IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

4/4/2014

Case Number: 70282/12

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

4/04/14 .....
DATE SIGNATURE

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
JUDGE'S SECRETARY
2014 -04- 04
REGISTERS KLERK
PRETORIA 0001
GRIFFIER VAN DIE NOORD GAUTENG HOË HOF, PRETORIA

In the matter between:

ROBINSON LIQUORS (PTY) LTD	**1ST APPLICANT**
PENTAFLOOR CC	**2ND APPLICANT**
SINTAM INVESTMENTS	**3RD APPLICANT**
CANDRO TRADE (PTY) LTD	**4TH APPLICANT**
MPS HOLDINGS CC	**5TH APPLICANT**
WHITE RIVER INT LIQUOR (PTY) LTD	**6TH APPLICANT**
BRAND IT MARKETING (PTY) LTD	**7TH APPLICANT**

and

THE MINISTER OF TRADE AND INDUSTRY	**1ST RESPONDENT**
THE NATIONAL LIQUOR AUTHORITY	**2ND RESPONDENT**

Coram: **HUGHES J**

JUDGMENT

Delivered on: 4 April 2014

Heard on: 19 March 2014

HUGHES J

1. This is an application where the applicants seek a *mandamus* order to compel the respondents to consider and make a decision of their various applications brought under this case number.

2. The number of applicants in this matter totals seven and each applicant has an application wherein it seeks the respondent to comply with the duties that it alleges the respondents have failed to do by virtue of the various sections of the Liquor Act, Act 59 of 2003 ("the Act") and its regulation.

3. When the matter was heard it transpired that the respondents had in fact complied with the second to the seventh applicants request and there was no need for this court to address those claims. The only issue that hung in the balance in terms of those claims was the issue on costs as the applicants were of the view that since there was a delay on the part of the respondents in attending to that which was necessary they were duly entitled to their costs.

4. As regards the first applicant its claim had been attended to in part and it wished of this court to compel the respondents to comply with that which they had failed to attend to.

5. I propose to deal with the issue of costs of the second to the seventh applicants and then to move on to the first applicants contentious application.

6. Advocate Pretorius represented all seven applicants while Advocate Phaswane represented the respondents. Ms Pretorius argued that time had evolved and the second to the seventh applicant's matters had eventually been dealt with,

the only aspect she was concerned about was that of costs, due to the respondent's delay in attending these applicant's matters.

7. Ms Pretorius further argued that the in ordinate delay in the respondents attending to these matters, that being more that 180 days, was inexcusable and warranted that the respondents be directed to pay the costs. These costs were to include the reservation costs of 18 February 2013, when the matter was postponed, by consent, for the respondents to file their answering affidavit and the costs were reserved. She urged this court to issue an order directing the respondents pay costs *in solidum* with each other, the one to pay the other to be absolved.

8. Mr Phaswane on the other hand, argued that the delay was not totally the fault of the respondents. He submitted that after the applicants lodged their applications, the respondents requested compliance of one thing or another and the applicants took their time in reverting. Thus the delay was not solely that of the respondents. He urged the court to consider that the wheels of response within the hierarchy of the respondents took time to turn. In this instance each party should pay their own costs and as regards the reservation fees for 18 February 2013 he could not take the matter any further as he had not been on brief and had no instructions regarding same.

9. I will return to the question of costs.

10. Turning to deal with the first applicants matter. This application was lodged on 8 February 2010 and the first applicant, in terms of section 16 of the Act, sought to add six additional addresses and also sought to relocate the main registered address of the first applicant. The requests of the first applicant were completed on one application.

11. The respondents granted the addition of the six addresses as requested in terms of section 13(3) (b) of the Act read with section 16(3) of the Act. The

relocation in terms of section 16(3) that the first applicant sought, the first applicant alleges that the respondent refused to consider this request.

12. A refusal letter dated 11 December 2011 from the Deputy-General of the Department of Trade and Industry was sent to the first applicant for easy reference I set out the pertinent portion thereof below:

"The National Liquor Authority has approved the application filed on the 08th February 2011 to alter the registered premises and include 6 additional proposed depots.

Please be advised that the relocation has not been considered on the basis that a separate form was not attached and no payment was made for the application. You are advised to file an application should you wish to relocate from the registered premises..."

13. The simple refusal of the respondents is that in terms of section 16(3) two separate, form NLA14, and two separate payments were necessary if one wanted to conduct two transactions, that being the alteration and the relocation. In this instance the first respondent had only completed one form and paid one fee for the two separate transactions.

14. The non-determination of the matter to relocate was not considered because of the factor above. The respondents submitted that they were just complying with the requirements of the Act, that is section 16(3), which reads as follows:

"(3) A registrant must notify the Minister in the prescribed manner and form if it proposes to-

(a) Relocate any of the activities authorised under its certificate of registration; or

(b) Alter the nature or conduct of any of those activities, in a manner that differs in a material way from that specified in its application for registration".

15. Ms Pretorius argued that there was no merit in the respondent's argument that a separate application should be filled out for the relocation of the first applicant to be considered. The respondents had failed in performing their duties in not considering the application of the first applicant. They had a duty to consider the application, and thereafter refuse or accept the application. They could not refuse to consider the application.

16. On an examination of section 16(3) I note that one needs to "notify the Minister", as was done by the first applicant. This notification must be done "in the prescribed manner and form"; the form was duly completed by the first applicant. However the respondents submit as the relevant section makes provision for one to embark on two possibilities, then if one embarked on both possibilities, two forms would need to be completed. The respondents submit that this is evident in the wording of the section by the use of "or".

17. I disagree that section 16(3) requires two forms to be completed because of the use of "or" in the section.

18. It is evident that in the context that the word "or" appears in the section it clearly denotes 'and'. Thus if you proceeding with a relocation as in section 16(3) (a) 'and/or' with an alteration as in section 16(3)(b), one would need to notify the Minister in the prescribed manner and form. Refer to Principles of legal interpretation of statutes, contracts & wills by E A KELLAWAY at page 77:
"The word "or" may not only indicate an alternative, "...but it is frequently used conjunctively to read 'and' or mean 'and/or'." See S v Heita 1987 (1) SA 311 (SWA) at 323:
"In isolation, the meaning of the word 'or' requires no comment. It indicates an alternative, 'the one or the other', that is, it is disjunctive. This indeed is its ordinary and accepted meaning and Courts of law would be slow to depart from it. However when 'or' is used in legislation, it is frequently used conjunctively to mean 'and' or to mean 'and/or'. Maxwell on Interpretation of Statutes 12th ed at 232 says:

'In ordinary usage, "and" is conjunctive and "or" is disjunctive. But to carry out the intention of the Legislature, it may be necessary to read "and" in place of the conjunctive "or" and vice versa.'

In R v La Joyce (Pty) Ltd and Another 1957(2) SA 113 (T) at 116 Dowling J said:

'I think that the cases show that the Courts should be slow to depart from the literal meaning of words especially where there is no ambiguity. The authorities, however, show that the Courts are not so slow to read "and" for "or" or "or" for "and" in cases where such a course appears better to give effect to the obvious intention of the Legislature and the scheme of the Act.'"

19. Thus if the notification to the Minister was in the prescribed manner and form in order to grant the alterations application, it stands to reason that it should have been in order to grant the relocation application. Nowhere in the section that the respondents rely on do I find that it prescribes that one needs to fill in two separate forms and pay two separate fees. If this was the intention it would have been indicated in the relevant section of the Act.

20. In the circumstances the respondents are to consider the application of 8 February 2010 which was submitted in terms of section 16(3) (a).

21. In my view the postponement and the costs reserved of 18 February 2013 were as a result of the respondents having failed to file their answering affidavit and as such the respondents were granted the indulgence to do so, they should pay for those wasted costs.

22. As regards the costs relating to the second to seventh applicant I believe that both parties were responsible for the delays that arose in the finalisation of those applications and thus the proper order in these instances is that each party pay their own costs for those applications.

23. The first application to my mind is rather different from the others, as the respondents were under the impression that they were complying with section

16 (3) of the Act. In this instance they were not advised correctly and have to stand and fall by the advice obtained. The costs with regards to the first applicant will follow the result.

24. Accordingly I make the following order;

24.1 The respondents are ordered to consider and decide the notification in respect of the change of address of the main registration of the first applicant (Robisson Liquors (Pty) Ltd t/a Ultra Liquors Kew (Registration Number: RG0002949)) from Ultra Liquors Kew, 168 10th Avenue, Kew, district of Johannesburg to Corlett Drive, 583 – 585 Louis Botha Avenue, corner Corlett Drive, Bramley, district of Johannesburg, within 1 (one) month from the date of this order.

24.2 The respondents are ordered, *in solidum* with each other, the one to pay the other to be absolved, to pay the costs of the 1st applicant's application including the costs reserved on 18 February 2013.

W. Hughes Judge of the High Court

Delivered on: 4 April 2014

Heard on: 19 March 2013

Attorney for the Plaintiff:

COUZYN, HERTZOG & HORAK

321 Middel street

Brooklyn

PRETORIA

Tel: 012 460 5090

Ref: M Blom/bb/ROB55/0005

Attorney for the Defendant:

THE STATE ATTORNEYS

Ground Floor

SALU Building

255 Francis Braad Street

PRETORIA

Tel: 012 309 1540

Ref: J. Matladi/10204/12/Z36/mfm