



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

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED
DATE: 22 MAY 2026
SIGNATURE: [REDACTED]

Case No. 2026/008776

In the application for *leave to appeal* between:

GAUTENG LIQUOR BOARD

APPLICANT

And

GOLDEN CANDLE BED & BREAKFAST

RESPONDENT

In re:

In the matter between:

GOLDEN CANDLE BED & BREAKFAST

APPLICANT

And

GAUTENG LIQUOR BOARD

RESPONDENT

Coram: Millar J

Heard on: 22 May 2026

Delivered: 22 May 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 09H45 on 22 May 2026.

JUDGMENT

MILLAR J

- [1] This is an application for leave to appeal brought by the applicant against a judgment and order granted by me on 16 February 2026. The order granted by me was one compelling the issue of a temporary liquor license the Golden Candle Bed & Breakfast (Golden Candle), pending a review of the decision taken by the Gauteng Liquor Board (the Board) on 22 December 2025, to refuse the application.
- [2] The Board now applies for leave to appeal that decision. The application was brought on 24 April 2026 – outside the time period provided for in the rules. There

is also an application for condonation for the late filing of the application for leave to appeal.

[3] I intend to deal first with the application for condonation. The factors to be considered in an application for condonation are:

[3.1] Firstly, the degree of lateness and the explanation for it.

[3.2] Secondly, the prospects of success on the merits of the appeal.

[3.3] Thirdly, prejudice to the parties.

[3.4] Fourthly, the importance of the finality of judgments.

[4] I intend to deal with the first and second factors. For the reasons that are set out below, it is not necessary, and I do not intend to deal with the third and fourth factors.

[5] The application for leave to appeal was brought 35 days late. The explanation given for the lateness is that on receipt of the judgment on 16 February 2026, a memorandum dealing with the effect of the court order and the prospects of success on appeal was sent to the Board.

[6] There is no indication given when this occurred. Apparently due to the unavailability of the Board members, a consultation could only be held on 30 March 2026 and instructions were given to proceed with the application for leave to appeal on that day. Thereafter, a draft notice was sent to the Board on 6 April 2026 and thereafter a second draft on 10 April 2026. The application was finally settled for service on 23 April 2026.

- [7] The high watermark of the explanation¹ for failing to bring the application timeously was the unavailability of the Board. It is self-evident that this explanation is inadequate. Broad statements about the unavailability of Board members for 1,5 months between 16 February 2026 and 30 March 2026 do not rise to the level of providing a full explanation of the reason for the delay.
- [8] Similarly, the delay between 30 March 2026 and 24 April 2026 is also not fully explained and inadequate. There is no explanation as to why the members of the Board would have been required for consultation or what their contribution to the notice of application for leave to appeal would have been in the context of their already having received a written advice from their legal representatives the day the judgment was handed down.
- [9] The delay and the explanation for it are lacking. However, even with a weak explanation for delay, condonation may nevertheless be granted if the prospects for success on appeal are sufficiently strong.
- [10] Turning now to the grounds upon which the application has been brought. The Board cited several grounds, some of which are a repetition of what was argued in the main case. I do not intend to deal with those again and stand by the judgment in this regard. However, there are two that merit consideration.
- [11] The first is in respect of the reasons given for the granting of the interim liquor license pending the review. It is trite that applications for leave to appeal are not brought against the reasons for judgment but against the order. In the present instance, the order that is being appealed is an interim order. Interim orders are not appealable save in exceptional circumstances.¹

¹ See *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (AD) at 549G and *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) at 639F-640A.

[12] The high watermark of the application is the ground that the granting of the temporary liquor license would “*set bad precedent in law, and would in future create problems.*” There is simply no basis for this ground given that in this matter, the Board itself had granted a temporary license to Golden Candle pending its own review of a prior decision.

[13] The nub of the application is perhaps the second ground:

“1.8.2 Applicants who trade using court orders are outside the enforcement of the Liquor Act and the board is unable to perform its mandate of collecting fees as the order does not provide for (if they are special traders who are above the terms of the Liquor Act).

1.8.2.1 It is submitted that, Inspectors, police and the board cannot enforce the Act on such traders as provided for in section 105, 106 and 107 can't be applied on the traders as only a court order can suspend or revoke the right to trade thus hindering enforcement of the Act.

1.8.3 It is not in the public interest to have this (sic) special type of liquor traders.”

[14] This is no ground of appeal. It is a plea *ad miseracordium*. The solution for the Board is to ensure that the review is prosecuted without any undue delay to ensure that the time period between the granting of the temporary liquor license and the final determination of the matter is limited.

[15] The test for the granting of leave to appeal pertinent to the present matter is set out in section 17(1) of the Superior Courts Act² as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that

(a) (i) the appeal would have a reasonable prospect of success or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration”

[16] I have considered the grounds upon which this application has been brought and the reasons given by me for the judgment. I have also considered the submissions made by counsel for the granting of leave to appeal on the part of the Board and those opposing the granting of leave to appeal by Golden Candle.

[17] I am not persuaded that another court would come to a different conclusion or that there is some other compelling reason why leave to appeal should be granted.³

[18] Since the explanation for the delay in bringing the application is wholly inadequate and there are in my view no prospects of success in the appeal, it follows that condonation is to be refused.

[19] Costs will follow the result on the same basis as was granted on 16 February 2026.

² 10 of 2013


³ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA).

[20] In the circumstances, I make the following order:

[20.1] The application for condonation is refused.

[20.2] The application for leave to appeal is refused.

[20.3] The applicant for leave to appeal, the Gauteng Liquor Board, is ordered to pay the costs of the application for condonation and this application for leave to appeal, on the scale as between party and party, scale C.


A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 22 MAY 2026

JUDGMENT DELIVERED ON: 22 MAY 2026

IN THE LEAVE TO APPEAL

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