



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

The Chairperson of the Western Cape Gambling and Racing Board and Others v Goldrush Group Management (Pty) Ltd and Another (660/2022) [2023] ZASCA 148 (10 November 2023)

The Supreme Court of Appeal (SCA) today upheld an appeal against an order of the Western Cape Division of the High Court, Cape Town (the high court) setting aside a decision to allocate additional limited payment gambling machines to two licenced operators. The appeal was brought by the Western Cape Gambling and Racing Board (the Board), with the leave of the high court.

In 2004, the Board granted licences to Vukani Gaming Western Cape (Pty) Ltd t/s V-Slots (V-Slots) and Grand Gaming Western Cape (RF) (Pty) Ltd t/s Grand Slots (Grand Slots), to operate limited payment gambling machines (LPMs) in the Province. The licences were granted following a Request for Proposals (RFP) and a competitive bidding process. The Board stated in the RFP that its intention was to permit the operation of 3000 LPMs by three operators. The RFP, however, reserved to the Board the right to allocate more than 1000 LPMs to each operator in the event that fewer than three operators were licenced. V-Slots and Grand Slots were each allocated 1000 LPMs. In 2017, the Board decided to allocate the unallocated 1000 LPMs to V-Slots and Grand Slots, equally.

In 2019, Goldrush Group Management (Pty) Ltd (Goldrush) launched a review application in the high court to set aside the allocation. It contended that the allocation was unlawful since the Board was obliged to advertise the LPMs for allocation to other prospective operators.

The high court application was opposed on the basis that Goldrush lacked the legal standing to challenge the decision; that there was in any event an inordinate and unexplained delay in challenging the decision; and that the Board was not obliged to invite applications for the appointment of other licenced operators.

The high court found that Goldrush had no legal standing. It also found that the delay was unreasonable and not explained. It nevertheless found, in considering whether to overlook the delay in the interests of justice, that the decision was unlawful and irrational. It therefore decided to adjudicate the review and set aside the decision. It ordered the Board to advertise any unallocated LPMs if it thought it prudent to do so.

The SCA found that Goldrush could establish no own-interest legal standing in relation to the allocation of LPMs to existing licenced operators. Its commercial interest related to an interest in applying to be licenced as an operator. However, the Board had decided to allocate only two operators following its RFP bid process. It had decided not to invite further applications. That decision stood and was not challenged in the review. The SCA found that the high court had erred in conferring standing to Goldrush based on its conclusion that the review ought to succeed. It further held that the high court's conclusion on the merits of the review was not sustainable. It held that the Board was entitled to act in accordance with the RFP. This permitted it to allocate the additional LPMs to the licenced operators.

The SCA therefore upheld the appeal, set aside the high court order and replaced it with an order dismissing the application with costs, including those of two counsel.

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