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**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Reportable/Not Reportable

Case no: 2025-204832

In the matter between:

**THE PORTUGUESE ASSOCIATION OF THE CAPE
OF GOOD HOPE**

Applicant

And

AUGUSTO GOMES SANTOS RAFAEL

First Respondent

RAE-MERO RAFAEL

Second Respondent

SORRISO RESTAURANT AND BAR

Third Respondent

Neutral citation: *The Portuguese Association of the Cape of Good Hope v Augusto Gomes Santos Rafael, Rae-Mero Rafael, Sorriso Restaurant and Bar*

Coram: MANGCU-LOCKWOOD J

Heard: 04 November 2025

Delivered: 04 December 2025

ORDER

1. A rule *nisi* is hereby issued calling upon the Respondents to appear before this Honourable Court on 20 October 2026 to show cause why the following order should not be made final:
 - a. That the Respondents are directed to hand over control, possession and use of those areas of the Applicant's property which are currently occupied by the Respondents namely, the restaurant and bar located at 1[...] D[...] Road, Rugby, Western Cape ("the Premises").
 - b. That the Respondents be interdicted from selling and/or serving liquor on any part of the said Premises.
 - c. The Respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved, with counsel fees calculated on scale B.
2. That paragraph 1(a) above operates as an interim order pending the return day.

JUDGMENT: REASONS

MANGCU-LOCKWOOD, J

A. INTRODUCTION

[1] I hereby grant reasons for an order I granted on 4 November 2025 whilst on urgent duty, in the following terms:

“1. A rule *nisi* is hereby issued calling upon the Respondents to appear before this Honourable Court on 20 October 2026 to show cause why the following order should not be made final:

d. That the Respondents are directed to hand over control, possession and use of those areas of the Applicant’s property which are currently occupied by the Respondents namely, the restaurant and bar located at 1[...] D[...] Road, Rugby, Western Cape (“the Premises”).

e. That the Respondents be interdicted from selling and/or serving liquor on any part of the said Premises.

f. The Respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved, with counsel fees calculated on scale B.

2. That paragraph 1(a) above operates as an interim order pending the return day.”

[2] The applicant is a cultural, recreational and sporting association with its place of business at the premises referred to in paragraph 1(a) of the order. It leases the premises from the City of Cape Town pursuant to a 25-year written agreement

of lease, which commenced on 29 October 2002 and is due to terminate on 28 October 2027. The premises consist of clubhouse comprising, amongst other things, a banquet hall, a restaurant and bar, and various sporting facilities. The applicant is also the holder of a liquor licence in respect of the premises, in terms of the Western Cape Liquor Act 4 of 2008.

[3] The first respondent is a previous member of the applicant who operates a restaurant and bar business at the premises - the third respondent - together with his son, the second respondent.

[4] The applicant states that, with the onset of the Covid-19 pandemic in 2020, it was forced to close the premises for a period of twelve months and to cancel its agreement with the then-operator of the restaurant and bar. In 2021, after the hard lockdown the first respondent, who was then a committee member of the applicant, proposed to source an operator for resumption of operations of the bar and restaurant on behalf of the applicant. He and another committee member, Mr Carlos de Aguiar who has deposed to a confirmatory affidavit, were mandated to jointly manage and oversee the new operator on behalf of the applicant.

[5] After a few failed attempts, the first respondent took over the operations of the restaurant and bar facility himself, and as time progressed, enlisted the services of the second respondent and other family members, to the exclusion of Mr Carlos De Aguiar. The applicant states that this was done without its consent, and that it expressed its disapproval to the first respondent, but the conduct continued unabated.

[6] In the meantime, the applicant states that it received numerous complaints from its members regarding the operation and services at the restaurant and bar, ranging from bad food quality to the rude and belligerent attitude of the first and second respondents. It made repeated requests for improvement of services, which the respondents failed to comply with.

[7] Eventually, in 2023 the applicant's committee resolved to terminate the first respondent's operation of the bar and restaurant, and communicated its decision via its then chairman, Mr Luis De Andrade and Mr Carlos De Aguiar, at a meeting held in about July or August 2023 at the Mug and Bean restaurant Paddocks Centre, Milnerton. At the meeting the first respondent requested permission to remain at the premises until the end of December 2023, and to vacate by 1 January 2024, so that he could attend to events which he said had already been pre-booked. The permission was granted. However, the respondents did not vacate by 31 December 2023 or 1 January 2024.

[8] After the applicant elected a new committee in 2024, it resolved at its first meeting of 9 April 2024 to once again direct the respondents to vacate the premises and to hand over possession of the bar and restaurant by 1 June 2024. To this end, the applicant addressed a letter terminating the first respondent's *de facto* appointment as the restaurant and bar operator, with effect from 1 June 2024.

[9] The first respondent responded by letter dated 13 May 2024 from his attorneys,
stating *inter alia* the following:

“It is our instructions that approximately two years ago our client entered into a verbal lease agreement, which will end at the end of October 2027, with the Portuguese Association of the Cape of Good Hope. This explicit terms and conditions of said lease agreement is not necessary to be discussed at this stage.”

[10] The applicant responded by letter dated 1 July 2024 denying that there was ever any agreement of a lease in any form with the first respondent, and highlighting that the agreement with him was to operate the restaurant and bar for benefit of the applicant, with the committee retaining the overall control to ensure food and service quality, and ultimately, to enable him to operate under the applicant’s liquor licence. The letter referred to the respondent’s undertaking to vacate by 1 January 2024, which he had failed to do, and the respondent was afforded until 31 August 2024 to vacate the premises.

[11] On 19 February 2025 the applicant resolved to request the Liquor Licensing Tribunal of the Western Cape Liquor Authority to suspend its liquor licence. It states that it did so because the respondent’s conduct prevented it from trading its own premises while continuing to trade and benefit in terms of the applicant’s liquor licence. In addition, the applicant points to the unhygienic state of the restaurant and the fact that its insurance policy did not cover any loss originating from the part of the building occupied by the respondents.

[12] On 7 May 2025 the Western Cape Liquor Authority notified the applicant that its liquor licence had been suspended. The respondents were made aware of the suspension by email dated 15 May 2025 addressed to their attorney, Mr Smith. The email also cautioned that, should the first respondent continue to sell liquor on the premises, he would open himself to criminal prosecution. Notwithstanding the

notification of suspension of the liquor licence, the respondents continued to sell liquor and to advertise upcoming events which included the sale of liquor.

[13] On 3 October 2025, Mr Elton R Baron, Inspector: Compliance and Enforcement of the Western Cape Liquor Authority visited the restaurant and bar and witnessed the sale of liquor in contravention of the suspension order issued by the Liquor Licensing Tribunal. He also contacted the Designated Liquor Officer of the Milnerton Branch of the South African Police Services (SAPS) to pursue the matter in terms of the Criminal Procedure Act of 51 of 1977.

[14] The applicant contracted the services of a private investigator, Advocate Brink, who attended at the premises on 4 October 2025 and also witnessed the sale of liquor to various persons. He recorded his findings in a report, in which he also noted that despite the suspension of the liquor licence five months earlier, the bar and fridges were fully stocked with many types of beer, wine and hard liquor such as brandy, whiskey, shooters.

[15] On 7 October 2025 the Inspectorate Compliance and Enforcement: Western Cape Liquor Authority addressed a letter to the applicant reminding it that its liquor licence had been suspended, and pointing to a report it had received in terms of section 73(7) of the Western Cape Liquor Act, which recorded that there was illegal sale of liquor at the premises. It informed the applicant that the matter would be referred to its Tribunal in terms of section 20(1)(g) of the Western Cape Liquor Act.

[16] In an attempt to resolve the situation, one of the patriarchs and founders of the applicant, Mr Gastao Fernandes, invited the first respondent to forward

proposals upon which the respondents would be prepared to vacate the premises. In his response dated 21 October 2025, the first respondent demanded an immediate payment of R600,000.00 and reinstatement of the liquor licence to allow the respondents to continue their business until 31 December 2025, whereafter he would hand over the restaurant and bar to the applicant. He stated that if his offer was not accepted, he would continue to operate the restaurant and bar until the expiration of the current lease between the applicant and the City of Cape Town, and would remain until a new lease was negotiated.

[17] On 23 October 2025 the applicant's attorney sent a counter-proposal which included an offer to make an *ex gratia* payment of the sum of R100,000.00 once the respondents vacated the premises by 31 December 2025. The letter, however, made clear that the liquor licence would not be reinstated. It also requested a response from the respondents by 27 October 2025, failing which court proceedings would be instituted.

[18] On 24 October 2025 the respondents' attorney undertook to revert with instructions from his client. However, no response had been received by the date of hearing this matter which was on 4 November 2025.

B. THE LAW

[19] Rule 6(12) of the Uniform Rules of Court confers a discretionary power on a court to dispense with the forms and service envisaged in the Rules if an applicant

can show the circumstances which (s)he avers render the matter urgent.¹ Central to that determination is A consideration of whether the litigant will be afforded substantial redress in due course - whether the abridgement of time periods from those ordinarily prescribed by the Rules is commensurate with the urgency with which the redress is required.²

[20] As for interim interdicts, the requirements are well-known.³ The applicants must establish (a) a *prima facie* right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to the right if the interdict is not granted; (c) the balance of convenience must favour the grant of the interdict; and (d) the applicant must have no other available remedy.

[21] An interim interdict does not involve a final determination of the rights of the parties, and does not affect their final determination, but preserves or restores the *status quo* pending the final determination of those rights.⁴

[22] When weighing the evidence the applicable test is that which is set out in *Webster v Mitchell*⁵, as qualified by *Gool v Minister of Justice and Another*⁶, in terms of which the applicants must show that on their version, together with the allegations of the respondents that they cannot dispute, they should obtain relief at the trial. If, having regard to the respondents' contrary version and the inherent

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) paras 6 -7.

² *Luna Meubel Vervaardigers (Edms) Bpk v Makin & Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F.

³ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

⁴ *Apleni v Minister of Law and Order* 1989 (1) SA 195 (A) 201.

⁵ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 11189.

⁶ *Gool v Minister of Justice and Another*, 1955 (2) SA 682 (C) at 688E.

probabilities serious doubt is then cast on the applicants' case, the applicants cannot succeed.⁷ It is not necessary for an urgent court to make a final determination on the legal issues.⁸

[23] In *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another*⁹ the Court explained the approach to be followed, as follows:

“In exercising its discretion the Court weighs, inter alia, the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience. The foregoing considerations are not individually decisive, but are interrelated; for example, the stronger the applicant's prospects of success the less his need to rely on prejudice to himself. Conversely, the more the element of 'some doubt', the greater the need for the other factors to favour him. The Court considers the affidavits as a whole, and the interrelation of the foregoing considerations, according to the facts and probabilities... Viewed in that light, the reference to a right which, 'though prima facie established, is open to some doubt' is apt, flexible and practical, and needs no further elaboration”.

C. DISCUSSION

[24] This matter was launched as an urgent application and the papers were served upon the respondents via the sheriff on 31 October 2025, for hearing on 4 November 2025. Whilst a notice of opposition was delivered on behalf of the respondents on 3 November 2025, no answering papers were filed by them. Instead, Mr Grobbelaar appeared on their behalf and explained that his client, the first respondent, was overseas and could not say when he would return. Upon enquiries from the court as to the availability of and instructions from the second respondent who, it is common cause, co-runs the business with the first respondent, no answer was forthcoming.

⁷ *Spur Steak Ranches Ltd and Others v Saddles Steak Ranch, Claremont and Another* 1996 (3) SA 706 (C) at 714E-H; See also *Gool v Minister of Justice and another* 1955 (2) SA 682 (C) at 688 (E).

⁸ *Zulu v Minister of Defence and Others* 2005 (6) SA 446 (T) paras 41 - 42.

⁹ *Eriksen Motors (Welkom) Ltd v Protea Motors & Others* 1973 (3) SA 685 (A) at 691E-G.

[25] In court the respondents' counsel also made an open tender that the respondents would refrain from selling and serving liquor at the premises. In other words, the tender was made in respect of the relief sought in paragraph 2.2 of the notice of motion. On that basis, he proposed that an interim order be granted in terms of paragraph 2.2 of the notice of motion, and the rest of the matter postponed. He also relayed some instructions from the bar, to the effect that there has been no liquor sold at the premises since 6 October 2025.

[26] In addition to all of this, the respondents' counsel challenged the urgency of the matter, stating that the issue of the liquor licence was orchestrated by the applicant who themselves requested its suspension.

[27] Starting with the argument made regarding urgency, it does not assist the respondents to state that the suspension of the licence was orchestrated by the applicant. The fact is that the liquor licence was indeed suspended, and not by the applicant but by the Western Cape Licencing Authority. And, as recently as 7 October 2025, that authority was pursuing legal processes against the applicant, as a result of the respondents' conduct. This is far from self-created urgency.

[28] The respondents themselves have been aware of the suspension since 15 May 2025 and failed to comply with it and have instead continued to operate illegally. If they were of the view that that the suspension was somehow irregular or orchestrated as they now claim, one would have expected them to challenge it. In my view, their somnambulance precludes them from now claiming that the suspension is orchestrated by the applicant and that that somehow prevents the court from dealing with the issue as a matter of urgency. There is no doubt that the respondents' continued illegal operation is a matter of urgency, affecting not only

the applicant, but also, as the facts show, the Western Cape Licensing Authority and the City of Cape Town as lessor, as well as the operation of the rule of law. The court is entitled to intervene as a matter of urgency.

[29] Furthermore, when the matter was heard, the court roll regulating semi-urgent matters ran to September or October 2026. The applicant could not be expected to wait until then for resolution of the issues raised in the papers.

[30] As regards the open tender, it was rejected as '*a little too late*' by the applicant. First, the applicant's counsel pointed to his client's communication of 23 October 2025, in which the respondents were warned that court proceedings were imminent. No response was forthcoming.

[31] Second, the applicant's counsel pointed out that the instructions relayed by respondents' counsel are directly contradicted by the contents of an e-mail received from the first respondent on 17 October 2025, in which he stated that, if his offer was not accepted the respondents will continue to operate the restaurant and bar until the expiration of the applicant's current lease. This is an indication of an intention to continue operating illegally unless his demands were met.

[32] Also relevant to the respondents' late tender is the communication already referred to leading to these proceedings. In the applicant's letter of 23 October 2025, specific mention was made of the applicant's concern that the restaurant and bar were continuing to sell liquor illegally notwithstanding the suspension of the liquor licence and the fact that this had previously been communicated to the respondents. The letter made reference to the visit of a member Western Cape Liquor Authority of 3 October 2025, who witnessed the illegal sale of liquor and subsequently submitted a report for the matter to be referred to the Liquor

Licensing Tribunal under section 20(1)(g) of the Western Cape Liquor Act based on the non-compliance. It also made mention of the private investigator's visit of 4 October 2025, who similarly witnessed the illegal sale of liquor. There was no response to this letter denying the illegal sale. And if the respondents stopped selling liquor at any point before or after this communication, one would have expected them to communicate that to the applicants.

[33] That is especially the case in circumstances where the respondents, who were legally represented at that point, were forewarned of the applicant's intention to launch this litigation and were requested to respond by 27 October 2025. Their legal representative merely acknowledged receipt of the email on 24 October 2025 and promised to revert with his clients' instructions from his client. Nothing further was heard from the respondents since.

[34] Given all the circumstances above, I was satisfied that the matter was urgent.

[35] Turning to the merits of the case, the applicant denies the existence of any form of agreed lease between it and the respondents, and emphasizes that, from the very beginning, the intention was for the first respondent to operate the business under the supervision of, and on behalf of the applicant. This is confirmed by Mr Carlos de Aguiar, a member of the applicant's committee of more than 20 years who was tasked, together with the first respondent, to undertake that task.

[36] The existing lease agreement for the premises is contained in the record, and is between the applicant and the City of Cape Town. In terms of clause 3.3 thereof, the applicant is precluded from subletting the premises or part thereof, except with

the prior written consent of the City. There is no indication that this was done in this case.

[37] In the same vein, clause 7 of the applicant's Constitution (also referred to as the 'Bye-Laws'), provides as follows:

"It behoves the Management Committee as a whole to... rent out, alienate... fixed or movable property, rights or privileges that the [applicant] is capable of acquiring or selling, setting up prices, terms and conditions as deemed convenient provided the amounts of the transactions are below R5000,00. For higher amounts the approval of a General Meeting is required."

[38] This provision supports the applicant's version that, if there had been any agreement of lease with the respondents, it would have been agreed by its committee, which was not done on the evidence presented before the court. In fact, even the respondents' allegation of an agreement of a lease which was contained in his correspondence of 13 May 2024 lacked any particularity, save to state that it was a verbal agreement. No details have ever been provided regarding the terms of the alleged agreement of a lease, or of the circumstances under which such agreement was reached. Whilst the applicant denied the allegation as far back as 1 July 2024, the respondents have yet to provide particularity regarding this allegation. Even in the latest correspondence from the first respondent dated 21 October 2025, there was no allegation of an existing agreement of lease.

[39] In further support of its denial of the existence of a lease agreement with the first respondent, the applicant refers to s 51(7) of the Western Cape Liquor Act which provides as follows:

"A licensee may not let the licence to another person or allow another person to carry on business in terms of the licence: Provided that a licensee in respect of a licence which includes the right to micro-manufacture may apply to the Liquor Licensing Tribunal to let

the licenced premises concerned or part thereof to another person for the purpose of micro-manufacturing by lodging with the Board an application in the prescribed manner and from, and against payment of the prescribed fee.”

[40] The provision makes clear that the applicant has no authority to transfer, cede, or otherwise permit any other person to trade in or sell liquor under its liquor licence. As the applicant correctly states, the conclusion of a lease as alleged by the first respondent would have granted him exclusive possession and use of the bar, restaurant, and adjoining facilities for the purpose of trading in liquor under the applicant’s licence. Such conduct is expressly prohibited by s 57(1) of the Western Cape Liquor Act. The applicant states that this is the reason that it has merely appointed operators, including the first respondent, to conduct the restaurant and bar under its control and supervision, and on its behalf.

[41] All of these factors lead me to conclude that the applicant has established A *prima facie* right in respect of the relief sought in paragraph 2.1 of the notice of motion. But it is important to emphasize that the relief sought in paragraphs 2.1 and 2.2 is interconnected. That much is apparent, firstly from the nature of the business run by the respondents, whose activities significantly rely on the use of the liquor licence. Secondly, it is apparent from the parties’ communication contained in the record that, in their minds, the two issues raised in these prayers - the vacation of the premises and the operation of liquor licence - are part of the same negotiation.

[42] As regards the liquor licence which is currently suspended, it is not disputed that, following discovery of the continued transgressions by the respondents, the Western Cape Liquor Authority has indicated that the matter will be sent to the Liquor Licensing Tribunal for determination, with the possible consequence that

the applicant's liquor licence could be cancelled. That is one of the consequences of the first respondent's blatant disregard for the law.

[43] If there is further non-compliance, s 82(1) of the Western Cape Liquor Act provides that a failure to comply with an order of the Liquor Licensing Tribunal in connection with licenced premises constitutes an offence. The Liquor Licensing Tribunal may after proper enquiry *inter alia* refer the matter to SAPS for prosecution or cancel the licence. Moreover, the applicant states that it is exposed to potential civil liability and is without insurance cover in respect of any incident that may occur within the bar and restaurant.

[44] The deponent to the applicant's application also points out that he is the responsible person appointed as the manager in terms of s 52 of the Western Cape Liquor Act 4 of 2008 in respect of the applicant's liquor licence, who is exposed to potential criminal prosecution as a result of the respondents' conduct.

[45] In addition to the above, the illegal sale of liquor by the respondents on the premises exposes the applicant to the risk of a breach of the clause 15.2 of the agreement of lease concluded with the City of Cape Town, which provides as follows:

"15.2 The Lessee may not do, permit, allow or suffer any person to do anything on the Premises which would be an infringement of the law for the time being regulating the sale, supply or delivery of intoxicating liquor".

[46] The respondents' continued sale of liquor from the premises, in spite of the applicant's suspended liquor licence, fits within the terms of this provision, because it amounts to "*an infringement of the law for the time being regulating the sale,*

supply or delivery of intoxicating liquor”. As a result of this conduct, while the liquor is being illegally sold from its premises the applicant is unable to commence the process of negotiating a renewed lease with the City of Cape Town which it needs to do as soon as possible.

[47] The injury or irreparable harm was established to be continuing, and the first respondent conveyed an intention to continue with his conduct. The same facts also indicate why the applicant had no other alternative but to approach this court for relief, since it did engage with the first respondent for a protracted period of time before approaching the court, to no avail.

[48] I am furthermore of the view that the balance of convenience favours the granting of the interim interdict, especially given the undisputed, illegal nature and consequences of the respondents’ conduct of continuing to operate despite the suspended liquor licence. Furthermore, and in any event, the respondents have repeatedly given assurances to vacate the premises and have failed to do so. On the other hand, the applicant cannot be expected to continue being deprived of the use of its premises which it leases legally, with the concomitant consequences arising from the respondents’ conduct which I have already discussed.

[49] There is accordingly every reason for this court to intervene by granting a court order to stop the continued illegal conduct of the respondents.

[50] There was furthermore no reason why costs should not follow the result.

D. ORDER

[51] For all these reasons, the relief sought by the applicant was granted, as follows:

1. A rule *nisi* is hereby issued calling upon the Respondents to appear before this Honourable Court on 20 October 2026 to show cause why the following order should not be made final:
 - a. That the Respondents are directed to hand over control, possession and use of those areas of the Applicant's property which are currently occupied by the Respondents namely, the restaurant and bar located at 1[...] D[...] Road, Rugby, Western Cape ("the Premises").
 - b. That the Respondents be interdicted from selling and/or serving liquor on any part of the said Premises.
 - c. The Respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved, with counsel fees calculated on scale B.
2. That paragraph 1(a) above operates as an interim order pending the return day.

N. MANGCU-LOCKWOOD

Judge of the High Court

Appearances:

For applicants: W Roux

Instructed by: B. R. De Sousa, Abrahams & Gross Inc.

For respondents: E. Grobbelaar

Instructed by C. Smith, Smith De Jongh Attorneys