G.P.-S.384—1952-3—10,000.

U.D.J. 443.

236/54

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(.....DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPEL IN KRIMINELE SAAK.

.....

Appellant.

versus

.....

Respondent.

Appellant's Attorney Medallie *Respondent's Attorney* 4321.
Prokureur van Appellant *Prokureur van Respondent*

Appellant's Advocate O. Gayed Q.C., C. Cooper *Respondent's Advocate* (Myburgh & H. Blenden)
Advokaat van Appelant *Advokaat van Respondent*

Set down for hearing on:—.....
Op die rol geplaas vir verhoor op:—

Gayed: 1.45; Myburgh 10.45 — 12.0 — C.A.V.)

Judgment: 3/3/55.

Appeal dismissed.

3/3/55.

Original

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between :-

MARIA MASILELA Appellant

and

R E G I N A Respondent

Coram: Centlivres, C.J., Greenberg, Schreiner, Hoexter et Fagan, JJ.A.

Heard: 14th. March, 1955. Delivered: 30-3-1955

J U D G M E N T

GREENBERG J.A. :- The appellant was charged in the magistrate's court with a contravention of section 15 (1) of Act 25 of 1945 read with Proclamation No. 22 of 1953 in that in the district of Pretoria she, being a native, wrongfully and unlawfully resided in or occupied a dwelling on land outside an urban area situate within ten miles of the urban area of Pretoria without the written approval of the Minister while she was not a bona fide in the employment of the owner, lessee or occupier of such land. The Proclamation referred to in the charge was one made under section 15(2) of the Act and it extends the limit of five miles mentioned in section 15 (1) to ten miles in the case of the urban area of Pretoria.

The/.....

The only point in issue at the trial and in the subsequent proceedings ~~was~~ is whether the area in which the land referred to in the charge ~~the~~ fell outside ~~of~~ an urban area, the contention on the part of the appellant being that as this land was in a township, known as Riverside, which fell within the jurisdiction of the Peri-Urban Areas Health Board as constituted under Ordinance No. 20 of 1943 (Transvaal), it was within, and not outside an urban area as alleged in the charge. It was common cause that the land did fall within the jurisdiction of the above-mentioned ~~Health~~ Board, and the only question ~~was~~ ~~and~~ is whether this Board is a "health board" within the definition of "urban local authority" contained in section 1 of the Act. This definition reads : "Urban local authority "means any municipal council, borough council, town council "or village council, or any ~~lesser~~ town board, village management board, local board, health board or health committee." In the same section "urban area" is defined as "an area "under the jurisdiction of an urban local authority." The magistrate convicted the appellant and on appeal the Transvaal Provincial Division, considering itself bound by two decisions of the full court of that Division, without more dismissed the appeal but granted leave to appeal to this

Court./.....

Court. These two decisions are Rex v. Mziza (1946 T.P.D. page 654) and van Wyk v. Johannesburg Liquor Licensing Board (1949 (4) S.A. page 192).

The former of these cases dealt with the exact point in issue in this appeal, and held that the Board was not an urban local authority in terms of the definition. The judgment expressed its agreement with the decision in Kupfer v. Carnarvon Liquor Licensing Board (1938 C.P.D. page 136), where it was held that a body known as the Vanwyksvlei Settlement Board was neither a local board, nor a health board nor a health committee in terms of the definition of "urban local authority" contained in section 175 of the Liquor Act,No. 30 of 1928; this definition, word for word, is the same as the definition with which we are concerned. The presiding judge (the present Chief Justice) in giving the reasons for the decision, said at page 138 :- " It seems to me to be quite clear from the "legislation in the matter of local authorities that when "the Legislature defined 'urban local authority' in the "Act of 1928 it must have had in mind the nomenclature "which was given to local governing bodies in various parts "of the Union,because, as I shall show in a moment, that "nomenclature differs in the different provinces."

Later/.....

Later on the same page the learned judge gave a list of the Provincial Ordinances in which the various institutions referred to in the definition were mentioned (this list included Ordinance 4 of 1926 (Natal) the long title of which is "To establish Local Administration and Health Boards"), and his conclusion, after setting out the list, was in these terms, ~~where he said~~ at page 139:- " So what I have said shows, "to my mind, that when Parliament used these terms Parlia- "ment must be taken to have had in mind the statutory nomen- "clature which had been given to various local government "bodies by the different Provincial Ordinances."

The definition which was under consideration appeared in the 1928 Act and the Ordinances mentioned in the judgment were all prior to that date. The difference between Kupfer's case on the one hand and the case of Rex v. Mziza (supra) and the present case on the other is that, although these latter cases were concerned with the definition in the 1945 Act under which the appellant is charged, the definition was taken over verbatim from Act 21 of 1923, which the 1945 Act repealed and I think it must be taken that the legislature, in enacting the 1945 definition, intended it to have the same meaning as in the 1923 Act. It could not therefore have had in mind a "statutory nomenclature" that first appeared at a later date than 1923. In the list of Provincial Ordinances

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set out in Kupfer's case there is more than one that bears a later date than 1923 but with one exception these are cases where the same nomenclature had been used in earlier legislation. In the case of Ordinance 4 of 1926 (Natal), however, in which the learned judge in Kupfer's case found the origin of the words "health board", I have been unable to find, nor have counsel been able to refer the Court to, any earlier legislation which was the predecessor of the 1926 Ordinance and in which the phrase was used; it seems therefore that the use of the phrase in the 1923 Act and consequently also in the 1945 Act cannot be explained by reference to the language in the 1926 Ordinance. There is a reference, viz. in section 153 of the Public Health Act, No. 36 of 1919, to "The board of health for the division of Kimberley "constituted under" a Cape Act, No.10 of 1884; the section also provides that this board shall be the local authority for the division of Kimberley in terms of section 7 of the 1919 Act. I am at least doubtful whether the legislature had in mind this reference to a board of health when it promulgated the definition in the 1923 and the 1945 Acts; it is not without significance that this reference escaped the notice of counsel on both sides to whom an enquiry was directed after the completion of argument and I do not think

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it surprising that it did. There is therefore this difference between Kupfer's case and the present case. It was also contended by counsel for the appellant that, assuming that the definition in the Liquor Act was correctly construed in Kupfer's case, that comstruction, which dealt with a different Act, would not necessarily apply to the definition in the 1923 and the 1945 Acts; he illustrated a possible difference by drawing our attention to section 63 of the Liquor Act in regard to which he said that the quota provisions contained in that section would be difficult to apply to the Peri-Urban area, but that no such difficulty arose in the 1945 Act. This contention is not without substance, although there is some probability, in view of the fact that the definition in the Liquor Act in wording is an exact repetition of the definition in the 1923 Act, that it was copied from it and this makes it likely that it was intended to have the same meaning. On the whole however, I prefer not to regard the decision in the Cape case as entirely covering the question before us.

The definition clearly is of the listing and not of the descriptive type; if it were the latter, it would give a description including the features

that/.....

that it intended should provide the test of what was an urban authority. One is driven to ask whence the legislature got its list and the answer seems to me to be the same as that given in Kupfer's case, viz. from statutory bodies named in various provisions of Acts or Ordinances. If I am right in assuming that section 153 of the Public Health Act was not in the mind of the law-giver in 1923, then the reasonable conclusion is that the law-giver made a mistake and thought that legislative provision had been made for health boards as well as for the other bodies mentioned in the definition; the only reasonable alternative to this conclusion would be that Parliament made a definition which was of the listing type in regard to all the bodies except the class of health boards, which appears to be unlikely, even without invoking the aid of the maxim (c) nescitur a sociis (see Commissioner for Inland Revenue v. Lunnon, 1924 A.D.94 at pages 98 and 99). There are other considerations which also point to the conclusion that the Peri-Urban Areas Health Board does not fall within the definition.

It is true that in Act 25 of 1945, as in its predecessor Act 21 of 1923 and in the Liquor Act of 1928, the definition of the words "urban local authority",

viz./.....

viz. as meaning any municipal council and the other bodies mentioned, does not expressly require that these bodies should be urban local authorities or should be local authorities but the fact that the definition is of an "urban local authority" is of importance in arriving at the meaning of the words used to describe these bodies and if the Peri-Urban Areas Health Board is neither urban nor a local authority, this would be a good reason for thinking that it was not one of the bodies mentioned in the definition. The fact that the area under the jurisdiction of the Board consists of "a number of areas in various parts of the "Transvaal in extent approximately one-eleventh of the area "of the Transvaal Province" taken in conjunction with the description "peri-urban" makes it clear that the area under that jurisdiction is not "urban" in its ordinary sense or in the sense in which this word is used in the legislation dealing with urban ~~and rural~~ local authorities. (The passage I have just cited in regard to the character and extent of the area of jurisdiction of the Board appears in Rex v. Mziza (supra at page 657) and the facts it sets out were referred to by counsel for the appellant).

The other question in this connection is whether there is anything to indicate that the

Board/.....

Board is a local authority. In Rex v. Mziza (supra) it was also held that the Ordinance establishing the Peri-Urban Areas Health Board, No. 20 of 1943 (Transvaal), was beyond the powers of the Provincial Council under section 85 (VI) of the South Africa Act as amended by section 1 of Act 1 of 1926; one of the reasons for this conclusion was that this Board was not a local institution. I see no ground for disagreeing with this view which was not challenged in argument; moreover section 1 of Act 41 of 1947, which validated the Ordinance, proceeds on the assumption that the Peri-Urban Areas Health Board is not a local institution. From the terms of section 85 (VI) of the South Africa Act as amended, it would appear that "local institutions" is a term akin in meaning to or covering "local authorities" and it therefore appears to me that the Board is not a local authority.

In view of these considerations, I think that the definition in question should be construed in the same way as the definition in Kupfer's case and that consdquently the Peri-Urban Areas Health Board is not a "health board" in terms of the definition. In my opinion the appeal should be dismissed.

Centlivres, C.J.)
Schreiner, J.A.) Concur.
Hoexter, J.A.)
Fagan, J.A.)

Leo Greenberg