

SOUTH AFRICA / JUDGMENT

Gannet Works (Pty) Ltd and Others v Middleton Sue NO and Another (492/2023) [2024] ZASCA 112; 2024 (6) SA 57 (SCA); 2024 (2) SACR 588 (SCA) (16 July 2024)

[2024] ZASCA 112

COURT

Supreme Court of Appeal

BEFORE

Mokgohloa, Hughes, Meyer, Weiner, Coppin

CASE / FILE NUMBER

492/2023

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FLYNOTES:

ENVIRONMENT – Fishing – Bait-carrying
drones for angling –
Prohibition
adversely affecting appellants who sell drones – Marine
Living Resources Act 18 of 1998 and regulations – Angling
defined in regulations and definition deemed to be included in Act
– Key word differentiating
angling from other fishing
activities is “manually” – Angler acquiring
permit for angling must use method
provided for in regulations –
Fishing by manually operating a rod, reel and line – To use
any method other than
authorised one would be unlawful –
Appeal dismissed.
THE SUPREME COURT OF
APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 492/2023

In the matter between:

GANNET WORKS (PTY) LTD

FIRST APPELLANT

IARC CC

SECOND APPELLANT

UNMANNED SA (PTY) LTD

THIRD APPELLANT

CDS ANGLING SUPPLIERS CC

FOURTH APPELLANT

CEG PROJECTS (PTY) LTD

FIFTH APPELLANT

and

MIDDLETON SUE NO FIRST

RESPONDENT

MINISTER OF FORESTRY, FISHERIES

AND THE ENVIRONMENT

SECOND RESPONDENT

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

Coram: MOKGOHLOA, HUGHES, MEYER and WEINER JJA and COPPIN AJA

Heard: 22 May 2024

Delivered: The judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 16 July 2024 at 11h00.

Summary: Environmental law – Marine Living Resources Act 18 of 1998 (the Marine Act) – whether the use of remote-controlled motorised equipment for purposes of recreational angling is authorised by the Marine Act and its regulations.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Maumela J sitting as court of first instance):

The appeal is dismissed with costs.

Mokgohloa JA (Hughes, Meyer and Weiner JJA and Coppin AJA concurring):

Introduction

[1] The appellants brought an application in the Gauteng Division of the High Court, Pretoria (the high court) seeking 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 withdraws 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 high court dismissed the application. The appeal is with leave of this Court.

The facts

- [2] 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).
- [3] 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.
- [4] 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 some instances, orders which had previously been placed for drones were cancelled and other clients demanded that they be reimbursed for past purchases.

In the high court

- [5] The appellants contended that the notice issued by the DDG is unlawful as, neither the Marine Act, nor the regulations prohibit the use of motorised devices such as drones in fishing. They contended that the Minister/DDG seeks to amend the Marine Act without following the correct procedure. They submitted further that the word 'angling', only appears in the regulations and not in the Marine Act.
- [6] 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. The drone enables the angler to fly the bait to the area where he requires his bait to be dropped. The bait is attached to a hook which is attached to the fishing line that forms part of the fishing rod and reel. Once the bait is released, the bait carrying device (drone) returns to the shore, and it plays no further role in the fishing activity. Therefore, so the contention went, angling does not
- exclude the use of drones to drop the bait.
- [7] The respondents opposed the application and contended that the notice issued by the DDG does not amount to a new law. It is 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 may only be conducted by manually operating a rod, reel and line on one or more separate lines to which no more than ten hooks are attached per line. They argued that the interpretation of the statutory requirement for lawful recreational fishing endorsed for angling alleged by the appellants conflicts with the purposive interpretation of the provisions of the Marine Act and its regulations.
- [8] The respondents contended that the regulations prescribe the different categories and methods of fishing which may be authorised under the Marine Act. They contended that 'recreational fishing' is recognized as a discreet fishing category, subject to the acquisition of a recreational fishing permit, which is then endorsed with the type or method of fishing permitted. Angling falls within this definition. The endorsement of the permit issued for recreational fishing, so the contention went, determines what method of fishing is authorised in terms thereof. The method of recreational fishing and the type of permit required is chosen by indicating either 'angling' or 'spearfishing' or 'cast/throw net' on the application form.
- [9] According to the respondents, as angling is 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 falls outside of the 'manual operation' of a rod, reel and line is not and cannot be permitted as recreational fishing endorsed for angling.

[10] The respondents requested the high court to appreciate that the subject matter of fisheries management is a policy-laden and polycentric provision that entails a degree of specialist knowledge and expertise that very few judges may be expected to possess. They contended that a court has no discretion to declare that the lawful obligations imposed by the relevant legislation should not be complied with.

[11] In dismissing the application, the high court held as follows:

‘In this case, conditions and circumstances involving fishing have come into scrutiny. The legislature has not left room for any ambivalence where it regards what constitute “legally permissible fishing”.’

The high court continued and concluded that:

‘Consideration of judicial deference also comes leaning towards a purposive interpretation of the word “angling” in the

“Regulations”. That, coupled with the fact that the definition of “this Act” in section 1 of the Act “includes any regulation or notice made or issued under this Act” has the effect that the court inclines towards dismissing this Application with costs’.

In this Court

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

[13] The appellants allege that the high court erred in identifying the nature of the application as similar to review rather than the one requiring interpretation of the Marine Act. They contend that, had the high court engaged upon an interpretive exercise, it would have found that the prohibitions listed in s 44 of the Marine Act^[1] do not include bait-carrying drones or other bait-carrying devices.

[14] The key question to determine is whether the Marine Act and its regulations prohibit the use of bait-carrying drones for purposes of recreational angling. To answer this question, an interpretive exercise is required.

[15] The principles applicable to statutory interpretation are trite. Regard must be had to the text, context and purpose of the provision, and the provision must be within the lens of the Constitution.^[2] Furthermore, the historical context within which the provision was enacted may be relevant to the process of interpretation. I find it apposite to outline the relevant sections in the Marine Act that provide for fishing, the background and the purpose of those sections.

[16] Fishing activity in South Africa is regulated by the Marine Act and its regulations. Section 24(b) of the Constitution imposes a legal obligation on the Minister to protect the environment for the benefit of the present and future generations through reasonable legislative and other measures that ‘prevent ecological degradation; promote conservation; and to secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development’.

[17] Section 2 of the Marine Act outlines the objectives and purpose of the Act as follows:

‘The Minister and any organ of the state shall in exercising any power under this Act, have regard to the following objectives and

principles:

- (a) The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;
- (b) the need to conserve marine living resources for both present and future generations;
- (c) the need to apply precautionary approaches in respect of the management and development of marine resources;
- (e) the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;
- (f) the need to preserve marine biodiversity;
- ...
- (j) the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.’

To achieve this statutory obligation, the Minister has to put reasonable legislative measures in place, such as the statutory system of fisheries management provided in the Marine Act and its regulations. This would include the manner in which the fishing activities are performed. This is done to ensure that the effects of fishing are such that the fish populations remain stable for the benefit of all South Africans. With this prelude, I now set out the statutory systems for fishing activities and their definitions.

[18] The Marine Act defines fishing to mean:

- ‘(a) searching for, catching, taking or harvesting fish or an attempt to any such activity;
- (b) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) placing, searching for or recovering any fish aggregating device or associated gear, including radio beacons;

- (d) any operation in support or in preparation of any activity described in this definition, or
- (e) the use of an aircraft in relation to any activity described in this definition. . .’

[19] ‘Aircraft’ is defined as ‘any craft capable of self-sustained movement through the atmosphere and includes a hovercraft’. ‘Recreational fishing’ is defined as ‘any fishing done for leisure or sport and not for sale, barter, earnings or gain’. ‘Angling’, on the other hand, is defined in the regulations as ‘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’.

[20] The appellants contend that the word angling is foreign as it is not mentioned in the Marine Act. Whilst this is correct, the definition of ‘this Act’ in section 1 of the Marine Act ‘includes any regulation or notice made or issued under this Act’. This therefore means that, although angling is defined in the regulations and not in the Marine Act, its definition is deemed to be included in the Marine Act.

[21] The key word in the definition of angling which differentiates the fishing activity of angling from other fishing activities is, in my view, ‘manually’. The Oxford Dictionary defines manually to mean ‘by hand rather than automatically or electronically.’

[22] Section 13 of the Marine Act provides that:

- (1) ‘No person shall exercise any right granted in terms of s18 or perform any other activity in terms of this Act unless a permit has been issued by the Minister to such person to exercise that right or perform that activity.’
- (2) Any permit contemplated in subsection (1) shall –
 - (a) ...
 - (b) be issued subject to the conditions determined by the Minister in the permit;’

[23] Once the fisherman chooses a permit for angling as the type of fishing, the method to perform angling, as defined in the regulations, comes into play. The respondents contend that a permit for recreational fishing endorsed for angling authorizes only fishing by manually operating a rod, reel and line. They point out that a method for ‘recreational angling’ is clearly defined in very specific terms as the ‘manual operation’ of a rod, reel or line. This definition implicitly excludes the use of remote-controlled, motorized equipment, such as drones.

[24] Counsel for the appellants argues however that once a fishing permit has been issued to an angler, the angler is then at liberty to engage in any form of fishing activity using whatever methods that may be available, provided the method used is not specifically prohibited in terms of the Marine Act or the regulations. He contends that the activity of fishing, by definition, includes the use of aircraft such as drones.

[25] In my view, the above argument is ill-conceived. First, 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. Second, lawful fishing can only be authorised by means of a s13 permit. As stated earlier, once the angler has been issued with the permit for angling, the angler is not at liberty to use any method other than the one that is provided for in the regulations that is, 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. To use any other method other than the authorised one would be unlawful.

[26] For these reasons, I find that the appellants failed to make out a case for the relief sought. Therefore, the appeal must fail.

[27] In the result, the following order is made:

The appeal is dismissed with costs.

F E MOKGOHLOA

JUDGE OF APPEAL

Appearances

For the appellant: R Stockwell SC with W Carstens Instructed by: Otto Krause Inc Attorney, Roodepoort Honey Attorneys, Bloemfontein For the respondent: J Rust SC Instructed by: The State Attorney, Pretoria The State Attorney, Bloemfontein.

[1] Prohibited fishing methods 44.

(1) No person shall- (a) use, permit to be used, or attempt to use any explosive, fire-arm, poison or other noxious substance for the purpose of killing,

stunning, disabling or catching fish, or of in any way rendering fish to be caught more easily; (b) carry or have in his or her possession or control any explosive, fire-arm, poison or other noxious substance for any of the purpose referred to in paragraph (a); or (c) engage in a fishing or related activity by a method or in a manner prohibited by the Minister by notice in the Gazette.

(2) No person shall land, sell or possess any fish taken by any means in contravention of this Act.

[1] Prohibited fishing methods

44.

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(a) use, permit to be used, or attempt to use any explosive, fire-arm, poison or other noxious substance for the purpose of killing,

stunning, disabling or catching fish, or of in any way rendering fish to be caught more easily;

- (b) carry or have in his or her possession or control any explosive, fire-arm, poison or other noxious substance for any of the purpose referred to in paragraph (a); or
 - (c) engage in a fishing or related activity by a method or in a manner prohibited by the Minister by notice in the Gazette.
- (2) No person shall land, sell or possess any fish taken by any means in contravention of this Act.
- [2] Cool Ideas 1186 CC v Hubbard [2014] ZACC 16; SA 2014 (4) SA 474 CC; 2014 (8) BCLR 869 (CC).

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