

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA**

Case Number: **2023-046515**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE: 13 June 2023
SIGNATURE: JANSE VAN NIEUWENHUIZEN J

In the matter between:

LOLAFON (PTY) LTD

Applicant

and

THE GAUTENG PROVINCIAL LIQUOR BOARD

First

Respondent

LIQUOR CITY JACKAL CREEK

Second Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

- [1] This is an urgent application for an interim interdict in terms of which the applicant is authorised to trade pending the finalisation of an application for the review of the first respondent's decision to decline the applicant's application for a liquor licence.

BACKGROUND

- [2] On 21 February 2023 Francis-Subbiah J granted an order in terms of which the first respondent, the Gauteng Liquor Board ("the Board"), had to consider

and finalise the applicant's application for a liquor store license within 30 calendar days of date of the order.

- [3] On 11 April 2023 a certain Martin Sibanyoni ("Sibanyoni") send an email to Mr Blom ("Blom"), the applicant's attorney of record, advising that the Board had resolved to decline the application. Sibanyoni, further, stated that a formal letter signed by the chairperson of the Board will be send in due course.
- [4] The letter was not sent and on 1[...] May 2023 this urgent application was served on the Board. The applicant sought, *inter alia*, an order declaring the Board to be in contempt of the court order granted on 21 February 2023.
- [5] In terms of the notice of motion the Board had to file its answering affidavit, if any, on or before noon on 26 May 2023.
- [6] The Board eventually and no doubt due to the pending contempt application, forwarded its decision in compliance with the court order to the applicant's attorney on 25 May 2023. I will deal with the decision in more detail *infra*.
- [7] In view of the aforesaid development, the applicant no longer persisted in the contempt relief and filed an amended notice of motion claiming the relief referred to *supra*.

FACTS

- [8] The facts set out in the founding affidavit were deposed to by George Demetriou Georgiadis ("Georgiadis"), a businessman and director of the applicant. Georgiadis stated that he holds an interest in at least two liquor licenses through companies in which he holds the controlling share.
- [9] In applying for liquor licenses in the past, Georgiadis made used of the services of one Thabo Lenake ("Lenake"), a liquor consultant, that was previously employed in a senior position by the Board. According to Georgiadis, Lenake had been practising as a liquor consultant for at least 8 years.
- [10] On each occasion Lenake performed his services without incident and Georgiadis had no reason to question Lenake's credibility.

- [11] The applicant secured the right to run a Pick 'n Pay supermarket and liquor store at Jackal Creek Shopping Centre in Johannesburg and enlisted the services of Lenake in applying for a new liquor store license.
- [12] The application was lodged on 3 May 2020 and Georgiadis stated that to the best of his knowledge and belief, the application was compliant on lodgement. On or about the middle of December 2020, Lenake delivered a document which, based on Georgiadis' knowledge and the format of new licences, was a license for the liquor store. The license had the following reference number: G[...].
- [13] Liquor licenses must be renewed yearly and Georgiadis, once again, enlisted the services of Lenake for the renewal of the license. Lenake duly delivered a document, which in Georgiadis' experience and knowledge, was a renewal for the period December 2021 to December 2022.
- [14] Much to Georgiadis' consternation and on 12 January 2022, the South African Police Services closed the liquor store and informed him that the initial license was fraudulent.
- [15] It subsequently appeared that the fraud allegation is based on a statement by a certain Raymond Martin, who was the director: liquor at the time. The statement indicated that the applicant's fraudulent license formed part of a "batch" of blank license documents which were stolen from his office.
- [16] Georgiadis confronted Lenake who informed him that he was assisted by a further consultant, one Da Silva, and that he had no knowledge of how the license could be fraudulent. Not surprisingly, Lenake, was not willing to depose to an affidavit in confirmation of the aforesaid.
- [17] Georgiadis, thereupon, consulted Blom who advised that if the document issued is not proper, it means that the application for a license was not yet finalised. Georgiadis was advised to lodge an application compelling the Board to decide on the initial application and to pray for an interim order that would allow the store to reopen pending the decision.

- [18] The application was heard and dismissed by Kumalo J on 13 April 2022.
- [19] Subsequent to the dismissal of the application, the applicant lodged a new application for a liquor store licence with the Board.
- [20] In the interim, a case of illegal trading in liquor was opened by the South African Police against the applicant. During December 2022 Georgiadis learned that the national prosecuting authority declined to prosecute and that a *nolle prosequi* was issued.
- [21] I pause to mention, that the aforesaid facts are not denied by the Board.

DECISION

- [22] The decision of the Board reads as follows:
“The Board held a Meeting on the 4th of April 2023, and after deliberations, resolved to decline the application for the Liquor Store License for the following reasons:
- 1.1 *The Applicant is not of good character and is not fit to be holder of a Liquor Licence as envisaged in Section 30(2)(b) of the Gauteng Liquor Act No 2 of 2003.*
- 1.2 *The Applicant operated with an unlawful liquor licence which forms part of the stolen bunch of letterheads from Chief Director’s Office of the Liquor Board.”*
- [23] In view of the fact that the Board does not dispute Georgiadis’ version of events coupled with the fact that the applicant was not prosecuted for trading illegally in liquor, the decision is somewhat perplexing to say the least.
- [24] Be that as it may, the applicant intends taking the decision on review and the present application pertains to interim relief pending the finalisation of the review application.

INTERIM INTERDICT

- [25] Mr Lekitima counsel for the Board, stated during his address that the Board does not dispute the court’s authority to issue an interim interdict in the terms

prayed for by the applicant. The Board, however, contends that the applicant has not satisfied the requirements for an interim interdict.

Prima facie right

- [26] In terms of the constitution the applicant has a right to freedom of trade [section 22] and a right to just administrative action [section 33]. In order to enforce these rights, the applicant intends to lodge an application for the review of the Board's decision, which decision in effect hampers the applicant's right to trade as entrenched in section 22 of the Constitution.
- [27] The right to trade in *casu*, is subject to legislative authority and should the review be successful, the applicant's right will be vindicated.
- [28] I am satisfied that the facts underlying the review establish at least a *prima facie* right for purposes of an interim interdict.

Irreparable harm

- [29] Georgiadis stated that the applicant invested R 17 000 000, 00 to establish the Jackal Creek Pick 'n Pay business. I am mindful that only a portion of the investment would have been in respect of the liquor store.
- [30] The applicant has entered into a lease agreement in respect of the liquor store and has to pay approximately R 70 000, 00, depending on the variables, under lease, per month. Bearing in mind that the liquor store was closed by the South African Police Service during January 2022, the payment of the lease amount constitutes a monthly loss for the applicant.
- [31] More importantly, Georgiadis stated that the liquor store employed 8 employees, some of which had to be laid off due to the problem with the liquor license. In view of the dire economic situation in South Africa and the high number of unemployed citizens, the loss of employment by any person is devastating, to say the least. Georgiadis indicated that, should the interim interdict be granted, the applicant would be in a position to re-employ the employees that lost their employment.
- [32] The applicant will not be able to recoup the losses it will suffer until the finalisation of the review. The plight of families left without an income is self-

evident. Each month that the ex-employees do not earn an income, their families are left without income to pay for basic necessities, such as food and shelter.

- [33] In the circumstances the applicant has established irreparable harm, if the interim relief is not granted.

Balance of convenience

- [34] The Board stated that, should the interim relief be granted, its authority will be undermined, and its stature tarnished.

- [35] I do not agree. The applicant is merely exercising its right of legal recourse. Any harm the Board might, in the interim, suffer pales in comparison to the harm that will be suffered by the applicant and its employees.

No other satisfactory remedy

- [36] Pending the finalisation of the review application, the applicant has no other remedy to its disposal to protect its rights.

COSTS

- [37] I am of the view that the costs of this application should be costs in the review application.

ORDER

In the premises, I grant the following order:

1. In terms of the provisions of rule 6(12) of the Uniform rules of court, condonation for the non-compliance with the rules of court is granted.
2. The applicant is authorised to trade in liquor at its business known as Pick 'n Pay Liquor Jackal Creek situated at Erf 9[...] and 9[...]8 Zandspruit Extension 6[...], being Shop 1[...] Jackal Creek, corner of Aureole Avenue and Boundary Road, Zandspruit Extension 6[...], Johannesburg, Gauteng pending the finalisation of the review against the respondent's decision to decline the applicant's application for a liquor licence.

3. The applicant is ordered to institute the review within 30 days from date of this order, failing which the order shall lapse and be of no force and effect.
4. Costs of the application is costs in the review. Should the review not be instituted any party may set the matter down in respect of the issue of costs.

N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD:

06 June 2023

DATE DELIVERED:

13 June 2023

APPEARANCES

For the Applicant: Advocate Snyman Sc

Instructed by: Marius Blom Incorporated

For the 1st Respondent: Advocate Lekitima

Instructed by: State Attorney Pretoria