



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: **4595/2022**

In the matter between:

KGATSANE SYLVIA MEHLO

Applicant

and

**THE FREE STATE GAMBLING, LIQUOR AND
TOURISM AUTHORITY**

1st Respondent

**THE CHAIR PERSON OF THE FREE STATE GAMBLING,
LIQUOR AND TOURISMS AUTHORITY**

2nd Respondent

CORAM: LOUBSER, J et RAMDEYAL, AJ

HEARD ON: 24 APRIL 2023

JUDGEMENT BY: RAMDEYAL, AJ

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 26 MAY 2023. The date and time for hand-down is deemed to be 26 MAY 2023 at 16:00

[1] This is an application in terms of the provisions of section 6 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) read with Uniform Rule 53 for the

judicial review and the setting aside of the refusal of a licence application for Sylvia's restaurant.

Section 6 of the said "PAJA" reads as follows:

- '(1) Any person may institute proceedings in a court or a tribunal for the judicial review of administrative action.
- (2) A court or tribunal has the power to judicially review an administrative action if-
- (a) the administrator who took it-
 - (i) was not authorized to do so by the empowering provision;
 - (ii) acted under a delegation of power which was not authorized by the empowering provision;
 - or
 - (iii) was biased or reasonably suspected of bias;
 - (b) a mandatory and material procedure or condition prescribed by an empowering provision; was not complied with;
 - (c) the action was procedurally unfair;
 - (d) the action was materially influenced by an error of law;
 - (e) the action was taken-
 - (i) for a reason not authorized by the empowering provision;
 - (ii) for an ulterior purpose or motive;
 - (iii) because irrelevant considerations were taken into account or relevant considerations were not considered;
 - (iv) because of the unauthorized or unwarranted dictates of another person or body;
 - (v) in bad faith; or
 - (vi) arbitrarily or capriciously;
 - (f) the action itself-
 - (i) contravenes a law or is not authorized by the empowering provision; or
 - (ii) is not rationally connected to-
 - (aa) the purpose for which it was taken;
 - (bb) the purpose of the empowering provision
 - (cc) the information before the administrator; or
 - (dd) the reasons given for it by the administrator;
 - (g) the action concerned consists of a failure to take a decision;
 - (h) the exercise of power or the performance of the function authorized by the empowering provision, in pursuance of which the administrative action was purportedly taken is so unreasonable that no reasonable person could have exercised the power or performed the function; or
 - f) the action is otherwise unconstitutional or unlawful.'

- [2] The applicant's application for a liquor licence was lodged in terms of section 27 read with section 31 of the Free State Gambling and Liquor Act 6 of 2010 ("the Act").
- [3] The applicant at the time already had a liquor licence for a bottle store issued on the same premises and sought to apply for a second liquor licence on the same premises expecting the respondents to have due regard to the existing licence. They complied with the Act in obtaining the necessary reports from the South African Police Services, the municipality and relevant inspectors which the applicant believes are favourable to her application. The report from the nearby church apparently supports the "project", there is no mention though of the support of the actual sale of liquor.
- [4] The respondent refused the application for the liquor licence on the basis of the following reasons:
- "1) The proposed premises are in close proximity to the place of worship.
 - 2)The application will exceed 60/40 requirement as there is already existing business and therefore annexure F will not apply.
 - 3)There is no sufficient parking at the proposed premises which will lead to traffic disturbance.
 - 4)Section 28(4) of the Act read together with regulation 70 (1) and (3) further indicates that "when considering an application for registration, the Authority must also take due regard to issues of proximity of the proposed premises to,
 - (i) institutions of learning,
 - (ii) places of worship,
 - (iii)existing outlets..."
- [5] Section 28 of the said Act reads as follows:
- "(1) The Authority may –
 - (a) require further information relevant to an application; and
 - (b) refuse an application if the applicant has not supplied all information required in terms of paragraph (a) within the prescribed time.
 - (2) If the application complies with the provisions of the Act, the Authority must further consider the application relating to the following criteria:
 - (a)The applicant's proposed contribution to combating alcohol abuse, including whether the applicant has subscribed to any industry code of conduct approved by the national Minister as contemplated in section 13 (1)(b) of the national Liquor act; and

(b) The extent to which the proposed contribution to combating alcohol abuse, including whether the applicant has subscribed to any industry code of conduct approved by the National Minister as contemplated in section 13 (1)) (b) of the National Liquor Act; and

(c) The extent to which the proposed registration may materially restrict or promote –

- i) new entrants to the liquor industry;
- ii) job creation within the liquor industry;
- iii) diversity of ownership within the liquor industry;
- iv) efficiency of operation of the liquor industry; or
- v) competition within the liquor industry.

3) For a micro-manufacturing registration, the Authority may consider the applicant's commitment to black economic empowerment.

4) When considering application for registration, the Authority must also take due regard of issues of-

- (a) public interest;
- (b) proximity of the proposed premises to-
 - (i) institutions of learning; or
 - (ii) places of worship
 - (iii) existing outlets;

(c) The ratio of population vis-a vis the number of outlets in the relevant ward;

(d) the report of the relevant municipality received in terms of section 31; and

(e) the reports, views, comments and objections contemplated in sections 31(4) to sections 35;

(5) After considering the application and all relevant factors the board may either-

- (a) register the applicant; or
- (b) refuse to register the applicant.

(6) If the Authority refuses an application, the Authority must give the applicant written reasons for the decision.'

[6] The respondents base their refusal to grant the application on the basis that 'the applicant disregards the legislative requirements.'

It is apparent that the main point of contention as per the argument in court by Mr. Qwelane, appearing for the respondents, is that Section 24(4)(d) requires that the report of the municipality be taken into consideration.

The report of the municipality reads as follows:

"a. The building plan submitted does not correspond with the existing structure.

The office of Municipal Health Services – Manguang Metropolitan Municipality shall approve premises for operation only if it complies with all relevant Municipal legislation. **Therefore, this application is not approved and supported.'**

- [7] The respondents' contention is that there are no reasons forthcoming from the applicant convincing them as to why they should not have regard to the negative comment from the municipality.
- [8] It has been said that liquor can be regarded as a potentially dangerous substance and therefore the excessive consumption should be avoided. Mr. Qwelane basically argued that the existing liquor licence for the business on the said premises is for an outlet referred to as a bottle store for the purpose of purchasing and leaving the premises whereas the current application is for a restaurant requiring the sit down of patrons consuming liquor on the premises. Section 28 (2)(a) of the Act states that the applicant's proposed contribution to combating alcohol abuse must be taken into consideration.
- [9] Section 40(1) of the Constitution of South Africa states that in the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Therefore, the report of the municipality is essential for consideration.
- [10] In *Reynecke v Free State Gambling and Liquor Authority and Another*¹ it was said by Lekhale J that 'SAPS and the municipality served as the eyes and ears of the respondents... Their cooperation was necessary in the services that the respondents render and was, as such, of utmost importance to service delivery.'
- [11] I am of the opinion that the report of the municipality which does not approve the application for a liquor licence for the said premises is an essential factor to consider as well as all the other relevant factors for refusal as discussed.
- [12] In the circumstances the following order is made:
1. The application for review is dismissed with costs.

¹ (3402/2014) [2014] ZAFSHC 19 (30 October 2014) paragraph 29



RAMDEYAL AJ

I agree:



LOUBSER, J

On behalf of the Applicant:
Instructed by:

Adv. R Van der Merwe
Kobus Burger Attorneys
Bloemfontein

On behalf of the Respondent:
Instructed by:

Mr. D.S Qwelane
Qwelane Theron & Van Niekerk
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