

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 3734/2023

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
DATE: <u>23/6/2025</u> SIGNATURE:	

In the matter between:

BOLEDI LUCY MONTJANE**APPLICANT**

And

MEC DEPARTMENT OF ECONOMIC DEVELOPMENT**ENVIRONMENTAL AND TOURISM LIMPOPO****FIRST RESPONDENT****HEAD OF DEPARTMENT ECONOMIC****DEVELOPMENT ENVIRONMENTAL AND TOURISM****SECOND RESPONDENT****PREMIER OF LIMPOPO PROVINCE****THIRD RESPONDENT****LIMPOPO GAMBLING BOARD****FOURTH RESPONDENT**

JUDGEMENT

KGANYAGO J

- [1] The applicant is an admitted legal practitioner. On 11th March 2013 the applicant was appointed as a member of the Limpopo Gambling Board (board) for a period of 3 years in terms of the *Limpopo Province Casino and Gambling Board Act*¹ (old Act). On 29th March 2017 the applicant was reappointed as a member of the board for a period of 5 years with effect from 1st April 2017. The second appointment was in terms of the *Limpopo Gambling Board Act*² (new Act). On 31st October 2017 the applicant was appointed as the deputy chairperson of the board for a period of 5 years.
- [2] On 3rd November 2022 the first respondent issued a letter to the applicant notifying her that she had served two terms as a member of the board; that her term of office as a member of the board had lapsed on 31st October 2022 and; that in terms of the new Act a member who had served more than one term was not appointable to the board. The applicant alleges that on 18th November 2022 she had a verbal communication with the fourth respondent who informed her that there was an error of judgement in not re-appointing her.
- [3] Aggrieved by the decision of the of the first respondent, the applicant has brought a review application in terms of the *Promotion of Administrative Justice Act*³ (PAJA). In her amended notice of motion of motion, the applicant is seeking orders that the decision made by the first respondent on 31st October 2022 not re-appointing her as a member and deputy chairperson of the board be

¹ 4 of 1996

² 3 of 2013

³ 3 of 2000

reviewed and set aside; substitution of the decision taken by the second respondent not to appoint her, and ordering that the applicant is eligible to be re-appointed as member and deputy chairperson of the board in terms of the provisions of the new Act for a period of 5 (five) years; and that the second respondent be ordered to re-appoint the applicant as the deputy chairperson of the board, alternatively, an order that is just and equitable in terms of the provisions of section 8 of PAJA.

- [4] The applicant's grounds of review are that the decision of the first respondent was materially influenced by various errors of law; the first respondent has unlawfully and intentionally made an unreasonable decision not to re-appoint her without valid reasons; the first respondent failed to take into consideration that her appointment as a member of the board in 2013 was in terms of the old Act which was repealed by the new Act; that under the old Act she was appointed to serve as a member of the board for a period of 3 years which ended in 2016, and she applied to serve as a new member and was appointed deputy chairperson in terms of the new Act; and that at the end of the term all other serving board members were re-appointed in terms of section 8 of the new Act, whilst she was unfairly excluded.
- [5] The applicant submit that the first respondent had failed to take into consideration that the new Act did not apply retrospectively, and she ought to have been appointed for additional one term as she was eligible for re-appointment. The decision of the first respondent not to re-appoint her was without merit, unreasonable and made in bad faith as other members of the board were re-appointed at the end of the term.

- [6] The first and second respondents (respondents) are opposing the applicant's review application. The respondents have filed the record of the proceedings in terms of Rule 53(1)(b) of the *Uniform Rules of Court* (Rules). On receipt of the record the applicant has filed a supplementary founding affidavit and also amended her notice of motion. In her supplementary founding affidavit, the applicant has stated that from the record of the proceedings filed by the respondents, she has been replaced by Mr Mahumani to her position of the deputy chairperson of the board with effect from February 2023. Based on that, exceptional circumstances exist to grant an order to substitute or vary the decision taken by the second respondent or correct the defect in the decision. Further that exceptional circumstances exist that in the alternative the court order the respondents to pay her compensation. That it will be waste of time to remit the matter back to the first respondent, as the respondents have already filled her positions with other persons.
- [7] The first respondent has deposed an answering affidavit on behalf of all the respondents. The respondents in their answering affidavit had submitted that the appellant is seeking far reaching relief aimed at reinstating her as the member and deputy chairperson of the board, in circumstances where she had no right in law to be appointed and/or reappointed. Following the delivery of the record, the applicant has filed a supplementary affidavit where it appears that the applicant had accepted that the primary relief of reinstatement is incompetent, as she now seeks an order to be paid compensation as an alternative relief.
- [8] The respondents avers that the applicant has failed to demonstrate a right to be re-appointed to the board; she has failed to place any evidence before court

that she was entitled and qualified to be re-appointed as a board member; she has failed to demonstrate exceptional circumstances, warranting the court to interfere with the exercise of the first respondent's discretion in terms of section 8 of the new Act and substitute his decision; she has failed to demonstrate the financial loss and the existence of exceptional circumstances, entitling her to compensation; and that the relief she is seeking has been overtaken by events.

[9] The respondents have raised two points *in limine*. The first point *in limine* is that of non-joinder of Adv Mahumani the deputy chairperson of the board and Ms Sethume the new board member. The respondents have submitted that both Adv Mahumani and Ms Sethume have direct and substantial interest in this matter as the relief which the applicant is seeking is that they be removed from the positions that they are currently occupying. The second point *in limine* is that the relief which the applicant is seeking is incompetent is that the applicant in these proceedings is not seeking to challenge the decision to appoint Adv Mahumani as deputy chairperson and Ms Sethume as the new board member. The respondents submit that in the absence of the challenge, these appointments will remain valid until such time that they had been set aside and consequently, the relief sought by the applicant to be reinstated as a board member and deputy chairperson are incompetent.

[10] On the merits, the respondents have submitted that the applicant was the only board member who had served on the board for at least two terms, in terms of the 2013 and 2017 boards, whilst the rest were new members. In considering whether to re-appoint board members, the first respondent took into account the number of terms a board member has served, as well as the need to ensure that board members are rotated, in order to give as many people an opportunity

to serve on the board. In the light of the fact that the applicant had already served the board as part of the 2013 and 2017 boards, the first respondent in the exercise of his discretion, decided against the re-appointment of the applicant for another term. The respondents submit that the applicant has failed to make out a case for the relief she is seeking.

[11] In her replying affidavit in relation to the point *in limine* of non-joinder, the applicant has submitted that the point *in limine* is not applicable to her case as the current deputy chairperson does not have direct and substantial interest in the relief she is seeking. Her main contention in the matter is that the court must review the decision of the first respondent which was taken without applying his mind on the law. Further that the current deputy chairperson was appointed despite the fact that she had raised her concern to the first respondent that she had only served one term as a board member.

[12] At the commencement of the hearing, it was agreed that both points *in limine* and merits of the application be argued at the same time. However, it is vital that the point *in limine* of non-joinder be dealt with first. It is trite that the test in a non-joinder dispute is whether the party sought to be joined has a direct and substantial interest in the matter. The alleged necessary party must have a legal interest in the subject-matter which may be affected prejudicially by the judgment of the court in the proceedings concerned. (See *Gordon v Department of Health, Kwazulu-Natal*⁴).

[13] In *ABSA Bank v Naude*⁵ Schoeman AJA said:

⁴ 2008 (6) SA 522 (SCA) at para 9

⁵ 2016 (6) SA 540 (SCA) at 542I-543B

"The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined. In *Gordon v Department of Health, Kwazulu-Natal* it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined".

- [14] As part of her relief in the amended notice of motion, the applicant is seeking that the respondents be ordered to reappoint her as member and deputy chairperson of the board. The composition of the board is been regulated by section 5 of the new Act. In terms of section 5(2) of the new Act, the board must consist of 9 members. There is no provision for appointment of additional members. Currently all the positions of the 9 members has been filled. Should the applicant be successful with her application, one member and the deputy chairperson must relinquish their positions as section 5(2) in relation to the composition of the board is peremptory.
- [15] Ms Sethume who is the new member of the board and Adv Mahumani are therefore having a legal interest in the subject matter, and may affected prejudicially by the judgment and order of this court in these proceedings. The two are the necessary parties in these proceedings and have a direct and substantial interest in this matter. They should therefore be joined to the proceedings. The respondents' first point *in limine* of non-joinder stand to be upheld. However, that is not a point *in limine* that disposes the whole matter. The appropriate relief will be to stay the proceedings and enable the applicant to join Ms Sethume and Adv Mahumani to the proceedings should she so wish.
- [16] In the result the following order is made:

16.1 The respondents' point *in limine* of non-joinder is upheld with costs on party and party scale B.

16.2 The proceedings are stayed pending the joinder of Ms Sethume and Adv Mahumani should the applicant so wish.

16.3 The applicant to bring the joinder application with 20 days of receipt of this judgment and order, failing which the respondents are at liberty to bring an application for the dismissal of the applicant's claim of the same papers or supplemented where necessary.


 KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH
 AFRICA, LIMPOPO DIVISION,
 POLOKWANE

APPEARANCES:

Counsel for the applicant	: Adv Moifo
Instructed by	: Montjane BL Attorneys
Counsel for 1st to 3rd respondents	: Adv D Mtsweni
Instructed by	: State Attorney Polokwane
Date heard	: 5th May 2025
Electronically circulated on	: 23rd June 2025