



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case Number: 6208/2019

In the matter between:

Mbeko Venfolo N.O.

Applicant

And

Western Cape Liquor Board

First Respondent

**Chief Executive Officer of the Western
Cape Liquor Licensing Board**

Second Respondent

JUDGMENT DELIVERED ON 31 JANUARY 2020

BAARTMAN, J

[1] On 17 December 2019, I made the following order and indicated that my reasons, which appear below, would follow.

*‘The Applicant had timeously paid the licence renewal fee of 100% penalty for 2019 as contemplated in Section 62(3)(a)(ii) of the Western Cape Liquor Act, 4 of 2008 (**the Act**), on 28 February 2019, in respect of the premises at 21 Washington Street, Langa (**the***

premises), and that the liquor licence became valid again on 28 February 2019.

The Western Cape Liquor Board and/or the appropriate Western Cape liquor licence authority is directed to update their records to reflect the Applicant as the holder of a valid liquor licence for the premises.

The costs occasioned by the postponements on 15 April 2019 and 5 November 2019 are costs in the cause.

The Respondents are directed to pay the Applicant's costs including the costs of 2 counsel.'

- [2] The chronology of events that led to this litigation, which I deal with to the extent necessary, was largely common cause. A liquor licence was issued to Mr Soxuza and Mr Xashimba in October 2009. The licence was issued for the premises situated at 21 Washington Street, Langa in the Western Cape (**the tavern**). Since 10 August 2012, Mr Soxuza has been the sole holder of the licence for the tavern. In 2013, Mr Lin Shui (**Shui**) was working at the tavern.
- [3] Licence renewal notices were posted to the tavern in October 2013 and October 2014 for the 2014 and 2015 renewals. Similarly, in October 2015, the renewal notice for 2016 was posted to the tavern. At the time a R3 000 fee was due and paid timeously. On 9 January 2016, Mr Soxuza died and Mr Venfolo was appointed as the executor of his deceased estate. In October 2016, the renewal notice for the 2017 year was posted to the tavern. The renewal fee was still R3 000.
- [4] However, in June 2017, the respondents brought an application to suspend/revoke the licence relevant to this matter. A hearing followed but the tribunal's judgment has been outstanding since December 2017. It was still outstanding at the date of the hearing of this application. Nevertheless, on 11 August 2017, the applicant

applied for the transfer of the licence to Ms Vaphi (**Vaphi**)¹. That application too was still unsolved at the date of this hearing.

- [5] In November 2017, at a meeting held at the Langa police station, tavern licence holders in the area were informed that the renewal fee had increased from R3 000 to R4 000 for the 2018 renewal. Vaphi paid the fee and took proof of payment to the 'offices of the WC Liquor Board in Bellville'. She learnt from the receptionist that the board had 'forgotten to send a notice to the tavern for that year...'. The receptionist belatedly handed her a copy of the notice. The belated notice also informed 'that the licence holder could pay two years' worth of fees, namely for 2018 and for 2019, in the sum of R4 000 per year, if paid by 31 December 2017. The applicant elected not to take up the offer as he envisaged that the licence would be transferred before the next renewal was due.
- [6] In January 2019, Sergeant Mapolisa, the area designated liquor officer, and an official from the Western Cape Liquor Board attended the tavern to conduct a routine inspection. Shui gave them the receipt for R4 000 as proof that the 2019 licence had been paid. The official raised no concern after inspection of the receipt.
- [7] On 27 February 2019, Ms Amanda Ackerman (**Ackerman**), an official in the employ of the first respondent, telephonically informed the applicant that the licence fee had increased to R4 360 and that their records reflected that the applicant had only paid R4 000 and was therefore liable to pay 100% penalty. On 28 February 2019, the applicant paid R800 to settle the penalty. He did so as he understood that the penalty related to the unpaid amount of R360. However, on 14 March, Ackerman, in email correspondence, indicated that the penalty pertained to the entire fee not just the unpaid portion. It

¹ Section 65(1) of the Western Cape Liquor Act, 4 of 2008.

follows that the applicant had to pay R8 720 instead of R800 to revive the tavern's licence. Although the applicant disagreed with the calculation, he paid a further amount of R5 000 to the respondents and submitted a condonation application. In terms of the Liquor Act²², the applicant had until 31 March 2019 to apply for condonation. However, the condonation application was only launched on 11 April 2019 and it was therefore declined³, correctly so.

- [8] Against that background, the tavern's licence was considered expired and it could not operate lawfully. The applicant, in its amended notice, applied for the main relief and certain alternatives. I granted the main relief which is premised on an interpretation of section 62(3)(a)(ii) of the Liquor Act. The relevant sections provide:

'62(2)(b) a licence lapses – on 1 January of the year in respect of which the applicable fees prescribed are not paid on or before 31 December of the preceding year; ...

(3) A licence which has lapsed, and the rights, privileges, obligations and liabilities which were attached thereto immediately before the date on which it lapsed, become valid again on the date on which –

(a) where the license has lapsed under the circumstances contemplated in subsection (2)(b), the fees so contemplated –

(i) ...

²² Section 62(3) (a) (ii) of the Western Cape Liquor Act.

³ *Amandla GCF Construction CC & Another v Municipal Manager, Saldanha Bay Municipality & Others* 2018 (6) SA 63 (WCC) at para 32: 'A principle that can be extracted from the case law above, in relation to this case, is that there is no general power afforded to the Municipality...to extend a statutory time period, except if that power is conferred on it, as allowed in that particular section of the statute. Therefore, if the legislature intended a statute to operate as an absolute bar, the "general power", if there was any, could not trump that intention.'

(ii) plus a penalty of 100% are paid between the first and the last day of February of the year in respect of which those fees should have been paid; ...'

- [9] It is common cause that as at 31 December 2018, the applicant had only paid R4 000 and that an amount of R360 was outstanding in respect of the renewal fee due for 2019. It follows that the licence lapsed on 1 January 2019. However, it could be revived by payment of a 100% penalty 'between the first and last day of February 2019'. The applicant paid the penalty in respect of the arrears on 28 February 2019. It follows that if the penalty related only to the arrears that the applicant's licence revived on 28 February 2019. However, if the penalty related to the entire fee irrespective of any amount timeously paid, the applicant's licence had lapsed and was not revived by the payment on 28 February 2019. That is the issue which I determined in the applicant's favour.
- [10] The respondent contended that the penalty applied to the entire fee and did not take into account any amount timeously paid. The purpose of the penalty provision would be hamstrung, so the submission went, if the penalty applied only to the unpaid portion of the fee as it 'may amount to a nominal penalty'. I find that submission untenable. The respondents further submitted that it would cause administrative difficulty to determine the amount due in respect of the penalty if it applied only to the unpaid portion of the fee. There is no merit in that submission, the mathematical calculation involved is basic. Even if the calculation involved complicated mathematical calculations, which this case does not, it would not justify an interpretation so untenable and contrary to the basic principles⁴.

⁴ *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism & Others* 2004 (4) SA 490 (CC) at para 90.

- [11] A lapsed licence, in terms of subsection (2)(b), becomes valid again on the date on which *'the fees so contemplated...plus a penalty of 100% are paid...in respect of which those fees should have been paid.'* Literally interpreted, the penalty must apply to that amount which should have been paid but was not. In this case, it was R360 that remained unpaid and not R4 360. By 31 December 2018, R4 000 had been paid and could not have attracted a penalty but the balance of R360 was admittedly outstanding and attracted the 100% penalty. It follows that on the literal interpretation, the applicant was entitled to the main relief. Even if I am wrong, the context and purpose of the Liquor Act support the interpretation advanced.
- [12] The Liquor Act aims to regulate the sale of liquor in an orderly manner within the Western Cape. It clearly envisages that only licence holders are entitled to sell liquor. In an attempt to ensure compliance, licence holders are encouraged to pay their licence fees timeously. Therefore, the penalties for late payment increase incrementally depending on whether the fees are paid in January, February or March⁵. It is important to bear in mind that the regulations pertain to the formal and relatively informal sector. It would certainly be harsh to penalise a small trader who in difficult circumstances pays the bulk of its fees with a 100% or even 50% of the entire fee when the trader has made payment within its ability timeously. That would potentially exclude small taverns in disadvantaged areas despite an attempt to be compliant. That would

Bastian Financial Services (Pty) Ltd v General Hendrick Schoeman Primary School 2008 (5) SA 1 (SCA) at paras 16-19.

Democratic Alliance v Speaker, National Assembly & Others 2016 (3) SA 487 (CC) at para 28.

⁵ Section 62(3)(a)(i) & (ii) of the Liquor Act provides: 'where the licence has lapsed ...the fees so contemplated –

- (i) plus a penalty of 50% are paid on or before 31 January; or
- (ii) plus a penalty of 100% are paid between the first and that last day of February of the year in respect of which those fees should have been paid.'

frustrate the purpose of the Act. Cameron J⁶ said the following for a unanimous court:

‘[44] But, fortunately, we live in a constitutional state. And that makes the Constitution supreme. The position under the common law provides but a useful backdrop to the process of interpreting section 118(3) in accordance with and in the light of the Constitution. If there is any doubt about the meaning of the section, that doubt must be resolved to accord best with the spirit, purport and objects of the Bill of Rights. Since Hyundai, all legislation must be approached through the prism of the Bill of Rights. And it has been “gold-plate doctrine” in this Court that, if a meaning conformable with the Bill of Rights can reasonably be ascribed to legislation, that meaning must be embraced, rather than one that offends the Constitution. ...’

- [13] Following the above approach, the question ‘whether the values and rights in the Constitution’ lead to the conclusion that the penalty referred to in the Liquor Act pertains also to amounts timeously paid must be answered in the negative. As indicated above, the Act goes to some length to encourage timeous payment by incrementally increasing the penalty. This accords with the purpose of the legislation and considers the position of less formal traders, especially those in less affluent areas. The consequences of imposing the penalty on amounts timeously paid can be severe, as the facts in this matter illustrate. The licence holder, if unable to pay the penalty in respect of amounts timeously paid, loses its licence. If unable to trade, the business will probably have to retrench staff. In addition, its stock may be confiscated, as happened in this matter, and the applicant had to approach this court for the release of its stock.

⁶ *Jordaan and Others v City of Tshwane Metropolitan Municipality and Others* [2017] ZACC 31, at para 44.

[14] In interpreting legislation, a court must promote the spirit, purport and objects of the Bill of Rights⁷. I have no doubt that result is achieved by interpreting section 62(3)(a)(ii) of the Liquor Act so that the penalty pertains only to the unpaid portion of the fee payable. That interpretation is supported by the wording of section 63(4) which provides an opportunity to a licence holder who has made no payments by February to apply in writing on or before 31 March of that year to the Chief Executive Officer (**the CEO**) for condonation. The CEO may condone the non-payment and allow the late payment subject to payment of the renewal fee plus 150% penalty thereon. It would be anomalous to impose a penalty on the whole amount in the case of non-payment as well as in instances of part payment, irrespective of the amount already paid. In this matter, the bulk of the fee, R4 000, had been paid leaving a small arrears of R360.

Conclusion

[15] I am persuaded that the literal and purposive approach to the interpretation of the relevant section seen through the prism of the Constitution leads to the conclusion that the penalty applies to the unpaid portion of the fee payable.

[16] I have indicated that the applicant had claimed alternative relief should it not succeed in the main. The alternatives are:

- (a) the legitimate expectation point;
- (b) the review point;
- (c) the constitutional point.

⁷ Section 39(2).

[17] I do not deem it necessary to deal with the alternative relief as I am persuaded that the applicant was entitled to succeed on the main relief, save to add that I found no merit in any of the alternatives.

BAARTMAN J