IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION: PIETERMARITZBURG

CASE NO: 1366/2015

In the matter between:

THE PREMIER OF KWAZULU-NATAL	**FIRST APPLICANT**
THE MEMBER OF THE EXECUTIVE COUNCIL FOR THE PROVINCE OF KWAZULU-NATAL FOR FINANCE	**SECOND APPLICANT**
AFRISUN KZN (PTY) LIMITED t/a SIBAYA CASINO & ENTERTAINMENT KINGDOM	**THIRD APPLICANT**
THE PEOPLES FORUM AGAINST ELECTRONIC BINGO TERMINALS Applicant for Intervention	**FOURTH APPLICANT**
PEERMONT GLOBAL (KZN) (PTY) LIMITED Applicant for Intervention	**FIFTH APPLICANT**

and

THE KWAZULU-NATAL GAMING AND BETTING BOARD	**FIRST RESPONDENT**
SIBUSISWE NKOSINOMUSA ZULU	**SECOND RESPONDENT**
PEARL DAWN ARNOLD-MFUSI	**THIRD RESPONDENT**
ASHWIN HIRJEE TRIKAMJEE	**FOURTH RESPONDENT**
ISOBEL ELIZE KONYN	**FIFTH RESPONDENT**
THOKOZANE IAN NZIMAKWE	**SIXTH RESPONDENT**
THEMBELIHLE PRETTY MAPIPA-NDLOVU	**SEVENTH RESPONDENT**
HEINRICH OOSTHUIZEN	**EIGHTH RESPONDENT**
PETROS ZAMOKUHLE DLAMINI	**NINTH RESPONDENT**
NOZIBUSISO DOROTHY SHABALALA	**TENTH RESPONDENT**

GALAXY BINGO PAVILION (PTY) LTD t/a GALAXY PAVILION **ELEVENTH RESPONDENT**

GALAXY BINGO MIDLANDS (PTY) LTD t/a GALAXY MIDLANDS **TWELFTH RESPONDENT**

POPPY ICE TRADING 18 (PTY) LTD t/a POPPY ICE **THIRTEENTH RESPONDENT**

GALAXY BINGO GATEWAY (PTY) LTD t/a GALAXY GATEWAY **FOURTEENTH RESPONDENT**

CHESTNUT HILL INVESTMENTS 61 (PTY) LTD t/a GOLDRUSH PHOENIX **FIFTEENTH RESPONDENT**

GOLD RUSH GAMING (PTY) LTD **SIXTEENTH RESPONDENT**

VITUBYTE (PTY) LTD t/a GOLDRUSH RICHARDS BAY **SEVENTEENTH RESPONDENT**

GALAXY BINGO KZN (PTY) LTD t/a GALAXY BINGO EMPANGENI **EIGHTEENTH RESPONDENT**

BINGO ROYALE HILLCREST (PTY) LTD t/a BINGO ROYALE **NINETEENTH RESPONDENT**

GOLD RUSH (PTY) LTD **TWENTIETH RESPONDENT**

VITUBYTE (PTY) LTD t/a GOLDRUSH MALVERN **TWENTY-FIRST RESPONDENT**

ALLEXIGENIX (PTY) LTD t/a GOLDRUSH CHATSWORTH **TWENTY-SECOND RESPONDENT**

GALAXY BINGO AMANZIMTOTI (PTY) LTD t/a GALAXY AMANZIMTOTI **TWENTY-THIRD RESPONDENT**

ZATOPIX (PTY) LTD t/a GOLDRUSH SCOTTBURGH **TWENTY-FOURTH RESPONDENT**

GALAXY BINGO SOUTH COAST (PTY) LTD t/a GALAXY BINGO SOUTH COAST **TWENTY-FIFTH RESPONDENT**

GALAXY BINGO EMPANGENI (PTY) LTD **TWENTY-SIXTH RESPONDENT**

EMIKAMACK (PTY) LTD t/a GOLDRUSH RICHARDS BAY **TWENTY-SEVENTH RESPONDENT**

AND IN THE JOINDER APPLICATION:

AFRISUN KZN (PTY) LIMITED t/a SIBAYA CASINO & ENTERTAINMENT KINGDOM **APPLICANT**

and

INTERNATIONAL GAME TECHNOLOGY-AFRICA (PTY) LIMITED **FIRST RESPONDENT**

WMS GAMING AFRICA (PTY) LIMITED **SECOND RESPONDENT**

VUKANI GAMING CORPORATION (PTY) LIMITED **THIRD RESPONDENT**

J U D G M E N T
Delivered on: Thursday, 04 July 2019

Olsen J

[1] These review proceedings concern the game of bingo, and in particular that game played electronically on Electronic Bingo Terminals ("EBTs"). Bingo is a game of chance. Accordingly when played for a consideration, it features in the legislation designed to regulate gambling in this country.

[2] In its traditional form bingo is a game played simultaneously by a number of participants each of whom has a card divided into squares, each square containing a number. A "caller" makes a random selection of numbers, one at a time, and calls them out. If the number features in a square on a player's card it is marked. As I understand the rules, the first player to mark all the squares on his or her card is the winner and receives a prize. This form of the game has been referred to as "paper bingo" or "traditional bingo".

[3] To a greater or lesser extent electronic versions of the game of bingo short circuit the process of the game, and enliven it by substituting brightly lit screens for the dullness of paper. Some elements of the casino industry have complained, rightly or wrongly, that EBTs are devices which are simply

gambling machines of the type used in casinos; and that given the number of machines that might be allowed in a bingo establishment, bingo operators will compete unfairly with casinos *inter alia* because the investment in infrastructure to support the tourism industry, which is required to qualify for a casino licence, does not have to be made by Bingo operators.

[4] To put it plainly, the present proceedings have got out of hand. The papers extend to well over 3000 pages. When making arrangements for this case to be set down for argument over 2 days the Judge President directed that a core bundle be compiled and provided. That ran to some 700 pages to which additions were made after the bundle had been prepared. This is not the first occasion upon which the present matter has served before this court. And unless an order is made now, dismissing the review application upon the basis that it has become academic, this will not be the last occasion that the present matter serves before this court. That is because, the argument over whether the case has become academic aside, I am only to decide certain preliminary issues.

[5] It is necessary to give an account of the history of the present matter, both to identify the issues to be decided, and to facilitate the furnishing of reasons for those decisions.

[6] Gambling in South Africa is governed by both national and provincial legislation. The KwaZulu-Natal Gaming and Betting Act No. 8 of 2010 (which I will call "the Act") is at the centre of the dispute which has arisen in this case. Section 60 of the Act provides that a licence is required in order to conduct bingo games. The place at which the games are played is called a "bingo hall". The licence required to operate a bingo hall is called a "bingo licence".

[7] In 2010 the KwaZulu-Natal Gaming and Betting Board (which I will call the "Board" or the "Gambling Board") granted bingo licences to a number of aspirant proprietors of proposed bingo halls. The conditions of those licences did not then permit the use of EBTs in those halls.

[8] Section 66 of the Act is to the effect that the manufacturer or supplier of gaming equipment (which would include EBTs) has to be registered by the Board, and its gaming equipment has to be separately registered by the Board in accordance with the provisions of s 59(c) of the Act. Regulation 82 of the regulations promulgated under the Act is to similar effect. It is clear from the

Act and the regulations that it is the manufacturer or supplier of gaming equipment which applies for the registration of the equipment, and may indeed apply for its deregistration. Section 59 of the Act is to the effect that a licensee (which would include a bingo operator whose licence permits the use of EBTs) cannot use an EBT which is not registered by the Board.

[9] After conducting hearings,

(a) on 16 October 2014 the Board approved the registration of seven Electronic Bingo Terminals on the application of Vukani Gaming Corporation (Pty) Limited ("Vukani") and 40 Electronic Bingo Terminals on the application of International Game Technology-Africa (Pty) Limited ("IGT"); and

(b) on 15 January 2015 the Board approved the registration of six Electronic Bingo Terminals on the application of WMS Gaming Africa (Pty) Limited ("WMS").

The grant of those applications meant that there were now EBTs available for lawful use in bingo halls subject, of course, to the approval of amendments to the conditions of licences issued to bingo hall proprietors who wished to introduce EBTs. (I will call Vukani, IGT and WMS the "suppliers".)

[10] The Gambling Board then granted applications for the amendment of licence conditions made by the various operators who feature as the eleventh to twenty-fifth respondents in the present proceedings. This was done on 16 January 2015. The decisions to grant those amended licence conditions have been referred to as the "impugned decision" in the present review proceedings, but the term should be "impugned decisions" as a separate decision was made in respect of each application. The impugned decision allowed each bingo operator to use a specified number of EBTs.

[11] These proceedings were launched on or about 30 January 2015 by the Premier of KwaZulu-Natal and the Member of the Executive Council for the Province of KwaZulu-Natal responsible for finance. They sought an order reviewing and setting aside the impugned decisions. In addition an interdict was sought restraining the issue of licences bearing the amended conditions, and the processing of them in any manner whatsoever. The grounds upon

which the relief was sought are not presently of particular relevance. But prominent amongst them was a contention that the Gambling Board had proceeded with undue haste in the face of requests or directives from provincial government that EBTs should not be introduced at that stage, *inter alia* because it was intended to introduce amendments to the legislation which would have the effect of reducing the impact of EBTs on gambling in the province.

[12] In the application the Premier and the MEC cited:

(a) the Gambling Board as first respondent;
(b) the individual members of the Board as second to tenth respondents (inclusive); and
(c) the beneficiaries of the impugned decisions (i.e. the bingo licensees whose licence conditions had been amended) as eleventh to twenty-fifth respondents.

All save one of the bingo licensees belong to one of two groups. These groups are referred to in the papers as the Goldrush respondents and the Galaxy respondents, and the remaining (the thirteenth) respondent is known as “Poppy Ice”.

[13] On 3 February 2015 Afrisun KZN (Pty) Limited, which trades as the Sibaya Casino and Entertainment Kingdom, applied to be joined as an applicant in the review proceedings. It eventually became the third applicant. (I will call it “Afrisun”). The Sibaya Casino lies to the north of the town of Umhlanga which is in turn to the north of the central business district of Durban.

[14] Besides adopting such grounds of review as the Premier’s application had advanced, the deponent to Afrisun’s affidavit supporting the application to intervene concentrated on the contention that EBTs were not devices facilitating the playing of the game of bingo, as then defined in the Act. He advanced Afrisun’s contention that EBTs were ordinary gambling machines masquerading as devices for the playing of the game of bingo.

[15] Two other parties applied to intervene as co-applicants. They are the Peoples Forum Against Electronic Bingo Terminals and another casino operator, Peermont Global KZN (Pty) Limited. These two parties ultimately played no part in the proceedings before me, Peermont having explained in an affidavit that it had launched its own review proceedings.

[16] Although I have classified the Premier's application as the initiation of the present review proceedings, it should be observed that the Premier did not slavishly follow the procedure available under Rule 53. The Premier presented the application as an urgent one, and interim relief was sought to prevent the Gambling Board from permitting bingo operations to commence using EBTs. For that reason the Galaxy respondents delivered an extensive answering affidavit on 4 February 2015, a day in advance of these proceedings serving for the first time before this court. The main thrust of that answering affidavit was a challenge to the proposition that the provincial government (represented in this case by the Premier and the MEC for Finance) had any right or power to interfere in the performance of the Board's functions regarding the licences in question, by issuing directives; let alone any right to have the Board's impugned decisions reviewed because the Board did not obey such directives.

[17] In the founding affidavit the MEC for Finance had also mentioned the contention advanced by some people that EBTs did not qualify as bingo machines. As I read the founding affidavit the issue was raised not to advance the case that as a matter of fact the EBTs did not qualify as bingo devices, but to raise the issue as to whether the Board had acted precipitously, and as to whether the members of it had applied their minds properly to the issue as to the suitability of the available EBTs when deliberating on what became the impugned decisions. There was particular reference to the case of *Akani Egoli (Pty) Limited and Others v Chairperson of the Gauteng Gambling Board and Others* (17891/06) [2008] ZAGPHC 262 (30 July 2008) in which it was held that the EBTs considered in that case did not qualify to be used in bingo halls. In their answering affidavit delivered on 4 February 2015 the Galaxy respondents recorded that the *Akani* case, and the evidence available in the *Akani* case, had to do with a device which was then (in 2015) already seven years old, and not currently available in the market.

The deponent stated that over that seven year period technology with respect to EBTs had advanced significantly.

[18] This application then served before this court on 5 February 2015 when an order was taken by consent. Afrisun was granted leave to intervene "without prejudice to any party to raise any arguments in this respect". The application was adjourned to 28 April 2015 and directions were given as to when the record was to be delivered, supplementary affidavits in terms of Rule 53(4) to be filed, and further affidavits and all heads of argument to be delivered. All questions of costs were reserved.

[19] On 20 February 2015 (i.e. the last day for delivery of a supplementary affidavit in terms of Rule 53(4)) Afrisun delivered an amended notice of motion and a supplementary affidavit titled "Supplementary Affidavit in terms of Rule 53(4)". The significant features of these supplementary papers from the perspective of the matters now before the court were the following.

(a) Afrisun did not confine itself to the relief sought by the Premier against the respondents who were Bingo hall operators. In paragraphs 2 to 6 of the amended notice of motion Afrisun sought orders reviewing and setting aside the earlier decisions of the Board to approve the applications for registration of gaming equipment granted in favour of the suppliers; to declare the EBTs manufactured or distributed or sold by the suppliers as impermissible (that is to say impermissible under law); and in the alternative to such a declaratory order, an order directing the terminals to be produced for inspection by Afrisun after which Afrisun should be allowed further time to supplement its papers.

(b) The amended notice of motion was one crafted with a view to the application of Rule 53, requiring the delivery of the records relating to the approval of the equipment supplied by WMS, IGT and Vukani; and the provision of reasons for the decisions made in favour of those suppliers. The notice of motion asserted a right on behalf of Afrisun to amend and to vary the terms of its motion in terms of Rule 53(4) after receipt of these fresh records. I will revert to this topic later.

[20] Afrisun launched applications to join each of the suppliers. These were opposed.

[21] Answering affidavits delivered on behalf of the various respondents objected to Afrisun's attempt to expand the proceedings to review the decisions in favour of the three suppliers. There were also general objections to the intervention of Afrisun in the review proceedings launched by the Premier.

[22] When the matter then served again before this court on 28 April 2015 an order was made that a number of issues should be separately dealt with, and the case set down for adjudication of them on a date to be arranged with the registrar. In essence these were the remaining intervention applications, the objections to Afrisun's intervention, the question as to whether Afrisun should be permitted to seek relief attacking the registration of the equipment supplied by WMS, IGT and Vukani, and the joinder applications relating to those entities. The case was otherwise postponed sine die.

[23] These separated issues were argued before me in April 2019. However the arguments extended beyond what was contemplated in the order of 28 April 2015 because of subsequent events. I turn to those.

[24] By notice dated 18 November 2016, the Premier and the MEC for Finance withdrew their application. In December 2016 Afrisun brought an application to set aside the withdrawal of the review by the Premier and the MEC. In the alternative Afrisun asked that it be permitted to pursue the application as a party thereto. On 22 June 2018 this court (Koen J) delivered judgment in that application, granting the alternative relief, declaring that Afrisun is "entitled to pursue the review application … unless and until a court pursuant to paragraph 1.1 of the order [granted on 28 April 2015] upholds any argument that would disqualify it from doing so."

[25] Prior to that, however, and by Act 4 of 2017, the Act had been amended with the intention, it seems, to put it beyond doubt that EBTs should be permitted to be employed in bingo halls. Because of the present litigation the Board's decision in 2015 to permit the respondents who are bingo operators to use EBTs was not implemented. However, following the amendment, the requisite licence conditions were altered, licences were issued, and the requisite processes followed and permissions granted which had the effect of the various bingo halls actually offering the game of bingo

utilising EBTs. All this became the subject of fresh review proceedings instituted by Afrisun in 2018.

[26] When Afrisun's application served before Koen J in June 2018 it was argued that as a result of the events just described the review application which Afrisun wished to pursue had become academic. The learned Judge decided that he could not deal with that argument, dispositive as it might turn out to be of the issue he had to decide, because it had not been canvassed in the papers. He continued (at paragraph 57 of the judgment) as follows.

'It might however be that in the future management of this litigation attention be directed to defining the factual foundation, whether by the exchange of affidavits or some form of stated case, for this issue also to be addressed.'

[27] Unsurprisingly in the light of events I have described which post-dated the original set of papers in this application, and perhaps also in the light of the observations made by Koen J, the Galaxy and Goldrush respondents sought to deliver supplementary affidavits, the principal thrust of which was that the issue as to whether anything done in 2015 was reviewable had become academic and moot. The Board itself, which had not as a body previously taken any part in the proceedings, now sought also to put in an affidavit raising, *inter alia*, the fact that the present application had become academic, and that it ought to be dismissed on that account. (The Board also sought leave to withdraw from its earlier position, that it would abide the decision of this court in the review proceedings.)

[28] Afrisun has opposed these attempts to introduce further affidavits, and in the result the papers became supplemented with nearly 500 pages more than existed when the Judge President gave permission to the parties at the pre-hearing conference to set the matter down for 2 days upon the basis that a core bundle should be produced for the hearing.

[29] It is against this background that this judgment must canvass and decide,

(a) the issues identified in April 2015 for separate consideration;

(b) the newly generated interlocutory applications; and, upon the assumption that the new evidence is admitted

(c) the question as to whether these proceedings should be finalised now upon the basis that the relief originally sought has become academic or moot.

AFRISUN'S RIGHT TO ATTACK THE REGISTRATIONS OF EBT EQUIPMENT GRANTED IN FAVOUR OF IGT, WMS AND VUKANI

[30] The first issue to be decided must be whether Afrisun had the right in these proceedings to challenge the registration of EBTs at the instance of the suppliers. This was not relief sought by the Premier; and neither was this new relief disclosed to the other parties when they consented to an order permitting the joinder of Afrisun in the Premier's application, subject to their right to challenge Afrisun's claim to be entitled to be joined as a co-applicant.

[31] The means by which Afrisun sought to introduce these new challenges illustrates the difficulty with the proposition that it was permissible for it to do so. Having become a co-applicant it exercised its right under Rule 53 (4) to deliver a supplementary founding affidavit. It notionally had the right also under that rule to amend its notice of motion; but it did not have one. It therefore delivered a fresh notice of motion. There it sought, in paragraphs 2 to 6 of its prayer, to introduce the further decisions it wished to challenge. But of course the records of those administrative decisions were not before the court as they were not required to be delivered under the original notice of motion. If the new challenge was to proceed, it would require the records of another three sets of administrative decisions to be furnished. To achieve access to those records Afrisun's so-called amended notice of motion called upon the Board to deliver the records of those three administrative proceedings together with reasons (if required or desired) within 15 days of receipt of the so-called amended notice of motion. The document was in effect a notice of motion starting fresh proceedings against the suppliers in respect of the decisions to register machines which had been made in favour of each of them.

[32] Rule 53 (4) deals with what an applicant may do after provision of the record of the proceedings brought under review by an applicant's notice of motion. It reads as follows.

'The applicant may within 10 days after the registrar has made the record available to him or her, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his or her notice of motion and supplement the supporting affidavit.'

Dealing with the general scheme of things, Madlanga J in his judgment in *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) at para 13 said the following.

'The purpose of rule 53 is to "facilitate and regulate applications for review". The requirement in rule 53 (1) (b) that the decision-maker file the record of decision is primarily intended to operate in favour of an applicant in review proceedings. It helps ensure that review proceedings are not launched in the dark. The record enables the applicant and the court fully and properly to assess the lawfulness of the decision-making process. It allows an applicant to interrogate the decision and, if necessary, to amend its notice of motion and supplement its grounds for review.'

(References excluded.)

[33] In my view any ordinary reading of Rule 53 (4) suggests that what is to be addressed in a supplementary affidavit, and if necessary an amended notice of motion, is the decision which was identified in the original notice of motion as the subject of the litigation. That understanding seems to underlie the description of the process in the passage from *Helen Suzman Foundation* just quoted above, although it must be observed immediately that the Constitutional Court was not in that case seized with the issue which arises here.

[34] It is clear that what may legitimately be done under Rule 53(4) may be done as of right. Obviously the record of the decision may reveal grounds of review not stated in the original founding affidavit. These would be dealt with in the supplementary affidavit. It may be revealed that the decision under review was mis-described, perhaps as to its precise ambit or as to when it was made, and so on. That would justify an amendment to the notice of motion. I would venture to suggest, although that issue does not arise in this case, that the notice of motion may be amended to cite further respondents if the record reveals circumstances which render their joinder compulsory.

[35] There is authority for the proposition that circumstances may exist in which it is permissible for an applicant in review proceedings to amend the notice of motion under Rule 53(4) to bring under review decisions not identified in the original notice of motion. That is what occurred in *Pieters v Administrateur, Suidwes-Afrika en 'n Ander* 1972 (2) SA 220 (SWA). The applicant in that matter had applied under Rule 53 to review the refusal of his application for a permit to enter and remain in the country then known as South-West Africa. He required permission as he had not been born there. His application was dismissed in September 1971. The record of the proceedings was provided. In that record reference was made to some five earlier decisions all of which had the effect of denying the applicant the right to be in the country. The applicant used the provisions of Rule 53(4) to amend his notice of motion so as to bring those earlier decisions under review as well. Whilst the record supplied by the respondent mentioned the earlier decisions, it did not constitute a record of them. The applicant chose to have this rectified by calling for discovery of those records. That was resisted by the respondents *inter alia* on the basis that those decisions were not actually brought under review in the proceedings. The court (Hoexter J) disagreed. Whilst the decision to compel discovery of the record of the earlier decisions was made ultimately on the basis that they formed part of the record of the 1971 decision, and had accordingly to be produced, the learned Judge (at 225E-G) appeared to have no difficulty with the proposition that the applicant could amend his notice of motion to bring those earlier decisions under review.

[36] There are of course a number of features of the *Pieters* case which distinguish it from the present proceedings. First of all, the parties to the earlier decisions were the same as the parties to the decision identified in the original notice of motion. Secondly, as I understand the facts, the earlier decisions were of the same type as the 1971 decision, and indeed informed the refusal of the application made in 1971. Here the position is different.

[37] The decisions in favour of the suppliers were not decisions in which the bingo operators cited by the Premier had any legal interests. Likewise, the impugned decisions (i.e. the decision in favour of bingo operators) allowing them to use EBTs, brought under review by the Premier, were decisions in

which the suppliers had no legal interests. The two decision types are quite separate and were dealt with in separate and different administrative proceedings.

[38] The reason why Afrisun would want to bring the decisions in favour of the suppliers under review in the same proceedings as the decisions in favour of the bingo operators were challenged appears to me to be obvious. Afrisun wished to make the case against the bingo operators that the EBTs could not lawfully be regarded as bingo machines. If they had been separately registered by the Board under s 59 of the Act on earlier occasions, those registrations would at the very least on the face of it render the use of the machines lawful in bingo halls. Section 59(c) of the Act reads as follows.

'A licensee may not use a gaming machine, limited payout machine or gambling equipment or allow any game to be played on a gaming machine or limited payout machine or on or with gaming equipment which –

(a) …

(b) ...

(c) has not been separately registered by the Board.

The proposition was raised in argument before me, and not contradicted, that although the section is rendered in the negative, the effect of it in the context of the Act is that, once any such equipment is "separately registered", bingo operators are entitled to use it in their bingo halls.

[39] In argument on the question of joinder, the suppliers have all conceded that if it should be held that Afrisun was entitled as of right under Rule 53(4) to expand the ambit of the proceedings in this case by bringing the Board's registration and approval of their machines under review, then their joinder as parties to these proceedings is necessary. However they argue, correctly in my view, that they have no role to play in these proceedings if the extension of the relief to them by Afrisun, without the leave of the court (which was not sought), was impermissible. Of course, as suppliers of EBTs, they would have been most satisfied with the Board's decision (brought under review by the Premier) to permit the bingo operators to install EBTs. By no stretch of

imagination can that be elevated to the status of a legal interest justifying their compulsory joinder in these proceedings.

[40] The Goldrush respondents make the point in their affidavit that the bingo operators would merely be passengers in the dispute between Afrisun and the suppliers. The issue in that dispute is essentially whether the Board erred in regarding the EBTs registered on the application of the suppliers as having the characteristics justifying their registration under the Act as it was before it was amended. That raises technical issues to which the bingo operators would have nothing to contribute. The duration of the proceedings would be extended, according to the Goldrush respondents, indefinitely; and the costs (for the bingo operators) would be increased significantly.

[41] I have little doubt that all these considerations would have weighed with the court had Afrisun chosen to apply for leave to amend its notice of motion to bring the decisions in favour of the suppliers under review.

[42] I conclude that Rule 53(4) cannot be given so broad a construction as to permit what Afrisun has sought to do in bringing under review in the present proceedings three new sets of decisions to which the existing respondents (besides the Board) were not parties. I reach that conclusion on the basis of the considerations which support it which have already been discussed above. That means that the applications to join the suppliers must fail.

OBJECTIONS TO AFRISUN'S JOINDER : *LOCUS STANDI*

[43] I turn to the issue set out in paragraph 1.1 of the order made on 28 April 2015 as clarified by the order of Koen J made on 22 June 2018. Paragraph 1.1 of the order of 28 April 2015 set aside for prior consideration the intervention applications of Peermont and The Peoples' Forum Against Electronic Bingo Terminals; and the objections to Afrisun's intervention. For reasons already given there is no need to consider the intervention applications. The objections to Afrisun's further participation in these proceedings must be dealt with, but only with regard to its claims which affect the bingo operators, given the conclusion I have come to regarding its claim which affects the rights and interests of the suppliers. In his order of 22 June 2018 Koen J clarified the effect of paragraph 1.1 of the order of 28 April 2015.

'Afrisun (Pty) Limited, having been granted leave to intervene in the proceedings under case number 1366/15 on 5 February 2015, and joined as the third applicant, is declared entitled to pursue the review application under that case number, unless and until a court pursuant to paragraph 1.1 of the order [granted on 28 April 2015], upholds any argument that would disqualify it from doing so.'

[44] Review proceedings under PAJA have as their purpose the vindication of the right under s 33 of the Constitution to administrative action that is lawful, reasonable and procedurally fair. Section 6 (1) of PAJA is to the effect that "any person" may institute proceedings for the judicial review of administrative action. However s 38 of the Constitution deals with who may approach a competent court for appropriate relief upon the basis that a right in the Bill of Rights is being infringed or threatened with infringement. Section 38 of the Constitution must be read into s 6(1) of PAJA. (See *Giant Concerts CC v Rinaldo Investments (Pty) Limited* 2013 (3) BCLR 251 (CC) at para 29.)

[45] Whilst counsel for Afrisun ventured a suggestion in argument that, as a participant in the gambling industry, Afrisun had an interest in seeing that all administrative decisions made by the Gambling Board in connection with the gambling industry are made in compliance with PAJA, that is not the basis upon which Afrisun sought leave to intervene. In its founding affidavit in the intervention application Afrisun asserted

(a) that the decisions made in favour of the bingo operators would bring about that Afrisun would suffer a significant loss of "gross gaming revenue"; and

(b) that it was a party affected by the decision in that "from the outset [Afrisun] submitted objections to attempts to licence EBTs, and also submitted objections to the applications which culminated in the decision of the first respondent which is now sought to be reviewed and set aside".

It is clear that Afrisun claims the right to approach the court on the basis that it is acting in its own interests, as contemplated by s 38(a) of the Constitution.

[46] The fact that Afrisun participated in the hearings which preceded the impugned decisions cannot on its own afford Afrisun standing. As pointed out in *Giant Concerts* (para 56):

'It is not logical to assert that an own-interest standing qualification arises from participation in a process if the objection remains hypothetical and academic.'

[47] What Afrisun relies upon to render its objection to the decisions made by the board, and its interest in intervening in these review proceedings, real and not academic, is the detrimental effect upon its gaming revenues which it claims will result from the use of EBTs in bingo halls.

[48] However fanciful claims of potential prejudice are not sufficient to justify a conclusion that a claim to standing is premised on real interests, as opposed to ones which are hypothetical or academic. In this case all of the bingo halls which were beneficiaries of the impugned decisions were cited, and the relief sought by Afrisun covers all of them, even those whose distance from Afrisun's casino is such that they could not reasonably be expected to have any effect on Afrisun's gambling revenues. All of the beneficiaries of the impugned decisions were originally cited in this matter by the Premier and the MEC for Finance, based on their claim of *locus standi* to object to the approvals of any licence conditions authorising the use of EBTs in KwaZulu-Natal. Afrisun does not approach the court with the same standing as that claimed by the original two applicants. It had to establish its standing with respect to each of the impugned decisions. In my view it failed to do so.

[49] In submitting its objections during the course of the process which resulted in the impugned decisions, Afrisun identified five of the bingo operator respondents as being within its "catchment area", and as likely to cause it the loss of gaming revenue to which I have already referred. They are the eleventh, fourteenth, fifteenth, nineteenth and twentieth respondents. Counsel for the respondents conceded in argument that there is enough on the papers to justify the conclusion that Afrisun has standing to challenge the decisions made in favour of those respondents.

[50] However they argue correctly that all the other bingo operator respondents fall outside what might be called Afrisun's sphere of interest.

[51] Reverting to paragraph 1.1 of the order made on 28 April 2015, the challenge to Afrisun's standing to intervene to seek relief against the bingo operator respondents other than the eleventh, fourteenth, fifteenth, nineteenth and twentieth respondents, must be upheld.

THE REMAINING INTERLOCUTORY APPLICATIONS

[52] I deal first with an interlocutory application which resides in the original papers, the so-called "Rule 30 Application". After the application to join it had been served on WMS, it delivered a notice in terms of Rule 6(5)(d)(iii) notifying Afrisun of questions of law upon the basis of which WMS intended to opposed the application to join it in the review proceedings. Afrisun objected, complaining (according to its founding affidavit in the application in terms of Rule 30 subsequently launched) that

(a) the notice was delivered late; and

(b) the notice traversed issues of fact as well as issues of law.

[53] The complaint that the notice deals with matters of fact as well as law is without merit. The notice delivered by WMS did not call upon the court to make any decisions on fact. A respondent wishing to employ the sub-rule is entitled to raise questions of law which arise from or in the factual matrix revealed in the founding papers. I can see nothing wrong in mentioning a fact (believed to be part of that matrix) in the notice in order to contextualise and better explain the question of law the respondent seeks to describe and define. If the identification of a question of law arises from a misunderstanding or misstatement of the facts revealed in the founding papers that does not render the notice invalid. It would render it ineffectual for the respondent's purposes when the court rules that the question of law does not arise in the case.

[54] In my view the notice delivered by WMS was wholly in compliance with the sub-rule. It raised no issues of fact. It raised questions of law arising from facts already before the court at the time when the notice was delivered.

[55] The founding affidavit in the Rule 30 application was attested to by the attorney acting for Afrisun. In it he claimed that there was prejudice to Afrisun because he (the attorney) had already written to the presiding Judge seeking

dates to have the matter set down. He complained, as I have said, that the notice raised factual issues and not just legal ones. There was no merit in those complaints when they were made. The attorney had to have known that the issues raised by WMS would have to be dealt with in the application to join the suppliers, come what may. They were nothing new. One is driven to the conclusion that what was sought to be achieved in the Rule 30 application was the silencing of WMS. In my view the Rule 30 application was at best misguided, and at worst a designedly obstructive tactic of a kind which our courts ought to frown upon.

[56] The application in terms of Rule 30 must be dismissed. As WMS has accepted that its notice was delivered late I propose to grant an order condoning that fact, despite my uncertainty as to whether such condonation is necessary. (The notice of motion initiating the joinder proceedings was defective, *inter alia,* because it did not notify WMS of the date by which notice to oppose had to be delivered.)

[57] I turn to the applications to admit further evidence in supplementary affidavits. On 26 February 2019 the Galaxy respondents delivered an application for leave to file their supplementary affidavit, asking that Afrisun pay the costs of the application only if it be opposed. The Goldrush respondents delivered a similar application on 8 March 2019 seeking similar relief, and condonation if it was required for the late delivery of the affidavit. The Board delivered an application on 28 February 2019. I will deal with its application separately.

[58] The Galaxy respondents sought by their affidavit to place before the court evidence of three circumstances which had arisen after the papers in the main application had been completed. They were the amendment to the Act, the judgment of Koen J handed down on 22 June 2018 and the institution by Afrisun in September 2018 of review proceedings against, *inter alia,* the Galaxy respondents in which Afrisun sought orders setting aside the various decisions made in 2018 (i.e. after the amendment of the Act) which brought about that the bingo halls could operate using EBTs. Its affidavit asserted that the facts that it wished to place before the court went to the question as to whether the present review proceedings had become academic and as to

whether, in the circumstances, Afrisun should be permitted to continue with the present application.

[59] The application by the Goldrush respondents was in all material respects the same as that of the Galaxy respondents, although the affidavit it sought to have admitted expanded a little upon the argument as to why the present proceedings have become moot.

[60] Afrisun opposed both of these applications. It complained that they had come too late, that they would obstruct the proposed hearing and that the issue as to whether the present proceedings had lost their purpose, and had become moot, should be dealt with when the merits of the review application came to be argued later.

[61] I accept the proposition that the supplementary affidavits were delivered late. Counsel for Afrisun has argued, correctly in my view, that the affidavits could have been delivered earlier, given that the parties knew certainly by October 2018 that they wished to place further affidavits before the court. However the facts stated in the affidavits are uncontentious, and each of them was within the knowledge of Afrisun from the moment the fact arose. Afrisun was able to produce an affidavit answering the material raised in the supplementary affidavits delivered by the Galaxy and Goldrush respondents, and I am satisfied that there was no disruption to the proceedings before me that mattered. There was time enough for all parties to prepare on and deal with the issue raised in the supplementary affidavits, that is to say the contention that the present proceedings have become academic and moot and should be stopped now. The matters raised in the supplementary papers were fully argued before me. An order admitting the supplementary affidavits of Goldrush and Galaxy must accordingly be made.

[62] The position with regard to the Board is slightly different. It had decided at the outset to abide the decision of this court in the review application. It was of course entitled to apply to court for leave to oppose and to file answering papers, such leave being required because it was well out of time on both counts. However in my view it was not entitled to do so as late as it did, and expect to have its delay condoned, insofar as the papers it wished to deliver went to issues unconnected with the contention that, since the papers in the application had been finalised, the issue raised in the review

proceedings had become academic. Afrisun was, for instance, confronted with a new extensive set of facts concerning its gaming revenue, and so on, directed at making a very belated further challenge to its contention that it had standing to seek the relief it did against the bingo operators.

[63] Nevertheless, I do consider that it was permissible for the Board to deliver affidavits setting out what has been done since the Act was amended, to the extent that it may have a bearing on the issue as to whether the proceedings have become academic and moot. Indeed, as the judge seized with that issue, I would have been disappointed if the Board, an organ of State responsible for the administration of these matters, had not placed the material facts before the court.

[64] I accordingly propose to admit the Board's papers into evidence, and to condone their late delivery, but on the footing that the only material disclosed in those affidavits which is to be considered in this judgment is that which goes to the issue as to whether this review has become academic and moot.

[65] In reaching these decisions as to the admission of supplementary papers I have kept in mind what was said in *Afrisun KZN (Pty) Limited t/a Sibaya Casino and Entertainment Kingdom v KwaZulu-Natal Gaming and Betting Board and Others* (14370/2017P) [2018] ZAKZPHC 49 (5 October 2018), to which I was referred by counsel for Afrisun.

'11. Over time, various tests have been posited for the introduction of affidavits additional to those allowed as of right. It has been recognised that this is not simply for the asking. However, the test or approach is not capable of being reduced to a finite list with boxes to be ticked. Each case depends on its own facts. It is trite that the court has a discretion whether or not to do so. That discretion must be exercised judicially. The most reliable guiding principle in exercising that discretion is fairness to all the parties.'

I am in respectful agreement with that analysis. I would simply add that the decision made must be one which serves the interests of justice, and that in the present context, the most prominent feature of the interests of justice is fairness to the parties.

HAS THIS REVIEW BECOME ACADEMIC?

[66] Counsel for Afrisun argues that the question as to whether or not this review should end merely for having become moot or academic should be dealt with when the merits of the review are argued. He argues that the issue is not just one of law, but one of fact, and that insufficient facts are before the court. However he did not contradict the proposition contended for by the Board and the bingo operators that if I should decide that there is sufficient material before the court to support a conclusion that the review has become moot, an appropriate order should be made now, and not later. I agree with that proposition. If, on the facts before the court, the law ordains that this court should not entertain the relief sought in the review application because it has no practical effect, then delaying the decision does offence to the administration of justice, and would be prejudicial to the parties who will incur further very substantial costs preparing for and presenting argument on the merits of this case, an exercise in futility.

[67] It is convenient to commence the consideration of this topic by stating (and in some instances re-stating) certain facts which can be dealt with briefly.

(a) Prior to the making of the impugned decisions each of the affected bingo hall operators had bingo hall licences.

(b) As contemplated by the Act, each licence was subject to conditions.

(c) One of the conditions was that the licence should permit the holder to perform the activities listed on a Schedule B. Schedule B described the permitted activity as “traditional bingo” (i.e. so-called “paper bingo”) and, presumably for the sake of clarity, a note indicated that “this excludes electronic bingo terminals”.

(d) Each licence was subject to the condition that it would remain in force until the 31st March of the year succeeding the one during which it was issued unless for some reason it lapsed or was cancelled earlier.

(e) The impugned decisions involved the approval of applications for electronic bingo terminals which had been brought by the affected respondents. In the case of each respondent a specified number of bingo terminals was permitted.

(f) The notification of the impugned decision relating to each respondent given in writing by the Board to each respondent, recorded the following.

> 'All relevant licence conditions will be amended accordingly in due course and your office will be notified accordingly on the outstanding fees payable.'

(g) In each case the impugned decision did not on its own generate a right on behalf of the bingo hall operator to install EBTs and conduct bingo games using them. Each impugned decision was in effect a decision in principle, as it required a number of further administrative functions to be performed or decisions to be made to get to the point where a licence with appropriate conditions for the use of EBTs could be issued.

(h) None of these further decisions was taken until after the Act was amended in 2017, and no bingo licence having the effect of permitting the offering of the game of bingo using EBTs was issued before the Act was amended.

[68] It is convenient, to avoid getting bogged down in the intricacies of the gambling legislation (including regulations and rules), to look to Afrisun's notice of motion in the review application it launched in 2018 for an account of the type of decisions which had to be made, and permissions granted, in order to issue what might be called a viable bingo licence permitting the use of EBTs. The licensee must apply for approval of its floor plan. It must obtain the Board's approval of its internal control system. It must obtain the Board's approval of its surveillance system and the surveillance system plan. If there are amendments, those must likewise be sanctioned by the Board. The Board must grant its approval for the transport of EBTs to the bingo hall site. When they are installed there in accordance with the plan, the Board must certify the installations. I am sure that the requirements for approval, and the processes to be followed, are somewhat more complex than this brief summary suggests, extracted, as it is, merely from a copy of the notice of motion in the 2018 review proceedings which has been put up with the supplementary papers.

[69] As already mentioned, the only relief sought against the bingo hall respondents is that the impugned decision in favour of each of them dating from January 2015 should be reviewed and set aside. The principal ground for this relief advanced by Afrisun is that the Act in the condition in which it stood in January 2015 did not permit the use of EBTs, or certainly those which had been approved by the Board on the applications of the suppliers, in bingo halls. As mentioned earlier, despite the fact that there were conflicting views on whether Afrisun's interpretation of the Act was correct, the Act was amended *inter alia* to put it beyond doubt that the use of EBTs was indeed lawful. The question as to whether the amended Act has achieved that purpose is not an issue in the present application. In the present matter what is left of the principal issue raised by Afrisun is the question as to whether such EBTs were permissible under the Act prior to its amendment. (It is perhaps interesting to note that the deponent to Afrisun's founding and supplementary founding affidavits stated that if the amendments proposed in what was then an amendment Bill had been introduced, the use of EBTs of the type he was talking about in 2015 would have been permissible. As far as I can see there is no difference that matters between the relevant provisions of the Bill and the amendments actually enacted.)

[70] Afrisun also based its application to review the impugned decisions on what might be called process related or procedural grounds. The merits of those procedural grounds are not before me for decision. All that need be said is that they relate exclusively to the quality of the decision making process which resulted in the making of the impugned decisions in January 2015.

[71] The Goldrush and Galaxy respondents, and the Board, argue that the relief sought against the bingo hall operator respondents is moot and has no practical effect. The points made and facts relied on by these respondents, drawn from all three supplementary affidavits, may be summarised as follows.

(a) Bingo hall licences were renewed in March 2018 in accordance with the amended Act, containing provisions which permitted the use of EBTs.

(b) Bingo licences lapse every year and have to be renewed.

(c) Whatever the position may have been in January 2015 when the impugned decisions were made, the licences issued in March 2018 contained conditions stipulated in the light of the law as it stood as a result of the amendment to the Act.

(d) Setting aside the impugned decisions would have no effect, and would be a meaningless order made without purpose, as the rights of the affected bingo operator respondents to use EBTs is dependent not on the impugned decisions made in 2015 under the Act before it was amended, but on the decisions made to issue licences which sanctioned the use of EBTs in the light of the provisions of the amended legislation.

[72] There is another fact which in my view ought to be taken into account before considering the merits of the argument that the review application should end now as it has become moot. In its affidavit answering the supplementary papers tendered by the Goldrush and Galaxy respondents and by the Board, Afrisun stated that as a matter of fact the Board "remains alive to the difficulty of the impugned decisions and actively seeks to avoid making decisions affected by the impugned decisions". As an example of this, Afrisun referred to a series of documents which had been produced as part of the record in the 2018 review proceedings called "Audit Details Reports", in which the Board records that the decisions dealt with in those reports do not relate to the impugned decisions of January 2015. These reports deal with a series of decisions necessary to be made in order to issue licences permitting the use of EBTs in accordance with the provisions of the amended Act.

[73] Afrisun's argument is that the relief it seeks setting aside the impugned decisions has a practical effect as the existing licences were granted consequent upon the impugned decisions. It argues that the substantive validity of the impugned decisions is a precondition for the validity of the decisions made after the amendment of the Act to issue licences containing conditions permitting the use of EBTs. (See *Oudekraal Estates (Pty) Limited v City of Cape Town and Others* 2004 (6) SA 222 (SCA) at para 31.) Whether that is so depends upon the provisions of the legislation.

[74] Section 30 of the Act provides for applications for licences, and s 60 is to the effect that no person may "maintain premises where the gambling game of bingo is played" without either a casino licence or a bingo licence. Regulation 28 deals with the issue of licences where such an application is granted. Regulation 28(5) reads as follows.

'Unless the Act provides that a licence or registration expires on 31 December, every licensee or registrant must, no earlier than 1 January and no later than 1 February of every year, make application for renewal of the licence or registration on 1 April of that year and must simultaneously pay to the Board the fee prescribed in Schedule 2 to the Act.'

(Regulations 28(6) and (7) deal respectively, with the circumstance that a licence is issued at a time where compliance with Regulation 28(5) is not possible, and where a registration is renewable annually on its anniversary date. They are not applicable here.)

[75] Section 39 of the Act (headed "Renewal of Licence") provides that a licence other than a temporary licence "remains in force until the date of renewal". It lapses on the date of renewal if the licensee fails to apply for renewal as required by s 39(2) of the Act.

[76] Section 30A of the Act (inserted by the amending Act of 2017) deals with conditions of licences. Section 30A(1) reads as follows.

'The Board may, after first affording the licence holder or registrant an opportunity to make representations, impose conditions which are-

(a) clear and unambiguous;

(b) objectively measureable; and

(c) reasonably achievable,

upon the issue of any licence or certificate of registration, **or upon the renewal of any licence** or certificate of registration.'

(My emphasis)

[77] In terms of s 60(3) of the Act a bingo licence must specify the number of EBTs authorised for use and in terms of s 60(2) (which deals with the issue

of bingo licences and conditions) the conditions may stipulate “requirements in relation to the gaming equipment placed, used and operated” in the bingo hall, and “any devices or electronic bingo terminals which may be used to play bingo”.

[78] These provisions, and especially s 30A, reveal that insofar as the conditions of licences are concerned, and in this case, particularly bingo licences, the question as to the conditions upon which such licences are issued must be considered not only when the licence is first issued, but on the occasion of each renewal thereof. One of the objectives of the Board is to ensure that “all gambling authorised under this Act is conducted in a manner which promotes the integrity of the gambling industry and does not cause harm to the public interest”. (Section 6(a) of the Act.) Bearing in mind that, inevitably, mistakes may be made, the performance of that important function would be undermined if it was not within the power of the gambling board to revisit conditions such as whether EBTs should be permitted, and in what number, upon the occasion of the renewal of licences. The fact that it is a requirement of any such alteration that the licensee should first be heard reinforces the proposition that changes to conditions may be made which do not necessarily enjoy the support of the licensee.

[79] I accordingly conclude that where s 30A of the Act provides that the Board “may” impose conditions upon the renewal of any licence, the word “may” must be taken “to signify an authorisation to exercise a power coupled with a duty to do so when the requisite circumstances are present.” (See *Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55 (CC) at para 73.) The bingo hall operators were all licence holders before the impugned decisions were made in January 2015. They only acquired licences which actually entitled them to install EBTs when the decisions to bring that about were made after the amendment of the Act. Those licences were accordingly renewals with altered conditions. Upon the occasion of those renewals the Board had to be satisfied that the conditions with regard to the installation of EBTs were appropriate at that time. The Board’s decisions with regard to those conditions were not dependent on the validity of the impugned decisions dating from 2015. As Afrisun itself has pointed out in its papers, when the Board made its decisions in 2018 to grant the licences under which

electronic bingo is now played, it proclaimed that it was doing to without reliance on the impugned decisions. There is no reason to reject that given that it was in fact the duty of the Board to proceed in that fashion in 2018 when it issued licences with new conditions sanctioning the use of EBTs.

[80] In the circumstances I conclude that a ruling in favour of Afrisun in these review proceedings against bingo hall operators would have no practical effect.

[81] It remains to consider the law applicable to circumstances such as these.

[82] In *Afriforum NPC and Others v Eskom Holdings Soc Ltd and Others* [2017] 3 All SA 663 (GP) Murphy J (at para 107) held that mootness

'usually arises from events arising or occurring after an adverse decision has been taken or a lawsuit has got underway, usually involving a change in the facts or the law, which allegedly deprive the litigant of the necessary stake in the pursued outcome or relief. The doctrine requires that an actual controversy must be extant at all stages of review and not merely at the time the impugned decision is taken or the review application is made.'

[83] In *Comair v Minister of Public Enterprises* 2016 (1) SA 1 (GP) at para 14 Fabricius J put it this way.

'It is clear that the relevant principle is that courts should not decide matters that are abstract or academic, and which do not have any practical effect, either on the parties before the court or the public at large. Courts of law exist to settle concrete controversies and actual infringement of rights, and not to pronounce upon abstract questions, or give advice on differing contentions. The same principle has been stated to mean that one should rather not deal with vague concepts such as "abstract", "academic" and "hypothetical" as yardsticks. The question rather ought to be a positive one, i.e. whether a judgment or order of the court will have a practical effect and not whether it will be of importance for a hypothetical future case.'

[84] Problems of "mootness" arise most frequently in appeal cases where a longer lapse of time since the issue arose renders it more likely that the facts have altered, or that the law has changed, with the result that "the issues are

of such a nature that the decision sought will have no practical effect or result, …" (section 2(a)(i) of the Superior Courts Act, 10 of 2013). The dangers of a court of first instance overlooking the requirement that the relief sought from it must have practical effect were stressed in *Minister of Justice v Estate Stransham-Ford* 2017 (3) SA 152 (SCA). In paragraph 22 of the judgment Wallis JA said the following.

'Since the advent of an enforceable Bill of Rights, many test cases have been brought with a view to establishing some broader principle. But none have been brought in circumstances where the cause of action advanced had been extinguished before judgment at first instance. There have been cases in which, after judgment at first instance, circumstances have altered so that the judgment has become moot. There the Constitutional Court has reserved to itself a discretion, if it is in the interests of justice to do so, to consider and determine matters even though they have become moot. …'

The learned Judge proceeded as follows in paragraph 25 on the subject of the Constitutional Court deciding to hear a case notwithstanding that it has become moot.

'When a court of appeal addresses issues that were properly determined by a first-instance court, and determines them afresh because they raise issues of public importance, it is always mindful that otherwise under our system of precedent the judgment at first instance will affect the conduct of officials and influence other courts when confronting similar issues. A feature of all the cases referred to in the footnotes to paragraph [22] above is that the appeal court either overruled the judgment in the court below or substantially modified it. The appeal court's jurisdiction was exercised because "a discrete legal issue of public importance arose that would affect matters in the future and on which the adjudication of this court was required". The High Court is not vested with similar powers. Its function is to determine cases that present live issues for determination.'

[85] I have found that these review proceedings, directed as they are at the impugned decisions made in January 2015, no longer present live issues for determination.

THE ORDER AND COSTS

[86] Afrisun is the only remaining applicant. I propose to dismiss the review application, of which it has taken sole charge since the first and second applicants withdrew.

[87] Insofar as costs are concerned, despite the fact that Afrisun purported to adopt such grounds of review as had been advanced by the first and second applicants, I do take the view that it would be unfair to burden Afrisun with costs incurred before it launched its application to join in the proceedings.

[88] In my view Afrisun ought to have realised that the application had become moot and purposeless as soon as the Act was amended.

[89] The parties have not drawn my attention to any reserved costs which might require separate attention.

[90] Finally, on the issue of costs, and out of an excess of caution, I must record that the costs orders I make are intended to supplement and not to contradict any costs orders that have already been made under the present case number.

I MAKE THE FOLLOWING ORDERS.

1. The late delivery by WMS Gaming Africa (Pty) Ltd of its notice in terms of Rule 6(5)(d)(iii) is condoned and the third applicant's application under Rule 30 is dismissed with costs.

2. (a) The applications to deliver supplementary affidavits made by the eleventh, twelfth, fourteenth, eighteenth, twenty third, twenty fifth and twenty sixth respondents (the "Galaxy respondents) and the thirteenth, fifteenth, sixteenth, seventeenth, twentieth, twenty first, twenty second, twenty fourth and twenty seventh respondents (the "Goldrush respondents") are granted.

(b) The third applicant is ordered to pay the costs incurred by the opposition to these applications.

3. In the application by the first respondent launched by notice of motion dated 28 February 2019 the following order is made.

(a) The application for leave to deliver an affidavit is granted.

(b) The application is otherwise dismissed.

(c) There will be no order as to costs in the application.

4. (a) The objection to prayers 2 to 6 of the third applicant's amended notice of motion is upheld, and those prayers are struck out.

(b) The application to join the three respondents cited in the joinder application launched by notice of motion dated 11 March 2015 is dismissed with costs.

5. The objection to the third applicant's standing to pursue review proceedings against the Galaxy and Goldrush respondents other than the eleventh, fourteenth, fifteenth, nineteenth and twentieth respondents is upheld.

6. (a) The main review application is dismissed.

(b) The third applicant is ordered to pay the costs of the eleventh to twenty seventh respondents incurred after 3 February 2015 to the extent that such costs have not been dealt with separately above.

(c) The costs incurred by the eleventh to twenty seventh respondents in objecting to the additional relief referred to in paragraph 4 (a) of this order shall be included in those recoverable in terms of paragraph 6 (b) of this order.

(d) There will be no order as to the first respondent's costs in the main review application.

7. All costs orders set out above shall include the costs of two counsel where employed, and any costs that have been reserved.

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Olsen J

Date of Hearing:	WEDNESDAY, 17 APRIL 2019; & THURSDAY, 18 APRIL 2019
Date of Judgment:	THURSDAY, 04 JULY 2019
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For 11th, 12th, 14th, 18th, 23rd, 25th, & 26th Respondents:	Mr M Pillemer SC with Mr P Farlam SC
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