

**Lance Bessick v The State. Case no. A539/2010. Judgement 29 May 2012.
Western Cape High Court (Cape Town)**

KEY CONCEPTS	
Rape of 15-year-old female	Meaning of oath
S164 of CPA Act 1977	Competency examination
Enquiry into oath	

A 15-year-old complainant testified on a charge of rape against the appellant. Before she testified, the magistrate asked her whether she understood what the word 'oath' ("bevestiging" or "eed") meant. She replied "no," whereupon the magistrate proceeded to conduct an informal inquiry into whether the complainant was able to distinguish between truth and lies. The court then made a finding that the complainant was able to distinguish between truth and lies and was able to appreciate the importance of speaking the truth. The court found further that, since the complainant did not understand the meaning of the word 'oath' ("bevestiging" or "eed"), she was unable to take the oath because she did not understand the nature or import of the oath. Her evidence was, therefore, received in terms of s164 of the Criminal Procedure Act 51 of 1977 and she was warned to tell the truth.

Section 164 provides that unsworn or unaffirmed evidence is admissible when:

- (1) Any person, who is found not to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation: Provided that such person shall, in lieu of the oath or affirmation, be admonished by the presiding judge or judicial officer to speak the truth.

The appellant argued that the complainant's evidence was inadmissible since it had not been given under oath. The crux of the matter turned on the meaning of the phrase "understanding the nature and import of the oath." Although preferable, a formal inquiry is not necessary to determine whether the witness understands the nature and import of the oath. The presiding officer can come to such a conclusion from the surrounding circumstances, but it is necessary that some form of an inquiry takes place.

The presiding officer must be satisfied that the witness does not understand the nature and the import of the oath, which may require explaining to the witness what the oath means. Simply asking a complainant what the word means is not sufficient to make a finding that a witness does or does not understand the nature and import of the oath. The witness may simply not understand the meaning of the word, but understand the concept once the word has been explained.

The full bench of the High Court found that the oath inquiry conducted by the magistrate in this case was inadequate as it simply amounted to asking the complainant whether she knew what the word meant. The magistrate needed to go further and explain the meaning

of the word to see whether the child understood the nature and import. As a result, the evidence of the witness had to be excluded as it was not given under oath and, consequently, the appeal on conviction was upheld.