



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case No: 653/10

In the matter between:

CASINO ENTERPRISES (PTY) LTD

APPELLANT

and

THE GAUTENG GAMBLING BOARD

FIRST RESPONDENT

THE NATIONAL GAMBLING BOARD

SECOND RESPONDENT

THE MINISTER OF TRADE & INDUSTRY

THIRD RESPONDENT

Neutral citation: *Casino Enterprises v The Gauteng Gambling Board* (653/10) [2011] ZASCA 155 (28 September 2011)

Coram: HEHER, PONNAN, SERITI JJA, PLASKET and PETSE AJJA

Heard: 23 August 2011

Delivered: 28 September 2011

Updated:

Summary: Gambling – National Gambling Act 7 of 2004 – Gauteng Gambling Act 4 of 1995 – gambling – what constitutes - internet casino – operated from Swaziland - whether interaction with players in Republic gambling in South Africa.

ORDER

On appeal from: North Gauteng High Court (Pretoria) (Tuchten J sitting as court of first instance):

The appeal is dismissed.

JUDGMENT

HEHER JA (PONNAN, SERITI JJA, PLASKET AND PETSE AJJA concurring):

[1] This is an appeal against a judgment of Tuchten J sitting in the North Gauteng High Court with leave of the learned judge. His judgement has been reported.¹

[2] The appellant is a company registered and incorporated in Swaziland. It owns and operates a land-based casino in and an internet casino (also referred to as an online casino) from that kingdom. Both operations are duly licensed there, trading under the name Piggs Peak. Neither is licensed in South Africa.

[3] The real dispute in this appeal is whether the activities of the internet casino contravene the gambling laws of this country, being for present purposes, the National Gambling Act, 7 of 2004 ('the NGA') and the Gauteng Gambling Act, 4 of 1995 ('the GGA'), when gamblers in South Africa gamble on-line.

[4] The genesis of the dispute was a notification by the first respondent (the Gauteng Gambling Board) to certain radio stations broadcasting in Gauteng that they were prohibited in terms of s 71 (1) of the GGA from advertising or distributing any information in the province concerning the appellant's internet casino and threatening them with prosecution in terms of s 71 (3). As a result the stations withdrew all advertising that referred to on-line gambling with that casino and have since refused to air such advertisements.

[5] The appellant instituted motion proceedings against the first respondent in this

appeal, the National Gambling Board (the second respondent) and the Minister of Trade & Industry (the third respondent). Those proceedings were referred to trial because expert witnesses of the appellant and the first respondent had expressed conflicting views in their respective affidavits about where the gambling with the internet casino took place. The third respondent did not participate in the trial.

[6] At the trial the appellant sought declaratory relief to the effect that when persons in Gauteng gamble with the internet casino, such gambling takes place in Swaziland and not in South Africa and that such activities do not contravene any of the provisions of either Act.

[7] In the alternative the appellant claimed a declaration that, when gamblers in Gauteng gamble on the internet casino, such gambling is made available to them on the appellant's computer servers in Swaziland, and not in Gauteng in any manner that contravenes either Act.

[8] The appellant also sought a declaratory order that any advertising occurring in South Africa in respect of its Swaziland internet casino was not unlawful and did not constitute a contravention of s 15 of the NGA or s 71 (1) of the GGA.

[9] The parties called their respective experts, Prof Hazelhurst for the appellant and Prof S H von Solms for the first and second respondents, to testify. The debate was whether gambling with the internet casino takes place solely in Swaziland or, because of the essential player input without which the server in Swaziland would be inactive, both in South Africa and Swaziland.

[10] The court a quo dismissed all aspects of the appellant's claims on the basis that persons who interact with the casino engage in gambling in South Africa and that such gambling is unlawful because the appellant does not hold a gambling licence in South Africa.

¹ *Casino Enterprises (Pty) Ltd (Swaziland) v Gauteng Gambling Board and Others* 2010 (6) SA 38 (GNP).

[11] The grounds for the court's decision in regard to the GGA were that certain actions undertaken by the gambler take place in Gauteng and constitute gambling as defined by the GGA. Since such gambling does not take place at licenced premises the actions of the gambler are unlawful.

[12] With regard to the NGA the court held that it mattered not that certain elements identified in ss 5(1)(a)(i) and (ii) take place in Swaziland since s 11 of the NGA prohibits engaging in or making available 'the game as a whole'. The court found that this takes place when a gambler presses the spin button and connects interactively with the servers in Swaziland.

The statutory prohibitions

[13] The following provisions of both the Acts are of relevance to this appeal

(1) Section 15 of the NGA provides:

'(1) A person must not advertise or promote-

(a) any gambling activity-

(i) . . .

(ii) that is unlawful in terms of this Act or applicable provincial law;

or . . .'

(2) Section 8 of the NGA provides:

'Despite any other law, a person must not engage in, conduct or make available a gambling activity except-

(a) a licensed gambling activity; . . .'

(3) Section 11 of the NGA provides:

'A person must not engage in or make available an interactive game except as authorised in terms of this Act or any other national law.'

(4) Section 71 (1) of the GGA provides:

'(1) No person shall, by way of advertisement or with intent to advertise, publish or otherwise disseminate any information concerning gambling in the Province in respect of which a licence in terms of this Act is not in force.'

Section 71 (3) renders a contravention of ss (1) a criminal offence.

(5) In terms of s 76 of the GGA:

'(1) No person may gamble on the result of any event or contingency other than –

(a) a casino game;

- (b) a bingo game;
- (c) the operation of a gaming machine;
- (d) . . .
- (e) a sporting event.

(2) No person may gamble on the result of an event or contingency contemplated in subsection (1) with any person other than the holder of a licence who is authorised by such licence to gamble on the event or contingency concerned.

(3) Any person who contravenes a provision of subsection (1) or (2) shall be guilty of an offence.'

[14] At the heart of all these prohibitions is the concept of 'gambling'. It will be necessary in due course to determine what the legislature meant in that regard.

[15] With regard to the prohibitions the following matters were common cause:

1. The appellant has no licence under either Act to engage in, conduct or make available a gambling activity as defined.
2. The games played on the appellant's website are 'interactive games' as defined in the NGA.
3. The games played on the website are 'casino games' as defined in the GGA.
4. If the games played on the website are played in the Republic (or the Gauteng Province as the case may be) they are, subject to the argument considered below relating to the application of the legislation to gambling through the internet, struck by the prohibitions.

The contentions of the appellant

[16] Appellant's counsel submits that the court a quo erred. Two main strands can be discerned in his argument to us.

[17] The first depends upon the common cause premise that neither statute has extra-territorial application.² According to the submission material aspects of any gambling initiated by a participant in the Republic occur in Swaziland. In consequence no offence is committed in this country.

[18] The second turns on a proposition that neither statute was designed with the internet in mind. Counsel submits that the evidence shows that appellant's operation of its

² This Court has so held in relation to the GGA: *Casino Enterprises (Pty) Ltd (Swaziland) v The Gauteng*

casino through that medium has consequences that were not foreseen by the legislature or catered for in the legislation: the casino operates, as it were, in cyberspace and does not have a terrestrial presence in South Africa; the servers, which are the directing minds of the casino operation, are located in Swaziland and all communication between a player and the casino can only be effective once processed by the servers there. Most notably, according to the submission, whatever game the player selects is played on the servers and the uncertain future event that is essential to the nature of gambling occurs on and is determined by the workings of the servers. In counsel's submission such a relationship between player and operator is not embraced by the terminology of either statute and an intention to extend the prohibitions on terrestrial gambling in the Republic to such a situation falls beyond the scope of the legislation. Counsel also draws attention to the transitional provisions contained in the Schedule to the NGA as evidence that the legislature did not have cross-border internet gambling in mind when enacting the prohibitions. I shall consider the force of this submission later in this judgment.

The facts

[19] In my view it is unnecessary to analyse the evidence of the respective experts. They were agreed on all the substantial facts relating to the modus operandi of the internet casino.

[20] A reasonably brief description of the process taken from the expert summary of Prof Hazelhurst will suffice. He is describing how the gambling software set up and operated by the appellant works from a technical perspective:

'2.3. There are two major components of the software. Programs run on the servers in Swaziland. Someone who wishes to play Casino software installs some software on his own computer. The software on the server and on the player's computer communicate over the internet.

2.4. . .

2.5. . .

2.6. I shall use as an example the working of a slot machine type game since this is the one for which I inspected the code. However, I understand how some of the other games work, and there is nothing in principle different from a computational perspective.

2.7. . .

2.8. For the purpose of this description, there are three key computers in an interaction between a player and the system in Swaziland: the player's own computer, and two servers in Swaziland.

(a) **The player's own computer.** From a technical perspective, the player could be anywhere in the world. But for the purpose of this discussion, I shall assume that he is in Gauteng. The software on the player's computer includes program modules that for each game displays appropriate images, takes instructions from the player which are communicated to the server, and takes results of games from the server and communicates them to the player by displaying them on the screen.

(b) **Two servers that provide the gaming services.** I shall call these the gambling server (GS) and the database server (DS). (This is a simplification of the system as there are several servers and hardware devices involved).

2.9. **The gaming server.** On the gaming server, separate programs relevant to my example run, with different responsibilities. In principle, these programs could run on different computers if the workload required it. The programs are:-

(a) A program which I shall call the workload manager (WM). It is responsible for communication with the player, for load balancing and for choosing which game to play. When the WM receives a request from the player's computer, it will validate the request by checking the player's credentials and ensuring that the message has not been corrupted in its transmission over the internet, and choose the appropriate game module to activate.

(b) Programs which actually implement the games (slots in this case, but it could be another game). A separate program runs for each game on the system. It is only these game programs which understand the details of the games and the gambling that will take place.

For the purpose of the example, I focus on the module that implements a slot game.

2.10. **The database server.** The database server is responsible for the safe, reliable storage of all important data in the system. This includes player information and the history of all games played.

2.11. The player's computer communicates through the internet with the gaming server, which communicates with the database server. The player and player's computer are ignorant of the existence of the database server and do not communicate with it.

2.12. The servers are based in Swaziland.

2.13. This type of architecture is a common architecture for electronic commerce and is known as a multi-tier architecture.

Example operation

2.14. The player must acquire a copy of the *player* software and install it on his computer – this can either be downloaded or installed from compact disc (CD) or Digital Versatile Disc (DVD). There is also a Flash version of the software which allows the user to access the online casino directly through his web browser. Essentially, the software components are automatically downloaded

transparently to the player as they are needed. The mode of acquisition of software is up to the player.

2.15. The player logs in and authenticates himself. The Workload Manager will be responsible for managing the authentication process at the game server.

2.16. Each player has what I shall call a “wallet” in the Piggs Peak system. This is the amount of money which is available to the client to play with. I have been informed that at any time the client may close his wallet and transfer the money back to his bank account. Before playing any games, the player must have a positive balance in his wallet.

2.17. The player is presented with a choice of games to play and then chooses which game to play. The paragraphs below describe what happens when the client chooses a typical slot game.

2.18. The player’s screen displays the game. In the case of the slots game, these are very colourful images which show the initial positions of the slots as well as the “paylines” that the player can choose in response to the game. These are essentially the bets the player may make.

2.19. The following sequence of events occurs. . . .

(a) The player decides which paylines to choose and the stakes, and presses *Spin*. From this point, until stage 2.19(h), the player’s computer will display spinning wheels/slots.

(b) The player’s computer records the information about the game choices in an XML data structure, and then sends this structure with the player’s credentials encrypted using the SSL protocol over the internet to the game server. From this point until stage 2.19(h), no processing takes place on the player’s computer other than the displaying of spinning wheels/slots. At this point the player’s program acts *asynchronously* of the server computers.

(c) The Workload Manager on the game server receives the packet from the client computer, validates the packet as being genuine, and based on the packet and the workload of the system allocates the player’s choice of game to the appropriate game program. A message is sent to the game program using a standard network send routine.

(d) The game program then takes the information stored in the XML record about the player’s choices and plays the game on the game server according to the rules of the game. The game module calls a pseudo-random number generator routine that introduces the factor of chance into the game.

(e) Once the game has been played and the results are known, the game program processes the results into the database by doing a call (over the network) to the database server, which performs a set of SQL (database) commands as a transaction. The transaction records the outcome of the game, updates the player’s balance in his wallet, and retrieves the updated balance.

(f) The confirmed game result and updated balance are sent to the Workload Manager.

(g) The Workload Manager packages the results, encrypts the data and sends the results and updated balance back to the player’s computer.

(h) The player's computer receives and decrypts the packet and displays the results on the player's computer.

2.20. It is important to point out that in this process, once the player presses "Spin", he has no control over the outcome of the game. Once the packet with his choice has been sent to the game server, the behaviour of the player and/or the program on the player's computer is irrelevant, and has no effect on the game being played and the results of the game.

2.21. If the player's computer is switched off or struck by lightning or if there is a network failure, there will be no consequences for the outcome of the game. The various components of the server will continue to operate, the game will continue to play, the result will be determined, and the player's status will be updated. The game server will attempt to send a message to the client computer with the result, which will not be received. However, the non-receipt of the message will have no effect on the outcome. At a later stage, should the player log in to the system, he will be informed of the outcome. Even if he never logs in again, the gaming records and status of his wallet will have changed.

2.22. . .

2.23. . .

2.24. . .

2.25. Based on this analysis, I believe that the following actions occur in the province:

- (a) The player may initiate the moving of money between his "wallet" in the casino and his bank account;
- (b) The player decides which game to play, which bets to make, and what stakes to play;
- (c) The player presses (in this case) "Spin" (other games require other actions). This initiates a sequence of actions which includes the sending of the data packet to the server and the spinning wheels being displayed on the screen.

2.26. Based on this analysis, I believe the following actions take place in Swaziland:

- (a) Verification of the player's credentials;
- (b) Records of monetary transactions are kept;
- (c) The player's "wallet" is kept;
- (d) The state of the current game and all game history is kept;
- (e) The games are offered;
- (f) The games are played by the game server interpreting any instructions from the player;
- (g) The outcomes of the games are determined;
- (h) The effect of the outcome on the player's balance and status is determined.'

[21] The materiality of the facts in the summary (inasmuch as any action takes place in

or out of the Republic) depends not on the opinion of the expert witness but upon what, in the context of the respective statutes, is meant by the concept of 'gambling'. Any aspect that is irrelevant to the proper meaning, eg the place of pay-out, can be ignored.

The meaning of 'gambling' under the statutes

The NGA

[22] An express purpose of the NGA, as stated in the preamble, is 'to safeguard people participating in gambling . . . against the adverse effect of gambling', and to that end to establish norms and standards applying throughout the Republic with regard to gambling so that (inter alia)

* gambling activities are effectively regulated licensed, controlled and policed;

. . . .

* society and the economy are protected against over-stimulation of the latent demand for gambling.'

These norms and standards are embodied in the national gambling policy which is set out in Chapter 2 of the Act. In general, having regard to the content and structure of the NGA three main aims can be identified as the reason for the regulation and control of gambling:

1. The protection of the public against the potentially harmful effects of gambling.
2. The protection of licensed gambling activities against competition from unlicensed operators.
3. The protection of the income which the State derives from the licensing of gambling.

[23] As this Court recognised in the *Lotto* case³ it is notorious that gambling is no respecter of international boundaries. Adequate protection of the public against exploitation requires proper regulation and licensing. In construing the NGA as a remedial statute designed to meet the challenges posed by, for example, the internet as a developing platform for cross-border gambling activities its terms should be understood in a broad rather than a narrow sense where such extension is feasible. See eg *Slims (Pty) Ltd and Another v Morris* NO 1988 (1) SA 715 (A) at 734D-F.

[24] Counsel for the respondents referred to dicta in judgments from the United States concerning internet gambling. In *The People of the State of New York v World Interactive*

³ *Online Lottery Services (Pty) Ltd and Others v National Lotteries Board and Others* 2010 (5) SA 349 (SCA) at 357C.

Gaming 185 Misc. 2d 852, 714 N.Y.S. 2d 844 the Attorney-General applied *inter alia* to interdict the respondent from operating within or offering to residents of New York State gambling over the internet. The central issue was whether the State could enjoin a foreign corporation legally licensed to operate a casino offshore from offering such gambling to internet users in New York. The State constitution contained a prohibition against unauthorised gambling. The Court said (at para 9):

'Respondents argue that the Court lacks subject matter jurisdiction, and that Internet gambling falls outside the scope of New York state gambling prohibitions, because the gambling occurs outside of New York state. However, under New York Penal Law, if the person engaged in gambling is located in New York, then New York is the location where the gambling occurred [See, Penal Law § 225.00(2)]. Here, some or all of those funds in an Antiguan bank account are staked every time the New York user enters betting information into the computer. It is irrelevant that Internet gambling is legal in Antigua. The act of entering the bet and transmitting the information from New York via the Internet is adequate to constitute gambling activity within the New York state.

Wide range implications would arise if this Court adopted respondents' argument that activities or transactions which may be targeted at New York residents are beyond the state's jurisdiction. Not only would such an approach severely undermine this state's deep-rooted policy against unauthorized gambling, it also would immunize from liability anyone who engages in any activity over the Internet which is otherwise illegal in this state. A computer server cannot be permitted to function as a shield against liability, particularly in this case where respondents actively targeted New York as the location where they conducted many of their allegedly illegal activities. Even though gambling is legal where the bet was accepted, the activity was transmitted from New York. Contrary to respondents' unsupported allegation of an Antiguan management company managing GCC, the evidence also indicates that the individuals who gave the computer commands operated from WIGC's New York Office. The respondents enticed Internet users, including New York residents, to play in their casino.'

Although as the extract makes clear, the New York statute was in terms different from those under consideration here, the practical policy that underlies the dictum is equally valid in the Republic, *vis-a-vis* the need to counter potentially harmful communications generated and transmitted from beyond the country's borders. The question is whether such reasoning can be reconciled with the terms of the NGA and the GGA.

[25] Counsel for the appellants referred us to a number of foreign authorities which, he submitted, supported the contention that his client operated its casino in Swaziland and not

in South Africa. I do not find any directly in point as this appeal clearly turns on the terms of the two statutes under consideration and the application of the facts to those statutes. I would however echo the words of Jonathan Parker LJ in *800-Flowers Trade Mark* [2002] F.S.R.12 at para 136:

‘The implications of Internet use for issues of jurisdiction are clearly wide-ranging, and will need to be worked out with care both in domestic and in private international law . . . I do venture to suggest that the essence of the problem is to fit the factual circumstances of Internet use into the substantive rules of law applying to the many and very different legal issues that the Internet affects. It is therefore unlikely, and it is nowhere suggested, that there will be one uniform rule, specific to the Internet, that can be applied in all cases of Internet use.’

We are of course, not concerned with a case of private international law, but the suggested approach certainly has relevance to the domestic law that we must consider and to the manner in which I propose to confront the problem.

[26] Section 3 of the NGA provides:

‘An activity is a gambling activity if it involves-

- (a) placing or accepting a bet or wager in terms of section 4 (1);
- (b) [not relevant];
- (c) making available for play, or playing-
 - (i) bingo or another gambling game in terms of section 5; or
 - (ii) [not relevant].’

[27] According to s 4:

‘(1) A person places or accepts a bet or wager when that person-

- . . . (c) stakes or accepts a stake of money or anything of value with one or more other persons on any contingency; or
- . . .’

[28] Section 5 provides:

‘(1) An activity is a gambling game if-

- (a) it meets the following criteria:
 - (i) it is played upon payment of any consideration, with the chance that the person playing the game might become entitled to, or receive a pay-out; and
 - (ii) the result might be determined by the skill of the player, the element of chance, or both; or

(b) [not relevant].’

[29] No express definition of the term ‘gambling’ is included in the Act but the intention is made clear, particularly in s 5. Very much in accord with the common law – see eg *Rademeyer v Evenwel* 1971 (3) SA 339 (T) – the elements of gambling are-

(i) payment of a consideration (stake, bet or wager)

(ii) the chance (contingency) of becoming entitled to or receive a pay-out (the uncertain future event).

Once those criteria are satisfied in the context of s 4(1) the player who places the stake is gambling and (since gambling is necessarily a reciprocal activity) the other party or parties who make the gambling game available or accept the wager (who may be different persons) is or are likewise engaged or involved in a gambling activity. These criteria do not vary according to whether one is considering a terrestrial encounter between player and casino or whether the meeting takes place in cyberspace.

The GGA

[30] In this Act ‘gambling’ is defined in s 1 as follows:

“gambling” means the wagering of a stake of money or anything of value on the unknown result of a future event at the risk of losing all or a portion thereof for the sake of a return, irrespective of whether any measure of skill is involved or not and encompasses all forms of gambling and betting, but excludes the operation of a machine contemplated in subsection (3) or (4): Provided that the responsible Member may, on the recommendation of the board, declare certain games of skill not to be gambling;’.

From this definition it is clear that the essence of ‘gambling’ under the GGA is, as under the NGA, the staking of a consideration on an uncertain future event.

[31] So also the aims which the provincial legislation seeks to achieve, as spelled out in the preamble to the GGA accord in substance with those that inform the interpretation of the NGA.

[32] There is an obvious concurrence in reasoning between the two Acts as to when gambling can properly be said to take place.

[33] Having determined that gambling takes place when a player places a stake upon an uncertain chance it becomes necessary to decide whether and, if so, at what point in the course of the operations described in para 20 that fulfilment is achieved. In my view the key facts are those contained in paras 2.19(a), 2.20 and 2.21 of the summary.

[34] According to these facts the stake is irrevocably placed on the outcome of the player's chosen gambling game (and the gamble is under way) at the moment that he or she activates the 'Spin' button (or its equivalent). The fact that any or all of the actions described by Prof Hazelhurst may occur in Swaziland after or as a consequence of that activation is, it seems to me, irrelevant to the central issue as none of those actions changes the reality that the player at his or her computer has in South Africa committed himself or herself to staking money on the chance. That takes place where the player is (in South Africa) and not in Swaziland.

[35] Such an interpretation satisfies the aims of the statute: the prospective player is 'seduced' in South Africa, he or she takes and activates the crucial decision to gamble here, he or she is impoverished here; the internet casino intrudes upon the field of licensed operators here and it does so without payment of dues to the State. The legislature is concerned with substance, not form, and if gambling takes place in South Africa it is of no consequence what means are employed to facilitate it and whether those means are employed outside the country.

[36] Moreover the appellant 'makes' such games 'available' to prospective players in South Africa. The purpose of the Act is to control the effect of gambling on South Africans in South Africa whatever the source of the temptation may be. In so far as the intention of the appellant is to use the internet casino to introduce South Africans to the 'delights' of direct gambling from their homes (or places of business) it places no strain upon the ordinary meaning of the expression to treat the placing and maintenance on the web of an internet casino which is readily accessible to such persons as acts of making gambling available in South Africa. The appellant's advertising on its web-site informs the interested viewer that

'In just a few easy steps you can start playing all your favourite casino games from the comfort of your own home' and

'Imagine being able to enjoy all your favourite slot machine games in your own personal cozy abode where you can just relax and be at home.'

Although these statements no doubt contain some hyperbole, they also identify an essential truth in what the appellant is doing: the opportunity to gamble is being offered to the would-be player wherever it finds him or her with a computer link to the internet, which usually means in the home or office.

[37] It is now necessary to consider an argument tentatively offered by Mr Ginsburg relating to the interpretation of 'gambling', 'gambling activities' and 'gambling games' in the NGA. As I understood him, in so far as this case concerns gambling through the medium of the internet, the legislative intention is unformed (or at least, inchoate) and cannot be construed to proscribe such activities (save to the limited extent of s 11). This is because Item 5 of the Schedule to the Act expressly provided for the establishment of a committee to consider and report on national policy to regulate interactive gambling within the Republic and required the Minister, within two years of the effective date of the Act (1 November 2004) to introduce legislation in Parliament to regulate such gambling. Such legislation was introduced by the National Gambling Amendment Act 10 of 2004 but has yet to be put into operation.

[38] Given the broad and undefined scope and effect of the transitional provisions, our obligation is to interpret the body of the statute as we find it, particularly when it is, as I see it, unambiguous in its terms. We cannot be diverted by the subsequent caution (or hindsight) of the legislature into watering down its plain meaning by reliance on amending provisions that have not been, and may never be, brought into operation. Even then the scope for interpreting an earlier law by reference to legislative intention in a later statute (albeit an amending one) is limited: *Clan Transport Co (Pvt) Ltd v Road Services Board* 1956 (4) SA 26 (SR) at 33H-34E; *Woodley v Guardian Assurance Co of SA Ltd* 1976 (1) SA 758 (W) at 764B-F. It cannot be said (and counsel did not argue) that the amendment 'proceeded on the assumed basis that the earlier Act had a particular meaning, and by so proceeding it tacitly interpreted the earlier legislation': *Clan Transport* at 34E.

[39] That the appellant neither 'engages in' nor 'makes available' the gambling activities offered on its casino website was maintained by its counsel with no great enthusiasm,

rightly so, as I see it. To 'engage in' means to 'participate in' or 'be involved in' any form of business (Concise OED 472). To 'make available' means to 'render accessible for use' or 'place at one's disposal or within one's reach'; see *Reynolds Brothers Ltd v Chairman, Local Road Transportation Board, Johannesburg and Another* 1985 (2) SA 790 (A) at 802. The 'engagement' and the 'making available' both take place wherever the participant finds him- or herself, which, as the introductory material on the website makes clear, is the appellant's stated intention.

[40] The conclusions at which I have thus arrived have the effect that persons in South Africa who gamble with the appellant as well as the appellant in its interactive participation contravene the provisions of ss 8 and 11 of the NGA and ss 76 (2) of the GGA. The consequence is that advertisement of information concerning the activities of the appellant's casino is prohibited by s 15 (1) of the first-mentioned and s 71 (1) of the last-mentioned statute.

[41] The court a quo was for these reasons correct in its dismissal of the action instituted by the appellant. The parties have agreed that no order for costs should follow the result of this appeal.

[42] In consequence an order is made that the appeal be dismissed.

J A Heher
Judge of Appeal

APPEARANCES

APPELLANT: P Ginsburg SC (with him E W Dunn SC and I Miltz SC)
Hack Stupel & Ross, Pretoria
Lovius Block, Bloemfontein

1st and 2nd RESPONDENTS: I A M Semanya SC (with him V Maleka SC and N
Nharmuravate)
Mdlulwa Nkuhlu Inc, Sandton
Symington & De Kok, Bloemfontein

3rd RESPONDENT: No appearance