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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 122856/2025

(1) REPORTABLE NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE: 8 August 2025

SIGNATURE:

In the matter between

**AL MADAR GENERAL TRADING (PTY) LTD
T/A MAMS CASH AND CARRY
REGISTRATION NUMBER: 2020/02478/07**

APPLICANT

and

**THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

FIRST RESPONDENT

JUDGMENT

VAN DEN BERG AJ

- [1] The applicant urgently applies for an interim interdict to suspend the enforcement of prohibition notices issued by the City of Tshwane Metropolitan Municipality that led to the closure of the applicant's business and the cessation of operations.
- [2] The applicant, Al Madar General Trading operates a Cash and Carry business dealing in foodstuffs in Mamelodi East, Extension 18, Pretoria. The first respondent, the City of Tshwane Metropolitan Municipality ("the Municipality"/first respondent) issued a temporary permit to the applicant to conduct its business at its premises on 26 November 2024.
- [3] On 20 May 2025, the Municipality issued the applicant with a Prohibition Order under Regulation 4 of R638 of 22 June 2018, pursuant to the Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972 ("the FCDA"), citing violations related to foodstuffs, hygiene, and food safety ("the Prohibition Order"). The Prohibition Order also specified that:
- "In terms of regulation 4(2) of the abovementioned regulations, you are hereby prohibited to sell foodstuffs contrary to the requirements set out."*
- [4] The Municipality issued the applicant on the same day, also with a s16(2) Instruction Notice in terms of the Fire Brigade Services Local Authority Notice 396 dated 9 March 2016 ("the s 16(2) instruction"). The Prohibition Order did not instruct the applicant to close its business or cease trading. The s 16(2)

instruction asserted that the applicant failed to submit an application for the approval of building plans. The further relevant part of the s 16(2) instruction reads as follows:

The following requirements must be adhered to: *Submit plan for approval.*

And be completed before or on: *Close the premises.* at 12:00

WARNING: If you fail to comply with this notice you will be summonsed to appear in a magistrate's court and a fine of not more than R5 000,00 or imprisonment for a period of 6 months may be imposed on conviction. The original hereof was today handed to the aforementioned personally and the importance thereof explained to him/her.

- [5] The applicant promptly took measures to address the issues identified in both the Prohibition Order and the s 16(2) instruction. On 6 June 2025, the applicant supplied the first respondent with documentary evidence of efforts undertaken to resolve these issues. No response was received from the first respondent.
- [6] On 4 July 2025, the applicant's attorneys addressed correspondence to the first respondent and confirmed that the applicant had complied with the complaints and requested permission to resume trading. No response was received from the first respondent. The applicant lodged an appeal on 16 July 2025 against both the Prohibition Order and the s 16(2) instruction in terms of s 62 of the Municipal Systems Act, 32 of 2000 ("the MSA"). Following the lodgement of the appeal, the applicant resumed trading.
- [7] On 18 July 2025, a Warrant Officer of the first respondent attended the premises and enforced closure, directing the immediate cessation of operations under threat of penalties, including fines or imprisonment. The applicant duly complied with the said instruction.
- [8] A final demand was made on behalf of the applicant by its attorneys on 21 July 2025, and the present urgent application was served on 25 July 2025.

- [9] On Monday, 4 August 2025 after the respondents had delivered their answering affidavit, the first respondent proceeded to advise the applicant of its decision to dismiss the appeal on the grounds that the appeal was irregular as it could not be lodged in terms of s 62 of the MSA. The first respondent further withdrew the s 16(2) instruction.
- [10] The applicant and respondents were both represented by counsel at the arguing of the urgent application on Tuesday, 5 August, and Thursday, 7 August 2025. The parties exchanged papers and provided the Court with heads of argument.
- [11] The applicant claims that the application is urgent and seeks immediate relief to resume trading. The respondents argue that the urgency is self-created and that the applicant has alternative remedies available. I am satisfied that the application is urgent and have proceeded to hear the matter accordingly.
- [12] Mr Aucamp, who appeared on behalf of the applicant, submitted that the Prohibition Order should be suspended pending the outcome of review proceedings. The applicant has established a *prima facie* right to trade, supported by its compliance with the requirements set out in the Prohibition Order, which was not seriously disputed by the first respondent in their answering affidavit. The first respondent did not contradict the applicant's evidence that it obtained the necessary pest control certificate, food safety training, submitted building plans and engaged a Town Planner for rezoning.
- [13] The first respondent adopted a technical basis of opposition to the relief sought. In paragraph 62 of the answering affidavit, the following is stated regarding the steps taken by the applicant in compliance with the Prohibition Order and instruction:

“... the Respondents would still need to satisfy themselves that indeed rectifying measures have been implemented, through an investigation and not a mere submission of documents.”

- [14] The argument developed by Mr Sekwakweng, on behalf of the Municipality, was to the effect that the applicant's submission of documents and the final demand by the applicant's attorneys were not in terms of Regulation 4(4) of the Regulations. Regulation 4(4) provides that:

"... The person in charge or his or her representative, upon whom a prohibition order was served, may after rectifying the conditions which led to the issuing of a prohibition order, in writing request the removal of the prohibition order."

- [15] Regulation 4(5) and 4(6) further prescribe that the Municipality must, within 72 working hours of receiving the written request, carry out an investigation of the food premises, facility, activity or circumstances that gave rise to the prohibition. Once the investigation is complete, the Municipality must inform the person in writing, on whom the prohibition order was served, whether the prohibition order has been withdrawn or remains in force, as applicable.

- [16] The applicant claims that it never had the opportunity to make submissions before the Prohibition Order, s 16(2) instruction or order to close its business and cease operations were issued. After the Prohibition Order and s 16(2) instruction were issued, it took the necessary steps to comply, and its final demand by the applicant's attorney was akin to a request under Regulation 4(4). The Municipality does not deny that it received the documents or that it was aware of the correspondence from the applicant's attorneys. Therefore, there is no real argument that this did not, under the circumstances, prompt or should have prompted the Municipality to initiate an investigation as required by Regulation 4(5) and 4(6). The Municipality cannot claim that it is not obliged to assist taxpayers seeking to comply with Prohibition Orders, as in this case, solely on the basis that the documents were not submitted using the "correct" form, did not cite the relevant regulation, or lacked a specific phrasing in their submission request.

- [17] The applicant has established a *prima facie* right to trade. The prolonged closure of the applicant's business risks irreparable harm, including loss of customers, commercial reputation, potential collapse of the business, loss of

job opportunities and a damages claim would not provide adequate redress as the harm is ongoing and not readily reversible.

- [18] The applicant plays a significant role in the local community by selling food and acting as an employer, and there is no substantial evidence to suggest any real risk that continued trading in foodstuffs could lead to harm. In this regard, it is again emphasised that the respondents failed to present any direct evidence before the Court of any risk, harm, or other substantial threat to the community's wellbeing or safety should the applicant be permitted to trade in foodstuffs.
- [19] The applicant relied upon the authority of *Cotty and others v Registrar, Council for Medical Schemes and others*¹ which affirmed the common law principle that an appeal against an administrative decision suspends the execution of that decision. The regulations contain no express provision to the contrary, and I accept that the appeal lodged by the applicant in any event suspended the operation of the Prohibition Order.
- [20] The applicant further referred the Court to the judgment in *Welgevonden Lodge No 57 (Pty) Ltd v Limpopo Provincial Liquor Board*² in which the Court emphasised its inherent jurisdiction to grant interim relief to prevent injustice and hardship, particularly in commercial matters. It highlighted the importance of granting relief when unreasonable delays or administrative failure cause prejudice. The applicant has been conducting business for many years, and the premises were previously licensed for the trade in foodstuffs. The applicant has taken the measures in terms of the Prohibition Order and wishes to regularise its trade in accordance with the relevant legislation. There is no evidence that the continued trade by the applicant was not in the public interest or had a negative impact on the community.

¹ 2021 (4) SA 466 (GP)
² 2021 JDR 2260 (LP)

- [21] In the premises, I find that it is likely, on the available evidence, that the applicant will succeed in obtaining the necessary permissions in compliance with the Prohibition Order.
- [22] The purpose of this order is not to interdict the first respondent from fulfilling its constitutional obligation or to limit in any way its regulatory and enforcement powers. It merely provides an opportunity for a decision to be taken on the applicant's compliance with the Prohibition Order, and should it not be withdrawn, a review of such decision. The relief originally applied for in the Notice of Motion to interdict the Municipality could have encroached on the doctrine of separation of powers. Upon considering the answering affidavit, the dismissal of the appeal and given the withdrawal of the s 16(2) instruction, the applicant changed its tack and proposed a draft order in line with the relief that was granted in *Welgevonden*³.
- [23] In light thereof that there is a possibility that the Municipality may withdraw the Prohibition Order once it has completed its investigation in terms of Regulation 4(5) and 4(6) and since no other Court will be in a better position to decide on the issue of costs, I have exercised my discretion in awarding the costs of the application in favour of the applicant.
- [24] Regrettably, the Municipality chose to oppose the urgent application on technical grounds. It would have been more prudent to dedicate time, effort, and resources to verifying the applicant's compliance and attempts to regularise the situation, in the interest of all stakeholders and the community.
- [25] Accordingly, I grant the order as set out below:
1. The first respondent is hereby directed to, within a period of 72 working hours from the date of this order, carry out an investigation of the premises at 3[...] T[...], F[...] Avenue, Mamelodi East, Extension 18, Pretoria, ("the premises"), as well as the facility, activities, or

circumstances that gave rise to the Prohibition Order, dated 20 May 2020, (“the Prohibition Order”), and to determine whether the Prohibition Order should be withdrawn or remain in force, as the case may be, in accordance with Regulations 4(4) and 4(5) of the Regulations Governing General Hygiene Requirements for Food Premises, the Transport of Food and Related Matters (“the Regulations”), issued under the Foodstuffs, Cosmetic and Disinfectants Act 54 of 1972 (“the FCDA”).

2. The applicant is hereby authorised to trade as a cash and carry business dealing in foodstuffs at the premises, subject to the FCDA and the Regulations, as if not violating the Prohibition Notice, until the final outcome of the investigations launched in terms of Regulation 4(5) and the first respondent's decision, made pursuant, has been communicated to the applicant as per Regulation 4(6).
3. Should the first respondent decide not to withdraw the Prohibition Order, then the applicant is authorised to continue trading until such time as the decision could have been finalised on review before this court, subject to the applicant instituting review proceedings within 1 (one) month of the decision being communicated and received by the applicant.
4. The first respondent is to pay the costs of this application as between party and part, such costs to include the cost of Counsel on Scale B.

J.P VAN DEN BERG
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the Applicant: Adv S Aucamp
Instructed by Jacques Classen Inc Attorneys

For the Respondent: Adv M.D Sekwakweng
Instructed by Diale Mogashoa Attorneys

Date of hearing: 5 and 7 August 2025

Date of judgment: 8 August 2025

MODE OF DELIVERY: This judgment is handed down by circulation to the parties' legal representatives by email, and by being uploaded on CaseLines and released to SAFLII. The delivery date and time are deemed to be 8 August 2025, at 10:00 a.m.