

SOUTH AFRICA / JUDGMENT

Mathule v Kuisis and Another; In Re: Kuisis and Another v Free State Gambling, Liquor and Tourism Authority and Others (A118/2018) [2020] ZAFSHC 114 (25 June 2020) [2020] ZAFSHC 114

COURT

Free State High Court, Bloemfontein

BEFORE

JP Daffue, A K Ramlal

CASE / FILE NUMBER

A118/2018

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: A118/2018

In

the matter between:

TSIETSI
MATHULE Applicant
and
BERNARD
PETER
KUISIS 1st
Respondent
ERROL
MARTIN
THOMAS 2nd
Respondent
(in
the application for leave to appeal)
In

Re: BERNARD
PETER
KUISIS 1st
Applicant
ERROL
MARTIN
THOMAS 2nd
Applicant
FREE
STATE GAMBLING, LIQUOR
AND 1st
Respondent
TOURISM
AUTHORITY
THE
CHAIRPERSON OF THE BOARD OF
THE 2nd
Respondent
FREE
STATE GAMBLING, LIQUOR AND
JOJO
DANIEL FOKOU
TCHINDA 3rd
Respondent
TSIETSI
MATHULE 4th
Respondent

CORAM: DAFFUE, Jet RAMLAL, AJ
HEARD
ON: 19 JUNE 2020

JUDGMENT

BY: DAFFUE, J

DELIVERED ON: 25 JUNE 2020

- [1] The applicant in this application for leave to appeal who was cited as 4th respondent in the main application is Mr Tsietsi Mathule. He drafted his own heads of argument and personally made oral submissions before us insofar as his erstwhile attorney withdrew as his legal representative.
- [2] The application for leave to appeal is opposed by the two respondents who were the applicants in the main application.
- [3] The parties shall be referred to as in the application for leave to appeal.

- [4] Our judgment was delivered on 26 March 2020, setting a deadline of 20 April 2020 for the filing of any application for leave to appeal. The applicant's application for leave to appeal was filed on 29 May 2020 and is thus some 6 weeks late. There is no formal application for condonation, but applicant asked for condonation in his heads of argument and during the hearing. He relied in particular on the state of disaster and lockdown that came into effect the day after the judgment was delivered. The present respondents opposed the application for condonation and it was submitted on their behalf that no proper reasons for the delay were advanced. We decided to hear argument on the merits as well and having considered the totality of the arguments, I am of the opinion that even in the absence of a formal application for condonation and reasons under oath, the reasons for delay should be accepted based on the unusual situation that existed in this country from 27 March 2020 onwards.
- [5] A stricter test for adjudicating applications for leave to appeal applies since the introduction of s 17(1)(a)(i) of the Superior Courts Act, 10 of 2013. The word "would" is indicative of a measure of certainty that another court will differ from the judgment appealed against. See: *Acting NDPP v Democratic Alliance* (19577/09) [2016] ZAGPPHC489 (24 JUNE 2016) at paragraph 25.
- [6] Unlike his attorney's submissions in the main application, applicant emphasised in his written and oral arguments that respondents

allegedly relied upon a fabricated fixture in an attempt to mislead us and that they distorted the records in an attempt to avoid

liability. Although these allegations were made in the answering affidavit to the main application, Mr Litheko who appeared for the applicant in the main application did not seriously raise the issue of fabrication or distortion of records or any fraudulent behaviour. The alleged fraudulent document is the fixture attached as annexure "FAT" to the founding affidavit in the main application. It is evident from the document and explained in the founding affidavit that the particular fixture was compiled on 11 February 2015. It is also common cause that fixtures change on a daily basis. The two bookmakers, the respondents in this application, illustrated that this specific fixture was attached merely to provide a depiction of the general layout of a typical fixture. In my view no fabrication, distortion or fraud has been shown and there is no reasonable possibility that another court will come to a different conclusion. It is in any event evident from the record that applicant attached a document as annexure "TMA" to his answering affidavit on which he allegedly relied in order to place his bets, but when Rule 35(12) procedure was utilised, he produced a totally different fixture than the one relied upon in responding to the application. In reply, the present respondents stated that the document attached to the answering affidavit was inauthentic and unreliable.

- [7] It is deemed unnecessary to consider the further grounds of appeal and arguments pertaining to the betting tickets. No new issues that need to be considered emerged. It is unnecessary to repeat any of the findings in our judgment and I merely refer to paragraphs 13 to 28 thereof.
- [8] I align myself with the submissions in paragraphs 12 to 29 of the respondents' heads of argument and the oral submissions of counsel. There are no reasonable prospects of success on appeal.
- [9] Consequently the following order is made:
- The application for leave to appeal is dismissed with costs.

JP DAFFUE, J

I concur

A K RAMLAL, AJ

On behalf of Applicant: Mr T MATHULE in his personal capacity

(4th Respondent in the main application)

On behalf of Respondents: Advv I Goodman and Adv Mitchell

(Applicants in the main application)

Instructed by: EDWARD NATHAN SONNENBERGS

c/o MeINTYRE & VAN DER POST

BLOEMFONTEIN

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Prepared on 12 October 2026 · Esheria