

SOUTH AFRICA / JUDGMENT

Roomes Menlyn Maine (Pty) Ltd & Others v Gauteng Provincial Liquor Board & Another (77750/2016) [2018] ZAGPPHC 791 (21 September 2018)

[2018] ZAGPPHC 791

COURT

North Gauteng High Court, Pretoria

BEFORE

Mosopa

CASE / FILE NUMBER

77750/2016

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

CASE NO: 77750/2016

In the matter between

ROOMES MENLYN MAINE (PTY) LTD & OTHERS

APPLICANT

and

THE GAUTENG PROVINCIAL

LIQUOR BOARD & ANOTHER

RESPONDENT

JUDGMENT

MOSOPA AJ

[1] This matter came before my brother Diedericks AJ on the 11 October 2016 by way of an urgent application. On the 11 October 2016 the matter was stood down to 12 October 2016 and it is on that day that the parties settled the matter in the following terms;

1.1 Seven draft orders were made an Order of Court authorising the First to the Seventh Applicant to trade liquor in their respective businesses until their application for a restaurant liquor licence lodged with the First Respondent has been finalised;

1.2 Cost of the urgent application was reserved.

[2] From the order made on the 12 October 2016 it is not clear what the parties intended doing with the remainder of the prayers in the urgent application.

[3] The matter came again before my brother Raulinga J on the 6 August 2018 and was removed from the roll with no order as to costs. The matter has since the 12 October 2016 not enrolled for hearing relating to the

outstanding prayers in the urgent application.

2. ISSUES FOR

DETERMINATION

2.1 Costs of the urgent application; and

2.2 Whether or not the main application is still pending.

APPLICABLE PRINCIPLE PERTAINING TO COSTS

3. The general rule is that costs follow the event, that is the successful party should be awarded his or her costs. This rule should be departed from only where there are good grounds for doing so. The general principle regarding the award of costs is well settled: it is entirely a matter for the discretion of the Court which is to be exercised judicially upon a consideration of the facts of each case and in essence it is a matter of fairness to both sides. (see Law of Costs, A.C Cilliers at pages 2-14 to 2- 15).

[4] It would appear, however, that there must be substantial success before the party achieving such success will be regarded as "successful" for the purposes of an award of costs in his or her favour. In *Fleming v Johnson & Richardson* 1903 TS 319 325 Innes CJ said; "It is a sound rule that where a plaintiff is compelled to come to Court, and recovers a substantial sum which he would not have recovered had he not come to Court, then he should be awarded his costs."

[5] Where a plaintiff succeeded, or partially succeeded, on all the major issues raised, he or she was held entitled to all costs in spite of the fact that he or she had failed on some of the minor issues raised.

[6] In *Stiff v Q Data Distribution (Pty) Ltd* 2003 (2) SA 336 at 343 par A-D Mthiyane JA stated; "It has been authoritatively stated in this Court that; "... costs are awarded to a successful party in order to indemnify him for the expense to which he has been put through having been unjustly compelled either to initiate or to defend litigation as the case may be. Owing to the necessary operation of taxation, such an award is seldom a complete indemnity compelled either to initiate or to defend litigation."n as the case may be. Owing to the necessary operation of taxation, such an award is seldom a complete indemnity, but that does not affect the principle on which it is based... Nor has it been the practice to deny full costs to a party who has achieved substantial success. In *Golding Torch Printing & Publishing Co (Pty) Ltd and Others* 1948 (3) SA 1069 (C) at 1092 a plaintiff who had succeeded, or partially succeeded on all the major issues raised but had on some minor issues, was held to be entitled to all his costs..." (see *Golding v Torch Printing and Publishing Co (Pty) Ltd and Others* 1948 (3) SA 1067 (C); *Kate v MEC for the Department of Welfare, Eastern Cape* 2005

(1) SA 141 (SE))

DISCUSSION

[7] Ms Pretorius on behalf of the Applicant contended that the Applicant is entitled to the costs of the urgent application because immediately after the interim order was granted the mandamus fell off. There can be no way that the matter can be enrolled again for the determination of mandamus. The order was granted pending finalisation of the application lodged with the liquor board and not pending finalisation of the main

application.

[8] Mr Mathapuna on behalf of the Respondent contended that the interim orders were granted pending the finalisation of substantive application. Further that prayers 2 and 4 of the urgent application relating to mandamus and review application in the event the Applicant are not successful with their applications to the liquor board had not been finalised and there is no indication from the Applicants whether or not are they abandoning such prayers. There are two issues to determine, firstly, whether the Applicants have succeeded and secondly, whether they have received the relief they sought.

[9] Ms Pretorius contended that for the fact that the Applicants are currently trading they have partially succeeded because that is what they actually wanted. The orders made an Order of Court are specific in that they provide that the Applicants are granted an interim order to trade pending their application to the liquor board. The order does not read pending the finalisation of the final determination of the matter.

- [10] Now the question arises as to what will happen in the event the Applicants are not successful with their applications to the liquor board. Prayer 4 of the Urgent Application caters for such situation, as the Applicants can take the Respondents on review for their refusal to approve the liquor licences of the Applicants. Most importantly as the Applicants will not be trading in liquor business, then it means prayer 2 of the urgent application will then become relevant. This can only be obtained if the urgent application is placed on the roll again.
- [11] Immediately when such application of the liquor licence fails, then it means that the interim interdict will also lapse. Then it will mean that the Applicant must then re-enrol the matter again in pursuance of the outstanding prayers which were not dealt with at the time when the parties entered into a settlement agreement.
- [12] I fully agree with Ms Pretorius that when the parties settled the matter, the Applicant actually obtained the relief they were seeking but that came in a form of an interim relief pending the application of liquor licences with the Respondent.
- [13] Ms Pretorius in her submission raised an important point that if the Respondent's wait for another ten years without approving liquor licences of the Applicants, it then means that the Applicants will proceed to trade with no interruption. However, I do not agree with Ms Pretorius contention that the granting of the interim relief had an impact in the mandamus in the sense that it fell off the way and there is no way that the mandamus can be enrolled. The future of the interim relief granted to the Applicants hangs on the outcome of the applications made by the Applicants to the Respondent for liquor licences. If the Applicants become successful in their applications then it is the end of the matter.

But the problem will arise if the applications are rejected.

- [14] The Applicants obtained the interim interdict in 2016 and since that time they have not indicated what is the status of such application. I note that a period of approximately 23 months has since lapsed since the Applicants obtained such relief. However it will be presumptions at this stage to pronounce whether the applications will be successful or not. In any event the matter is not before me but before the Liquor Board.
- [15] As already indicated that costs follow the event but there are instances where a successful litigant cannot be allowed costs. I am of the view that it will be reasonable and fair in casu if each party can be ordered to bear its own costs.

ORDER

[16] Having regard to the above, I make the following order;

- (1) The Applicants' application is dismissed.
- (2) Each party to pay his or its own costs.

M.J MOSOPA AJ

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For Applicant : Adv L.A. Pretorius

Instructed by : Marius Blom Incorporated

For the Respondent : Adv M. Mathaphuna

Instructed by : State Attorney

Date of hearing : 10 September 2018

Date of Judgment : 21/09/2018

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2018/791.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/roomes-menlyn-maine-pty-ltd-others-v-gauteng-unknown-topic-agpphc-2018>

Prepared on 12 October 2026 · Esheria