

PH

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2014/07129

In the matter between:

YEOVILLE BELLEVUE RATEPAYERS ASSOCIATION First Applicant

MELUSI EMMANUEL NCALA Second Applicant

and

THE MEC OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT, GAUTENG PROVINCIAL GOVERNMENT First Respondent

THE CHAIRPERSON OF GAUTENG LIQUOR BOARD Second Respondent

THE MINISTER OF TRADE AND INDUSTRY Third Respondent

NOTICE OF MOTION

PART A: INTERIM RELIEF

TAKE NOTICE THAT on TUESDAY, 22 APRIL 2014 and at 10:00, or so soon thereafter as the matter may be heard, application will be made to this court by the above applicants for the following orders:

1. The respondents and all other persons who have a legitimate interest in the relief sought in this application are called upon to put forward the reasons on a date to be determined by the Registrar at 10:00 or so soon thereafter as counsel may be heard why this court should not grant the following order:

- (a) ~~reviewing and setting aside the decision of the first respondent to promulgate the provisions of the Gauteng Liquor Regulations and~~

GESERTIFISEERDE WERKAFSKRYF VAN DIE OORSPRONKELIKE
DOKUMENT. DIT IS GEEN AANHOUDING VAN DIE OORSPRONKELIKE
DOKUMENT. IN DIE ENEMACTIGDE PERSONE GEWYSIG IS DIE
CERTIFIED A TRUE COPY OF THE ORIGINAL DOCUMENT. THERE
NO INDICATION THAT THE ORIGINAL DOCUMENT WAS
AMENDED BY UNAUTHORIZED PERSONS.

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GRIFFIER VAN DIE HOOGGEREGSHOF
CLERK OF THE HIGH COURT

Shebeen Licences published under Government Notice 586 in *Provincial Gazette* 56, dated 1 March 2013 (“the Regulations”);

(b) declaring that the provisions of the Regulations be declared *ultra vires* and therefore invalid;

(c) All licences granted under the Regulations be declared null and void and of no effect;

(d) to the extent necessary, condoning the applicants' failure to bring this application within the timeframe contemplated in section 7(1) of the Promotion of Administrative Justice Act No 3 of 2000, as amended;

(e) directing that any respondent who opposes the relief sought herein be ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved; and

(f) granting to the applicants such further and/or alternative relief as the above Honourable Court may deem just.

2. Pending the final determination of the application for the review and setting aside of the Regulations, sought in Part B of this application:

(a) The first and second respondents are interdicted and restrained from granting licences under the Regulations;

- (b) directing that any respondent who opposes the relief sought herein be ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved; and
 - (c) granting to the applicants such further and/or alternative relief as the above Honourable Court may deem just.
3. Directing the first and second respondents within 10 (ten) days of the granting of this order to provide the applicants with the identity of all those persons to whom shebeen licences have been granted under the Regulations, as well as their physical addresses.
 4. Directing the applicants to effect service of this application on all the parties identified under paragraph 3 above within 15 (fifteen) days of receipt of the information sought in paragraph 3.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **MAURICE PETER SMITHERS** (together with its attachments) and the supporting affidavit of **MELUSI EMMANUEL NCALA** will be used in support of **Part A** of this application.

TAKE NOTICE FURTHER THAT the applicants have appointed **WERKSMANS ATTORNEYS** as its attorneys of record and as the address at which the applicants will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT if you intend opposing **Part A** of this application you are required -

- (a) within 5 days of service of this application upon you, to notify the applicant's attorneys in writing of your intention to oppose this application;
- (b) within 15 (fifteen) days after you have so given notice of your intention to oppose this application, to file your answering affidavits, if any; and
- (c) to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT the applicants will within 10 (ten) days of service upon the applicants of the respondents' answering affidavit/s, deliver any replying affidavit/s they may choose to file in answer to the respondents' affidavit/s.

PART B: FINAL RELIEF

TAKE NOTICE THAT, on a date to be arranged with the Registrar of this court, the applicants intend to make application to this court for the following orders:

- 1 reviewing and setting aside the decision of the first respondent to promulgate the provisions of the Regulations;

- 2 declaring that the provisions of the Regulations be declared *ultra vires* and therefore invalid;
- 3 all licences granted under the Regulations be declared null and void and of no effect;
- 4 to the extent necessary, condoning the applicants' failure to bring this application within the timeframe contemplated in section 7(1) of the Promotion of Administrative Justice Act No. 3 of 2000, as amended;
- 5 directing that any respondent who opposes the relief sought herein be ordered to pay the costs of the application, jointly and severally, the one paying the other to be absolved; and
- 6 granting to the applicants such further and/or alternative relief as the above Honourable Court may deem just.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **MAURICE PETER SMITHERS** (together with its attachments) and the supporting affidavit of **MELUSI EMMANUEL NCALA** will be used in support of Part B of this application, and will be supplemented in terms of Rule 53(4) of the Uniform Rules of Court.

TAKE NOTICE FURTHER THAT the applicants have appointed **WERKSMANS ATTORNEYS** as its attorneys of record and as the address at which the applicants will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT if you intend opposing **Part B** of this application you are required -

- 1 within 15 (fifteen) days after receipt of this Notice of Motion, or within 15 (fifteen) days after receipt of any amendment to this Notice of Motion and Founding Affidavit, deliver notice to the applicants of such intention to oppose and must in such notice appoint an address within 15 (fifteen) kilometres of the office of the Registrar of the above Honourable Court at which they will accept notice and service of all process in these proceedings; and
- 2 within 30 (thirty) days after the expiry of the time referred to in Uniform Rule 53(4) of the Uniform Rules of Court, deliver any affidavit they may desire to deliver in answer to the allegations made by the applicants.

TAKE NOTICE FURTHER THAT the applicants will within 10 (ten) days of service upon the applicants of the respondents' answering affidavit/s, deliver any replying affidavit/s they may choose to file in answer to the respondents' affidavit/s.

TAKE NOTICE FURTHER THAT, in terms of Rule 53(1)(b) of the Uniform Rules of Court, the first and second respondents are called upon to deliver to the Registrar of this Honourable Court within fifteen (15) days after receipt of this notice of motion the

record of the decisions referred to in paragraphs 1 and 3 (including all correspondence, reports, memoranda, minutes, documents, evidence, transcripts of recorded proceedings and other information serving before the first and second respondents when the decisions were made) together with such reasons as it is in law required or desires to give or make, if any, and timeously to notify the applicants that it has done so.

TAKE NOTICE FURTHER THAT the applicants may, within ten (10) days after the Registrar of this Honourable Court has made the record and reasons mentioned above available to them, by delivery of a notice and accompanying affidavit amend, add to or vary the terms of this notice of motion and supplement the founding affidavit.

TAKE NOTICE FURTHER THAT if no such notice of intention to oppose be given, the application for the relief sought in Part B will be made at **10:00** on the 22nd day of April 2014, or as soon thereafter as the matter may be heard.

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at SANDTON on this the 27TH day of FEBRUARY 2014.



WERKSMANS ATTORNEYS
Applicants' Attorneys

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Ref: Ms L Bick /Ms A Ngidi/PROB20192.144

TO:
THE REGISTRAR OF THE ABOVE HONOURABLE COURT
JOHANNESBURG

AND TO:

**THE MEC OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT, GAUTENG
PROVINCIAL GOVERNMENT**

First Respondent
Second Floor, Matlotlo House
94 Main Street
Johannesburg

SERVICE BY SHERIFF

Received copy hereof on this day

of 2014

**For: THE MEC OF THE DEPARTMENT OF
ECONOMIC DEVELOPMENT,
GAUTENG PROVINCIAL GOVERNMENT**

AND TO:

THE CHAIRPERSON OF GAUTENG LIQUOR BOARD

Second Respondent
c/o THE MEC OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT,
GAUTENG PROVINCIAL GOVERNMENT
First Respondent
Second Floor, Matlotlo House
94 Main Street

Johannesburg

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Received copy hereof on this day

of 2014

For: THE CHAIRPERSON OF GAUTENG LIQUOR BOARD

THE MINISTER OF TRADE AND INDUSTRY

Third Respondent

The DTI,

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77 Meintjies Street

Sunnyside

Pretoria

SERVICE BY SHERIFF

Received copy hereof on this day

of 2014

For: THE MINISTER OF TRADE AND INDUSTRY