IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case no: 19/2024P

In the matter between:

HOLLYWOOD SPORTSBOOK KWAZULU-NATAL (PTY) LTD	**APPLICANT**

and

CAPITEC BANK LIMITED	**FIRST RESPONDENT**
FIRST NATIONAL BANK, A DIVISION OF FIRSTRAND BANK LIMITED	**SECOND RESPONDENT**
NEDBANK LIMITED	**THIRD RESPONDENT**
ABSA BANK LIMITED	**FOURTH RESPONDENT**
STANDARD BANK LIMITED	**FIFTH RESPONDENT**
BIDVEST BANK (PTY) LIMITED	**SIXTH RESPONDENT**
DISCOVERY BANK LIMITED	**SEVENTH RESPONDENT**
AFRICAN BANK LIMITED	**EIGHTH RESPONDENT**
FINBOND MUTUAL BANK	**NINTH RESPONDENT**
NKHENSANI NGOBENI	**TENTH RESPONDENT**
GIVEN MAHLAULE	**ELEVENTH RESPONDENT**
NSIKAYESIZWE THOBELANI GCABASHE	**TWELFTH RESPONDENT**
SIFUNDO MBHELE	**THIRTEENTH RESPONDEDNT**
SITHEMBILE PRISCILLA NSINDANE	**FOURTEENTH RESPONDENT**
MSAWAKHE VICTOR MKHIZE	**FIFTEENTH RESPONDENT**
LIFT WISEMAN BHEKUBUHL THIYANE	**SIXTEENTH RESPONDENT**
SKHUMBUZO COMFORT MKHIZE	**SEVENTEENTH RESPONDENT**

SINENHLANHLA SUZAN DUVE	**EIGHTEENTH RESPONDENT**
DELISILE PRETTY MBHELE	**NINTEENTH RESPONDENT**
PHINEAS PHUMLANI MNYANDU	**TWENTIETH RESPONDENT**
MLUNGISI JEROME BASI	**TWENTY FIRST RESPONDENT**
PHUMLANI THEOPHILUS MKHIZE	**TWENTY SECOND RESPONDENT**
SIBONGAKONKE AMOS NENE	**TWENTY THIRD RESPONDENT**
LEBOHANG ISAAC NGWENYA	**TWENTY FOURTH RESPONDENT**
NKOSIKHONA SYDNEY MHLONGO	**TWENTY FIFTH RESPONDENT**
NGCEBO MBUSO MAPHUMULO	**TWENTY SIXTH RESPONDENT**
FEZILE BARBARA MTSHARE	**TWENTY SEVENTH RESPONDENT**
NQOBILE BARBARA LINDA	**TWENTY EIGHTH RESPONDENT**
EMMANUEL NKOSINATHI NENE	**TWENTH NINTH RESPONDENT**
PETRUS CHAUKE	**THIRTIETH RESPONDENT**
	AND 140 OTHER RESPONDENTS

Coram: MOSSOP J
Heard: 10 September 2025
Delivered: 10 September 2025

ORDER

The following order is granted:

The rule nisi granted on 5 January 2024 by Henriques J, as amended, is confirmed against the following respondents:

The 12 to 19^{th} respondents;

The 20^{th} to 29^{th} respondents;

The 31^{st} respondent;

The 33^{rd} to 39^{th} respondents;

The 40^{th} respondent;

The 42^{nd} respondent;

The 44^{th} to 47^{th} respondents;

The 52^{nd} and 53^{rd} respondents;

The 55th to 57th respondents;
The 59th respondent;
The 60th to 67th respondents;
The 69th and 70th respondents;
The 72nd respondent;
The 74th to 77th respondents;
The 79th and 80th respondents;
The 82nd respondent;
The 84th to 87th respondents;
The 89th and 90th respondents;
The 92nd to 94th respondents;
The 100th respondent;
The 102nd to 105th respondents;
The 109th and 110th respondents;
The 112th to 115th respondents;
The 118th and 119th respondents;
The 121st and 122nd respondents;
The 128th and 129th respondents;
The 130th to 134th respondents;
The 137th to 140th respondents;
The 142nd respondent;
The 155th and 156th respondents;
The 159th respondent; and
The 161st to 169th respondents.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex-tempore judgment.

[2] The application was initially brought as an urgent ex-parte application that identified, and cited, 169 respondents. That number was increased by one after the

later joinder of a commercial bank as the 170th respondent. Together with the 170th respondent, there are, in all, nine other banks cited, and they are the first to ninth respondents (the banks). The remaining respondents are all natural persons.

[3] The applicant seeks confirmation of a rule *nisi* initially granted to it on 5 January 2024 by Henriques J (the rule). Such confirmation is sought only as against certain of the respondents. The rule was subsequently varied by Ncube J on 12 January 2024, by Sibiya J on 15 January 2024 and by Nirghin AJ on 23 January 2024. On 4 March 2024, Z P Nkosi J discharged the rule in respect of four of the respondents, confirmed it against many of the other respondents and extended it in respect of the balance of the respondents. Then, on 30 May 2024, Hadebe J confirmed the rule against another 5 respondents.

[4] By virtue of these decisions, the respondents against which relief is sought has been winnowed down as the matter has progressed. Of the initial 170 respondents, relief is now claimed against the following respondents, who have all actively opposed its confirmation by the delivery of answering affidavits and are represented before me today by their counsel, Ms *De Beer*:

The 12 to 19th respondents;
The 20th to 29th respondents;
The 31st respondent;
The 33rd to 39th respondents;
The 40th respondent;
The 42nd respondent;
The 44th to 47th respondents;
The 52nd and 53rd respondents;
The 55th to 57th respondents;
The 59th respondent;
The 60th to 67th respondents;
The 69th and 70th respondents;
The 72nd respondent;
The 74th to 77th respondents;
The 79th and 80th respondents;
The 82nd respondent;

The 84th to 87th respondents;
The 89th and 90th respondents;
The 92nd to 94th respondents;
The 100th respondent;
The 102nd to 105th respondents;
The 109th and 110th respondents;
The 112th to 115th respondents;
The 118th and 119th respondents;
The 121st and 122nd respondents;
The 128th and 129th respondents;
The 130th to 134th respondents;
The 137th to 140th respondents;
The 142nd respondent;
The 155th and 156th respondents;
The 159th respondent; and
The 161st to 169th respondents.

[5] The order granted by this court shall accordingly only relate to these respondents.

The applicant's case

[6] The applicant is a well known South African sports betting company. While it accepts bets in respect of, inter alia, the outcome of live sporting events, it also conducts an online betting platform. For a short while, which was a period of just over a week, the applicant accepted bets on an online game on its betting platform called 'Betgames Instant Lucky 7' (the impugned game). To be entirely accurate, the impugned game was online for the period 22 December 2023 to 31 December 2023.

[7] The impugned game was not dissimilar to the national lottery, despite the applicant's vehement statement in its replying affidavit that:

'[i]t is denied that the Lucky Seven Game is similar to the lotto.'

The applicant appears to have forgotten that this is precisely how it described the impugned game in its founding affidavit:

'[t]he Game is similar to taking a lotto ticket ….'

[8] In any event, a punter wishing to play the impugned game was first required to have an account with the applicant with sufficient money in it to cover the extent of the bet: there was no gambling on credit permitted. The money standing to the credit of the punter in his account with the applicant could be used to purchase multiple numbers in a draw conducted by the impugned game. The numbers having been selected, the punter could then determine how many times the selected numbers would appear in the draws to come. It was possible to use the same numbers up to 50 times. The consideration that had to be paid for the bet would then be calculated and, if acceptable to the punter, the bet would be placed. In ideal circumstances, the punter's account with the applicant would be debited with the value of the consideration for the placement of the bet.

[9] While there may have been a resemblance to the national lottery, unlike the national lottery, the draw did not happen once or twice a week: there was a new draw happening every 30 seconds.

[10] But there was a problem inherent in the impugned game. That weakness had nothing to do with the respondents and everything to do with those that designed the game (which was not the applicant, but a third party company). The problem was that the game failed to deduct the value of the consideration linked to the bet from the punter's account. This, ultimately, meant that the punter could gamble for free and at no risk, for it cost him nothing to acquire his numbers in the draws but he could still win. When the punter won, the winnings were paid into his or her account with the applicant.

[11] The respondents must have noticed the weakness in the impugned game, and they exploited it. In the week that the impugned game was available, just over R13 million was collectively won by the 10th to 169th respondents. One example suffices as to what occurred. The 12th respondent stated in his answering affidavit that he played the impugned game for approximately four days. He deposited R50 on 28 December 2023 and R850 the next day. He estimates that he placed about 40 bets and won R443 700. Having won that money, he withdrew it from his account and transferred it to his personal banking account held with one of the banks cited in the application.

[12] The winnings of the 12th respondent are at the one extreme of the spectrum of what was won. At the other end of the spectrum is the respondent who won R3 000.

[13] The applicant has monitoring systems in place, and those systems picked up what was regarded as suspicious levels of winnings and, as a result, the brief life of the impugned game came to an end, and it was removed from the applicant's online platform.

[14] The applicant now claims that it is entitled to the return of all the winnings that the respondents received via the impugned game. Upon discovering what had occurred, the respondents were telephoned by representatives of the applicant, who read from a prepared script, and requested the respondents to repay their winnings. Almost all the respondents refused to do so and indicated that if the applicant wanted their winnings back, it would have to sue them. The applicant obliged and that is why this matter is before me today. In seeking the relief claimed in the application, the deponent to the applicant's founding affidavit stated that:

'I submit there is no prejudice to the respondents from such an order.'

[15] In claiming repayment of the respondents' winnings, the applicant places some emphasis upon its standard terms and conditions (the conditions). The conditions must accordingly enjoy some scrutiny. The conditions are drawn to the attention of a punter when an account with the applicant is opened.

[16] The conditions deal thoroughly with the issue of what constitutes a valid bet. They provide that a valid bet is, inter alia, one that has been made with available funds in the punter's account after all preceding bets have been correctly allocated to that account. A cautionary admonishment is to be found in the conditions:

'If you have any doubts as to whether a bet has been accepted and is accordingly valid you should view your list of "pending" bets or check with a member of Hollywoodbets' staff.'

[17] As far as the mechanism of betting is concerned, the conditions, significantly in my view, contain the following clause:

'Customers can only bet up to the amount held within their account. No credit bets will be accepted by Hollywoodbets. A customer shall not, at any time, use any amount that has been incorrectly credited to his betting account as a result of

- an incorrect deposit entry (whether done erroneously or deliberately and fraudulently),
- a prohibited betting transaction,
- an incorrect result or
- incorrect for any reason in which does not rightfully accrue to him.

Hollywoodbets shall be entitled to void any and all winning betting transactions where applicable and claim from the customer all amounts wagered on unsuccessful betting transactions.'

[18] The conditions go on to state that the applicant will return all stakes on void bets placed and that:

'All winnings paid under a void bet will be forfeited and refundable to Hollywoodbets on demand by Hollywoodbets.'

[19] The conditions also provided that:

'Should funds be paid to you in error, it is your responsibility to immediately notify Hollywoodbets of the error. Any money paid to you as a result of the error and prior to the notification of Hollywoodbets, whether linked to the error or not, shall be deemed to be invalid and will be repayable by you to Hollywoodbets and you are deemed to agree and accordingly to hereby authorise Hollywoodbets to deduct from your account the sum of the money incorrectly paid into your account.'

The relief claimed

[20] Whilst the orders granted by various courts within this division have changed and corrected some of the ancillary relief initially claimed by the applicant, it is true to say that the substantive relief claimed by the applicant has remained the same.

[21] In summary, the banks were interdicted and restrained from permitting any withdrawals or transfers to be made from the bank accounts of such respondents as banked with them. A schedule was prepared by the applicant that specified which of the respondents banked with which of the banks joined in the application. All the

bank accounts of the respondents with the banks cited were frozen and the banks were ordered:

'… not to permit any activity of any nature to be transacted on the accounts.'

[22] The banks were furthermore directed, within 4 hours of the interim order being granted, to furnish the applicant with full particularity of the account holders cited as respondents in the application, and, in the event of any withdrawal or transfer of money having occurred prior to the granting of the interim order, were directed to provide full particularity of the amount involved, when the transfer was made and to whom it was made. Finally, as regards the banks, they were directed to pay to the applicant, within seven days of the granting of the interim order, the amounts standing to the credit of each respondent that banked with it to the value of an amount identified in a schedule in which each respondent's winnings were separately itemised.

[23] The respondents, on the other hand, were interdicted from operating their banking accounts with the banks 'limited to the outstanding balances set out in annexure "PI3" as at 04 January 2024.' I am not sure that I understand what this means.

The respondents' defence

[24] The respondents who delivered answering affidavits used a template to do so. The affidavits are all substantially the same, save for the amounts that each person was alleged to have won, how much was in their account with the applicant, and how many days they played the impugned game.

[25] The respondents uniformly deny that they have behaved in an unlawful manner. Each of them rejects the notion that they have acted fraudulently or, in the alternative, that they have committed theft by claiming their winnings and paying them out into their bank accounts held with one of the banks cited. They claim that they simply did as they were allowed to do and did not break any rules and stress that they each:

'… bet only with funds I initially deposited, and after that, with the funds, (sic) I won.'

[26] They complain that they have been prejudiced by the interim order granted against them and state that as a consequence of the freezing of their respective accounts, their debit orders on their bank accounts were not met, and they have now acquired a negative entry on their credit bureau record. The respondents, without exception, do not see why they should have to repay their winnings.

[27] Having heard argument this morning, I stood the matter down to allow me to gather my thoughts. I also requested counsel to definitively produce a list of respondents who were still actively involved in the matter. This they then did, and I am accordingly indebted to Mr *Reddy* and Ms *De Beer* for their kind assistance.

Analysis

[28] Black's Law defines a wager as:

'1. Money or other consideration risked on an uncertain event; a bet or gamble.

2. A promise to pay money or other consideration on the occurrence of an uncertain event.'[1]

[29] A wager itself has three component parts: the consideration, being the amount wagered, the existence of risk and a prize.[2] It matters not whether the result of the wager might be determined by the skill of the player or the element of chance, or both.

[30] It appears to me that two of the abovementioned components of a proper wager are absent on the facts of this case. Firstly, there was no consideration paid by any of the respondents to reap the benefits that they won. While they may have selected numbers which ordinarily would require them to pay therefore, due to the inadequacy of the impugned game, no consideration was collected from their accounts by the applicant. Thus, the respondents were able to gamble for free. That leads to the second component that is missing: there was no risk attached to what was wagered. Because the consideration was not deducted, it made no difference whether the punter lost. A loss would have no financial consequence for a punter

[1] Black's Law, 9th edition.

[2] Rose, I. Nelson; Loeb, Robert A. (1998). 'Blackjack and the Law' (1st ed.). Oakland, CA: RGE Pub. p. 109.

because, in reality, the punter did not lose anything because he or she did not pay the consideration necessary to take the wager. Once it was realised by the respondents that winnings could be obtained for no consideration, each of them simply increased their bets in order to maximise their winnings.

[31] It appears to me that the applicant's conditions, already discussed, comprehensively cover a situation in which an invalid bet occurs and specifically provides for the applicant's entitlement to recover any winnings gained from such an invalid bet.

[32] From the aforegoing, it is evident that the applicant's principal complaint is that nothing was wagered by the respondents. They gambled without paying for the right to do so. This is a serious and potentially deadly argument that the respondents were required to address. They did not do so in their answering affidavits. Whilst they have said that they always had enough in their accounts with the applicant to cover their bets, that, with respect, is not the issue. What is the issue is that the respondents gambled for free. Because of the standardised way in which the answering affidavits were prepared, if the answering affidavit upon which all the other answering affidavits was based did not address this issue, none of the other affidavits did either. I cannot be sure which answering affidavit was the template for the others. But the fact is that none of the answering affidavits deal with this crucial issue. I must conclude that the respondents have not dealt with it because they are not able to refute it.

[33] The applicant has suggested that there was a conspiracy amongst the respondents to defraud it. It is suggested by the applicant that because each respondent who put up an answering affidavit indicated that they told other people about the ease with which winnings could be earned when playing the impugned game, this evidences the existence of a criminal conspiracy. I am not able to accept that argument. None of the respondents indicated who they specifically told about the impugned game, and it is therefore not possible to know whether the persons that they admitted telling are also respondents in this matter. It is conceivable that they told persons who did not access the impugned game. The respondents are scattered over the length and breadth of the province of KwaZulu-Natal and, indeed,

this country, and are not confined to a specific area, nor has any relationship been established that links them one to the other. I am accordingly unable to come to the conclusion pressed for by the applicant.

[34] I am, furthermore, on the facts of this case not prepared to find that a fraud was committed upon the applicant. For a fraud to exist there must be a misrepresentation. I do not discern any such misrepresentation. If it is suggested that the misrepresentation relates to the fact that no consideration was paid, I still cannot accept that the respondents made any misrepresentation. They had no control over whether the consideration was deducted from their account. That was a power held by the applicant. I asked Mr *Reddy*, who appears for the applicant, to address me on this aspect this morning. Ultimately, he agreed that there was no fraud.

[35] My reluctance to find that there was fraud is also based upon the fact that motion proceedings are generally not designed to permit a court to easily make findings of fraud.[3] As Seegobin J said in *Commissioner for the South African Revenue Services v Sassin and others*:[4]

‘Our courts have consistently held that it would be unwise to decide a disputed issue of whether fraud was committed on motion proceedings without the benefits inherent in the hearing of oral evidence, including discovery of documents, cross-examination of witnesses, and so forth.’

[36] Before concluding, I feel that something should be said about the interim relief granted to the applicant. Firstly, I am not able to comprehend why all transactions on the respondents’ bank accounts had to be frozen. It could not have been known what was in each respondent’s bank account at the time that the ex parte application was brought and it is entirely possible that there were funds in a respondent’s bank account in excess of the amounts that needed to be repaid to the applicant. The interim order prevented the respondents from accessing those additional funds. It would have been preferable if the hold on each respondent’s bank account was clearly defined to be in respect of the amount allegedly owed by the respondent to the applicant, instead of the prohibiting of all transactions.

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[3] *Korff v Scheepers en Andere* 1962 (3) SA 83 (W) at 85.

[4] *Commissioner for the South African Revenue Service v Sassin and others* [2015] ZAKZDHC 82; [2015] 4 All SA 756 (KZD) para 47.

[37] Secondly, the applicant's previously mentioned submission that the order that it claimed would not occasion any prejudice to the respondents cannot be allowed to pass without comment. What has been stated in the previous paragraph establishes the obvious prejudice to the respondents.

[38] Thirdly, the application was moved ex parte, and the banks were directed to repay the amounts owed to the applicant by each respondent within seven days of the granting of the interim order. It is therefore conceivable that such payment could have been extracted from a respondent's bank account without him or her receiving any notice at all. This would fly in the face of the audi alteram partem principle ingrained in our law. In my view, it would have been appropriate to divide the relief claimed into a part A and a part B, with part A preserving the status quo pending the determination of the relief claimed in part B, being the order to repay the amounts unlawfully won.

[39] Despite these misgivings, the interim relief claimed was granted and cannot now be undone.

Conclusion

[40] I accordingly find that the wagers placed by the respondents through the impugned game were not valid wagers. It must follow therefore that the respondents were not entitled to the winnings that they received from the impugned game and that they must be returned to the applicant. The rule must accordingly be confirmed against the respondents mentioned at the commencement of this judgment.

[41] It follows that the applicant has achieved its aim and has been successful, despite it, ultimately, being responsible for the deficiency in the impugned game. I, reluctantly, find that it is entitled to its costs, which form part of the rule.

Order

[42] The following order is granted:

The rule nisi granted on 5 January 2024 by Henriques J, as amended, is confirmed against the following respondents:

The 12 to 19th respondents;

The 20th to 29th respondents;
The 31st respondent;
The 33rd to 39th respondents;
The 40th respondent;
The 42nd respondent;
The 44th to 47th respondents;
The 52nd and 53rd respondents;
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The 121st and 122nd respondents;
The 128th and 129th respondents;
The 130th to 134th respondents;
The 137th to 140th respondents;
The 142nd respondent;
The 155th and 156th respondents;
The 159th respondent; and
The 161st to 169th respondents.

MOSSOP J

APPEARANCES

Counsel for the applicant:	Mr T Q Reddy
Instructed by:	Grant and Swanepoel Attorneys Incorporated Suite 1, The Mews Redlands Estate George MacFarlane Lane Pietermaritzburg
Counsel for the respondent:	Ms B De Beer
Instructed by:	Shabangu Attorneys 191 Jabu Ndlovu Street Pietermaritzburg