



**SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF**  
**APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 14 January 2021

Status: Immediate

**Minister of Transport v Brackenfell Trailer Hire (Pty) Ltd and Others (707/2019)**  
**[2021] ZASCA 05 (14 January 2021)**

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

The Supreme Court of Appeal (SCA) today dismissed an appeal by the Minister of Transport against the judgment of the Western Cape Division of the High Court, Cape Town (high court).

On 20 March 2019 the high court granted an order in favour of the respondents, Brackenfell Trailer Hire (Pty) Ltd, Ms Pascal Constance Sprague and Mr Gerhardus Adriaan Odendal, in terms of which it declared that in cases in which it is necessary for the prosecution to prove the identity of the driver of the vehicle used in the commission of an offence, whether at common law or in terms of the National Road Traffic Act 93 of 1996, the presumption in s 73(1) of the said Act operates only against the owner of such vehicle, and not against the owner of any trailer being towed by such vehicle at the time the offence is committed, unless the nature of the offence concerned pertains specifically to the operation of a 'combination of motor vehicles' (as defined in the Act). However, the high court dismissed the respondents' application in respect of parking traffic violations holding that the rationale for the presumption located in s 73(2) of the National Road Traffic Act 93 of 1996 (the Act) was the probability that if it were not the owner of the vehicle who parked it unlawfully, the owner would know who was in possession of it at the relevant time.

The dispute between the parties arose against the following backdrop. The respondents each own 1000 trailers that are registered in their respective names. Long before 2013, the second and third respondents had been independently operating trailer hire businesses in the Western Cape. In 2013 they decided to form a private company and pursuant to their decision the first respondent was incorporated. The first respondent thereafter took over the separate businesses of the second and third respondents. The first respondent acquired 1000 additional trailers and therefore had a total of 3000 trailers for hire. These trailers are of varying sizes and types. None of the trailers is self-propelled. It is therefore necessary for the first respondent's customers who hire trailers to have vehicles suitable for towing the trailers as well as valid drivers' licences.

The respondents instituted proceedings in the high court against the Minister in which they sought a declaratory order that s 73 of the Act does not apply to trailers towed by vehicles belonging to their customers. Section 73 provides that:

'(1) Where in any prosecution in terms of the common law relating to the driving of a vehicle on a public road, or in terms of this Act, it is necessary to prove who was the driver of such vehicle, it shall be presumed, in the absence of evidence to the contrary, that such vehicle was driven by the owner thereof.'

(2) Whenever a vehicle is parked in contravention of any provision of this Act, it shall be presumed, in the absence of evidence to the contrary, that such vehicle was parked by the owner thereof.

(3) For the purposes of subsections (1) and (2) and section 88 it shall be presumed, in the absence of evidence to the contrary, that, where the owner of the vehicle concerned is a corporate body, such vehicle was driven or parked, as contemplated in those subsections, or used as contemplated in that section by a director or servant of the corporate body in the exercise of his or her powers or in the carrying out of his or her duties as such director or servant or in furthering or endeavouring to further the interests of the corporate body.'

The respondents were constrained to institute proceedings because they were being prosecuted for traffic violations, like driving through red traffic lights or exceeding the speed limit, committed by the drivers of the towing vehicles.

Invariably, the commission of the traffic violations is captured on camera located in such a way that it can only capture the rear number plate of the vehicle. Because in many instances the rear number plate of the towing vehicle is obstructed by the trailer in tow, the camera would then capture the number plate of the trailer. As a result, the prosecuting and traffic authorities instituted criminal proceedings against the owner of the vehicle whose registration number is captured on camera. In many instances where the respondents' trailers were towed by their customers' vehicles on public roads, the respondents would be prosecuted depending on the identity of the owner of the trailer involved at the time of the commission of the traffic violations concerned.

It was contended on behalf of the Minister that as a trailer is defined in the Act as a vehicle designed or adapted to be drawn by a motor vehicle, the presumption contained in s 73 of the Act applied with equal force to trailers which, as vehicles, are therefore capable of and are being driven as contemplated in the Act.

The SCA rejected the Minister's contention. It held that whilst it is true that a trailer is defined as a vehicle in the Act it was nevertheless incapable of itself being driven. The SCA held that the Act seeks to hold criminally liable drivers who commit traffic violations whilst driving on public roads. And that the verb 'drive' must be given its ordinary meaning which is to manipulate the controls of a vehicle and determine its speed and direction. Therefore, the speed and direction of the trailer are determined not by manipulating the controls of the trailer but rather those of the towing vehicle. And that as a trailer is towed or drawn by the towing vehicle, it is the driver of the towing vehicle who commits the traffic violation concerned. Thus, it is the driver of the towing vehicle who is liable to be prosecuted. If the identity of the driver is not known because the commission of the offence was captured on camera whilst the towing vehicle was in motion, the presumption contained in s 73 of the Act would be triggered.

The SCA further held that all that the presumption requires is for the owner of the towing vehicle to provide facts that are within his or her knowledge as to who was driving at the relevant time for it would be unreasonable to expect the prosecution to establish this fact in an ensuing prosecution.

Consequently, the Minister's appeal was dismissed with costs, including the costs of two counsel.