

IN THE HIGH COURT OF SWAZILAND

CASE NO: 1965/96

IN THE MATTER BETWEEN:

THEMBA SIGUDLA

APPLICANT

VS

THE CHAIRMAN (LIQUOR LICENCING BOARD)

1ST RESPONDENT

THE ATTORNEY GENERAL

2ND RESPONDENT

CORAM:

S.B. MAPHALALA - AJ

FOR APPLICANT:

MS N. GWIJI

FOR 1ST AND 2ND RESPONDENTS:

MR NXBMALO

JUDGEMENT

The matter was brought by way of notice of motion for an order in the following terms:

1. That the decision of the 1st Respondent refusing the applicant's application for a Bottle Store Liquor Licence in respect of Lot No. 27 Vukutentele Township, Msunduza, Hhohho District be reviewed, corrected and set aside.
2. The respondent be ordered to pay the costs of this application.
3. Granting other or alternative relief.

The application is supported by the affidavit of the applicant Themba Sigudla who deposed that on the 11th September 1995, he applied for the grant of a Bottle Store liquor licence to entitle him to carry on the business of a bottle store on Lot No. 27, Vukutentele Township, Mbabane, Hhohho District. As at the date of the hearing of the application the police and the Health inspectors had not yet filed their reports on the application. The application was heard on that date and he gave evidence on the application and his knowledge of the law relating to the Liquor Act 1964 and other matters incidental thereto.

Thereafter the Liquor Licensing Board reserved their decision pending receipt of the reports by the Police and Health Inspectors submitted their reports which are dated the 3rd May, 1996 and

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the 10th April 1996, copied whereof are attached hereto marked Annexure "A" and "B", his application was set down for hearing by the Liquor Licensing Board on the 20th March, 1996. There was no appearance by his Attorneys or himself before the Liquor Licensing Board on the 20th March, 1996 for the reasons stated in Annexure "D".

On a date when he went to check up on when "another date of hearing" he asked for Annexure "D", he was told that the Liquor Licensing Board had given its decision on the 20th March, 1996 and that the Board had refused his application on the following grounds:

- i. The premises are in a residential area.
- ii. The premises are near a Primary School called Mqolo Primary School. iii) That applicant was not conversant with the Liquor Licensing Act.

The matter came for argument in the Contested Roll of the 5th December, 1997. The court entertained argument from Ms Gwiji for the applicant and Mr Nxumalo from the Attorney General representing the Chairman of the Liquor Licensing Board.

Ms Gwiji contended in her argument that the decision of the Board was irregular in the absence of the requisite reports viz from the police and the Health authorities. The applicant answered all the questions put to him by the Board satisfactory.

Mr Nxumalo for the Board took another view that the Applicant has brought the proceedings in terms of Rule 53 (4) of the High Court Rules which was improper. According to Section 12 of the Liquor Licensing Act the proceedings should be brought by way of petition. That the application should be dismissed on that point alone. He further argued that there is a dispute of fact in this matter and the issues cannot be decided on the papers as they stand. Paragraph 7 which specifically denies it creates a dispute of fact. He argued further that the application be dismissed with costs.

These are the issues before me. For a review of the Board's proceedings in terms of Section 12 (1) of the Liquor Licensing Act No. 30/1964 before the High Court the proceedings are to be brought by way of petition. The requirement of a petition, as opposed to a notice of motion is preremptory. The section is clear and reads in part, thus;

" 12 (1) on petition of an applicant or objector, the High Court may review a proceeding of a Board if it appears to it that:

(a) in the proceedings in question the Board exceeded its powers, or failed to take

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into consideration matters which it was its duty to consider or otherwise failed to perform a duty, or exercised its powers in an arbitrary, malqfide or grossly unreasonable manner, or a point of law arose which such court should determine or.....".

The step taken by the applicant for the reasons I have outlined above was irregular and I agree with Mr Nxumalo for the Board in this respect. (See Breetvelot vs Van Zvl 1972 (1) S.A. 304 (7))

On the second point canvased by the Board there is clearly a dispute of fact which cannot be resolved on the papers as they stand.

In the circumstances I dismiss this application with costs and would venture to advise applicant to file his papers in conformity with Section 12 of the Liquor Licensing Act No. 30 of 1964.

S.B. MAPHAALA

Acting Judge