

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CCT 57/05**

**South African Liquor Traders' Association and Others**

**vs**

**The Chairperson of the Gauteng Liquor Board and Others**

**Date of Judgment: 2 June 2006**

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**MEDIA SUMMARY**

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*The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

The Gauteng Liquor Traders' Association and fourteen other applicants seek the confirmation of an order of constitutional invalidity made by the Pretoria High Court in respect of the definition of "shebeen" contained in section 1 of the Gauteng Liquor Act, 2 of 2003. The Act currently defines a shebeen as "any unlicensed operation whose main business is liquor and is selling less than ten (10) cases consisting of 12 x 750ml of beer bottles." This definition was challenged as both vague and irrational, in that it did not stipulate any time period in which the quantity of beer is sold.

The Act, which came into effect in 2004, is the first which seeks to bring the sale of liquor by shebeens within the framework of liquor legislation. Shebeens are informal and unlicensed liquor traders who primarily sell liquor to customers in townships. Most shebeen owners are small traders who operate from private homes. Their businesses have always been considered unlawful. The Act changes this by seeking to bring shebeens within the scheme of the Act. Empowered by section 141(1)(m) of the Act, the Minister made regulations in November 2004 in terms of which shebeen owners were obliged to apply for permits within four months. The permits, originally valid for a period of eighteen months from the date of promulgation of the regulations, were extended and are now valid till 1 May 2007.

A number of permits were issued. Those permits precluded their holders from selling more than ten cases of beer quarts bottles per week and from selling any liquor other than beer. Perturbed by the terms of the permit, the applicants approached the High Court for an order declaring the definition of "shebeen" to be inconsistent with the Constitution on the grounds of vagueness and irrationality, as it fails to provide a time period within which the ten cases of beer bottles is to be sold. The applicants also sought an order declaring the limits imposed upon the sale of liquor under the shebeen permits to be invalid as they go beyond the scope of the definition. The respondents consented to the order in the High Court.

The Pretoria High Court provided that the second portion of the definition is unconstitutional and should be severed so that the definition would read as follows:

“shebeen means any unlicensed operation, whose main business is liquor”.

The effect of this order was that all unlicensed liquor traders could seek shebeen permits. The High Court also ordered that the permits issued be amended consistently with that order. The order of invalidity has no force and effect unless confirmed by this Court.

Both parties agreed that the definition was inconsistent with the Constitution and O'Regan J for a unanimous court concludes that the definition is vague. Impermissibly vague laws violate the rule of law, a founding value of our Constitution and as such the definition is inconsistent with the Constitution.

The parties differed as to the appropriate remedy. The Court holds that to be appropriate any remedy severing words from or reading words in to the definition must result in a definition which is in accordance with the purpose of the Act in relation to shebeens. However it is not possible to discern a purpose in this regard from the terms of the Act so the Court simply declares the definition invalid.

So as not to leave shebeens completely unregulated, the order of invalidity is suspended for six months during which the terms of the definition are to read:

“‘shebeen’ means any unlicensed operation whose main business is liquor and is selling less than sixty (60) cases consisting of 12 x 750ml of beer bottles per week.”

During this period, all permits issued shall be read to contain a limit on the amount of beer sold of 60 cases per week of quarts, but no limitation on other liquor sold.

Two special costs orders are made: one against the MEC who is ordered to pay costs on the attorney and client scale, save for the costs of the hearing on 2 March 2006 which the Office of the State Attorney is ordered to pay itself.