

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

4/9/14

CASE NO: 57412/2014

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
4 September 2014	<i>E. M. Busisiwe</i>
DATE	SIGNATURE

In the matter between:

MARIUS BLOM INCORPORATED
BOXER SUPER STORES
ROBINSON LIQUORS (PTY) LTD

FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT

and

SOUTH AFRICAN REVENUE SERVICE
LIMPOPO PROVINCIAL LIQUOR BOARD
**DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT
& TOURISM**

FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT

J U D G M E N T

KUBUSHI, J

[1] The applicants have approached the court on an urgent basis for a declaratory order that the directives of the respondents regarding payments to be made in terms of Act 27 of 1989 (the Act) to the second respondent, are in conflict with the provisions of the Act; and a declaratory order that the first respondent is obliged to act as collecting agent for the second respondent and to receive payments in terms of the Act on behalf of the second respondent at any of its branches in the Republic of South Africa. The payments referred to in terms of the Act, which are specific for purposes of this judgment, are payments for liquor licence renewals.

[2] There is no opposition from the first respondent. A letter was tendered in court by the applicants' counsel wherein the first respondent indicates its intention not to oppose the matter. The second and third respondents are opposing the application on the merits and on urgency.

[3] I shall, in this judgment, deal first with the issue of urgency. For convenience I shall refer to the second and third respondents simply as respondents.

[4] In terms of the uniform rule 6 (12) (b), the applicant must in his or her founding affidavit set out explicitly the circumstances on which he or she relies to render the matter urgent and the reason why he or she claims that he or she cannot be afforded substantial relief at a hearing in due course. See Erasmus: *Superior Court Practice* at B1 -56B and *Luna Meubel Vervaardugers v Makin and Another* 1977 (4) SA 135 at 136h and 137h.

[5] In their founding affidavits, the applicants aver the following in respect of their application to be heard on an urgent basis:

- “10.1 The First Applicant is mandated by the Second Applicant in respect of a liquor application in the Limpopo Province which mandate the First Applicant has executed and finalised, the only remaining issue being the payment of a prescribed fee of R500.00;
- 10.2 All licences in Limpopo has to be renewed before the end of December by the payment of a prescribed renewal fee which, according to the current attitude of the Respondent, will mean that the First Applicant will have to make arrangements to send staff to Polokwane in respect of all renewals as was described above;
- 10.3 The payment on behalf of the Second Applicant could not be done because of the attitude of the Respondents and as of 4 August 2014 it bears a surcharge of 50% for not paying within the prescribed time period which expired on 3 August and it will resolve in a further surcharge of 50% if not paid before 3rd of September;
- 10.4 If this application is brought in the normal course of the rules of the Honourable Court, it will only be heard by the Honourable Court after the transfer authority in favour of the Second Respondent has lapsed and most likely only after all renewals in respect of clients of the First Applicant had to be paid for the year 2015;
- 10.5 ...”

This is all that is said about the urgency.

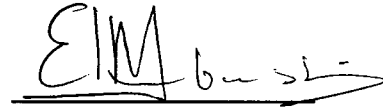
[6] The evidence before me is that between 9 December 2013 and 13 December 2013 there was a flurry of emails between the first applicant's office and that of the second respondent. From the contents of these emails it is apparent that from as early as December 2013 the first applicant was aware that the second respondent had instructed the first respondent not to accept any payment for Limpopo licence renewals.

[7] From the perusal of the record it is evident that this application was instituted on 5 August 2014. There is no explanation of what happened between December 2013 and August 2014. The applicants had at least seven months in which they would have launched this application. They instead waited until the eleventh hour before filing their papers. This, to me, is a self-induced urgency and the application is as a result flawed. The provisions of uniform rule 6 (12) (b) are said to be imperative and failure to comply therewith is fatal to an application. See *Salt and Another v Smith* 1991 (2) SA 186 (Nm) At 187d-G.

[8] Counsel for the respondents applied for the dismissal of the application for lack of urgency; alternatively for the matter to be struck off the roll. As *per* his argument before me, this matter is important to stabilise the liquor industry in the Limpopo Province, as such, I am not inclined to dismiss the application but rather have it struck from the roll.

[9] I am also of the view that the cost order prayed for by the respondents' counsel against the first applicant *de bonis propriis* is unfounded. The second and third applicants, as clients of the first applicant, have the right to appoint whomever they choose as their legal representative. On the evidence before me, there is no indication why they were prompted to employ the services of the first respondent and as such what is averred by the respondents' counsel is only speculation, which, I do not intend to entertain. I am also not inclined to order costs on a scale as between attorney and client against the applicants. An order on a party and party scale will, in the circumstances of this matter, suffice.

[10] The application is struck off the roll and costs are ordered against the applicants, jointly and severally the one paying the other to be absolved.



KUBUSHI J

JUDGE OF THE HIGH COURT

APPEARANCES

HEARD ON THE	: 02 SEPTEMBER 2014
DATE OF JUDGMENT	: 04 SEPTEMBER 2014
APPLICANTS' COUNSEL	: ADV L PRETORIUS
APPLICANTS' ATTORNEY	: MARIUS BLOM INCORPORATED
RESPONDENTS' COUNSEL	: ADV Z Z MATEBESE
RESPONDENTS' ATTORNEY	: THE STATE ATTORNEY