

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



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

CASE NO: **1214/2022**

In the matter between:

VENGIES GAMING (PTY) LTD

Applicant

and

DEEPS BETTING GROUNDS (PTY) LTD

First Respondent

**THE CHAIRPERSON: NORTHERN CAPE
GAMBLING BOARD**

Second Respondent

THE NORTHERN CAPE GAMBLING BOARD

Third Respondent

Coram: Nxumalo, J

JUDGMENT

NXUMALO J:

- [1] This is an application for leave to appeal to the Full Court of this Division.¹ The applicant in these proceedings is one Vengies Gaming (Pty) Ltd, a company duly registered and incorporated in terms of the laws of South

¹ In terms of Section 1 of the **Superior Courts Act 10 of 2013**- a “*Full Court*” in relation to any Division, means a court consisting of three judges.

Africa, with its registered office in Kuruman, Northern Cape Province. The first respondent is one Deeps Betting Grounds (Pty) Ltd, also a company duly registered and incorporated in terms of the laws of South Africa. The first respondent's offices are currently located somewhere in Pretoria East, Gauteng Province.

- [2] The second respondent herein is the incumbent chairperson of the Northern Cape Gambling Board, appointed as such in terms of Section 3(5) of the **NORTHERN CAPE GAMBLING ACT** 3 of 2008.² He is cited herein in his official capacity.³ The third respondent is the Northern Cape Gambling Board, a juristic person established in terms of Section 2 of the **PROVINCIAL ACT**.⁴
- [3] The applicant sought leave to appeal against the judgment and order of this Court delivered on 05 May 2023. The impugned order dismissed the urgent application that was launched by the applicant with costs. The dismissed motion prayed that this court forthwith interdict the first respondent from conducting any bookmaking business from the impugned premises, pending the institution of review proceedings by the applicant, either under the **PROMOTION OF ADMINISTRATIVE JUSTICE ACT** 3 of 2000;⁵ or the principle of legality, within 60 days, from the date of the order sought. The foreshadowed review application pertains to the setting aside of the first respondent's bookmaker licence that was granted to the first respondent by the third respondent some time back in 2014.
- [4] The applicant also prayed that the third respondent be ordered to forthwith take such steps as regulator under the Act, to ensure that the first respondent suspends its business, pending the finalisation of the envisaged review proceedings. The notice of motion did not pray for costs.

² Hereinafter referred to simply as “the Act/ the Provincial Act”

³ Hereinafter referred to as “the Chairperson”

⁴ Hereinafter referred to as “the Board”

⁵ Hereinafter simply referred to as “PAJA”

- [5] Section 15(1) of the **PROVINCIAL ACT** authorises the Board to exercise certain powers and perform specific functions whilst contemporaneously impelling it to carry out the duties specified by or in terms of the **PROVINCIAL ACT**; or assigned to it in terms of the **NATIONAL GAMBLING ACT 7** of 2004⁶ or any other law.
- [6] The reasons for the dismissal of the application by this court are clearly set out in the impugned judgment, the fulcrum of which resides at paragraphs 67 to 72 thereof.⁷
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- [7] The grounds of the foreshadowed appeal are that this Court erred in finding that:
- 7.1 the applicant did not make out a case for an interim interdict on the basis that there is a similar or satisfactory remedy or protection by another ordinary remedy;
 - 7.2 the prevention, combating and investigation of crimes; the maintenance of public order; protecting and securing the inhabitants of the Republic and their property; upholding and enforcing the law falls squarely within the province of the police constitutionally and that this was the most decisive factor that came to bear in the exercise of the court's general discretion to grant or refuse the relief sought; and
 - 7.3 an order directing the second respondent to take steps to ensure that the first respondent suspends its business pending finalisation of the foreshadowed review proceedings before the process contemplated in Section 38 of the **PROVINCIAL ACT**, would not only deny the first respondent the fundamental right to lawful

⁶ Hereinafter referred to as “the National Act”

⁷ *Vengies Gaming (Pty) Ltd v Deeps Betting Grounds (Pty) Ltd and Others* (1214/2022) [2023] ZANCHC 19 (5 May 2023)

administrative action, but would amount to a usurpation of the powers of the Board, *contra* the principle of separation of powers.

[8] The applicant therefore contended that this court ought to have:

- 8.1 considered and followed the judgment by Lever J, in the unreported matter of **Deeps Betting Grounds (Pty) Ltd v Vengies Gaming (Pty) Ltd and Another**⁸ handed down *ex tempore* on 06 May 2022, wherein Justice Lever under similar facts granted an interim interdict;
- 8.2 in line with the above stated judgment, held that upon *prima facie* proof of non-compliance with regulation 7(c), an interim interdict should follow coupled with an order directing the second respondent to take steps necessary to ensure that the first respondent do not continue to operate, pending the finalisation of the intended review proceedings;
- 8.3 considered the *dictum* set out in **Hotz and Others v University of Cape Town** 2017 (2) SA 485(SCA); to wit:

“[35] ...

[36] *There may also be instances where, in the case of a statutory breach, a criminal prosecution, in appropriate circumstances, will provide an adequate remedy, but there are likely to be few instances where that will be the case.*”
- 8.4 distinguished between the drawn out process that criminal steps entail compared to the swift and immediate effect of an interdict to stop a *prima facie* illegal activity such as the matter at hand; and
- 8.5 considered the first respondent’s laconic response to the evidence by the applicant that the first respondent’s business is conducted in

⁸ Case number 732/2022

contravention of regulation 7(c) and the thereto, that *prima facie*, the business is operated in contravention of regulation 7(c) and given this Court's findings in paragraph 22 of the impugned judgment that an interim interdict is warranted.

[9] This Court opined as follows in the said paragraph:

*"[22] The contention by the first respondent that Regulation 7(c) does not prevent it from operating in terms of a licence issued to it possibly in contravention with same is thus simply absurd. The absurdity is so glaring that it could have never been contemplated by the legislature when it passed the legislation to which the Regulations are subsidiary. Apposite in this regard is the maxim: "Interpretatio quae parit absurdam non est admittenda"- legislation was not meant to be absurd or anomalous. This court says no more."*⁹

[10] The applicant in sum contended that laying criminal charges against the second respondent as contemplated in Section 76(1) of the **NORTHERN CAPE GAMBLING ACT** does not constitute an adequate alternative remedy.

[11] The second respondent, who was the only party which opposed this motion for leave to appeal, did so on two main grounds. First, that the applicant's failure to institute the review application means it is not in the interests of justice to hear this leave to appeal application; alternatively, that it should be dismissed for the same reason. Second, that the applicant has not established either ground for the granting of leave to appeal contemplated in Section 17(1) of the **SUPERIOR COURTS ACT** 10 of 2013.

[12] Section 17(1) of the Superior Courts Act, expressly and unambiguously stipulates *inter alia*, that leave to appeal may only be given where a judge or judges concerned are of the opinion that the appeal would have a

⁹ *Vengies Gaming (Pty) Ltd v Deepes Betting Grounds (Pty) Ltd and Others*, (supra) fn 7

reasonable prospect of success; or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. To this must be added the consideration that in this subsection the word “*would*” is used in determining the conclusion in regard to the reasonable prospect of success of the appeal to which the judge or judges must come to before leave to appeal can be granted.

- [13] It has been well said by the Supreme Court of Appeal that leave to appeal, especially to the SCA, must not be granted unless there truly is reasonable prospect of success.¹⁰ It follows from the foregoing that there must be a sound, rational basis for the conclusion that there are prospects of success on appeal- ***Four Wheel Drive Accessory Distributors CC v Rattan NO 2019 (3) SA 451 (SCA)*** at 463F.¹¹
- [14] The principles that emerge from ***Four Wheel Drive Accessory Distributors CC v Rattan NO*** (*supra*) and ***Independent Examinations Board v Umalusi***¹² amongst others, require that the court test the grounds on which leave to appeal is sought against the facts of the case and the applicable legal principles to ascertain whether an appeal court “*would*” interfere in the decision against which leave to appeal is sought.¹³ If the appellants ‘had simply failed to make out a proper case’ in their original founding papers for the relief sought, leave to appeal should be refused.¹⁴
- [15] Important factors this Court took into consideration in the determination of the “interim interdict” application was the legal effect of the order sought and the availability of any other adequate remedy. This Court concluded that even though the relief sought is couched as an interim relief in form, it is final in substance, and that another adequate remedy is available. Another important factor taken into consideration was the undue delay in launching

¹⁰ ***MEC for Health, EC v Mkhitha*** (unreported SCA 1221/15 dated 25 November 2016)

¹¹ See also ***S v Smith*** 2012 (1) SACR 567 (SCA) para 7

¹² 2021 JDR 0091 (GP); [2021] JOL 49499 (GP)

¹³ ***Van den Heever NO and others v RC Christie Inc and others (Leave to Appeal)*** [2023] JOL 58032 (GJ)

¹⁴ ***Global Environmental Trust and others v Tendele Coal Mining (Pty) Ltd and others (Centre for Environmental Rights as Amici Curiae)*** [2021] JOL 49548 (SCA)

the interdictory proceedings. Notably, the impugned license was granted in 2014.

- [16] This Court is of the opinion that the unreported matter of **Deeps Betting Grounds (Pty) Ltd v Vengies Gaming (Pty) Ltd and Another**¹⁵ handed down *ex tempore* on 06 May 2022 by Lever J is factually dissimilar and therefore distinguishable from the matter *in casu*. It is so because the learned Judge in that matter actually interdicted and restrained the Board (First Respondent) and Vengies (Third Respondent) from:

“... implementing and giving effect to a temporary bookmaker license awarded to the Third Respondent by First Respondent... in respect of certain premises, by operating gambling activities from buildings located at those premises.”

In *casu*, this Court was sought to order the Board, in the interim, to ensure that Deeps Betting “suspends its business, pending the finalisation of the envisaged review proceedings”.

- [17] The applicant’s reliance on the *obiter dictum* in **Hotz and Others v University of Cape Town** (*supra*) was also misconceived. That case is distinguishable because it dealt with the grant of a final and not an interim interdict *contra in casu*. It is trite in our law that the discretion of a court to refuse a final interdict when its three requisites are present is very limited and depends exclusively upon the question whether the alternative remedy is adequate.¹⁶ The following is appositely stated in **Hotz** (*supra*):

“[29] The law in regard to the grant of a final interdict is settled. An applicant for such an order must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other ordinary remedy. Once the applicant has established the three requisite elements for the grant of an interdict, the scope, if any, for refusing relief is

¹⁵ Case number: (732/2022)

¹⁶ **Setlogelo v Setlogelo** 1914 AD 221 AT 227; see also **Chevron SA (Pty) Ltd v Awaiz at 110 Drakensburg CC & Another** [2008] JOL 21162 (T) para 80

limited. There is no general discretion to refuse relief. That is a logical corollary of the court holding that the applicant has suffered an injury or has a reasonable apprehension of injury and that there is no similar protection against that injury by way of another ordinary remedy. In those circumstances, were the court to withhold an interdict, that would deny the injured party a remedy for their injury...."¹⁷

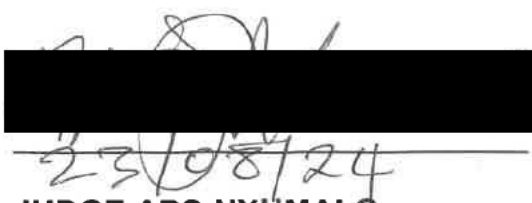
- [18] On the other hand, a court has a wide discretion to refuse an interim interdict even if the requisites have been established. This means that the court is entitled to have regard to a number of disparate and incommensurable features in coming to a decision. The discretion is a judicial one which must be exercised according to law and upon established facts.¹⁸ A court however has no discretion to grant an interim interdict if its four requirements have not been established.¹⁹
- [19] As alluded above, it is so that an application for leave to appeal must demonstrate that the appeal *would* have a reasonable prospect of success or that there are compelling reasons why the appeal should be heard. As far as compelling reasons and prospects of success are concerned, the merits remain vitally important and are often decisive – ***Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020 (5) SA 35 (SCA)*** at para 2.
- [20] Having fully considered and dispassionately examined the application for leave to appeal, this Court is not satisfied that leave to appeal should be granted.
- [21] In the premise, the following order is made:

(A) LEAVE TO APPEAL IS HEREBY DISMISSED WITH COSTS.

¹⁷ Footnotes omitted

¹⁸ ***Benoni Town Council v Meyer and Others*** 1961 (3) SA 316 (W) 326

¹⁹ ***Sweets from Heaven (Pty) Ltd and Another v Ster Kinekor Films (Pty) Ltd and Another*** 1999 (1) SA 796 (W) para 11


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