



**IN THE HIGH COURT OF SOUTH AFRICA,**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:—	YES/NO
Circulate to Magistrates:	YES/NO

Case No: 6461/2017

In the matter between:

**RESTIVOX (PTY) LTD t/a**

**GOLDRUSH GAMING SLOTS FREE STATE**

**Applicant**

And

**THE CHAIRPERSON OF THE FREE STATE**

**GAMBLING, LIQUOR AND TOURISM AUTHORITY**      **1<sup>st</sup> Respondent**

**THE FREE STATE GAMBLING, LIQUOR**

**AND TOURISM AUTHORITY**      **2<sup>nd</sup> Respondent**

**VUKANI GAMING FREE STATE (PTY) LTD**      **3<sup>rd</sup> Respondent**

**ITHUTENG CONSULTANCY (PTY) LTD**      **4<sup>th</sup> Respondent**

**24 TM BOKAMOSOTRADING ENTERPRISE CC**      **5<sup>th</sup> Respondent**

**MAONO CONSTRUCTIONS AND**

**PROPERTY DEVELOPMENT (PTY) LTD**      **6<sup>th</sup> Respondent**

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## JUDGMENT

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**CORAM:** NAIDOO J et OPPERMAN J

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**HEARD ON:** 12 NOVEMBER 2018

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**DELIVERED ON:** 12 NOVEMBER 2018

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[1] This is an application to review and set aside the decisions of the second respondent, dated 9 May 2016, in terms of which it approved:

- 1.1 The acquisition by the fourth respondent of a financial interest in the third respondent, and
- 1.2 The acquisition by the sixth respondent of a financial interest in the third respondent.

Adv J Els appeared for the applicant. The first and second respondents initially opposed the application but subsequently withdrew their opposition. There was no appearance on their behalf at this hearing. The third to sixth respondents did not oppose the application, which proceeded on an unopposed basis.

[2] The applicant is a competitor of the third respondent, who is the holder of Route Operator Licence, issued by the second respondent in terms of the Free State Gambling, Liquor and Tourism Act 6 of 2010 (the Act). A Route Operator's Licence enables the third respondent to enter into agreements with site operators to place Limited Gaming Machines at their sites. These

are gaming machines which are programmed to pay out certain sums subject to a pre-determined limit.

[3] The third respondent applied, to the second respondent on 12 January 2016, for approval of a change of more than 5% of its shareholding, which was comprised as follows:

- 3.1 Vukani Gaming Corporation – 45%
- 3.2 SACTWU Welfare Trust Free State – 15%
- 3.3 24 TM Bokamoso Trading Enterprise CC – 20%
- 3.4 Scenisolve (Pty) Ltd – 20%

The proposed change in the shareholding of the third respondent was comprised as follows:

- 3.5 Ithuteng Consultancy (Pty) Ltd (new shareholder) – 15%
- 3.6 Maono Construction and Property Development (Pty) Ltd (new shareholder) – 10%
- 3.7 The shareholding of 24 TM Bokamoso Trading Enterprise CC be reduced from 20% to 15 %

[4] The above changes were approved by the second respondent on 9 May 2016, and the applicant seeks to have this decision reviewed and set aside in terms of section 6(2)(b) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), on the basis that a mandatory and material procedure or condition prescribed by an empowering provision was not complied with, and/or section 6(2)(c) of PAJA in that the decision was procedurally unfair. The basis of the applicant's contentions is that section 84 of the Act, read with sections 63 and 65 to 69 of the Act, requires that notice of the applications must be published in the Provincial Gazette and a newspaper circulating in the area, with the aim of allowing objections to be raised to such

applications, that representations in respect of such objections be received and that the second respondent must hold public hearings, if necessary. The applicant contends that the applications were not published in the Provincial Gazette or in a local newspaper. As a result, there was no opportunity to file objections and or for public participation, as envisaged in the Act. This much was conceded by the third respondent in its Answering Affidavit to an application by the applicant in which the latter sought, *inter alia*, an investigation into whether or not the third respondent's shareholding complied with Broad –Based Black Economic Empowerment, as required in the conditions of the third respondent's Route Operator License. The third respondent asserted that "Due to an unfortunate inadvertent error, those applications were not advertised for public comment".

[5] The applicant set out in its Founding Affidavit numerous objections it would have raised, had the applications been published and the public participation process been followed, as envisaged by the Act. It is not necessary at this stage to deal with such objections, save to say that had the proper processes been followed, the applicant would have been in a position to ventilate such objections, which in turn, may or may not have altered the decision that was made by the second respondent.

[6] Section 84(1) and (3) provide as follows:

**"84 Financial interests in business of licensee**

(1) Any person, other than an institutional investor, a depository institution or a central securities depository, who directly or indirectly, procures a financial interest of 5 % or more in the business to which a licence relates must, within the prescribed period and in the prescribed manner, apply to the Authority for approval to hold such interest.

(2).....

- (3) The provisions of sections 63 and 65 to 69 must, *mutatis mutandis* apply in relation to an application contemplated in subsection (1) and (2).

- [7] **Section 63** deals with the disqualification of certain persons from holding licences or a financial interest in the holder of a licence referred to in the Act. **Section 64** empowers the granting of gambling licences. **Section 65** stipulates the procedure for submission of an application for a licence. **Section 65(2)(b)(ii)** bears mention, in that it stipulates that an application for a licence must be accompanied by “certified copies of the prescribed notice published in the Provincial Gazette and a newspaper circulating in the area in which the premises, where the gambling is to take place, are situated”. **Section 67** stipulates the manner and time period in which a person wishing to object to an application may do so. **Section 68(1)** provides that any application, objections and response thereto lodged with the Authority (in this case the second defendant), must be open to inspection by interested persons who, upon payment of the prescribed fee, will be entitled to a copy or extracts from such application, objections or response. The word “must” in Section 68(3) obliges the Authority to hold a hearing where an objection has been lodged against an application, at a date, time and place it has determined after notice of such hearing has been published in the Provincial Gazette and a newspaper circulating in the area where the premises to which the application refers, are situated. **Section 69** provides that the Authority may, in order to determine whether a licence should be granted, gather such relevant information from any person or source.
- [8] As indicated, the applicant approaches this court in terms of section 6(2)(b) and /or section 6(2)(c) of PAJA. Section 6(2)(b) and (c) of PAJA provide as follows:

“A court or tribunal has the power to judicially review an administrative action if-

(a)....

(b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;

(c) the action was procedurally unfair;”

[9] Section 84 of the Act, which is an empowering provision, as envisaged in PAJA, makes the mandatory provisions of sections 63 and 65 to 69 applicable to applications for a change in shareholding of a licence holder. Publication of the applications in the Provincial Gazette and a newspaper circulating in the area in which the relevant premises are situated is mandatory in terms of the Act. The reason for this is to invite any objections to such applications, to hold public hearings in order to properly ventilate such objections and enable the Authority to investigate such objections. This ensures procedurally fair processes which inform the resultant administrative actions, rendering such actions themselves fair, rational and reasonable.

[10] It is not in dispute that the fourth and sixth respondents failed to advertise, in accordance with the precepts of the Act, the applications by the fourth and sixth respondents to acquire a financial interest of more than 5% in the third respondent. This is clearly a non-compliance with the mandatory and material provisions of the Act, as envisaged by section 6(2)(b) of PAJA.

[11] The decisions of the second respondent approving the acquisitions by the fourth and sixth respondents of a financial interest in the third respondent are therefore based on defective applications, rendering the process which culminated in the

decisions by the second respondent procedurally unfair to the applicant. The latter was deprived of the opportunity to lodge its objections to the applications, due to not receiving notice of the application, and was unable to properly raise those objections as a result of the public participation process not being followed. This court is therefore empowered in terms of section 6(2)(b) and (c) of PAJA to review the decisions of the second respondent.

- [12] The applicant raised the issue of its non-compliance with the provisions of section 7 of PAJA, which stipulates that a review in terms of PAJA must be brought within 180 days of the applicant being informed or becoming aware of the decision sought to be reviewed. The applicant set out a chronology of events, during which it requested information from the second respondent, and after an application was brought to court on 7 July 2017 to compel the furnishing of such information, most of it was furnished, except the second applicant's approvals granted to the fourth and sixth respondents on 9 May 2016.
- [13] Such approvals only came to light on 19 October 2017, in an Answering Affidavit by the third respondent, in the application brought by the applicant for an order directing the second respondent to investigate the shareholding of the third respondent. The present application was launched on 8 December 2017. There is no dispute that the decision which the applicant now seeks to review only came to its attention on 19 October 2017. In my view, the applicant acted within the required 180-day period. The applicant pointed out that in terms of, section 9 of PAJA this court has the discretion to extend the period of 180 days, where the interests of justice require it. This application is unopposed, and there is no objection or information before this

court which would militate against the court exercising its discretion in favour of the applicant. The applicant indicated that the second respondent furnished it with the approval in respect of the fifth respondent, pursuant to the court order dated 7 July 2017. Even if it is argued, on that basis, that this application was brought outside the 180-day period, my view is that it would be in the interests of justice that such extension be granted. In the final analysis, it is not necessary for this court to exercise its discretion as I have expressed the view that this application was brought within the 180-day period. Mr Els advised the court that the applicant no longer seeks a costs order against any of the respondents, and seeks an order only in respect of prayer 1 of the Notice of Motion.

[14] In the circumstances, the following order is made:

14.1 The decisions of the second respondent, handed down on 9 May 2016, in terms of which the second respondent approved:

14.1.1 The acquisition of a financial interest in the third respondent by the fourth respondent,

14.1.2 The acquisition of a financial interest in the third respondent by the sixth respondent,

are hereby reviewed and set aside.

14.2 No order is made in respect of costs.



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**S. NAIDOO J**

I agree

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**L OPPERMAN J**

On behalf of Applicant:

Instructed by:

Adv. Adv. J Els

Noordmans Inc

1 Eighth Street

Arboretum

Bloemfontein

(Ref: A Noordman)

On behalf of 1<sup>st</sup> & 2<sup>nd</sup> Respondents:

Instructed by:

Kirshen Naidoo & Company Inc

Suite 7 Canterbury Park  
67 President Reitz Avenue  
Westdene  
Bloemfontein  
(Ref: MAT7310/KKN/BFN)

On behalf of the 3<sup>rd</sup> Respondent:

Instructed by:

Lovius Block Attorneys  
31 First Avenue  
Westdene  
Bloemfontein  
(Ref:  
C12363\*PDY/mn/S179/16)