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

Case No: **006392/2025**

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED:

DATE 27 MAY 2026

SIGNATURE

In the matter between:

BOXER SUPERSTORES (PTY) LTD

Applicant

and

THE GAUTENG PROVINCIAL LIQUOR BOARD

First Respondent

JOÃO ALBERTINA FERNANDEZ DE ABREU

Second Respondent

CHINA HUANG CC

Third Respondent

INFLOWZ TRADING AND PROJECTS CC

Fourth Respondent

XIABING TRADING CC

Fifth Respondent

PERNUNCH TRADING CC

Sixth Respondent

SUNNYSIDE OASIS LIQUOR (PTY) LTD

Seventh Respondent

ANTONIO ENSELMO DE SOUSA ALLERGRIA

Eighth Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 27th May 2026.

JUDGMENT

RETIEF J

INTRODUCTION

[1] The applicant, Boxer Superstores (Pty) Ltd, relies on the basis that this Court is endowed with power, by way of interim relief, to authorise it to trade in liquor from its liquor store known as Boxer Super Liquors situated at erf 1[...], 2[...], R[...] S[...] Street, Sunnyside, Gauteng Province [the premises]. This relief is sought on an interim basis in Part A of its notice of motion pending judicial review relief brought in Part B [interim relief]. In Part B, the applicant seeks to review and set aside the first respondent's, Gauteng liquor board [liquor board], decision to refuse its application for a liquor store liquor license [license] in terms of section 23 read with section 28(1)(b)(ii) of the Gauteng Liquor Act 2 of 2003 [the Act].

[2] The liquor board together with the second to eighth respondents, who are traders in the Sunnyside and surrounding suburbs, opposed the interim relief. The interim relief initially served before the urgent court but was struck from the roll for want of urgency. At the hearing in the urgent court, the second to eighth

respondents, who had lodged a collective objection with the liquor board against the granting of the applicant's license withdrew their filed opposition and informed the urgent court that their objection in terms of section 25 of the Act had also been withdrawn. In consequence, at the date of the hearing of this application, there were no objections before the liquor board. None the less, the liquor board persisted with its opposition.

[3] To understand why the applicant seeks interim relief it is helpful to set out the salient background facts.

BACKGROUND FACTS

[4] The applicant is a private company, a subsidiary of Pick 'n Pay Retailers (Pty) Ltd which in turn is a full subsidiary of Pick 'n Pay Stores Limited. Pick 'n Pay Stores Limited is a listed company on the Johannesburg Securities Exchange.

[5] The applicant in its section 23 application¹ informed the liquor board that it had a variety of interests in the liquor trade in the Republic of South Africa directly and, through its holding company Pick 'n Pay Retailers (Pty) Ltd.

[6] Other than its interest in liquor, the applicant described its business as a general commodity store trading in the basic retail needs of its customers, ranging from services in food, beverage and, in certain areas, establishing complementary liquor stores next to the general commodity outlets. The applicant has a number of stores in KwaZulu Natal, the Eastern Cape, Mpumalanga, the Limpopo Province, Gauteng, the North-West Province, Northern Cape, Free State and in Swaziland.

[7] The applicant already runs a commodity store in Sunnyside Pretoria and wishes to establish a complementary liquor store near the Sunnyside superette outlet like it has in other provinces. On the 6th of October 2023, the applicant

¹ Section 23 prescribes the manner in which an applicant is to lodge its new license application with the relevant local committee.

formally applied to the liquor board for the liquor store license. The application was a new license.

[8] On the same day, the 6 October 2023 the respondents through Ms P Da Silva of Dynamic Consultants, lodged a collective section 25 objection with the liquor board objecting to the applicant being granted the liquor license to trade in liquor from the premises. The objections spoke to the section 30(3)² radius considerations regarding similar licensed premises as that of the second to eighth respondents, public interest considerations, alleged misrepresentation of facts by the applicant and concerns around the effect of a monopoly by the applicant, it being part of a large brand trading in the same business node as the second to eighth respondents. The applicant replied in writing to the objections.

[9] On the 27 November 2023, the Deputy Director Inspector authored a section 23 pre-inspection report in terms of section 118 of the Act [pre-inspection report]. The inspector in the report listed ten (10) places of worship and three (3) similar licensed premises he observed as being within a radius of five hundred (500) metres of the premises in terms of section 30(3) of the Act.

[10] More than a year later and on the 14th of November 2024, the liquor board held a section 10 enquiry. Both the applicant and the second to eighth respondents' representative attended.

[11] On the 11th of December 2024, the chairperson of the liquor board made its decision and, on the 25th of January 2025 it informed the applicant of its decision in writing [impugned decision]. The applicant was informed that the outcome of the impugned decision was based on the meeting of the 14th of November 2024 and after considering the oral evidence and written submissions made by both the applicant and the second to eighth respondents. The impugned decision was that

² Section 30 (3) of the Act states that: "*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 made determine or as may be prescribed from time to time.*"

the liquor board decided to decline the liquor store license application. In so doing, it cited four reasons for its impugned decision, namely:

- 11.1. Granting of the liquor store license would cause a harmful monopolistic condition to arise or be aggravated in terms of section 30(2)(d) of the Act;
- 11.2. There is a proliferation of liquor store licenses in the area;
- 11.3. Material misrepresentations in that the applicant did not mention all other liquor stores within a 500-meter radius from the proposed premises; and
- 11.4. Lastly, that the granting of the liquor store license would not be in the public interest in terms of section 30(2)(c) of the Act.

(collectively [the reasons])

[12] Procedurally now, the applicant wishes to review and set aside the impugned decision in terms of rule 6(2) of PAJA, relying on the review grounds that the liquor board was biased when it took the decision, that the decision was materially influenced by an error of law, that the decision was taken for an ulterior motive, that the decision was taken arbitrarily and capriciously, that the decision taken was unreasonable and unconstitutional in that it the liquor board did not balance its rights in terms of section 22 and section 33 of the Constitution with those of the second to eighth respondents and those of its customers who shop in its next door supermarket.

[13] The applicant contends that it has suffered financial prejudice in that it has invested in the fixtures and fittings of the premises and has already been obligated to pay rental for the premises since May 2024. The pre-inspection report and the photographs lodged with the section 23 application confirms that the premises is ready to trade.

[14] The respondents' section 25 written objections were withdrawn after the impugned decision and after the applicant instituted its interim relief.

[15] Against this background the central legal issues arise.

CONSIDERATION OF THE ISSUES

Applicant's salient argument

[16] In support of the interim relief, Mr. Blom on behalf of the applicant submitted that this Court has jurisdiction to assist the applicant in terms of the common law and in terms of section 6(2)(g) read with section 8(1)(a), 8(1)(e) and 8(2) of the Promotion of Administrative Justice Act 3 of 2000 [PAJA] and therefore, granting the interim relief would not be contrary to the principles of the separation of powers.

[17] Furthermore, he contended in the founding papers that "*The Applicant has a right to the license applied for as it is not a delicate crumb dropped from the bureaucratic table, but actually something the simple citizen is entitled to.*" Although the weight and meaning of this allegation was not explained by its Counsel, Mr Blom did attempt to do so under oath by contending that, the applicant has a *prima facie* right to the interim relief as the license is a right, not a privilege which it is being deprived of because the liquor board is a law unto itself which acts to the prejudice of its members. The attack of the liquor board's conduct and its alleged disregard for the law is a serious allegation which was not underscored by the evidence in the founding papers nor, did the applicant's Counsel deal with it in oral or in written argument. The appropriate weight and relevance of the allegation, as it speaks to the conduct of the liquor board, is misplaced.

[18] But what weight is to be placed on the allegation advanced by Mr Blom that a liquor store license is a right and not a privilege and therefore, the applicant must have a *prima facie* right to it? In this regard this Court was invited to consider what Daffue J found in a "*relevant judgement*" which Mr Blom said his Counsel would

make available to this Court at the date of the hearing. He contended further that Daffue J found that a right to a license was a constitutional right.

[19] Notably, the applicant's Counsel, other than to confirm that such a judgment existed, did not specifically deal with this "*relevant judgment*" penned by Daffue J nor did she make reference to such license being a constitutional right, but rather glibly resorted to oral references to and reliance on section 22 of the Constitution in support of the applicant's right to trade.

[20] Notwithstanding, the applicant's Counsel, in the bundle of authorities included a judgment penned by Daffue J. It was included without any reference to it in her written heads of argument. The Court had to trail through the case itself in search of its relevance. None, on the point advanced in the founding papers could be found. In context rather, Daffue J in his judgment dealt with two applications both concerning compel relief brought against the Free State Gambling and Liquor Authority as a result of their delay in considering the respective applicants' applications within a reasonable time.³ The applicant's right to have their application considered without undue delay the was nub of the issue.

[21] For the sake of clarity, this Court accepts that the applicant has the right to choose to trade in liquor, but this trade is regulated by the Act and therefore, to choose to trade in liquor is to choose to comply with the Act. Section 22 of the Constitution provides for the right to freely choose one's trade, occupation or profession but it forewarns of the possible regulation of certain trades, occupations and professions. It is common cause that to trade freely in liquor requires a license granted by the liquor board. Logically then, to trade in liquor absent a license, regardless of the freedom to choose it as a trade, remains unlawful. The right attaches itself to the exercise of the freedom to choose and not to the license itself, as advanced.

³ **MA NAZO v Free State Gambling and Liquor authority and another** (case number: 2386/2015) and **CJT Jacobs v Free State Liquor and Gambling authority and another** (case number: 2512/2015)

[22] This application concerns the right the applicant possesses to have its application lawfully, reasonably and procedurally fairly determined by the liquor board.⁴ The lawful administrative act is testament to the exercise of the freedom to choose to trade in liquor in terms of the Act. Although the foundation of this right to the interim relief was misplaced by the applicant in its founding papers, as reasoned above, it did however make reference to its right to a fair administrative decision-making process and did deal with its prospects of success regarding its review success on the merits. Its Counsel also confined her argument to this aspect for this Court to consider.

[23] The applicant, relying on the fact that the license was refused for reasons which it contends were clearly reviewable, submits that it now finds itself with a lease agreement which it has to honour and a premises which it fitted and ready to trade which, it can do nothing with. The applicant alleges financial prejudice having to pay monthly rental from May 2024 and an inability to trade as guaranteed in section 22 of the Constitution.

[24] At this juncture it is important to point out that the applicant's Counsel in her written heads, referred to, and dealt with the applicant's interim relief in the form of an interim interdict. This created profound confusion in that the authorisation sought by the applicant in its prayers was sought absent mandating any person or the liquor board to positively do anything. This Court understood the interim relief rather as the applicant seeking authorisation, albeit leave, from this Court to trade in liquor.

Liquor board's salient argument

[25] Conversely, the liquor board disputed the applicant was entitled to the interim relief on the merits and, on the basis of this Court' was not the competent authority entitled to grant it. In amplification, the liquor board argues that the

⁴ Section 33 of the Constitution.

applicant's reliance on section 8, in particular, sub-section 8(1)(e) of PAJA, as the empowering provision⁵, other than common law, is misplaced in that this Court was not sitting as a review court. It further argued that the applicant had failed to establish a *prima facie* right to the interim relief as specifically advanced on the papers and, even if it could establish some *prima facie* right, it argued that this Court was not competent to grant the interim relief. It argued that granting the interim relief would usurp the function of the liquor board.

Does the empowering provision, grounded in PAJA, assist the Applicant?

[26] Although this Court is only seized with the interim relief in Part A, the applicant did simultaneously institute review proceedings by way of section 6(1) of PAJA in Part B. It is common cause that Part B contains the review relief. Section 6(1) speaks to the institution of review proceedings and not to the final determination of review proceedings.

[27] Section 8 of PAJA⁶ provides that a court in review proceedings which is brought in terms of section 6(1), as in this case, may grant just and equitable relief. Such just and equitable relief in section 8 also speaks to interim relief or an interim interdict in sub-section (1)(e). The applicant seeks interim relief. Therefore, this Court is satisfied that it is statutorily empowered, as relied on by the applicant, to entertain the interim relief if brought by way of PAJA in terms of section 8(1)(e). The applicant also relies on common law.

[28] Whether the empowering provision to grant interim relief *per se*, is sourced in PAJA or in the common law does not translate into a Court's automatic power to grant the very interim relief sought by the applicant. The nature and reach of the relief sought requires scrutiny. The liquor board advances this point in that it

⁵ Section 8(1)(e) of PAJA provides that:

"8(1) the court or tribunal, in proceedings for judicial review in terms of section 6 (1), may grant any order that is just an equitable, including orders –

(a-c) -

(e) granting a temporary interdict or other temporary relief;"

⁶ Ibid.

argues that the nature and reach of the relief sought offends the separation of powers. This indeed was the conundrum Tuchten J wrestled with and tried to answer in the Bharshila Investments v Gauteng Liquor Board⁷ [Bharshila matter]. The applicant relied on the Bharshila matter as authority for such interim relief. Tuchten J in this matter, was faced with the same type and reach of interim relief sought by the applicant before this Court. In resolving the issue, the Learned Judge accepted that a Court does have inherent power to grant a license if it is to avoid injustice and hardship. This he reasoned after accepting the majority decision of the Appellate Division, as it then was, in the Airoadexpress matter.⁸ Yet, Tuchten J crafted the relief in such a way that the nature and reach of the license granted by the Court did not offend the provisions of Act nor the regularity powers the liquor board possessed in terms thereof. This Court considers that approach to be correct. The applicant however did not craft its prayers on that basis, nor did it seek to amend its relief after the liquor board raised the issue, albeit conundrum voiced by the Court in the Bharshila matter.

[29] Be that as it may, Counsel for the liquor board did not argue nor refer this Court to any authority to disturb the majority decision of the Appellate Division in the Airoadexpress matter and how it was applied by Tuchten J in the Bharshila matter. This Court therefore accepts that the power it possesses is a salutary power to be preserved jealously and only used in deserving cases when exceptional circumstances are evident on the papers [Airoadexpress principle]⁹.

[30] It is therefore apt to consider if the applicant's case on the papers falls within the purview of the Airoadexpress principle.

CONCLUSION

[31] On the material facts before this Court and considering the effect of the withdrawal of the objections by the second to eighth respondents and, having

⁷ Unreported case of **Bharshila Investments v Gauteng Liquor Board** case number: 32820/2011.

⁸ **Airoadexpress v Local Road Transportation Board**, Durban 1986 (2) 663 (A).

⁹ Ibid.

regard to the nature of the relief sought in Part B, this Court finds that the applicant has a *prima facie* case made out that the impugned decision will be reviewed, set aside and referred back to the liquor board, as prayed for, to enable the liquor board to reconsider the application absent, *inter alia*, the objections.

[32] Furthermore, this Court finds that the applicant at the time it instituted the interim relief was remediless but for seeking leave in the interim from this Court in that the Act does not cater for an internal appeal process. The liquor board raises section 23(3) of the Act arguing that the applicant could have reapplied upon the refusal by the liquor board. However, in as much as section 23(3) of the Act grants the applicant a remedy to submit a new application, such application is linked to a time condition when such right is triggered. The ability to exercise the procedural right is after 1 (one) year from the date of the impugned decision. Furthermore, this Court cannot find any indication that liquor board would have granted special leave to apply again prior to the 1(one) year period if, the applicant had sought such leave from it in terms of section 23(3) of the Act.

[33] The applicant's Counsel both in oral and written argument advanced that the hardship and injustice to the applicant is that it is unable to conduct its commercial business which it is entitled to do and that it has gone to great financial expense to ensure that it is ready to trade. The fact that the applicant is ready to trade at the premises is demonstrated on the papers. The difficulty the Court has with this argument is that the applicant is presently trading as a supermarket next to the premises. The applicant is part of a large chain and successful brand which operates all over the country and, in this way, is conducting business on a national scale. The only difference with the Sunnyside premises, unlike the other supermarkets in the country is that it has not opened its liquor outlet. The applicant has not demonstrated commercial hardship.

[34] What indeed has occurred is that its full range of services, but for liquor, is not being sold at the premises as the applicant can do at its other stores. The section 23 application attached to the founding papers clearly demonstrates that it desires to complete a shopping experience for its customers and not that it will have no customers because it does not sell liquor. The liquor store and the

expense incurred to acquire the premises and fit it out was incurred to expand an already existing customer base and to ensure that the premises could comply with the provisions of section 23 of the Act.

[35] If a delay arose from the time of the application to the impugned decision causing hardship, such delay is not the thrust of this application before this Court and procedurally, nothing prevented the applicant from, as in the matters before Daffue J, approaching this Court for competent relief to ameliorate any hardship as a result thereof. This does not appear to be a procedural step taken by the applicant.

[36] Lastly, the applicant in Part B seeks the referral of the decision back to the liquor board. It does not, as it could have sought just and equitable relief catered for in section 8 after the final determination of the review relief. Exceptional circumstances, if there were, would have been submitted or an attempt at least would have been made because the effect of the interim relief is not only but limited, in that it would only have assisted the applicant to trade in liquor until the review relief had been finalised and not until the liquor board made a further decision by order. Prayer 1 was crafted in that manner.

[37] Having considered all the facts and applying the Airoadexpress principle, this Court does not find that this case is an exceptional case warranting the interim relief. The application fails.

COSTS

[38] Costs should follow the result, and no argument was tendered otherwise.

Therefore, the following order:

1. The interim relief sought in Part A is dismissed.
2. The Applicant is to pay the Respondent's costs, counsels fees taxed on scale B.

L.A. RETIEF

Judge of the High Court

Gauteng Division

Appearances:

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