



CONSTITUTIONAL COURT OF SOUTH AFRICA

Hilda Van der Burg and Another v National Director of Public Prosecutions

**Case No.: CCT 75/11
[2012] ZACC 12**

**Date of Hearing: 8 March 2012
Date of Judgment: 12 June 2012**

MEDIA SUMMARY

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

On Tuesday 12 June 2012 the Constitutional Court handed down a judgment in an application for leave to appeal against the decision of the Full Court of the Western Cape High Court, Cape Town (Full Court). The Full Court found in favour of the National Director of Public Prosecutions (NDPP) and upheld the forfeiture order that was previously granted against the applicants' property, in terms of the Prevention of Organised Crime Act (POCA).

The applicants are a married couple, who have been running an illegal shebeen in contravention of the Liquor Act for several years from their home in Athlone, Western Cape, where they live with their four children, some of whom are minors. Despite several complaints by neighbours of the harmful effects that the shebeen has on the neighbourhood, numerous police actions (including warnings, searches and seizures of liquor and arrests) and a preservation order, granted over the property, the applicants continued to run the shebeen.

The Full Court found that the applicants' property was an instrumentality of the offence of selling liquor without a license, and that the forfeiture would not have a disproportionate effect on the applicants or their children.

In this Court, the applicants argued that the offence of selling liquor without a licence is not subject to POCA's forfeiture provisions, as POCA targets organised crime. Furthermore, forfeiture ought to have been sought as a last resort only, and effective police action would have been more appropriate. Therefore, they argued, the forfeiture was disproportionate and ought not to be confirmed. In addition, they alleged that the forfeiture would render them and their children homeless.

The Centre for Child Law was admitted as *amicus curiae*. It argued that the Constitution guarantees children separate representation and that the Court should not order forfeiture unless it is satisfied that children's interests have been adequately considered. Since the Full Court failed to consider the children's interests adequately, it submitted, a report by a curator was necessary before deciding on the forfeiture.

In a unanimous judgment, written by Van der Westhuizen J, this Court dismissed the appeal. It found that POCA applied to the offence of selling liquor illegally and that forfeiture was not disproportionate in the circumstances. Nearly 60 police actions were ineffective in causing the applicants to desist with their profitable and co-ordinated unlawful activities. The applicants did not lead evidence to support their assertion that their legitimate monthly income from selling fruit was insufficient to lease another home and to support their children.

The Court also found that Full Court gave adequate weight to the children's best interests and that a report by a curator was unnecessary. However, it found that the children may be in need of care and protection, and ordered the NDPP to engage a social worker to investigate and make a determination in this regard, in terms of the Children's Act.