

MEDIA STATEMENT

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CONSTITUTIONAL COURT RULES IN FAVOUR OF DEPARTMENT OF TRANSPORT OVER A TWO-YEAR COURT BATTLE AGAINST THE OPERATION OF SECOND-HAND IMPORTED VEHICLES IN SA

The final word has now been spoken by the highest court of the land, on the question of whether second-hand imported vehicles destined for export to neighbouring Southern African countries can be driven on South African roads before exiting our borders to their destinations in foreign countries. The Constitutional Court, comprising eleven Judges, unanimously dismissed an application which had been brought to Court for leave to appeal against the judgment of the Supreme Court of Appeal, which had unanimously, by its five Judges, declared that these vehicles are not entitled to the issue of temporary and special permits and consequently cannot be driven on South African roads.

Both the National and Provincial Departments of Transport have been fully vindicated in refusing to issue these permits. The legal battle commenced during June 2005 when the National and Provincial Departments of Transport issued a directive to stop the issuing of these permits to imported second hand vehicles. This resulted in an application by certain clearing and forwarding agents, who grouped themselves under an association known as Clearing Agents, Receivers and Shippers (CARS), challenging the Departments' directive to stop the issuing of permits. The application was opposed by the National and Provincial Departments and judgment was handed down by the then Acting Justice Koen AJ, who effectively declared that the issuing of such permits was illegal.

During March 2007 the Supreme Court of Appeal, comprising five Judges, unanimously dismissed CARS's appeal which, in effect, declared the issuing of such permits to be illegal. The Departments believed that this judgment of the Supreme Court of Appeal would have put paid to the matter. However, CARS then brought an application for leave to appeal to the Constitutional Court against the judgment of the

Supreme Court of Appeal. After having lodged the latter application CARS then brought another application based on the aforementioned undertaking and contended in that application that the undertaking was to endure until its application for leave to appeal to the Constitutional Court was determined.

That application was heard by Judge Niles-Dunér and was granted. However the Departments of Transport appealed that Order, which had the effect of staying the operation of the Order of Judge Niles-Dunér. This prompted CARS to bring a further application requesting Judge Niles-Dunér to put their Order into effect. The Departments opposed this application and the matter was to be heard on the 4th of May 2007. Prior to the hearing of this application, eleven Judges of the Constitutional Court refused the application for leave to appeal made by CARS, which has the effect of that court finally pronouncing that the issuing of such permits to these vehicles is not permissible in terms of the law.

KwaZulu-Natal MEC for Transport, Community Safety and Liaison welcomes and applauds the court decision. “These vehicles have been a menace to the various authorities who are required to ensure that traffic legislation in South Africa is complied with and has also resulted in a host of fraudulent activities being perpetrated, especially with respect to the issuing of false and fraudulent Certificates of Roadworthiness” Cele said.

“The fact that the highest court of the land has given its judgment on the matter, the Department of Transport will not in any way tolerate the driving of these vehicles on our roads and offenders will be confronted with the full letter of the law and prosecuted for their offences” he added.

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