

Reportable: Yes / No
Circulate to Judges:
Yes / No

Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

Case No: CA & R 40\05

Date heard: 2006\04\24
Date delivered: 2006\

In the review matter of:

THE STATE

versus

JIM LASHA

ACCUSED

Coram: Majiedt J *et* Williams J *et* Molwantwa AJ

JUDGEMENT ON SPECIAL REVIEW

MAJIEDT J:

1. The accused had pleaded guilty in terms of the provisions contained in section 112(1)(a) of the Criminal Procedure Act, 51 of

1977, to an offence in terms of section 154(1)(c)(i) of the Liquor Act, 27 of 1989 (hereinafter referred to as “*the old Act*”) read with Act 59 of 2003 (hereinafter referred to as “*the new Act*”). He was convicted on the aforementioned plea of guilty and sentenced to a fine of R100 or 10 days imprisonment. The *status quo* in terms of section 103(1) of Act 60 of 2000 was maintained (the magistrate had erroneously referred to section 113(1) on the J15 document).

2. The magistrate had sent the matter through to this Court on special review, since he had doubts whether the provision contained in section 154(1)(c)(i) of the old Act still constitutes an offence in terms of the new Act.
3. This matter was placed before me on special review and I had requested the Judge President of this division to constitute a Full Bench to hear same in order to attain final legal clarity in this division with regard to the query which the magistrate had raised as to whether section 154(1)(c)(i) of the old Act still constitutes an offence. It appears from the magistrate’s memorandum submitting the matter on special review that magistrates in this province hold diametrically opposing views on this particular question. Ms Birch for the State and Mr Cloete for the accused had furnished extremely helpful written and oral argument in this regard for which we are grateful.
4. Sections 154(1)(b) to 154(1)(f) of the old Act read as follows:

“Offences in general

- (1) Any person who-
- (a)
- (b) is drunk, violent or disorderly on any premises, whether licensed or not, on which liquor may by virtue of this Act be sold;
- (c) is drunk in or on or near-
- (i) any road, street, lane, thoroughfare, square, park or market;
- (ii) any shop, warehouse or public garage; or
- (iii) any place of entertainment, cafe, eating-house or race-course or any other premises or place to which the public has or is granted access (irrespective of whether access is granted against payment or is restricted to any category of persons or not);
- (d) subject to subsection (2), consumes any liquor in any road, street, lane or thoroughfare, or on vacant land adjacent thereto, in an urban area or other area subdivided into erven or plots with streets bounded by such erven or plots;
- (e) consumes or possesses any liquor on any private premises without the consent of the owner or lawful occupier of those premises first having been obtained;
- (f) introduces, possesses or consumes any liquor on a sports ground, or any part thereof, to which the public has or is granted access (irrespective of whether access is granted against payment or is restricted to any category of persons or not), except-
- (i) on any licensed premises situated on the sports ground concerned; or
- (ii) in so far as a declaration under subsection (4) applies thereto
-
- is guilty of an offence.

5.1 The new Act came into operation on 13 August 2004 by virtue of proclamation R.43 of 16 August 2004 in Government Gazette 26673. In terms of the new Act there are no offences stipulated as is the case in section 154(1) of the old Act.

5.2 The aforementioned new Act repealed the old Act in its entirety, save for the regulations (see section 46 and schedule 2 of the new Act). Furthermore the new Act also contains a transitional provision contained in item 2(1) of schedule 1 which reads as follows:

“2 Transition from repealed laws to provincial legislation

(1) Despite section 46, in respect of each province, a provision of a law mentioned in Schedule 2 that concerns the micro-manufacture, retail sale or consumption of liquor or methylated spirits remains in force within that province until a date determined in accordance with subitems (2) and (3) and declared by notice in the Gazette. “

6.1 The effect of the aforementioned provision is that the provisions of the old Act insofar as

“..... that concerns the micro-manufacture, retail sale or consumption of liquor or methylated spirits”

remain in force in the Northern Cape Province until the province's own provincial liquor legislation is in force. In effect therefore, the relevant portion of the old Act has not been repealed, due to the aforementioned transitional provision. The Northern Cape's liquor legislation has as yet not been enacted at the time of this judgment.

- 6.2 The portion of the abovequoted transitional provision which is relevant in determining whether section 154(1)(c)(i) of the old Act still constitutes an offence is that portion of the provision which reads:

“.....that concerns the consumption of liquor or methylated spirits ...”

- 6.3 There can be no doubt that this particular portion of the transitional provision covers sections 154(1)(d), (e) and (f). The question that arises is whether this portion of the transitional provision also covers sections 154(1)(b) and (c). Put differently, the matter which now requires consideration is whether this portion of the transitional provision also covers the offence commonly known as *public drunkenness* as contained in the old Act.

7. Both counsel who appeared before us were *ad idem* that the matter should properly be approached by applying the principles of the interpretation of statutes. GE Devenish, **Interpretation of Statutes, 1992** at 53 correctly enunciates the starting point in interpreting a statute as follows:

“The process of interpretation must of necessity always start with the ordinary grammatical meaning of words (the literal rule or the literal theory). The mechanism of interpretation makes use of the term “*the intention of the legislature*” (subjective theory) in order to ascertain the purpose of the legislation (purposive theory). Words should, however, be interpreted to be compatible with a continuous timeframe (objective theory).”

The point of departure is therefore to ascertain the ordinary literal grammatical meaning of the words contained in a statute.

See in this regard: **Venter v R 1907 TS 910 at 913** where Innes J summarised it as follows:

“In construing the statute the object is of course to ascertain the intention which the legislature meant to express from the language it employed. By far the most important rule to guide courts in arriving at that intention is to take the language of the instrument as a whole, and, when the words are clear and unambiguous, to place upon them their grammatical construction, and to give the ordinary effect.”

8. When regard is had to the dictionary meanings of the words “*concern*” and “*consume/consumption*” then the following appears:

a) In the **Concise Oxford English Dictionary**, 10th Ed revised, “*concern*” is defined as “relate to: be about; affect or involve; be relevant to”. “*Consume*” is defined as “eat, drink or ingest, use up.

b) In **Merriam/Webster Inc. Webster’s Third New International Dictionary**, “*concern*” is defined as “a connecting relation, something that relates or belongs to one; to relate or refer to; be about; to bear on”. “*Consume*” is defined as “to take completely; to eat or drink without measure; to use up”.

- c) The **Collins Concise Dictionary** (Harper Collins Publishers) defines “*concern*” as follows: “to relate to; affect; regard or interest”. “*Consume*” is defined as “to eat or drink; to use up; expend”.
- d) The **Readers Digest Association of SA (Pty) Ltd: Readers Digest Afrikaans/Engelse Woordeboek** defines “*concern*” as “betref, aangaan, geld, raak, traak, met betrekking tot, omtrent.” “*Consume*” is defined as “verteer, verbruik, opgebruik, verslind, verorber, opeet, konsumeer, vernietig, verkwis, vermors, uitteer”.
- e) **Labuschagne and Eksteen: Verklarende Afrikaanse Woordeboek, 8th Revised Ed** defines “*betref*” as “aangaan, raak” and “*verbruik*” as “deur gebruik verteer, konsumeer, opgebruik.”
- f) The **Verklarende Handwoordeboek van die Afrikaanse Taal (Odendaal & Gouws), 4th Ed** defines “*betref*” as: “aangaan, betrekking hê op” and “*verbruik*” as “deur gebruik verteer, gedaan maak, opgebruik.”
9. In applying the abovementioned definitions, the general, ordinary literal grammatical meaning of the word “*consume/consumption*” is therefore “eat, drink, use up, eat or drink without measure, take completely, verbruik, opgebruik, konsumeer/konsumpsie, gedaan maak.” The question that consequently arises is whether in terms of this general, ordinary literal meaning of the word “*consume/consumption*” would include the words “*drunk*” or “*dronk*”. It is important to note that the old Act did not include a definition of “*drunk*” or “*dronk*” (the old Act was published in both Afrikaans and English, whereas the new Act is published only in English).
10. The literal dictionary meaning of the word “*drunk*” and “*dronk*” appears to be the following:
- a) In the **Concise Oxford English Dictionary, 10th Ed** revised,

“*drunk*” is defined as “affected by alcohol to the extent of losing control of ones faculties or behaviour; influence of alcohol”.

b) According to the **Readers Digest Association of SA (Pty) Ltd: Readers Digest Afrikaans/Engelse Woordeboek** “*dronk*” means “drunk” while “*drunk*” means “intoxicated, beskonke, besope, drunk”.

c) In **Merriam/Webster Inc. Webster’s Third New International Dictionary** “*drunk*” is defined as “being in a condition caused by alcoholic drink in which control of the faculties is impaired and inhibitions are broken and in later stages of which one tends toward or reaches insensibility; relating to, caused by, or attended by intoxication; drunken, intoxicated, inebriated, tipsy, tight”.

d) In the **Collins Concise Dictionary** (Harper Collins Publishers) “*drunk*” is defined as “intoxicated with alcohol to the extent of losing control over normal functions”.

e) The **Verklarende Handwoordeboek van die Afrikaanse Taal (HAT) (Odendaal & Gouws), 4th Ed** defines “*dronk*” as “onder die invloed van sterk drank, bedwelms deur alkoholiese drank; besope, beskonke”.

11. In the course of her argument Ms Birch for the State conceded that the normal grammatical meaning of the word *consume/consumption* does not, on the face of it, include the general ordinary meaning of the word “*drunk/dronk*”. She submitted, however, that it had been the clear intention of the legislature through the insertion of the transitional provision that the words “*consume/consumption*” would also include the word “*drunk/dronk*”. In this regard she referred to **Juta Interpretation of Statutes 3rd Ed by GM Cockram at 48 and Terblanche v SA**

Eagle Insurance Company Ltd 1983(2) SA 501 (N) at 504 F.

She submitted further that the legislature's intention was that until provincial legislation is in place, the transitional provision, namely *"that concerns the micro-manufacture, retail sale or consumption of liquor or methylated spirits"* would remain in force in its place. Ms Birch submitted further that it could never have been the intention of the legislature that sections 154(1)(d) – (f) would continue to exist while sections 154(1)(b) and (c) would fall away until provincial legislation is in place. In motivation of this submission she pointed out that the extent of the offences contained in sections 154(1)(b) and (c) are far more serious in nature and its consequences far wider than the offences contained in sections 154(1)(d) – (f). An extensive interpretation should therefore be attached to the word *"consumption/consume"* as it appears in the transitional provision, so contended Ms Birch.

12. I have grave difficulties with the aforementioned submissions of Ms Birch. I agree with Mr Cloete, who appeared for the accused, that the intention of the legislature does not appear very clearly from the wording employed in the transitional provision. He referred in this regard to **Jaga v Dönges NO and another; Bhana v Dönges NO and another 1950(4) SA 653 (A) at 664 E-H**, whereat Schreiner JA stated as follows:

"Seldom indeed is language so clear that the differences of meaning is wholly excluded, but some language is much clearer than other language; the

clearer the language the more it dominates over context, and *vice versa*, the less clear it is, the greater the part that is likely to be played by context. Ultimately when the meaning of the language in context is ascertained, it must be applied regardless of the consequences and even despite the interpreter's firm belief, much supportable by factors within the limits of interpretation, that the legislator had some other intention."

It is further correct as Mr Cloete contended, that if the wording of the statute is clear and unambiguous, then the legislature's actual intention whatever it may be, may not take precedence over the actual wording of the statute.

13. When one examines the relevant provisions of the old Act closer, it is quite apparent that sections 154(1)(d), (e) and (f) relate to the consumption of liquor and therefore would apply to "*consumption of liquor or methylated spirits*" as contained in the new Act. Consequently the offences stipulated in the aforementioned sections of the old Act had continued to exist in terms of the new Act, since the transitional provision is a provision of an Act which relates to the **consumption** of liquor. On the other hand though, sections 154(1)(b) and (c) of the old Act refer to offences concerning a person who is drunk in public. To my mind there is a clear distinction between the offences in sections 154(1)(b) and (c) of the old Act on the one hand which relate to offences where a person is "drunk (dronk)", while on the other hand, the offences referred to in sections 154(1)(d) – (f) are offences where a person "consumes (verbruik) liquor". This clear distinction is of considerable importance in determining whether the offence

mentioned in section 154(1)(c)(i) of the old Act still constitutes an offence in terms of the new Act.

14. In applying the golden rule of interpretation it seems to me that the ordinary grammatical meaning of the words “consume” or “consumption” does not include the ordinary grammatical meaning of the word “drunk (dronk)”. This is particularly so, given the fact that there is a clear distinction between the consumption of liquor and of being drunk as set out in paragraph 13 above. In the premises, I am of the view that sections 154(1)(b) and (c) of the old Act are not provisions which relate to the consumption of liquor as described in the transitional provision of the new Act. In the premises, I am of the view that the transitional provision of the new Act does not include the offence of public drunkenness as it is commonly known and that therefore the accused has been wrongly convicted.
15. I am quite aware of the far-reaching implications of this judgement. There are very many instances in this province where accused persons are arrested and charged with public drunkenness or more correctly, contravening section 154(1)(c)(i) of the old Act. It was pointed out by Ms Birch that public drunkenness usually leads to far more serious offences such as murder, rape, robbery, serious assault and the like. While I am mindful of these grave consequences, it seems to me that the legislature can quite easily

remedy this. So, for example, the provincial liquor legislation (which as I have said, has still not been enacted as yet) can quite easily make provision for the continuation of this offence as it was contained in the now repealed Act.

16.1 In the premises the conviction and sentence of the accused are set aside.

16.2 This judgement is to be circulated to all magistrates and regional court magistrates in the Northern Cape province.

16.3 A copy of this judgment is to be forwarded to the office of the Director of Public Prosecutions in this province as well as to the office of the MEC for Economic Affairs in this province.

**SA MAJIEDT
JUDGE**

I concur:

**CC WILLIAMS
JUDGE**

I concur:

**BC MOLWANTWA
ACTING JUDGE**

For the State: Adv TT Birch
For the Accused: Adv PJ Cloete (Legal Aid)

