

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 134629/2023

DATE: 05-01-2024

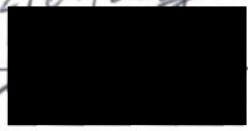
DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

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

(3) REVISED.

DATE 22/01/2024

SIGNATURE 

10 In the matter between

PARADISE HOTEL AND ENTERTAINMENT LOUNGE

Applicant

and

GAUTENG LIQUOR BOARD

Respondent

J U D G M E N T

YACOUB, J: The applicant was the holder of a hotel liquor
licence that was withdrawn. The date and circumstances of
20 the withdrawal are disputed.

According to the applicant the first time it knew of the
withdrawal was when it was forcibly shut down on 28
December 2023 by representatives of the respondent. It
claims in the founding affidavit that at this time it was given
a notice dated 26 September 2023, and signed on 25

October 2023, and that it had no idea before this of the withdrawal. According to the deponent of the founding affidavit he had attended a hearing on 30 March 2023 (at which he does not disclose what happened) and heard nothing more until 28 December 2023.

The respondent revealed that, on the contrary, the applicant was informed on 19 April 2023 that the respondent had resolved on 30 March to withdraw the licence. In reply the applicant then acknowledged this and stated that it had
10 responded in May by saying that this was not a proper notification. According to the applicant there was no formal notification and therefore the licence had not been properly withdrawn.

The respondent's version is that there was a notification in April, and that the applicant had known since then that it was trading without a licence. The respondent's explanation of the notice dated September 2023, and signed in October 2023 is that it was a simply an internal note of a resolution taken in September to enforce the withdrawal.
20 Examination of the notice reveals that this is not the case, nor could the respondent have thought it was the case. The notice is addressed to the applicant and informs the applicant of the resolution to withdraw the licence which was taken on 30 March. This implies that even as far as the respondent is concerned the applicant had not received

proper notice. It is on this basis that I found the matter urgent.

The applicant seeks an order that it may continue to sell liquor under the terms of the withdrawn licence pending the review of the withdrawal to be instituted. The applicant in its founding affidavit does not deal specifically with the allegations in the police report of non-compliance with the terms of the liquor licence. It focuses instead on other elements in the complaint by the police which deal with
10 crimes in the vicinity. The applicant simply furnishes a bare denial of any non-compliance and then blames the police for lack of vigilance as far as the prevalence of crime is concerned.

The respondent, apart from its prevarication regarding the notice, set out the basis on which the licence was withdrawn. It also alleges that the deponent to the founding affidavit conceded to licence contraventions at the hearing. To this, in reply, the applicant furnishes a general bare denial. It does not deal specifically with the allegation
20 that the deponent conceded to licence contraventions.

The respondent contends that the applicant does not have a *prima facie* right because the licence was withdrawn in April, and, therefore, there was no right to trade in liquor after that.

In my view, if the decision is subject to review, that is

putting the cart before the horse. I accept that the applicant has established a *prima facie* right.

The second requirement for an interim interdict, is that there must a reasonable apprehension of irreparable harm.

The applicant contends that its entire business ceases to function without the licence. It has not put up any evidence of this.

The respondent submits that, since this is a hotel
10 liquor licence, the applicants core business is that of a hotel providing accommodation and perhaps meals. The core business is not the sale of liquor. The withdrawal of the licence cannot then cause the failure of the business. The applicant does not seriously deal with this issue.

The balance of convenience for the applicant is related to the question of irreparable harm and the fact that employees will allegedly lose jobs and it will not be able to pay rent. Again, these are bald allegations for which no detail is put up.

20 The respondent, firstly, denies that this can be the outcome of the withdrawal if the core business is of providing accommodation, but also submits that the balance of convenience is in its favour, because of the public importance of ensuring that licence conditions are complied with and the likelihood that the non-compliance with licence

conditions contributes to the prevalence of crime in the area.

The final requirement is that of no alternative remedy. There is no suggestion that there is any alternative remedy, and I accept that there is none.

I accept that the applicant has established a *prima facie* right, and that there is no alternative remedy. I am not satisfied that the applicant has established that there is threat of harm or that the balance of convenience favours it.

10 Taking into account that, in motion proceedings, the respondent's version must prevail unless it is so fantastic that it cannot be believed, and that, other than the attempt to prevaricate regarding the notice, the respondent's version appears to be coherent and reasonable, I am not satisfied on these two elements.

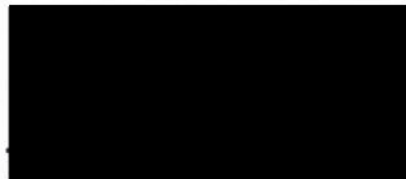
An interim interdict is discretionary relief. Even if I accept in the applicant's favour that it has established a *prima facie* right, that there is a threat of harm, and that the balance of convenience favours it, the difficulty in granting
20 the relief sought is two-fold.

The first is that the applicant was not honest with the Court about knowing in April already that the licence had probably been withdrawn, or that a decision had been taken to withdraw the licence. That information was concealed until the respondent mentioned it. The applicant must

approach Court with clean hands.

Secondly, the applicant has been coy about exactly how much of its business is based on its hotel business and how much simply on selling liquor. It has also been coy about its participation in inquiry and the level of compliance it achieves. It sought in the founding affidavit to focus the Courts attention on the police complaint of the prevalence of crime and away from the question of non-compliance.

10 In my view this less than open approach by the applicant militates against my exercising my discretion in its favour, even if I had been able to find that it had established all the elements for an interim interdict. For these reasons the applicant is dismissed with costs.



YACOUB, J

20 JUDGE OF THE HIGH COURT

DATE: 22/01/2024