

SENYATSI J (BAM J concurring)

Introduction

[1] This is an appeal against the judgment and order of the Magistrate's Court for the District of Pretoria North (the court *a quo*) handed down on 20 March 2020 by Magistrate Ramahanelo, in terms whereof an interim interdict granted against the respondents on 6 November 2019 was discharged. The interdict prohibited the respondents from operating a liquor business from their residential property, pending the finalisation of an application for a final interdict and a demolition order.

Background

[2] The appellant (the Municipality) sought relief against the respondents, a married couple, on the grounds that they had erected structures on their residential property to operate a business, specifically a tavern, which also sells food. The appellant contended that this use of the property and the associated structures contravened its Town Planning Scheme, the National Building Regulations and Building Standards Act 103 of 1977 ("the Building Standards Act"), and its by-laws.

[3] The interim interdict was granted by agreement on 6 November 2019. When the matter proceeded for the final relief, the court *a quo*, in a brief judgment, discharged the interim order. The learned magistrate found, in essence, that because the respondents possessed a valid liquor license issued by the Gauteng Liquor Board, there was no justification for the court to order the demolition of the structures from which the business was operated.

[4] Aggrieved by this decision, the appellant appeals to this court.

Submissions by the parties

[5] Advocate Buthelezi, for the appellant, submitted that the court *a quo* fundamentally misdirected itself. She argued that the possession of a liquor license

is irrelevant to the question of whether the respondents' use of the land and the physical structures thereon comply with municipal town planning and building regulations. The two regulatory regimes - liquor licensing and land use management - are distinct and administered by different organs of state.

[6] Counsel further submitted, compellingly, that the liquor license itself may have been issued erroneously. He drew the Court's attention to section 24(3) of the Liquor Act 59 of 2003, which provides that the Liquor Board must require an applicant for a license to prove that the applicant has the right to use the premises for the purposes of the license in terms of any law. A zoning certificate from the local municipality is standard proof of this right. Advocate Buthelezi argued that the respondents, not having obtained the necessary rezoning, could not have lawfully granted such certificate, and thus the issuance of the liquor license was likely flawed. However, he correctly conceded that the validity of the liquor license is not directly before this court; the primary issue is land use and building control.

[7] The respondents, who initially appeared in person, were fortuitously assisted by Advocate Arcangeli, who was present in court and generously offered to consult with them and make submissions on their behalf. The Court expresses its gratitude to Advocate Arcangeli for his assistance, which ensured the respondents were not unduly prejudiced by their lack of legal representation. Advocate Arcangeli's submissions largely reiterated the position of the court *a quo*, emphasizing the respondents' possession of the liquor license as a shield against the Municipality's action. He further indicated that the respondents' business was their livelihood.

[8] Importantly, when questioned by the Court, the respondents, through their counsel, confirmed that since the judgment of the court *a quo*, they have not regularized the status of their property. They have not applied for, let alone obtained, the necessary rezoning of the property from residential to business purposes. They admitted that they continue to trade from the contravening structures.

The Legal Framework

[9] The legal principles are well-established and were not applied correctly by the court *a quo*.

[10] First, the requirements for a final interdict are: (a) a clear right; (b) an injury committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.

[11] The appellant's clear right is derived from its statutory duty to administer and enforce its Town Planning Scheme and the Building Standards Act. These laws are enacted for the public good, to ensure orderly development, safety, and the protection of the property rights of all residents. The respondents' unlawful operation of a business in a residential area and their erection of non-compliant structures constitute a direct injury to the appellant's statutory authority and the integrity of its planning regime.

[12] Second, and crucially, the issue of a liquor license by the Provincial Liquor Authority does not oust the jurisdiction of the Municipality nor absolve a landowner from complying with municipal laws. This principle was succinctly stated in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*¹, albeit in a different context, where the Constitutional Court affirmed the distinct and separate responsibilities of different spheres of government. The Liquor Board regulates the sale of liquor; the Municipality regulates land use and buildings. Compliance with one does not equate to compliance with the other.

[13] The court *a quo*'s finding that the liquor license was a bar to a demolition order was a clear misdirection on a point of law.

[14] Furthermore, the appellant has no other satisfactory remedy. The respondents have had ample opportunity, since at least November 2019, to bring their property into compliance. Their own admission to this court confirms that they have chosen not to do so and continue to flout the law. The appellant is therefore left with no alternative but to seek the cessation of the unlawful activity and the demolition of the unlawful structures.

¹ 2012 (2) SA 104 (CC) para 24

Finding

[15] We find that the court *a quo* erred in discharging the interim interdict. Its reasoning was based on an irrelevant consideration (the liquor license) and a misapprehension of the applicable legal principles. The appellant has successfully demonstrated a clear right, a continuing injury, and the absence of an alternative remedy.

[16] The respondents' continued unlawful use of the property and their defiance of the appellant's lawful authority cannot be condoned. The fact that the business provides their income does not trump the duty to comply with laws that apply equally to all citizens.

Order

[17] In the result, the following order is made:

- (a) The appeal is upheld.
- (b) The judgment and order of the Magistrate's Court, Pretoria North (court *a quo*) discharging the interim interdict is set aside and replaced with the following order:
"(a) A final interdict is granted, prohibiting the respondents from operating a business, specifically a tavern or shebeen, from the property situated at ERF 1[...] U[...] Street, Soshanguve WW, Pretoria.
(b) The respondents are ordered to demolish the structures erected on the said property which were built for, or are primarily used for, the purpose of conducting the business, within 60 (sixty) calendar days of the date of this order.
(c) In the event that the respondents fail to comply with paragraph
(b) above, the appellant is authorized to demolish the said structures and to recover the costs of such demolition from the respondents.
(d) The respondents are ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved."
(c) The respondents are to pay the costs of this appeal, jointly and severally at scale A.

ML SENYATSI

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

I agree,

**NN BAM
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

DATE OF HEARING: 04 September 2025

DATE OF JUDGMENT: 19 September 2025

APPEARANCES

Counsel for the Appellant: Adv Buthelezi

Instructed by: Kunene Rarnapala Inc.

Counsel for the Respondents: Adv Arcangeli (*pro bono*) on the day of the hearing

Instructed by: