



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: 16 July 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Gannet Works (Pty) Ltd and Others v Middleton Sue NO and Another (Case no 492/2023) [2024] ZASCA 112 (16 July 2024)

Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs. The appeal emanated from the Gauteng Division of the High Court, Pretoria (the high court) wherein the high court dismissed an application launched by the appellants in which they sought an order that: (a) a declarator be issued that the use of drones, bait carrying remote-controlled boats and other remotely operated devices, are not prohibited in terms of the Marine Living Resources Act 18 of 1988 (the Marine Act) and the regulations published pursuant thereto; (b) the first respondent publicly withdraw the public notice published on 24 February 2022; and (c) the first respondent declares that the aforesaid public notice is of no legal effect or consequences.

The appellants are business entities who manufacture, import, market and sell angling equipment, such as bait carrying drones and other remote-controlled bait-carrying devices. The first respondent is the Deputy Director-General for Fisheries Management of the Department of Forestry, Fisheries and the Environment (the DDG). The second respondent is the Minister of Forestry, Fisheries and the Environment (the Minister).

On 24 February 2022, the DDG published a notice in which members of the public, recreational anglers and suppliers of fishing equipment were advised that the 'use of motorised devices, such as, but not limited to, bait-carrying drones, bait-carrying remote-controlled boats and other remotely operated vehicles, as well as motorised electric reels' are prohibited for angling. The appellants alleged that the publication of the notice by the DDG had a devastatingly adverse and negative effect on their businesses. They experienced a rapid decline in the demand for the drones and other bait-carrying devices.

In the high court, the appellants contended that the notice issued by the DDG was unlawful as, neither the Marine Act, nor the regulations prohibited the use of motorised devices such as drones in fishing. They contended that the Minister/DDG sought to amend the Marine Act without following the correct procedure and that the word 'angling', only appears in the regulations and not in the Marine Act. In explaining the use of a drone, the appellants contended that the use of a remote-controlled, bait-carrying device such as drones does not derogate from the fact that the anglers who use these devices apply the old, recognised method of fishing by manually operating a rod, reel and a line with hooks, swivels

and sinkers attached to the line. In essence, the appellants contended that angling does not exclude the use of drones to drop the bait.

The respondents opposed the application and contended that the notice issued by the DDG does not amount to a new law, it was a notification to the public that the use of motorised devices such as drones, are not permitted when undertaking recreational angling. According to the respondents, lawful recreational angling could only be conducted by manually operating a rod, reel and line on one or more separate lines to which no more than ten hooks were attached per line. They argued that the interpretation of the statutory requirement for lawful recreational fishing endorsed for angling alleged by the appellants conflicted with the purposive interpretation of the provisions of the Marine Act and its regulations.

The respondents contended that the regulations prescribed the different categories and methods of fishing which could be authorised under the Marine Act. They contended that 'recreational fishing' was recognized as a discreet fishing category, subject to the acquisition of a recreational fishing permit, which was then endorsed with the type or method of fishing permitted and angling fell within this definition. According to the respondents, as angling was defined in regulation 1 to mean 'recreational fishing by manually operating a rod, reel and line or one or more separate lines to which no more than ten hooks are attached per line', any method that fell outside of the 'manual operation' of a rod, reel and line was not and could not be permitted as recreational fishing endorsed for angling. They contended that a court had no discretion to declare that the lawful obligations imposed by the relevant legislation should not be complied with.

The issue before the SCA was whether the appellants had made out a case for the declaration that the use of remote-controlled motorised equipment such as drones, for purposes of recreational angling was authorised by the Marine Act and therefore, that the notice issued by the DDG was unlawful and should be set aside.

In coming to a conclusion, the SCA reasoned that the contention by the appellants, that once a fishing permit has been issued to an angler, the angler was then at liberty to engage in any form of fishing activity using whatever methods that may be available, provided the method used was not specifically prohibited in terms of the Marine Act or the regulations was ill-conceived because: Firstly, the Marine Act and its regulations not only specify the type of fishing activity, but also the method to be used in performing such fishing activity. Secondly, lawful fishing can only be authorised by means of a s 13 permit and that, once the angler has been issued with the permit for angling, the angler was not at liberty to use any method other than the one that is provided for in the regulations – to use any other method other than the authorised one would be unlawful.

In the result, the SCA dismissed the appeal with costs.

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