

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No. 2026/008776

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED

DATE: **16 FEBRUARY 2025**

SIGNATURE:

In the matter between:

GOLDEN CANDLE BED & BREAKFAST

APPLICANT

And

GAUTENG LIQUOR BOARD

FIRST RESPONDENT

Coram: Millar J

Heard on: 10 February 2026

Delivered: 16 February 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 16 February 2026.

JUDGMENT

MILLAR J

- [1] This is an application for an order compelling the issue of a temporary liquor license to the applicant, pending a review of the decision taken by the respondent on 22 December 2025, to refuse the applicant's application.
- [2] The present application, which was heard by way of urgency, arises in consequence of events that occurred relating to a prior application that had been submitted, refused, and then by agreement after the applicant had brought an urgent application before this Court, remitted back, by agreement between the parties, to the respondent for reconsideration.
- [3] The circumstances of the matter, which are not in dispute between the parties, are as follows:

- [3.1] On 7 February 2025, the applicant lodged an application in terms of s 28(1)(c) for an on-site consumption liquor license in terms of the Gauteng Liquor Act¹ (the Act).
- [3.2] No objections to the granting of the license were raised.
- [3.3] Although the respondent decided on 25 July 2025 to refuse the application, this was only reduced to writing on 29 September 2025 and the applicant notified of this for the first time on 7 October 2025.
- [3.4] The reason proffered for the refusal of the license that had been applied for was that the respondent had considered the application as one having been made in respect of premises from which a “*tavern*” was to be operated.
- [3.5] The business of the applicant, and the application that was made, was for an on-site consumption at a guest house and function venue and not for a tavern.
- [4] The applicant then brought an urgent application in December 2025, to review the decision that had been taken *inter alia* based on a report relating to the proximity of churches and a school to the venue and without any proper consideration of the public interest as required by s 30(3) of the Act.
- [5] On 3 December 2025 and agreement between the parties an order was made besides agreeing that the decision to refuse the application was reviewable and

¹ 2 of 2003.

should be set aside, that it would be remitted back to the respondent for re-consideration upon strict timelines. Additionally, it was agreed that:

“Pending the receipt of the reconsidered decision, the applicant is authorised to trade in liquor in its business known as Golden Candle Bed & Breakfast, situated at 1[...] T[...] Street, Roodepoort, Gauteng Province, with reference G[...], as if the s 28(1)(c) on – consumption liquor license applied for had been granted and issued, from today, 3 December 2025 until 12 January 2026, on which date the interim order will lapse.”

[6] The respondent undertook to reconsider the applicant's application by 18 December 2025 and to then communicate the decision on re-consideration within 5 days. The respondent duly complied and on 22 December 2025, notified the applicant that it had once again declined the application.

[7] The applicant is aggrieved by the fact that notwithstanding the respondent had conceded that its initial decision to refuse the application had been impeachable and subject to review and setting aside, it had again, and for precisely the same reasons, rejected the application for a second time.

[8] The initial reasons given for declining the application on 25 July 2025 were:

“The granting of the license is not (sic) public interest in terms of Section 30(2)(c) (sic) Gauteng Liquor Act.

In terms of Section 30(3) of the Act, the Board shall grant application in the premises not situated within a radius of 500 meters in the vicinity of a place of Worship and educational institution. City Life Church 100 meters, New Harvest Christian Fellowship 500m, Canterbury International School 300m.”

[9] Central to the first decision was the report of an inspector dated 25 April 2025 from which the proximity of the churches and educational institutions were derived. The content of this report was placed in issue in the first application.

[10] The second decision to refuse the application, taken on 22 December 2025, was for the following reasons:

“1. *The inspector’s report dated 25 April 2025 is duly correct.*

2. *The granting of the license is not in the public interest in terms of section 30(2) of the Gauteng Liquor Act, No 2 of 2003.*

3. *In terms of section 30(3) of the Act, the board shall grant application in the premises not situated within a radius of 500 meters in the vicinity of a place of worship and educational institution, and in this instance when an in-loco inspection was conducted, more places of interests (sic) were identified (see attached report).”*

[11] The report, which was attached to the decision of 22 December 2025, is prefaced with a statement that:

“The purpose of this inspection is to confirm the existence if there are any premises of interest within 500 m radius from the applicant’s premises as per the inspector’s report.”

[12] It is readily apparent that in respect of both the inspector’s reports of 25 April 2025 and 10 December 2025, that both reports focus exclusively on the proximity of the applicant’s premises to places of worship and schools.² The

² Proximity to none of the other places referred to in s 30(3) of the Act such as similar licensed premises or public transport facilities are relevant in this case.

report of 10 December did no more than repeat and attempt to bolster the contents of the report of 25 April 2025.

[13] Having regard to the two decisions as set out above, it is evident that:

[13.1] Both were made for the same reasons.

[13.2] Both relied on what was in effect the same proximity reports.

[13.3] There is no report or any indication that any consideration or investigation was conducted in respect of the “public interest”, the second ground upon which the application was refused.

[14] Section 30(3) of the Act provides that:

“(3) The Board shall grant an application in the case of premises not situated within a radius of five hundred (500) meters in the vicinity of a place of worship, educational institution, similar licensed premises, public transport facility, or such further distance as the Board may determine or as may be prescribed from time to time.”

[15] It is readily apparent that the refusal of the application when it was remitted back to the respondent is predicated upon the self-same reasons as the first refusal.

[16] It was argued for the applicant that s 30(3) does not impose a prohibition on granting liquor licenses in proximity to schools or churches. What the section requires is that such proximity is considered within the public interest enquiry provided for in s 30(2)(c) of the Act. This is obviously so, having regard to the

plain wording of the section. In its terms, the respondent is obliged, notwithstanding distance to grant licenses (assuming proximity is the only issue) if it is more than 500 meters but it does not preclude the granting of a license if the proximity is less than 500 meters.³

- [17] It was also argued that the fact that “*public interest*” was not properly considered when the first decision was taken is indicative of a decision-making process where the reference to the “*public interest*” is used as a “catch all” basis to justify what is a patently incorrect application of s 30(3) of the Act. There is simply no reference to any enquiry or any reason proffered as to why the granting or the refusal of the application would or would not be in the public interest. It is a reason tendered “*in vacuo*” and meaningless within the context of the application given the body of information available to the respondent at the time that it made both the first and second decisions.
- [18] The applicant has indicated that it intends in part B of the application to seek an order for the reviewing and setting aside of the second decision. This leaves the question of whether the remedy sought now, being the grant of further interim license is apposite.
- [19] The requirements for an interim interdict are well known.⁴ The applicant must establish *prima facie* right (even if open to some doubt), demonstrate irreparable harm, there must be no alternative remedy, and the balance of convenience must favour the grant of the interdict. The requirements are dealt with sequentially hereunder.

³ Caroline Street Liquor Store CC v The Gauteng Provincial Liquor Board 2010 JDR 0804 GNP.

⁴ *Webster v Mitchell* 1948 (1) SA 1186 (W).

- [20] In *Airroadexpress (Pty) Ltd v Chairman Local Road Transportation Board, Durban, and Others*,⁵ it was held:

“I cannot accept that, if it can be shown in a case of this kind that the appellant must inevitably succeed in the appeal, interim relief pending the determination thereof can lawfully be withheld solely by reason of an order which cannot conceivably be sustained. I am of the view further that in principle the same approach should prevail where a strong prima facie case is established that the permits applied for were wrongly refused. In my view the principle applied in the De Fraetas type of case should be extended to case like the present. The decision in that case is based on the existence of a “general power” or, put differently, an inherent jurisdiction to grant pendente lite relief to avoid injustice and hardship. An inherent power of this kind is a salutary power which should be jealously preserved and even extended where exceptional circumstances are present and where, but for the exercise of such power, a litigant would be remediless, as is the case here.”

- [21] There is no doubt that this Court has the authority to grant the interim license that the applicant seeks. Its entitlement is further fortified by the fact that the respondent previously agreed to the grant of such an order when it knew that its decision was impeachable.

- [22] In *Tabooz Glenanda (Pty) Ltd v The Gauteng Liquor Board*,⁶ the Court referred to *Barshila Investments CC v The Gauteng Liquor Board* in which it was held:

“The applicant for the interim relief must have a prima facie clear right to the relief sought. In casu, the applicant applied for a license and has a right to have his application decided. The applicant is suffering prejudice. Until such time that a license is granted, the applicant will not be able to run a proper business of a

⁵ 1986 (2) SA 663 (A) at 676C-E.

⁶ (2023/051124) [2023] ZAGPPHC 517 (26 June 2023) at para [28].

game lodge as it is difficult to imagine enthusiastic patrons looking to stay at a lodge if there is not liquor available to consume with meals, game drives or at the bar.”

- [23] In the present matter, the applicant similarly will suffer prejudice since it is a bed and breakfast, and function venue will not attract the patronage and be able to function as it ought to if it is unable to serve liquor with meals or during functions.
- [24] For the reasons set out above, I find that the applicant has *prima facie* right to the issue of a temporary liquor license pending the determination of the review in part B of the application. Having regard to the type of the business of the applicant, there is no other remedy which can appropriately be granted.
- [25] In this matter, the prior agreement on the part of the respondent to issue a temporary license, establishes that the balance of convenience in granting the order sought, favours the applicant. It was argued by the respondent that the negative impact of the grant of the order upon it, would be disproportionate but this squarely at odds with its own prior conduct of agreeing to a temporary license in favour of the applicant not two months earlier when it knew its refusal was impeachable.
- [26] It is customary for costs to follow the result and it is for this reason that I intend to make the order for costs that I do.
- [27] In the circumstances, I make the following order:

- [26.1] Part A is heard as an urgent application and the non-compliance by the applicant with the rules of Court in respect of service and form of dies is condoned in terms of rule 6(12).
- [26.2] The applicant is entitled to trade in liquor at its business premises known as Golden Candle Bed & Breakfast, situated at 1[...] T[...] Street, Roodepoort, Gauteng Province, with reference
- G[...] as if the s 28(1)(c) on-consumption liquor license applied for by it from the respondent was granted and issued, until such time as the decision of the respondent not to grant the applicant the license has been finalized on review in accordance with part B of the notice of motion (including any appeals in respect thereof) and effect has been given to the order that this Court makes in respect of the review.
- [26.3] Part B of the application is postponed *sine die*.
- [26.4] The respondent is ordered to pay the costs of part A of the application as between party and party with counsel's costs to be paid on scale C.

A MILLAR

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

HEARD ON: 10 FEBRUARY 2026

JUDGMENT DELIVERED ON: 16 FEBRUARY 2026

COUNSEL FOR THE APPLICANT: ADV. A VAN DER MERWE

INSTRUCTED BY: MARIUS BLOM INC

REFERENCE: MR. R VAN DER MERWE

COUNSEL FOR THE RESPONDENT: ADV. G RAMARU

INSTRUCTED BY: THE STATE ATTORNEY PRETORIA

REFERENCE: MS. L. TSHIVHASE