

WAYNE DIETRECHSEN
Trading as “The Jock & Saddle’

versus

ENIAS MAGATE

In his capacity as Provincial Magistrate
for the District of Matebeleland North
and

R MWANAKA

In his capacity as Liquor Licensing Inspector
for the Bulawayo Metropolitan Province

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 9 JUNE AND 6 AUGUST 2015

Urgent Chamber Application

J Tshuma for the applicant
T O Dodo for the respondents

MOYO J: This is an urgent chamber application wherein the applicant seeks the following interim relief:

“Pending the return date of this matter, the applicant be granted the following relief:

- 1) The temporary Liquor Licence issued to the applicant on 13 of April 2015, be and is hereby reinstated and declared valid and effectual pending the return day,
- 2) In the event that the application for review is finalized before the return day, the Provisional order shall be automatically discharged.”

At the hearing of the application I granted the provisional order and stated that my reasons would follow, here are they:

The facts of this matter are that applicant applied for and was granted a temporary liquor licence by the first respondent and the second respondent. On 11 May 2015 applicant received a letter from first respondent a letter unilaterally revoking the temporary Liquor Licence applicant had been granted on 13 April 2015. The material part of the letter from first respondent cancelling applicant’s temporary liquor licence read as follows:

“Re: Withdrawal of temporary Liquor Licence issued to Wayne Dietrechsens t/a Jock and Saddle.”

The above matter refers.

I hereby withdraw the temporary liquor licence issued to you ---on 13 April 2015 for the simple reason that you misrepresented facts to the issuing officer sitting at Bulawayo magistrates court in your affidavit.”

It is common cause that first and second respondents issued applicant with a temporary Liquor Licence on 13 April 2015. It is also common cause that applicant then received the letter cancelling the liquor licence on 11 May 2015. It is also common cause that first and second respondent did not communicate with Applicant in any manner whatsoever when they discovered the misrepresentation referred to in the cancellation letter.

Neither was applicant given a chance to answer to the allegations of misrepresentation of facts prior to cancellation.

The *audi alteram partem* rule demands that a person shall not be condemned, nor have his rights taken away from him and without being given a chance to present his own defence.

G. Feltoe in the *Guide to Zimbabwe Administration Law* 3rd edition, has the following to say at page 23

“The principles of natural justice embody fundamental notions of procedural fairness and justice. As applied to administrative decisions, these principles seek to ensure that such decisions are only taken after fair and equitable procedures have been adhered to. In essence natural justice tries to guarantee that the parties who will be affected by the decisions receive a fair and unbiased hearing before the administrative tribunals reach their decisions. By required adherence to standards of procedural fairness not only is justice seen to be done, but also these principles assist tribunals to reach substantively correct decisions. If the principles are observed, decisions reached only after the tribunals have been informed of the facts relevant to their determination and decisions are reached on objective evaluation of the evidence ---.”

In this matter applicant was issued with a temporary liquor licence, which was then unilaterally cancelled by first respondent on the basis that applicant misrepresented facts.

In my view first respondent should have first called upon applicant to show cause why his temporary licence should not be cancelled on the basis that he misrepresented facts to the first respondent. Applicant would then state his own side of the story on the misrepresentation. Respondent would then do an objective evaluation of the facts before him and then come to the appropriate decision. To unilaterally cancel a licence, where an applicant has been made to

believe that he can trade in a certain manner, does not only breach the rules of natural justice in my view, but it also means applicant may suffer a huge economic set back due to the fact that he had a legitimate expectation that the licence would be valid for the entire period for which it was granted.

It is for this reason that because an administrator’s decision is important as it steers people affected by it into action with the belief that all is well, that they can then not be arbitrarily revoked in my view. First respondent’s failure to call upon applicant to show cause why his temporary licence could not be revoked for the misrepresentation that first respondent states in its cancellation letter, renders the cancellation decision unlawful as it was arrived at without applicant being given an opportunity to answer the allegations on the misrepresentation. I hold the view that until the first respondent’s decision is reviewed, applicant is entitled to have the *status quo* remain.

I accordingly granted the provisional order for the aforementioned reasons.

Webb, Low & Barry, applicant’s legal practitioners