

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 112599/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
14/11/2023	
DATE	SIGNATURE

In the matter between:

ZULZI ONDEMAND (PTY) LTD

Applicant

and

**THE MINISTER OF SOUTH AFRICAN
POLICE SERVICES**

First Respondent

**THE COMMISSIONER OF SOUTH AFRICAN
POLICE SERVICES FOR GAUTENG**

Second Respondent

**THE STATION COMMANDER FOR
MIDRAND POLICE STATION**

Third Respondent

THE GAUTENG LIQUOR BOARD

Fourth Respondent

JUDGMENT

- [1] The applicant launched this application on urgent basis seeking an order against the respondents in the following terms:
- [1.1] The applicant be granted leave to bring this application as one of urgency in terms of rule 6(12)(a) and (b) of the Uniform Rules of Court and that the forms and services provided for in the rules of this Honourable Court be dispensed with;
 - [1.2] The seizure of the applicant's stock (stock listed at annexure "ZOD4") which consists of intoxicating beverages be declared unconstitutional and unlawful;
 - [1.3] The first, second and third respondents be directed to release the stock (stock listed at annexure "ZOD4") to the applicant forthwith;
 - [1.4] That the members of the first, second, third and fourth respondents be interdicted from further unlawfully interfering with the applicant's business at 23 Trinity Close, Cambridge Commercial Park, Paulshof, Johannesburg, Gauteng, 2191 or any of the applicant's secondary warehouses;
 - [1.5] That the fourth respondent is compelled and directed to consider the applicant's applications submitted on or about the 5th of May 2023 under reference numbers GLB 7000016903; GLB7000016904; GLB 7000016905; GLB 7000016906; GLB 7000016907; GLB 7000016105 and thereafter issue the applicant with the relevant liquor licences within 10 (ten) days of this order;
 - [1.6] The respondents are to pay the cost of this application, including that of counsel appointed, jointly and severally, the one paying the other to be absolved on a scale between attorney and client.
- [2] The application is opposed by the respondents who have filed a comprehensive answering affidavit wherein two points *in limine* are raised.

- [3] The first point *in limine* was that the matter does not deserve the attention of the urgent court since the applicant has on two occasions this year paid fines for the same offence regarding the same premises. I dismissed this point *in limine* for the applicant was challenging the seizure of its goods, which occurred on the 19th of October 2023. The applicant had been negotiating with the respondents for the release of the goods until it became clear on the 25th of October 2023 that the respondents are not interested in resolving the matter – hence the applicant instituted these proceedings.
- [4] The second point *in limine* related to the authority of the deponent to the founding affidavit. There was no merit in the argument that the deponent required authority from the directors of the applicant to depose to the affidavit. The deponent was in charge of the premises where the goods of the applicant were removed, and he deposed to the facts that are known to him. Furthermore, the respondents did not file a notice in terms of rule 7 of the Uniform Rules of Court to challenge the institution of these proceedings by the applicant, but only the authority of deponent has been challenged.
- [5] In *Ganes v Telecom Namibia Ltd*,¹ the court quoted with approval the case of *Eskom v Soweto City Council*,² wherein the following was stated when it dealt with the issue of authority:

“[19] There is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorised. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of

¹ *Ganes v Telecom Namibia Ltd* [2003] ZASCA 123; 2004 (3) SA 615 (SCA) (“*Ganes*”).

² *Eskom v Soweto City Council* 1992 (2) SA 703 (W).

attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705C - J.)³

- [6] The genesis of this case is that on the 19th of October 2023 the members of the South African Police Service ("SAPS") attended at the premises of the applicant and demanded that it produce a liquor license. It is undisputed that the applicant produced a liquor license relating to the premises situated at 23 Trinity Close, Cambridge Commercial Park, Paulshof, Johannesburg. However, the premises attended to by the members of the South African Police are situated at Calswad Décor Centre.
- [7] It was contended by counsel for the applicant that the applicant is a holder of a Discretionary Virtual Liquor License (Off-Consumption), number GLB 7000016105 issued by the fourth respondent. The applicant is to conduct its business selling all kinds of alcohol on-line. Due to growth of the business, the applicant has acquired warehouses wherein to store the alcohol which is not for immediate use or demand. The storage of the alcohol does not require the applicant to have a license for each warehouse but uses only the license for the Paulshof head office. Out of abundance of caution and due to the harassment by the members of the SAPS, the applicant has submitted applications for licenses of its other storage facilities.
- [8] The respondents contended that the license issued in favour of the applicant by the fourth respondent relate only to the premises as stated therein. It cannot be extended to other premises without the approval of the fourth respondent.

³ See *Ganes* (fn 1) at para 19.

Furthermore, so the argument went, the applicant has on two occasions this year been fined for the storage of the alcohol in warehouses in other premises other than 23 Trinity Close, Cambridge Commercial Park, Paulshof. The applicant has, so it was contended, sought to interpret the terms of the license in a way that suits it.

- [9] It is apposite that the relevant provisions of the Gauteng Liquor Act,⁴ be restated at this stage which provide the following:

“23 Applications

- (1) Every application for a new license shall be made to the relevant local committee of the district or metropolitan area in which the license is sought, in the prescribed form by lodgement with the secretary of the local committee and shall provide or be accompanied by-
 - (a) A detailed written motivation in support of their license applied for;
 - (b) a detailed sketch plan of the premises showing the rooms, services, buildings, construction material and other pertinent information;
 - (c) A detailed written description of the premises to which the application relates, together with color photographs of the external and internal features of the premises;
 - (d) a report of an inspector and reports of any inspection required by any law or by-law;
 - (e) Proof of publication of notices in the newspaper in terms of section 24;
 - (f) a certificate of suitability on the person to the applicant and the application issued by the South African Police Services;
 - (g) The full business address and location of the premises to which the application relates, identity number or registration number of the applicant, residential address or address of registered office of the applicant;
 - (h) Proof of affiliation to an association referred to in section 38;

⁴ 2 of 2003.

- (i) proof of payment of the prescribed fee; and
 - (j) clearance certificate by the South African Revenue Services that the applicant complies with tax laws.
- (2) For purposes of considering a license under subsection (1), the local committee may cause an inspection to be made of the premises to which the application relates and any other investigation the local committee thinks necessary.

...

28. Kinds of licenses

- (1) The following licenses may be granted for the sale and supply of liquor-
 - (a) for consumption on the licensed premises concerned-
 - ...
 - (c) any other license that the Board, in its discretion will deem appropriate."

[10] The relevant conditions of the license issued to the applicant as they appear thereon are as follows:

"CERTIFICATE IN TERMS OF SECTION 23 OF THE GAUTENG LIQUOR ACT, 2003 ("THE ACT")

DISCRETIONARY VIRTUAL LIQUOR LICENSE (OFF-CONSUMPTION)

Zulzi Ondemand (Pty) Ltd is pursuant to the provisions of Section 23 and in terms of the provisions of Section 28(1)(c) of the Act hereby licensed to sell All Kinds of Liquor and to conduct on-line trade in liquor under the name of Zulzi Ondemand upon premises, the plan of which has been approved situated at No. 22 Witkoppen Road, Cambridge Park, Paulshof in the district of Johannesburg such as is, in accordance with the conditions of the act or any other law, authorized to be conducted under the above mentioned license.

The holder of a Discretionary Virtual Liquor License (Off-Consumption) shall in terms of the Act and Regulations, at all times maintain a bona fide virtual liquor

store business in respect of which the requirements of the Act and Regulations are complied with.

It is a condition of issue of this license for the licensee to comply with the following:

Liquor not required for immediate sale, shall be stored on the licensed premises or any such place designated for that purpose. The licensee shall be required to disclose to the Board, for the purposes of conducting online trade in liquor, a place or places where such liquor is to be stored or warehoused, where such a place or warehouse is not the primary point of sale. The liquor licensing authority reserves the right to inspect any such other place or places where liquor intended for online trade is stored to ensure compliance with the Act and Regulations."

[11] It is now settled that, in interpreting statutory provisions, the court must first have regard to the plain, ordinary, grammatical meaning of the words used in the statute. While maintaining that words should generally be given their grammatical meaning, it has long been established that a contextual and purposive approach must be applied to statutory interpretation. Section 39(2) of the Constitution of the Republic of South Africa,⁵ enjoins the courts, when interpreting any legislation, and when developing the common law or customary law, to promote the spirit, purport and objects of the Bill of Rights.

[12] In *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd*,⁶ the Constitutional Court dealt with the interpretation of the provisions of a statute and stated the following:

"[53] It is by now trite that not only the empowering provisions of the Constitution but also of the Restitution Act must be understood purposively because it is remedial legislation umbilically linked to the Constitution. Therefore, in construing 'as a result of past racially discriminatory laws or practices' in its setting of section 2(1) of the Restitution Act, we are obliged to scrutinise its purpose. As we do so, we must seek to promote the spirit, purport and objects of the Bill of Rights. We must prefer a generous construction over

⁵ Constitution of the Republic of South Africa, 1996.

⁶ *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd* [2007] ZACC 12; 2007 (6) SA 199 (CC); 2007 (10) BCLR 1027 (CC).

a merely textual or legalistic one in order to afford claimants the fullest possible protection of their constitutional guarantees. In searching for the purpose, it is legitimate to seek to identify the mischief sought to be remedied. In part, that is why it is helpful, where appropriate, to pay due attention to the social and historical background of the legislation. We must understand the provision within the context of the grid, if any, of related provisions and of the statute as a whole including its underlying values. Although the text is often the starting point of any statutory construction, the meaning it bears must pay due regard to context. This is so even when the ordinary meaning of the provision to be construed is clear and unambiguous.”⁷

- [13] More recently, in *Independent Institution of Education (Pty) Limited v KwaZulu-Natal Law Society*,⁸ the Constitutional Court again had an opportunity of addressing the issue of interpretation of a statute and stated the following:

“[1] It would be a woeful misrepresentation of the true character of our constitutional democracy to resolve any legal issue of consequence without due deference to the pre-eminent or overarching role of our Constitution.

[2] The interpretive exercise is no exception. For, section 39(2) of the Constitution dictates that ‘when interpreting any legislation ... every court, tribunal, or forum must promote the spirit, purpose and objects of the Bill of Rights’. Meaning, every opportunity courts have to interpret legislation, must be seen and utilised as a platform for the promotion of the Bill of Rights by infusing its central purpose into the very essence of the legislation itself.”⁹

- [14] The Court continued and stated the following:

“[18] To concretise this approach, the following must never be lost sight of. First, a special meaning ascribed to a word or phrase in a statute ordinarily applies to that statute alone. Second, even in instances where that statute applies, the context might dictate that the special meaning be departed from. Third, where the application of the definition, even where the same statute in which it is located applies, would give rise to an injustice or incongruity or absurdity that is at odds with the purpose of the statute, then the

⁷ Id at para 53.

⁸ *Independent Institute of Education (Pty) Limited v KwaZulu-Natal Law Society* [2019] ZACC 47; 2020 (2) SA 325 (CC); (2020 (4) BCLR 495 (CC) (“*Independent Institute of Education*”).

⁹ Id at paras 1-2.

defined meaning would be inappropriate for use and should therefore to be ignored. Fourth, a definition of a word in the one statute does not automatically or compulsorily apply to the same word in another statute. Fifth, a word or phrase is to be given its ordinary meaning unless it is defined in the statute where it is located. Sixth, where one of the meanings that could be given to a word or expression in a statute, without straining the language, 'promotes the spirit, purport and objects of the Bill of Rights', then that is the meaning to be adopted even if it is at odds with any other meaning in other statutes.

...

[38] It is a well-established canon of statutory construction that 'every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature'. Statutes dealing with the same subject matter, or which are *in pari materia*, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent with itself. In other words, that the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.

...

[41] This canon is consistent with a contextual approach to statutory interpretation. It is now trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used therein. While maintaining that words should generally be given their ordinary grammatical meaning, this Court has long recognised that a contextual and purposive approach must be applied to statutory interpretation. Courts must have due regard to the context in which the words appear, even where "the words to be construed are clear and unambiguous".

...

[42] This Court has taken a broad approach to contextualising legislative provisions having regard to both the internal and external context in statutory

interpretation. A contextual approach requires that legislative provisions are interpreted in light of the text of the legislation as a whole (internal context). This Court has also recognised that context includes, amongst others, the mischief which the legislation aims to address, the social and historical background of the legislation, and, most pertinently for the purposes of this case, other legislation (external context). That a contextual approach mandates consideration of other legislation is clearly demonstrated in *Shaik*. In *Shaik*, this Court considered context to be 'all-important' in the interpretative exercise. The context to which the Court had regard included the 'well-established rules of criminal procedure and evidence' and, in particular, the provisions of the Criminal Procedure Act."¹⁰

- [15] The provisions of sections 23 and 28 of the Act are plain and unambiguous. It is clear and plain that the requirements in terms of section 23 are that an application for a liquor license must be accompanied by a detailed sketch plan of the premises showing the rooms, services, buildings, construction material used and other pertinent information about the premises. Of importance in this case is section 23(1)(c) which requires a detailed written description of the premises to which the application relates together with the colour photographs of the external and internal features of the premises. Furthermore, section 23(1)(g) requires the business address and location of the premises to which the application relates.
- [16] It is undisputed that the applicant has been issued with a liquor license at the discretion of the fourth respondent in terms of section 28(1)(c). The license was specifically issued to the applicant to conduct on-line trade in all kinds of liquor upon premises, the plan of which had been approved by the fourth respondent, situate at No. 22 Witkoppen Road, Cambridge Park, Paulshof in the district of Johannesburg. Although the license permits the storage of liquor not required for immediate sale to be stored or warehoused at other premises other than the licensed premises, it categorically provides that such premises must be designated for that purpose. To ascertain that there is compliance with the Act and the Regulations, the fourth respondent, as the liquor licensing authority,

¹⁰ See *Independent Institute of Education* (fn 8) at paras 18, 38, 41 and 42 respectively.

has the right to inspect such other premises where liquor intended for the on-line trade is stored or warehoused.

- [17] I do not understand the applicant to be saying that it has complied with the requirements of section 23 with regard to the premises at Calswald Décor Centre. The applicant is labouring under the view that since its license permits the storage of the liquor at other premises other than the licensed premises, then it does not require a license. However, it is clear from the license of the applicant that the licensee must at all times comply with the Act and the Regulations. Although the license permits the warehousing of liquor in other premises, it provides that such premises must be designated for the purpose. The premises can only be designated by the Liquor Authority by approving the plans of those premises.
- [18] It is my considered view therefore that, the discretionary virtual liquor license issued for the conduct of on-line trade to the applicant does not permit the applicant to store or warehouse its stock which is not for immediate sale at any other premises other than those mention in the license unless such premises meet the requirements of the Act. The ineluctable conclusion is therefore that, the Act requires the premises which are used for the storage of liquor which is not for immediate sale under the license of the applicant to have its own license as licenses are only issued in relation to premises which meet the requirements of the Act.
- [19] There is no merit in the argument that the conduct of the members of the SAPS in confiscating the alcohol from the premises which do not have a license to store or warehouse the liquor is unlawful and unconstitutional. The applicant was on two occasions subjected to a fine for the same criminal conduct of housing alcohol at unlicensed premises but continued to do so. Nothing turns on the fact that the applicant has applied for licenses for several of its warehouses. For as long as it is not yet issued with the licenses due to the processes followed by the fourth respondent, those premises are not designated as warehouse or storage of the liquor and should not be used as such. The unavoidable conclusion is that the applicant has failed to establish a case for the interdict and the application falls to be dismissed.

[20] In the circumstances, I make the following order:

[1] The application is dismissed with costs.



M L TWALA
JUDGE OF THE HIGH COURT
JOHANNESBURG

Delivered: This judgment and order were prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 14th of November 2023.

Heard: 7 November 2023

Delivered: 14 November 2023

APPEARANCES:

For the Applicant: Advocate L J Mboweni

Instructed by: Nkobi Attorneys Inc

For the Respondents: Advocate N Naidoo

Instructed by: State Attorney