

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.

.....
DATE
SIGNATURE

Case no.: **11734/2019**

In the matter between:

PHUMELELA GAMING AND LEISURE LIMITED

APPLICANT

And

**MEMBER OF THE EXECUTIVE COUNCIL:
ECONOMIC DEVELOPMENT, ENVIRONMENT,
AGRICULTURE AND RURAL DEVELOPMENT,
GAUTENG**

1ST RESPONDENT

PREMIER OF THE GAUTENG PROVINCE

2ND RESPONDENT

GAUTENG GAMBLING BOARD

3RD RESPONDENT

Coram: Dlamini J

Request for Reasons: 29 June 2023

Delivered: 28 September 2023

JUDGMENT

DLAMINI J

INTRODUCTION

- [1] This is an application brought by the applicant wherein it seeks an order granting it leave to amend its notice of motion. The application is opposed by the respondent.
- [2] The matter has a long history and litigation is continuing between the parties.
- [3] In the initial notice of motion, the applicants had included Part A and Part B. In the original Part B, the applicants allege that it omitted to include a prayer for levies that were due to the applicant between the period of 1 April 2019 to 30 November 2021 due to the MEC's amendment.
- [4] The applicant filed a Notice in terms of Rule 28 wherein it endeavors to amend its notice of motion to include that, subject to its success in the review, the respondents are directed and liable to pay levies that would have been payable in terms of the pre-amended version of regulation 276 for the period between 01 April 2019 to 30 November 2021.

[5] The respondents oppose the amendment application on the grounds, *inter alia*, that;-

5.1 They argue that the amendment will cause them prejudice since it is sought at a time when they have already filed their answering affidavit in the main review application and the review application is ripe for hearing, causing undue delay, and further that nothing has changed since the filing of the original notice of motion to justify the applicant's application for leave to amend.

5.2 They refer to the fact that, in Part A of this application, Phumelela sought relief which would have suspended the implementation of the regulations and would have had the consequence of obliging the respondents to continue paying the levies. They say that having decided to abandon the Part A relief, Phumelela should not now be permitted to introduce the repayment claim in Part B.

5.3 The respondents further argue that the applicant will not be prejudiced if it is compelled to bring separate proceedings to recover the levies.

ISSUES

[6] The central issue at the heart of this application is whether the leave to amend should be granted and whether such an amendment would cause prejudice to the respondents or not.

[7] Having read the pleadings and heard both Counsels during the hearing, I am of the view that in the interest of justice and the interest of the *audi alteram partem* rule it is just that the amendment be allowed.

[8] The only issue that is left for determination is the question of costs.

[9] The principles regarding costs are trite and have been pronounced in a number of our court decisions. In *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Other*:¹the SCA set out the principle as follows.

“The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting to either comprehensiveness or complete analytical accuracy, depriving the successful party of their costs can depend on circumstances such as, for example, the conduct of parties, the conduct of their legal representatives, or whether a party achieves technical success only, the nature of litigant and the nature of proceedings.

[10] In the present matter, I am satisfied that this court should deviate from the normal costs order. The applicants have brought this notice to amend very late in the proceedings when answering affidavits had already been filled and the matter was ready for set down. In my view, the respondent has now been saddled with unnecessary legal costs and will incur further legal costs to answer to the amended notice of motion. It is for these reasons that the costs ought to be granted to the respondent.

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

ORDER

1. The order marked “X” that I signed and dated 15 February 2023 is made an Order of this Court.

¹ [1996] ZACC 27; 1996 (2) SA 621 (CC)

DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
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