**IN THE HIGH COURT OF SOUTH AFRICA**
**NORTH WEST DIVISION, MAHIKENG**

**Not Reportable**
Case no: 2026-049446

In the matter between:

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| **TSHEPISO DAVID MONARE** | **First Applicant** |
| **TD MONARE HOLDINGS (PTY) LTD** | **Second Applicant** |

and

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| **THE MEC: DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT, CONSERVATION AND TOURISM, NORTH WEST** | **First Respondent** |
| **NORTH WEST LIQUOR AUTHORITY** | **Second Respondent** |

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| **ADVOCATE O RATSHIKANA N.O. CHAIRPERSON: NORTH WEST LIQUOR AUTHORITY** | **Third Respondent** |
| **STATION COMMANDER: KLERKSDORP POLICE STATION SOUTH AFRICAN POLICE SERVICES (SAPS)** | **Fourth Respondent** |
| **THE HEAD OF DEPARTMENT: DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT,CONSERVATION AND TOURISM, NORTH WEST** | **Fifth Respondent** |
| **MUNICIPAL MANAGER: CITY OF MATLOSANA LOCAL MUNICIPALITY** | **Sixth Respondent** |
| **DIESELLEC PROPCO (PTY) LTD** | **Seventh Respondent** |
| **TRUSTEES OF THE BODY CORPORATE OF THE ACADEMY HEIGHTS SECTIONAL TITLE SCHEME** | **Eighth Respondent** |

**BODY CORPORATE OF THE ACADEMY HEIGHTS SECTIONAL TITLE SCHEME** **Ninth Respondent**

**Coram:** Wessels AJ

**Heard:** 7 April 2026

**Delivered:** This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 14 April 2026.

**Summary:** Urgent application for interim suspension of liquor licence suspension – urgency self-created – lease agreement constituting unlawful letting or hiring of liquor licence in contravention of s 42(4) of the North West Liquor Licensing Act 6 of 2016 – *ex turpi causa non oritur actio* – Electrical Certificate of Compliance invalid – application dismissed

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## JUDGMENT

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**Wessels AJ**

### Procedural background

[1] This matter came before me on 7 April 2026 as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court. The applicants seek interim relief pending the final determination of a review application (Part B) in which

they seek to set aside the decision of the second and third respondents dated 18 February 2026, suspending the liquor licence of the seventh respondent, which trades as Franco's Restaurant or now known as New Age Lounge.

[2] The first applicant, Mr Tshepiso David Monare, is cited in the application as the managing director of the second applicant. The second applicant is a private company of which the first applicant is the sole director. The eighth and ninth respondents ('Academy Heights') were joined as respondents by order of this Court on 16 March 2026, following an intervention application. The first through fifth respondents, through the State Attorney's office, filed a Notice to Abide.

[3] On 7 April 2026, after hearing argument in the present application, I requested the parties to file supplementary heads of argument on the narrow issue of the validity of the Electrical Certificate of Compliance ('COC') relied upon by the applicants. Supplementary heads were filed on 8 April 2026 by both sides. As will become clear, this judgment disposes of the application in its entirety.

**The case of the applicants**

[4] The applicants seek relief in Part A of the notice of motion to the effect that the operation of the decision of the second and third respondents dated 18 February 2026 suspending the liquor licence of the seventh respondent ('the liquor licence'), be suspended pending the final determination of Part B and that the liquor licence of the seventh respondent be reinstated with immediate effect. Part B requests the review of the decision of the second and third respondents to suspend the liquor licence.

[5] The salient allegations contained in the applicants' founding affidavit are:

(a) The first applicant was appointed as manager of the licenced premises in terms of s 39 of the Liquor Act[1] ('the 1989 Liquor Act') on 31 January 2025; (b)The second applicant entered into a lease agreement with the seventh respondent, the holder of the restaurant liquor licence. The first lease agreement was concluded on 26 June 2024 for the period 1 July 2024 to 30 June 2025. A second lease agreement was concluded on 1 September 2025 for the period 1 September 2025 to 31 August 2030 ('the second lease agreement'); (c) Complaints were lodged with the second respondent during 2025 concerning loud music, failure to trade within prescribed hours for a restaurant licence, and patrons parking in front of residents' gates; (d) The applicants responded to the complaints in correspondence dated 18 December 2025, denying the allegations and requesting the s 141 reports and attendant complaints; (e) Without affording the applicants a proper opportunity to make representations, the second and third respondents decided on 18 February 2026 to suspend the liquor licence, effective 23 February 2026; (f) The suspension decision was taken under the repealed 1989 Liquor Act, as opposed to the North West Liquor Licensing Act[2] ('the North West Liquor Act'). The decision is therefore *ultra vires* and procedurally unfair; (g) The suspension has caused and continues to cause irreparable financial harm to the applicants, with the sale of alcoholic beverages constituting approximately 71.5% of turnover. It is furthermore contended that twenty-one employees of the second applicant are at risk of retrenchment; (h) All health and safety concerns have been addressed, and the applicants have attached various compliance certificates, including a COC dated 12 September 2023.

[6] The applicants contend that they have established a prima facie right (even if open to some doubt), a reasonable apprehension of irreparable harm, that the

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[1] Liquor Act 27 of 1989.
[2] North West Liquor Licensing Act 6 of 2016.

balance of convenience favours the granting of interim relief, and that there is no adequate alternative remedy.

**The case of the eighth and ninth respondents**

[7] The eighth and ninth respondents oppose the application on several grounds. These grounds are summarised as follows: (a) Lack of urgency: The applicants were aware of the complaints as early as April 2025, but failed to take steps to prevent the suspension. They procrastinated for almost a year and only brought the application on five days' notice after the suspension was communicated on 19 February 2026. Any urgency is self-created; (b) Lack of locus standi: The liquor licence is held by the seventh respondent, not by either applicant. The first applicant's purported appointment as a manager in terms of s 39 of the (now repealed) 1989 Liquor Act does not vest him with standing to bring these proceedings in his personal capacity. The second applicant has only an indirect financial interest; (c) Unlawful use of the licence: Section 42(4) of the North West Liquor Act prohibits the letting or hiring of a liquor licence. The second lease agreement commenced after the North West Liquor Act came into force and is therefore unlawful. This Court is constitutionally precluded from facilitating the commission of a criminal offence; (d) No prima facie right: The applicants have failed to demonstrate strong prospects of success on review. Their two primary grounds of review are demonstrably unfounded; (e) Balance of convenience: The interests of the neighbouring community and the students of Academy Heights far outweigh the applicants' desire for profit from liquor sales. (f) Alternative remedy: The applicants undertook to relocate the tavern business to an alternative premises being the Rio Casino in Klerksdorp ('Rio Casino') as early as December 2025 and have failed to explain why they have not done so.

[8] On the specific issue of the COC raised by the Court, the eighth and ninth respondents submit that the COC dated 12 September 2023 is invalid for the following reasons: it is more than two-and-a-half years old; it was issued in the name of 'Franco's Restaurant', not in the name of the current operator (the second applicant); the City of Matlosana Municipality ('the Municipality') has expressly recorded that the premises are operating without a valid COC; and the building on the premises has been altered, requiring a new COC.

**The issues**

[9] The following issues fall for determination: (a) whether the application is urgent; (b) whether the lease agreement of 1 September 2025 is unlawful under s 42(4) of the North West Liquor Act; (c) whether the COC relied upon by the applicants is valid; and (d) whether the applicants have established the requirements for interim relief.

**Urgency**

[10] The settled position, as brought about by Rule 6(12)(a) of the Uniform Rules, requires an applicant for urgent relief to set out explicitly the circumstances which render the matter urgent and the reasons why substantial redress cannot be afforded at a hearing in due course. The primary enquiry is whether the applicant will be afforded substantial redress if the matter proceeds in the ordinary course.

[11] The applicants contend that the matter is urgent because they were given only three calendar days' notice of the suspension of the liquor licence and face irreparable financial harm as a result. The broader timeline, however, tells a different story. The applicants were aware of the serious complaints against them

as early as April 2025. The Municipality issued a notice on 3 June 2025 and a further letter on 3 December 2025 detailing multiple non-compliances, including the absence of a valid electrical certificate of compliance. In their formal response dated 18 December 2025, the applicants made explicit undertakings to the sixth and third respondents that New Age Lounge Restaurant would relocate to another venue and that the terms of a lease at the Rio Casino would be finalised in January 2026.

[12] By January 2026, the applicants had apparently done nothing to finalise any alternative lease. When asked to explain this hiatus, the first applicant stated that the intended lessee at the Rio Casino was 'on leave' and the lease could therefore not be signed. This explanation is implausible for the following reasons. Firstly, in the final event, the applicants had to provide an explanation for the absence of a concluded alternative lease, which was addressed in the applicant's replying affidavit filed on 27 March 2026. By this time, the self-imposed finalisation date of the lease contract in January 2026 had long passed without the applicants providing any reasonable explanation. Secondly, it is hard to fathom that, in a corporate environment, the absence of a single individual can keep the signing of a commercial lease in abeyance for more than two months.

[13] The applicants cannot simultaneously represent to the second respondent (and third respondent) that they will relocate and then represent to this Court that they cannot relocate because a single person is on leave. The applicants cannot manufacture their own harm through inaction and then seek urgent relief to avoid its consequences.

[14] The applicants were aware of the complaints against them since April 2025. Yet, they waited until the suspension was communicated on 19 February 2026, then waited a further two weeks before launching this application. The

eventual redress that the applicants can obtain is closely related to the urgency of the present application. The trite legal position is that when an applicant conjures up urgency, it falls into the category of self-created urgency. Self-created urgency is not countenanced in our legal system. In the present application, the urgency is nothing but self-created. On this basis, this matter falls to be struck from the roll.

[15] However, I am mindful that striking the application for want of urgency will simply result in the applicants re-enrolling the matter on the ordinary motion roll. In the interests of finality and given that the parties have fully argued the merits, the court exercises its discretion to deal with the merits notwithstanding the want of urgency. The reasoning should cite the court's inherent power in this regard.

**The lease agreement**

[16] At the outset, it is necessary to address the interplay between the 1989 Liquor Act and the North West Liquor Act. South Africa's liquor regulatory structure is now a system of concurrent national and provincial legislation. This means that while there is a national framework, the provinces are responsible for the day-to-day regulation, licensing, and enforcement of liquor sales. The primary act is the National Liquor Act[3]. This act sets the national standards and framework for the liquor industry. At the provincial level, a province has its own liquor act, with the North West Liquor Act governing licensing, trading hours, and offences within the North West Province. The North West Liquor Act came into operation on 1 April 2025[4]. Simultaneously with its commencement, it was determined that the 1989 Liquor Act would cease to operate within the North West Province. Section 42(4) of the North West Liquor Act provides that a

[3] National Liquor Act 59 of 2003.
[4] Promulgated in terms of General Notice 3099 of 2025, published in Government Gazette 52409 of 28 March 2025.

licenced person may not lease the liquor licence to any person or allow another person to carry on business in terms of the licence. Section 42(10) renders a contravention of subsec (4) a criminal offence.

[17] The second lease agreement commenced on 1 September 2025. By that date, the North West Liquor Act had been in force for five months, having commenced on 1 April 2025. Clause 13.2 of the second lease agreement states that the liquor licence shall be held in the name of the seventh respondent and that the second applicant shall trade under the liquor licence as Franco's Restaurant. Clause 13.2 of the lease agreement states:

'The Liquor Licence shall be held in the name of the LESSOR, Diesellec Propco (Pty) Ltd. **The LESSEE shall trade under the Liquor Licence as FRANCO'S RESTAURANT.** It is placed on the record that the LESSOR is in the process of obtaining the necessary licence. The renewal fee shall be paid annually by the LESSEE. The LESSOR shall be the legal owner of the Liquor Licence. The LESSEE shall also be liable to pay the annual renewal cost on consumption as prescribed by the Liquor Act.' (emphasis added)

[18] This is, on any analysis, a letting or hiring of a liquor licence, which s 42(4) of the North West Liquor Act expressly prohibits and which s 42(10) of the same act criminalises. The applicants' entire claim to operate the establishment rests upon this lease agreement. Without it, they have no right to occupy the premises, no right to trade under the seventh respondent's licence, and no basis to challenge the suspension. The foundation of the applicants' case is illegal. The *ex turpi causa non oritur actio* principle provides that no court will lend its assistance to a party who founds their cause of action upon an illegal act. Both applicants' rights to the claimed relief depend on the unlawful lease of the liquor licence. The unlawfulness of the lease of the liquor licence means that the applicants cannot found any entitlement to relief, and this point is independently dispositive of the

application. This is where this matter should end, but I am enjoined to engage, albeit briefly, with the other issues in the matter.

**The validity of the Electrical Certificate of Compliance**

[19] The applicants rely on a COC dated 12 September 2023 issued in the name of Franco's Restaurant. The Municipality, in its letter dated 3 December 2025, states unequivocally that the applicants are conducting business without approved building plans, a valid electrical certificate of compliance, fire clearance certificates, health certificates, or pest control certificates. The same letter records that the building has been altered and extended in a manner inconsistent with the approved building plans on file. Regulation 7(1) of the Electrical Installation Regulations[5] is peremptory in that no person may alter or add to an electrical installation unless a registered person has issued a certificate of compliance in respect of the alteration or addition. The applicants have produced no COC covering the alterations and the Municipality's official position cannot be ignored. The COC relied upon by the applicants is not valid proof that the electrical installation is compliant.

**The requirements for interim relief**

[20] Even if the applicants had overcome the foregoing obstacles, they have failed to establish the requirements for interim relief, which are: that the applicant must establish a prima facie right, even if open to some doubt; a reasonable apprehension of irreparable and imminent harm; that the balance of convenience favours granting the interdict; and that there is no other adequate remedy. As the applicants apply for an order interdicting the exercise of a statutory power, this

[5] Promulgated by Government Notice R242, published in Government Gazette 32094 of 6 March 2009.

presupposes a measure of exceptionality, which increases the rigour of applying the principles of an interim interdict. The Constitutional Court in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*[6] has underscored the exceptional nature of the kind of interim relief sought by the applicants as follows:

'The common law annotation to the *Setlogelo* test is that courts grant temporary restraining orders against the exercise of statutory power only in exceptional cases and when a strong case for that relief has been made out. Beyond the common law, separation of powers is an even more vital tenet of our constitutional democracy. This means that the Constitution requires courts to ensure that all branches of Government act within the law. However, courts in turn must refrain from entering the exclusive terrain of the Executive and the Legislative branches of Government unless the intrusion is mandated by the Constitution itself.'

[21] The Constitutional Court found, in this regard, that when an interim interdict is sought against the exercise of statutory power by an organ of state, the balance of convenience enquiry must give proper weight to the probable impact the restraining order will have on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought. A temporary restraint against the exercise of statutory power may be granted only in the clearest of cases, after careful consideration of that harm.

[22] As to the prima facie right, the applicants rely on two grounds of review. First ground: that the suspension decision was taken under the repealed 1989 Liquor Act. The applicants contend that because the North West Liquor Act 6 of 2016 came into operation on 1 April 2025, any decision taken after that date must be taken under the new Act. This ground ignores the presumption against the retrospectivity of legislation. In *Veldman v Director of Public Prosecutions*[7]

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[6] *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012) para 44.
[7] *Veldman v Director of Public Prosecutions* (CCT19/05) [2005] ZACC 22; 2007 (3) SA 210 (CC) paras 26-27.

wherein the Constitutional Court quotes from *Curtis v Johannesburg Municipality*[8], this principle is aptly described as follows:

'[26] Generally, legislation is not to be interpreted to extinguish existing rights and obligations. This is so unless the statute provides otherwise or its language clearly shows such a meaning.That legislation will affect only future matters and not take away existing rights is basic to notions of fairness and justice which are integral to the rule of law, a foundational principle of our Constitution. Also central to the rule of law is the principle of legality which requires that law must be certain, clear and stable. Legislative enactments are intended to 'give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.'

[27] As Innes CJ reasoned in *Curtis*:

"The general rule is that, in the absence of express provision to the contrary, statutes should be considered as affecting future matters only; and more especially that they should if possible be so interpreted as not to take away rights actually vested at the time of their promulgation.'

[23] The investigative process under s 141 of the 1989 Liquor Act was initiated well before 1 April 2025, as is clear from the report of SAPS Captain Van Schalkwyk, dated February 2025. The complaints were lodged, the hearings were convened, and the evidence was gathered under the 1989 Liquor Act. Where a process has commenced under a particular legal regime, it is legally sound for that process to be concluded under the same regime. To require the Liquor Board to abandon a partially completed investigation and start afresh under a new Act would lead to delay, potential injustice and absurdity. The second respondent, therefore, acted lawfully in concluding the section 141 process under the 1989 Liquor Act.

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[8] *Curtis v Johannesburg Municipality* 1906 TS 308 at 311.

[24] Second ground: that the applicants were denied a fair hearing. The applicants argue that they were not properly informed of the complaints against them and were not afforded a meaningful opportunity to respond before the liquor licence was suspended. This contention is demonstrably false on the papers. The timeline of events, which is set out in detail in the answering affidavit of the eighth and ninth respondents, reveals that the applicants attended no fewer than three oral hearings before the second respondent. At these hearings, specific complaints were articulated: loud music causing a nuisance to residents and to the students of Academy Heights; failure to trade within the hours prescribed for a restaurant licence; failure to operate a bona fide restaurant as opposed to a tavern; and patrons parking in front of neighbours' gates, obstructing access to their properties. The applicants were allowed to respond to each of these complaints. They did so, both orally at the hearings and in written correspondence dated 18 December 2025.

[25] The applicants knew exactly what the complaints were. The purpose of the hearings was clear, as the second respondent disclosed its concerns. To these concerns, the applicants responded, but they simply failed to persuade the second respondent. The applicants cannot now complain that they were denied a hearing when they were given multiple hearings. The right to procedural fairness does not guarantee a favourable outcome; it guarantees a fair process. A fair process is what the applicants received. Their dissatisfaction with the outcome does not translate into an irregularity.

[26] In conclusion on the issue of a prima facie right, the applicants have failed to demonstrate any reasonable prospect of success on review. The reliance on the 1989 Liquor Act was justifiable and the multiple hearings satisfied the requirements of procedural fairness. The prospects of success are therefore negligible. This alone is fatal to the applicants' claim for interim relief, as a prima

facie right (even one open to some doubt) is an indispensable requirement of the test as affirmed by *OUTA*[9].

[27] As to the balance of convenience, the Constitutional Court in *OUTA*[10] held that interim orders affecting executive action should be granted only in exceptional circumstances and in the clearest of cases. This is not such a case. The harm to the applicants is economic and compensable by damages. The harm to the neighbouring community, including sleep deprivation, inability to study, and physical nuisance, is not readily compensable. The applicants have suitable alternative premises available and have failed to honour their own relocation undertakings. The sustained harm they fear is self-created.

[28] As to an adequate alternative remedy, the applicants have a clear alternative remedy: they may relocate to the Rio Casino as they undertook to do. Their failure to do so is a matter of their own choice, not a legal necessity.

**Conclusion**

[29] The application lacks urgency, and the unlawfulness of the liquor licence lease means the applicants are not entitled to the relief sought. Additionally, the applicants have failed to establish a prima facie right or to show that the balance of convenience favours them. The application falls to be dismissed.

[30] On the question of costs, there is no reason why costs should not follow the result. As opposed to the intervention application, the issues raised in the

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[9] *Op cit* fn 6.
[10] *Ibid.*

opposition of the application by the eighth and ninth respondents are sufficiently complex to warrant a cost order on Scale B.

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

1 Part A of the application is dismissed.

2 The first and second applicants are jointly and severally liable for the costs of Part A of the application on Scale B.

[redacted]

M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances:

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| For the applicants: | Adv GE Matsietsa |
| Instructed by: | Sepecholo Inc.<br>Mahikeng |
| For the eighth and ninth respondents: | Mr C Nienaber |
| Instructed by: | Brand & Lambrechts<br>Klerksdorp<br>c/o Nienaber Wissing<br>Mahikeng |