

SOUTH AFRICA / JUDGMENT

Rapholo v Gauteng Liquor Board (2025/080377) [2025] ZAGPPHC 678 (3 July 2025)

[2025] ZAGPPHC 678

COURT

North Gauteng High Court, Pretoria

BEFORE

Nthambeleni

CASE / FILE NUMBER

2025/080377

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IN

THE HIGH COURT OF SOUTH AFRICA

[GAUTENG DIVISION,
PRETORIA]

CASE

NO: 2025-080377

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

In

the matter between: MATETSHA
JOHANNES RAPHOLO
APPLICANT
TRADING
AS JOE'S PUB AND RESTAURANT
And
THE
GAUTENG LIQUOR BOARD
FIRST RESPONDENT
THE
GAUTENG PROVINCIAL COMMISSIONER OF SECOND
RESPONDENT
POLICE

JUDGMENT

CORAM NTHAMBELENI, AJ

HEARD: 17 June 2025

DELIVERED: 03 July 2025

INTRODUCTION

- [1] This is an urgent review application launched by the applicant seeking relief that is divided into part A and part B. I am ceased with part A of this application in Part A, the applicant seeks an order authorizing him to continue trading in liquor as if his restaurant liquor license was not suspended or revoked by the first respondent, pending the finalisation of the review application in part B.
- [2] The first respondent belatedly served a notice of intention to oppose on 13 June 2025.[1] It is common cause that in matters of this nature, time frames are determined unilaterally by the applicant due to the degree of urgency also determined by the applicant.
- [3] The first respondent sought condonation for the filing of the answering affidavit and referred this court to the authority in *Sorec Properties Hillbrow (Pty) Ltd and Another v Van Rooyen*[2] it was further submitted by the first respondent's Counsel that this Court should not penalise the First Respondent for making a genuine attempt to furnish relevant information to the Court, under circumstances where it was unable to comply strictly with the truncated time periods in the applicant's notice of motion.
- [4] The answer to the condonation sought will be granted in the order of this Court.The second respondent served a notice of intention to abide.[3]

MERITS AND COMMON CAUSE FACTS

- [5] The respondent was the holder of a restaurant liquor license issued on 16 November 2022, where he operated a family-owned establishment known as Joe's pub and restaurant which includes a car wash and kitchen.[4]
- [6] There were complaints lodged against the business of the applicant, which pertains to compliance with municipal by-laws, to which the respondent holds no jurisdiction to prosecute.
- [7] On several occasions members of the respondent attended the premises of the applicant's business. During these visits, the officials of the respondent allegedly trapped the applicant by buying liquor and taking it for off-consumption use. This was allegedly stopped by the applicant, before the officials left the licenced premises. It is further alleged that the said officials did not properly identify themselves and were wearing informal clothing.
- [8] The applicant was served with a notice in terms of section 10 of the Gauteng Liquor Act, 2 of 2003 ("the Act"), to appear in a section 106 inquiry scheduled for 12 December 2024.[5] On 12 December 2024, the applicant was sick and instructed a representative Advocate Mabasa to appear on his behalf and requested

a postponement. Together with the request for postponement, the applicant's representative provided a medical certificate.[6]

- [9] Despite the postponement being granted, the respondent suspended the applicant's liquor license with immediate effect.[7] It was submitted that no evidence of any contravention of the applicant's liquor license, was presented before the First

Respondent and was tested on 12 December 2024.

- [10] The applicant immediately launched an urgent application to the Johannesburg Division of the High Court and on 18 December 2024 the court granted an order authorising the applicant to continue trading in liquor pending the finalization of the section 106 inquiry and any review of the outcome of the section 106 inquiry.[8]
- [11] The prayers sought before the Court were as stated below:

"1. Dispensing with the time periods set out in the Rules for the Conduct of Proceedings in this Honourable Court and allowing this application to be heard as one of urgency in terms of Rule 6(12) (a);

2. Declaring that the conduct of the First Respondent in suspending the Applicant's liquor licence under Licence No. GLB6000005615, issued to the Applicant in terms of section 98 of the Gauteng Liquor Act 2 of 2003 ("the Liquor Act"), is unlawful and invalid;
3. Authorising the Applicant to trade in liquor at his business situated at Erf 1[...], 3[...] P[...]a Drive, Extension 2, Norkem Park, Kempton Park, Gauteng Province, pending the finalisation of the pending inquiry in terms of section 106 of the Liquor Act;

5. Directing the Third and Fourth Respondents to immediately return all liquor stock and items confiscated from the Applicant's business premises on Friday, 19 December 2024, upon presentation of this order;
6. Interdicting the Respondents from interfering with the normal business operations of the Applicant and from entering or confiscating any liquor from the Applicant's business premises situated at Erf 1[...], 3[...] P[...]la Drive, Extension 2, Norkem Park, Kempton Park, Gauteng Province.”[9]

[12] The Court order was served on all the interested parties in the proceedings. Although service was effected, and the court order authorised the applicant to continue trading, the officials of the South African Police Services (SAPS) advised that the court order was not valid for unknown reasons, and the applicant was advised by his erstwhile attorneys of record, to cease all trading in liquor until such time that the matter has been resolved.

[13] The applicant's erstwhile attorneys of record advised that the only way for the applicant to start trading in liquor again was to again approach the Court for urgent relief. The applicant did not have the financial capacity to do so.[10]

[14] At the section 106 inquiry held on 6 March 2025, the applicant's liquor licence has been revoked.[11]

[15] The revocation letter reads as follows:

“We refer to the above matter as well as the investigation report received from the Gauteng Liquor Board's Law Enforcement and Compliance Directorate, and further contravention reports received from the South African Police Services (SAPS) and Ekurhuleni Metropolitan Police Department (EMPD), respectively.

It is against this background that the Board held a hearing on 6 March 2025 and resolved with immediate effect to revoke the liquor license issued to Mr. Matedza Johannes Rapholo, trading as Joe's Pub Restaurant (GLB6000008137), situated at No. 301, Pongola Drive, Norkem Park, Extension 2, Kempton Park, for failure to comply with and contravention of the following sections of the Gauteng Liquor Act, No. 2 of 2003:

- a) Section 29(1): stipulates that the license grants the licensee such privileges and rights, as well as the responsibilities as may be conferred in terms of the Act.
- b) Section 41(5): compels all licensees to comply with all laws of the land, including the municipal by-laws and regulations, smoking and health regulations.
- c) Section 51(1): stipulates that the holder of an on-consumption license shall ensure that liquor sold or supplied is consumed at the premises.
- d) Section 132(a): makes it an offence to fail to comply with a condition; and

- e) Section 132(e): which makes it an offence to fail or refuse to comply with a notice issued in terms of the Act.”[12]
- [16] It was submitted before this Court that reasons provided do not constitute reasons good in law to revoke the applicant’s liquor licence. Thus, the decision to revoke the applicant’s liquor licence is reviewable on numerous grounds.[13]
- [17] Only after investigations into what the current status of the matter is, did it come to the applicant’s knowledge that the court order of 18 December 2024 had been reconsidered. It is the applicant submission that it only came to the applicant’s knowledge during April 2025 that the court order obtained on 18 December 2025 was allegedly reconsidered. No primary evidence to this effect could be provided to the applicant or his legal representatives.
- [18] Further that numerous attempts were made by the applicant’s legal representatives to obtain clarity as to the purported reconsideration of the order granted on 18 December 2024.
- [19] It was submitted that after numerous attempts and only on 5 May 2025, was the applicant’s legal representatives provided access to caselines profile of the matter, but no court orders were uploaded. No evidence of the alleged reconsideration could be found.
- [20] The applicant’s attorney or record sent an e-mail to the Judge’s registrar who allegedly heard the matter on 19 December
2025. The Judge’s registrar replied to the request on 20 May 2025 and stated that the 18 December 2025 court order has in fact been recalled, and on 21 May 2025, she provided a summary of what transpired.[14]
- [21] The court order of 19 December 2025 reads as follows:
1. “The matter is struck off from the roll;
 2. No order as to costs.”[15]
- [22] No reference is made to the order granted on 18 December 2025. Despite the foregoing, the application before me was launched in attempt to obtain an order to trade in liquor pending the review of the decisions of the respondent.
- THE URGENT REVIEW APPLICATION
- [23] In an urgent review application such as this, the rules require the absence of substantial redress[16]. Once such prejudice is established, other factors to be considered include, but are not limited to: whether the respondents can

adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondents and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights[17]. Each case should be determined based on its own merits.

[24] In cases where an interdictory relief sought is interim in effect, form and substance the applicant must establish the following to succeed, the requirements were set out in the leading authority of *Setlogelo v Setlogelo*[18] as set out by Innes J also adopted by the Court in *Webster v Mitchell*[19]:

- (a) a prima facie right, even though open to some doubt;
- (b) a well-grounded apprehension of irreparable harm if interim relief is not granted;
- (c) a balance of convenience in their favour; and
- (d) the lack of another remedy is adequate in the circumstance.

[25] All the requirements set out above, should exist in order to be granted interim interdictory relief. The manner in which a Court should evaluate whether a prima facie right has been established was set out in *Simon NO v Air Operation of Europe ABE and Others*[20], as follows:

“Insofar as the appellant also sought an interim interdict pendente lite, it was incumbent upon him to establish, as one of the requirements for the relief sought; a prima facie right, even though open to some doubt. The accepted test for a prima facie right in the context of an interim interdict is to take the facts averred by the applicant together with such facts set out by the respondent that are not or cannot be disputed and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered and, if serious doubt is thrown upon the case of the applicant, he cannot succeed.”

[26] For the applicant it was contended that the applicant has the right to trade while his review is being consider by this Court, and thus his right has to be protected against the conduct of the respondents.

[27] It is trite law that the business such as the one operated by the applicant should operate within the confines of the law and as such no business operation, should operate above the letter of the law. Thus, the law should be complied with chapter and verse.

[28] A reasonable apprehension of injury is one which a reasonable man might entertain when faced with certain facts. The test is objective.[21] It was argued by the applicant Counsel that the applicants stand to suffer irreparable harm if this application is not granted in their favour. Counsel for the applicant even went beyond the call of duty by making submission from the bar without instructions for either the instructing attorneys that if the interim order is not granted part B review will be withdrawn.

- [29] The essence of the balance of convenience is to assess which of the parties will be least seriously inconvenienced by being compelled to endure what may prove to be a temporary injustice until the answer can be found at the end of the review proceedings already launched before this Court.
- [30] The balance of convenience is inextricably bound up with the discretion of the Court. I am of the view that there is a greater possible prejudice to the respondents than that of the applicant if an interim interdict is granted.
- [31] An interim interdict of this nature if granted will open a floodgate for establishments such as the one similar to the applicants while the merits are not properly ventilated in line with the principles of audi alteram partem rule to determine issues of compliance with the law as prescribed in terms of the Liquor Act as administered by the first respondents.
- [32] “It is also clear that the grant of an interdict is a discretionary remedy. One of the main factors which the Court is enjoined to take into account in deciding whether to exercise its jurisdiction is whether there is any other remedy open to the applicant which can adequately protect him in his rights.”[22]
- [33] The applicants' contention that he has no alternative remedy is without merit as the applicants was always aware, since 18 December 2024 that he could bring a review application of this nature. There is a long period that is unaccounted for even on the applicant's own version that is indicative that this is a self-created urgency by the applicant.

ANALYSIS

OF TIMES FRAMES FOR COMPLIANCE WITH URGENCY

- [34] It is trite law that an applicant cannot create its own urgency by simply waiting until the normal rules can no longer be applied.[23] An applicant in such a case must as soon as possible launch the application and cogent reasons must be advanced to the Court for any delay in bringing the application.[24]
- [35] The applicant attributes the purported urgency of his case to the fact that the operation of his business is not sustainable and profitable due to the fact that his liquor license was suspended by the First Respondent on 12 December 2024 and/or that his license was revoked on 26 March 2025. This allegation is factually incorrect as the license was revoked at the inquiry held on 06 March 2025. The applicant was present and/or was represented at the inquiry.
- [36] The purported urgency has since fallen away in the hands of the applicant and this is clearly set out on the chronology below:

36.1. The first urgent application was struck off the roll on 19 December 2024. A full period from 19 December 2024 to 06 March 2025 is unaccounted for or the explanations therein are wholly inadequate. In fact, in his own admission, the applicant knew from December 2024 that he should have brought an urgent application soon thereafter, and decided not to bring an urgent application at that time because of “his financial situation” (para 5.26 of the Founding Affidavit).

36.2. On 06 March 2025, an inquiry that culminated in a decision to revoke the applicant’s liquor license was convened. The applicant was present at this hearing and/or was represented. On the same date, the applicant’s license was finally revoked. Had the outcome of the decision made on this date been of cardinal importance, one would have expected the applicant to approach the Court and seek an order that the inquiry herein be interdicted for reasons stated in the founding affidavit herein. The Applicant failed to do that.

36.3. On 02 April 2025, the applicant consulted for the first time with the current attorneys of record. These attorneys requested all the necessary information from the applicant as they were not privy to any of the official documentation presented to the first respondent. The period between 02 April 2025 and 21 May 2025 is not fully accounted for. It is important to mention that from 02 April 2025, the both the applicant and his attorneys knew of the decision dated that was taken on 06 March 2025 revoking his license.

36.4. On 20 May 2025, it simply took the applicant’s attorneys to write to the secretary of Judge Makamu inquiring about the existence of the 19 December 2024 order striking the first urgent application off the roll. The secretary responded on the same day confirming the existence of this order. Bafflingly, it took the applicant’s attorneys a period of nearly two months, namely from 02 April 2025 and 20 May 2025 to simply inquire from the judges secretary about the 19 December 2024 order.

[37] Notshe AJ in *East Rock Trading 7 (Pty) and Another v Eagle Valley Granite (Pty) Ltd and Others*[25] at para [9] held that where there is a delay in instituting the proceedings, an applicant has to explain the reasons for the delay

and why despite the delay he cannot be afforded substantial redress at a hearing in due course.

[38] This Court is not to be used as a fire extinguisher for poorly managed time frames. Courts are constitutional forums for fairness and justice to both parties and the use of urgency under Rule 6(12) ought not be abused.

COMPLIANCE WITH THE RULES, PRACTICE DIRECTIVES AND CONDONATION

[39] The present application, brought on short notice, is based on self-created urgency to an alarming degree. There is no justification why this application should be brought on truncated time frames that made it nearly impossible for the respondents to file their papers.

[40] It is trite law that submissions from the bar are inadmissible evidence before court and carry no probative value under the rules of the law of evidence, that evidence should be contained through properly sworn affidavits and the respondents should be given an opportunity to answer. On the applicant's own papers there was a pending case against the applicant in the Magistrate Court for illegally trading with liquor while the licence was suspended. These allegations are contained in the number of the applicant's

submissions in the founding affidavit that the police on several occasions found revellers consuming "their own alcoholic

beverages" on the applicant's premises allegedly purchased elsewhere".

[41] Counsel for the applicant made submission from the bar that the case is withdrawn and such submission is inadmissible in these strict application proceedings where each and every allegation should be tested as no viva voce evidence is led before Court. Therefore, such allegation from the bar that the matter is struck out for non-compliance with evidentiary rules of law of evidence.

[42] The applicant was not justified in approaching the Court with such extreme urgency. The urgency deemed by the applicant was so extreme that the respondents, organs of state, were given only five (5) days to consult, appoint legal representatives, and prepare a defence.

[43] Therefore, and based on the shorten strict time frames prescribed by the applicants, the condonation that is sought for the late filing of the answering papers by the respondents is granted.

ORDER

[44]

1. The application is struck from the roll due to lack of urgency;
2. The applicants are ordered to pay Costs in Scale C.

RR NTHAMBELENI

ACTING JUDGE, _

GAUTENG DIVISION, PRETORIA

EEPRESENTATION AND COUNSEL FOR THE PARTIES

FOR THE APPLICANTS: ADV ANMARLI VAN DER MERWE

INSTRUCTED BY: Brandon-Swanepoel Attorneys

REF: NJ009

FOR THE RESPONDENTS: ADV RUDZANI RAMUHALA

INSTRUCTED BY: STATE ATTORNEYS, PRETORIA

ENQ: MS MMB MASIA

- [1] Notice of intention to oppose, CL 022-1.
- [2] 1981 (3) SA 650 (W) at para 657G-H)
- [3] Notice of intention to abide, CL 023-1.
- [4] Founding affidavit, paragraph 5.4, CL 002-5.
- [5] FA, paragraph 5.16, CL 002-7.
- [6] FA, paragraph 5.16, CL 002-7.
- [7] FA, paragraph 5.18, CL 002-8, Annexure “E”, CL 007-2.
- [8] FA, paragraph 5.21, CL 002-8.
- [9] FA, paragraph 5.21, CL 002-8, Annexure F, CL 008-2.
- [10] FA, paragraph 5.26, CL 002-10.
- [11] FA, paragraph 5.31, CL 002-10; Annexure “G”, CL 009-2.
- [12] FA, paragraph 5.33, CL 002-11; Annexure “G”, CL 009-2.
- [13] FA, paragraph 5.34, CL 002-12.
- [14] FA, paragraph 5.58, CL 002-18.
- [15] FA, paragraph 5.59, CL 002-19.
- [16] East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd [2011] ZAGPJHC 196 (23 September 2011) at par 6-7.
- [17] Mogalakwena Local Municipality v Provincial Executive Council, Limpopo 2016
- (4) SA 99 (GP) at par 64.
- [18] 1941 AD 221.
- [19] See 1948 (1) 1186 (W).
- [20]
- [1998] ZASCA 79; 1999
- (1) SA 217 (SCA) at 228 F-1
- [21] See National Council of Societies for the Prevention of Cruelty to Animals v Openshaw 2008
- (5) SA 339 (SCA).
- [22] See Johannesburg Consolidated Investment Co Ltd v Mitchmor Investments (Pty) Ltd and Another 1971 (2) SA (WLD) 404 E-F.

[23] See *Dlala v Ethekwini Municipality* (unreported, KDZ case no 2799/2023 dated 4 April) at para 37.

[24] See *ENX Group Limited v Spilkin* (unreported, ECG case no 2296/2022 dated 8 November 2022) at paragraph 15 and the authorities there referred to; *Pacinamix (Pty) Ltd v Patina (Pty) Ltd* (unreported, GJ case no 2022/045786 dated 25 November 2022) at paragraphs [9]–[10]; *Janse van Rensburg v WAD Holdings (Pty) Ltd* (unreported, GP case no 29458/2022 dated 5 December 2022) at paragraphs [40]–[43].

[25]

(11/33767) [2011] ZAGPJHC 16 (23 September 2011) para [6].

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