

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 7896/2020

REPORTABLE: YES/NO

OF INTEREST TO THE JUDGES: YES/NO

REVISED.

In the matter between:

WELGEVONDEN LODGE NO. 57 (PTY) LTD

APPLICANT

and

LIMPOPO PROVINCIAL LIQUOR BOARD

RESPONDENT

JUDGMENT

MAKGOBA JP

[1] At the hearing of this matter on 21 September 2021 and upon hearing the submissions by Counsel for both parties, I pronounced the following order and indicated that my written judgment would follow in due course:

1. The Respondent be and is hereby directed within 30 calendar days of this order, to consider and finalize the Applicant's application for a special license (on-consumption) (accommodation) in respect of a business known as Fifty Seven Waterberg situated at Welgevonden Private Game Reserve, Stand 57, Portion 8 of the farm Koedoespoort 283 KQ, Vaalwater district Waterberg, Limpopo Province.

2. The Applicant be and is hereby authorized to trade in liquor in its business known as Fifty Seven Waterberg situated at Welgevonden Private Game Reserve, Stand 57, Portion 8 of the farm Koedoespoort 238, KQ, Vaalwater, district Waterberg, Limpopo Province, as if the liquor license as applied for has been granted and issued until the final decision in respect of the application has been communicated and received by the Attorneys of record for the Applicant, and should the decision be to decline the application the Applicant is authorized to continue trading until such time as the decision could have been finalized on review before this Court; provided that the Applicant has to institute such review proceedings within 1 (one) month of the decision being communicated and received by the Attorneys of record for the Applicant.
3. The Respondent shall pay the costs of the application.

[2] What follows is my judgment and the reasons thereof.

[3] The Applicant brought an application against the Respondent in terms of section 6(2)(g) of Promotion of Administrative Justice Act 3 of 2000 ("PAJA") for the review of administrative action consisting of the failure by the Respondent to take a decision in regard to the issue of a liquor license to the Applicant.

The application is coupled with the seeking of an interim relief in accordance with common law and section 8(1)(e) of PAJA enabling the Applicant to trade on an interim basis.

[4] This application is in the nature of a *mandamus* compelling the Respondent to issue an on-consumption liquor license which had previously been granted to the Applicant in respect of a business known as Fifty Seven Waterberg, authorizing the Applicant to trade in liquor at Welgevonden Private Game Reserve, situated at Stand 57, Portion 8 of the farm Koedoespoort 238 KQ, Vaalwater, district Waterberg, Limpopo Province.

[5] The Court has the common law jurisdiction as well as jurisdiction in terms of section 6(2)(e) of PAJA, to issue a *mandamus* order against an administrative organ, directing it to take a decision in a matter which is unnecessarily delayed or where there is a refusal on the part of the administrative organ to take a decision.

Factual Matrix

[6] The facts outlined hereunder are common cause or not in dispute.

[7] In terms of Section 19 of the Liquor Act 27 of 1989, as amended, (the “Liquor Act”) the Applicant applied for a special license (on-consumption) (accommodation) in respect of a business to be known as Fifty Seven Waterberg and to be situated at Welgevonden Private Game Reserve, Stand 57, Portion 8 of the farm Koedoespoort 238 KQ, Vaalwater, district Waterberg, Limpopo Province.

[8] The application was properly drawn, compiled, signed and lodged at the Magistrate Office of Modimolle (Nylstroom) on 4 October 2019 and the prescribed fee in this regard was paid. No objections were filed of record against the application of the Applicant as is provided for in Chapter 2 of the Regulations to the Liquor Act.

The application having been lodged on 4 October 2019, the report of the Designated Police Officer (DPO) was to be filed on 8 November 2019. Thereafter the Magistrate Office was to forward the application to the Liquor Board (Respondent) for consideration on approximately 18 November 2019.

[9] The Applicant realized that there was no progress made with regard to the consideration of the application and on or about July 2020 the Applicant consulted with its attorneys of record regarding the delay in the processing of the application. The attorneys made an enquiry regarding the status of the matter by way of an email dated 29 July 2020. The said email is Annexure “D” to the founding affidavit.

[10] The said email was addressed to Mr Pelser, Director : Liquor Affairs of the Respondent. The said Mr Pelser is the deponent to the Respondent’s answering affidavit in the present case. On 29 July 2020, one Mr Shitlhangu of the Respondent,

who was also copied in Annexure “D” forwarded the email to other staff members of the Respondent requesting them to ascertain the whereabouts of the application.

[11] No further feedback was received from the Respondent and on 14 September 2020 and 29 October 2020 the attorneys for the Applicant followed up with the Respondent again but did not receive any reply.

[12] On 3 November 2020 the attorneys for the Applicant telephoned the Offices of the Magistrate of the district where the application was lodged and was told that the application was indeed lodged on 4 October 2019 and that the magistrate is still awaiting the report of the DPO.

Further follow ups were made to the Magistrate and the South African Police Service but no reply was received from any of these addressees.

[13] It is on record that the Applicant’s attorney followed up the lack of response from the Respondent since July 2020 to November 2020 with no reply coming from the Respondent. The Respondent admits to the correspondence of July 2020 but failed to properly address the situation. Only upon service of the present court application did the Respondent start taking any actions and a liquor inspector was assigned who was joined by a designated police officer (DPO).

Grounds for Opposition

[14] In the answering affidavit the Respondent stated that

“15. I admit that an application which meets all the requirements cannot take longer than six months before the Respondent to finalise if indeed such an application is before the Respondent”.

There is no denial of the fact that the application was properly lodged as far back as October 2019. As a ground for the opposition of the present application the Respondent states the following in its answering affidavit:

“4. The review application is opposed by the respondent on, inter alia, the basis that the application for liquor license which is the subject of the review application herein, has not reached the Respondent and consequently the Respondent has no obligation to consider or decide an application which is not before it”.

[15] I agree with the submission made by Mr Welgemoed, Counsel for the Applicant that the Respondent's ground for the opposition is bizarre in the light of the admission under oath that certain steps were taken in respect of the application. The ground of opposition is contrary to the admissions contained in the answering affidavit and more particularly in the fact that:

15.1. the application was assigned to a liquor inspector, namely Mr Matome Talakgale.

It goes without saying that if an application was not received an inspector could not be appointed.

15.2. a designated police officer were to join the inspector to locate the premises – see paragraph 5.16 of the answering affidavit. Again no designated police officer could be appointed if there is no application.

[16] In my view the Respondent was duly made aware of the liquor license application of the Applicant and was indeed aware of the application resulting from the enquiries of the attorneys of the Applicant. The Respondent was obliged to make a follow up with the Magistrate and the DPO to ensure that the application is laid before the Respondent for its consideration.

The definition of “**competent authority**” in the Liquor Act includes the Magistrate and the Respondent. It is further the duty of the Respondent to obtain the necessary report from the DPO.¹

¹ See Section 2(1)(vi) of the Liquor Act 27 of 1989.

[17] When launching the present proceedings the Applicant attached a complete copy of its application for the liquor license as lodged with the Magistrate on 4 October 2019. The Respondent acknowledges in the answering affidavit that on perusal of the review application it came to the Respondent's attention that the Applicant's application for a liquor license related to premises previously licensed and that the previous license lapsed due to Applicant's failure to renew. The Respondent correctly states further that in the absence of any extraordinary circumstances, these types of applications are normally granted without delay and with no difficulties.

[18] In the light of the concessions made by the Respondent in paragraph [17] above, I am of the view that the delay in considering the Applicant's liquor license lodged on 4 October 2019 is inordinate, unnecessarily delayed and amounts to a dereliction of duty on the part of the officials or public servants of the Respondent.

Procedure in liquor license application

[19] It is appropriate to set out the prescribed procedure to be followed when applying for a liquor license. This is so because the Respondent's main basis of opposition, as I understand it, is that it did not receive the liquor license application of the Applicant as lodged on 4 October 2019 in accordance with the Liquor Act 27 of 1989 and Regulations thereto.

[20] In terms of the Regulations to the Liquor Act, an application for a liquor license is lodged with the relevant Magistrate on the first Friday of a given month, or if such a day is a public holiday or closed day, on the first Friday which is not such a day.

The Magistrate then has to forward a copy thereof to the designated police officer (DPO) for his report in terms of Section 140 (a) of the Liquor Act.

[21] The designated police officer, no later than 35 (thirty five) days after lodgment of the application with the Magistrate, has to lodge a written report in terms of Section 140 (a) of the Liquor Act. Thereafter, no later than 42 (forty two) days after all the relevant time period for objections and replies to objections have lapsed in

terms of the Regulations, the Magistrate shall forward to the Secretary of the Respondent the original and copy of the application.

The Respondent then has to consider the application and either grant or refuse the application.

[22] It is clear from the Liquor Act and Regulations that it is the responsibility of the Magistrate to forward a copy of the application to the Respondent, and accordingly not the responsibility of the Applicant.

I am therefore of the view that in the present case the Applicant is not responsible for the fact that the application was allegedly never received by the Secretary of the Respondent. Furthermore, it is not the responsibility of the Applicant to ensure that the Magistrate forwards the original application to the Respondent for consideration once it has been properly lodged with the Magistrate, as was the case with the application of the Applicant.

[23] In any event the Respondent became aware that the liquor license application had been lodged with the Magistrate when the Applicant's attorneys made an enquiry during July 2020. When the present court application was served on the Respondent a complete application was attached thereto. Nothing stopped the Respondent from taking further steps to consider the liquor license application of the Applicant to date hereof.

[24] Not only was the liquor license application attached to the Founding Affidavit, but the court application, inclusive of the liquor license application, was also forwarded to the Inspector of the Respondent on 30 March 2021;² and thereafter the Inspector and the DPO conducted their inspection of the proposed premises. The matter thus simply needs to be decided by the Respondent.

If an application was properly lodged in terms of the Liquor Act and the Regulations, the Respondent cannot simply discard its duty to process the

² Copy attached as Annexure "R1".

application on the basis that it was never received by the Respondent. Being part of the “competent authority” the logical thing the Respondent would have done would have been to check with the Magistrate, who is also part of the competent authority as per the definition in section 2(1)(vi) of the Liquor Act 27 of 1989.

[25] The Respondent was in any event aware of this application when the court application was served on it in January 2021, but only caused the DPO and Inspector to do an inspection more than two months later.

Applicable law

[26] The Respondent is a statutory body charged with the responsibility in terms of the Liquor Act for among others the consideration of applications for liquor licenses, decision-making in connection therewith and matters incidental thereto.

[27] The Respondent is a public administration body, subject to its own legislation and constitutional controls. To this end, the provisions of section 195 (1)(g) of the Constitution is relevant and deserves mention:³

“[195] (1) – Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(g) transparency must be fostered by providing the public with timely, accessible and accurate information.”

In the matter of ***President of RSA v South African Rugby Football Union***⁴ the Constitutional Court held:

“[133] Public administration, which is part of the executive arm of the government, is subject to a variety of constitutional controls. This

³ See *South African Restructuring and Insolvency Practitioners Association NPC v CEO Government Gauteng Division Pretoria*, Case NO 27628/2021 (1 July 2021).

⁴ 2000 (1) SA (CC) at para 133.

Constitution is committed to establishing and maintaining the efficient, equitable and ethical public administration which respects fundamental rights and is accountable to the broader public...”.

[28] Section 22 of the Liquor Act states that an application for a liquor license shall be considered by the Board, and it may –

(a) refuse the application or

(b) grant the application.

I find the conduct of the Respondent unreasonable and I am at a loss to understand why there is such a delay in finalizing the application for a liquor license over a period of almost two years. An injustice has been done to the Applicant. Our Courts have held that the Courts enjoy a general power or inherent jurisdiction to grant *pendent lite* relief to avoid injustice and hardship.⁵

[29] In a similar application in the Gauteng Division of the High Court Adams AJ (as he then was) held:⁶

“[19] By then, the matter had become urgent in the sense that the restaurant business of the applicant ought to have been up and running and would have been fully operational but for the fact that the liquor license had not been issued. This in turn resulted in irreparable damage to the applicant in that it is suffering great financial loss due to the severe damage to the reputation of the restaurant. This in my view had resulted from the tardy conduct on the part of the second respondent”.

[30] *In casu* it is stated in paragraph 5.5 of the Founding Affidavit and supported by Annexure “D” the existence of this liquor license application as well as the fact that it

⁵ *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban and Others* 1986 (2) SA 663 (A).

⁶ *Pizza Vino Lynridge (Pty) Ltd t/a Piza E Vino v The Chairperson of Gauteng Provincial Liquor Board* (2016/70433) [2016] ZAGPPHC 864 (15 September 2016).

was previously lodged at the Magistrate Modimolle (Nylstroom) on 4 October 2019 and was communicated to the Head of the Secretariat of the Respondent who is also the deponent to the answering affidavit, by way of an electronic mail dated 29 July 2020.

Therefore the liquor license application was brought to the attention of the Respondent and the Respondent has failed to discharge its administrative duty of considering the application.

Mandamus Application

[31] This Court has the common law jurisdiction as well as jurisdiction in terms of section 6 (2)(e) of PAJA, to issue an order against an administrative organ, directing it to take a decision in a matter which is unnecessarily delayed or where there is a refusal on the part of the administrative organ to take a decision.

In casu, the Respondent is unnecessarily delaying the taking of a decision in respect of the Applicant's application for a liquor license, alternatively, refusing to take such a decision. In the light of that, this Court can assist with a *mandamus* order in terms of the common law and section 6 (2)(g) and section 8 (1)(e) of PAJA. The latter section provides for the granting of a temporary relief.

[32] More than a reasonable time has lapsed since the liquor license application of the Applicant was submitted. It is not denied that the application was properly submitted or that there is any outstanding documents still to be submitted by the Applicant. The application ought to have been considered by the Respondent within a reasonable time.

[33] The failure by the Respondent to consider the application cannot be simply condoned. The law places a duty on the Respondent to consider the application within a reasonable time. This failure is causing an invasion to the Applicant's rights and the people it employs. The Applicant has a constitutional right to administrative action that is lawful, reasonable and procedurally fair (section 33 (1) of the

Constitution). The Respondent, as the administration, does not have a free hand to behave as it wishes.⁷

See also *Vumazonke v MEC for Social Development Eastern Cape and Three Similar Cases*⁸ where it was stated that the administration has to establish and maintain an efficient, equitable and ethical public administration.

Interim Relief

[34] I have already stated hereinabove that an injustice has been done and the Applicant is prejudiced by the unreasonable delay in finalizing its application for liquor license. Section 8 (1)(e) of PAJA specifically caters for interim relief to stop the prejudice suffered by the Applicant on the basis of such relief being just and equitable in the circumstances.

Our Courts have held that the Courts enjoy a general power or inherent jurisdiction to grant *pendente lite* relief to avoid injustice and hardship.⁹

[35] It has been stated in similar liquor matters that:¹⁰

“45. The interim interdict sought by the applicant in the notice of motion is of the kind that has been granted for time immemorial by higher courts as well as courts in this division. Various cases were referred to in support of such relief. The applicant has made out a prima facie case that the second respondent has wrongfully failed to take a decision, which has caused loss and hardship to the applicant. The applicant has accordingly established the ground for review envisaged by section 6 (2)(g) of PAJA, namely, a failure to

⁷ *Targazest (Pty) Ltd v Vrystaat Dobbet en Drankowerheid en Ander* (5034/2011) [\[2011\] ZAFSHC 200](#) (8 December 2011).

⁸ [2005 \(6\) SA 229](#) (EC) at para [11].

⁹ *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban and Others*, supra.

¹⁰ *Boneltha (Pty) Ltd t/a Casa Bella Loftus v Pandelani NO & Another* (33277/2018) [2018] ZAGPPHC 520 (13 June 2018).

take a decision, and is accordingly entitled to appropriate relief. In my view, this is an appropriate case for the grant of interim relief”.

[36] In my view the Applicant in the present case has satisfied all the requirements for the granting of interim relief. In ***Bharshila Investments CC***¹¹ Tuchten J granted leave to the applicant to trade pending the review of the Liquor Board’s decision.

The applicant for the interim relief must have a *prima facie* clear right to the relief sought. *In casu*, the Applicant applied for a license and has a right to have his application decided. The Applicant is suffering prejudice. Until such time that a license is granted, the Applicant will not be able to run a proper business of a game lodge as it is difficult to imagine enthusiastic patrons looking to stay at a lodge if there is not liquor available to consume with meals, on game drives or at the bar.

[37] There is no alternative remedy available to the Applicant to offset such prejudice. The only way for the Applicant to go is to have a liquor license issued to it.

The balance of convenience favours the Applicant. The Respondent must simply do its work as it is tasked to do in terms of the empowering legislation. This Court is not deciding the issue of the license on behalf of the Respondent as the interim relief is just an interim order and the Respondent will ultimately have to decide the application and grant and issue the liquor license.

[38] This is an exceptional case where interim relief should be granted and for the following reasons:

(a) The premises were previously licensed for the operation of a special license (on-consumption) (accommodation);

¹¹ *Bharshila Investments CC v The Gauteng Provincial Liquor Board* (North Gauteng Case NO 32820/2011 of 11 June 2011. See also *Pizza Vino*, supra at para [19].

(b) The Applicant applies for exactly the same type of license which previously operated in respect of the premises, because the former special license has lapsed due to non-renewal;

(c) There is no evidence that there were any complaints that the trading of liquor from this premises was not in the public interest or had negative impact on the area or the public;

(d) Because of the previous licensing of the premises it is unlikely that the Applicant's current application will fail.

Conclusion

[39] The Applicant has made out a proper case for an order in terms of Section 6 (2)(g) as well as an interim relief in terms of section 8 (1)(e) of PAJA.

[40] At the hearing of this matter on 21 September 2021 the Applicant expressed its willingness to assist the Respondent in complying with the order herein by furnishing the Respondent with further copies of the liquor license application if so requested. I need not make an order in this regard but leave all in the hands of the parties to co-operate with each other.

[41] It is for all the above reasons that I granted the appropriate order on 21 September 2021.

E M MAKGOBA
JUDGE PRESIDENT OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on	21 September 2021
Order granted on	21 September 2021
Judgment delivered on	29 September 2021

**For the Applicant
Instructed by**

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Instructed by**

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