



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/ Not Reportable

Case no.: 731/2022

In the matter between:

**DEEPS BETTING GROUNDS (PTY) LTD t/a
SCOREBET**

Applicant

and

NORTHERN CAPE GAMBLING BOARD

1st Respondent

**CHAIRPERSON OF THE NORTHERN CAPE
GAMBLING BOARD**

2nd Respondent

VENGIES GAMING (PTY) LTD

3rd Respondent

Coram: WILLIAMS J *et* NXUMALO J.

Heard: 18/11/2024.

Delivered: 20/02/2026.

Summary: Review – Promotion of Administrative Justice Act, 3 of 2000 – or The principle of legality – Mootness.

ORDER

1. The costs of Part A of this application are to be borne by the three respondents on an attorney and client scale, jointly and severally.
2. The review application in Part B of this matter is dismissed.
3. The costs of Part B are to be borne by the first respondent and the third respondent jointly and severally on the attorney and client scale.

JUDGMENT

Williams J

[1] On 6 May 2022, Lever J made an order, relating to the urgent relief in Part A of this matter, in the following terms:

- “1 That pending the determination of the relief sought in part B, the first and third respondents are interdicted and restrained from implementing and giving effect to the temporary bookmaker licence awarded to the third respondent by the first respondent in respect of premises located at Shop No 1[...], 1[...] C[...] Street, Kimberley, by operating gambling activities from the building located at the aforementioned premises.
2. Directing that the costs of this application for the relief in Part A be reserved for determination at the hearing of the application for the relief sought in Part B.
3. That the first and second respondents’ attorney file an affidavit setting out the reasons why it should not pay costs *de bonis propriis* on a punitive scale.
4. The first and second respondents themselves are to file affidavits setting out why they should not pay the costs of this application on a punitive scale having regard to this court’s proceedings and attempt to pre-empt these proceedings.”

- [2] Part B of this matter is a review application in terms of the Promotion of Administrative Justice Act, 3 of 2000,¹ or the principle of legality, which served before us on 18 November 2024. The relief sought is the reviewing and setting aside of the decision by the first respondent, the Northern Cape Gambling Board (“the Board”), taken on or about 23 March 2022, to approve and grant an application for a bookmaker licence to the third respondent, Vengies Gaming (Pty) Ltd, (Vengies), in terms of s 26(1)(a) of the Northern Cape Gambling Act 3 of 2008, for a site located as described in paragraph 1 of the interim order.

Background

- [3] The applicant, Deeps Betting Grounds (Pty) Ltd t/a Scorebet (Scorebet), is the holder of a number of bookmaker licences and site operator licences in the Northern Cape.
- [4] Scorebet objected to an application by Vengies for a bookmaker licence relating to premises described in the Northern Cape Provincial Gazette of 7 June 2021, as Erf no 1[...], 1[...] C[...] Street, Kimberley - the first licence application. The premises were situated within 500 meters of three churches and one school. It therefore did not comply with Regulation 7(c) of the Regulations published under the Northern Cape Gambling Act. Regulation 7(c) provides that:
- “the Board may not issue a licence to an applicant if the premises from which the licenced activities will take place, are in the opinion of the Board. . . .
- (c) on or in premises which are within 500 meters of a school or place of worship.”
- [5] On 23 July 2021, the Board received a formal communication from Vengies withdrawing the first licence application.

¹ PAJA.

- [6] Without informing Scorebet of the withdrawal by Vengies of its first licence application, the Board published a second licence application by Vengies in the Gazette of 18 October 2021. All the details pertaining to the second application are similar to the first application, except for the inspection periods and the date by which objections should be lodged, i.e. 16 November 2021.
- [7] Scorebet avers that the second licence application only came to its attention on 20 December 2021, whereafter it immediately addressed a letter to the Board restating its previous objections and requesting the date upon which any public hearing would be held as well as that it be permitted to make oral representations at such a hearing.
- [8] No correspondence was received from the Board and on 31 March 2022, Scorebet received an e-mail from an unknown source that the Board had approved Vengies' second licence application at its meeting of 23 March 2022 and granted it a temporary licence certificate indicating the address on the certificate as "Shop no 1[...], 1[...] C[...] Street, Kimberley".
- [9] Scorebet maintains that the first licence application with premises situated at 1[...] C[...] Street, Kimberley and the temporary licence certificate granted to Vengies at Shop 12, 1[...] C[...] Street, Kimberley, pertain to the same building which has different entrances, one on Curry Street and the other on C[...] Street. Irrespective, both entrances are within 500 meters of the three churches and the school.
- [10] In addition, the second licence application which was published in the Gazette referred to the premises as 1[...] C[...] Street, the same address as the first application – with the result that prospective objectors to the C[...] Street entrance, would not have had effective notice of the application by Vengies for a licence which was ultimately given in respect of the premises on that street.

Grounds of review

- [11] The grounds of review are as follows:

- 11.1 That in light of Regulation 7(c), the Board acted *ultra vires* in making the impugned decision as the aforementioned regulation prohibits the granting of a gambling licence in respect of the premises;
 - 11.2 That the Board acted in a procedurally unfair manner by not informing Scorebet, who had lodged an objection to the first licence application. That the first licence application had been withdrawn and would be re-advertised and furthermore by not holding a public hearing prior to deciding the licence application where an objection had been lodged; and
 - 11.3 The Board was not properly constituted at the time it considered the second licence application and reached the impugned decision.
- [12] The first and second respondents initially opposed the application, but before Part A of the application was heard by Lever J, they withdrew their opposition. Only Vengies still opposes the review application.
- [13] Vengies initially opposed on two grounds, namely: that Scorebet does not have the necessary *locus standi* to bring the application; and that the grounds of review are unsustainable.
- [14] After the order by Lever J on 6 May 2022, Vengies filed a supplementary answering affidavit to which Scorebet filed a replying affidavit on 2 September 2022. Thereafter, Scorebet appears to have applied for a trial date only on 17 July 2023 and filed a notice of set down for this hearing on 24 August 2023.
- [15] In the meantime, Vengies filed an application to file a supplementary affidavit on 19 February 2024 to be heard simultaneously with this review application.
- [16] After hearing argument, we received Vengies' further affidavit in the interest of justice and in an attempt to narrow the issues between the parties.
- [17] The essence of Vengies' supplementary affidavit is that the matter has become moot since the gambling licence sought to be set aside was a

temporary licence which has not been renewed by the Board. The application would thus have no practical effect and stands to be dismissed.

[18] Having conceded the main ground of review, that is, that the licence was granted in contravention of Regulation 7(c), the only other ground of opposition which Vengies persists with is the doctrine of dirty hands which it raised in its answering affidavit to a contempt of court application brought by Scorebet after the order by Lever J was not immediately complied with. The contempt application was however abandoned. Vengies avers that Scorebet itself operates gambling establishments within 500 meters of churches and schools, thus also in contravention of Regulation 7 (c).

[19] Scorebet however persist with the relief sought in the review application.

Mootness

[20] The temporary licence certificate issued to Vengies on 30 March 2022, states specifically that “this licence is issued subject to renewal by the Licensees no later than the last day of March in any year”.

[21] Vengies maintains that it had applied for the renewal of the C[...] Street, Kimberley licence together with applications for the renewal of two other licences in respect of Kuruman and Postmasburg. However, whereas the Kuruman and Postmasburg licences were approved and renewed by the Board for the year ending 31 March 2024, the Kimberley licence was not. Correspondence between Vengies and the Board in this regard is attached to Vengies’ supplementary affidavit.

[22] The argument by Mr Jagga for Vengies is that, the granting of the relief sought would be of no practical value and entirely academic. The rule that a party is not entitled to approach the courts on abstract and academic matters should apply. He referred in this regard to *National Coalition for Gay and*

*Lesbian Equality and Others vs Minister of Home Affairs and Others*² where the Constitutional Court held:

“A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.”

- [23] Mr Kruger who appeared for Scorebet, holds an opposite view. He referred us to *Allpay Consolidated Investment Holdings (Pty) Ltd and Others vs Chief Executive Officer, South African Social Security Agency and Others*³, where the Constitutional Court held that:

“Once a ground of review under PAJA has been established there is no room for shying away from it. Section 172(1)(a) of the Constitution requires the decision to be declared unlawful.”

- [24] The distinguishing feature between *AllPay* and this matter is that there was a live controversy between the parties when the *Allpay* matter was heard.
- [25] It is very seldom that a court would make an order that would have no effect. In *Mohammed and Another v President of the Republic of South Africa and Others (Society for the Abolition of the Death Penalty in South Africa and Another Intervening)*,⁴ the Constitutional Court held, although in that case a United States citizen had already been deported to stand trial in the US, that it would not necessarily be futile for the court to pronounce on the illegality of the governmental conduct, since there were important issues of legality and policy involved and that the findings of the Court could have a bearing on the case before the US Court.⁵ Another matter where the Court was prepared to review and set aside the decision of a School Governing Body, where the learner who had been found guilty of serious misconduct had already left the school, is that of *Antonie v Governing Body, Settlers High School and*

² 2000, (2) SA 1 (CC) para 21 (footnote 18). See also *Mamabolo v Rustenburg Regional Local Council* 2001 (1) SA 135 (SCA) para 8.

³ 2014 (1) SA 604 (CC) para 25.

⁴ 2001 (3) SA 893 (CC).

⁵ *Ibid* para 70.

*Others*⁶. The Court in that instance took into account that the Governing Body's decision and sanction would be permanently recorded on the learner's school record and may negatively impact on her personality, dignity and self-esteem.⁷ The Court thus has a discretion to decide a moot issue in accordance with what the interests of justice require.⁸

[26] No such considerations are applicable *in casu*. It is settled law, and the respondents have conceded that the granting of the licence to Vengies was in contravention of Regulations 7(c) and there is therefore no need to entertain this issue any further.

[27] I may also mention at this stage that Regulation 7(c) has been amended in the Provincial Government Gazette no 2671 of 24 March 2024, some 9 months before this application was heard. It now reads as follows:

“7. The Board may not issue a licence to an applicant if the premises from which the licenced activities will take place are...
(c) On or premises which are within 100 m of a school or an existing place of worship.”

The doctrine of unclean hands

[28] The argument on behalf of Vengies is that Scorebet is itself conducting licenced activities at premises within 500 meters of places of worship and schools and that the court should therefore not come to Scorebet's assistance. Having found that the matter has become moot, I do not intend to spend much time on this issue.

[29] The fact of the matter is that Vengies has alleged that Scorebet has been granted a licence for premises which contravenes the prescripts of Regulation 7(c). Scorebet denies these allegations. The granting of this licence as far as I

⁶ 2002 (4) SA 738 (C).

⁷ *Ibid* para 2.

⁸ *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exportation and Exploitation SOC Ltd and Another* 2020 (4) SA 409 (CC) paras 47 and 48.

am aware, had not yet been taken on review when the present application was heard. The issue of the invalidity of Scorebet's licence is thus best left for the reviewing court to decide upon, if and when it is faced with such an application.

Costs

- [30] The costs relating to both Part A of the application as well as Part B thereof need to be considered. According to Lever J's order in Part A, the attorneys for the first and second respondents as well as the first and second respondents themselves had to submit reasons by way of affidavit why they should not bear the costs of Part A *de bonis propriis* and on the attorney and client scale, respectively.
- [31] The reasons for the order relating to the costs of Part A are as follows. The first and second respondents stated in their opposing affidavit, before they withdrew their opposition, that the first respondent had not yet issued certificates of employment in terms of s 57 and s 70 of the Northern Cape Gambling Act, to Vengies and have also not inspected the premises as the pre-conditions for gambling activities to commence. It however transpired on the morning of the hearing that in the meantime and despite the pending application, the first respondent had granted the certificates and permissions referred to and that in fact Vengies had started trading.
- [32] The first and second respondents have not given any explanation for their conduct in the face of the pending application. They have displayed an utter disregard not only of the rights of Scorebet, but also of the authority of the court.
- [33] Although Lever J did not require of Vengies to provide an explanation why it should not be saddled with a punitive cost order in regard to Part A of the application, it has shown just as much disrespect and disregard for the court processes by commencing trading while Part A of the application was pending. I see no reason why Vengies should not be ordered together with

the first and second respondents to bear the costs of Part A of the application on the scale as between attorney and client.

[34] With regard to the costs of Part B, the review application, the argument by Mr Jagga, was that Scorebet should bear the costs of Part B, due to persisting with the application despite the mootness of the matter.

[35] It does however not follow automatically that Scorebet should pay the costs of Part B. Mr Kruger has referred us to *Hull v Free Market Foundation (Southern Africa) and Others*⁹, wherein it was stated that it cannot be regarded as a hard and fast rule that the withdrawing party bear the costs. The Court has to make a proper allocation of costs in the exercise of its discretion. In *Hull*, the application had become moot and the applicant had withdrawn the application and the matter eventually turned solely on the issue of costs. The court in *Hull* relied heavily on the principles enunciated in *Serwada v Minister of Home Affairs for RSA*¹⁰ which also concerned the withdrawal of an application because of mootness. The relevant considerations relating to costs would be *inter alia*, the merits of the application, the manner in which the parties conducted themselves and which of the parties took unnecessary steps or adopted a wrong procedure.

[36] *In casu* the conduct of Vengies can be summarised as follows:

36.1 In its opposing affidavit, Vengies denied that the distances between the premises and churches and schools were within 500 meters.

36.2 In a supplementary affidavit filed by Vengies on 16 August 2022, it maintained that the board has a discretion to grant licences to applicants with premises within 500 meters of churches and schools.

36.3 In the supplementary affidavit in which the mootness of the matter was raised, dated 19 February 2024, Vengies concedes that there is ample and binding authority on Regulation 7(c) and that this Court does not have to decide the issue. In effect conceding that Regulation 7(c) does

⁹ (2021/39689) [2023] SAGPJHC 103 (8 February 2023).

¹⁰ [2011] JOL 27643 (ECM) (23 August 2011).

not confer any discretion on the Board when it considers and adjudicates applications for gambling licences. In the matter of *Desert Palace Hotel Resort (Pty) Ltd v Deeps Betting Grounds (Pty) Ltd t/a Scorebet and Another*, heard in this Division under case no 1698/2019, Dauds AJ on 13 December 2019, held that Regulation 7(c) places a prohibition on the establishment or operation of gambling activities within a radius of 500 meters of a school or place of worship. This interpretation was confirmed by the Supreme Court of Appeal.

36.4 In his heads of argument dated 20 February 2024, it was finally conceded by Mr Jagga that Vengies premises fall within 500 meters of schools and churches as contemplated by Regulation 7(c), therefore conceding that the Boards' issuing of the licence to Vengies breached Regulation 7(c) and was therefore unlawful.

36.5 I may also mention that the affidavit raising mootness was filed some 10 months after Vengies became aware of the fact that the licence, the subject matter of this review, had not been renewed by the Board. The conduct of Vengies is to say the least, lamentable.

[37] It is clear from the above that the review application would have succeeded on the merits had it not been for the eventual mootness of the matter. Vengies was well aware of this fact but persisted with its vexatious opposition on the merits for about 20 months before making the necessary concessions. Even if Scorebet had withdrawn the application after receiving the supplementary affidavit, by then the bulk of the costs in this application would already have been incurred and the issue of costs would in any event have to be adjudicated.

[38] In light of the above, I see no reason why Scorebet should be made to bear the costs of the review application. In fact the Board, which is responsible for setting this application in motion with its unlawful issuing of the licence and Vengies through its conduct should in my view bear the costs of Part B of the application on the attorney and client scale.

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

1. The costs of Part A of this application are to be borne by the three respondents on an attorney and client scale, jointly and severally.
2. The review application in Part B of this matter is dismissed.
3. The costs of Part B are to be borne by the first respondent and the third respondent jointly and severally on the attorney and client scale.

CC WILLIAMS
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

I CONCUR

APS NXUMALO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For Applicant:
On instruction of:

Adv M Kruger
Edward Nathan & Sonneberg
c/o Elliot Maris Attorneys

For 1st and 2nd Respondents:

Towell & Groenewaldt Attorneys

For 3rd Respondent:
On instruction of:

Adv N Jagga
Van de Wall Inc.