



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Tsogo Sun Caledon (Pty) Ltd and Others v Western Cape Gambling and Racing Board and Another [2022] ZASCA 102

Today the Supreme Court of Appeal upheld an appeal with costs of two counsel against an order of the Western Cape Division of the High Court, Cape Town (per Martin AJ). The high court dismissed an application by Tsogo Sun Caledon (Pty) Ltd and its associated companies (the Tsogo group) to review a decision of the Western Cape Gambling and Racing Board (the Board) and the Chairperson thereof.

The Tsogo group held casino and route operator licences authorising them to conduct certain gambling operations in the Western Cape. All of the licences were subject to conditions imposed by the Board under the applicable Broad-Based Black Economic Empowerment (B-BBEE) framework. The Tsogo group had voluntarily achieved level 1 or 2 B-BBEE ratings and been commended for this commitment by the Board. After industry-wide consultation, the Board decided to amend the B-BBEE conditions to require all licensees to attain and maintain a level 4 B-BBEE rating. This is a lower rating than that which was held by the Tsogo group. Tsogo contended that this decision (the impugned decision) was made *ultra vires* the powers accorded to the Board because the jurisdictional facts giving rise to that power had not been

satisfied.

The SCA held that s 53(2)(b) of the National Gambling Act 7 of 2004 empowers the Board to ‘impose further or different reasonable and justifiable conditions . . . to the extent necessary to address’ the commitments and achievements of the licensee relating to B-BBEE matters. Prior to imposing conditions, the Board must assess the commitments previously made and must then review the achievements of the licensee in relation to those commitments. If those do not measure up, the Board is then empowered to impose conditions but only ‘to the extent necessary to address’ the shortcomings of the licensee regarding B-BBEE matters. This, the SCA held, requires evaluation of individual licensees before the power to impose further or different conditions arises.

In the present matter the Board had not considered the commitments or achievements of any of the Tsogo group but adopted what would better be understood as a policy and applied it in a blanket fashion to all licensees. Whilst it was permissible to adopt a policy, it was necessary to assess each licensee individually and then consider whether the policy should be applied to that licensee. Since the Board did not assess the Tsogo group individually, the jurisdictional facts necessary for the power to impose those conditions were not satisfied. As a result, the Board had no power to impose those conditions on the Tsogo group. The impugned decision should have been reviewed and set aside by the high court. The SCA therefore upheld the appeal and substituted an order reviewing and setting aside the impugned decision, allowing the costs of two counsel.