



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

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: YES/NO ☒ YES ☒ NO  
 (2) OF INTEREST TO OTHER JUDGES: YES/NO ☒ YES ☒ NO  
 (3) REVISED: ☒ YES ☒ NO

27/11/2025

DATE

SIGNATURE

CASE NO: 108644/2025

In the matter between:

ITHUBA LOTTERY RF PTY LTD

Applicant

And

MINISTER OF TRADE, INDUSTRY AND COMPETITION

First Respondent

NATIONAL LOTTERIES COMMISSION

Second Respondent

SIZEKHAYA HOLDINGS RF (PTY) LTD

Third Respondent

BOSELE GAMING RF (PTY) LTD

Fourth Respondent

|                                        |                    |
|----------------------------------------|--------------------|
| WINA NJALO RF (PTY) LTD                | Fifth Respondent   |
| RINGETA CONSORTIUM RF (PTY) LTD        | Sixth Respondent   |
| GIYA GAMES HOLDINGS (PTY) LTD          | Seventh Respondent |
| UMBULELO LOTTERY SERVICES RF (PTY) LTD | Eighth Respondent  |
| LEKALINGA (RF) (PTY) LTD               | Ninth 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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 27 November 2025.*

---

#### ORDER

---

1. The application is dismissed.
2. The Applicant to pay the costs of the respondents on scale C, including the costs of two counsel where so employed.

---

#### JUDGMENT

---

**TOLMAY J**

---

1. This is an opposed urgent application in which the applicant, Ithuba Lottery RF (Pty) Ltd ("Ithuba"), seeks to interdict the implementation of the award of the Fourth

National Lottery Licence to the third respondent, Sizekhaya Holdings RF (Pty) Ltd (“Sizekhaya”), pending the final determination of a review application.

2. The Minister’s power to award the Fourth National Lottery Licence is conferred by s13 of the Lotteries Act.<sup>1</sup> The Request for Proposal (RFP) sets out the requirements

---

<sup>1</sup> 57 OF 1997. Section 13 reads as follows: Licence to conduct National Lottery.

(1) The Minister may, after consultation with the board, issue one licence at one time authorising a person to conduct the National Lottery, which for purposes of section 57 will constitute a lottery, in accordance with the provisions of this Act.

(2) Before a licence is granted under this section-

(a) the Minister shall by notice in the *Gazette* and in not less than two newspapers circulating in every province invite interested parties to apply in writing for a copy of a request for proposal or any other document which may be made public, and the board shall require payment for any such documents;

(b) the Minister shall be satisfied that-

(i) the applicant for the licence contemplated in subsection (1) has sufficient appropriate knowledge or experience to conduct the National Lottery, or has unconstrained and continuous access thereto, and will be able to conduct the National Lottery strictly in accordance with this Act, the licence of the National Lottery and any agreement pertaining to the licence;

(ii) the applicant has the necessary financial and other resources to conduct the National Lottery;

(iii) the applicant will for the duration of the licence show a clear and continuous commitment to the social responsibility programme contemplated in section 10 (g) and to the advancement, upliftment and economic empowerment of persons or groups or categories of persons disadvantaged by unfair discrimination; and

(iv) no political party in the Republic or political office-bearer has any direct financial interest in the applicant or a shareholder of the applicant.

(3) In considering whether to grant the licence, the Minister shall take into account-

(a) whether any person who appears to the Minister to be likely to manage the business or any part of the business of the National Lottery under the licence, is a fit and proper person to do so;

(b) whether any person for whose benefit that business is likely to be conducted, is a fit and proper person to benefit from it; and

(c) whether any person who is likely to manage the business or any part of the business of the National Lottery under the licence or a sports pool, will do so-

(i) with all due propriety and strictly in accordance with the Constitution, this Act, all other applicable law and the licence for the National Lottery together with any agreement pertaining to the licence;

(ii) so that the interests of every participant in the National Lottery and sports pools are adequately protected; and

(iii) subject to subparagraphs (i) and (ii), so that the net proceeds of the National Lottery and sports pools are as large as possible.

(4) A licence granted under this section shall include the conditions contemplated in section 14.

(5) The licence contemplated in subsection (1) may allow the licensee to appoint another person to conduct certain lotteries of the National Lottery on behalf of the licensee only with the written approval of the Minister: Provided that the board has made a recommendation to the Minister to allow such appointment if the person to be appointed has satisfied the provisions of section 13 (2) (b) and any other requirements or conditions as directed by the Minister.

[Sub-s. (5) substituted by s. 12 of Act 32 of 2013 (wef 14 April 2015).]

(6) In considering whether to grant the licence contemplated in subsection (1), the Minister and the board shall not favour an applicant solely because the applicant or a shareholder or partner of that applicant is an organ of the State.

for the award of the licence. It specifies the objectives and mandates a three-stage evaluation process, consisting of Pre-Qualification, Technical Evaluation and Financial and B-BBEE Evaluation. The RFP requires the second respondent ("the NLC") to assess all applications and present its findings to an Adjudication Committee ("AC"). The AC conducts an adjudication and prepares a report for the Minister. The RFP also requires the appointment of independent quality assurers ("QA").

3. Ithuba contends that it seeks interim relief because the Minister's reasons for awarding the Fourth Licence to Sizekhaya and the Rule 53 record reveal a series of irregularities which vitiated the Minister's award. According to Ithuba, these alleged irregularities violate its rights to just administrative action and a fair, competitive and equitable public procurement process. Ithuba further alleges that it has satisfied the requirements of an interim interdict. It argues that the present case presents the clearest of cases that warrants the granting of interim relief. It alleges irreparable harm on the ground that by the time its review application is heard, Sizekhaya would have substantially implemented the award. It further contends that this situation substantially harms the public interest and the rule of law.
4. Uniform Rule 6(12)(b) requires that a party bringing an urgent application must explicitly state the grounds for urgency and provide reasons why the applicant cannot be afforded substantial redress if a hearing is only held in the normal course. The principles that should be applied in the exercise of the court's discretion on the

determination of whether a matter is urgent are well established and have been confirmed in various cases.<sup>2</sup>

5. The review application was filed on 4 July 2025. Despite that, this application was only launched on 1 September 2025. The reason offered for this delay is that Ithuba says that it was waiting for the Minister to provide reasons for his decision. It is difficult to establish why the reasons were required in order to launch the urgent application, in the light of the fact that it was able to launch the review application. Ithuba could have filed this application with the review application as is done in matters like this. The urgency is self-created. I wholeheartedly agree with what was said in *Wina Njalo v the Minister of Trade, Industry and Competition and Others*:<sup>3</sup>

*"Self-created urgency is fatal to an application. Self-created urgency is urgency which stems from a deliberate in action until the hour of reckoning. Courts have consistently refused urgent applications in cases where the urgency relied upon was clearly self-created with the appropriate order of striking the matter from the roll. Consistency in striking self-created urgency matters from the roll is important as it informs the public and legal practitioners that the rules of Court and Practice Directives can only be ignored at a litigant's peril."*<sup>4</sup>
6. Despite the above I have decided to determine the application in the interest of justice because of the public's interest in the matter and to provide some measure of certainty pending the determination of the review. This decision should not be

---

<sup>2</sup> See for example *Luna Meubelvervaardigers (Edms) Bpk v Makin and Another* 1977(4) SA 135(W); see also *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* (081473/2023) [2023] ZAGPPHC 709 (21 August 2023).

<sup>3</sup> (2025)/039592 [2025] ZAGPPHC 517 (21 MAY 2025) (*Wina Njalo*).

<sup>4</sup> *Id* par 23. See also *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd*; *Commissioner, South African Revenue Services v Hawker Aviation Partnership* 2006 (4) SA 292 (SCA) [9].

construed as a deviation from the principles applicable to the determination of urgency.

7. On what basis interdictory relief should be granted needs some consideration. In *Commercial Stevedoring Agricultural and Allied Workers' Union and others v Oak Valley Estates (Pty) Ltd and another*<sup>5</sup> where the Constitutional Court dealt with a final interdict the following was said about interdictory relief in general:

*"[i]n a constitutional order, interdicts occupy a place of importance. In granting an interdict a court enforces 'the principle of legality that obliges courts to give effect to legally recognised rights'. The purpose of injunctive relief is to 'put an end to conduct in breach of the applicant's rights'. An interdict is intended to protect an applicant from the actual or threatened unlawful conduct of the person sought to be interdicted. Thus, for an interdict to be granted, it must be shown, on a balance of probabilities ... that unless restrained by an interdict, the respondent will continue committing an injury against the applicant or that it is reasonably apprehended that the respondent will cause such an injury."*<sup>6</sup>

8. It is imperative to keep the above in mind when considering whether an interdict should be granted. The requirements for an interim interdict are by now well-known. The first is a prima facie right. The threshold for establishing a prima facie right is stringent, particularly when restraining an organ of state as is the case here.<sup>7</sup> It must

---

<sup>5</sup> [2022] 6 BLLR 487 (CC); 2022 (5) SA 18 (CC); 2022 (7) BCLR 787 (CC); 2022 JDR 0494 (CC).

<sup>6</sup> Id par 19.

<sup>7</sup> *National Treasury And Others v Opposition To Urban Tolling Alliance And Others* 2012 (6) SA 223 (CC) (OUTA) par 44. *Economic Freedom Fighters v Gordhan and others and a related matter*, 2020 (6) SA 325 (CC) par 40 (EFF v Gordhan).

be granted only in the clearest of cases with due consideration being given to the separation of powers.<sup>8</sup> The second requirement is a well-grounded apprehension of irreparable harm, the third is that the balance of convenience favours the granting of an interim interdict and lastly that the applicant has no alternative remedy.

9. Ithuba's argument was that it had much more than a prima facie right, it has a clear right. It was therefore argued that there is no need to prove irreparable harm as would be the case when only a prima facie right is established.<sup>9</sup> The same, it was argued, applies to the requirement of the balance of convenience.<sup>10</sup> Only in the event that the Court should find that there is no clear right will reliance be placed on a prima facie right.

10. In *Economic Freedom Fighters v Gordhan and Others*<sup>11</sup> the Constitutional Court said:

*"In addition, before a court may grant an interim interdict, it must be satisfied that the applicant for an interdict has good prospects of success in the main review. The claim for review must be based on strong grounds which are likely to succeed. This requires the court adjudicating the interdict application to peek into the grounds of review raised in the main review application and assess their strength. It is only if a court is convinced that the review is likely to succeed that it may appropriately grant the interdict. The rationale is that an interdict which prevents a functionary from*

---

<sup>8</sup> Id par 47.

<sup>9</sup> *Setlogelo v Setlogelo* 1914 AD 221 at 227.

<sup>10</sup> *Hydro Holdings (Edms) Bpk v Minister of Public Works* 1977 2 SA 778 (T) at 787A-B, citing *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 3 SA 685 (A) at 691C-G. See also *Ladychin Investments (Pty) Ltd v SANRAL* 2001 3 SA 344 (N) at 353F/G.

<sup>11</sup> *Supra* Note 7.

*exercising public power conferred on it impacts on the separation of powers and should therefore only be granted in exceptional circumstances.”<sup>12</sup>*

11. This Court must tread carefully when taking ‘a peek’ into the review grounds as it must keep in mind that the review court is ultimately the forum that must pronounce on the review grounds. The view of this Court regarding the grounds of review is limited to an analysis of whether an interim interdict should be granted and is not binding on the review court. I will now consider the review grounds on this basis.
  
12. Ithuba says that the Minister jettisoned the scoring criteria for a purely subjective preference. The Minister denies this and points out that the evaluation of bids is not a mere mechanical exercise.<sup>13</sup> It was explained that the Minister was required to assess not merely raw scores, but the long-term viability, credibility, and national strategic fit of each business plan. To demand pure adherence to numerical output would be to render the executive authority incapable of making a rational decision for the public good.
  
13. In *Gidani II*<sup>14</sup> the purpose of the RFP process was explained as follows:

*“The RFP process... was not designed to identify how the Minister would make his decision. Its purpose... was to identify how the Board would evaluate the competing bids for the purpose of advising the Minister. The Minister was thereafter required*

---

<sup>12</sup> Id par 42.

<sup>13</sup> South African National Roads Agency Ltd v Toll Collect Consortium 2013 (6) SA 356 (SCA) (12 September 2013) (*Gidani II*).

<sup>14</sup> Supra.

*to make up his own mind, by reference to such factors as he might properly regard as significant...*"<sup>15</sup>

The scoring by the committees was advisory and the Minister had to make up his own mind by executing a qualitative assessment of all the relevant factors. The argument by Ithuba is accordingly challenged by the Minister.

14. Ithuba argues that the Minister acted unlawfully by awarding the licence based on financial documents that were conditional and therefore insufficient. Section 13(2)(b)(ii) of the Lotteries Act requires the Minister to "be satisfied" that the applicant has the necessary financial resources. This is a subjective standard, assessed objectively for rationality. The Minister's reliance on the RMB Letter of Comfort and the Genesis Analytics Report must be evaluated in that light. The RMB letter was conditional, subject to final credit committee approval and the award of the licence. In *Gidani III* the Court held that such conditionality is commercially standard and does not negate the substance of the commitment. The Court accepted that expecting a financial institution to issue an irrevocable funding letter before final documentation and award would be commercially absurd.<sup>16</sup>
  
15. The Minister was aware of the fact that Sizekhaya's loan facilities were subject to conditions precedent which included final documentation and the award of the licence. He accepted that these constituted standard administrative process. The Court cannot at this point, conclude that his decision was irrational and that Ithuba is correct about the issue of funding. *Gidani III* upheld the principle that the judiciary

---

<sup>15</sup> Id par 24.

<sup>16</sup> Id par 54.

must defer to the executive's evaluation of expert and economic advice, confirming that "*even to a Court holding a different view... [this] would not constitute an appearance of irrationality*".<sup>17</sup>

16. The Minister, when considering financial viability relied on the Genesis Analytics Report, which affirmed the credibility and viability of Sizekhaya's structured funding plan. The absence of a finalised loan agreement on its own did not render the tender non-compliant, it was supported by expert analysis. In *Gidani III* the Court observed expecting any commercial entity to commit irrevocably by letter before final contractual documentation would be absurd.<sup>18</sup>
17. There is no merit in the argument that the Minister acted unlawfully by awarding the licence without fully committed financing. The Lotteries Act requires the Minister to "*be satisfied*" that the applicant has the necessary financial resources. This entails forming a rational opinion and does not require absolute certainty or unconditional documentation as was held in *Gidani III*.
18. Ithuba relies on *Gidani II* for support of the argument that any conditional funding is unlawful. That judgment concerned a specific factual matrix, namely, the Minister's failure to interrogate the solvency risk posed by a fixed rand commitment and the unlawful imposition of a resolutive condition. It did not establish a general rule that conditional funding is, per se, irrational or non-compliant. The facts are distinguishable from *Gidani II*. There is no fixed and committed bond, no unlawful

---

<sup>17</sup> Id par 67.

<sup>18</sup> Id par 58.

performance bond, and no failure to interrogate risk.<sup>19</sup> Therefore the facts of this case are distinguishable from what happened in *Gidani II*.

19. The next complaint is that the appointment of the quality assessors (QA) was irregular. Ithuba says that the first QA was MMB Consulting (MMB) however their report reveals that it was never instructed to “conduct reviews of the RFP evaluations and adjudication processes to ensure that all criteria were applied consistently and impartially to all Applicants”. MMB records it did not “express an opinion or assurance conclusion”. Ithuba points out that the MMB report reveals that it deferred to the conclusions of the AC, rather than making any independent assessment of the process. For these reasons Ithuba says MMB failed to fulfil the function of an independent external QA. The second QA process was according to Ithuba also defective. The requirement was that it should be independent, but it was not as it was composed of Department of Trade, Industry and Competition personnel and the Minister’s counsel and other advisors.
20. Ithuba alleges that the appointment of the Ministerial Committee (MC) was unlawfully constituted because it was not provided for in the RFP. However, it provided for the inclusion of advisers and this entitlement was confirmed in both *Gidani II*<sup>20</sup> and *Gidani III*.<sup>21</sup>

---

<sup>19</sup> *Gidani II* par 59,62 and 63.

<sup>20</sup> *Gidani II* par 67 and 68.

<sup>21</sup> *Gidani III* par 68.

21. In relation to the aforementioned complaints it must be said that Ithuba must prove that the Minister's exercise of his discretion was irrational and not only whether it came from a contested source. In *Minister of Home Affairs and Others v Scalabrini Centre and Others*<sup>22</sup> the SCA explained:

*"But an enquiry into rationality can be a slippery path that might easily take one inadvertently into assessing whether the decision was one the court considers to be reasonable. As appears from the passage above, rationality entails that the decision is founded upon reason — in contra-distinction to one that is arbitrary — which is different to whether it was reasonably made. All that is required is a rational connection between the power being exercised and the decision, and a finding of objective irrationality will be rare."*<sup>23</sup>

Applying the aforesaid to this case, it cannot be said that the appointment of the MC was unlawful or irrational. There is also no evidence before me that the Minister abdicated his statutory function.

22. Ithuba furthermore raises the issue of failure to conduct a fitness and propriety assessment. Section 13(3)(a) and (b) of the Lotteries Act, provides that, before awarding a license, the Minister "*shall take into account... whether any person who appears to the Minister to be likely to manage the business or any part of the business of the National Lottery under the licence, is a fit and proper person to do so; [and]... whether any person for whose benefit that business is likely to be conducted, is a fit and proper person to benefit from it*".

---

<sup>22</sup> *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs and Others* [2025] 3 All SA 827.

<sup>23</sup> 2013 (6) SA 421 (SCA) par 65.

23. Chapter 9 of the RFP provides inter alia that applicants are required to undergo an independent probity assessment by the State Security Agency (SSA). Ithuba says the Minister and the NLC failed to comply with Chapter 9 and the Minister failed to consider whether Sizekhaya was fit and proper. The complaint was that Sizekhaya has significant foreign shareholding and the SSA could not screen foreign persons or entities for fitness and propriety, and that no alternative objective mechanism for screening such persons was employed. The only fitness and propriety assessment of foreign nationals involved a notice sent to Sizekhaya and other bidders on 27 September 2024, in which they were asked whether— *“Any individual shareholders or directors of the individual applicant or any direct or indirect shareholders of the applicant were under investigation or had been found guilty of any criminal offence in any jurisdiction, and if so, to provide details thereof.”* For these reasons Ithuba says the Minister’s decision was irregular.
24. The SSA and not the Minister determines the appropriate procedure. It was neither unlawful nor irrational for the Minister to rely on the information provided to him by the SSA.
25. The further issue raised in this regard was the financial interest of political office bearers. The central issue under section 13(2)(b)(iv) of the Lotteries Act, as expanded by the RFP, is whether any political office-bearer holds a direct or indirect financial interest in the applicant or its shareholders. The Lotteries Act only referenced a direct financial interest, but the RFP refers to both a direct and indirect financial interest. This prohibition is designed to prevent undue influence or benefit

by political office-bearers in the licensing process. Ithuba's allegations centre on Deputy President Paul Mashatile and his alleged associations with Ms. Khumo Bogatsu, Mr. Moses Tembe, and Mr. Sandile Zungu. The legal question is whether these relationships give rise to a disqualifying financial interest.

26. In order to substantiate its argument Ithuba relies on the definition of 'financial interest' as explained in *Stellenbosch Farmers Winery Ltd v Distillers Corporation (SA) Ltd*<sup>24</sup> where a financial interest in a business was defined as follows:

*"the relationship between a person and the business in question where he is so circumstanced with respect to it that his financial position is affected by it either beneficially or detrimentally".*<sup>25</sup>

27. Deputy President Mashatile, on the evidence presently available, does not have any direct or indirect shareholding in Sizekhaya or is a party to any contractual arrangement that would lead to a direct financial interest. As far as an indirect financial interest is concerned, it was argued on behalf of the Minister that to determine that will require an investigation. There is no evidence before this Court to justify such a conclusion at this point the complaint is based only on the existence of political proximity and social association.

28. In the Minister's heads of argument, it is conceded that Ms. Bogatsu, Mr. Tembe and Mr. Zungu may hold indirect financial interest in Sizekhaya. For present

---

<sup>24</sup> 1962 (1) SA 458 (A). See also *Durban Add-Ventures Ltd v Premier, Kwazulu-Natal* (no 1) 2001 1 SA 384 (N).

<sup>25</sup> ID at 476H.

purposes it cannot be found that the Minister's determination of fitness and propriety was unlawful or irrational. He relied on disclosures, legal advice and made a decision based on the information available to him.

29. Ithuba is aggrieved that the QA process was not timeously completed. It says that neither the first Quality Assurance Report nor the second one was completed or provided to the Minister before he received the AC's recommendations. Clause 8.2.4 of the RFP provided as follows:

*"The NLC shall appoint one or more independent external quality assurers to conduct reviews of the RFP evaluations and adjudication processes to ensure that all criteria were applied consistently and impartially to all Applicants. These reviews may be conducted during the evaluations and adjudication processes. The NLC shall appoint a further independent quality assurer nominated by the Minister to review the NLC's processes after the NLC has concluded its adjudication of the bids, but before the NLC makes its recommendations to the Minister."*

30. Ithuba argues that while the RFP does not expressly say that the same applies to the first report, it does so by clear implication and the materiality of non-compliance with peremptory requirements is assessed in terms of whether the relevant conduct frustrates the purpose of the impugned provision. The Minister does not deny the sequence of the reports but says that clause 8.2.4 of the RFP does not prescribe a rigid procedural formula, nor does it elevate sequencing to a jurisdictional fact. The Minister's duty, it was argued, under section 13 of the Lotteries Act is not one of flawless procedural choreography but of rational satisfaction. The Minister

considered the AC's recommendations alongside both Quality Assurance Reports and consulted with the AC and QAC before making his decision.

31. In *Allpay Consolidated Investment Holdings (Pty) Ltd And Others v Chief Executive Officer, South African Social Security Agency, And Others*<sup>26</sup> (Allpay 1) the materiality principle was affirmed and it was explained as follows:

*“Under the Constitution there is no reason to conflate procedure and merit. The proper approach is to establish, factually, whether an irregularity occurred. Then the irregularity must be legally evaluated to determine whether it amounts to a ground of review under PAJA. This legal evaluation must, where appropriate, take into account the materiality of any deviance from legal requirements, by linking the question of compliance to the purpose of the provision, before concluding that a review ground under PAJA has been established.*

*Once that is done, the potential practical difficulties that may flow from declaring the administrative action constitutionally invalid must be dealt with under the just and equitable remedies provided for by the Constitution and PAJA. Indeed, it may often be inequitable to require the rerunning of the flawed tender process if it can be confidently predicted that the result will be the same.*

*Assessing the materiality of compliance with legal requirements in our administrative law is, fortunately, an exercise unencumbered by excessive formality. It was not always so. Formal distinctions were drawn between 'mandatory' or 'peremptory' provisions on the one hand and 'directory' ones on the other, the former needing strict compliance on pain of non-validity, and the latter only substantial*

---

<sup>26</sup> 2014 (1) SA 604 (CC) (ALLPAY 1).

*compliance or even non-compliance. That strict mechanical approach has been discarded. Although a number of factors need to be considered in this kind of enquiry, the central element is to link the question of compliance to the purpose of the provision. In this court O'Regan J succinctly put the question in ACDP v Electoral Commission as being 'whether what the applicant did constituted compliance with the statutory provisions viewed in the light of their purpose'. This is not the same as asking whether compliance with the provisions will lead to a different result.'*<sup>27</sup>(Footnotes omitted).

32. At this stage the alleged procedural deviation cannot be said to have frustrated the purpose of the RFP or rendered the Minister's decision irrational.

33. Ithuba says that the licence was negotiated before the award was made contrary to clauses 8.2.5 and 8.2.6 of the RFP that provides as follows:

*"8.2.5. The Minister may, after consultation with the NLC, make a final decision to award the Licence to the Successful Applicant.*

*8.2.6. Thereafter, the final terms of the Licence Agreement will be finalised by the Minister with the Successful Applicant after consultation with the NLC, with specific terms and conditions agreed upon by both parties within the parameters of the RFP and the Lotteries Act."*

The argument was that before entering licence negotiations, the Minister had to have already decided on the successful applicant. The subsequent licence

---

<sup>27</sup> Id par 28 - 30.

negotiations were intended merely to “finalise” licence terms, not to provide an additional period within which the Minister could decide upon the successful applicant.

34. It was argued on behalf of the Minister that Ithuba’s reliance on the timing of licence negotiations echoes the procedural objection raised in *Gidani III*, where it was contended that the Minister could not have considered a financial report dated after the award decision. The Court rejected that argument, holding that the Minister had already satisfied himself of the relevant facts through prior consultations and merely requested a formal record of that information and says that the same principle applies here. Emphasis was placed on the extensive engagement with the NLC, the AC and the MC.I agree that for purposes of this application this Court cannot conclude that the process followed was irrational or unlawful.

35. The onus is on Ithuba to prove on a balance of probabilities that it has a clear right to an interim interdict. It did not succeed in proving such a right. The onus is less onerous to prove the existence of a prima facie right as the right may be open to some doubt but the other requirements for an interim interdict now come into play. In *Webster v Mitchell*<sup>28</sup> it was explained that:

*"The right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "prima facie established though open to some doubt" that is enough.*

---

<sup>28</sup> 1948 (1) SA 1186 (W). See also *Knox D'Arcy Ltd v Jamieson* 1995 (2) SA 579 (W) at 592H - 593B.

*The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant he could not succeed in obtaining temporary relief, for his right, prima facie established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief."*<sup>29</sup>

36. Ithuba relies on the right to just administrative action to support its argument that it is entitled to an interim interdict. In *Outa*<sup>30</sup>, the Constitutional Court explained that an interdict restraining a state organ should only be granted in the clearest of cases. Ithuba however relied on *South African Informal Traders Forum and Others v City of Johannesburg and Others*; *South African National Traders Retail Association v City of Johannesburg* <sup>31</sup> (*SA Informal Traders*) to support the argument that an interim interdict could be granted where an applicant demonstrates prospects of success on review.

37. The facts underpinning the decision in *SA Informal Traders* is clearly distinguishable from the facts in this matter. There the Constitutional Court held that a prima facie

---

<sup>29</sup> Id at 189.

<sup>30</sup> *Outa* par 65.

<sup>31</sup> 2014 (4) SA 371 (CC) (*SA Informal Traders*).

right may be established by demonstrating prospects of success in the review. That case however concerned applicants who sought to protect an existing, conceded right to trade in specified stalls. There was no dispute over their entitlement and the City expressly conceded unlawful conduct. The interim relief sought in that case was intended to preserve the applicants' possession of specific trading stalls pending the final hearing, because the interim solution offered by the city would have forced the traders to settle for relocation to unspecified stalls. The Court therefore treated the interim application as one to protect an acknowledged, ongoing substantive right, not merely a right to have a decision reviewed.

38. Ithuba does not seek that kind of status-quo protection. The right that Ithuba seeks to protect is disputed by the Minister, the NLC and Sizekhaya. The principle enunciated in *Outa* that more than the right to just administrative action is required before interim relief can be granted should be applied and the interdict should only be granted in the clearest of cases in order to acknowledge and respect the separation of powers. The following was said in *Outa* in relation to the granting of an interim interdict:

*“Under the Setlogelo test the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or*

*imminent irreparable harm. The right to review the impugned decisions did not require any preservation pendente lite.*"<sup>32</sup>

39. Ithuba disagrees with the Minister's decision in what is essentially a polycentric exercise of the Minister's powers. The Minister and the NLC interpreted the RFP in a certain manner, whether it was correct or not is not for this Court to determine. In *Bel Porto School Governing Body and Others v Premier, Western Cape, and another*<sup>33</sup> the Constitutional Court said:

*"The role of the Courts has always been to ensure that the administrative process is conducted fairly and that decisions are taken in accordance with the law and consistently with the requirements of the controlling legislation. If these requirements are met, and if the decision is one that a reasonable authority could make, Courts would not interfere with the decision."*<sup>34</sup>

40. The SCA in *Logbro Properties CC v Bedderson NO and Others*<sup>35</sup> explained citing Hoexter<sup>36</sup> with approval:

*"... a judicial willingness to appreciate the legitimate and constitutionally ordained province of administrative agencies; to admit the expertise of those agencies in policy-laden or polycentric issues; to accord their interpretation of fact and law due respect; and to be sensitive in general to the interests legitimately pursued by*

---

<sup>32</sup> Outa par 50.

<sup>33</sup> 2002 (3) SA 265 (CC).

<sup>34</sup> Id par 87.

<sup>35</sup> 2003 (2) SA 460 (SCA).

<sup>36</sup> Cora Hoexter 'The Future of Judicial Review in South African Administrative Law' (2000) 117 SALJ 484 at 501 - 2, citing A Cockrell "'Can You Paradigm?' - Another Perspective on the Public Law/Private Law Divide' 1993 Acta Juridica 227.

*administrative bodies and the practical and financial constraints under which they operate. This type of deference is perfectly consistent with a concern for individual rights and a refusal to tolerate corruption and maladministration. It ought to be shaped not by an unwillingness to scrutinise administrative action, but by a careful weighing up of the need for - and the consequences of - judicial intervention. Above all, it ought to be shaped by a conscious determination not to usurp the functions of administrative agencies; not to cross over from review to appeal [quoted from Hoexter, par [64] below, at 501 - 2].”<sup>37</sup>*

41. The above illustrates that the *Outa* principle should apply and that this Court, considering the factual matrix of this case cannot find that a clear or *prima facie* right exists.

42. This application has an element of déjà vu as ten years ago with the award of the Third National Lottery Licence in *Gidani (Pty) Limited v Minister of Trade and Industry*,<sup>38</sup> (*Gidani I*) the same scenario played out in court. Aggrieved by the Minister’s decision to award the licence to Ithuba Holdings, *Gidani* sought an interim interdict pending a review. The Court in *Gidani I* had the following to say:

*“What *Gidani* actually seeks to protect is something different. *Gidani* is worried that if *Ithuba* is allowed to prepare itself to take up its responsibilities on 1 June 2015 by entering into contracts and making other financial commitments, *Ithuba* will create, as it were, facts on the ground and position itself better to make an argument to a*

---

<sup>37</sup> Id par 21 - 22.

<sup>38</sup> 2014 JDR 2659 (GP).

*reviewing court that upon a finding of invalidity in relation to the Minister's decision, the award of the license to Ithuba should not be set aside because of the great prejudice to Ithuba and because of the dislocation to the administration of the lottery that this would cause.”<sup>39</sup> And “But I am by no means convinced that a market participant in this high risk high reward industry which chooses to spend money on risk will receive much judicial sympathy in the context described. I think that the weight which Gidani ascribes to the alleged risk to its commercial interests is overstated.”<sup>40</sup>*

43. The risk faced by Ithuba is similarly a commercial risk which is part and parcel of this high-risk industry. One should also not lose sight of the fact that Sizekhaya already started with the implementation plans during June 2025. It says that the Commencement Transition Plan and the preparatory steps towards the Transition Period did not commence on 2 September 2025 but immediately after Sizekhaya concluded the Licence Agreement in May 2025. This has been known to Ithuba Lottery since at least May 2025.
  
44. The interest of Ithuba must be weighed against the public interest that the lottery will not be interrupted unless the review succeeds. Although Ithuba did not initially give any undertaking to make up any losses that Sizekhaya or the lottery may suffer, it gave a very limited undertaking during the hearing. This undertaking was limited to an amount of R50 million for the losses that Sizekhaya may suffer but subject to

---

<sup>39</sup> Gidani I par 46.

conditions, and only if such losses can be proven . The offer did not cover any other losses and Sizehaya indicated that the offer was wholly inadequate.

45. Ithuba referenced numerous failures by the Minister, the NLC and the different committees to comply with the procedural requirements and thus resulting in a decision by the Minister which Ithuba says should be reviewed and set aside. These failures are disputed by both the Minister and the NLC. In *Gidani II*<sup>41</sup> the same Judge that refused the interim interdict ultimately reviewed and set aside the Minister's decision and remitted it to the Minister for reconsideration. This illustrates that Ithuba has an effective alternative remedy available to it. The matter ended up in court again and in *Gidani III* the review was dismissed.<sup>42</sup>
46. The granting of another temporary licence as suggested by Ithuba is not a viable option. The appointment of a temporary licensee requires a competitive process. As is illustrated by the litigation in *Wina Njalo* <sup>43</sup> there can be no certainty that it will be possible to run a properly competitive temporary licence process that results in the appointment of a temporary licensee if the implementation of the Fourth Licence is interdicted. Without a temporary licensee the National Lottery cannot operate and this will be prejudicial to the public interest.
47. The relief sought in the review is instructive. Ithuba seeks in the review application remittal to the Minister and not substitution as the preferred bidder. This confirms

---

<sup>41</sup> [2015] ZAGPPHC.

<sup>42</sup> *Gidani (Pty) Ltd v Minister of Trade and Industry and Others* (65337/2015) [2016] ZAGPPHC 609 (13 May 2016).

<sup>43</sup> *Wina Njalo* par 79.

that the review court is asked to enforce a procedural right and not a substantive entitlement to the licence. This is indicative of the fact that there is no irreparable harm that needs to be prevented by the granting of an interim interdict. The ability of the Minister to conduct a fresh, fair licensing process is not extinguished by Sizekhaya's expenditure or operational entrenchment. Even if the award is set aside, the Minister remains empowered to initiate a new licensing process, which fully vindicates Ithuba's procedural right under section 33 of the Constitution. Ithuba's own prayer for remittal demonstrates that the only injury it faces is the delay in a procedural reassessment of the bids.

48. The balance of convenience does not favour Ithuba. The public interest militates against the granting of the interdict. It is in the public interest that the Lottery should continue uninterrupted. There is nothing before this Court to indicate that Sizekhaya is not in a position to comply with its obligations in terms of the licence. On the papers before me it is uncontradicted that so far it has been taking all the necessary steps to be able to administer the National Lottery from June 2026. If the process is interdicted now it will lead to a very real possibility that the National Lottery will be interrupted. This will lead to the good causes supported by it to suffer harm. Ithuba did not establish any inconvenience to itself. It asserts only its right to lawful administrative action as the right it seeks to protect through the interim interdict and relies on a combination of review grounds pleaded in its review application and additional grounds set out in its founding affidavit to contend that it has strong prospects of success in the review application.
49. Ithuba did not meet the requirements for an interim interdict. It did not show a clear right. In considering a *prima facie* right, the other requirements for an interim

interdict come into play. There is no indication that Ithuba will suffer irreparable harm if the interdict is not granted and the balance of convenience does not favour Ithuba. The review court can still grant adequate relief. This was illustrated in the *Gidani* matters.

50. As a result, the application should be dismissed with costs.

The following order is made:

1. The application is dismissed.
2. The Applicant to pay the costs of the respondents on scale C, including the costs of two counsel where so employed.

  
R TOLMAY  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For Applicant: Adv A COCKRELL SC; Adv M MBIKIWA & Adv J DAVIS instructed by Roodt Mkhabela Attorneys Inc.

For First Respondent: Adv IV MALEKA SC; Adv JA MOTEPE SC & Adv KD MAGANO instructed by Malatji & Co Attorneys.

For Second Respondent: Adv N MAENETJE SC; Adv B LEKOKOTLA & Adv N SAKATA instructed by Malatji & Co Attorneys.

For Third Respondent: Adv N RAJAB-BUDLENDER SC; Adv I CURRIE & Adv N LUTHULI instructed by Cliff Dekker Hofmeyer.

Date of hearing: 28 – 29 October 2025.

Date of judgment: 27 November 2025.