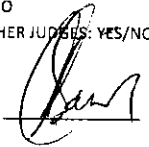


2/4/2014

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
1/4/2014	
DATE	SIGNATURE

42943/12
CASE NO: ~~42493/12~~

In the matter between:

2/4/2014

MASSTORES (PTY) LTD

Applicant

vs

THE MINISTER OF TRADE AND INDUSTRY

First Respondent

THE NATIONAL LIQUOR AUTHORITY

Second Respondent

JUDGMENT

BAM J

1. On 24 July 2012 the applicant, served on the respondents a notice of an urgent application, enrolled to be heard on 14 August 2012, for an interim order authorizing the applicant to trade in liquor at two business, MAKRO, Cape Gate, and MAKRO, Bloemfontein. The applicant also prayed for an order mandating the respondents to within 30 days finalise the process in regards to the applicant's application in that regard, in terms of the provisions of Section 16 of Act 59 of 2003.

2. Before the hearing of the matter the respondents, on 7 August 2012, furnished to the applicant's attorneys the required documentation. It appears that the consent required by the applicant was granted already on 3 August 2012.
3. The respondents were apparently not aware that the required documentation was granted by the officers concerned with the applicant's application in that the respondents' answering affidavit was in any event filed on 6 August 2012.
4. Consequent upon having received the required consent the applicant's attorney filed a Notice of Removal of the application on 8 August 2012. It was agreed that the issue of costs could be addressed at a later stage, hence this application.
5. On behalf of the applicant it was submitted by Ms Pretorius that the respondents unduly delayed their decision to grant consent to the applicant as requested, thereby forcing the applicant to lodge the urgent application.
6. The following facts are relevant:
 - (i) The applicant lodged its application in terms of the provisions of section 16 of the Liquor Act, No. 59 of 2003 on 21 February 2012;
 - (ii) Receipt of the application was acknowledged by the second respondent on 24 March 2012.
 - (iii) On 29 May, 2 July and 10 July 2012, the applicant's attorneys addressed Emails to the second respondent enquiring about the finalization of the application;
 - (iv) On 10 July 2012 the applicant's attorneys stated in their Email that their client was not amenable to wait "forever" and threatened with

an application to the High Court which they undertook to hold over until 20 July 2012;

(v) On 18 July 2012 the first respondent responded stating that the application had *'been evaluated and escalated for processing'*.

(vi) On 24 July 2012, after no further response from the respondents, the applicant lodged his application.

7. Section 16(4) of the Liquor Act provides that the Minister has to notify an applicant within 30 days that the Minister will review the conditions of registration or that the Minister has accepted the proposed changes.

8. It is further common cause that the respondents did not respond to the applicant's application and only granted the applicant's application after expiration of about 5 ½ months upon the receipt of the applicant's application.

9. It was submitted by Mr Mphaswane, appearing on behalf of the respondents that the applicant's application of 14 August 2012 was not urgent at all and for that reason the respondents should not be ordered to pay the costs.

10. The application in terms of section 16 of the Liquor Act merely entailed the adding of two further addresses as depots to the applicant's existing registration from where the applicant could trade in liquor.

11. It is common cause that a period of 5 ½ months expired before the respondents informed the applicant of the approval of its application.
12. However it is also common cause that on 18 July 2012, 6 days before the applicant served its urgent application on the respondents on 24 July 2012, its attorneys was notified by the respondents that the application had been *"evaluated and escalated for processing"*. The application was granted on 3 August and the applicant informed on 7 August.
13. It appears that the applicant appreciated that the granting of the application was a foregone conclusion although certain conditions could have been added.
14. The applicant's case for urgency was based on the allegation that it was prejudiced by the delay in view of the fact that the opening of the two Makro stores in question were scheduled for September and October 2012, and *"not being able to 'open with liquor" will be extremely prejudicial to the applicant."*
15. In the Email of 2 July 2012, referred to above, the respondents were alerted to the fact that the applicant intended to open the said two stores in *"August and September"*.
16. The Email of 18 July 12 addressed to the applicant's attorneys, although indicative of the fact that the application was receiving attention, did not state when the applicant could have expected finalization thereof, and did clearly not allay the applicant's concerns.

17. Although the applicant, in my view, would not have succeeded with the relief sought in prayer 2 of the urgent application, the applicant was in the circumstances entitled to lodge an urgent application for the relief sought in prayer 3 - an order directing the respondents to finalise the process in regards to the section 16 application within 30 days.
18. As alluded to above the applicant removed the urgent application from the court roll 6 days before the hearing. The applicant is therefore only entitled to the costs for the preparation and enrollment of the application.
19. The respondents were clearly not amenable to tender or pay any costs to the applicant and the applicant was subsequently forced to apply for the awarding of costs in this court. This is however not a case where penalty costs should be awarded. It cannot be found that the respondents, despite the relatively long delay of 5 1/2 months before finalizing the applicant's application, were *mala fide* or negligent in any respect.
20. Accordingly the following order is made;

The respondents are ordered to pay to the applicant:

- (i) The costs incurred by the plaintiff for drafting and enrolling the urgent application on 14 August 2014.
- (ii) The costs of this application.



A J BAM JUDGE OF THE HIGH COURT 28 March 2014