



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 19 September 2019

STATUS Immediate

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

KwaZulu-Natal Bookmakers' Society v Phumelela Gaming and Leisure Ltd

(889/2018) [2019] ZASCA 116 (19 September 2019)

MEDIA STATEMENT

The SCA today dismissed an appeal from a decision of the Gauteng Division of the High Court, which dismissed an application brought by the KwaZulu-Natal Bookmakers' Society and the Gauteng Off-Course Bookmakers' Association, to declare invalid, provincial licences held by Phumelela Gaming and Leisure Ltd, and Kenilworth Racing (Pty) Ltd, who operate totalisator betting in relation to horse racing and other sports events. As regards Gold Circle (Pty) Ltd, a totalisator operator, the bookmakers accepted that the KwaZulu provincial legislation did provide for such express authorisation, but submitted that the KwaZulu Act, purported to deal with an area over which a provincial legislature, did not enjoy legislative competence. It was alleged that the relevant provincial statutes did not authorise the holder of a totalisator licence to take bets on sporting events, other than horse racing. In essence the bookmakers claimed that in addition to their right to take bets on horse racing, they possessed the sole right to take bets on other sports, to the exclusion of totalisator operators, who were said to be confined to taking bets on horse racing. The SCA held that on an interpretation of the definition of a 'sports pool' in the Lotteries Act 57 of 1997 (the Lotteries Act), totalisator betting on sports other than horse racing, was not included in the definition and was regulated in terms of the

National Gambling Act 7 of 2004 (the Gambling Act) and the provincial legislation. Consequently, totalisator betting on sports other than horse racing, was not prohibited in terms of the Lotteries Act and a sports pool licence, was not required to do so. This interpretation was informed by a consideration of the historical legislative and constitutional context, before the passing of the Lotteries Act and the National Gambling Act. The provinces enjoyed provincial legislative competence in respect of totalisator betting on sports, which was reflected in the Constitution, which draws a clear distinction between sports pools on the one hand and gambling, casinos and wagering, on the other. The distinction is reflected in the legislation, in terms of which the Lotteries Act regulates lotteries and sports pools and the National Gambling Act and provincial legislation regulates wagering, consisting of both bookmaker betting and totalisator betting, on all events. In addition, there are inherent differences between a sports pool and totalisator betting on sports. In totalisator betting, the individual amount staked by the winning participant who correctly forecasts the result of a sporting event, together with the total amount staked by all of the participants, determines the dividend payable. This cannot be equated with a sports pool where there is no accumulation of a pool or dividend to be paid, but instead a prize, which bears no relationship to the amounts staked. The SCA therefore concluded that the provincial legislation lawfully regulated and controlled totalisator betting not only on horse racing, but also on other sports events. The provincial licences were therefore validly issued by the provincial gambling boards, to the totalisator operators, in accordance with the provincial legislation.