

South African Constitutional Court rules on taking of evidence

It is not every day that a Constitutional Court rules on a matter of evidence. The case *Tulip Diamonds FZE v Minister of Justice and Constitutional Development and Others* concerned the taking of evidence in South Africa for a criminal investigation in Belgium. It was on a matter of common interest in South Africa and Belgium: diamonds. In the course of a criminal investigation in Belgium, the authorities issued a letter of request for evidence in South Africa. This concerned evidence that had to be produced by Brinks Southern Africa, established in South Africa. This company was not involved in the suspected criminal activities, but transported diamonds for Tulip from Angola and Congo to the United Arab Emirates. Tulip was the intermediary of Omega, the Belgian company who allegedly imported the diamonds under false certificates to conceal their real value and therefore the company's taxable profit. The documents that the Belgian authorities sought to be transferred concerned invoices by Brinks Southern Africa to Tulip.

The request was approved by the Minister of Justice and given to a magistrate to carry out. The magistrate issued a subpoena to an employee at Brinks. Before she could submit the documents, Tulip got wind of the request. After negotiations and a temporary interdict by the High Court for Brinks not to transfer the documents, Tulip approached the court for a review of the approving of the request. The issue then arose whether Tulip had standing under the Constitution or under common law to bring these proceedings.

Some of the issues in the case concern criminal procedure law, but the matter of standing is also of interest for civil cases, to my mind.

The judgment (issued on 13 June 2013) is available on the website of the Constitutional Court and on the Legalbrief site.