



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

Case No: 1741/2021

In the matter between:

VINPRO NPC

Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

**THE MINISTER OF COOPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

Second Respondent

THE PREMIER OF THE WESTERN CAPE PROVINCE

Third Respondent

MINISTER OF HEALTH, WESTERN CAPE PROVINCE

Fourth Respondent

MINISTER OF COMMUNITY SAFETY,

Fifth Respondent

MINISTER OF HEALTH

Sixth Respondent

JUDGMENT DELIVERED ELECTRONICALLY: TUESDAY, 3 AUGUST 2021

NZIWENI AJ

Introduction

[1] The current legal battle is brought by a non-profit company, which represents a number of South African wine producers, sellers and industry stakeholders. The

applicant seeks interim relief authorising the third respondent (“the WC Premier”) to adopt deviations to the fifth liquor ban imposed on 28 June 2021 (in terms of Regulation 29 published in Government Gazette 44772 on 27 June 2021), pending the hearing of the main application to this court, which is enrolled for hearing from 23 - 26 August 2021. In pursuance of the interim remedy, the applicant approached this court on an urgent basis, pending the hearing of the issues by the full bench in August. The urgent application was heard on 21 July 2021. After submissions by the parties, judgment was reserved.

[2] Prior to the judgment being delivered, the President of the Republic addressed the nation, on 25 August 2021, on the government’s response to the pandemic. The President announced that the liquor ban would be lifted with immediate effect. In light of this announcement, the position has now changed, which impacted on the delivery of the awaited judgment.

Mootness

[3] Mootness essentially restricts the court’s jurisdiction, or powers to hear or determine a matter. Certainly, a court is not in any way avoiding giving a decision on the issues. However, in our law the doctrine of mootness is recognised. Particularly if giving judgment in a matter will produce no tangible result, but merely an opinion. See *JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others* 1997 (3) SA 514 (CC).

[4] In *Normandien Farms (Pty) Ltd v South African Agency for Promotion of Petroleum Exportation and Exploitation SOC Ltd and Another* 2020 (4) SA 409 (CC), the Constitutional Court stated the following when it comes to mootness of a matter:

‘[47] Mootness is when a matter “no longer presents an existing or live controversy”. The doctrine is based on the notion that judicial resources ought to be utilised efficiently and should not be dedicated to advisory opinions or abstract propositions of law, and that courts should avoid deciding matters that are “abstract, academic or hypothetical”.

[48] This court has held that it is axiomatic that “mootness is not an absolute bar to the justiciability of an issue . . . [and that this] court may entertain an appeal, even if moot, where the interests of justice so require”. This court has “discretionary power to entertain even admittedly moot issues”.

[49] Where there are two conflicting judgments by different courts, especially where an appeal court's outcome has binding implications for future matters, it weighs in favour of entertaining a moot matter.

[50] Moreover, this court has proffered further factors that ought to be considered when determining whether it is in the interests of justice to hear a moot matter. These include -

(a) whether any order which it may make will have some practical effect either on the parties or on others;

(b) the nature and extent of the practical effect that any possible order might have;

(c) the importance of the issue;

(d) the complexity of the issue;

(e) the fullness or otherwise of the arguments advanced; and

(f) resolving the disputes between different courts.' (Internal footnotes omitted.)

[5] In *JT Publishing* (supra), para 15, the following was stated:

'A corollary is the judicial policy governing the discretion thus vested in the Courts, a well-established and uniformly observed policy which directs them not to exercise it in favour of deciding points that are merely abstract, academic or hypothetical ones. I see no reason why this new Court of ours should not adhere in turn to a rule that sounds so sensible.' (Internal footnote omitted.)

[6] Given the President's announcement, I then invited the parties to make written submissions insofar as the mootness of this matter. The parties submitted comprehensive written arguments. I am indebted to the parties for their invaluable submissions. In essence, the parties agree that the matter is moot.

The nature of the relief sought

[7] As far as this court is concerned, it was only seized with the matter in order to determine if it can afford the applicant interim reprieve pending the hearing of the main application. In my mind, the present application concerns a mere preliminary issue. It is my firm view that, because of the interim nature of the relief sought in this

matter, it not suitable for this court to continue determining it. There is no justification in the circumstances for awarding an interim remedy.

[8] The interim relief sought by the applicant, ceased to exist as a dispute when the President's announcement rendered it unnecessary for this court to consider the issue. The remedy sought from this court has manifestly fallen away.

[9] It is so that the subject raised in this matter is indeed an issue of public importance, and there is a likelihood that in future the Government may still impose national liquor bans; however, it is a fact that the very same issue is still going to be adjudicated by the full bench of this court.

[10] The announcement by the President essentially cleared the path for the full bench. There is thus another method available to litigants to address the other controversies raised. In any event, this court was called upon to grant interim relief on the very same disputes which are going to be adjudicated by the full bench. Hence, the respondent Government parties, during the hearing of these proceedings, labelled the relief sought by the applicant as a dress rehearsal of the full bench hearing.

[11] Given the fact that the liquor ban has since been lifted, and the full bench still has to adjudicate on the same aspect, any interim order by this court will not have any practical effect.

[12] Unlike in the case of *British American Tobacco South Africa (Pty) Ltd and Others v Minister of Co-Operative Governance and Traditional Affairs and Others* (6118/2020) [2020] ZAWCHC 180 (11 December 2020), in this matter there is an alternative route available to the parties to obtain redress or resolve the issues raised.

[13] In *Normandien*, supra, Mhlantla J stated the following at para 52:

'... There is no triable issue to consider and no party will receive any direct benefit or advantage as a result of an order on the merits by this court ... there is no discrete legal principle that requires this court to decide the case.'

Costs

[14] Gleaning from the voluminous documents which were filed for purposes of this application, and the counsels which were involved in it, clearly this was a costly litigation.

[15] It may be asserted that the mootness arose because of the Government's own action – the President's announcement had the effect of mooted an impending litigation. I did not get the impression, however, that the President, in making the announcement, acted in bad faith. It is my view that the President's reasons for lifting the national liquor ban, were not linked to the litigation in this matter, and did not constitute an attempt to put an obstacle in the way of the litigation of the issue. Hence, it is my view that, in the context of this matter, no party can really be blamed for the happenstance developments.

[16] As a result, it is my view that, under the circumstances, it will be appropriate to order that the costs of this application should be costs in the main application.

[17] **Accordingly, I make the following order:**

1. The matter has become moot.
2. The matter is therefore struck off the roll.
3. Costs will be costs in the main application.



CN NZIWENI
Acting Judge of the High Court