



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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

5.06.2023

DATE

CASE NO: 9547/2018

In the matter between

THE CASINO ASSOCIATION OF SOUTH AFRICA

Applicant

and

PORTAPA (PTY) LTD t/a SUPABETS

First Respondent

THE GAUTENG GAMBLING BOARD

Second Respondent

CASE NO: 38099/2018

In the matter between:

CASINO ASSOCIATION OF SOUTH AFRICA

Applicant

and

THE GAUTENG GAMBLING BOARD

First Respondent

CHAIRPERSON, GAUTENG GLAMBLING BOARD

Second Respondent

PORTAPA (PTY) LTD t/a SUPABETS

Third Respondent

SUPAWORLD GAUTENG (PTY) LTD

Fourth Respondent

INTELLIGENT GAMING (PTY) LTD

Fifth Respondent

JUDGMENT

Citation: Casino Association of South Africa v Portapa (Pty) Ltd t/a Supabets and another (Case no: 9547/2018) and Casino Association of South Africa v The Gauteng Gambling Board and Others (Case no: 38099/2018) [2023] ZAGP JHC 625 (5 June 2023).

CRUTCHFIELD J:

[1] These two review applications came before me as a special motion.

[2] The applicant in both applications is the Casino Association of South Africa (“CASA”), a voluntary association having perpetual succession and the power to sue and be sued in its own name. CASA’s objectives include providing a forum for the promotion of the casino industry in South Africa and guarding the interests of CASA’s members.

[3] Save in respect of two casino licence holders in the Northern Cape and one in the Eastern Cape, CASA’s members comprise all of the holding companies of the casino licence holders in South Africa. The members of CASA are Tsogo Sun, Sun International, Peermont Global and Caesar’s Entertainment ENEA. CASA’s members and their subsidiaries are the holders of all seven casino licences issued in Gauteng,

[4] The first respondent is the Gauteng Gambling Board (“the Board”), a juristic entity established in terms of s3 of the Gauteng Gambling Act, 4 of 1995 (“the Gauteng Act”).

[5] The second respondent is the Chairperson of the Board, appointed in terms of s5(3) of the Gauteng Act. The second respondent is responsible for convening the first respondent’s meetings in terms of s11 of the Gauteng Act, at which meetings decisions in respect of overseeing and controlling gambling activities in Gauteng may be taken.

[6] The third respondent is Portapa (Pty) Ltd t/a Supabets (“Supabets”), the holder of a bookmaker’s licence in terms of chapter 9 of the Gauteng Act, issued to Supabets by the Board under the Gauteng Act.

[7] The fourth respondent is Supaworld Gauteng (Pty) Ltd (“Supaworld”), similarly holding a bookmaker’s licence issued by the Board under the Gauteng Act.

[8] The fifth respondent is Intelligent Gaming (Pty) Ltd (“Intelligent Gaming”), the distributor of a betting software system, Aardvark Betting Software Version 1.0 (“the Aardvark system”). Intelligent Gaming is cited for such interest as it might have in these proceedings.

[9] The referencing of the respondents as the first, second, third, fourth and fifth respondents respectively herein refers to the respondents as they are cited in the second review application under case number 38099/2018. The second respondent did not oppose the application. Insofar as I refer to “the respondents” herein, I refer to the first and third to fifth respondents jointly.

[10] The respondents opposed both review applications (“the reviews”) arguing *inter alia* that the review under case number 9547/2018 was subsumed under case number 38099/2018. I heard both reviews simultaneously.

[11] CASA instituted proceedings under case number 9547/2018 on 9 March 2018. CASA claimed the following relief in its amended notice of motion:

11.1 Declaring it unlawful in terms of the Gauteng Act for persons other than the holder of a casino licence to offer fixed odds bets on the outcome of a casino game, including the game of roulette;

11.2 Declaring that:

11.2.1 Supabets was not authorised and/or licensed to offer fixed odds bets on the outcome of roulette;

11.2.2 Supabets conduct in offering fixed odds bets on the outcome of roulette was unlawful and contravened s76(2) of the Gauteng Act; and

11.2.3 Insofar as may be necessary, reviewing and setting aside the Board’s decision dated 2 March 2018, that Supabets did not act contrary to the provisions of s39 and s76 of the Gauteng Act.

11.3 Interdicting and restraining Supabets from offering roulette as a contingency on which punters place fixed odds bets;

- 11.4 Costs against the first respondent, jointly and severally with the second respondent in the event of the latter opposing the application, which the second respondent did not do.

[12] CASA launched the second review on 15 October 2018, (“the second review”), being the primary subject of the hearing before me and of this judgment. CASA claimed relief:

- 12.1 Reviewing, declaring invalid and setting aside the Board's decisions:

12.1.1 approving Supabets and Supaworld offering fixed odds bets on roulette games as a contingency; and

12.1.2 approving Supabets' and Supaworld's installation of the Aardvark system at their various betting shops for fixed odds betting as a contingency;

- 12.2 Costs of the application jointly and severally against such respondents that opposed the application.

[13] CASA brought the reviews in terms of PAJA alternatively the principle of legality. The grounds of the reviews, in terms of both PAJA and the principle of legality, included the following:

- 13.1 The decisions were premised on material errors of law, (which reflected the Board's failure to apply its mind in reaching the decisions),

- 13.2 The empowering provisions did not authorise the decisions thus rendering them *ultra vires*;
- 13.3 The decisions failed to take relevant considerations into account, (including the oversaturation of the gambling industry and the need for the fiscal and regulatory net to ensure that dues were paid to the State, contributing to local social and economic development), thereby undermining the reasonableness of the decisions; and
- 13.4 The decisions did not comply with mandatory and material conditions enacted under the legislative regime, thereby serving to deprive CASA of its entitlement to procedural fairness.

[14] By agreement between the parties, I granted condonation in each instance where it was sought by a party and I heard the arguments of senior counsel for the third to fifth respondents prior to those of the first respondent.

[15] Supabets, during 2018 or thereabouts, commenced accepting fixed odds bets on a live roulette game streamed from a roulette table in Lithuania. CASA argued that roulette is legislatively defined as a casino game and that fixed odds bets can only be offered by the holder of a casino licence issued by a South African gambling authority. The Board's subsequent decisions to approve the acceptance of fixed odds bets on a contingency, being the outcome of the livestreamed roulette game from Lithuania, and approve the installation of the Aardvark System, are the crux of the reviews.

[16] CASA and the respondents ("the parties"), agreed that both reviews centred on two substantive questions of law, the relevant facts of which were largely common cause. The first and critical issue was whether Supabets and Supaworld's offering of

fixed odds bets on the outcome of livestreamed roulette games from Lithuania as a contingency was lawful, given that Supabets and Supaworld (“the Supabets’ entities”), both hold bookmaker’s licences and not casino licences.

[17] In the event that I find in favour of CASA on the first question, then the second does not arise and both review applications should be decided in favour of CASA. A finding favourable to CASA on the first issue will result in the Board’s decisions approving Supabets and Supaworld’s offering of fixed odds bets on the outcome of livestreamed roulette games from Lithuania as a contingency (‘the decisions’), being unlawful given that those decisions are inconsistent with the Gauteng Act.

[18] If CASA fails on the first issue, then the second arises for consideration. The latter is whether the Board properly applied its discretion when it decided to grant Supabets and Supaworld (“the Supabets’ entities”), permission to act in the impugned manner, in that the roulette game livestreamed from Lithuania must be a licensed roulette game. The Supabets’ entities accept that the roulette game livestreamed from Lithuania, in order to be lawful, has to be a licensed roulette game.

[19] Accordingly, the respondents have to prove that the Board satisfied itself prior to granting the approval, that the roulette game was licensed. Thus the question whether the Board did indeed properly apply its mind and exercise its discretion in granting the approval arises as part of the second issue.

[20] The respondents argued that the game offered by the Supabets’ entities comprises fixed odds bets on the contingency of where a ball would drop or a wheel would stop, in terms of the provision for ‘games’ in the National Gambling Act, 7 of 2004 (‘the National Act’). The respondents accept that in order for their offering to be lawful,

the contingency must fall within the definition of sporting event in terms of the Gauteng Act.

[21] The respondents contended that CASA's approach that roulette was defined as a casino game and available to be played in casinos only was restrictive, anti-competitive and in contrast to the National Act, one of the purposes of which is to make gambling more accessible.

[22] The respondents referred to the definition of "sporting event" in the Gauteng Act read with s4(1)(b) of the National Act. They emphasised the reference to "competition or game" in the Gauteng Act's definition of "sporting event".

[23] The respondents contended that the proper interpretation of the definition of "sporting event" in the Gauteng Act was not the restrictive definition applied by CASA. The respondents argued that the words "game and competition" read together with "any contingency" in s 4(1)(b) of the National Act, evidenced the Board's power to approve the third to fifth respondents' applications to accept fixed odds bets on the contingent outcome of live-streamed roulette from Lithuania.

[24] In effect, the respondents argued that the reference to a "game" in the definition of "sporting event" was not limited to a game in which the participants exerted themselves profusely but included a game other than a sports game. This is notwithstanding that the word "game" appears in terms of the definition of "sporting event".

[25] The essence of the third to fifth respondents' argument was that betting on roulette games livestreamed from Lithuania was not exclusive to roulette as a casino

game but was included in the definition of 'sporting event' in the Gauteng Act read together with the National Act.

[26] The Board largely agreed with the arguments of the third to fifth respondents and asserted that the Supabets' entities did not contravene the provisions of s39 and s76 of the Gauteng Act but merely introduced a contingency type without prior approval of the Board.

[27] The parties differed on the correct starting point in considering the powers of bookmakers relative to those of casinos and the extent of the activities that both bookmakers and casinos are entitled to undertake, being the core issue in this matter. The respondents relied on the National Act whilst CASA contended that it was the Gauteng Act.

[28] I turn to consider the issues raised in these reviews.

[29] Gambling in Gauteng is regulated under both the National Act and the Gauteng Act. This is because gambling is a functional area referred to in Part A of Schedule 4 of the Constitution together with casinos, racing and wagering but excluding lotteries and sports pools. The heading to Schedule 4 is 'Functional Areas of Concurrent National and Provincial Legislative Competence'. Accordingly, functional areas falling under Part A of Schedule 4 are subject to legislation passed by both parliament and the relevant provincial legislature. Each province is empowered to regulate these functional areas differently and the Gauteng Legislature has exercised that power in terms of the Gauteng Act.

[30] There being no inconsistency between the national and the provincial acts relevant hereto, the Supabets' entities, in order to conduct their bookmaking businesses

lawfully, are obliged to comply with the provisions of both being the National Act and the Gauteng Act insofar as they relate to and regulate bookmaking¹. If Supabets and / or Supaworld breach one or the other or both of the National Act and the Gauteng Act, then they act unlawfully. In the event that the Board permits them to act in contravention of either or both Acts, then the Board conducts itself unlawfully.

[31] Provisions of national and provincial legislation are “inconsistent when they cannot stand at the same time, or cannot stand together, or cannot both be obeyed at the same time. They are not inconsistent when it is possible to obey each without disobeying either. There is no principal or practical reason why such provisions cannot operate together harmoniously in the same field,”² as is the case in this matter.

[32] The preamble to the National Act pertinently states that the National Act regulates the national sphere of gambling, establishing certain norms and standards that operate throughout the country, ensuring that gambling activities overall are effectively regulated, licensed, controlled and policed, protecting society and the economy and establishing certain national institutions in order to determine and administer gambling policy on a national basis in a co-operative, coherent and efficient manner.

[33] The Gauteng Act, however, legislates gambling in Gauteng specifically. The Gauteng Act provides for restrictions, regulations and controls appropriate and applicable to Gauteng.

[34] The Board, the decisions of which are under review herein, is constituted and empowered under the Gauteng Act. The Board's powers and functions, in terms of s4 of the Gauteng Act, include the power to oversee and control gambling activities in

¹ *Ex parte Speaker KwaZulu-Natal Provincial Legislature in re Certification of the Constitution of the Province of KwaZulu-Natal* 1996 (4) SA 1098 (CC) para 24 (footnotes omitted).

² *Id.*

Gauteng, to advise and make recommendations to the responsible member on matters in connection with the licensing of persons to conduct gambling in Gauteng as well as its regulation and control, and to exercise such powers and perform such functions and duties assigned to the Board under the Gauteng Act or such other applicable law.

[35] Given that the provinces are entitled to pass legislation that deals specifically with gambling in the respective provinces, whilst the National Act regulates the industry as a whole overall, together with the fact that Supabets and Supaworld both operate under bookmaker licences issued by the Board under the Gauteng Act, it is the Gauteng Act that is the starting point in considering the nature and extent of activities that bookmakers are authorised to undertake relative to those of casinos, particularly whether bookmaker licences permit offering fixed odds bets on livestreamed roulette games from Lithuania.

[36] The Gauteng Act distinguishes between bookmakers and casinos. Section 1 of the Gauteng Act defines “casino” as “premises where casino games are played or are available to be played for money or other valuable gambled on a possibility of winning a prize.”

[37] A “casino game” is defined as “any game, irrespective of whether or not the result thereof is determined by chance or a measure of skill, played with playing cards, dice, a gaming machine or any other device used to determine win or loss in the outcome of a wager for money or other valuable consideration, and includes, without derogating from the generality of the foregoing, black jack, ... and roulette, or any other game whose rules closely resemble that of the foregoing.”

[38] “Casino” is defined under the National Act as “premises where gambling games are played, or are available to be played.”³ “Gambling game” is defined under the National Act as “any activity described as such in Section 5”.

[39] “Conduct” is defined in the Gauteng Act as “to carry on the business, to control, to direct, to keep, to manage, to oversee or to own and ‘maintain’ has a corresponding meaning”. Accordingly, in order to conduct or carry on the business of a casino, it is necessary to hold a casino licence to operate and conduct casino games including roulette.

[40] “Gambling” is defined in s1 of the Gauteng Act as “the wagering of a stake of money or anything of value, on the unknown result of a future event at the risk of losing all or a portion thereof for the sake of a return, irrespective of whether any measure of skill is involved or not and encompasses all forms of gaming and betting but excludes the operation of a machine contemplated in subsection (3) or (4): Provided that the responsible Member may, on the recommendation of the board, declare certain games of skill not to be gambling.”

[41] “Licence” in respect of a casino means “a casino licence contemplated in Chapter 4 ...”,⁴ and in respect of a bookmaker, “a bookmaker’s licence contemplated in chapter 9” of the Gauteng Act.⁵

[42] “Licensed premises” is defined as “the place or premises specified in a licence on which the activities authorised thereby may be conducted in terms of (the Gauteng) Act.”

³ This definition is subject to certain exceptions that are not relevant hereto.

⁴ Gauteng Act, Section 1.

⁵ Gauteng Act, Section 1.

[43] Each definition covers its own specified ground. There is no overlap between the definitions or the competencies under the respective licences.

[44] Chapter 9 of the Gauteng Act regulates bookmaker licences. Section 55 of the Gauteng Act provides that a bookmaker's licence shall authorise the accepting, on the licensed premises concerned, of fixed odds bets on sporting events. Thus, accepting fixed odds bets on anything other than sporting events falls outside of the authority of a bookmaker's licence under the Gauteng Act.

[45] The National Act defines a "bookmaker" as "a person who directly or indirectly lays fixed-odd open bets or open bets with members of the public or other bookmakers, or takes such bets with other bookmakers".

[46] It is evident from the various definitions quoted above, that casinos are defined under the Gauteng Act as places where "casino games" are available to be played for money or other valuable gambled on the possibility of a return. Casino games, in turn, are defined as including roulette. Accordingly, roulette is defined under the Gauteng Act specifically as a "casino game" available to be played in casinos.

[47] Given the definition of "conduct" in the Gauteng Act, it is necessary under the Gauteng Act to hold a casino licence in order to conduct or carry on the business of a casino and to operate and conduct casino games, including roulette.

[48] Sports events being the sole category of events on which a bookmaker is authorised to offer fixed odds bets under the Gauteng Act,⁶ the latter defines "sporting event" as "any ball-game, race (including a race involving vehicles or animals) or other

⁶ Gauteng Act, Section 1.

athletic or sporting contest, competition or game, including a beauty contest, usually attended by the public.”

[49] Thus, a bookmaker, under the authority of a bookmaker’s licence, is entitled to offer fixed odds bets on ball games, races (including those involving vehicles or animals), or any other athletic or sporting contest, competition or game, including a beauty contest, usually attended by the public. These are the only events in respect of which a bookmaker may offer a fixed odds bet.

[50] The respondents contended that the applicant sought to “think away” the comma after “sporting contest” in the definition of sporting event. The respondents argued that the comma served to distinguish “sporting contest” from “game”, competition and the balance of the definition including beauty contest. Accordingly, “sporting contest” stood apart from a game or competition, from a ball-game and a race.

[51] The respondents referred to the inclusion of “beauty contest” in the definition of sporting event as an indication that a wide interpretation should be given to “sporting event,” and that the latter should not be limited to an event requiring physical exertion of the participants. Furthermore, that if the meaning to be attributed to “sporting event” is confined to an activity involving physical exertion by the participants, then the words “competition or game” after “contest” are superfluous as a contest by definition includes a competition or a game.

[52] The interpretation of a statute or other document involves the process of attributing meaning to words. The text and the grammatical meaning of the text read in the context of the statute as a whole, remain the starting point of the interpretive exercise.⁷ A court must consider the words as they stand in the text and may not

⁷ *Capitec Bank Holdings Ltd and another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99 (09 July 2021) (*‘Capitec’*) at para 51.

reconstruct or rewrite the text in order to give rise to a predetermined outcome of the interpretation.

[53] The definition of a “sporting event,” as the term implies, refers to a sporting or athletic event. The nature of a sporting event is determined by the nature of the specific activity involved in the event. A ball-game or a race by their very nature refer to athletic or sporting activities, being those involving physical exertion by the participants.

[54] The use of the word “including” in the phrase “race (including a race involving...)” serves to broaden⁸ the definition of “sporting event” by including other types of races beyond those involving animals or cars. Thus, motor-bike, cycling or go-kart races will be included as events that meet the definition of “sporting event.” Similarly, the use of the word “other” in the phrase “other athletic or sporting contest, ...” extends the meaning to be attributed to the definition, to include sporting events or sporting contests additional to or outside of ball-games and races.

[55] The natural meaning and the syntax of the words “athletic or sporting contest, competition or game,” indicate that “athletic or sporting” serve to qualify the words thereafter, being “contest, competition or game.” The last mentioned, “game,” is followed immediately by a comma, which separates and isolates the phrase “athletic or sporting contest, competition or game” from the words that follow thereafter.

[56] The inclusion of “beauty contest” in the definition of sporting event notwithstanding that a beauty contest does not fit into or accord with an athletic or sporting activity, does not negate the interpretation that “athletic or sporting” defines and limits the words thereafter, being “contest, competition or game.”

⁸ *De Reuk v Director of Public Prosecutions (Witwatersrand Local Division)* 2004 (1) SA 406 (CC) (*‘De Reuk’*).

[57] This is because “beauty contest” is included specifically in the definition by way of the word “including.” The pair of commas located prior to “including” and after “contest,” results in the separation or isolation of “including a beauty contest” from “athletic or sporting contest, competition or game.” The use of the word “including” in the definition of sporting event, extends the meaning of the definition to include beauty contests, which would not ordinarily be associated with a sporting or athletic event.

[58] In addition, a sporting event is defined as referring to such events that attract public interest. The natural and ordinary meaning of “usually attended by the public” refers to attendance by the fee paying public in the form of spectators at the event. That is manifest upon a simple reading of the definition.

[59] The placement of the words “usually attended by the public” at the end of the definition and after a comma, results in that phrase qualifying the entirety of the definition and the words prior thereto including “beauty contest.”

[60] Roulette cannot be considered to be a ball-game such as tennis or soccer and roulette has no sporting or athletic characteristics in the sense of a true sporting or athletic event. Roulette does not qualify as a race. Nor is it an athletic event.

[61] Furthermore, roulette does not ordinarily attract the attendance of public spectators in the sense that an athletic meeting or a sporting game, contest or competition, attracts the attendance of the public as spectators.

[62] I agree with the respondents’ contention that the variance between the words “contest, competition or game” is minimal. That, however, does not change my view that “athletic or sporting” define “contest, competition or game.” Whilst “game” in its ordinary grammatical meaning is not limited to an event requiring physical exertion by

the participants, the use of the word “game” in the context of the definition is limited by the words “athletic or sporting.”

[63] In my view, the plain and clear language used in the definition of “sporting event,” read in its entirety, particularly the words “any ball-game, race, ... or other athletic or sporting ...” make it plain that the entire definition other than a beauty contest, relates to sporting and athletic activities.

[64] Accordingly, the words “other athletic or sporting” define and limit the words “contest, competition or game.”

[65] In addition, the rule against redundancy militates against roulette being both a casino game and simultaneously falling within the definition of sporting event. Roulette is defined specifically as a casino game. In those circumstances and in the absence of any compelling consideration to the contrary, I must presume, that the Gauteng Legislature intended that roulette, (given its inclusion in the definition of casino game), be conducted as a casino game only.

[66] In the event that the Gauteng Legislature intended roulette to be anything other than a casino game available to be played in casinos, it would not have included roulette specifically in the definition of casino game. Nothing stopped the Gauteng Legislature, if it wished to do so, from including roulette as a sporting event. However, the Gauteng Legislature did not do so, choosing instead to include roulette as a casino game.⁹ Roulette cannot be both a casino game and a sporting event simultaneously.

[67] I must be slow to conclude that words in a single document, being the Gauteng Act, are “tautologous and superfluous”.¹⁰ Hence, in the light of the absence of any

⁹ *De Reuk id.*

¹⁰ *African Products (Pty) Ltd v AIG South Africa Limited* 2009 (3) SA 473 (SCA) para 13.

pressing consideration to the contrary, I cannot find that notwithstanding the Gauteng Legislature stipulating that roulette is a casino game to be played in casinos, in the Gauteng Act, that the Gauteng Legislature intended something different, being that roulette is simultaneously a sporting event, despite roulette not being referenced in the definition of sporting event.

[68] In the circumstances, account being had of the words utilised in the respective definitions of “sporting event” and “casino games,” the plain meaning of those words, their language, punctuation and syntax, as well as their context within the Gauteng Act and the purpose of the relevant provisions, I am of the view that the definition of roulette as a casino game to be played in casinos, reflects the intention of the Gauteng Legislature.

[69] Accordingly, roulette, defined as it is as a casino game, cannot be both a casino game and a sporting event simultaneously.

[70] The respondents’ reference to the National Act as the starting point in determining the activities under a bookmaker’s licence, is problematic insofar as the respondents rely on the generic law whilst excluding the specific provincial legislation intended to deal with the issues relevant to this matter. The respondents cannot use the provisions of the National Act to interpret or dilute the Gauteng Act.

[71] It is apparent from the preamble to the National Act and the areas and matters that are regulated under the National Act, that the latter bears no relevance to the issues that arise in this matter.

[72] The nature of licences issued under the National Act are not relevant to the issues in this matter. The National Act, effectively, leaves the licensing of casinos and

bookmakers in the respective provinces to the relevant provincial legislatures. In any event, the national legislature, Parliament, retains oversight in terms of the National Act. The Supabets' entities are obliged to comply with both the Gauteng Act and the National Act. It does not assist the respondents to comply with the National Act only.

[73] An emphasis on the National Act does not serve the respondents as they are obliged to comply with both Acts. Nor can the respondents rely on the National Act or utilise the National Act as a tool of interpretation of the Gauteng Act, by using the general language of the National Act in order to interpret or dilute the relevant aspects of the Gauteng Act. Similarly, the respondents cannot utilise the Operational Rules in order to interpret the Gauteng Act.

[74] The respondents blur the statutory differentiation between bookmakers and casinos by drawing a distinction between betting on roulette and betting on the outcome of roulette. The difficulty with the respondents' proposition is that when a player bets on roulette, wherever the player does so and whatever medium the player utilises to do so, the player ultimately places a bet or bets on the outcome of roulette, being the contingency of where the ball will land or the wheel will stop.

[75] The respondents reference to the roulette table and the casino experience are of no consequence. The location of the roulette table within a casino and the attributes of a casino prioritise form over substance and thus are of no value. Equally, the location of the game or the medium used to participate in the game is not important. It is the nature of the game that determines the outcome.

[76] The respondents referred to the Operational Rules for Bookmakers ("Operational Rules"), made under the National Act. The respondents' attempt to elevate the Operational Rules over the Gauteng Act is untenable.

[77] The Operational Rules apply to bookmakers' operations. They do not regulate what a bookmaker may do and do not assist in determining the activities that bookmakers may undertake under a bookmaker's licence.

[78] The Operational Rules broaden the definition of "contingency" found in the National Act by including provision for "any lawful event or contingency other than horseracing or a sporting contest."

[79] Applying the definitions under the National Act and the definition of "contingency" in the Operational Rules, the respondents conclude that it is lawful for a bookmaker to offer bets on a "contingency" outside of a sporting event or a horseracing event.

[80] The respondents argued that the National Act and the Gauteng Act permit bookmakers to offer bets on sports events and other lawful contingencies, events or occurrences of which the outcome is unknown to any person until it happens. According to the Board, the Supabets' entities do not offer bets on roulette but on the outcome of roulette, being a bet on a lawful contingency. Due to the bet being a bet on a lawful contingency, the Supabets' entities' bookmaker licences permit bets on the outcome of roulette games.

[81] The flaw in the respondents' reasoning is that the Supabets' entities are obliged to comply with the Gauteng Act, which provides in terms that bookmakers may only accept bets on sporting events.

[82] In so far as the respondents argued that CASA's interpretation of "sporting event" conflicts with the National Act, the National Act provides that a bet in respect of a bookmaker includes a fixed-odds bet on any contingency.

[83] Thus, the respondents, reading the two definitions together, argued that a bookmaker is free to accept fixed-odds bets on any contingency such as the outcome a game not limited to a “ball-game,” “race” and “athletic event” or “sporting contest.”

[84] The error in the respondents’ reasoning is that a bet on a roulette game or a bet on the outcome of a roulette game is not a bet on a sporting event as required under the Gauteng Act. A bookmaker under the Gauteng Act may only accept a fixed odds bet on the contingent outcome of a sporting event, defined as set out above.

[85] The content and the ambit of the Gauteng Act is wholly different to that of the National Act. The two Acts have to be applied in accordance with their tenor, the National Act on an oversight basis relating to general issues applicable to the industry as a whole, whilst the Gauteng Act focus is on the specifics of gambling within the province.

[86] Thus, I find that there is no difference between betting on roulette and betting on the outcome of roulette. They both amount to playing roulette as a casino game as defined in the Gauteng Act.

[87] The activities that bookmakers operating under the Gauteng Act may offer are limited to sporting events as defined under the Act.

[88] Given my finding on the first legal issue referred to by CASA, there is no necessity for me to deal with whether or not the Board applied its discretion appropriately in granting the Supabets’ entities the relevant permissions, being the second legal issue.

[89] Accordingly, the second review must succeed and the decisions of the Board to grant the respective permissions to the Supabets' entities and Aardvark be declared unlawful and set aside. The appropriate order will follow hereunder.

[90] As regards case number 9547/2018, the issues therein were included in case number 38099/2018. CASA ought to not to have continued with the first review under case number 9547/2018 once it issued the second review under case number 38099/2018. Accordingly, CASA is entitled to the costs of the application under case number 9547/2018 but the respondents are entitled to the costs thereafter, including their costs of opposing the first review and the hearing thereof.

[91] By reason of the aforementioned, I grant the following order:

1. Case number 9547/2018 is dismissed.
2. Portapa (Pty) Ltd t/a Supabets and the Gauteng Gambling Board are ordered to pay the costs of the notice of motion and founding papers under case number 9547/2018 jointly and severally, the one paying the other to be absolved.
3. The applicant is to pay the costs of Portapa (Pty) Ltd t/a Supabets and the Gauteng Gambling Board's opposition to the review and the hearing of the review under case number 9547/2018.
4. The review case number 38099/2018 is upheld with costs.
 - 4.1 The decisions of The Gauteng Gambling Board:

i. approving the third and fourth respondents offering fixed odds bets on roulette games as a contingency; and

ii. approving the third and fourth respondents' installation of the Aardvark system at their various betting shops for fixed odds betting as a contingency;

are reviewed, declared invalid and set aside.

4.2 The first, third, fourth and fifth respondents are ordered to pay the costs of the review jointly and severally the one paying the others to be absolved.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected 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 of the judgment is deemed to be 5 June 2023.

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