I N D E X

NO-SENTENCE ANNIE SILINGA

vs.

R E G I N A

ORDINARY JURISDICTION

No. 3139 / 1956.

IN THE COURT OF THE NATIVE COMMISSIONER:

for the District of the Cape Peninsula holden at Langa before B. F. LIZAMORE, Esquire, Add. Native Commissioner for the said District, on the 21st day of May, 1956.

REGINA versus

NO-SENTENCE alias ANNIE SILINGA, N/F, 52 years,

No. 754 Jungle Walk, Langa,

charged with the offence of contravening Section 10(4) read with Section 10(1) of Act 25 of 1945, both as substituted by Section 27 of Act 54 of 1952, and read with Section 44 of Act 25 of 1945, as amended,

in that upon or about the 19th day of May 1956, and at or near Langa, in the said District, the accused, being a Native:-

(a) who was not born and did not permanently reside in the Proclaimed Area of the Cape Peninsula; and

(b) who had not worked continuously in such area for one employer for a period of not less than ten years or lawfully remained continuously in such area for a period of not less than fifteen years without having

/been..

been convicted during either period of any offence in respect of which he was sentenced to imprisonment without the option of a fine for a period of more than seven days or with the option of a fine for a period of more than one month; and

(c) who was not the wife, unmarried daughter or son under the age at which he would become liable for payment of general tax under the Native's Taxation and Development Act 1925 (Act No. 41 of 1925), of any Native mentioned in paragraphs (a) or (b) above, and ordinarily resided with that Native; and

(d) who had not been granted permission so to remain by a person designated for the purpose by the Council of the City of Cape Town,

did wrongfully and unlawfully remain for more than seventy-two hours in the Proclaimed Area of the Cape Peninsula, in respect of which the Council of the City of Cape Town, an urban local authority, exercises the powers referred to in sub-section (1) of Section 23 of Act 25 of 1945.

Mr. Kahn for Accused.

/The ...

The accused, being arraigned, pleaded Not Guilty.

JUDGMENT: Guilty.

SENTENCE: £10. or 60 days I.C.L.

Ordered under Section 14(1) Act 25/1945

to be removed to Nqamakwe.

B. F. LIZAMORE,

A.N.C. 28/8/56.

On 21/5/56.

P.P. informs Court that he is prepared to grant bail on condition that accused reports daily at Langa Police Station at 9 a.m. He fixed bail at £10.

B. F. LIZAMORE,

Addl. Native Commissioner.

21/5/56.

On 2/7/56.

Remanded to 3/7/56. Bail to stand.

B. F. LIZAMORE,

Addl. Native Commissioner .

2/7/56.

On 3/7/56.

Mr. Saacks informs Court that Mr. Kahn appears personally in this matter. He is ill in bed and asked for a remand.

Case remanded to 13/7/56. Bail to stand.

B. F. LIZAMORE,

Addl. Native Commissioner.

3/7/56.

On 13/7/56.

Albertus van Dyk, b/v:-

Sersant in S.A. Polisie gestasioneer te Athlone. Ek ken beskuldigde. Sy is 'n Naturellevrou.

Op 19/5/56 het ek na beskuldigde se huis te Sigcawulaan, Langa gegaan. Dit was ongeveer 9 v.m. Ek het haar gevra of sy 'n permit het om binne die gebied te wees. Sy kon geen permit toon. Langa is binne die geproklameerde gebied van die Kaapse Skiereiland.

Ek was vergesel van Naturellekonstabels Botwana, Hanise en Molise en blanke Konstabel Jacobs.

Deur Mnr. Kahn:-

Geen vrae nie.

Boniface Botwane s/s:-

Native Constable, S.A. Police stationed at Athlone. I know Accused. I saw Accused first time this year on 15/5/56 ±6 p.m. in her home No.754 Jungle Walk, Langa. I was then stationed at Langa. I saw her again the following day i.e. 16/5/56 at ±6.30 p.m. in her house busy ironing. I saw accused again ±7 p.m. in her house. I spoke to her and asked her whether she is back again.

/On....

On 19/5/56 I accompanied Sgt. van Dyk to 754 Jungle Walk, Langa. We went to accused's house where Sgt. van Dyk demanded accused's permit to be in this area. She could not produce any such document. Accused spoke in Xhosa. Accused was then arrested.

By Mr. Kahn:-

No questions.

By Court:-

Sgt. van Dyk spoke in English and I interpreted in Xhosa.

CROWN CASE.

Court adjourns for lunch.

On resumption Mr. Kahn calls

Stanford Mdudu s/s:-

I live Mshaye Street, Duncan Village, East London and brother of accused. I came here to Cape Town in 1926. I worked for Mr. Donnelly, a building contractor. I worked at many other places here. I left Cape Town during 1934. I did not come back. I only came back for visits. Accused came here when I was here. She came here in 1937. I was then at Dixon Street, Cape Town. I was working at the docks for S.A.R. & H. I worked there till 1941. I

/then...

then went to Chamberlain's. I left there 1943 and went to East London.

Accused stayed at Dixon Street where I was already staying.

If I am not mistaken her husband came here 1940. He worked at Dynamite Factory, Somerset West.

I remember that sister came here in 1937 because I went home for three weeks. I have children. My child was born in March 1938 at Nqamakwe. When I went to East London accused was still staying at Dixon Street.

By P.P.:-

I am not Vakyntshiwo. After 1934 I only came here to accused for visit - she was ill. I stopped working here 1943. I did not say I stopped working here in 1934. I said it was 1943. I left Cape Town 1943 and not 1934. I have attend school for little while. I cannot remember the years very well. I cannot remember when accused was sent back to the Transkei because I was at East London. That is not important to me. I remember sister came here 1937. When accused's husband came here I was staying at Dixon Street, working at the Docks. He came here in Cape Town proper. Silinga did

/not....

not get work here so he went to Somerset West. When I left Cape Town in 1943 Silinga was still employed at Somerset West and did not stay with Silinga at Somerset West. Accused did not visit him there. I was staying with Accused. Accused is married to Silinga according to Native custom. They got married during 1936.

By Mr. Kahn:-

Silinga came to visit accused here.

By Court:-

Silinga has two wives. I do not know the name of other wife. I heard that he has two wives. Accused told me that. According to Native Custom. I am accused's guardian. Five head of cattle was paid to Mtwenkwe Mdudu my eldest brother who is now dead. I do not know when he died. I received five head of cattle too. This was during 1940, 1941 and 1942. Accused is second wife. I do not know how other wife was married. Accused never went back to Nqamakwe. After 1943 I never came back to Cape Town. I came back for visits only. I never asked Silinga where he was working.

Annie Silinga s/s:-

Accused and married by Native Custom to Matthew

/Silinga....

Silinga. When I married Silinga I was at Butterworth. He was also at Butterworth. His relatives are also at Butterworth. I was not married in Church nor at the Native Commissioner's Court. I got married to him in 1936. I first came to live here in 1937. After that I continuously stayed here till 1955. Till 1955 I was never convicted of any offences. I stayed at Dixon Street, Cape Town with brother Stanford. Husband came to stay here in 1940. He worked at Somerset West. Afterwards I stayed at Langa. I did not live at Somerset West.

By P.P.:-

Since 1937 I have never left Cape Town. I worked at Paarl during 1948. I had no permit then because there were no permits. I had no permit to return to Cape Town when I returned from Paarl in 1948. I did not take a permit. I did not work at Paarl for a long period. I do not know for how long. I remember that I came here in 1937 from last trial. I know I came here in 1937. I spent Xmas at home and came in January. I stayed at Dixon Street with brother in one house. Brother had only one room. It was not his house. I stayed with brother in

/same....

same room. I do not know name of owner. He passed away. I remember that I said during my last trial that I was staying with a man who was working at Groote Schuur Hospital. He was staying downstairs and his name is Dhlamini. I told the Court last time that I stayed with Stanford. I stayed with brother from 1937 till he left, i.e. till 1943. That is six years. I never spoke about years during the last hearing. I worked at Paarl during the Grape season.

By Court:-

I did not work at Paarl for one year. I do not know for how long I worked there. I stayed at Paarl location. I only worked for two seasons at Paarl. During the second season I also stayed at Paarl location. I came back Friday afternoons. I left Cape Town for Paarl on Mondays and always returned Fridays. I stayed there from Mondays to Fridays. I first worked at Paarl during 1947 during the grape season.

The other wife of Silinga is Florence. She and Matthew Silinga were married according to Christian rites. They are not yet divorced but are not staying together because they are not on good terms. When I came to

/Silinga's....

Silinga's house Florence was no longer staying there. I told the Public Prosecutor that I never left Cape Town because I still had a house at Cape Town where my children were. When I left for Paarl my husband looked after the children. Husband worked for three years at Somerset West. He came back to Cape Town in 1943 when we got a house at Langa. He worked at Goods Sheds, Cape Town.

By Mr. Kahn:-

I have at present three living children with Silinga. First child was born in 1942 at Dixon Street. Children were with husband when I worked at Paarl. That was at Langa.

Remanded to 18/7/56. Bail to stand.

B. F. LIZAMORE,
Addl. Native Commissioner,
13/7/56.

On 18/7/56.

As Mr. Kahn is again indisposed case remanded to 26/7/56. Bail to stand.

B. F. LIZAMORE,
Addl. Native Commissioner,
18/7/56.

On 26/7/56.

Court recalls

Annie Silinga, s/s:-

Stanford is my eldest living brother. He is from Nqamakwe, now at 1103 Shai Street, Duncan Village, East London. I have only been there once. He is not my guardian. I am married. Mathew Silinga and two children are here at Langa. One is at College at Keiskammahoek.

By P.P.:-

I went to Stanford to East London this year.

CASE FOR DEFENCE.

Public Prosecutor addresses Court.

Mr. Kahn addresses Court.

Public Prosecutor : Nothing in reply.

After Accused had been found guilty, case remanded to date to be fixed by P.P. Bail to stand.

B. F. LIZAMORE
Addl. Native Commissioner.
26/7/56.

On 28/8/56.

Public Prosecutor hands in previous convictions, Exhibit A.

Mr. Kahn addresses Court on sentence.

I hereby certify that the above is a true record of the proceedings in the case of Regina versus Annie No-Sentence Silinga, tried this 28th day of August 1956 before me,

B. F. LIZAMORE,

Addl. Native Commissioner:

Cape Peninsula.

L A N G A.

PREVIOUS CONVICTIONS

against

NO-SENTENCE SILINGA

(Extract from the Criminal Record Book)

Office of the
Native Commissioner,
LANGA.

Case No.	Accused (Name under which convicted)	Crime (of which convicted)	Date	Place Where Convicted	Sentence	Remarks
1980/55	No Sentence Silinga	C/s 10/4 Act 25/1945	2/8/55	Native Commissioner, Langa	£3. or 15 days ICL Ordered under Sec. 14(1) Act 25/1945 to be removed to Nqamakwe	

Place LANGA

Date 3/7/56

A true extract

S.O. v.d. Linde.
Clerk of the Court.

The accused, having been informed that it appears that she was convicted of the crimes above stated, and upon being called upon to admit or deny the convictions, declares:-

I admit

B. F. Lizamore.
Additional Native Commissioner.

NATIVE COMMISSIONER'S COURT : CAPE PENINSULA.

CASE NO.3139/56.

R E G I N A

vs.

NOSENTENCE ANNIE SILINGA.

Judicial Officer's Reasons for Judgment.

Facts found proved.

1. Accused is a female Native.
2. Accused had no permission in terms of section 10(2) of Act 25 of 1945, as amended, to be in the Proclaimed Area of the Cape Peninsula.
3. Accused left the Proclaimed Area of the Cape Peninsula during 1947 and 1948 for periods of five days to work at Paarl.
4. Accused was found guilty on a similar charge on 2/8/55 and fined £3. or 15 days I.C.L.
5. Accused is unmarried.

Reasons for Judgment.

The accused was charged before this Court with the offence of contravening section 10(4) read with section 10(1) of Act No.25 of 1945, both as substituted by

/section....

section 27 of Act 54 of 1952 and read with section 44 of Act 25 of 1945, as amended.

It is common cause that accused did not fall under the provisions of section 10(1) (a), (c) or (d) of the Act. The accused alleged, and there is nothing to the contrary that she arrived in Cape Town in 1937. This must therefore be accepted as such. The question in issue is thus whether she had lawfully remained continuously in the above mentioned proclaimed area for a period of not less than 15 years, as the Crown did not prove that she had been convicted of any offence in respect of which she had been sentenced to imprisonment without the option of a fine for a period of more than seven days or with the option of a fine for a period of more than one month.

The only two words in section 10(1)(b) which cause difficulty in interpreting are "remained" and "continuously". Funk and Wagnall's new Standard Dictionary defines "remain" as meaning "to continue, as in one place, condition or "character" and "continuous" as "connected, extended or prolonged without a break", or as "unbroken" or "uninterrupted".

/Mr. Kahn....

Mr. Kahn, for accused, suggested that "continuously" should be interpreted in its broader sense. This, however, is not in accordance with well established principles in the interpretation of statutes. Steyn in his book "Uitleg van Wette" on page 13 writes:

"Woorde, sê hy (Paulus Voet) moet in hul gewone eie betekenis verstaan word en daarvan moet nie afgewyk word nie, al sou dit blyk dat die wet beswarend is of die spoor van die gemene reg verlaat. Die blote feit dus dat woorde in hulle gewone betekenis regte wegneem of laste of strawwe oplê, of 'n afwyking van die gemene reg skep, sou nog geen rede wees om hul in 'n ander betekenis te verstaan nie."

Now the Act under which accused was charged is a most restrictive piece of legislation, but in view of the above-quoted passage the words in question cannot be construed in their broader sense, but must be given their plain grammatical meaning, as defined above.

Mr. Kahn suggested certain absurdities which would follow should "continuous" be interpreted as contended above, e.g. certain proclaimed areas are only approximately one square mile in extent and it would be

/unreasonable....

to expect any Native to remain in such an area indefinitely without running the risk of interrupting his continuous stay in that particular area should he, for instance, cross the boundary to fetch a tennis ball or go for a swim in the sea.

An argument on similar lines was advanced in Regina vs. Marquard S.A.L.R. 1954(3) 819 at pages 821 and 822 where the accused was charged with the offence of contravening section 11(1) and (2) of the same Act, but the Court held that the statute should be given its plain meaning.

The accused, under cross-examination, admitted that during the grape seasons of 1947 and 1948 she worked at Paarl during the week and stayed here only during the week-ends.

Having arrived at the above contention it follows that once the amended section 10 came into force (in June 1952) accused's residence in the proclaimed area of the Cape Peninsula became unlawful, because at that stage she had not lawfully remained continuously in this area for not less than 15 years and therefore required permission

/in....

in terms of sub-section (2) of this section to remain here. (Vide R. vs. Ndingane C.P.D. dated 29/8/55 not reported). This permission she failed to obtain.

She was accordingly convicted of the offence charged and sentenced as recorded.

In view of the previous removal order to Nqamakwe, the fact that accused is unmarried and that accommodation is available there, an order for her removal to Nqamakwe in terms of section 14(1) of Act 25 of 1945 was made.

B. F. LIZAMORE, 10

Addl. Native Commissioner,

LANGA.

5/9/56.

IN THE NATIVE COMMISSIONER'S COURT, LANGA.

CASE NO. 3139/1956.

In the matter of

REGINA

versus

NO SENTENCE ANNIE SILINGA.

NOTICE OF APPEAL.

BE PLEASED TO TAKE NOTICE that an Appeal is hereby noted against the conviction of the accused on the grounds that:-

1. The conviction is against the weight of evidence.

2. The evidence established that the accused had lawfully remained continuously for a period of not less than 15 years in the area and was thereby and otherwise qualified by reason of the provisions of Section 10(1) (b) of Act 25 of 1945, as amended.

DATED AT LANGA, THIS 28th DAY OF AUGUST, 1956.

S. KAHN & CO.
Per: ??

Appellant's Attorneys,
206 Burleigh House,
24, Barrack Street,
CAPE TOWN.

To:-
The Clerk of the Court,
Native Commissioner's Court,
LANGA.

IN THE SUPREME COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

In the matter between :

NO-SENTENCE ANNIE SILINGA Appellant

and:

R E G I N A Respondent

JUDGMENT delivered this 20th day of November, 1956.

HERBSTEIN, J. : The Appellant was charged with contravening Section 10(4) read with Section 10(1) of Act 25 of 1945, both as substituted by Section 27 of Act 54 of 1952, and read with Section 44 of Act 25 of 1945 as amended in that upon or about 19th May 1956 and at or near Langa, she, being a native, wrongfully and unlawfully remained for more than 72 hours in the Proclaimed area of the Cape Peninsula.

The defence was that as she had

"lawfully remained continuously in such area for a period of not less than 15 years"

without having been convicted she was, under sub-section (b), entitled to be in the said area. She was, however,

/convicted ....

convicted, sentenced to a fine of £10 or 60 days I.C.L. and ordered under Section 14(1) to be removed to Nqamakwe which was her birthplace. She admitted that on 2nd August 1955 she had been convicted in the same Court for a contravention of the same section, had had inflicted on her a punishment of a fine of £3. or 15 days I.C.L. and had been ordered under Section 14(1) to be removed to Nqamakwe.

The appeal against the present conviction is based on the ground that the evidence established that the Appellant was entitled to remain in the area by virtue of the provisions of Section 10(1)(b) of Act 25 of 1945 as amended. There is no express appeal against the order for removal. The Appellant in her evidence stated that she had been married by native custom at Butterworth in 1936 and in January 1937 came to live in the Cape Peninsula, where she stayed continuously till 1955. During that period she was not convicted of any offence.

Under cross-examination she admitted that during that period she had worked at Paarl. Exactly what this amounted to appears from her answers in reply to the Court:-

/ "I ....

"I did not work at Paarl for one year. I do not know for how long I worked there. I stayed at Paarl location. I only worked for two seasons at Paarl. During the second season I also stayed at Paarl location. I came back Friday afternoons. I left Cape Town for Paarl on Mondays and always returned Fridays. I stayed there from Mondays to Fridays. I first worked at Paarl during 1947 during the grape season."

"I told the Public Prosecutor that I never left Cape Town because I still had a house at Cape Town where my children were. When I left for Paarl my husband looked after the children."

The use by her of the description "my husband" was unjustified. Though she was living with Silinga by whom she had had three children, it is clear that he was married according to Christian rites to another woman named Florrie.

On this evidence, the Court came to the following conclusion:-

/It ....

MCH91-8a-7-1

In the Supreme Court of South Africa.

appellate
~~CAPE OF GOOD HOPE PROVINCIAL~~
DIVISION.

.....Division

On the 9th *day of* May 1957

IN RE

Miss annie Sibunga — *~~Plaintiff~~ ~~Applicant~~ Appellant*

versus

Regina — *Defendant Respondent*

Brief.

On appeal

Mr. Adv. A. Sachs

with you

Mr. Adv. D. B. Molteno

Fees: *Guineas.*

Memorandum:

S. KAHN & CO.
Per

Attorneys for appellant.

206, BURLEIGH HOUSE,
24, BARRACK STREET,
CAPE TOWN.

47064/5/56. FEDERAL, C.T.

"It follows that once the amended section 10 came into force (in June 1952) accused's residence in the proclaimed area of the Cape Peninsula became unlawful, because at that stage she had not lawfully remained continuously in this area for not less than 15 years and therefore required permission in terms of sub-section (2) of this section to remain here. (Vide R. v. Ndingane, C.P.D. dated 29/8/55 not reported). This permission she failed to obtain."

The Governor-General signed the Afrikaans text of Act 54 of 1952. Section 10(1) in so far as it is material reads :-

"(1) Geen naturel mag langer dan twee-en-sewentig uur in 'n stadsgebied, of in 'n geproklameerde gebied ten opsigte waarvan 'n stedelike plaaslike bestuur enige van die in sub-artikel (1) van artikel drie-en-twintig bedoelde bevoegdhede uitoefen, of in 'n gebied wat deel van 'n geproklameerde gebied uitmaak en ten opsigte waarvan 'n stedelike plaaslike bestuur enige van daardie bevoegdhede uitoefen, bly nie,

/tensy....

Sachs 1/11

IN THE APPELLATE DIVISION OF THE SUPREME COURT

OF SOUTH AFRICA HELD AT BLOEMFONTEIN.

In the matter between:

NO-SENTENCE ANNIE SILINGA

Appellant

and

R E G I N A

Respondent

RECORD on Appeal from the Judgment of the HONOURABLE MR. JUSTICE HERBSTEIN and the HONOURABLE MR. JUSTICE WATERMEYER delivered in the Cape of Good Hope Provincial Division of the Supreme Court of South Africa on the 20th day of November, 1956.

The Attorney-General,
CAPE TOWN.

S. Kahn & Co.,
(Appellant's Attorneys),
206, Burleigh House,
Barrack Street,
CAPE TOWN.

and

The Attorney-General,
BLOEMFONTEIN.

Lovius & Block,
(Appellant's Attorneys),
Warden Buildings,
52, Henry Street,
BLOEMFONTEIN.

tensy -

(a) hy in daardie gebied gebore is en sy vaste verbly aldaar het; of

(b) hy in die gebied vir een werkgewer vir 'n onafgebroke tydperk van minstens tien jaar gewerk het of wettiglik in die gebied gebly het vir 'n onafgebroke tydperk van minstens vyftien jaar en nie gedurende enige van beide tydperke skuldigbevind is nie aan 'n oortreding waarvoor hy sonder die keuse van 'n boete gevonnis is tot gevangenisstraf vir 'n tydperk van meer as sewe dae, of met die keuse van 'n boete, vir 'n tydperk van meer as een maand; of

(c) sodanige naturel die vrou, ongetroude dogter of seun onder die ouderdom waarop hy belastingpligtig geword het vir algemene belasting kragtens die Naturelle Belasting en Ontwikkeling Wet, 1925 (Wet No. 41 van 1925), is van 'n in paragraaf (a) of (b) van hierdie sub-artikel genoemde naturel en gewoonlik by daardie naturel woon; "

/Mr. Molteno....

IN THE APPELLATE DIVISION OF THE SUPREME COURT OF SOUTH AFRICA HELD AT BLOEMFONTEIN.

In the matter between:

NO-SENTENCE ANNIE SILINGA

Appellant

and

R E G I N A

Respondent

RECORD on Appeal from the Judgment of the HONOURABLE MR. JUSTICE HERBSTEIN and the HONOURABLE MR. JUSTICE WATERMEYER delivered in the Cape of Good Hope Provincial Division of the Supreme Court of South Africa on the 20th day of November, 1956.

The Attorney-General,
CAPE TOWN.

S. Kahn & Co.,
(Appellant's Attorneys),
206, Burleigh House,
Barrack Street,
CAPE TOWN.

and

The Attorney-General,
BLOEMFONTEIN.

Lovius & Block,
(Appellant's Attorneys),
Warden Buildings,
52, Henry Street,
BLOEMFONTEIN.

Mr. Molteno, for the Appellant, argued that the words "gebly het" in the phrase "in die gebied gebly het vir 'n onafgebroke tydperk van minstens vyftien jaar" should be construed as meaning "lived" or "resided" and not as having been "physically present" for that period. On the basis of this construction he made two further submissions which, prima facie, appear to be sound, namely,

"(a) proof of temporary absences for short periods would not suffice to displace the conclusion of residence (Cleeve v. Minister of Interior, 1956(2) S.A. at 226, and cases there cited; Levene v. I.R. Commissioners, 1928 A.C. 222),

and (c) the words "vir 'n onafgebroke tydperk" do not require the residence to have been absolutely continuous but serve to prevent broken periods of residence from being added together so as to total "minstens vyftien jaar".

The basic problem, namely, the meaning of "gebly het" remains to be solved.

In P.I.O. v. Hawabu, 1936 A.D. 26, the Court was faced with a very similar problem in that it was called

/upon ....

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

NO-SENTENCE ANNIE SILINGA

Appellant

and

R E G I N A

Respondent

I, STEFANUS JACOBUS VAN PLETSEN, Registrar of the Supreme Court of South Africa, Cape of Good Hope Provincial Division, do hereby certify that this is a true and correct copy of the record in the above case.

S. J. VAN PLETSEN

REGISTRAR.

upon to construe the words "has in any Province offspring" which occur in Section 3(2) of Act 22 of 1914. The "crisp question for decision" was whether the phrase meant "has offspring physically present in any province" (the "physical presence" meaning) or "has offspring resident in any province" (the "residence" meaning). The approach of the Court to the problem may fairly be stated to have been a consideration of three questions:-

(a) What is the ordinary meaning of the words?

(b) Are they capable of a secondary meaning?

(c) If they are, in what sense were they used by the Legislature?

Two further observations should be made. The first is that the Court emphasised "the necessity of establishing at the outset that the words are capable of a secondary meaning in addition to their ordinary meaning" and pointed out that

> "if the words are capable only of the 'physical presence' meaning, they must be held to bear that meaning regardless of consequences".

The second observation relates to the method of finding the answer to the third question. The learned Judge, at

/page ...

page 32 said :

"In order to solve this problem, regard must be had to such factors as the context of the words, the scope, policy and object of the Act and the consequences which may follow if one or other meaning is to be assigned to them".

It seems to me that this Court might profitably adopt the same line of enquiry. I turn, therefore, to consider what the ordinary meaning is of the words "gebly het". Reference to the authoritative Afrikaanse Woordeboek reveals that the word "bly" may have a number of possible meanings. Reside (qua reside) does not appear to be amongst them. The most helpful is "een sekere plek behou" but this does not convey the concept of residing or living. Afrikaans-English dictionaries give English translations of the word as "to stay, remain, live" (Kritzinger & Steyn: Woordeboek; Bosman & v.d. Merwe: Woordeboek).

It seems to me that, prima facie, the ordinary meaning of "bly" is "to remain" or "to stay" and that ordinarily it connotes physical presence as contrasted with residence or living.

/What ....

What is the answer to the second question? In Jaga v. Donges, N.O. 1950(4) S.A.L.R. at 663, Schreiner J.A. pointed out

> "the expression 'secondary meaning' is not, of course, used in the sense in which it is used in the law of defamation; here it means only a meaning less usual than some other which latter is called the 'ordinary' or sometimes the 'natural' or 'primary' meaning".

That "bly" is used colloquially in the sense of "to live" is clear, for one often hears the query "waar bly jy?", when strictly it should be "waar woon jy?" Even if in this sense "bly" lacks the sense of permanent residence, it, nevertheless, does convey the meaning of "living". That this is so is shown by the fact that in the dictionaries above mentioned "to live" is given as one of the meanings. I am, therefore, of the opinion that the words "gebly het" are capable of meaning "lived" in the sense of "resided".

I come to consider the third question; namely, which of the two meanings should be assigned to the words.

/ Mr. Beukes....

Mr. Beukes, for the Crown, submitted

(a) that an examination of the Afrikaans text shows that the Legislature intended the "physical presence" meaning, and

(b) that even if the Afrikaans text left the matter in doubt, the English text made this absolutely clear.

In support of the first submission, attention was directed to the use in sub-section (a) of the words "sy vaste verblyf aldaar het" for "permanently resides" and in sub-section (c) of the word "woon" for resides. It is argued that if the Legislature had intended to make the essential element (in sub-section (b)) residence and not physical presence, it would have used "gewoon het" instead of "gebly het" or some phrase like "sy vaste verbly aldaar het". If the Legislature had done so, it would have removed all doubts as to its intention. But the fact that it has used different words is not conclusive. If the draughtsman in sub-section (c) had used the word "bly" instead of "woon" the sub-section would have had, for all practical purposes, the same meaning and effect as it now has. While it may be and

/probably....

probably is more correct and more elegant, when one person is living or residing with another, to use "woon", it does not follow that "bly" cannot be used in the sense of living in a particular area or district.

Mr. Beukes, however, refers to the English text and argues that the use of the word "remains" is a clear indication that the Legislature intended "bly" to have the meaning of "physical presence".

In this regard reference must be made to the remarks of Van den Heever, J.A. in New Union Gold Fields Ltd. v. C.I.R. 1950(3) S.A. 396 (A.D.) in regard to the meaning and effect of Section 67 of the South Africa Act:-

> "In cases of conflict between the two copies... that signed by the Governor-General shall prevail."

Inter alia, he said:-

> "A conflict between the two versions can only arise where one version says one thing and the other another. For this reason it seems to me that where two divergent versions are capable of reconciliation they should be reconciled for both equally give expression to the intention of

/Parliament....

Parliament. Where therefore the English version may convey a wider meaning but the Dutch version only a more limited meaning I think that there is no conflict and the latter should be adopted as giving expression to the will of Parliament".

This statement of law is very much the same as that of Feetham, J. in Orkin & Others v. Pretoria Municipality and Another, 1927, T.P.D. at 552, where he expressed his agreement with the principle laid down by Gardiner, J. in Jaffer v. Parow Village Management Board, 1920, C.P.D. 267:-

"Where one of the two official versions of a Statute is capable of two constructions but the other version is capable of only one of those constructions the Court will apply the construction of the later version".

(See also R. v. Shulman, 1937, C.P.D. at 185, and R. v. Singu, 1954(3) S.A. 555).

In the English text the version which is used is "or has lawfully remained continuously in such area for a period of not less than fifteen years".

The Shorter Oxford Dictionary gives a number of

/ meanings ....

meanings of the word "remain"; inter alia, "to continue in the same place (or with the same person), to abide, stay". It also gives as an obsolete meaning "to dwell". The Imperial Dictionary gives the meaning of "to continue in a place, to stay, abide".

On the authorities cited above, the expression "gebly het" would have to be given the narrower meaning of the English word "remain". If this is done, and "gebly het" be translated as "stayed" or "abided" or "continued in the district" it would still have to be considered whether this would cover residing or living and, even if it did not, whether the condition so described (i.e. of staying, abiding or continuing) will have ceased if, at any stage, there had been one or more temporary absences of short duration? Clearly it is not allowable to arrive at the meaning of "to remain" by taking one of its possible meanings to be found in a dictionary, e.g. "to stay" and then to select one of the possible meanings of that word and to attribute that meaning to "to remain". Thus we cannot say "to remain" may mean "to stay" and because this may mean "to live" or "to reside" that "to remain" may mean "to live or to

/ reside....

reside". For the truth is that when the meaning "to stay" is attributed to "to remain" it is in the other possible sense of "to continue" and not "to reside".

In my view "to remain" must be construed as "to stay" in the sense of "to continue in one place" and in this sense it connotes physical presence and not residence.

Even if it is possible to conclude that, in addition to the ordinary meaning, "remain" is capable of the secondary or less usual meaning of "to reside" or "to live", it does not seem to me that a consideration of the factors referred to by De Villiers, J.A. justifies the conclusion that it was used in that less usual or secondary sense. In this regard reference must be made to the remarks of Schreiner, J.A. in Jaga v. Donges, 1950(4) at 662:-

> "'The context' ... is not limited to the language of the rest of the Statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the Statute, its apparent scope and purpose and, within limits, its background".

/Act....

Act 25 of 1945, as originally promulgated, had a number of objects of which one was "the regulation of the ingress of natives into and their residence in such areas". Clearly this was the purpose of the original Section 10 as it still partially is of the section substituted by Act 54 of 1952, Section 27.

The general prohibition against natives remaining in an urban area for more than 72 hours was made subject to certain exemptions. The first class (sub-section (a)) covered those natives who "were born and permanently reside in such area". (For the meaning of "permanently resides" see Mathebula v. Ermelo Municipality, 1955(4) S.A. 443).

Sub-section (b) covers two groups -

(1) those natives who had worked continuously in such area for one employer for not less than ten years,

and (2) those natives who had "lawfully remained continuously in such area for a period of not less than fifteen years". (As the additional requirement of freedom from conviction is not material for present purposes it does not call

/for....

for any consideration).

The period of fifteen years above referred to had to be completed by 24th June, 1952, when the Act came into force. At that date there must have been a number of natives who for the required period had had their permanent homes in the area. It would have been remarkable, indeed, if most, if not all, of them had not at some stage or another been outside the area. If subsection (b) is construed as contended for by the Crown, it would mean that very few, if any, natives in this group could have proved themselves qualified for the exemption. Clearly the Legislature intended to benefit some natives; but as is indicated by the section as a whole, the number was severely limited. The right to remain was a privilege granted to those who could prove that they fell within the specified classes. That there would be hardship was inevitable; such hardship would not be suffered only by those who could not prove an unbroken presence in the area for fifteen years but by others as well, e.g. those who could prove an unbroken presence in the area of $14\frac{3}{4}$ years. It does not seem to me that any assistance in regard to the meaning of the

/language....

language is derivable from an argument based on hardship to those affected by the legislation. The scope and purpose of the Act is a drastic limitation of the number of natives who should be allowed to stay in urban areas. The Legislature has seen fit to place the onus on the native to show that he is entitled to remain in such areas; if he cannot do so, the Court cannot, on grounds of hardship, widen the limits of eligibility.

The Court was referred to other sections of the Act which, it was contended, threw light on the meaning of Section 10. I have looked at all of them but do not find them of any assistance in the solution of the present problem.

One of the contentions was that the use in Section 14 of "his home or last place of residence" and in Section 29(8) of "to return home" indicated that the Legislature had in mind that the test should be one of residence.

It may well be that many difficulties will present themselves when Section 14 comes to be applied but I do not think that it assists in the determination of the meaning of "remains".

/I ....

I come to the conclusion that the Additional Native Commissioner correctly convicted the accused.

It has been pointed out that there is no appeal against the order for removal to Nqamakwe. It is thus unecessary to consider whether the order was correctly made and whether the Crown established that Nqamakwe was her "home or last place of residence". Nor, in the circumstances, is it necessary to consider the interesting point raised by Mr. Beukes that, having regard to the previous conviction and the order for removal which followed it, it was not open to the accused to raise the defence that she was entitled under Section 10(b) to remain in the area.

The appeal is dismissed and the conviction and sentence are confirmed.

WATERMEYER, J.: I agree.

C.A.&.R. 267/1956.

IN THE SUPREME COURT OF SOUTH AFRICA.

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Before the Honourable Mr. Justice Herbstein,

and the Honourable Mr. Justice Watermeyer.

CAPE TOWN, Tuesday, 20th November, 1956.

In the matter between

NO-SENTENCE ANNIE SILINGA

Appellant

and

REGINA

Respondent

Having on Thursday the 1st day of November 1956 heard Mr. Molteno Q.C. with him Mr. Forman, Counsel for the Appellant in an appeal against the decision of the Native Commissioner at Langa delivered on 28th August, 1956, whereby the Appellant was convicted of contravening Section 10(4) read with Section 10(1) of Act 25 of 1945, both as substituted by Section 27 of Act 54 of 1952, and read with Section 44 of Act 25 of 1945 as amended, and sentenced to £10 or 6 days imprisonment with compulsory labour and ordered under Section 14(1) of Act 25 of 1945 to be removed to Nqamakwe;

/Having....

Having read the record on appeal and heard Mr. Beukes, Counsel for the Respondent;

THE COURT RESERVED JUDGMENT:

Thereafter on Tuesday the 20th day of November, 1956;

THE COURT dismisses the appeal and confirms the conviction and sentence.

Thereafter, on an application for leave to appeal;

THE COURT grants Appellant leave to appeal to the Appellate Division. 10

BY THE COURT,

J. LANSDOWN.

ASSISTANT REGISTRAR.

(S. Kahn & Co.)

I N D E X.

Administrative Enquiry in terms of Section 14(1) of Act 25 of 1945.

ANNIE SILINGA.

On 28/8/56.

Administrative Enquiry in terms of Section 14(1) Act 25 of 1945.

Sgt. Roelofse, Station Commander, S.A. Police, Langa, asks for removal of Respondent to Nqamakwe.

Veli Makiwe s/s:-

I am a Native male and reside at Cecugwana Location, Nqamakwe. I am the Chief of that location. I am appointed by the Government.

I know respondent by name of Nomfungusa Mdudo. She was born at Cecugwane Location. Her parents are both dead. She has only one brother Stanford Mdudo, who is alive and is employed at East London. He still maintains a kraal at this location. His wife is in his kraal. According to Native law and custom, Stanford is guardian of Respondent because she is sister and when she goes home she usually goes to his home.

I heard that she was living with another man. I do not know whether she is legally married to this man. Stanford is still a taxpayer of my district.

If Respondent is sent back to Nqamakwe there will

/be....

be place for her at kraal of Stanford.

By Mr. Kahn:-

Stanford has children - two - I know only of two, but there is a third child there. I have not discussed matter with Stanford. I do not know what position will be if he does not want her there. I do not know what Stanford earns. I do not know whether he can afford to keep her. We plant mealies and often get few bags.

I do not know how long she and Silinga has been living together. I do not know how many children she and Silinga has. Under Native law and custom mother also loves children and wishes to be with them.

By Sgt. Roelofse.

Children of Respondent can be accommodated by Stanford.

By Mr. Kahn:-

I cannot say whether he would be willing to care for her and three children.

By Native Commissioner:

I am ± 68 years old. I have lived all my life at this location. Stanford is also legal guardian of

/children ....

children.

According to Native law and custom a woman is entitled to support from her guardian.

I cannot say how often she visited her kraal. I last saw her in February 1956.

I am aware of fact that Respondent was removed from Cape Town to Nqamakwe at beginning of this year. She was staying at Stanford's kraal.

Mr. Kahn does not call Respondent to give evidence.

JHB.

IN THE SUPREME COURT OF SOUTH AFRICA.

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Tuesday, 21st November, 1956.

R v. ANNIE SELINGA

HERBSTEIN, J. : In the matter of Selinga versus the Queen, Mr. Molteno has applied for leave to appeal. This has been opposed by the Crown, for whom Mr. Strydom appear: He argues that the prospects of success of the appellant on appeal are so slight as to be negligible. It was intimated to Mr. Strydom that the members of the Court had some difficulty in the preparation of this judgment and they feel that this is a matter in which the Court of Appeal might well take a different view. In emendation of that I might say that the judgment was a matter, as far as I was concerned, of difficulty, and that we consider that there are reasonable prospects that the Appeal Court may take a different view to that taken by us.

Furthermore, although it is not the test which should be applied, the matter is one of great importance, and not only to the appellant, but to a number of other persons who are placed in a similar position to that in which the applicant has found herself. The

/legislation...

legislation imposed, as the judgment sets out, drastic limitation on a number of natives who are allowed to stay in urban areas. If this judgment given by the Court is wrong in law, it will impose a further limitation on that number, i.e. that it would go beyond the intention of Parliament. That, too, is a consideration which weighs with me in determining that leave should be granted. In my opinion leave to appeal should be granted.

WATERMEYER, J. I agree.
