

SOUTH AFRICA / JUDGMENT

Robispec (Pty) Ltd and Others North West Province Provincial Liquor Board and Others (M363/2016) [2017] ZANWHC 13 (26 January 2017) [2017] ZANWHC 13

COURT

North West High Court, Mafikeng

BEFORE

T J Djaje

CASE / FILE NUMBER

M363/2016

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IN THE NORTH WEST HIGH COURT, MAHIKENG

CASENO: M363/2016

In the matter between:

ROBISPEC (PTY) LTD 1st APPLICANT

EVANGELOS VRYSOULIS AND EYDOXIA

2nd APPLICANT

VRYSOULIS

LUHANE TRADING (PTY) LTD 3rd APPLICANT

And

THE NORTH WEST PROVINCE 1st RESPONDENT

PROVINCIAL LIQUOR BOARD

THE PROVINCIAL COMMISSIONER OF 2nd REPONDENT

POLICE FOR THE NORTH WEST PROVINCE

THE MAGISTRATE FOR BRITS 3rd RESPONDENT

THE MAGISTRATE FOR VRYBURG 4th REPONDENT

REASONS

FOR JUDGMENT

DJAJE AJ

[1] This matter appeared before me on 8 December 2016 and after submissions were made I granted the following order:

“1. The first respondent pays the costs of the first applicant’s application.

2. The application for the second and the third applicants be and is hereby dismissed with costs.”

[2] On 17 January 2017 the Applicant filed an application requesting reasons for the order of 8 December 2016. I now furnish the reasons.

[3] This was an application by the Applicants for the first Respondent to consider and decide pending applications for transfer of liquor licenses.

First Applicant

[4] The first Applicant is a private company trading as Pick ‘n Pay Harties. The relief sought was for an order directing the first Respondent to consider and decide the pending application of the first Applicant for transfer of the Grocer’s Wine Liquor Licence to the business known as Pick ‘n Pay Harties. It was the first Applicant’s case that an application for the transfer of the licence was initiated and processed in terms of section 113 of Liquor Act 27 of 1989 (“ the Act”). The first Applicant submitted that the application was dispatched by courier and delivered to the offices of the third Respondent on 20 January 2015 for lodgement. It is worth noting that this court application before me was served on the first Respondent on 1 August 2016.

[5] In the answering affidavit the first Respondent stated that the First Applicants application for transfer was received at their offices on 11 March 2015 and only considered and granted during the sitting of 16 and 17 August 2016. As a result the relief sought by the first Applicant falls off and the only consideration is whether the first Respondent should be liable for the costs of this court application.

[6] It was also conceded during argument by the first Respondent that there was a delay in attending to the first Applicant’s

application due to the fact that the designated officer’s report was only received by the first Respondent on 2 August 2016. The first Respondent has not been able to furnish any explanation why it waited 17 months for a report from the designated officer. It is also inexplicable why the said report was only served on the first Respondent a day after this court application was served on the first Respondent.

- [7] The general rule is that costs follow the event. That is, the successful party should be awarded his or her costs. See: *Pelser v Levy* 1905 TS 466 at 469. The first Respondent's conduct in dealing with the first Applicant's application was reckless and caused the first Applicant to approach this court in order to get assistance. It is for that reason that the first Respondent cannot escape the punishment of a cost order in favour of the first Applicant.

Second and third Applicant

- [7] The relief sought by the second Applicant was for an order directing the first Respondent to consider and decide the pending application of the second Applicant for the transfer of the liquor store licence of the business known as Land Drankwinkel situated in Vryburg into its name. It is the second Applicant's case that the said application was lodged by way of courier with the fourth Respondent on 5 October 2015. The second Applicant attached a copy of a courier receipt indicating that 'documents' were delivered at the Magistrate's offices in Vryburg and received by Masego on 27 February 2015. According to the second Applicant both the second and fourth Respondent alleged that they never received the application by the second Applicant.
- [8] The third Applicant as well applied for the transfer of a liquor store licence into its name in respect of a business known as M&E Drankwinkel also situated in Vryburg. According to the third Applicant the application was lodged with the fourth Respondent by courier on 5 October 2015 and have attached a courier receipt indicating that the 'documents' were delivered at the Magistrate's office in Vryburg and received by Marietjie. The third Applicant also stated that the second and fourth Respondent alleged that they never received the application by the third Respondent.
- [9] In response the first Respondent submitted that it is not in a position to consider the applications by the second and third

Applicants if they have not been lodged with the fourth Respondent.

- [10] It was argued by the second and third Applicants that the principle of *maxim omni praesemuntur rite esse acta* (all official acts are presumed to have been duly performed until the contrary is proved) is applicable in this matter. The reason for this submission is that documents lodged with the Fourth Respondent are presumed to have been dealt with by the First Respondent.
- [11] In contention the first Respondent argued that the second and third Applicants have not detailed any attempts to verify that the applications were indeed received by the second and fourth Respondent. Further that the second and third Applicants have not provided any detail that their applications were received by the secretary of the first Respondent as contemplated in Regulation 78 of the Act.
- [12] Section 113 of the Liquor Act provides that:

“The holder of a licence (excluding a temporary liquor licence and occasional licence) may at any time make application for the transfer thereof to another person (hereinafter called the prospective holder)”.

[13] Regulation 73 of the Liquor Act provides that:

“An application for the transfer of a licence (excluding a temporary liquor licence and occasional licence) shall be lodged with the magistrate”.

[14] Regulations 75 -78 of the Liquor Act states as follows:

“75. Procedure upon receipt of application

The magistrate with whom an application has been lodged, shall forthwith forward the copy thereof to a designated police officer for his report in terms of section 140(a).

76. Filing of police report

Not later than fourteen days after the application was lodged with the magistrate, the designated police officer shall lodge his written report in terms of section 140(a) with him and shall, after completion thereof, provide a copy to the applicants upon request.

77. Applicants reply

- (1) Not later than seven days after the police report was lodged with the magistrate in terms of regulation 76, the applicant who is the holder of the licence and the applicant who is the prospective holder may lodge their written reply thereto with him and shall certify thereon or in an annexure that a copy has been forwarded to the designated police officer.
- (2) The reply refer to in sub regulation (1) shall clearly identify the application concerned.

78. Forwarding of documents to secretary

On the day following the day contemplated in regulation 77(1) the magistrate shall forward to the secretary the original application and any document lodged in terms of regulation 76 or 77(1): provide that, upon request of the applicants, he shall forthwith forward to the secretary the original application and the document lodged in terms regulation 76”.

[15] There is no dispute that the second and third Applicants made applications for transfer of licences. It remains the responsibility

of the Applicants to ensure that the documents submitted to the magistrate have been received and attended to especially in this

matter as the documents were not hand delivered to the magistrate personally but couriered and received by a person whose rank is unknown. In terms of regulation 77 the Applicants may submit a written reply once the designated officer has furnished his report.

In terms of the regulations the Applicants' responsibilities do not end once the application has been lodged. There is no evidence that the Applicants in this matter made a follow up with the office of the magistrate as to whether the applications were received and attended to.

[16] In terms of regulation 78 the application is forwarded to the first Respondent by the magistrate. Once the magistrate alleges not to have received the application then there is no way that the first Respondent could know about it. In this matter it is the Applicants themselves who submitted that on enquiry, the second and fourth Respondents allege that they do not know anything about their transfer applications. In the absence of any evidence by the Applicants that the documents were received by the fourth Respondent,

it is difficult to conclude that the first Respondent did receive the documents.

[17] I am in agreement with the argument by the first Respondent that to expect it to trace the documents lodged with the fourth Respondent will be an unnecessary administrative burden. The fourth Respondent in terms of the regulation has the responsibility to forward the documents to the first Respondent and not that the first Respondent should enquire from the fourth Respondent if any documents have been lodged. The principle of *maxim omni praesemuntur rite esse acta* is therefore not applicable in this case as there is no proof that any of the Respondents received the section 113 applications by the second and third Applicants. It is therefore my view that the second and third Applicants are not entitled to the relief sought.

[18] It was for the above reasons that I granted the order in paragraph [1].

T J DJAJE

ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING

: 08 DECEMBER 2016

DATE OF JUDGMENT

: 26 JANUARY 2017

COUNSEL FOR THE APPLICANTS : ADV D. SMIT

COUNSEL FOR THE REPONDENTS : ADV M. MOAGI

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