



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO.	
(2) OF INTEREST TO OTHER JUDGES: NO.	
(3) REVISED.	
2025-06-18	
<u>DATE</u>	<u>SIGNATURE</u>

Case Number: 039592/2025

In the matter between:

MINISTER OF TRADE, INDUSTRY AND COMPETITION

First Applicant

NATIONAL LOTTERIES COMMISSION

Second Applicant

and

WINA NJALO (RF) PTY LTD

Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 18 June 2025.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

[1] Both the Minister of Trade, Industry and Competition [the Minister] and the National Lotteries Commission [the NLC] have applied for leave to appeal my judgment delivered on 21 May 2025. Wina Njalo has opposed the applications on the basis that the issues are moot and that the appeal is prevented by the doctrine of peremption.

The Minister's appeal

[2] It was submitted that another Court could find that the Minister's delay in taking a decision did not constitute a failure to take a decision under s6(2)(g) of the Promotion of Administrative Justice Act 3 of 2000 [PAJA]. Furthermore, the Court erred in finding that the Minister had failed to provide "justifiable reasons" for the delay.

[3] I am satisfied that there are no reasonable prospects that another court would come to another conclusion on the submissions made in paragraph 2.

[4] The Minister also seeks leave to appeal against the finding that the Minister's issuance of the Temporary License RFP constituted reviewable administrative action and was structured in such a way to favour Ithuba. Moreover, the Court erred in exercising the remedial power by suspending the order of invalidity for only five months.

[5] I am satisfied that there are no reasonable prospects that another court would come to another conclusion on any of the issues raised in paragraph 4.

[6] There are no compelling reasons why this appeal should be heard.

[7] Furthermore, the Minister's appeal is moot. The Minister published a media statement on 31 May 2025 that reads as follows:

"On 28 May 2025, I announced the successful conclusion and appointment of Sizekhaya Holdings (RF) (Pty) Ltd ("Sizekhaya") as the Fourth National Lottery and Sports Pools operator. Sizekhaya's appointment takes effect on 01 June 2026 and requires that there be transition from the Third National Lottery and

Sports Pools operations to the Fourth National Lottery and Sports Pool Licence operations.

On advice of the National Lotteries Commission, I also authorised that a Temporary Licensee must be appointed in terms of section 13B of the Lotteries Act, 1997. I am pleased to report that I have concluded, on advice of the Commission, successful negotiations with Ithuba Holdings (RF) (Pty) Ltd and have signed a Temporary Licence Agreement for them to operate the National Lottery and Sports Pool on a temporary basis for a period of 12 (twelve) months with effect 01 June 2025. The Temporary Licence will ensure the continuation of the lottery operations in the period that transition is required from the Third to the Fourth Licence operations.

...

It is in the context of both the 21 and 30 May 2025 judgments that I received an accepted the advice from the Commisison, that I appoint a temporary licence operator on an urgent basis.”

[8] The Minister had announced that he appointed Sizekhaya Holdings as the Fourth National Lottery operator. This renders order 2, the declaration of the invalidity of the failure to decide moot. It also renders order 3 moot; the order to determine the successful applicant for the Fourth Licence. As is order 5 moot; the declaration of invalidity of the bid validity extension. There are simply no live issues to be adjudicated by a court of appeal.

[9] The Minister has concluded a contract, not with the sole bidder for the temporary licence, but with Ithuba Holdings to operate the temporary licence for 12 months. The appeal against the declaration of invalidity of the temporary licence RFP and suspension of that order is thus moot. It will have no practical effect or result.

[10] The Minister’s application must be dismissed as having no prospects of success and being moot.

The NLC’s application for leave to appeal

[11] The NLC bases it application on order 4 declaring the temporary licence invalid on the basis that the Minister and the NLC predetermined the outcome of the tender

process by eschewing it in favour of Ithuba Lottery. I am satisfied that there are no reasonable prospects that another Court will come to another conclusion pertaining to these findings.

[12] Another ground raised is that the award of a licence under section 13 of the Lotteries Act is not governed by section 217 as a procurement process, the process must only be a fair and transparent process. This finding may impact future awards by the Minister.

[13] I am satisfied that a fair and transparent process was not followed and that no other court will come to a different conclusion. There is no compelling reason to grant leave to appeal on this basis.

[14] I am also satisfied that the period of 5 months for the suspension was based on the facts before the Court and that another court will not come to a different conclusion. I am further satisfied that the Minister awarded the temporary licence RFP, the order was against the Minister and no appeal thereon lies with the NLC.

[15] On behalf of Wina Njalo it was argued that the NLC had preempted its right to seek leave appeal. The parties had agreed that the further evidence can be placed before me. The NLC by instituting the extension proceedings in which it sought to extend the time period granted by me made the following statement under oath:

“WHY APPEALING THE ORDER OF MADAM JUSTICE POTTERILL IS NOT AN OPTION

79. The NLC considered appealing the judgment of this Court in respect of inter alia of the suspension period. This is because even on the facts before the Court, there may be misdirections of facts that justify an appeal. But an appeal would only exacerbate uncertainty and undermine the need for certainty that lottery operations will not be interrupted on 1 June 2025 until the Fourth Licensee is ready to take over lottery operations in 9 months as currently suggested by the applicant. Importantly, Ithuba Lottery is not prepared to conclude a temporary licence agreement even in the face of an appeal (assuming leave to appeal were granted), without certainty that its operations would be lawful throughout. This is understandable as unlawful operations may result in the need to disgorge profits earned.

80. Thus, the only realistic option is to seek certainty from this Court through the variation and extension of the suspension period in paragraph 6 of the Court order from 5 months to 12 months.”

[16] The NLC did not reserve its right to appeal this Court’s judgment if the extension application was unsuccessful. The NLC’s conduct and words were unequivocal and inconstant with any intention to appeal. I agree that the principle of peremption is applicable and that leave to appeal is to be dismissed.

[17] But, more importantly the Minister did not use the temporary licence RFP to appoint Ithuba Holdings as the temporary licensee for 12 months.

[18] The leave to appeal by the NLC is to be dismissed.

[19] The applications for leave to appeal are dismissed. The Minister and the NLC are to pay Wina Njalo’s costs including the costs of three counsel on scale C.



S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 039592/2025

HEARD ON: 13 June 2025

FOR THE FIRST APPLICANT: ADV. P. ELLIS SC
ADV. K. MAGANO

INSTRUCTED BY: State Attorney Pretoria

FOR THE SECOND APPLICANT: ADV. N. MAENETJE SC
ADV. B. LEKOKOTLA
ADV. N. SAKATA

INSTRUCTED BY: Malatji & Co Attorneys

FOR THE RESPONDENT: ADV. G. MARCUS SC
ADV. T. PALMER
ADV. D. SIVE
ADV. D. MUTEMWA

INSTRUCTED BY: Nortons Inc.

DATE OF JUDGMENT: 18 June 2025