

S v NOTTINGHAM ESTATES (PVT) LTD 1995 (1) ZLR 253 (SC)

Court Supreme Court, Harare A

Gubbay CJ, Korsah JA & Ebrahim JA B

Criminal appeal C

27 March & 10 April 1995 Judgment No S-51-95

[zFNz]Flynote

Criminal law - statutory offences - Parks and Wild Life Act 14 of 1975 - D s 53(1)(a) - conducting a safari for reward without holding a hunter's licence - whether offence committed where owner of land sells hunting rights and leaves purchaser to hunt on his own

[zHNz]Headnote

There is nothing in the Parks and Wildlife Act or the regulations under the Act that prohibits a person from selling hunting rights over the property E owned and leaving the purchaser to hunt on his own. In the present case the appellant had not conducted a safari for reward without a hunter's licence in contravention of the Act. "Conduct" means "manage, direct or be in charge of". The appellant had not conducted a safari. It had sold hunting rights and allowed the buyer of those rights to hunt on his own.

Cases cited: F

Fouriesburg Hotels (Pty) Ltd v van Rensburg 1981 (1) SA 517 (O)

The Mickleham [1918] P 166 (CA)

Pride of Derby & Derbyshire Angling Assn Ltd & Anor v British Celanese Ltd & Ors [1953] 1 All ER 179 (CA) G

Ebrahim v Min of the Interior 1977 (1) SA 665 (A)

Birch v Klein Karoo Agricultural Co-op Ltd 1993 (3) SA 403 (A)

J C Andersen SC for the appellant

Miss B Hammond for the respondent

[zJDz]Judgment

Gubbay CJ: The H appellant company, represented by its managing director

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in terms of s 357 (1) of the Criminal Procedure and Evidence Act [Chapter A 59], was tried on three counts of contravening s 53(1)(a) of the Parks and Wild Life Act 1975, and on a further three counts of contravening s 59(4) of the Parks and Wild Life (General) Regulations 1990 (SI 362 of 1990).

The State alleged in counts one to three that from 14 May 1992 to 26 June 1992, and at its farm known as Greater Kuduland, the appellant conducted for B reward three hunting safaris, without being the holder of a professional hunter's licence, learner professional hunter's licence or professional guide's licence, authorising such conduct. Counts four to six particularised that during the period aforementioned and at the same place the appellant, for reward, conducted three persons not ordinarily resident in Zimbabwe on a C hunting safari, without being in possession of the written authority given by the Director of Parks and Wild Life Management.

Despite its pleas of not guilty, the appellant was convicted by the presiding magistrate on all counts. A fine of \$400 was imposed, the offences being taken as one for the purpose of sentence. D

Dissatisfied with the outcome of the trial, the appellant now challenges the propriety of the convictions before this court. There is no appeal against sentence.

The facts which gave rise to the prosecution of the appellant were E not in dispute. The contention advanced, both before the court a quo and in support of this appeal, was that the evidence fell short of establishing that upon any of the three occasions relied upon by the State, the appellant conducted a hunting safari within the proper meaning of the word.

The farm Greater Kuduland is situated on the banks of the Limpopo river F some fifty kilometres from Beitbridge. It has been owned by the appellant since 1954. For many years the appellant raised cattle and grew crops there, but severe drought conditions ultimately caused it to diversify the operation to game ranching.

In early 1992, the appellant commenced to sell by public auction the right to G hunt animals on the farm. The highest bidder was deemed to be the purchaser. This enabled him to hunt over the whole area of the farm, save around water points, for a specified period of ten days. He was permitted to hunt the type and number of animals listed in the prospectus handed to each bidder, such as one eland bull, five male impala, five baboon, etc. In addition, he was H

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entitled A to bid to hunt extra animals during the period of ten days. These included hyena, bushbuck and zebra. All animals were to be paid for at the conclusion of the sale. Leopard and elephant were also auctioned. If won, they were not paid for by the successful bidder unless shot.

Gordon B Mace, Frederick Burger and Karel Bodenstein, all South African residents, were the purchasers of the three hunts in question. They paid in advance for the hunts. The appellant was not the holder of any one of the licences prescribed in s 53(1)(a) of the Act. Nor did it employ a person holding a requisite licence. Furthermore, it did not possess the written authority of the Director as mandated by s 59(4)(a) of the Regulations.

For B the duration of each hunt the individual purchaser and his party were provided with residential accommodation, linen, crockery and cutlery, but no food or drink. The accommodation was serviced by the appellant's staff, who were available to cook for the party if asked to do so. The purchaser utilised his own motor vehicles and firearms. Each motor vehicle had to be D accompanied by a guide or tracker in the employ of the appellant. His presence was to ensure that the purchaser did not stray beyond the boundaries of the farm. He was further required to notify management in the event of an animal being wounded in the course of a hunt, so that it could be followed and killed.

As I understood the arguments of counsel, it was common cause, and rightly E so, that there is nothing in the Act or Regulations to prohibit a person from selling hunting rights over the property owned, and nothing to prohibit the purchaser of such rights from being left to hunt on his own. The basic distinction drawn in this legislation is between hunting, on the one hand, and the conduct of a hunting safari, on the other. Compare ss 47 and 48 with ss 53 F and 54 of the Act; and ss 17 to 27 and 52 to 54 with ss 55 to 60 of the Regulations.

I am in agreement, therefore, that the sole point to determine is whether the three purchasers engaged in a hunt on their own, or whether the appellant G conducted the purchasers on a hunting safari.

Black's Law Dictionary, Abridged 5 ed (1983) at p 155, gives to the verb "conduct" the meaning:

"To manage, direct, lead, have direction, regulate."

See H also Chambers 20th Century Dictionary (1983) at p 263.

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In Fouriesburg Hotels (Pty) Ltd v van Rensburg 1981 (1) SA 517 (O) at 521F-G, A it was said that in the sense used in the subject section the word "conduct" means to "direct, manage, (business etc)"; while "control" means to "dominate, command; exert control over".

Much the same concept of management or direction was attributed to the word by PICKFORD LJ in The Mickleham [1918] P 166 (CA). He held at 169 B that a regulation which provided that a vessel must be conducted by pilots licensed by the London Trinity House, meant:

"conducted by a pilot who is compulsorily in charge and not merely navigated under his advice" (my emphasis). C

Again, in Pride of Derby and Derbyshire Angling Assn Ltd & Anor v British Celanese Ltd & Ors [1953] 1 All ER 179 (CA) LORD EVERSHED MR remarked at 189E-F, "The word 'conduct' seems to me to mean 'manage' or 'operate'." I accept these authorities as reflecting the plain and ordinary meaning of the word. D

The primary rule of interpretation is, of course, to endeavour to ascertain the intention of the lawmaker from an examination of the provision under consideration, placed in proper context. A court will commence its enquiry by giving the word its grammatical signification, unless it is clear that the literal sense, when so applied, defeats the legislative intendment. In such E event, a deviation from the ordinary meaning is justified, provided always that the word is sufficiently flexible to admit of another meaning by which such intention can be better effected. See Ebrahim v Minister of the Interior 1977 (1) SA 665 (A) at 678A-C; Birch v Klein Karoo Agricultural Co-operative Ltd 1993 (3) SA 403 (A) at 411E-G. F

Viewed in the setting of ss 53(1)(a) and 54(1)(a) of the Act, and of ss 57A, 57B(2)(b), 58(1) and 59(1) of the Regulations, there is, in my view, no indication that the lawmaker intended to give to the word "conduct" any meaning dissimilar from "manage", "direct", "be in charge of".

It follows that the question is simply this: Was it the appellant G or the purchasers who managed, directed or were in charge of, these hunts?

It was the purchasers who, each day, chose the time to commence and terminate the hunt. It was they who determined the precise area of the farm upon which to carry out the hunt. The order in which the animals on quota, H

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or A any additional animals won at the auction, were to be hunted, was at the sole discretion of the purchasers. The method of hunting, that is, whether to track the animals by motor vehicle or by foot, was dependent upon the decision of the purchasers. The type of firearms and ammunition to be used was not dictated to the purchasers.

The B respondent's counsel laid emphasis on the mandatory presence of a guide or tracker. Certainly such presence is a relevant factor. But one must ascertain the predominant reason for it being insisted upon. It was to ensure that the purchasers adhered to the conditions of the hunt sold to them; that they hunted only the quota animals or any additional ones purchased; that they did not stray beyond the confines of Greater Kudu Land; and so that any C animal wounded by the purchasers could be found later and destroyed. The guide or tracker would offer advice to the purchasers only when asked. They would not volunteer advice. They were not in control. In sum, it seems to me that the guide or tracker was there to monitor the hunt rather than to manage or direct the activities of the purchaser in carrying it out.

Nor D do I consider that much assistance is afforded the respondent's contention that the appellant conducted the hunts, by the content of the auction prospectus. This booklet sets out the conditions upon which the appellant was prepared to sell a hunt on its property. It specified the availability of ten separate hunts, the dates during which they were to be undertaken, and the E type and number of the animals it was permissible to shoot. It indicated that each hunt catered only for two

persons hunting, but that a maximum of twenty persons (family members, friends and workers) could be in the party. Wounded animals counted against the bag. Night hunting was prohibited except in the case of leopard. Finally, the purchaser was to report to management twenty-four hours before the date the hunt was to commence F and vacate the farm within twenty-four hours of the hunt finishing.

A conspectus of all relevant factors, satisfies me that the State failed to prove that the appellant conducted a hunting safari on any of the three occasions charged.

The G appeal is accordingly upheld and the convictions and sentence set aside.

Korsah JA: I agree

Ebrahim JA: I agree H