



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 2 December 2016
STATUS Immediate

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

Shoprite v MEC for Economic Development and Environmental Affairs, KwaZulu-Natal (78/2016) [2016] ZASCA 193 (2 December 2016)

MEDIA STATEMENT

The Supreme Court of Appeal today upheld an appeal against a judgment of the KwaZulu-Natal Division of the High Court, Pietermaritzburg concerning the interpretation of s 101(1) read with s 48(5)(e) of the KwaZulu-Natal Liquor Act 6 of 2010 (the KwaZulu-Natal Act), and also the lawfulness or otherwise of regulation 47(1) which was promulgated in terms of the KwaZulu-Natal Act.

The appeal was lodged by Shoprite Checkers Pty (Ltd), which is licenced to sell liquor in its groceries stores and liquor outlets for consumption off its licenced premises, against, amongst others, the MEC for Economic Affairs, Tourism and Environmental Affairs, for the Province of KwaZulu-Natal. Shoprite holds approximately 110 liquor licences which are operative in the province of KwaZulu-Natal, and most of these licenses were granted under the national Liquor Act 27 of 1989 (the 1989 Liquor Act), which has largely been repealed on 28 February 2014 by the KwaZulu-Natal Liquor Act. Twelve of Shoprite's licences in the province relate to premises which are located within approximately 80 metres of religious and learning institutions.

When Shoprite applied to the Liquor Authority to have its pre-existing liquor licence converted to licences as contemplated in s 39 of the KwaZulu-Natal Liquor Act, the Liquor Authority declined to issue the requested licence certificates. It took the view that it could not convert the licenses because the terms and conditions of Shoprite's pre-existing liquor licences that permit it to operate its liquor outlets within a circumference of 500 metres of religious and learning institutions was prohibited in s 48(5)(e) read with s 101(1)(a)(ii) and (iii) of the KwaZulu-Natal Liquor Act. It also said that Shoprite ought instead to apply for temporary amnesty under regulation 47(1) for the removal of the affected

licences to premises which are not located within a circumference of 500 metres of religious and learning institution. It was as a result of this that Shoprite approached the court a quo against the MEC, the Liquor Authority and the Premier of KwaZulu-Natal.

The court a quo found in favour of the MEC and held that the provisions of s 48(5)(e) read with s 101(1)(a)(iii) prohibited Shoprite Checkers from selling liquor for consumption off licenced premises as either a liquor or a grocers' store, where such premises are situated within a circumference of 500 metres from a learning institution and/or a religious institution. The court a quo also held that the prohibition applied equally to new applicants for licences as well as to persons granted licences under the 1989 Liquor Act.

The SCA held that s 101(1) read with s 48(5)(e) does not impose an absolute prohibition to valid pre-existing liquor licences relating to liquor premises located within a circumference of 500 metres of a religious or learning institution as defined, and that the holder of such licence was entitled to a licence certificate under s 101(1), (2) and (3) of the KwaZulu-Natal Liquor Act. The court also determined that the statutory obligations imposed upon pre-existing licence holders under s 22(2)(d)(i)(cc) of the 1989 Liquor Act, which prohibited the granting of a licence if the premises are situated in the vicinity of a place of worship or school or in a residential area, unless the business will be carried on in a manner that would not disturb the proceedings in that place of worship or school or prejudice the residents of that residential area, remained intact.

In coming to this conclusion, the SCA, in interpreting the above mentioned provisions of the KwaZulu-Natal Act, reasoned that the location of Shoprite's premises was not a 'term or condition' of its licences under the 1989 Liquor Act, and also not under the KwaZulu-Natal Liquor Act. And that both the 1989 Liquor Act and the KwaZulu-Natal Liquor Act drew a clear distinction between premises relating to a licence on one hand, and the 'terms and conditions' upon which a licence may be granted, on the other.

The SCA further reviewed and set aside regulation 47(1), as it fails to serve a rational purpose, and was also not empowered by the KwaZulu-Natal Act.

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