



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

CASE NUMBER: 2023/051124

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
26/6/2023

DATE

SIGNATURE

In the matter between:

TABOOZ GLENANDA (PTY) LTD

Applicant

And

THE GAUTENG LIQUOR BOARD

Respondent

JUDGMENT

OOSTHUIZEN-SENEKAL AJ:

Introduction

[1] The applicant launched an urgent application for an order in the following terms:

1. An order authorising the applicant, Tabooz Glenanda (Pty) Ltd, to trade in liquor in its business to be known as Tabooz Glenanda at shop 9 Glenanda Village Shopping Centre, 14 Le Roux Avenue, Glenanda, Johannesburg, Gauteng, 2091, until the pending application in terms of section 23 of the Liquor Act, 2 of 2003, currently pending before the respondent under reference number GLB7000016816, has been finalised. Should the application be declined, the applicant may continue trading until such a decision could have been processed on review, provided such review must be issued within one month from receipt of the written notice and full reasons why the application has been declined.
2. An order directing the respondent to consider and finalise the pending application of the applicant, referred to in 1, by not later than 30 June 2023.
3. Costs, only if the respondent opposes the relief sought.

[2] The respondent opposes the application.

Parties

[3] The applicant is Tabooz Glenanda (PTY) LTD, a private company registered under registration number 2021/873147/07.

[4] The respondent is the Gauteng Liquor Board, a legal entity duly established and constituted as such in terms of section 2 of the Gauteng Liquor Act, 2 of 2003, the Liquor Act.

Factual Matrix

[5] The facts outlined hereunder are *common cause* or not in dispute.

- [6] Mr Ristevski, the sole director of the applicant, bought the applicant from its previous owner under the impression that the premises was an existing, licensed liquor store. It is not clear from the papers when the business was bought. Following the purchase, a representative of the seller prepared an application for the “transfer” of the liquor license into the name of the applicant.
- [7] Prior to the transfer of the liquor license on the name of the applicant, on 26 September 2022, officers of the South African Police Service, visited the premises and informed the applicant that the liquor licence held in respect of the business was fraudulent, and as such the applicant was trading without a license. As a result, the business was immediately closed and no further trading was allowed.
- [8] Following the closure of the business the applicant consulted with Mr Chris Oelofse, a liquor consultant, in order to investigate the matter. Mr Oelofse made an appointment with an attorney specialising in liquor law-related matters, Mr Marius Blom, who advised him that there were several cases where licensed businesses were closed on the strength of fraudulent licenses issued. In January 2023, Mr Blom advised that, in his opinion, the issues regarding the “fraudulent licence” will not be clarified in the near future and that the applicant should instead apply for a new licence.
- [9] On 3 March 2023 the applicant lodged an application for the liquor license. The applicant simultaneously paid the “lodgement fees”. The application was properly drawn, compiled, signed and lodged with the respondent on the said date. Furthermore, no objections were filed against the application of the applicant.
- [10] The inspectorate of the respondent had to inspect the premises within 21 (twenty-one) days from lodgement in order to submit a report on the application.¹ An inspector arranged an inspection through the attorneys of the applicant for Wednesday, 29 March 2023, which the inspector failed to attend. The inspector again arranged to do an inspection which was attended to on 8 May 2023. Since then, the applicant has not been provided with a copy of the report and or any further correspondence regarding the application lodged.

¹ Section 23(1)(d) of the Liquor Act.

[11] On the day of the hearing of the application, 13 June 2023, the respondent was accordingly 11 (eleven) weeks in default of the time limits prescribed in its empowering legislation.

Urgency

[12] I am satisfied that the matter has become urgent in the sense that the business of the applicant ought to have been up and running since 23 March 2023 but for the liquor license had not been issued. It is important to note that the applicant holds a lease for the premises and is liable for the monthly rental thereof. Therefore, the applicant is suffering financial losses. Furthermore, the applicant had to retrench all its staff, due to the business being closed.

[13] There also seems to be a substantial backlog in considering applications under the Liquor Act, not only in respect of new licences but also in respect of transfer of licence applications, applications for structural alteration approval, etc. Counsel for the respondent conceded to the fact that the current position of the offices of the respondent are under enormous pressure due to these backlogs.

[14] Undoubtedly, the business of the applicant is suffering due to the delay in processing the license application and more so following the lockdown restrictions during the Covid-19 pandemic, which imposed strict conditions such as the ban of the sale of liquor, which had devastating effect on businesses trading in liquor.

Liquor Act

[15] Section 23² of the Liquor Act deals with applications for new liquor licences. It prescribes all the documentation that must accompany such an application, which itself must be made on a prescribed form.

[16] Section 25(1) of the said Liquor Act provides that:

“Any person may lodge an objection to the granting of a licence in terms of this Act, in the prescribed manner, with the local committee and the applicant within twenty-one (21) days from date of publication of a notice referred to in section 24.”

² **APPLICATIONS FOR LICENCES [section 23] Gauteng Liquor Act, 2 of 2003:**

1. Every application for a new licence shall be made to the relevant local committee of the district or metropolitan area in which the licence is sought, in the prescribed form by lodgement with the secretary of the local committee and shall provide or be accompanied by –
 - (a) a detailed written motivation in support of the licence applied for;
 - (b) a detailed sketch plan of the premises showing the rooms, services, buildings, construction material and other pertinent information;
 - (c) a detailed written description of the premises to which the application relates, together with colour photographs of the external and internal features of the premises;
 - (d) a report of an inspector and reports of any inspection required by any law or bylaw;
 - (e) proof of publication of notices in the newspaper in terms of section 24;
 - (f) a certificate of suitability on the person of the applicant and the application issued by South African Police Services;
 - (g) the full business address and location of the premises to which the application relates, identity number or registration number of the applicant, residential address or address of registered office of the applicant;
 - (h) proof of affiliation to an association referred to in section 38;
 - (i) proof of payment of the prescribed fee; and
 - (j) clearance certificate by the South African Revenue Services that the applicant complies with tax laws.
2. For purposes of considering a licence under subsection (1), the local committee may cause an inspection to be made of the premises to which the application relates and any other investigation the local committee thinks necessary.
3. Where an application for a licence has been refused by the Board, no new application may be made in respect of the same premises within a period of one (1) year from the date of refusal, except by special leave granted at the discretion of the Board.
4. Applications for tavern, pool club, pub, liquor store and night club liquor licences shall also be accompanied by unequivocal approval by the relevant department of the relevant metropolitan or district council, in addition to any zoning or planning or environmental laws requirements.

[17] The notice referred to in section 24 *supra*, is a publication of a notice of intention to apply for a liquor licence in the newspapers circulating in the area where the premises are situated and also in the Provincial Gazette.

Applicable Law

[18] The respondent is a statutory body charged with the responsibility in terms of the Liquor Act for among others the consideration of applications for liquor licenses, decision-making in connection therewith and matters incidental thereto.

[19] The Constitution of the Republic of South Africa, 1996, recognizes the importance of accountability. It sets out various provisions aimed at ensuring that public authorities and corporations are held accountable for their actions or lack thereof. Accountability further refers to the obligation of individuals, organizations, and institutions to be answerable for their actions and decisions.

[20] The respondent is a public administration body, subject to its own legislation and constitutional controls. To this end, the provisions of section 195(1)(g) of the Constitution is relevant and deserves mention:³

“[195] (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(g) transparency must be fostered by providing the public with timely, accessible and accurate information.”

[21] The Liquor Board is a “creature **of statute**” and cannot expect of an applicant more than is prescribed or do more than it is empowered to do by virtue of its empowering legislation. It is obliged to do what its empowering legislation empowers it to do and if it does not, an applicant can approach a Court to order it to do its work.

³ *South African Restructuring and Insolvency Practitioners Association NPC v CEO Government Gauteng Division Pretoria*, Case NO 27628/2021 (1 July 2021).

Mandamus Application

[22] In *Welgevonden lodge NO 57 (Pty) Ltd v Limpopo Provincial Liquor Board*⁴ Makgoba J stated the following;

“[31] This Court has the common law jurisdiction as well as jurisdiction in terms of section 6 (2)(e) of PAJA, to issue an order against an administrative organ, directing it to take a decision in a matter which is unnecessarily delayed or where there is a refusal on the part of the administrative organ to take a decision.

In casu, the Respondent is unnecessarily delaying the taking of a decision in respect of the Applicant’s application for a liquor license, alternatively, refusing to take such a decision. In the light of that, this Court can assist with a *mandamus* order in terms of the common law and section 6 (2)(g) and section 8 (1)(e) of PAJA. The latter section provides for the granting of a temporary relief.

[32] More than a reasonable time has lapsed since the liquor license application of the Applicant was submitted. It is not denied that the application was properly submitted or that there is any outstanding documents still to be submitted by the Applicant. The application ought to have been considered by the Respondent within a reasonable time.

[33] The failure by the Respondent to consider the application cannot be simply condoned. The law places a duty on the Respondent to consider the application within a reasonable time. This failure is causing an invasion to the Applicant’s rights and the people it employs. The Applicant has a constitutional right to administrative action that is lawful, reasonable and

⁴ *Welgevonden lodge NO 57 (Pty) Ltd v Limpopo Provincial Liquor Board* (7896/2020) [2021] ZALMPPHC 63 (29 September 2021) para [31]-[33].

procedurally fair (section 33 (1) of the Constitution). The Respondent, as the administration, does not have a free hand to behave as it wishes.⁵

See also *Vumazonke v MEC for Social Development Eastern Cape and Three Similar Cases*⁶ where it was stated that the administration has to establish and maintain an efficient, equitable and ethical public administration.”

Interim Relief

[23] I now turn to the question whether the court has power to grant interim relief in the present matter pending the determination of **the granting of the liquor** license.

[24] In *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban and Others*⁷ Kotzé JA held that courts enjoy a general power or inherent jurisdiction to grant *pendente lite* relief in order to avoid injustice and hardship. The existence of this general jurisdiction was affirmed in the full bench decision of *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others*.⁸

[25] Kotzé JA in the *Airoadexpress* case referred specifically to the issuing of liquor licenses and the following was said;

The question has in the past frequently arisen in regard to the renewal of liquor licences. For more than half a century interim relief in the form of mandatory orders to prevent prejudice or injustice has been decreed in several of the provinces. I will refer to a few of the better known(*sic*) cases.

Morkel and others and Hahne v Johannesburg Licensing Court 1914 TPD 395 was a case in which applications for the renewal of liquor licences were refused. An error of procedure by the licensing authority led to a refusal of the applications resulting in “hardship” and “injustice” to the applicants. The Court (MASON, J) set aside the refusal and referred the matter back to the licensing authority for a proper hearing. The next sitting of that authority

⁵ *Targazest. (Pty). Ltd v Vrystaat Dobbel. En Drankowerheid en Ander* (5034/2011) [2011] ZAFSHC 200 (8 December 2011)

⁶ 2005 (6) SA 229 (EC) para [11].

⁷ 1986 (2) SA 663 (A) at 976C

⁸ 1995 (2) SA 813 (W) at 827I-828C.

would not take place soon and the Court granted an interim order that a temporary licence be issued. The learned Judge said at pp 397-8:

‘With reference to the other part of the application, namely, for an interim order authorising the applicants to carry on business until the rehearing, that really is an application to the Court to allow them to carry on business without a licence. I am not at all satisfied that the Court has authority to give any such order. But I think, taking into consideration the Cape cases, and the words of the statute, the Court can give relief. Supposing the licensing court had wished to take a considerable time to consider the position, I think they would have been entitled, under sec. 27, to issue a conditional licence to the applicants, saying, ‘You can carry on with your business in the meantime, while we are considering this matter, or for such and such a period, till we can determine exactly what is to be done with your licences.’ I propose acting on what I believe to be the power of the licensing court, and, under the circumstances, directing the president of the licensing court to sign a certificate for a licence to the various applicants until such time as the licensing court has reconsidered and dealt afresh with the matter.’

[26] It is evident that a general power or inherent jurisdiction is vested in courts to grant interim relief to avoid “injustice” and “hardship”.⁹

[27] I find the conduct of the respondent to be unreasonable. The applicant is prejudiced by the unreasonable delay in finalizing its application for a liquor license. Furthermore, section 8(1)(e) of PAJA specifically caters for interim relief to stop the prejudice suffered by the applicant on the basis of such relief being just and equitable in the circumstances.

[28] I find that the applicant in the present matter has satisfied all the requirements for the granting of interim relief. In *Bharshila Investments CC v The Gauteng Liquor Board*¹⁰ Tuchten J said:

⁹ *Boneltha (Pty) Ltd t/a Casa Bella Loftus v Pandelani NO & Another* (33277/2018) [2018] ZAGPPHC 520 (13 June 2018).

¹⁰ North Gauteng case no 32820/2011 of 11 June 2011.

“The applicant for the interim relief must have a *prima facie* clear right to the relief sought. *In casu*, the Applicant applied for a license and has a right to have his application decided. The Applicant is suffering prejudice. Until such time that a license is granted, the Applicant will not be able to run a proper business of a game lodge as it is difficult to imagine enthusiastic patrons looking to stay at a lodge if there is not liquor available to consume with meals, game drives or at the bar.”

[29] I am of the view that there is no alternative remedy available to the applicant in order to offset prejudice it will suffer due to the lackadaisical approach by the respondent to have its application finalised. The balance of convenience favours the applicant. The respondent has to attend to its administrative duties in terms of its empowering legislation. The fact that the respondent experiences backlog regarding the issuing of licenses, due to reasons not privy to me, can not be laid at the door of the applicant.

[30] Furthermore, exceptional circumstances in the present case dictate that interim relief should be granted and for the following reasons:

1. The premises were previously licenced for the selling of liquor. There is no allegation of a negative influence on the area or detriment to the public interest. The only new factor is the applicant. No reason has been advanced why the applicant is not a proper entity to be granted the licence. Fundamentally, one is here dealing with a pre-existing licence, even though, without the knowledge of the applicant was issued fraudulently.
2. The applicant applies for exactly the same type of licence which previously operated in respect of the premises.
3. There is no evidence that there were any complaints or objections lodged that the trading of liquor from this premises was not in the public interest or had a negative impact on the area or the public.
4. It is unlikely that the applicant’s current application will fail, due a licence being issued before.

Conclusion

[31] Having considered the undisputed facts, particularly with regard to the relevant provisions of the Liquor Act, read with the rules and notes as well as the legal principles, I am satisfied that the applicant has made out a case for the relief sought in the proposed draft order.

Costs

[32] As a general rule the awarding of the costs is always in the discretion of the court.¹¹ The ordinary rule is that such costs should follow the result, being that costs are awarded to a successful litigant.¹²

[33] I have concerns about the way in which the respondent has approached this case, but I do not consider my concerns to be so serious as to mulct the respondent in punitive costs. I shall award the applicant costs on a party and party scale.

Order

[34] Consequently, I make the following order;

1. That the non-compliance with the rules in respect of *dies*, service and form be condoned in terms of Rule 6(12) and that the matter be heard as an urgent application;
2. An order authorising the Applicant, Tabooz Glenanda (Pty) Ltd, to trade in liquor in its business to be known as Tabooz Glenanda at shop 9 Glenanda Village Shopping Centre, 14 Le Roux Avenue, Glenanda, Johannesburg, Gauteng, 2091, until the pending application in terms of section 23 of the Liquor Act, 2 of 2003, currently pending before the Respondent under reference number GLB7000016816, has been

¹¹ *Kruger Bros & Wasserman v Ruskin* 1918 AD 63 69; Also *Graham v Odendaal* 1972 2 SA 611 (A) at 616.

¹² *Levben Products (Pvt) Ltd v Alexander Films (SA) (Pty) Ltd* 1957 4 SA 225 (SR) 227.

finalised. Should the application be declined, the Applicant may continue trading until such a decision could have been processed on review, provided such review must be issued within one month from receipt of the written notice that the application has been declined;

3. An order directing the Respondent to consider and finalise the pending application of the Applicant, referred to in 2, by not later than 7 July 2023;
4. The respondent is ordered to pay the costs of this application.

**CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *Case Lines* and by release to SAFLII. The date and time for hand-down is deemed to be 16h00 on 26 June 2023.

DATE OF HEARING: 13 June 2023

DATE JUDGMENT DELIVERED: 26 June 2023

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