

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION PRETORIA)

Case No: 14880/2022

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.

DATE: 12 April 2022

SIGNATURE:

In the matter of:

Gannet Works (PTY) LTD
IARC CC
Unmanned SA (PTY) Ltd
CDS Angling Supplies CC
CEG Projects (PTY) Ltd

First Applicant
Second Applicant
Third Applicant
Fourth Applicant
Fifth Applicant

And

Middleton, Sue N.O.
Minister of Forestry, Fisheries
and the Environment

First Respondent
Second Respondent

Summary: The purpose behind the Marine Living Resources Act 18 of 1998, (“the Act”) and the Regulations in terms of the Marine Living Resources Act, 1998 as published in GNR.1111 of 2 September 1998, (“the Regulations”) –

Interpretation of statutory “angling” in *Regulation 1* should purposively interpreted in the context of the deeper legal norms embedded in the legislative instrument.

Constitutional and legal obligation to protect the environment provides that the Minister's constitutional obligation and duty is to ensure that the impact of fishing activities is such that the fish populations remain as stable as possible.

JUDGMENT

Maumela J.

1. This matter came before court in the Urgent Roll. It is opposed. In it, the Applicants seek an order in the following terms:
 - 1.1. *That a declaratory order be issued declaring that the use of bait carrying drones, bait carrying remote controlled boats and other remotely operated devices are not prohibited in terms of the Marine Living Resources Act, 18 of 1998 and the regulations published pursuant thereto.*
 - 1.2. *That the First Respondent is directed to publicly withdraw the public notice which was published on 24 February 2022 within ten (10) days of the granting of this order.*
 - 1.3. *That in the withdrawal of the public notice the First Respondent publicly declares that the content of the public notice of 24 February 2022 is incorrect and that the said public notice is of no legal effect or consequence.*
 - 1.4. *That the Respondents are directed to pay the Applicants' costs, and such costs include the costs consequent upon the employment of two counsel."*

BACKGROUND.

2. In this case, all of the Applicants are involved in the conduct of business which is in one way or another, related to and is involved in the manufacturing and selling of equipment used by fishermen. They urgently seek a declaratory order relating to an interpretation of the Marine Living Resources Act¹, (*"the Act"*). They also seek an order directing the First Respondent to publicly withdraw a

¹. Act 18 of 1998.

Public Notice that was first published on the 24th of February 2022; (“the publication”).²

RE: URGENCY.

3. The Applicants charge that the publication that was first published on the 24th of February 2022 visited this whole matter with urgency. They make the point that in that notice, the First Respondent seeks to create the impression that the use of ‘bait-carrying drones’ and “bait-carrying”, remote controlled boats or any other remotely operated vehicle, when fishing, is illegal. They point out that the notice seeks to inform members of the public that transgressions will be prosecuted and that the devices used by the fishermen will be forfeited to the State.
4. All of the Applicants market and sell ‘bait-carrying-drones’ and ‘bait carrying; remote controlled boats and the like. They all claim that they almost immediately experienced a decline in the sales of the aforementioned equipment.³ As such, the Applicants aver that they are suffering irreparable prejudice. They point out that the prejudice they suffer, and which they will continue to suffer should there be no intervention, lies therein that members of the public who would otherwise have purchased one or more of these devices, will simply be no longer prepared to purchase drones and similar bait-carrying devices because those potential buyers shall be dissuaded from buying because of prospects of falling on the wrong side of the law and suffering losses since law enforcement may result in the equipment being confiscated.
5. The Applicants contended that the publication resulted in the sales of ‘bait-carrying-drones and other remotely operated bait-carrying devices coming to a complete standstill.⁴ The Applicants claimed that even clients, who previously placed orders for these devices are cancelling their orders and demanding a return of their deposits.⁵

URGENCY.

6. The Applicants submit that in this matter, urgency arises from the publication that was first published on the 24th of February 2022. They point out that in this notice, the First Respondent seeks to

². See annexure “A”, Case Lines 2-22.

³. See paragraph 27 of the founding affidavit, Case Lines 2-15.

⁴. See paragraph 29 of the founding affidavit, Case Lines 2-16.

⁵. See paragraph 33 of the founding affidavit, Case Lines 2-17.

create the impression that the use of bait-carrying drones and bait-carrying remote controlled boats or any other remotely operated vehicle, when fishing, is illegal. They point out that the notice seeks to inform members of the public that transgressions will be prosecuted and that the devices used by fishermen will be confiscated and shall be forfeited to the State.

7. All of the Applicants market and sell bait-carrying drones, bait-carrying remote controlled boats and related equipment. They all aver that they almost immediately experienced a decline in the sales of the equipment they sell.⁶ They argue that they are suffering irreparable prejudice as a result of the publication of the notice. They submit that the prejudice they suffer, which they will continue to suffer, lies therein that members of the public who would otherwise have purchased the one, the other or more of these devices, are simply no longer prepared to purchase drones and similar bait-carrying devices. They allege that the publication has resulted therein that the sales of bait-carrying drones and other remotely operated bait-carrying devices have come to a complete standstill.⁷ The Applicants also allege that they had clients, who previously placed orders for these devices, who are now cancelling their orders and demanding that their deposits be repaid to them.⁸
8. According to the Applicants, the content of the publication is patently incorrect. They argue that what is stated in the publication is not supported by the provisions of the Act or the regulations. They submit that the false impression which the publication has created in the minds of law-abiding citizens, urgently needs to be corrected. It is on that basis that the Applicants view that corrective measures are necessary which ought to be employed soonest in order to avoid further harm and prejudices being brought to bear against them in their capacity as owners of some of the businesses that trade in bait-carrying equipment. They submit that they incur harm and prejudice on every day that the publication remains in place.
9. In the founding affidavit, the Applicants explained that their sales normally increase before a Public Holiday.⁹ The Applicants allege

⁶. See paragraph 27 of the founding affidavit, Case Lines 2-15.

⁷. See paragraph 29 of the founding affidavit, Case Lines 2-16.

⁸. See paragraph 33 of the founding affidavit, Case Lines 2-17.

⁹. See paragraph 35 of the founding affidavit, Case Lines 2-18.

that over the School Holidays that preceded Easter Holidays, potential clients who would have purchased the devices in question no longer purchased them after they were dissuaded by possible consequences of the publication the effect of which possibly outlaws sale of the devices. The Applicants also pointed out that Easter Holidays are fast approaching and if the false impression, which the First Applicant has created in the publication, is not corrected on or before the 2nd of April 2022, a further opportunity will be lost and at the same time, they will once again suffer the accompanying prejudice.

10. On that basis, the Applicants made the point that arguments aimed at the relief claimed cannot await a turn to be heard in due course. They submit that any further delay will cause more untold and irreparable harm. They argue that the harm and financial prejudices which they stand to suffer cannot be remedied in any ways save through the order sought.
11. The Applicants argue that in disputing urgency, the Respondents are wrong. They base their contention on the following four grounds:
 - 11.1. That it is not true that the Applicants did not pursue the urgent application with vigour. They point out that after the publication was first published on the 24th of February 2022 they moved without any waste of time. They point out that they immediately went about obtaining a legal opinion from counsel. A letter was then sent to the Respondents, affording them three days in which to withdraw the publication. The letter received by the Respondents on the 2nd of March 2022.¹⁰ A three-day period expired on the 6th of March 2022. The application was issued four days later which was on the 10th of March 2022. The Applicants point out that clearly, there was no delay in the conduct of the Applicants in the process of launching this urgent application;
 - 11.2. That it is not true that the Respondents only had seven (7) days to prepare and file an answering affidavit. Contrary to that, they had 14 days, after the 10th of March 2022. The answering affidavit was only filed on the 23rd of March 2022 and not on the 22nd of March 2022. They had to file their

¹⁰. See annexure "B" to the founding affidavit, Case Lines 2-23.

answering affidavit, which affidavit is comprehensive and clearly requires no amplification;

- 11.3. The Applicants point out that as their third attack, the Respondents in paragraphs 30 and 31 of the answering affidavit¹¹ seek to place reliance on the provisions of Rule 6(13) of the Uniform Rules of Court. Rule 6(13) applies to applications brought in terms of rule 6(5) of the Uniform Rules of Court. They submit that the provisions of the rule are not applicable to urgent applications brought in terms of rule 6(12). They argue therefore that there is no merit in this attack;
- 11.4. Lastly, in paragraph 32 of their answering affidavit, the Respondents argue that the Act has been in place since 2005. In paragraph 32.1¹², emphasis is placed on the “*method of manually operating*”¹³ a rod, reel and line...” The Applicants argue that this argument is misplaced. They submit that their attack is not against the provisions of the Act, but is directed at the publication which was first published on the 24th of February 2022. They submit that the urgency in this matter arises from the publication and not the promulgation of the Act.

THE PROVISIONS OF THE ACT AND REGULATIONS.

12. The act of fishing, in terms of the Act, is defined 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.*”¹⁴

¹¹. Case Lines 4-19.

¹². Case Lines 4-20.

¹³. The opposite of manually, according to the dictionaries, is automated. A drone per definition is not an automated device. It is a remote controlled device which still requires to be manually operated. The emphasis which the respondents place on “*manually operating*” is thus misplaced.

¹⁴. See section 1(xviii) of the Act, Case Lines 9-5.

13. In turn, an aircraft is defined to mean “*any craft capable of self-sustained movement through the atmosphere and includes a hovercraft*”.¹⁵ The Applicants submit that bait-carrying drones squarely fit into the definition of an aircraft.¹⁶ They point out that drones are remotely controlled devices which can move through the atmosphere in a self-sustainable manner. According to them, The only difference between a drone and a normal aeroplane lies therein that a drone is manually operated by a person on the ground, whilst an aeroplane is manually operated by the pilot who is seated in the cockpit of the craft.¹⁷ The Applicants argue therefore that fishing, for purposes of the Act includes the use of drones for purposes of “*searching for, catching, taking or harvesting fish*”.
14. In terms of the Act, “Gear”, is defined to include the following in relation to fishing: “... *any equipment, implement or other object that can be used in fishing, including any net, rope, line, float, trap, hook, winch, aircraft, boat or craft carried on board of a vessel, aircraft or other craft*”.¹⁸ The Applicants argue that once again, bait-carrying drones as well as bait-carrying remote controlled boats or any other remotely operated device, comfortably fits into the definition of gear.¹⁹
15. It is submitted that Chapter 5 of the Act deals with and sets out the activities which are prohibited when it comes to fishing. Section 44(1)²⁰ lists a number of prohibitions and further provides that no person shall “*engage in a fishing or related activity by a method or in a manner prohibited by the Minister by notice in the Gazette*”.²¹ Various other prohibitions are provided for in sections 45 to 49,²². The Applicants submit that none of these provisions make mention of or deal with bait-carrying drones or bait-carrying remote controlled boats.
16. The Applicants submit further that apart from section 44(1)(c), section 77 of the Act entitles the Minister, who is defined as the

¹⁵. See section 1(i) of the Act, Case Lines 9-4.

¹⁶. See paragraph 23 of the founding affidavit, Case Lines 2-13. See further the definition of “*aircraft*” in the Civil Aviation Act, 13 of 2009.

¹⁷. Aircraft, unlike drones, can be placed on automated pilot.

¹⁸. See section 1(xxvii), Case Lines 9-6.

¹⁹. Sinkers, buckets, swivels, bait cotton and the like may also be included.

²⁰. Of the Act, Case Lines 9-18.

²¹. The words “*prohibited by the Minister by notice in the Gazette*”, where same appears in section 4(1)(c), are to be emphasised.

²². Of the Act. See Case Lines 9-19.

Minister responsible for the Department of Environmental Affairs and Tourism, to prohibit and publish regulations in order to give effect to the provisions of the Act. Regulations were duly published in Government Gazette 19205 under Government Notice R1111.²³ The Applicants make the point that the while various amendments to these regulations have been published from time to time; none of the amendments have had the effect of including bait-carrying drones or bait-carrying remote controlled boats among equipment the use of which has been outlawed.

17. Interestingly, the regulations introduce a new term, to wit ‘*angling*’, which is not found in the Act. In the regulations, ‘angling’ is defined 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*”.²⁴ Recreational fishing is a term which; as indicated is defined in the Act to include; “*any fishing done for leisure or sport and not for sale, barter, earnings or gain*”.²⁵
18. The Applicants submit that making use of a remote controlled, bait-carrying device, such as a bait-carrying drone, does not derogate from the fact that the fishermen who use these devices inevitably apply the old; recognised method of fishing by manually operating a rod, reel and a line with hooks, swivels and sinkers being attached to the line. The Applicants contend that there can be no doubt that those fishermen who make use of drones, squarely meet and fit into the definition of both “*angling*” and “*fishing*”. They further submit that these definitions describe the act or principal methods used when fishing or angling, and that they do not prohibit²⁶ the use of drones or other bait-carrying devices.
19. Chapter 5 of the Act, which deals with prohibited activities, *inter alia* prohibits the use of certain gear, except on authority of a permit.²⁷ The Applicants submit that nowhere in any of the sections is the use of drones or other bait-carrying devices prohibited. They point out that in fact, no mention is made of bait-

²³. Case Lines 9-35.

²⁴. See definition of angling in regulation 1, Case Lines 9-43.

²⁵. See section 1(xivii), Case Lines 9-7. Also see section 20 of the Act, Case Lines 9-13 which in fact prohibits anybody from selling, bartering or trading in any fish caught through recreational fishing.

²⁶. We again emphasise the provisions of section 44(1)(c) which authorises the Minister to “*prohibit*”. The definition of angling is descriptive and contains no prohibition.

²⁷. See section 47 for example, Case Lines 9-19.

carrying drones or any other remotely operated device such as a boat or vehicle. They argue that the Act clearly does not prohibit the use of these devices.²⁸

20. The Applicants argue that the regulations indeed create a system protecting certain species on the basis of mass and size.²⁹ They state that the said regulations also provide that recreational fishermen should obtain a permit before they go to fish.³⁰ They are adamant that there is no prohibition in the said regulations prohibiting use of any of the stated devices.³¹ They point out that the regulations are completely silent on the use of bait-carrying devices. They point out that drones were in fact a foreign concept when the Act and the regulations were promulgated.

THE RESPONDENTS' ULTERIOR MOTIVES.

21. The Applicants charge that what the First Respondent is seeking to achieve is to prohibit the use of bait-carrying drones and similar bait-carrying devices without amending the regulations. They point out that section 44(1)(c) of the Act is unequivocal in that it requires of the Minister to "*prohibit*" persons from engaging in a fishing or related activity. They point out that on the Respondents' own version, the regulations contain no prohibition relating to the use of bait-carrying drones.³²
22. The Applicant submit that the Respondents put forward an emotive argument³³ on why drones should be prohibited. They pointed out that prohibiting the use of drones will require an

²⁸. This is common cause between the parties - see paragraphs 62 and 72.2 of the answering affidavit, Case Lines 4-30 and 4-35.

²⁹. See annexure 10 to the regulations, Case Lines 9-114.

³⁰. See section 13, Case Lines 9-11.

³¹. The respondents concede that there is no provision in the regulation which "*specifically prohibits*" the use of drones. See paragraph 55 of the answering affidavit, Case Lines 4-28. Also see paragraph 20, Case Lines 4-16 where emphasis is again placed on manual operation as opposed to automated operation. Drones are not automated.

³². See also the "*scientific article*" - which it is not - annexed as annexure "A". In the article (at Case Lines 4-47) the following is unequivocally stated under the heading "*Governance of South African drone fishing*": -

"Although drone fishing is not specifically regulated by the Marine Living Resources Act in South Africa, there is other legislation that indirectly relates to the practice. For example, the National Civil Aviation Authority law states that permission is needed to drop a payload from any drone. Additionally, commercial drone use is only permitted by licenced drone pilots. Although not strictly applicable to recreational anglers, commercial drone use would apply to professional South African angling guides. It would also apply to recreational drone pilots who facilitate drone fishing by charging conventional shore anglers a fee to drop their baited hooks further offshore from certain South African beaches."

³³. The argument is by and large a repetition of what the authors state in the article attached as annexure "SM1", Case Lines 4-39.

amendment to the regulations. They state that amending the regulations requires a public participation process which has not been the case in this matter. According to them, prior to any public participation, a process comprising a proper scientific research is required to be carried out.³⁴ The Applicants point out that this is a burdensome process which the Respondents disingenuously seek to sidestep. They argue that the Applicants do so by intimidating the public into believing that making use of bait-carrying drones or other similar devices is a criminal offence whereas neither the Act nor the Regulations prohibit the use of these devices.

23. The Applicants make the point that the conduct resorted to by the First Respondent is despicable. She submits that on their own version, the Respondents knew that the Act and regulations do not contain any prohibition regarding the use of these devices. They argue that by acting as the First Respondent did, she indubiously acted *mala fide* and without any regard to the Applicants' rights nor the principles of the rule of law. They point out that the First Respondent in fact publicly stated that fishermen who make use of bait-carrying drones or bait-carrying remote controlled boats will be arrested and that their fishing gear will be forfeited to the State, well knowing that the regulations do not prohibit the use of bait-carrying drones.
24. The Applicants allege that the conduct of the Respondents in allowing what they, (the Applicants), regard as misinformation contained in the publication to continue, is regrettable to say the least. They view that the responsible public officials did not attend their public duties in a fair and responsible manner as would have been expected of responsible public officials following a consultative process before publishing a public notice as set out in the publication. Based on the above, the Applicants submit that an order as indicated under paragraph 1 above be made by this court.

³⁴. It is unequivocally recognised by the learned authors who prepared the article, annexed as annexure "SM1" to the answering affidavit that: "*Further research aimed at identifying the social-ecological impacts of drone fishing is needed and fisheries management agencies should aim to regulate the use of drones where necessary. While we acknowledge that the data collected in this review was based on internet search and social media activity, we contend that the observations made will have broad applicability to other countries where recreational drone fishing is gaining popularity*" (Case Lines 4-49).

25. The Respondents submit that the subject-matter in this matter has to do with recreational fishing endorsed for angling. They argue that this matter does not have to do with ‘fishing in general’. They contend that on the part of the Applicants, there is a complete misunderstanding of the statutory system of Fisheries Management in South Africa. They make the point that recreational fishing endorsed for angling is a discreet and defined sector of fishing, and it does not entail fishing in general. They point out that any reference to other methods of fishing than recreational fishing endorsed for angling, and/or to other fishing sectors, are irrelevant to this application.
26. The Respondents submit that from the outset, the Court should move from the premise that the correct question is not whether the use of remote-controlled motorized equipment for purposes of recreational angling are prohibited, but whether the use of remote-controlled, motorized equipment is authorised by the relevant permit for ‘*recreational fishing endorsed for angling.*’ They submit that a permit for recreational fishing endorsed for “*Angling*” authorizes only fishing by manually operating a rod, reel and line.
27. According to the Respondents, the primary relief sought on an urgent basis in Prayer 2 of the Notice of Motion³⁵, is for the Court to issue a declarator which, if granted in the context of recreational angling, will be contrary to the provisions of the Marine Living Resources Act 18 of 1998, (“*the Act*”), and the Regulations in terms of the Marine Living Resources Act, 1998 as published in GNR.1111 of 2 September 1998, (“*the Regulations*”).
28. The Respondents oppose the application on the basis that **Firstly**, the application is not urgent, and **Secondly**, that there is no merit in the relief sought by the Applicants.

RE: URGENCY.

29. The Respondents contend that the legislation on the grounds of which the Applicants seek an urgent interpretation, has been in place since 2005. They argue that ‘*recreational angling*’ may in terms thereof and since 2005, only be conducted with the method of manually operating a rod, reel and line or one or more separate

³⁵. Case Lines p.001-2.

lines to which no more than ten hooks are attached per line.³⁶

THE NOTICE.

30. The Respondents contend that the Notice which was published on the 24th of February 2022³⁷, in respect of which relief is sought in Prayer 3 of the Notice of Motion³⁸, did not change the legal position which has been in existence since 2005, or the statutory requirements for lawful recreational angling. They point out that the Applicants have built their respective businesses on the sale and supply of remote-controlled, motorized equipment to recreational anglers, which equipment may since 2005 not lawfully be used for that purpose. The Respondents argue that this application should therefore be struck from the roll with costs because it lacks urgency. They argue that the application be dismissed with costs, which costs should include costs of Senior Counsel.

MERIT.

31. The Respondents point out that the declaratory relief sought under Prayer 2 of the Notice of Motion is aimed at circumventing the statutory requirements for lawful recreational fishing endorsed for angling and therefore such a relief is not competent, much as it has no merit.
32. Consequently, the Respondents contend the following:
 - 32.1. That this Court is not called upon to review and set aside existing statutory obligations imposed upon any recreational fisher by means of the Act and the Regulations, in terms of which only certain methods of recreational fishing are permitted. 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. They submit that this implicitly excludes the use of remote-controlled, motorized equipment such as drones.
 - 32.2. The Respondents further point out that the Applicants in this case in effect, although not evidently from the Notice of Motion; seek a declaratory order on the interpretation of the definition of "*angling*" in regulation 1 of the Regulations. They submit that this definition needs no interpretation or

³⁶. See definition of "*angling*" in regulation 1 at Case Lines p.009-43 to 009-44.

³⁷. See the Notice, annexure A at Case Lines p.002-22.

³⁸. Case Lines p.001-2.

clarification as it clearly and unambiguously states that “angling” means: “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”.

33. The Respondents state that the relief sought in Prayer 3 of the Notice of Motion, if granted, will serve no purpose because:
 - 33.1. The Notice did not change the statutory obligations of recreational fishers in existence since 2005, but merely provided clarity to recreational anglers prior to the intended enforcement action being taken. They therefore dispute that the Notice created any impression as alleged. They contend that the Notice rather instead clarified existing statutory requirements for lawful recreational fishing endorsed for angling, while notifying the public that unlawful recreational fishing in contravention of the method authorised by the relevant permit, will be prosecuted.
 - 33.2. They further point out that the Notice does not change the definition of “angling” in any way. They contend that the *status quo* remains unchanged, irrespective of the Notice.
34. The Respondents argue that in general, the principle of judicial deference calls upon 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, if any, judges may be expected to have. On the basis of the above, the Respondents submitted that the court should find that the Applicants’ argument is premised on a wrong understanding of the applicable Act, much as it is devoid of a requisite alertness to considerations towards the preservation of the environment. They contended therefore that this application ought to be dismissed with costs and that such costs include the costs of Senior Counsel.
35. The Respondents further submit that the above should mark the end of this matter however, they also submit that in the event where this court views that the relief sought is worthy of consideration, such consideration should be weighed up within the correct legal framework.

LEGAL FRAMEWORK.

36. The Constitution.
The Respondents submitted that the commencement of the

Constitution introduced a shift in paradigm to a purposive, constitutional interpretation of legislation that is informed by the values of our constitutional democracy, that is informed by the foundational values of the Republic of South Africa and that promotes the spirit, purport and objects of the Bill of Rights. They submitted therefore that interpretation is no longer a formal exercise to find the superficial meaning of words used in legislation, but it has become a substantive value-laden or norm-seeking exercise to find the deeper legal norms embedded in the legislative instrument.

37. They submit that the definition of “*angling*” in *Regulation 1* should be purposively interpreted in the context of the deeper legal norms embedded in the legislative instrument. They argue that Section 24 of the Constitution binds the Minister to adhere to and to comply with the constitutional and legal obligation to protect the environment for the benefit of 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.
38. They point out that such is achieved through reasonable legislative measures, such as the Act, for purposes of which the Minister has a constitutional obligation and duty in terms of which he or she ought to ensure that the impact of fishing is such that the fish populations remain as stable as possible to enable fishing to continue for the benefit of all South Africans, (present and future generations), and to ensure that the environment is not adversely affected.
39. If one moves from such a premise, then it cannot be that where one finds gaps within the framework of the operative legislation, then it becomes permissible to engage in acts that undermine the preservation of the environment, as long as the applicable legislation does not go far enough in specifically mentioning that some or other particular activity is outlawed on the basis that it has potential to undermine the preservation of the environment. In that regard, the purpose behind the Marine Living Resources Act has to find consideration and application in determining a fitting approach to interpretation of the applicable pieces of legislation.

40. The Respondents argue that the objectives and principles set out in section 2 of the Act³⁹ give effect to the general objectives of integrated environmental management, and they inform the deeper legal norms embedded in the Act, providing that the Minister and any organ of state shall, in exercising any power under this Act, have regard to those objectives and principles. The most relevant of these objectives and principles are listed under paragraph 14 of the answering affidavit.⁴⁰
41. It is pointed out that in terms of section 13(1) of the Act⁴¹, no person shall exercise any fishing right or perform any other activity in terms of this Act, unless a permit has been issued to such person to exercise that right or to perform that activity. Sub-section 2(b) thereof further provides that such a permit shall be issued subject to the conditions determined by the Minister in the permit.
42. The Respondents charge that the Applicants mischievously disregard the prohibition in section 13(1) of the Act. Contrary to the stance of the Applicants, lawful fishing can only be authorised by means of a payment issued subject to the terms indicated under section 13. The Respondents emphasized that without such a permit, a fisher will be conducting an unlawful activity. They emphasize however that the fishing activities undertaken must also comply with the permitted method of fishing in order to be lawful failure of which they become unlawful.
43. The Respondents point out that the Regulations prescribe the different categories and methods of fishing which may be authorised under the Act. As mentioned above, '*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. In that regard, the following is notable:
- 43.1. That the endorsement of the permit issued for lawful recreational fishing determines *what method of fishing is authorised* in terms thereof.
- 43.2. That the type of permit required, or method of recreational fishing, is chosen by the applicant for a recreational fishing

³⁹. See Case Lines p.009-8.

⁴⁰. Case Lines p.004-7 to 004-8.

⁴¹. See Case Lines p.009-11.

permit, by indicating either “*Angling*” or “*Spearfishing*” or “*Cast/throw net*” and so forth, on the application form.⁴²

- 43.3. That the method known 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*”.
- 43.4. That 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.
44. It was pointed out that the definition of “*this Act*” in section 1 of the Act⁴³ “*includes any regulation or notice made or issued under this Act*”. The submission by the Applicants that the definition of “*angling*” in regulation 1 is not determinative of the method authorised by a permit for recreational fishing endorsed for angling, is misguided and it therefore cannot stand.
45. The Respondents submit that any method of fishing that may be authorised, must be in line with the Minister’s constitutional obligation and duty to ensure that the impact of fishing activities is such that the fish populations remain as stable as possible to enable fishing to continue for the benefit of all South Africans, (present and future generations), and to ensure that the environment is not adversely affected.
46. The Respondents contend that apart from the objectives and principles set out in section 2 of the Act, which should be applied in the interpretation of the provisions of the Act and the Regulations; the regime governing recreational fishing was carefully crafted so that only sustainable methods of fishing can be authorised. An approach should therefore be avoided which has potential to bring extinction to bear upon the various species of fish as they obtain at present.
47. The Respondents have explained comprehensively, also providing applicable scientific and other reasons why only the manual operation of a rod, reel and line may be permitted as

⁴². See annexure SM2 at Case Lines p.004-53.

⁴³. See the definition of “*this Act*” at Case Lines p.009-7.

recreational fishing, endorsed for angling.⁴⁴ Such evidence is indicative thereof that apart from being unlawful, the method of using motorized equipment to fish has potential to bring about an adverse impact upon certain species of fish. This is within a context where the populations of these species, and their ability to recover, is already proving to be in a dire state. This adverse impact in turn impacts negatively upon the livelihoods of small-scale fishers thereby impacting negatively upon their chances of survival.

48. The Respondents argue that the interpretation of the statutory requirements for lawful recreational fishing endorsed for angling, canvassed by the Applicants is in conflict with the purposive interpretation of the provisions of the Act and the Regulations. They argue consequently that the prayer for a declaratory relief sought in Prayer 2 of the Notice of Motion ought to be dismissed.
49. The Respondents argue further that having failed to establish the legal basis for the declaratory relief sought in Prayer 2, of the Notice of Motion, logic dictates that the declaratory relief sought in Prayer 2 equally fails. As submitted above such relief, if granted, will serve no purpose. The Respondents submit therefore that this application be dismissed with costs; alternatively, that it be struck from the roll for lack of urgency, with costs and that such costs in each instance be made to include the costs of Senior Counsel.

EVALUATION.

50. 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 constitutes 'legally permissible fishing'. It is fact that more fishing takes place over weekends and holidays were more people get involved because even those who are otherwise engaged or employed in various fields can find time to participate in fishing.
51. It therefore cannot be disputed that in a matter like this, the fact that Easter Holidays are almost upon us cannot be ignored. Implications of a pronouncement on the issue at hand are bound to come notable, firstly for those who are interested in or are involved in fishing for any reason and secondly, for all and sundry due to the impact of fishing on the economy of the country and

⁴⁴. See paragraph 15 and 16 of the answering affidavit at Case Lines p.004-9 to 004-14; annexure SM1 at Case Lines p.009-39 to 004-52.

the social well-being of members of the community. The timing of the Applicants in bringing this application was determined by the timing at which the Minister published the Notice in issue which the Applicants objects to and against which they seek a declaratory order towards reversal.

52. The economic impact of a judgment in this case, favorable or unfavorable, is bound to be irreversible. The court finds no other better time at which the Applicant should have brought this application. On the other hand, nothing suggests that in publishing the Notice, the Respondents deliberately chose a slot in the evolution of time with a view to cause if not to maximize harm against the Applicants or anyone for that matter who is involved or interested in fishing. That being the case, in this case, the court finds that the Applicants did satisfy the requirements for urgency.
53. Considerations of judicial deference also come 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 Act⁴⁵ “*includes any regulation or notice made or issued under this Act*” has the effect that the court inclines towards dismissing this Application with costs.
54. Consequently, this application is dismissed with costs and the following order is made:

ORDER.

54.1. This application is dismissed.

54.2. The Applicants are ordered to pay the Respondents’ costs, such costs to include the costs of Senior Counsel.



T.A. Maumela.
Judge of the High Court of South Africa.

⁴⁵. See the definition of “*this Act*” at Case Lines p.009-7.

REFERENCES

For the Applicant: R Stockwell SC
W Carstens

Instructed by: Otto Krause Inc Attorneys

For the Respondent: J Rust SC

Instructed by: The State Attorney Pretoria

Judgment heard: 28 March 2022

Judgment delivered: 12 April 2022