

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO. /

(2) OF INTEREST TO OTHER JUDGES: YES/NO. /

(3) REVISED. /

7/7/2010 [Signature]

Case No: 67800/2009

Date heard: 15/06/2010

Date of judgment: 07/07/2010

In the matter between:

Swema Pub and Restaurant CC

APPLICANT

and

The Gauteng Provincial Liquor Board

RESPONDENT

JUDGMENT

DU PLESSIS J:

In terms of the **Gauteng Liquor Act, 2 of 2003** ("the Act"), the applicant applied for a pub liquor licence. The respondent refused the application. It gave the following reasons:

"There are 2 institutions of learning within 500m radius; therefore the board is of the view that it would not be in (the) public interest;

It further takes notice ... that there is an existing tavern therefore in order to protect the schools;

The application is hereby refused".

By way of an urgent application launched in November 2009 the applicant sought to have the respondent's decision reviewed and set aside. It also sought ancillary relief aimed at allowing it to trade as a pub until a licence is granted. The application was not entertained as an urgent one and has now come before this court in the ordinary course.

A brief summary of facts is called for. The premises where the applicant proposes to conduct the pub are situated 350 metres from the Berea Park High School and 470 metres away from the Tshwane FET College, also referred to as the Pretoria Technical College. In the affidavit supporting his application for the licence, the applicant's deponent incorrectly stated that the premises are "not situated within 500m radius of any schools." In terms of section 24 of the Act the applicant was required to advertise its intention to apply for the licence and in the advertisements to state the "names and nature of educational institutions ... within a radius of one (1) kilometre from the premises (Section 24(3)). The applicant did not comply with this requirement in that the technical college is not mentioned in the advertisement. A tavern liquor licence had previously been granted in respect of another premises within 500 metres from the schools.

Section 30(2) of the Act sets out circumstances under which the respondent "shall" grant an application for a licence. Section 30(3) of the Act provides as follows:

"The Board shall grant an application in the case of premises not situated within a radius of five hundred (500) metres in the vicinity of ... (an) educational institution ..."

The applicant contends that the respondent misconceived its jurisdiction by interpreting section 30(3) to mean that, if there is an educational institution within 500 metres of the proposed premises, it was precluded from granting the application. The applicant does not adduce any evidence that supports its contention. The respondent's reasons that I have quoted does not convey such a misconception. It conveys that the respondent, correctly, held the view that it had a discretion to refuse or grant the application by reason of the close proximity of the educational institutions. According to the reasons, the respondent exercised its discretion against the applicant because it deemed the grant of the licence in close proximity to the schools not to be in the public interest.

The applicant further contends that the respondent took into account an irrelevant consideration when it had regard to the tavern licence that had been granted. In this regard too, the applicant's contention is not borne out by the facts. The respondent reasoned that the existence of the tavern licence, another

liquor outlet in close proximity to the educational institutions, rendered a further licence not in the public interest. The latter is a valid consideration.

It is apparent from the papers that the applicant and its attorney disagree from the respondent's view as to whether another licence should be granted in close proximity to the educational institutions. That disagreement is beside the point. The legislature has entrusted the relevant discretion to the respondent and the mere fact that an applicant may disagree from it, is irrelevant.

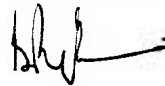
In the papers the applicant also contends that the respondent's decision falls to be reviewed because it did not apply the *audi alteram partem* rule. Counsel for the respondent pointed out, correctly in my view, that the applicant was given an opportunity to state its case. It had that opportunity in the form of its written application and the accompanying affidavit. Section 27 of the Act provides that the respondent **may** convene a hearing to consider an application. The respondent is not obliged to convene such a hearing and may determine the application after it had read and considered the applicant's application. On the facts of this case there was no reason for the respondent to convene a hearing. It did not have regard to any fact or consideration that the applicant could not foresee and did not address in its application.

The matter came before the court on 12 April 2010. On that date counsel for the respondent informed the court that the matter is not ripe for hearing as the

full record of the respondent's proceedings, the minutes of its deliberations in particular, have not been put before the court. The applicant contended that the matter was ripe for hearing. The matter was postponed and the costs reserved. The parties are still not agreed as to whether the record was complete when the matter was called on 12 April and as to what constitutes a complete record. Rather than attempting to make a finding as to what constitutes a complete record, the reserved costs should in my view follow the event.

In the result the following order is made:

The application is dismissed with costs, including the costs reserved on 12 April 2010.

A handwritten signature in black ink, appearing to be 'B.R. du Plessis', with a long horizontal stroke extending to the right.

B.R. du Plessis
Judge of the High Court

On behalf of the applicant: Marius Blom & GC Germishuizen Inc.
835 Duncan Street
Brooklyn
Pretoria

Adv. L. Pretorius

On behalf of the Respondent: The State Attorney
8th Floor
Bothongo Heights Building
167 Andries Street
Pretoria

Adv. T.A.N. Makhubele