



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 18 March 2015

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Trumper Trading 166 CC v Kouga Municipality (795/13) [2015]
ZASCA 18 (18 March 2015)***

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant and confirmed the order of the Eastern Cape High Court, Grahamstown.

The issue in this appeal was whether the Jeffrey's Bay Municipality: Zoning Scheme Regulations (the regulations), permitted the operation of a bottle store from premises zoned as 'special premises' without the special consent of the respondent (the municipality).

The appellant is a close corporation and sole proprietor of a bottle store which it operates on Erf 36, Paradise Beach, Jeffrey's Bay (the premises) in terms of a liquor licence granted to it by the Eastern Cape Liquor Board in November 2008. In October 2008, the appellant's former member applied to the respondent for special consent for the use of the premises and the buildings thereon as a bottle store, supermarket and coffee shop.

The municipality refused the application due to the objections received from surrounding property owners. As it turned out, the appellant had in the meantime commenced the business of a bottle store without municipal consent and was selling liquor from the premises. When this came to the municipality's attention, it directed the appellant to cease operating the bottle store. However, the appellant continued to trade whilst making further unsuccessful attempts until late in 2010, to obtain the consent. On 16 March 2011 the municipality instituted interdict proceedings in the magistrate's court to stop the appellant from trading as a bottle store without the necessary consent and was successful as was its opposition to the subsequent appeal in the high court.

On appeal, the appellant contended that by virtue of the zoning applicable to the appellant's premises as 'special business' in the regulations no consent was required to conduct the business of a bottle store because 'special business' is defined to include 'shops' as well as 'similar uses' and a bottle store is a similar use to a 'shop' as contemplated in the definition.

The SCA held that that the meaning which the appellant sought to ascribe to the definition of 'special business' did not find support in the regulations. A bottle store was expressly excluded from the definition of a shop and it was therefore highly unlikely that the legislature would exclude a bottle store expressly from the definition of a shop but then allow it under the category of similar uses.

The SCA concluded that in the circumstances, the appellant was not permitted to conduct the business of a bottle store without the municipality's consent thereby reaffirming the order of the high court.