



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case number: **3018/2017**
Date heard: **09/02/2018**
Date delivered: **09/03/2018**

In the matter between:-

DEEPS BETTING GROUNDS (PTY) LTD

APPLICANT

AND

THE NORTHERN CAPE GAMBLING BOARD

RESPONDENT

Coram: Stanton AJ

JUDGMENT

STANTON, AJ

INTRODUCTION:-

[1] This is an application in terms of which the applicant, Deeps Betting Grounds (Pty) Ltd (“Deeps Betting”), seeks:-

1.1 a declaratory order that the respondent, the Northern Cape Gambling Board (“the Gambling Board”) may grant a final licence to Deeps

Betting to conduct bookmaker activities, as contemplated in the Northern Cape Gambling Act, 3 2008, at Erf 7195, known as 23 Scott Street, Upington (“Erf 7195”); and

1.2 that the Gambling Board be ordered to immediately take any and all necessary steps (including the granting of the licence) so as to grant permission to Deeps Betting to conduct bookmakers’ gambling activities at Erf 7195.

[2] The application was issued on 15 December 2017, on a semi-urgent basis, and was set down for argument for 09 February 2018, without having been first dealt with as an urgent application on the motion court roll.

[3] The Gambling Board opposed the application on the following grounds, namely:-

3.1 Deeps Betting failed to make out a case why the application should be heard as an urgent application, alternatively, that any urgency, is self-created;

3.2 Erf 7195 offends against Regulation 7(c) of the Northern Cape Gambling Regulations (“the Regulations”) as it is situated within 362m of Upington High School; and

3.3 the licence in respect of Erf 3465 Upington, was granted without following due process and the court order granted on 01 September 2017 did not ratify the irregularity in the process.

PRECEDING APPLICATIONS:-

[4] Before I deal with the merits of this application, it is apposite to refer to the three applications that preceded this application. The three preceding applications also included relief pertaining to three additional premises, being in Galeshewe, Postmasburg and Springbok. These 3 additional premises are not relevant for purposes of this application.

[5] The first application, issued under case number 340/2017, was initially opposed by the Gambling Board, but the opposition was withdrawn prior to the filing of an answering affidavit. On 31 March 2017, Snyders AJ granted the following orders in the first application, namely:-

"1. The respondent is ordered to, within five days after the granting of this order, inspect the following sites that applicant has identified for licenced bookmaker activities contemplated in the Northern Cape Gambling Act, 3 of 2008, to wit:-

1.1 in Upington, the property known as Erf 3465 Upington, situated in the //Khara Hais Municipality, Division Gordonia, Northern Cape Province and the portion of the building situated between Upington Volkswagen Spares and Gatties Upington, as depicted in the grey area on the plan appended to the written lease agreement the Applicant had concluded for these premises and in accordance with Appendix 1 to the Founding Affidavit;

2. The respondent be ordered to, within seven days after the conducting of the contemplated investigation of these premises, finally process the applicant's application to conduct bookmaker activities on such premises, and to inform the applicant of the outcome of such investigations."

[6] The second application was issued during June 2017 under case number 1365/2017. The second application was opposed by the Gambling Board, but

again the opposition was withdrawn without the Gambling Board filing any answering affidavit. On 01 September 2017, Pakati J issued the following orders:-

“1. The Respondent is ordered to take any and all necessary steps so as to grant permission to the Applicant to conduct bookmakers’ gambling activities at the following locations, and so as to enable the Applicant to start its bookmaker’s activities sites forthwith, to wit:

1.1 In Upington, the property known as Erf 3465 Upington, situated in the //Khara Hais Municipality, Division Gordonia, Northern Cape Province and the portion of the building situated between Upington Volkswagen Spares and Gattis Upington, as depicted in the grey area on the plan appended to the written lease agreement the Applicant had concluded for use this premises;

2. The Respondent be ordered to so authorise the conducting of such bookmakers’ activities at the sites mentioned in prayer 1 above, within five days after the granting of this order.”

[7] During November 2017, Deeps Betting issued a third application, on an urgent basis, under case number 2741/2017, in terms of which it requested an order committing the Gambling Board and the Chief Executive Officer of the Gambling Board for contempt of court. The Gambling Board opposed the application and filed its answering affidavit. The third application was dismissed, with costs, by Snyders AJ on 02 December 2017. Snyders AJ found, in essence, that the order was incapable of fulfilment by the Gambling Board or CEO as the Gambling Board had been dissolved in March 2017, which position Deeps Betting accepted.

[8] In the three preceding applications, the Upington premises was described as Erf 3465 Upington. No reference was made to Erf 7195 in the affidavits. The

annexures attached to the affidavits in the three preceding applications, however, all pertain to Erf 7195.

- [9] It is for the first time in this application, that the Applicant informs the court that Erf 3465 *“had since become lost (post the granting of Pakati J’s order on 01 September 2017)... and that “the landlord of the previous property in Upington cancelled the lease.”* Deeps Betting attached a letter, dated 9 August 2017, to its founding affidavit in which it is recorded that *“The site at Upington known as Erf 3465 in terms of the Court Order is no longer available to our clients due to the delay of the Board in authorising the bookmaker activities. The new premises is situated at Erf 7195, known as 23 Scott Street, Upington.”*

THE ISSUES TO BE DETERMINED:-

- [10] The first issue to be determined is whether the matter is urgent and, secondly, whether the the Gambling Board has made out a case for a declaratory order that the relief granted on 01 September 2017 in respect of Erf 3465, should also be granted in respect of Erf 7195.

URGENCY:-

- [11] Mr Grobler, on behalf of Deeps Betting, denied that the urgency was self-created. He argued that Deeps Betting’s commercial interests justify the application of Rule 6(12) as it cannot institute an action for damages and, as such, had to proceed on a semi-urgent basis to mitigate any financial harm.
- [12] Mr Modisa, on behalf of the Gambling Board, submitted that any urgency that may exist, is self created as Deeps Betting has since 10 November 2017 been aware of the fact that the Erf 7195 was found to be non-compliant with Regulation 7(c).

[13] Mr Modisa argued that Deeps Betting is not entitled to rely on financial reasons to justify approaching the Court on an urgent basis.

[14] Rampai J, in *Ledimo & others v Minister of Safety & Security & another*¹, summarised the position with regard to whether the financial hardships of the applicants constituted grounds of urgency sufficient to justify the extraordinary modification of the ordinary rules, as follows:-

“Other litigants waiting for their matters to be heard would be prejudiced if priority were afforded to these applications as they would have to wait longer. And what distinguishes these two applications from other matters? Applications for review such as these occur commonly and are not given priority. The prejudice that applicants are complaining about is the possibility that they may suffer losses of profits – the losses, if any, sound in money. Assuming that such losses are irrecoverable, that still does not distinguish these matters from many others awaiting their turn on the ordinary roll... Moreover, the fact that a litigant with a claim sounding in money may suffer serious financial consequences by having to wait his turn for the hearing of his claim does not entitle him to preferential treatment. On the other hand, where a person's personal safety or liberty is involved or where a young child is likely to suffer physical or psychological harm, the Court will be far more amenable to dispensing with the requirements of the Rules and disposing of the matter with such expedition as the situation warrants. The reason for this differential treatment is that the Courts are there to serve the public and this service is likely to be seriously disrupted if considerations such as those advanced by the applicants in these two matters were allowed to dictate the priority they should receive on the roll. It is, in the nature of things, impossible for all matters to be dealt with as soon as they are ripe for hearing. Considerations of fairness require litigants to wait their turn for the hearing of their matters. To interpose at the top of the queue a matter which does not warrant such treatment automatically results in an additional delay in the hearing of others

¹ [2007] JOL 21032 (O) AT PARA 30

awaiting their turn, which is both prejudicial and unfair to them. The loss that applicants might suffer by not being afforded an immediate hearing is not the kind of loss that justifies the disruption of the roll and the resultant prejudice to other members of the litigating public.”

[15] In this application, the Court was not provided with a copy of the lease agreement in respect of either Erf 3465 or Erf 7195. On perusal of the court files in the three preceding applications, it is clear a lease agreement was only concluded in respect of Erf 7195, although only an unsigned copy thereof was appended. No lease agreement in respect of Erf 3465 was attached to any of the three preceding applications. The lease agreement in respect of Erf 7195 was to commence on 01 November 2016. In my view, Erf 7195 was therefore not procured before Pakati J's order was granted on 01 September 2017.

[16] It is not in dispute that the Gambling Board informed Deeps Betting on 13 November 2017 that Erf 7195 had been inspected and that it was established that this premises does not comply with Regulation 7(c).

[17] In its founding affidavit, Deeps Betting avers that it will suffer severe financial loss if the relief is not granted. These allegations are challenged by the Gambling Board in its answering affidavit, but not addressed by Deeps Betting in reply. In the absence of any proof of financial loss, I am not persuaded that Deeps Betting made out a case that irreparable financial losses have been suffered or would be suffered, as sufficient ground to justify a departure from the ordinary court rules.

[18] Ordinarily I would have struck the application from the roll for want of urgency. However, due to the circumstances of this case, I have decided that the interest of justice will be best served by disposing of the merits.

AD RELIEF SOUGHT:-

[19] Deeps Betting, in paragraph 12 of its founding affidavit, states that the facts

in casu support an application for a review and substitutory relief in terms of Rule 53 of the Uniform Rules of Court, but that it was advised, due to the urgency of the matter, to seek a declaratory order instead.

[20] Mr Grobler confirmed that the application before me is therefore not a review application. He relied on the judgment in the matter of Earthlife Africa v Eskom Holdings Ltd² and submitted that the Court may grant a declaratory order where the issue in review is not “multi-faceted” and can be disposed of by way of a declaratory order.

[21] In my view, this judgment has no application to the present case. The Court in the Earthlife case was tasked with a review application. A point *in limine* was raised that, prior to launching the application for review, the applicant was required to first have exhausted its internal remedies in terms of the Environment Conservation Act 73 of 1989 Act (“the ECA”). The internal remedy provided for in the ECA was an appeal to the Minister. This step was not made peremptory by the Act. Although the applicant had lodged such an appeal, it had launched the review application without awaiting the outcome of the appeal. The question raised by the respondents was whether the review application was barred until the appeal was disposed of.

[22] With reference to the judgment in Oudekraal Estates (Pty) Ltd v City of Cape Town and Others³, it is trite that:-

“Except possibly for a decision which is clearly invalid on its face, all official decisions are presumed to be valid until impugned by a court of competent jurisdiction;”

[23] As I understand Deeps Betting’s case, Pakati J’s judgment in respect of Erf 3465 should merely be enforced in respect of Erf 7195.

² 2005 (3) SA 156 (C)

³ 2002 (6) SA 573 (C) AT PAGE 591

- [24] According to Mr Grobler, the Gambling Board, in opposing this application, is attempting to retry an issue that has already been decided by the court. Mr Grobler submitted that Pakati J's order of 01 September 2017 is final and that no application for rescission is threatening or pending. He added that this court does not have the jurisdiction, as a court of first instance, to support any subversion or non-compliance with its final orders.
- [25] Mr Modisa submitted that this court cannot merely grant a license, despite non-compliance, simply to satisfy the court order dated 01 September 2017.
- [26] According to Mr Grobler, it is irrelevant that this application relates to a different site than the one specified in the court order of 01 September 2017.
- [27] In the matter of African National Congress v United Democratic Movement and others (Krog intervening),⁴ Chaskalson J held that:-

“This Court has previously drawn attention to the limited power that a court has to vary its orders after they have been made. In Minister of Justice v Ntuli⁵, it was held:

‘The principle of finality in litigation which underlies the common law rules for the variation of judgments and orders is clearly relevant to constitutional matters. There must be an end to litigation and it would be intolerable and could lead to great uncertainty if Courts could be approached to reconsider final orders made in judgments declaring the provisions of a particular statute to be invalid.’”

- [28] The application was argued on 9 February 2018. On 19 February 2018, Deeps Betting filed an application requesting that leave be granted to it to adduce

⁴ 2003 (1) SA 533 (CC) AT PARAS 14 AND 15

⁵ 1997 (3) SA 772 (CC) AT PARA 29

further evidence and that the evidence tendered in the supplementary affidavit, should be admitted.

[29] The Gambling Board opposed this application and filed its answering affidavit.

[30] In my opinion, there is no reason why the application to adduce further evidence should not be granted. The evidence in the affidavit, dated 16 February 2018, together with the answering and replying affidavits affidavit are accordingly admitted. The parties agreed that I may finalise this judgment in the absence of any additional oral argument.

[31] In essence, Deeps Betting is requesting that a letter from the Gambling Board to Deeps Betting, dated 13 February 2018, is admitted into evidence. Paragraph 2 of the letter reads as follows:-

"We hereby wish to inform you that your applications for annual renewal of your Bookmaker licences for the following towns Kimberley, Postmasburg, Upington, Colesburg, De Aar, Kuruman, Springbok were approved by the Board."

[32] According to Deeps Betting, this letter confirms that the Gambling Board has authorised Deeps Betting's bookmaker activities in respect of all its premises.

[33] The Gambling Board, however, contends that this letter merely relates to the annual renewal of the licenses, and not the operation of all Deeps Betting's gambling activities.

[34] During the hearing of the application on 9 February 2018, it was submitted on behalf of the Gambling Board that a temporary license was granted to Deeps Betting on 20 September 2013, on condition that it will start operating within six months from the date of the receipt of the license, failing which, the

license will be revoked. Mr Modisa contended that the temporary license lapsed due to the non-compliance with the condition.

[35] Mr Grobler argued that the Gambling Board should not be entitled to rely on the expiration of the license for the dismissal of the application. He added that Deeps Betting could not comply with the condition as it was unable to conduct any activities prior to approval of the premises, and in the absence of a functioning Gambling Board.

[36] I am not persuaded that the letter, dated 13 February 2018 bolsters Deeps Betting's application. In my view, the letter constitutes a renewal of the temporary licenses and cannot be considered as an approval of Erf 7195, or an authorisation to conduct gambling activities on Erf 7195.

CONCLUSION:-

[37] For the following reasons, I am not persuaded that Deeps Betting has made out a case for a declaratory order:-

37.1 it is not in dispute that the Gambling Board took its decision in respect of Erf 7195 on 13 November 2017. This administrative decision still stands;

37.2 the administrative decision was taken after Pakati J's order of 01 September 2017, which order was granted in respect of Erf 3465; and

37.3 this decision is presumed to be valid, until impugned by a court of competent jurisdiction.

[38] In the circumstances, I deem it unnecessary to deal with the arguments pertaining to the interpretation of Regulation 7(c).

COSTS:-

[39] Mr Grobler argued that a cost order should be granted in favour of Deeps Betting. In support of his submission, he stated that the Gambling Board should not have opposed the application, but merely filed a notice of intention to abide. I can, however, find no reason why the costs should not follow the result, with Deeps Betting to pay the Gambling Board's costs on a party and party scale. Despite my finding that there was no real urgency, it does not warrant a punitive cost order

WHEREFORE I MAKE THE FOLLOWING ORDER:

The application is dismissed, with costs.

A STANTON
ACTING JUDGE
Northern Cape Division, Kimberley

On behalf of Applicant:

Adv S Grobler (Van de Wall Inc.)

On behalf of Respondent:

Mr C Modisa (State Attorney)