

REPUBLIC OF SOUTH AFRICA



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

Case No: 018041/2024

Reportable: No
Of interest to other Judges: No
Revised: No

SIGNATURE

Date:

In the matter between:

MOKWAPE HERMAN MASHILE

Applicant

and

GAUTENG LIQUOR BOARD

1ST Respondent

CHAIRPERSON, GAUTENG LIQUOR BOARD

2ND Respondent

MINISTER OF POLICE

3RD Respondent

JUDGEMENT

MOOKI J

- 1 The applicant conducts business as a shebeen operator. Members of the South African Police Service have, at least on two occasions, interfered with his operations, including confiscating liquor at his premises.
- 2 The applicant seeks to interdict any such future interference pending a review of the decision by the first respondent (“the Liquor Board”) concerning the validity of his permit to run a shebeen. He approached the court on an urgent basis.
- 3 The applicant’s case is as follows. He was issued a permit in 2005 to run a shebeen. His premises were robbed, and the original permit was taken during that robbery. He contacted officials at the Liquor Board, seeking confirmation that he was authorised to run a shebeen. One Mpumelelo Wauchope confirmed on 28 February 2013 that the applicant had a valid permit.
- 4 Members of the South African Police Service, including a Sgt Khungoane, inspected the applicant’s business in October 2023. The applicant presented a copy of the permit. He was informed that the permit was

suspicious because it referenced “Metsweding” region instead of “Tshwane” region. The police informed him that the validity of the permit would be investigated.

5 The police, led by Sgt Khungoane, raided his shebeen on 1 December 2023. He was told that the permit was invalid. The police confiscated his stock of liquor. The applicant was given a warning to appear in court on 7 December 2023 for contravening section 127 (1) (a) of the Gauteng Liquor Act.

6 The applicant enquired from the offices of the Liquor Board on 6 December 2023 as to why his permit was said to be invalid. One Mampuru, an official employed Liquor Board, confirmed to the applicant in writing that the permit was valid. The applicant then presented the letter to the police, demanding the return of the confiscated liquor. The police informed him that the letter was insufficient because the Liquor Board initially indicated that the permit was invalid.

7 The applicant received a further letter from Mapuru, who essentially recorded that the initial view about the permit being invalid was based on having examined only the electronic database. Mapuru had since instructed another official, Pilane, to conduct a manual search of the database. That search confirmed that the permit was valid.

8 Mapuru confirmed with the applicant’s attorney on 3 January 2024 that the permit was valid. The applicant’s attorney was making enquiries on investigations being conducted by a Brigadier Dladla. The applicant’s

attorneys wrote to the police on 11 January 24 demanding the return of the confiscated liquor.

- 9 The applicant restocked his shebeen and resumed trading, on the strength of confirmations that the permit was valid. The police again raided his premises on 19 January 2024. He was informed that one Mashala, a senior administrative officer in the employ of the Liquor Board had made an affidavit in terms of section 212 of the Criminal Procedure Act that the permit was invalid. Mashala also mentioned that the Liquor Board had no record of the permit.
- 10 The applicant had a further discussion with Mapuru. Mapuru informed the applicant that there are two databases, one of which is digital. The 2005 database was not digitised and was available manually. Mapuru advised the applicant that the applicant's permit was granted in 2005 and was not part of the database that was digitised. The applicant also attended at the offices of the Liquor Board and was shown that the Liquor Board has a record of his permit.
- 11 The applicant maintains that he was issued a permit having followed a lawful process and that the statement that his permit is invalid is tantamount to a revocation of his permit. The applicant contends that the revocation is unlawful because the Liquor Board did not follow the relevant legislation before that revocation.
- 12 The applicant's attorney wrote to the Liquor Board on 1 February 2024 demanding that the board check both the digital and manual databases of

the records. The Liquor Board was invited so disclose its findings both to the applicant and to the police. The board did not respond to the invitation.

13 The Liquor Board's primary opposition to the relief sought in this application is that the permit is invalid because of the possibility of a fraud perpetrated by the applicant and Mampuru. The Liquor Board says a criminal case of fraud and defeating the ends of justice was opened against Mapuru, and that the applicant's involvement was also being investigated.

14 The applicant made several appearances in court. The senior prosecutor declined to prosecute.

15 Mapuru, according to the Liquor Board, is not authorised to write statements regarding the validity or otherwise of a permit. The Liquor Board pointed out that only Mr Mpumelelo Wauchope and Mr Trend Sibuyi, both of whom are liquor inspectors, are authorised to sign official compliance letters. The Liquor Board denies that there are two databases pertaining to permits to conduct business of the shebeen.

16 The third respondent did not participate in the proceedings. The first and second respondents initially took the view that they would not oppose the relief sought by the applicant. They had filed no affidavits when the matter was called on 5 March 2024. They sought leave on that day to file opposing papers because new information had come to light on the previous Friday. That new information was said to have made the first and second respondents change their mind and to oppose the application. The court then set timelines for the exchange of further papers.

- 17 Information that is said to have come to light and which made the first and second respondents oppose the application had long been available. The opposing affidavit does not point to information that first came to light after the applicant launched his application.
- 18 It was further submitted on behalf of the applicant that the Liquor Board did not put up confirmatory affidavits by persons with direct knowledge of events pertaining to the permit. For example, there is no confirmatory affidavit by Mapuru, Wauchope, and Pilane. It was submitted on behalf of the first and second respondents that such confirmations were unnecessary because Paseka Matlhaku, the Director, Registration and Licensing, deposed to a confirmatory affidavit stating that Mapuru was wrong about the permit, whereas Mashala was correct that the permit was invalid. It was submitted that Matlhaku was the superior to each of Mapuru, Wauchope, and Pilane.
- 19 There was no evidence that Paseka Matlhaku had personal knowledge of the facts attributed to Mapuru, Wauchope, and Pilane. His being their superior has no bearing on the truthfulness or otherwise of facts pertaining to those officials.
- 20 The respondents say Wauchope is one of the only authorised officials to confirm the validity of a permit. Wauchope confirmed the validity of the applicant's permit in 2013. The first and second respondents have not explained why they did not put-up evidence by Wauchope concerning his 2013 letter; more so because Wauchope is authorised to confirm the validity of a permit.

- 21 It was submitted on behalf of the applicant that the only serious challenge to the applicant's case was the existence or otherwise of a *prima facie* right, because the first and second respondents were challenging the validity of the permit. The submission was well made.
- 22 The respondents suggest fraud on the part of the applicant and Mapuru. Fraud is not inferred lightly. A strong case must be made. The suggestion of fraud has not been substantiated. It bears pointing out that the applicant's attorneys wrote to the respondent on 1 February 2024 inviting them to conduct an enquiry and to disclose the outcome both to the applicant and to the South African Police Service. The invitation was made long before this application. The respondents did not take up the invitation.
- 23 The first and second respondents sought to impress on the Court that allowing the applicant to conduct business would amount to the court sanctioning reliance on a questionable permit. The first and second respondents have all the resources to have conducted an investigation at least since January 2024 regarding the validity of the permit. This was not done. They did not respond to the applicant's invitation for such an investigation. It would be unjust for the applicant to be denied continuing to operate a shebeen, more so on the face of confirmation by Wauchope that the applicant's permit is valid.
- 24 The court does not close the door on the first and second respondents from making further enquiries into the applicant's permit. The purpose of this application is for the court to determine the specific relief sought by the

applicant, namely an interdict pending a review as contemplated in Part B of the notice of motion.

25 The court is satisfied, on the case advanced for the applicant, that an interdict be granted in his favour. The application succeeds.

26 I make the following order:

26.1 The application is heard as a matter of urgency in terms of Rule 6(12) of the Uniform Rules of Court.

26.2 Members of the South African Police Service are prohibited from confiscating the applicant's liquor stock on account that shebeen permit SHB/4548 is invalid, pending finalisation of relief sought in part B of the notice of motion.

26.3 Members of the South African Police Service at the Soshanguve Police Station are ordered to return the applicant's liquor stock confiscated on 1 December 2023 and on 19 January 2024.

26.4 The first and second respondents are ordered to pay costs.

Omphemetse Mooki

Judge of the High Court

Heard: 8 March 2024

Decided: 11 March 2024

For the applicant: P Nonyane

Instructed by: Nonyane Inc.

For the first and second respondents: F J Prinsloo

Instructed by: The State Attorney, Pretoria