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.

Goldrush Group (Pty) Ltd v North West Gambling Board and Others
(648/2021) [2022] ZASCA 164 (28 November 2022)

Today the Supreme Court of Appeal dismissed an appeal from a judgment of Snyman AJ in the North West Division of the High Court, Mahikeng (the high court). The appeal arose from requirements forming part of bingo operator and route operator licences imposed by the North West Gambling Board (the Board). The appellant, Goldrush Group (Pty) Ltd (Goldrush), held 40 percent of the shares in three companies which had been awarded licences by the Board (the licensee companies). The other 60 percent of the shares in the licensee companies were held by the sixth to tenth respondents (the local PDI shareholders). Both in the request for applications and in the resultant licences, there was a requirement that the licensed entity must be owned by 60 percent local PDIs, being citizens of the Republic of South Africa residing in the North West Province.

Disputes arose between Goldrush and the local PDI shareholders in the licensee companies. Things came to a head when a local PDI shareholder offered its approximately 4 percent shareholding to a competitor of Goldrush, prompting Goldrush to invoke a pre-emptive right to purchase those shares. This ultimately

resulted in the Board refusing to renew the licences on the basis that the licensee companies no longer complied with the 60 percent local PDI shareholding requirement.

Goldrush approached the high court for relief declaring the 60 percent local PDI requirement to be unlawful and invalid as conflicting with the Broad-Based Black Economic Empowerment Act and the Codes of Good Practice on Broad-Based Black Economic Empowerment. The Board took the point that Goldrush lacked the requisite standing to approach the high court for that relief. The high court dismissed the application on the merits.

The Supreme Court of Appeal held that it was necessary to decide the question of the *locus standi* of Goldrush initially. The only basis proffered by Goldrush was that it was a shareholder in the licensee companies and that the limitation on dealing with its shareholding was detrimental to it. This, then, amounted to own-interest litigation where the only interest was financial. Applying the principles in the matter of *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others* [2012] ZACC 28; 2013 (3) BCLR 251 (CC), the Supreme Court of Appeal concluded that Goldrush did not make out a case that the interests of justice tipped the scales in favour of it being accorded *locus standi*. It was accordingly held that Goldrush lacked the requisite standing and that the high court had correctly dismissed the application, albeit on a different basis. For those reasons, the appeal was dismissed with costs.