed to exhibit an affidavit in support of the warrant; and (4) that the execution of the warrant was unlawful because the South African Police Service seized items that were not mentioned in the warrant.

It was held that all three sub-sections of s 20 of the act were applicable in this case and that the magistrate correctly did not limit the warrant only to one section.

The SCA held further that a technically wrong address does not invalidate a warrant if it otherwise describes the premises with sufficient particularity so that the police can ascertain and identify the place to be searched.

With regard to the appellant's third argument the court found that the appellant did not request a copy of the affidavit from the police. Had he done so they would have indeed provided him with a copy.

The appellant further argued that the seizure of the ashtrays, chairs, documents and other smaller items were not permitted by the warrant and that this deemed the entire seizure invalid. The court found that although the warrant only permitted the seizure of gambling machines, money and tokens the execution of the warrant was not invalid because the search did not result in a abuse of power or a 'gross violation' of the appellant's rights. In any case, the high court already ordered the return of the other items which were taken.

Therefore the SCA dismissed the appeal with costs.