

SOUTH AFRICA / JUDGMENT

Tikbox League (Pty) Ltd and Others v Du Toit and Others (B1342/2023) [2023] ZAGPPHC 2025; 2024 (3) SA 198 (GP) (18 December 2023)

[2023] ZAGPPHC 2025

COURT

North Gauteng High Court, Pretoria

BEFORE

Le Grange

CASE / FILE NUMBER

B1342/2023

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FLYNOTES:

CONTRACT

– Contra bones mores – Boxing contests –

To

arrange fights between members of public – Contest whereby members intentionally apply bodily force to each other to settle

disputes – Common purpose to gain profit and fame –

Consequential participation possibly constituting organized crime

– Embodies what is regarded as crimes of assault, culpable homicide and even murder – Contest

has not been legalized

nor could lawful consent be granted – Proceeds of unlawful contracts and activities –

Illegal, contra bones mores and unenforceable – Application dismissed.

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NUMBER: B1342/2023

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

DATE: 18/12/2023

SIGNATURE: In

the matter between: TIKBOX
LEAGUE (PTY) LTD
First Applicant
DANIEL
CHRISTOFFEL VAN HEERDEN
Second Applicant
LINDRIE
GOUWS
Third Applicant
DOMINANT
SLAP LEAGUE (PTY) LTD
Fourth Applicant
and
FRANCOIS
JAKOBUS DU TOIT
First Respondent
COMPANIES
AND INTELLECTUAL PROPERTIES
Second Respondent
COMMISSION
JIRE
ITIKETS (PTY) LTD
Third Respondent
ANITA
LOUISE WHITTAKER / MYBURG
Fourth Respondent
ALBERTUS
JOHANNES POTGIETER
Fifth Respondent
JOHANNES
JAKOBUS JANSEN VAN RENSBURG
Sixth Respondent

Coram: LE GRANGE AJ

Heard: 05 October 2023

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date and time for hand-down is deemed to be 10h00 on 18 December 2023.

Summary:

Contract – to arrange boxing contests between members of the public – illegal, contra bones mores and unenforceable – consequential participation possibly constituting organised crime.

ORDER

The following order is made: -

1.
The application is dismissed with no order as to costs.
2.
This order is referred to the Companies and Intellectual Property Commission to consider whether the purpose of the first applicant as a company is lawful and if not to address the issue accordingly.
3.
This order is referred to the National Prosecuting Authority to consider whether a crime(s) has been committed by any of the parties or entities mentioned herein and if so, to address the issue.

JUDGEMENT

LE GRANGE AJ:

- [1] What's trending: #Tikbox
- [2] At first glance this matter seems to be the typical quarrel, between business partners, bound by company laws, ignited when riches arrive and memory fade – the Court left to determine the true terms of their bond.
- [3] Before this Court can turn to the questions, as per the relief sought, i.e.:
- (i) who is entitled to (what portion of) the purse; and (ii) who should be declared delinquent – it must first ensure that the purse was not filled with the proceeds of unlawful contracts and activities. This Court is of great appreciation for the further heads of argument filed in this regard.
- [4] Save for points in limine and a grave dispute as to the true terms of the contract, the following can be regarded as common cause.

Common cause facts

- [5] As suggests in name, 'Tikbox', from TikTok[1],
'conducts business as a promotion company, more specifically pertaining to the hosting and promotion of for fun Tik Tok 'star' fights, in a safe and controlled manner, for the benefit of the 'stars', through promoting same.'
- [6] 'Tik Tok stars' are people, made famous by their multitude of followers of their posts on the TikTok-platform, to the extent that they get paid by the latter.

[7] The first respondent allege that the business was his idea in late 2022 when he:

‘... began to realise that various local social media influences using the TikTok platform were on occasion having verbal altercations with one another. These altercations were popular with the influencers’ following on TikTok and I decided that it would be a profitable venture to arrange for these influencers to meet in person for boxing events, which events would be open to the public after they have bought tickets.’

[8] The applicant also conduct business, in another company called ‘Dominant Slap League (Pty) Ltd’ (the fourth respondent) through hosting and the promoting of ‘slap fights’. According to an article ‘Slap fighting: The next big thing, or unsporting stupidity?’ by appnews.com, ‘Slap fights’ can be described as an event where ‘The competitors stand rigidly upright with their hands behind their backs, waiting to absorb a brutal slap to the face. When the open- handed blow is delivered, there’s a sharp report and the reaction can be dramatic. Some fighters barely move, while others stumble backward or fall to the floor. Some are knocked out.’

[9] It needs mentioning that it remains in dispute whether the event (that followed) was conducted through the first applicant (i.e. the company) or through some or other partnership arrangement between its directors i.e. the second applicant and the first respondent in person. This Court for various reason seriously doubts the version of the first respondent who suggested the latter. Be that as it may, for reasons that follows and for purpose of this judgement this question

remains irrelevant and will reference only be made to ‘Tikbox’ as being the business through which the parties bound themselves in certain terms which are at issue.

[10] Tikbox quickly attracted (by way of further agreements and/or engagements) various associates and/or participants, i.e. save for the competitors, also sponsors, an online ticket sales platform and ultimately (as aimed) the TikTok platform and some of its followers.

[11] The first event was hosted on 4 March 2023 and generated an income, which quickly became the centre of this dispute. The applicant now claiming:

‘1. That the first respondent is declared a delinquent director of the first applicant;

2. That the second respondent is ordered to update its records accordingly to remove the listing of the first respondent as director of the first applicant;

3. That the third/fifth respondents are ordered to effect payment of the ticket sales to the first applicant, within 5 (five) days of date of this order.

[12] Following the feud the first respondent (hoping to have the better ‘Fight IQ’[2]) quickly resigned as director and incorporated ‘Tikbox South Africa (Pty) Ltd’. Its name and purpose which is evident from the website www.tikboxsouthafrica.co.za, is nothing but a replication of Tikbox, and as follows:-

‘We’re not just a platform; we’re a revolution that challenges TikTok accounts to break free from the confines of screens and words. Join us in a journey that transforms challenges into triumphs, where battles are waged, not with words, but with gloves. Discover the uncharted territories of strength, resilience, and unity as we pave the way for a better understanding of mental health.’

And further under the heading ‘ABOUT US’

‘Unleash Your Inner Warrior with Tikbox: Redefining Challenges. Founded in 2022, Tikbox emerged with a powerful mission: to make a lasting impact on mental health awareness through the unlikely union of technology and the age-old sport of boxing. In a world dominated by virtual interactions and the power of words, Tikbox steps in to redefine the norms. We believe it’s time to transform talk into action, to rise above the screens and truly face our adversaries – not through words, but through strength and courage. At Tikbox, we’ve ingeniously merged the virtual realm of TikTok with the raw intensity of boxing. We provide a unique platform for TikTok accounts to do more than just entertain – we empower them to become champions of their own battles, both in and out of the ring. How? By inviting TikTok accounts to step into our arena, to lace up the gloves, and to engage in a 3-round boxing spectacle that transcends the digital facade.

Legality

- [13] The nature and intended purpose of the contract is clear i.e. an agreement between parties – to host and promote a boxing event(s) where members of the general public, having a social media feud, are set about a contest whereby they intentionally apply bodily force to each other in an effort to settle same, to the spectacle of the public, all involved with a common purpose to gain profit and/or fame.
- [14] Considering the above, this matter (and its ‘sequalae’) seems to have its roots firmly set in an ancient notion called a ‘duel’, which have settled battles, entertained the colosseum and occupied the minds of jurists for millennia; and embodies what we now regard as crimes of assault, culpable homicide and even murder.
- [15] Embarking upon the question whether the relevant contract and the business is lawful, it first need be clarified that assault[3], like culpable homicide and murder, and the conspiracy to commit same[4], is unlawful and a crime.
- [16] That clarified, the next question which may, and in this matter does, arise is whether an ‘intentional application of force to the body on another’ may be regarded as a justification in our law in the instance of consent. The principle of *volenti non fit injuria* (‘willingness does not make injury’) being applicable i.e. the element of ‘unlawfulness’ negated by consent.
- [17] The requirements for successfully relying upon consent as a defence in law are set out in Snyman’s Criminal Law, Seventh Edition at 102-106 as follows:-
 - (a) The crime and the type of act in question must be of such a nature that the law recognises consent to the commission of such an act as a ground of justification.

- (b) The consent must be given voluntarily, without coercion.
- (c) The person giving the consent must be mentally capable of giving consent.
- (d) The consenting person must be aware of the true and material facts regarding the act to which she/he consents.

[18] Considering the above it is clear that lawful consent (i.e. consent which can be granted lawfully and act as a defence in law to a crime actually committed) is narrow and far more complex, than the ordinary defined concept of the word 'consent'.

[19] It is further trite that there are crimes, for example rape, where lawful consent may in some instances act as a defence and others where consent will not be a defence (and cannot be granted lawfully), for instance murder. See *S v Robinson and Others* 1968 (1) SA 666 (A) at 674 - 678 where it was stated:

'One of the issues in the case, novel in the history of this country, is whether the intentional and unlawful taking of a man's life, at his own request, renders the killers less blameworthy and so constitutes extenuating circumstances'

....

'Dus is gebleken dat iemand geen meester is over zyn eigen leven soodanig, dat hy selfs aan een ander geen macht kan geven om hem te doden.'

'Extenuating circumstances may be described as any factor, bearing on the commission of the crime, which tends to reduce the moral

blameworthiness of the accused, as distinct from his legal culpability. It was stated by this Court in *Rex v Fundakubi and Others*, 1948 (3) SA 810 (AD) at p. 818, that - 'No factor, not too remote or too faintly or indirectly related to the commission of the crime, which bears upon the accused's moral blameworthiness in committing it, can be ruled out from consideration'.

[20] As to assault, it is trite that lawful consent could be granted (and hence act as a defence) within the arena of a lawful sport. Jonathan Burchell in *South African Criminal Law & Procedure*, Volume 1, Fourth Edition at 230 state the law (this Court submits correctly) as follows:-

'Sport and entertainment

Although in Roman law contests where physical strength was lawfully even if death resulted, today contests such as dueling, prize-fighting or 'Russian roulette', where the contestants are subject to imminent risk of death or serious injury, are unlawful. Consequential participation in the contest is no defense.

The position is different, however, in the case of lawful sport. In the absence of legislation to the contrary, games in which the intention of the participants is not to inflict serious injury and where the rules are designed to prevent such injury, are not contrary to public policy and hence lawful. Participation in such games in itself means consent to or voluntarily assumption of the risk of the bodily injury incurred while the game is being played according to the rules.

...

Minor injuries normally incidental to participation would clearly be lawful and liability would be purged by ... consent. On the other hand, 'entertainment does not legalize harmful bodily injuries, and consent to such aggressions will be invalid'.

- [21] It is for this reason that boxing is tightly regulated by the South African Boxing Act 11 of 2001, its regulations and also by the Safety at Sports and Recreational Events Act 2 of 2010, i.e. to legalize the sport so that lawful consent can be granted by the participants and to justify the intentional application of bodily force to each other.
- [22] These acts and regulations are critical and necessary, and aimed at ensuring (inter alia by way of compulsory medical and other examinations) that competitors (the event, the officials, the rules of the game, etc, for a moment aside) are similar in sex, form, weight and ability; and are physically, mentally and emotionally fit, with no underlying medical condition or being under the influence of an unlawful substance – all to ensure that these competitors are not just 'able' to compete, but justly understand the inherent risks and challenges associated with the specific sport, to be able to grant lawful consent and to ensure that lawful consent has so been granted.
- [23] In further argument, the applicants, in their effort to legalise the contract, opined[5] that 'prize fighting was illegal in South Africa prior to 1923 – when it was legalised by the Boxing and Wrestling Act, No 5 of 1923 – the tournament in question cannot, with respect, be considered prize fighting in that no prizes were to be won: monetary, or otherwise. Even though ad hoc boxing tournaments may be undesirable, they do not appear to be prohibited, and so-called "white collar boxing" (under which category the tournament in question appears to fall) seems to have become a popular phenomenon as evidenced by an article in the Mail&Guardian online publication under the title Why white-collar boxing is such a knockout, dated 5 July 2012...'
- [24] The starting point of this arguments was right, the reasoning and conclusion however wrong and must this Court, considering LAWSA, Vol 6 par 64 Butterworths 1996 1st Re-issue as well as the matters of *Austin v Morrall & Others* (1905) 22 SC 67; *Rex v Motomana* 1938 EDL 128; *Rex v Manuele Sile* 1945 WLD 134 and *The State v Sikunyana and Others* 1961 (3) SA 549 (E), find that no person can simply consent to pure assault. There must be some or other justification for applying intended bodily force to another.

- [25] In this regard, the obiter dictum statement made by De Villiers CJ in *Austin v Morrall & Others* (1905) 22 SC 67 that:- ‘A friendly contest in boxing, not calculated to produce injury to either party, would not be illegal’, has also not escaped this Court’s consideration. This Court can however hardly – at this day and age, and with the advanced knowledge available in the medical, physiology and psychology fields – imagine an instance where any boxing contest can be regarded as a friendly contest not calculated to produce injury to either party. This due to the inherent and imminent risk and nature of the sport – the main purpose of which is to intentionally direct effort and force to the head of one’s opponent whenever an opportunity present itself – and maybe also due to the nature of man to summarily alter his intention and defend his body and/or honour once it is really at stake, especially after a good punch or two.
- [26] This Court finds that for this event, act, business, and/or contract to be lawful, (i) absent legislation and (ii) public policy not to the contrary, (iii) the consent must be one where the intention is not to inflict injury to the extent that it carries with it an inherent and/or imminent risk of serious injury or death.
- [27] The undisputed facts have shown that the contest has not been legalised nor could lawful consent be granted in the instance for the reasons above.
- [28] Considering then what is left i.e. public policy[6], the spirit, purport and objects of our Bill of Rights and more specifically the preamble, sections 11, 12, 16(2)(b), 185 and 198 of our Constitution[7] (read with the aforementioned legislation), this Court is bound to find that public policy do not just demand that these acts be criminalised, but has gone beyond and statutorily criminalised association, participation and consequent agreements.[8]
- [29] These arranged contests are no different to that of a schoolboy witnessing classmates being involved in a verbal argument, shouting ‘fight fight’ to encourage them to get physical and to apply bodily force to each other, recording the fight and posting it on social media with the aim to obtain responses or ‘likes’ – each and every one (to include the platform) engaging in, and committing, a crime through participation.
- [30] For the above reasons, this Court finds that the act to engage random members of the public, in a contest which is inherently dangerous to the extent that the participants may be seriously injured or even killed, is *contra bonos mores* and unlawful; and so is this contract which the parties seek to enforce.

Order

- [1] In the result the following order is made:-
1. The application is dismissed with no order as to costs;
 2. This order is referred to the Companies and Intellectual Property Commission to consider whether the purpose of the company is lawful and if not to address the issue accordingly; and

3. This order is referred to the National Prosecuting Authority to consider whether a crime has been committed by any of the persons or entities mentioned herein, and if so to address the issue.

AJ le Grange

Acting Judge

APPEARANCES

APPLICANTS: M Coetsee Instructed by Elliott Attorneys FIRST RESPONDENT: H West Instructed by Uys Matyeka Schwartz SECOND TO SEVENTH RESPONDENTS: No appearance

- [1] A video-sharing social media platform (or application) which allows users to create, share and discover short-form videos for

entertainment of their users, off course at a profit.

- [2] From Boxrope.com:- 'Often referred to as boxing intelligence, encompasses far more than mastery of technique. It's the art of strategic

application, of understanding when to strike and when to defend, when to exert energy and when to preserve it, and of decoding an opponent's strengths and weaknesses on the fly.

- [3] In S v Marx 1962

- (1) SA 848 (N) at 850G (citing Gardiner and Landsdown, S.A. Criminal Law and Procedure, 6th. ed. vol. 11 at p. 1570) assault is defined as 'the act of intentionally and unlawfully applying force to another directly or indirectly ... '.

- [4] Section 18(2)(a) of the Riotous Assemblies Act 17 of 1956 provide:- 'Any person who- (a) conspires with any other person to aid or procure the commission of or to commit; or (b) incites, instigates, commands, or procures any other person to commit, any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.'

- [4] Section 18(2)(a) of the Riotous Assemblies Act 17 of 1956 provide:-

'Any person who-

- (a) conspires with any other person to aid or procure the commission of or to commit; or
(b) incites, instigates, commands, or procures any other person to commit, any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.'

- [5] Applicant's heads of argument para 4

[6] See Van Jaarsveld v Bridges (3409)

[2010] ZASCA 76 (27 May 2010) where Harms DP (Nugent and Van Heerden JJA and Majiedt and Seriti AJJA concurring) stated, that: - 'Courts

have not only the right but also the duty to develop the common law, taking into account the interests of justice and at the same time to promote the spirit, purport and objects of the Bill of Rights.... I do believe that the time has arrived to recognise that engagements are outdated and do not recognise the mores of our time, and that public policy considerations require that our courts must reassess the law relating to breach of promise.' Emphasis added.

[7] The Constitution of South Africa Act 108 of 1996.

[8] Relevant hereto, see the Prevention of Organised Crime Act 121 of 1998 which inter alia provide: 'unlawful activity' means conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere. '5 Assisting another to benefit from proceeds of unlawful activities Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby- (a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or (b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way, shall be guilty of an offence.

[8] Relevant hereto, see the Prevention of Organised Crime Act 121 of 1998 which inter alia provide: 'unlawful activity' means conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere.

....

'5 Assisting another to benefit from proceeds of unlawful activities

Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby-

- (a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- (b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way, shall be guilty of an offence.

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