

# Media Statement



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**TO: ALL MEDIA**

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**RE: CONSTITUTIONAL COURT DISMISSES APPEAL IN SHEBEEN RESTRAINT ORDER CASE**

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The Constitutional Court today handed down an important judgment in an appeal against a decision of the Western Cape High Court.

The Court found in favour of the Asset Forfeiture Unit (AFU) of the NPA and upheld the forfeiture order that was previously granted against a shebeen, owned by the applicants, Hilda and Edward Van der Burg in terms of the Prevention of Organised Crime Act (POCA).

The applicants are a married couple, who have been running an illegal shebeen in contravention of the Liquor Act for several years from their home in Athlone, Western Cape, where they have lived with their four children, some of whom are minors.

The couple has continued to run the shebeen despite several complaints by neighbours of the harmful effects that the shebeen has had on the neighbourhood, numerous police actions (including warnings, searches and seizures of liquor and arrests) and the AFU's freezing order, granted earlier over the property.

In addition, the shebeen is situated 30 metres from a primary school. The first issue argued was that the forfeiture was disproportional to the unlawful activities, and further that POCA did not cover these types of offences.

The Constitutional Court unanimously dismissed the appeal. It found that POCA was applicable to the offence of illegal selling of liquor. It also ruled that the forfeiture was not disproportionate, because *inter alia*, nearly 60 police actions had failed to stop the applicants in their profitable and co-ordinated unlawful activities.

The second issue argued was that the Centre for Child Law had intervened in the case and argued that prior to a final determination of the forfeiture application, the best interests of children should be considered. It argued that a *curator ad litem* should be appointed by the State to assist the Court in this regard.

The Court rejected the argument and ruled that the High Court had given sufficient consideration to the interests of the children.

The Court went further and ordered that a designated social worker, as contemplated by the Children's Act, 2005 should be engaged by the NPA to investigate whether the applicants' minor children need care and protection, and whether they should be removed from the care of their parents (as envisaged in sections 47(1) & 155 of the Children's Act) after which Children's Court processes will follow depending on the findings of the social worker.

The AFU and the NPA have been working with the SAPS and provincial law enforcement bodies to clamp down on illegal shebeens that often operate in flagrant violation of the law.

It is a high priority to deal more effectively with such shebeens as they often contribute to high crime rates locally. In addition, they are often situated close to schools and have devastating consequences for learners and schooling.

The judgement has clarified a number of legal issues which will allow the State to take much stronger action against illegal shebeens in future.

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