

**BOULAICH v. ATTORNEY-GENERAL**

SUPREME COURT (Kneller, C.J.): March 8th, 1994

*Gambling—lotteries—lost or destroyed ticket—conditions of Lotteries Regulations, reg. 10A strictly applied—no claim for prize money on lost or destroyed ticket unless statutory declaration filed before draw and six months pass without claim on ticket*

The applicants applied for a declaration that they were entitled to claim the prize money in the Government lottery.

The applicants bought five shares in a ticket in the Gibraltar Government lottery. The purchase was recorded by the vendor in his account book, identifying the applicants as the holders of the shares. The number was drawn in the lottery, but the applicants had already thrown the ticket away believing that they had not won when the vendor informed them of their win.

The applicants made a statutory declaration to this effect, but neither the lottery officials nor the Financial and Development Secretary would accept their claim. They brought the present proceedings seeking a declaration that they were entitled to recover the prize money.

They submitted that since their purchase of the winning ticket was beyond dispute, the strict requirements of the Lotteries Regulations governing lost and destroyed tickets should not apply.

**Held**, dismissing the application:

The applicants were not entitled to recover the prize money. Under the Lotteries Regulations, reg. 10, a claimant holding a winning ticket had to present it within six months after the draw. If the ticket were lost or stolen, the conditions of reg. 10A had to be complied with, so that if the money had not been paid out within the six-month period, the applicants could claim the prize money provided that they had lodged a statutory declaration with the Financial and Development Secretary before the draw, stating that the ticket was lost or destroyed. As the applicants had only made their statutory declaration after the draw, they were disqualified (page 276, line 34 – page 277, line 4).

**Case cited:**

(1) *Alba v. Att.-Gen.*, Supreme Ct., December 2nd, 1985, unreported, followed.

**Legislation construed:**

Gaming Ordinance (1984 Edition), s.9(1): The relevant terms of this subsection are set out at page 274, lines 38–45.

Lotteries Regulations (1984 Edition), reg. 10: The relevant terms of this regulation are set out at page 275, lines 2–20.

reg. 10A: The relevant terms of this regulation are set out at page 275, lines 23–34.

reg. 11: The relevant terms of this regulation are set out at page 275, lines 36–42.

reg. 12: The relevant terms of this regulation are set out at page 275, line 44 – page 276, line 8.

*S. Ross* for the applicants;

*J. Blackburn Gittings, Attorney-General*, for the Crown.

**KNELLER, C.J.:** Mr. Abderrahman Boulaich and Mr. Abdelaziz Ahmed Boulaich (the Boulaiches) are brothers and they applied for a declaration that they are entitled to recover the prize money of the Gibraltar Government lottery drawn on September 24th, 1990 with their winning ticket, No. 15690. 15

The Attorney-General does not support or oppose the application. He adopts a neutral stance.

The Boulaiches have bought lottery tickets for some years from Mr. Trevor John Wilkinson of “Carters” at 32 Prince Edward’s Road. Each time they purchased  $2\frac{1}{2}$  tickets which amounted to five shares. On September 24th, 1990, Mr. Wilkinson sold them five shares in ticket No. 15690. Mr. Wilkinson wrote down “15690–Aziz” in his account book to record that he had sold the Boulaiches those shares in that ticket. 20

Mr. Wilkinson visited the Boulaiches and told them they had won a prize with their shares but Mr. Abderrahman Boulaich had thrown away their shares by then because he had checked in a newspaper and not found that ticket number in it as a prize-winner in that draw. The newspaper is said to have been an “incorrect” one, whatever that may mean. 25

The Boulaiches consulted their solicitors and as a result they made a statutory declaration about this. They took it to the officials who run the lottery and then, in October 1990, their solicitors entered into correspondence with the Financial and Development Secretary, but none of them would accept the Boulaiches’ claim, so, on March 25th, 1993, they brought their originating motion for this declaration. 30

The law cited by Mr. Ross and the Attorney-General was as follows. Section 9(1) of the Gaming Ordinance reads: 35

“The Governor may make regulations prescribing all matters which are necessary or convenient to be prescribed for giving effect to the foregoing provisions of this Part and in particular— 40

...

(e) for prescribing the time within which and the manner in which prizes shall be claimed;

(f) for providing for the disposal of unclaimed prizes or money or of prizes or money as to which any dispute has arisen...” 45

Under reg. 10 of the Lotteries Regulations:

“Prizes shall be paid by the Financial and Development Secretary in respect of winning tickets, and shares of tickets, in a lottery in accordance with the following provisions:

- 5 (a) payment shall be claimed by presenting and delivering up the ticket or share in respect of which the claim is made at the place and during the hours appointed for the purpose in the notice in pursuance of regulation 6;
- 10 (b) payment shall be claimed within six months after the date of the draw at which the ticket in respect of which or a share of which the claim is made was declared a winning ticket;
- ...
- 15 (d) payment shall be made to the person who presents the ticket or share for payment of the prize or portion of the prize won by that ticket or share, as the case may be, and such payment shall absolutely discharge the Financial and Development Secretary, the Government, its servants and agents in respect of the payment of that prize or that portion of that prize, as the case may be.”
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However, what about lost and destroyed tickets and shares? These are covered by reg. 10A:

25 “Notwithstanding anything contained in regulation 10, where any ticket or share has been lost or destroyed and such ticket or share is a prize winning ticket or share, then the prize shall be paid in respect of such ticket or share by the Financial and Development Secretary if—

- 30 (i) a statutory declaration to the effect that such ticket or share has been lost or destroyed has been made and lodged with the Financial and Development Secretary before the draw in which such ticket or share won a prize takes place; and
- (ii) no prize has been paid in respect of such ticket or share in the six months next succeeding such draw.”

35 Regulation 11 reads:

40 “If payment of a prize or portion of a prize is not claimed in the manner and within the period prescribed by regulation 10, and if the number of the ticket in respect of which the prize or portion thereof was payable has been duly published as provided in regulation 9, the proceeds of that prize or portion thereof, as the case may be, shall upon the expiry of the prescribed period be forfeited to Her Majesty and paid into the Consolidated Fund.”

Regulation 12 reads:

45 “If, when any ticket or share is presented for payment of a prize or portion of a prize, any number, mark, figure or word which is

material for identifying the ticket or share is, in the opinion of the Financial and Development Secretary, illegible or not clearly legible or incomplete or has been obliterated, defaced or removed, he shall not make any payment unless the person claiming payment produces evidence, to the satisfaction of the Financial and Development Secretary, identifying the ticket or share as the ticket or share in respect of which the prize or portion of a prize claimed, as the case may be, is payable.” 5

Alcantara, A.J. had a similar application before him in November 1985. The facts were that Señora Monsalud Vera Alba, a Spanish national living in Spain, visited Gibraltar on December 8th, 1983 and purchased a number of Gibraltar Government lottery tickets at a kiosk in Casemates, No. 11601 being among them. She was searched by the Spanish customs officers at La Linea and the tickets were confiscated. She was charged with a smuggling offence under the appropriate Spanish law and fined Pta. 48,897. 10 15

The lottery draw was held here in Gibraltar on December 12th, 1983 and ticket No. 11601 was the one drawn for the first prize of £20,000. A week later she reported to the Treasury here what had happened to that ticket and on the very same day a representative of the Banco Exterior de España produced that ticket to the Accountant General of Gibraltar, hoping for payment out of £20,000 for an unnamed client. The Accountant General refused to pay it out because Señora Monsalud Vera Alba had claimed it earlier and he was seeking legal advice. The bank’s representative was given the same answer when he presented the winning ticket on March 13th, 1984. He named his client on June 6th, 1984. It was the Administration and Inspectorate of Customs at La Linea. 20 25

On November 26th and December 17th, 1984, the Spanish bank’s and the Spanish Customs Department’s representatives failed to appear at interpleader proceedings here, though served, and they were barred from pursuing their claims on the winning ticket. 30

Alcantara, A.J. was left with this conundrum: Was Señora Monsalud Vera Alba entitled to the £20,000? His answer was “No.” He held that to obtain the £20,000 she had to present and deliver ticket No. 11601 within six months of the draw. She did not and could not do so, because either the Spanish bank’s representative or El Jefe de la Seccion Aduanera at La Linea had it. Furthermore, even if she could say it was therefore lost or destroyed by confiscation and no prize had been paid in the six months next succeeding the draw, she had not made and lodged with the Financial and Development Secretary her statutory declaration to that effect before the draw took place. So she could not bring herself within the terms of reg. 10A: see *Alba v. Att.-Gen.* (1). 35 40

The Boulaiches lost their ticket, no prize was paid on it in the six months next succeeding the draw, but they made their statutory 45

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declaration after the draw took place, so they are not entitled to recover the prize money in the Gibraltar Government Lottery drawn on September 24th, 1990. Their application for a declaration that they are entitled to recover the prize money is rejected.

5 If the parties fail to agree the issue of costs, the appeal may be listed before me in chambers for decision.

*Application dismissed.*

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