

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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.

**Minister of Home Affairs v Fireblade Aviation Ltd [2018] ZASCA**

**46.**

The SCA today dismissed an application for leave to appeal by the Minister of Home Affairs against a judgment of the Gauteng Division of the High Court, Pretoria. The case concerned the approval by the Minister, at that time Mr Malusi Gigaba, of Fireblade Aviation's application for approval of an ad hoc international customs and immigration component of a corporate fixed base aviation operation to be conducted by officials of the Border Control Operational Co-ordinating Committee at premises it had established within the precincts of O R Tambo International Airport.

There was a dispute between the parties as to the proper test to be applied in determining the application. This dispute was the reason for the court departing from its usual practice of not furnishing detailed reasons when dealing with applications for leave to appeal. The SCA rejected a contention by Fireblade Aviation that the application was one for special leave to appeal, where the test for granting leave is more stringent, and held that what was required was for the applicant to show

that it had reasonable prospects of success on appeal, or that some other compelling reason warranted the grant of leave to appeal.

Applying this less stringent test the court held that there were no reasonable prospects of success on appeal. The issue was whether the Minister had approved the application and conveyed that approval to Fireblade Aviation at a meeting on 28 January 2016, but had thereafter sought to suspend and withdraw that approval. The High Court held that he had approved the application and that his denial that he had done so could not be accepted. The SCA held that there was no reasonable prospect of the High Court's rejection of the Minister's evidence being overturned on appeal. It rejected the contention that Fireblade Aviation was seeking approval for a new port of entry into South Africa as that was inconsistent with a letter from the Minister saying that the application did not involve establishing a new port of entry. It also held that the Minister could not rely on his purported withdrawal of consent to the application as that was inconsistent with his prior approval of it.

There was no compelling reason to grant leave to appeal. The application for leave to appeal was dismissed with costs.