THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 707/2019

In the matter between:

THE NATIONAL MINISTER OF TRANSPORT	**APPELLANT**

and

BRACKENFELL TRAILER HIRE (PTY) LTD	**FIRST RESPONDENT**
PASCAL CONSTANCE SPRAGUE	**SECOND RESPONDENT**
GERHARDUS ADRIAAN ODENDAL	**THIRD RESPONDENT**

Neutral citation:	*Minister of Transport v Brackenfell Trailer Hire (Pty) Ltd and Others* (707/2019) [2021] ZASCA 05 (14 January 2021)
Coram:	PETSE DP, DAMBUZA and VAN DER MERWE JJA and WEINER and GOOSEN AJJA
Heard:	11 November 2020

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 09H45 on 14 January 2021.

Summary: Statutes – interpretation of – traffic offences – s 73(1) of the National Road Traffic Act 93 of 1996 (the Act) – meaning to be ascribed thereto in relation to a trailer in tow – whether a trailer towed by a self-propelled vehicle as defined in s 1 of the Act is itself actually being driven – whether presumption in s 73(1) of the Act applies to owner of a trailer in tow hired out to third parties.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Binns-Ward J sitting as court of first instance):
judgment reported *sub nom Brackenfell Trailer Hire (Pty) Ltd and others v Minister of Transport* 2019 (2) SACR 62 (WCC).

The appeal is dismissed with costs, including the costs of two counsel.

JUDGMENT

Petse DP (Dambuza and Van der Merwe JJA and Weiner and Goosen AJJA concurring):

Introduction

[1] Section 73(1) of the National Road Traffic Act 93 of 1996 (NRTA) provides that where, in any prosecution relating to the driving of a vehicle on a public road, either in terms of the common law or in terms of the NRTA, it is necessary to prove who was the driver of such vehicle, it shall be presumed, in the absence of evidence to the contrary, that such a vehicle was driven by the owner thereof. Section 73(2) of the NRTA, in turn, provides that whenever a vehicle is parked in contravention of any provision of the NRTA, it shall be presumed, in the absence of evidence to the contrary, that such vehicle was parked by the owner thereof. And, where the owner of the vehicle is a corporate entity, s 73(3) provides that it shall be presumed, in the absence of evidence to the contrary, that the vehicle concerned was, for purposes of subsecs (1) and (2), driven or parked by a director or servant of the corporate

entity concerned in the exercise of his or her powers or in the execution of his or her duties as such director or servant or in furthering the interests of the corporate entity.

[2] From the appellant's perspective, the clear terms of s 73(1), (2) and (3) occasion no undue hardships. All that they provide for, asserted the appellant, is an avenue of escape for the owner of the 'offending' vehicle if he or she was not the driver at the time when the driving or parking of the vehicle concerned resulted in the commission of the traffic offence(s) charged. Thus, by virtue of s 73, the owner can escape prosecution by means of a simple, convenient and practical expedient of notifying the authorities of the identity of the person who drove or parked the vehicle at the time of the commission of the offence(s). Not so, protested the respondents in this appeal. For their part, the respondents contended that in their case drivers of vehicles towing trailers hired out by them to third parties who are their customers occasionally commit traffic offences whilst towing their trailers. When this happens, the traffic authorities prosecute them – as owners of the trailers – with the consequence that, on several previous occasions, a number of warrants of arrest were issued against them with which they have had to contend. In addition, the traffic authorities have, in the past, refused to issue renewal licences for their trailers or renew their driver's licences unless they paid all the outstanding fines imposed in respect of their trailers. As a result, they find themselves in an intolerable predicament.

Litigation history

[3] Confronted with this dilemma, the first respondent, Brackenfell Trailer Hire (Pty) Ltd, second respondent, Ms Pascal Constance Sprague, and third

respondent, Mr Gerhardus Adriaan Odendal, jointly instituted proceedings in the Western Cape Division of the High Court (the high court) against the appellant, the National Minister of Transport, in which they sought an order declaring that the presumptions contained in s 73(1), (2) and (3) of the NRTA do not apply to trailers. In the alternative, they sought an order that the prosecution of the owner of a trailer under s 73(1), (2) and (3) for an offence involving the driving or parking of a vehicle towing, or having parked a trailer, is unlawful and inconsistent with the Constitution.[1] For brevity, I shall refer to the first, second and third respondents collectively as the respondents unless the context dictates otherwise.

[4] In due course the application served before Binns-Ward J who granted the principal relief sought by the respondents. The learned judge declined to grant the alternative relief stating that the respondents failed to make out a case for such relief. In support of his conclusion, the learned judge reasoned:

'Quite different considerations bear on the applicability of the presumption in s 73(2). In respect of parking cases, the vehicle involved in the commission of the offence might well be a trailer, with or without the towing vehicle. It is the fact that the vehicle is stationary in some spot that makes out the offence. The rationale for the presumption is the probability that if it were not the owner of the vehicle who put it there, the owner would know who was in possession of it at the relevant time. All the considerations taken into account in this regard in the judgment in *Meaker* would pertain, and it is unnecessary in the circumstances to repeat them. I am not persuaded that there is any merit in the applicants' counsel's attempt to draw a distinction between the current case and that in *Meaker* on the basis that trailers are likely to be less valuable than self-propelled vehicles, and that therefore the notion that their owners would know who was in possession of them at any given time is

[1] The Constitution of the Republic of South Africa Act 108 of 1996.

less compelling. As it is, the evidence is that the applicants are able to provide particulars of the identities of the hirers of their trailers at any given time.

It was common ground between counsel that the presumptions in s 73 derogate from the rights of accused persons in terms of s 35(3)(h), despite the fact that they do not create a reverse onus in the true sense. It was in issue, however, whether the derogation was justifiable in terms of s 36 of the Constitution. As far as I was able to discern from the evidence, the second and third applicants and the proxy for the first applicant have not actually ever found themselves confronted with the effect of the presumptions in the context of a trial. And the evidence, especially that given by the senior state advocate, suggests that it is unlikely that they ever would be. A question of this nature should in principle not be raised in the abstract, but rather in the course of a criminal trial in which it is alleged that the presumption would operate in a manner that would infringe the accused's fair trial rights. The individually identified fair trial rights in s 35 of the Constitution do not constitute an exhaustive list, and in any event they are not absolute. Fairness is an elastic concept in the sense that what might be considered fair or unfair in any given situation depends very much on the peculiar circumstances of the case.'[2]

[5] Insofar as the grant of the principal relief is concerned, the high court held that it 'is plain that ss (1) of s 73 has application only in prosecutions in which it is necessary to prove who was the driver of the vehicle to which the alleged offence relates'. And that 'the range of offences potentially implicated in the application of s 73(1) all concern the driving of the vehicle'.

[6] The high court then continued:

'. . . The pertinent ordinary meaning of "drive" is "operate and control the direction and speed of a motor vehicle". One does not drive a trailer when using it; one drives the motor vehicle that is used to tow the trailer. Should a driver unlawfully exceed the speed limit or proceed against a red traffic light or overtake on a sold white line while towing a trailer, he

[2] Paras 32 and 37 of the judgment.

or she commits the relevant driving offence through his or her operation and control of the towing motor vehicle, not through the use of the trailer. The prosecutor's task would be to prove who was driving the motor vehicle too fast, or who was behind the wheel of the motor vehicle when it was driven across the intersection when the light was red or when it overtook another vehicle by crossing a solid white line. That a trailer was being towed at the time would be quite irrelevant to the task of proving the elements of the offence. It follows that the words "such vehicle" in s 73(1) relate to the vehicle that is being driven when the offence is committed, and not any other vehicle.

There is nothing ambiguous about the language in which s 73(1) is couched. And construing the provision according to its tenor does not give rise to absurd or unbusinesslike results, or defeat the evident object of the provision. One knows from everyday experience that the majority of motor vehicles on the road can be identified, and their registered owners traced, by means of the vehicle's number plate particulars irrespective of whether the vehicle is seen from the front or the rear when the driver commits a moving offence. (The only exceptions that come to mind are motorcycles and trailers, which are required to display only rear number plates.) A situation in which a vehicle's rear number plate is obscured because it is towing another vehicle, while it is not unusual, will nevertheless present in a distinct minority of motor traffic instances.'

[7] The high court ultimately held that the language employed by s 73(1) was clear and unambiguous. And that the argument advanced by the appellant to the effect that the definition of a 'vehicle' in the NRTA include a 'trailer' because the text, context and purpose of the NRTA supports such an interpretation would do violence to the language of the text and thus 'cross the divide' between the interpretive and legislative processes.[3]

[3] See: para 30 of the high court judgment.

[8] Dissatisfied with the grant of the principal relief, the appellant sought and was granted leave to appeal to this Court against paragraph 1 of the high court's order. Subsequently, the respondents were granted conditional leave to cross-appeal against paragraph 2 of the high court's order in terms of which their application in relation to the alternative relief that they had sought was dismissed.

Issues

[9] The issue in this appeal is primarily one of statutory interpretation. It relates to the ambit and effect of s 73(1) of the NRTA. As will become apparent presently, the essential dispute between the antagonists is whether, as a matter of statutory interpretation, s 73(1) is applicable to a trailer as defined, that is, 'a vehicle which is not self-propelled and which is designed or adapted to be drawn by a motor vehicle'.

Factual background

[10] It is opportune at this juncture to set out a brief account of the facts that precipitated the proceedings in the high court. Prior to 2013, the second respondent had for many years been conducting a trailer hire business in Brackenfell, Western Cape. The business rented out trailers of different types and sizes registered in her name to the general public. The third respondent too conducted a similar business and had acquired a substantial number of trailers that were registered in his name. Between them, the second and third respondents owned some 2000 trailers for hire.

[11] During 2013 the first respondent was incorporated. Whilst it is the second respondent only who acquired shares in the first respondent and

became its sole director, both she and the third respondent have a financial interest in the first respondent. In incorporating the first respondent, the second and third respondents agreed that the first respondent would carry on the business of hiring out trailers to the general public. In the furtherance of its business, the first respondent has at its disposal a fleet of three thousand trailers for hire, two thousand of which were contributed by the second and third respondents. Nevertheless, the two thousand trailers contributed by the second and third respondents remain registered in their respective names. The remainder of the trailers acquired since the incorporation of the first respondent are registered in its name. None of the trailers is self-propelled. Thus, it is necessary for the customers who hire the trailers to have vehicles suitable for towing the trailers and valid drivers' licences. Once a trailer is hired out, the customer is at liberty to use it wherever they choose throughout the country.

[12] The respondents were constrained to institute the proceedings to which reference has already been made in paragraph 3 above as a result of countless and continuing difficulties that they encountered with traffic and prosecuting authorities. These entailed, amongst other things, charges preferred against them for traffic violations involving their trailers whilst in the possession and control of their customers. Most of the traffic violations involved offences committed whilst driving – self-evidently by the towing vehicle – like driving through a red traffic light, or exceeding the speed limit. Invariably, the commission of the offence is captured on camera that is located in such a way that it can only capture the rear number plate of the offending vehicle. But in many instances the rear number plate of the towing vehicle is obscured by the trailer that is in tow. From the perspective of the respondents, the unfortunate

consequence of this is that the camera can then only capture the number plate of the trailer which is then depicted on the resultant photograph.

[13] In those circumstances, the prosecuting authorities in whose area of jurisdiction the traffic offences concerned were committed, institute criminal proceedings against the owner of the vehicle whose registration number is depicted on the photograph, in this instance the trailer that is in tow. In the context of the facts of this case, the owner of the affected trailer would be one of the respondents, depending on the identity of the person in whose name the trailer in question is registered. The prosecuting authorities do so, relying on s 73(1) of the NRTA, because the identity of the driver of the towing vehicle is unknown to them since the camera could not capture the towing vehicle's registration number which, invariably, is obscured by the trailer in tow. Hence the charge is preferred against the owner of the trailer whose registration particulars would instead have been captured on camera.

[14] The use of concealed cameras to capture the commission of traffic offences by drivers of vehicles driven on public roads is virtually a universal practice. Their use by traffic enforcement authorities on public roads in this country is not contested in this case. Nor is their efficacy in issue.

[15] In instances where notices in terms of s 341 of the Criminal Procedure Act 51 of 1977 are issued, provision is made for the recipient of the notice to provide the prosecuting authorities with the particulars of the person who was driving the vehicle when the traffic violation was committed. In this regard, the deponent to the answering affidavit filed on behalf of the appellant stated that when the owner of the vehicle provides, under oath, the particulars of the

driver at the relevant time, the charges against the owner would be withdrawn and instead the driver at the relevant time would be pursued. This avenue of escape for the registered owner of the 'offending' vehicle is colloquially called the 'redirect process'.

[16] According to the appellant, the respondents' complaint directed at s 73 of the NRTA is therefore misplaced. For their part, the respondents contend that the virtues attributed to the 'redirect process' by the appellant are exaggerated as the redirect process is anything but perfect. They asserted that there had been instances where they had been confronted with numerous warrants of arrest issued against them in circumstances in which no summons for traffic violations had been served on them. The respondents further claimed that the invidious situation brought about by the warrants of arrest issued against them is further compounded by the fact that the licencing authorities also impose an embargo against them renewing their drivers' and motor vehicle licences for as long as the warrants of arrest remain of full force and effect, and outstanding fines unpaid. Thus, the respondents contend that they are subjected to this inequity by virtue of the fact that those charged with the duty to enforce s 73(1) fail to appreciate that the presumption for which s 73(1) provides is directed at the owners of the towing vehicles and not the owners of the trailers in tow.

Statutory framework

[17] It is now timely to turn to the relevant statutory provisions that are central to this appeal. Section 73(1) of the NRTA provides:

'(1) Where in any prosecution in terms of the common law relating to the driving of a vehicle on a public road, or in terms of this Act, it is necessary to prove who was the driver

of such vehicle, it shall be presumed, in the absence of evidence to the contrary, that such vehicle was driven by the owner thereof.'

[18] The social utility of statutory provisions like s 73(1) to promote public good was affirmed in *S v Meaker* 1998 (2) SACR 73 (W). There, Cameron J had occasion to consider the constitutionality of s 130(1)[4] of the repealed Road Traffic Act 29 of 1989 which was the functional equivalent of s 73(1). The learned Judge opined that where the identity of the driver is an essential element of the offence, s 130 relieved the prosecution of the burden of proving who the driver was and 'in the absence of rebutting evidence fixes criminal liability on the owner instead'.[5] Section 130 was therefore found to be constitutionally compliant. The learned Judge went on to hold that 's 130 pursues the conviction of road traffic offenders by means of a presumption that conduces precisely to that purpose. It is an eminently reasonable device, which accords with practical common sense and its application produces equitable results'.[6]

[19] As to the proper interpretation of s 73(2) to which the respondents' conditional cross-appeal relates, the high court held that it fell to be dealt with on a different footing as different considerations bore on its applicability. In this regard, the high court, in essence, concluded that it is the vehicle – which by definition includes a trailer – that is 'stationary in some spot' having been parked there unlawfully that constitutes the offence under s 73(2). Furthermore, the high court held that in relation to the offence created by

[4] Section 130(1) provided:
'Where in any prosecution under the common law relating to the driving of a vehicle on a public road, or under this Act, it is material to prove who was the driver of a vehicle, it shall be presumed, until the contrary is proved, that such vehicle was driven by the owner thereof.'
[5] See *S v Meaker* 1998 (2) SACR 73 (WLD) para 84 b-c.
[6] Id para 92j-93a.

s 73(2), the principle expounded in *Meaker* applied with equal force in respect of parking offences.

[20] It is by now clear that the fate of this appeal hinges on the proper interpretation of s 73(1) in the light of the overall purpose of the NRTA. Thus, I propose making reference first to certain decisions of our courts that bear on statutory interpretation.

Analysis

[21] The principles of statutory interpretation are by now well-settled. In *Endumeni*,[7] this Court authoritatively restated the proper approach to statutory interpretation. It further explained that statutory interpretation is the objective process of attributing meaning to words used in legislation.[8] This process, it emphasised, entails a simultaneous consideration of:

(a) the language used in the light of the ordinary rules of grammar and syntax;

(b) the context in which the provision appears; and

(c) the apparent purpose to which it is directed.[9]

[22] What the Constitutional Court said in *Cool Ideas* in the context of statutory interpretation is particularly apposite. The Court said:

'A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:

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[7] *National Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) (*Endumeni*). Endumeni has been followed in later decisions of this Court. See, for example, *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* [2013] ZASCA 176; 2013 (2) SA 494 para 12; *Norvatis v. Mapul* [2015] ZASCA 111;2016 (1) SA 518 para 27.

[8] Id para 18.

[9] Id para 18.

(a) that statutory provisions should always be interpreted purposively;
(b) the relevant statutory provision must be properly contextualised; and
(c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a).'[10] (Footnotes omitted.)

[23] Where a provision is ambiguous, its possible meanings must be weighed against each other given these factors. For example, a meaning that frustrates the apparent purpose of the statute or leads to unbusinesslike results is not to be preferred.[11] Nor is an interpretation that unduly strains the ordinary, clear meaning of words.[12] That text, context and purpose must always be considered at the same time when interpreting legislation has been affirmed on various occasions by the Constitutional Court.[13]

[24] Allied to these principles, courts must also interpret legislation to promote the spirit, purport and object of the Bill of Rights.[14] Again, courts should not unduly strain the reasonable meaning of words when doing so.[15] In *Mistry v Interim Medical and Dental Council of South Africa and Others*

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[10] *Cool Ideas 1186 CC v Hubbard* [201] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) (*Cool Ideas*) para 28.
[11] *Endumeni* above para 18.
[12] Id para 25. See also: *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In Re Hyundai Motor Distributors (Pty) Ltd v Smit N.O.* [2000] ZACC 12; 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC) (*Hyundai*).
[13] For examples see: *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) para 90 (the judgment of Ngcobo J) quoted with approval in *Du Toit v Minister for Safety and Security* [2009] ZACC 22; 2010 (1) SACR 1 (CC); 2009 (12) BCLR 1171 (CC) para 38; *Bertie Van Zyl (Pty) Ltd v Minister for Safety and Security* [2009] ZACC 11; 2010 (2) SA 181 (CC); 2009 (10) BCLR 978 (CC) (*Bertie Van Zyl*) para 21; *KwaZulu-Natal Joint Liaison Committee v MEC for Education, KwaZulu-Natal* [2013] ZACC 10; 2013 (4) SA 262 (CC); 2013 (6) BCLR 615 (CC) para 129; *Kubyana v Standard Bank of South Africa Ltd* [2014] ZACC 1; 2014 (3) SA 56 (CC); 2014 (4) BCLR 400 (CC) paras 77-8.
[14] Section 39(2) of the Constitution.
[15] *Hyundai* above paras 23-4.

[1998] ZACC 10; 1998 (4) SA 1127 (CC) the Constitutional Court held that the meaning of the provisions in an Act must be ascertained having regard to the scheme of the Act as a whole, and to the object and purpose of the legislation underpinning the provisions being interpreted.[16]

Discussion

[25] Central to the NRTA and to this case are the definitions of 'driver', 'driving', 'motor vehicle', 'park', 'trailer', and 'vehicle' in s 1 of the NRTA. 'Driver' is defined as 'any person who drives or attempts to drive any vehicle or rides or attempts to ride any pedal cycle or who leads any draught, pack or saddle animal or herd or flock or animals' and the verb 'drive' or any like words has a corresponding meaning. A 'motor vehicle' is defined as:

'any self-propelled vehicle and includes–

(a) a trailer; and

(b) a vehicle having pedals and an engine or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such pedals, engine or motor, or both such pedals and engine or motor, but does not include—

(i) any vehicle propelled by electrical power derived from storage batteries and which is controlled by a pedestrian; or

(ii) any vehicle with a mass not exceeding 230 kilograms and specially designed and constructed, and not merely adapted, for the use of any person suffering from some physical defect or disability and used solely by such person.'

[26] The verb 'park' means to 'keep a vehicle, whether occupied or not, stationary for a period of time longer than is reasonably necessary for the actual loading or unloading of persons or goods, but does not include any such keeping of a vehicle by reason of a cause beyond the control of the person in

[16] Paras 17-18.

charge of such vehicle.' 'Trailer' is defined as 'a vehicle which is not self-propelled and which is designed or adapted to be drawn by a motor vehicle, but does not include a side-car attached to a motor cycle.' Finally, a 'vehicle' means 'a device designed or adapted mainly to travel on wheels or crawler tracks and includes such a device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged other than such a device which moves solely on rails.'

[27] Insofar as the meaning of the words 'driving' and 'drive' are concerned, what Corbett J said, albeit in a different context, in *Wells and Another v Shield Insurance Co. Ltd and Another* 1965 (2) SA 865 (C) is instructive. The learned Judge said:

'The word "driving", as used in relation to the insured motor vehicle, means, ordinarily, in my view, the urging on, directing the course and general control of the vehicle while in motion and all other acts reasonably or necessarily incidental thereto. It would thus include, inter alia, the starting of the engine and the manipulation of the controls of the vehicle which regulate its speed and direction and also those which assist the driver and other users of the road, such as lights, traffic indicators, etc.'[17]

Thus, in ordinary parlance someone who is driving a vehicle must of necessity manipulate its controls to make it move or stop, reduce or increase its speed or make it turn in whatever direction chosen by the driver thereof.

[28] It is common cause between the parties that s 73(1) is a statutory reverse *onus* provision. This is, however, not entirely correct. Rather, s 73(1), unlike s 130(1) of Act 29 of 1989, is manifestly 'no more than an evidential

[17] Para 870H-871A.

presumption, which gives certain prosecuting evidence the status of prima facie proof, requiring the accused to do no more than produce credible evidence which casts doubt on the prima facie proof'. Put differently, all it does is to require an accused person to produce only facts which are peculiarly within his or her knowledge of which it would be unreasonable and onerous to expect the prosecution to establish. Thus, once the owner of the vehicle produces proof to the contrary, namely that he or he was not the driver at the time of the commission of the offence, he or she will be exonerated.[18] Nevertheless, the parties' paths diverge when it comes to the effect of s 73(1) in relation to trailers. The appellant contended that s 73(1) draws no distinction between vehicles and trailers since both are – in the context of the NRTA – to all intents and purposes regarded as vehicles. Notably, in support of this proposition, the appellant heavily relied on the definition of the word 'motor vehicle' in s 1 of the NRTA which, as already indicated in paragraph 25 above, includes a trailer. For their part, the respondents argued that s 73(1) applies only to self-propelled vehicles and that trailers are not such vehicles.

[29] The high court rejected the appellant's contention and instead upheld the respondents' counterargument. It reasoned that the fact that the definition of 'motor vehicle' in the NRTA includes a trailer did not avail the appellant because the definition of 'trailer' makes plain that it is a vehicle which is designed or adapted to be drawn by a motor vehicle. And that it could therefore not itself be driven.[19] It consequently concluded that the presumption located in s 73(1) finds no application to the owner of a trailer when it is towed by another vehicle, driven by the person who propels or

[18] As to the different types of presumptions see, for example, *S v Zuma & others* 1995 (2) SA 642 (CC) para 41.
[19] See: para 30 of the judgment.

manipulates the towing vehicle's controls and, in the process, commits an offence either in terms of the common law or in terms of the NRTA.[20] The correctness or otherwise of that conclusion is what confronts us in this appeal.

[30] The judgment of the high court was assailed on several bases. But before I address the appellant's contentions in this regard, it is necessary to mention that the appellant's overarching contention rests on two central pillars. First, it was argued that the high court erred in preferring the ordinary meaning of the verb 'driving' and 'drive' over the meaning ascribed to those words in the definition section of the NRTA itself. Second, it was contended that the object of s 73(1) 'is to ensure the effective investigation and prosecution of driving and parking offences'. And that if trailers are excluded from the ambit of s 73(1) the legislative purpose of the NRTA is undermined.

[31] As to the text, scheme and purpose of the NRTA, counsel for the appellant prefaced his argument by stating, with reference to decisions of our courts, that where a word in a statute has been defined, the defined meaning prevails over the ordinary meaning.[21] Counsel then argued that for purposes of s 73(1) the importance of the words 'vehicle' and 'driving' looms large. Building on this thesis the appellant contended that because a trailer is defined as a 'vehicle which is not self-propelled' whilst a motor vehicle is defined to include a trailer, it must necessarily follow that a trailer is a vehicle. Once this is appreciated, so the argument proceeded, and regard is had to the word

[20] See: para 31 of the judgment.
[21] See: *Minister of Defence and Military Veterans v Thomas* 2016 (1) SA 103 (CC) para 20 in which is stated that where parliament has defined a word used in a statute, this is taken to be an indication that parliament contemplated a special meaning as assigned to the word and not an ordinary meaning. See also: *Commissioner for Inland Revenue v Simpson* 1949 (4) SA 678 (A) at 692; *Hoban v Absa Bank Ltd t/a United Bank and Others* 1999 (2) SA 1036 (SCA) para 18.

'driving' as defined and 'drive' which bears a corresponding meaning, the conclusion becomes inescapable that in the context of the NRTA a trailer – which is a vehicle – is capable of being driven thereby bringing it squarely within the purview of s 73(1).

[32] In support of its contention, the appellant placed much store in decisions of this Court in *Santam Versekeringsmaatskappy Bpk v Kemp* 1971 (3) SA 305 (A); *Churchill v Standard General Insurance Co Ltd* 1977 (1) SA 506 (A) and *Road Accident Fund v Mkhize* 2005 (3) 20 (SCA). In *Santam*, this Court had occasion to consider the meaning of the word 'motor vehicle' located in s 11(1)[22] of the Motor Vehicle Insurance Act 29 of 1942, after its amendment by Act 31 of 1959. Potgieter JA, writing for the majority, said (at 325E-F):

'Die uitleg wat ek aan die omskrywing van "motorvoertuig" gegee het, en die slotsom dat art. 1 (2) geld wanneer 'n sleepwa deur 'n ander motorvoertuig voortbeweeg word deur die meganiese krag van laasgenoemde voertuig, hou die betekenis in dat waar 'n motorvoertuig 'n sleepwa, wat 'n motorvoertuig is, trek, die bestuurder van die trekkende voertuig ook geag word die bestuurder van die sleepwa te wees – tensy natuurlik die omstandighede sodanig is dat iemand anders werklik in beheer van die sleepwa is.'[23]

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[22] Section 11(1) after its amendment read:
'. . . a "motor vehicle" means any vehicle designed or adapted for propulsion or haulage on a road by means of any power (not being exclusively human or animal power) without the aid of rails, and includes any trailer of such vehicle, but does not include–
. . .'
Before its amendment, s 1(1) read:
'. . . motor vehicle means any vehicle designed for propulsion on a road by means of any power (other than human or animal power) without the aid of rails, but does not include–
. . .'

[23] The interpretation that I have given to the definition of "motor vehicle", and the conclusion that s 1(2) applies when a trailer is propelled by another motor vehicle through the mechanical force of the aforementioned vehicle, signifies that where a motor vehicle tows a trailer, which is a motor vehicle, the driver of the towing vehicle is also deemed to be the driver of the trailer—except, of course, where the circumstances are such that someone else is actually in control of the trailer. (Free translation mine.)

[33] In his minority judgment in the same case, Jansen JA said the following (335C-E):

'Trouens, soos deur Kollega POTGIETER aangetoon, is lg., geen groot sprong nie. Wat e.g. betref, kan dieselfde gesê word. Behalwe dat dit miskien afwyk van gewone spraakgebruik, kan daar geen beginselbeswaar wees teen te praat van die "bestuur" van 'n sleepwa, as eers aanvaar word dat dit 'n selfstandige motorvoertuig is nie. Trouens, die bestuurder van 'n lokomotief bestuur in sekere sin elke wa aan die trein. So ook kan gesê word dat die bestuurder van 'n motorvoertuig bestuur ook die sleepwa wat deur die motorvoertuig getrek word: hy beheer die stilhou en wegtrek, die spoed en die righting van die sleepwa net soseer as dié van die trekkende motorvoertuig. Dié benadering is ook nie iets nuut nie – dit is al voorheen weerspieël in sekere Ordonnansies (nou herroep) waar uitdruklike bepalings tot dien effekte gevind kan word. Ord. 15 van 1938 (K) bepaal:

"bestuurder"... (beteken)... ten opsigte van 'n sleepwa, die persoon wat die motorvoertuig waaraan die sleepwa gehaak is bestuur; en "bestuur het 'n betekenis dienooreenkomstig".'[24]

[34] In *Mkhize*, the claimant was a passenger in the tanker that was being propelled by the mechanical power of the tow truck towing it. Section 20(1) of the Road Accident Fund Act 56 of 1996 therein under consideration reads:

'For the purposes of this Act a motor vehicle which is being propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle.'

The issue before this Court was whether the claimant who was the passenger in the cab of the tanker and who was injured when the tanker capsized as a

[24] In fact, as pointed out by Colleague POTGIETER, the last mentioned is easy to arrive at. The same can be said about the first mentioned. Except that it may perhaps depart from ordinary parlance, there can be no objection in principle to speak of the "driving" of a trailer once it is accepted that it is an independent motor vehicle. In fact, the driver of a locomotive in a sense drives every part of the train. Thus it can also be said that the driver of a motor vehicle also drives the trailer that is towed by the motor vehicle; he controls stopping and accelerating the trailer, as well as the speed and direction thereof, as much as that of the towing motor vehicle. This approach is also not new—it has previously been used in certain Ordinances (now repealed) where express provisions to this effect can be found. Ord. 15 of 1938 (C) provides: "driver"…(means)…in respect of a trailer, the person that drives the motor vehicle to which the trailer is attached; and "driving has a corresponding meaning. (Free translation mine.)

result of the sole negligence of the driver of the tow truck could be deemed to have been conveyed as a passenger in the tow truck as contemplated in s 20(1) of the Road Accident Fund Act 56 of 1996. In determining this issue, Conradie JA said:

'A driver obviously drives a vehicle when he or she propels it by manipulating its controls. A person who is not, within the ordinary meaning of the term, 'driving' a vehicle, but is nevertheless in control of a vehicle being propelled by mechanical, animal or human power, or by gravity or momentum, is by s 20(1) of the Act deemed to be the driver of that vehicle. A person who is in control of a vehicle is the one who 'can make it move or not as he pleases'. Since the tanker was at the time of the occurrence a vehicle being propelled by the mechanical power of the tow truck and W J Lehmkuhl, the driver of the tow truck, was the one who could make it move or not as he pleased, Lehmkuhl is deemed to have been its driver.

Someone who is deemed to be the driver of a vehicle is in law, although perhaps not in fact, the driver of that vehicle and must be treated as though he or she were manipulating the controls and making it move. Lehmkuhl, the driver of the tow truck, was also the (deemed) driver of the tanker because he was in control of it. He was the driver of two vehicles at the same time. There is nothing unusual about that. We often speak of the driver of a horse and trailer or the driver of a car and caravan.'

The learned Judge of Appeal went on to hold that it mattered not whether the claimant was in the motor vehicle actually driven (in that instance the tow truck) or the one deemed to be driven (in that instance the tanker).

[35] Relying on these decisions, counsel for the appellant submitted that, having regard to the statutorily defined meanings of the words 'driving' and 'drive' in s 1 of the NRTA, a trailer that is in tow constitutes a vehicle 'because its mechanics and movements are determined and controlled by the driver'. And that being the case, it was then contended that the high court erred in

relying on the ordinary and dictionary meaning of the word 'drive' when in the context of the NRTA 'drive' bears a technical meaning.

[36] It is of course permissible for courts to have recourse to dictionaries in determining the meaning of words employed in a statute. But in doing so courts should take cognisance of the fact that whatever meaning is ascribed must necessarily pay due regard to context and the underlying purpose of the statute under consideration. For as Schreiner JA made plain seven decades ago in *Jaga v Dönges and Another*; *Bhana v Dönges and Another* 1950 (4) SA 653 (A):

'Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that "the context", as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background. The second point is that the approach to the work of interpreting may be along either of two lines. Either one may split the inquiry into two parts and concentrate, in the first instance, on finding out whether the language to be interpreted has or appears to have one clear ordinary meaning, confining a consideration of the context only to cases where the language appears to admit of more than one meaning; or one may from the beginning consider the context and the language to be interpreted together.'[25]

[37] But counsel's proposition that a trailer in tow is for purposes of s 73(1) of the NRTA a vehicle because its mechanics and movements are determined

[25] This statement was cited with approval by the Constitutional Court in decisions like *Du Toit v Minister for Safety and Security and Another* [2009] ZACC 22; 2009 (6) SA 128(CC); 2009 (12) BCLR 1171 (CC) para 37; *Bertie van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others* [2009] ZACC 11; 2010 (2) SA 181 (CC); 2009 (10) BCLR 978 (CC) para 21; and *South African Police Service v Public Servants Association* [2006] ZACC 18; 2007 (3) SA 521 (CC); [2007] 5 BLLR 383 (CC) para 17.

and controlled by the driver begs the question as to whether the driver concerned in actual fact determines and controls the mechanics and movements of the vehicle towing the trailer or the trailer that is in tow. Ultimately, the true enquiry here is whether it could be said that a trailer that is towed by another vehicle is itself being driven when a driving traffic offence is committed. The answer will depend on the meaning to be attributed to the word 'drive' in light of the scheme and purpose of the NRTA.

[38] It is necessary to emphasise that the decisions in *Santam, Churchill* and *Mkhize* upon which the appellant heavily relied were all concerned with the interpretation of statutory provisions that were materially different from those at issue in this case. Indeed, the passage upon which the appellant relied from the minority judgment of Jansen JA in *Santam* impliedly accepted that a trailer is 'not an independent motor vehicle' and that one can speak of the driver of the towing vehicle as the driver of the trailer only in the loose sense of the word 'drive'. The truth of the matter, however, is that the driver drives not the trailer but the towing vehicle to which the trailer is coupled.

[39] Section 1 of the NRTA tells us in terms that the verb 'drive' or any like word bears a meaning that corresponds to that of the noun 'driver'. The word 'driver' is then defined as meaning 'any person who drives or attempts to drive any vehicle or who rides or attempts to ride any cycle or who leads any draught, pack or saddle animal or herd or flock of animals'. Riding or attempting to ride a pedal cycle or leading any draught, pack or saddle animal or herd or flock of animals are not relevant for present purposes.

[40] It is as well to remember that a 'trailer' is defined as a vehicle which is not self-propelled but rather designed or adapted to be *drawn* by a motor vehicle. It is a fact that the appellant makes no argument to the contrary that trailers hired out by the respondents to their customers are not self-propelled. Significantly, it is also not in dispute that these trailers are drawn by customers' vehicles suitable for that purpose. Thus, it is self-evident that it is the controls of the vehicle drawing or towing the trailer that are manipulated by the driver of the towing vehicle whenever the trailer in tow is in motion. The trailer's speed and direction is determined by that of the towing vehicle. Accordingly, in the event of any traffic violation being committed, it will be the driver of the towing vehicle who would be liable to be prosecuted. And the enforcement of road rules in terms of either the common law or the NRTA in the course of driving a vehicle on a public road would not be undermined. Nor would, in these circumstances, the principal purpose of s 73(1) be thwarted.

[41] Accordingly, one's focus must then be on the question whether it could be said that a trailer is encompassed in the definition of 'vehicle' because it is 'a device designed or adapted mainly to travel on wheels' and therefore capable of being driven so as to bring it within the purview of s 73(1) of the NRTA. As already indicated, the contentions of the antagonists are diametrically opposed. In contending for an affirmative answer, the appellant argued that the objects and purpose of the section come to the fore.

[42] From the perspective of the appellant, s 73(1) plays a pivotal role in the effective investigation and prosecution of driving offences. And that without it the State's ability to effectively prosecute driving offences would be

hampered or undermined. Given human resources constraints, argued the appellant, it is impractical for traffic officers to physically intercept offending vehicles as and when a traffic violation occurs and then identify the drivers. So as to overcome these difficulties, use of technological equipment to detect and record offences committed whilst driving on public roads became the only viable and practical method available to the authorities to detect traffic offences. Because a trailer in tow obscures the rear number plate of the towing vehicle, it is not possible for traffic camera devices to capture the registration number of the offending (ie. towing) vehicle and therefore establish the identity of the owner, hence the capturing and recording of the rear number plate of the trailer in tow.

[43] It was further submitted that in these circumstances the capturing and recording of the registration number of the trailer would direct the authorities to the registered owner of the trailer. If the owner of the trailer was not the driver when the driving offence was committed, the owner is entitled and free to avail himself or herself of the redirect procedure and furnish the authorities with the particulars of the person who was driving at the relevant time. The thrust of the appellant's argument was that when regard is had to these policy considerations it becomes manifest that the interpretation embraced by the high court fails to pay due regard to the objects and purpose of s 73(1) in that it excludes trailers in tow from the ambit of this section with potential catastrophic consequences for other road-users. Shorn of its embellishments, the appellant's argument boils down to this: because the rear number plate of the towing vehicle is invariably obscured by the trailer – whose number plate is instead captured on camera – it is therefore the owner of the trailer who must in that event be the primary target for prosecution by virtue of s 73(1).

[44] I do not agree. It is as well to remember that one is here concerned with a case of statutory interpretation. And the stark reality is that s 73(1) itself contemplates the existence of the following: (a) a vehicle; (b) being driven; (c) on a public road; (d) the commission of an offence either in terms of the common law or in terms of the NRTA; (e) arising out of the driving of the vehicle. The word 'drive' is, as already indicated, defined in the NRTA with reference to the meaning of the word 'driver' as defined. Driver means someone who drives or attempts to drive any vehicle and includes someone who rides or attempts to ride a pedal cycle or leads any draught, pack, saddle animal or herd or flock of animals. Thus, the element of 'driving' in relation to a trailer in tow is lacking. It is illogical to speak of 'driving' a trailer when in actual fact what happens is that it is the towing vehicle that is being driven when it is propelled by manipulating its controls with the trailer in tow. Accordingly, a trailer – not being self-propelled – has no engine or controls to manipulate its speed and direction independently of the towing vehicle. On the contrary, the speed and direction of a trailer in tow is entirely reliant on the speed and direction of the towing vehicle. In these circumstances it is difficult to conceive of a situation where one can truly speak of a trailer being driven on a public road.

[45] When one has regard to the text of s 73(1) in its contextual setting, it does not support nor favour the construction of the section for which the appellant contended. The construction preferred by the high court is to my mind also reinforced by the linguistic analysis discussed above. When a driver of a vehicle towing a trailer commits a traffic violation whilst driving on a public road, he or she will not be immune from prosecution. If his or her identity is unknown because the traffic violation concerned was captured on

camera, and only the trailer's registration was visible, s 73(1) will be triggered. In that event, the owner of the towing vehicle will be presumed, in the absence of evidence to the contrary, to have been the driver of such vehicle. It bears mentioning that the respondents' case is that for each trailer hired out, they keep records relating to the identity of the drivers of the towing vehicles which they are willing to provide to the traffic authorities. The core of their complaint which precipitated litigation in the high court is that they do not – as owners of the trailers – want to be targeted for prosecution under s 73(1) when in truth trailers are incapable of being driven within the purview of this section.

[46] In sum, it bears emphasising that the essential issue here is whether, as a matter of interpretation, s 73(1) is applicable to a trailer, as defined in the NRTA. Although a trailer is a 'vehicle', it is nonetheless clear that s 73(1)'s central focus is the driver of the vehicle who has allegedly committed an offence in the course of driving the vehicle concerned on a public road. Thus, in essence, this section provides that where in a prosecution relating to the driving of a vehicle, it is necessary to prove 'who was driving such vehicle', there is a presumption that such a vehicle was driven by the owner thereof. 'Driving' and 'driver' bear their ordinary meanings, that is, to manipulate a vehicle's controls to regulate its speed and direction and any other activity incidental thereto. It therefore goes without saying that s 73(1) can only apply to a vehicle that is itself capable of being driver. Thus, it must ineluctably that s 73(1) is not applicable to a trailer.

Conclusion

[47] Consequently, it follows that the reasoning of the high court cannot be faulted. For the aforegoing reasons I am therefore of the view that the contentions advanced by the appellant in the high court and persisted in before this Court were rightly rejected by the high court. This conclusion renders it unnecessary to deal with the respondents' conditional cross-appeal.

[48] In the result the following order is made:

The appeal is dismissed with costs, including the costs of two counsel.

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X M PETSE

DEPUTY PRESIDENT

SUPREME COURT OF APPEAL

Appearances

For appellant:	R Jagga SC (with him Z Titus)
Instructed by:	State Attorney, Cape Town
	State Attorney, Bloemfontein
For respondents:	W R E Duminy SC (with him J C Tredoux)
Instructed by:	Jordaan & Ferreira Inc., Somerset West
	Rossouws Attorneys, Bloemfontein