

Kronieke / Chronicles

The integration of the TBVC Sun International Casinos into the South African regulatory system: The applicability of the Northern Province provincial legislation to Venda Sun and the legality of the Free State Province Zone I casino licence (Bloemfontein area)

1. Introduction

1.1 Background

1.1.1

In terms of the National Gambling Act 33 of 1996, the Northern and Free State provinces were respectively allocated three and four of the total 40 casino licences that could be awarded throughout the country.¹ This Act regulates gambling issues relating to *inter alia* casino gaming regulation and provides for national gambling norms and standards to be followed by the provincial gambling licensing boards.² No person may hold more than 16 casino licences in the country or more than two casino licences per province. Where a person however held more than two licences prior to 1994, the maximum number of casino licences allowed in such province is three.³ This last provision was aimed at, and only became applicable to Sun International ("SISA") after 10 May 1999.⁴

1 National Gambling Act 33/1996: section 13(1)(j).

2 National Gambling Act: Long Title.

3 National Gambling Act: section 13(3)(a).

4 National Gambling Act: section 13(3)(b).

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1.1.2

SISA, at the time the National Gambling Act was promulgated, was in a unique position in that it held 17 casino licences issued by the various former TBVC states.⁵ These licences fell within the following provinces: the Eastern Cape, the North West, the Northern Province and the Free State. A complicating factor regarding these licences was that the State, in the form of provincial government agencies of the North West and Eastern Cape, held shares in the SISA casino resort group.⁶ The National Gambling Act provides that the State may not have any financial interest in any gambling activity except for taxes and levies.⁷ This Act was amended in 1999 to extend the deadline for the State to rid itself of any financial interest in a gambling activity to 10 May 2003.⁸

The existing SISA casino licences did not lapse with the re-incorporation of the TBVC states back into the Republic in 1994. In the provinces where SISA had existing casinos, a rationalisation process had to be followed to provide for a transition from the old to the new regulatory order. This rationalisation process was not the same in all the provinces.

1.1.3

In the Eastern Cape, the existing SISA casino licences lapsed on 10 May 1999 and it had to re-apply for all licences.⁹ SISA had to close four casinos before that day to fall within the national limits.¹⁰ The existing Wild Coast Sun casino was re-issued with a casino licence after following the normal application process and SISA was also awarded the casino licence in Port Elizabeth.¹¹

1.1.4

In the North West province, SISA held seven existing casino licences in 1994, issued in terms of the Bophuthatswana Casino Act 19/1977. SISA had to dispose of four casinos before May 1999 to fall within the provisions of the National Gambling Act relating to the maximum licences per province¹²: the Mmbabatho and Taung casino licences were transferred to the Tusk Group and the Molopo and Thlabane Sun casinos were closed.¹³ All the other remaining licences were deemed to have been issued in terms of the

5 Brand 1997:1-6.

6 Brand 1997:1-6.

7 National Gambling Act: section 13(1)(f).

8 Gambling Matters Amendment Act 36/1999: section 1(a) as read with Proc R 71 Government Gazette 1999-05-31.

9 Gambling and Betting Act (Eastern Cape) 5/1997: section 91(9).

10 National Gambling Act: section 13(3); Brand 1997:1-7.

11 National Gambling Board of South Africa Annual Report 2000:24.

12 National Gambling Act: section 13(3).

13 Brand 1997:7-1 & 7-3.

relevant provincial Act.¹⁴ Currently, SISA holds three casino licences in the North West province: Sun City, Marula Sun and the Carousel.¹⁵

1.2

In the Northern Province and the Free State two different sets of problems arose regarding the existing SISA casino licences. Each of these issues will be discussed separately.

2. Northern Province

2.1

In the Northern Province, SISA only held the Venda Sun casino licence that was issued in terms of the Venda Casino Act 13 of 1980.¹⁶ On 14 March 1997 the Northern Province Casino and Gaming Act 4 of 1996 was declared as operational (retrospectively) from 3 March 1997.¹⁷ The Notice also contained the following section: "In terms of section 93(2) of the Act, I, further declare that this Act will be applicable throughout the province except for: Venda Sun, Mphephu Street, Thohoyandou, Venda." The Venda Act was also repealed by the same provincial Act.

2.2

This exclusion of the application of the provincial Act to Venda Sun is unlawful and *ultra vires*. The effect of the repeal of the Venda Act and the exclusion of applicability of the provincial Act to the Venda Sun was to create a *lacuna* in the regulation of that specific casino. It effectively means that Venda Sun is not regulated by any piece of legislation. Such non-regulation would create an untenable situation as the main aim of the constitution as read with the national and provincial gambling legislation is to ensure that the regulation of casino gaming is continuous.¹⁸

The non-regulation of a casino is contrary to the National Gambling Act guidelines: firstly, that gambling must be effectively regulated, controlled, policed and licensed¹⁹ and secondly, that each province must create a provincial authority to regulate and control *inter alia* casinos in the province.²⁰

14 North West Casino, Gaming and Betting Act 13/1994: section 51.

15 National Gambling Board of South Africa Annual Report 2000:24.

16 Venda Casino Act 13/1980: section 89(1).

17 No 7 Northern Province Provincial Gazette Extraordinary 1997-03-14.

18 Constitution of the Republic of South Africa Act 108/1996: section 104(1)(b)(i) read with Schedule 4A; National Gambling Act: section 13(1)(a); Northern Province Casino and Gaming Act: section 77-78; see also *Grand Slam Entertainment Centre v Minister of Safety and Security* (OPD) 2000-04-20 unreported case numbers 2734/99, 4369/95 and 532/96 7.

19 National Gambling Act: section 13(1)(a).

20 National Gambling Act: section 13(1)(g).

By excluding the Venda Sun from the application of the provincial Act and simultaneously repealing the Venda Act, the provincial Board is by implication excluded from regulating the Venda Sun as the Board after all only has the powers as given to it in terms of the Act.²¹ The exclusion also ignores the transitional provisions contained in the provincial Act itself, that any existing licence is deemed to have been issued in terms of the provincial Act.²²

2.3

It is submitted that the *de facto* situation in practice confirms the fact that both the provincial Board and Sun International regarded themselves as bound by the provincial Act, as the Venda Sun adhered to the regulations issued in terms of the provincial Act relating to accounting records, fees and levies and surveillance.

2.4

In conclusion, it is submitted that the exclusion of Venda Sun from the application of the provincial Act is unlawful, *ultra vires* and should be regarded as *pro non scripto*. The legal position should however be clarified by the legislature as soon as possible. The Venda Sun casino is currently still operated by SISA, although it might soon be transferred to Tusk Resorts (Pty) Ltd.²³ For the sake of completeness, it should be noted that the Pietersburg casino licence was also awarded to SISA.

3. Free State

3.1 Introduction

3.1.1

In terms of the Free State Gambling and Racing Act 6/1996 ("provincial Act") any existing SISA licences are deemed to have been issued in terms of the provincial Act and the provisions of the said Act are applicable to these licences.²⁴ The existing casino licences did not expire on a specific date. The Free State problem was unique in the sense that two existing SISA casino licences, the Thaba'Nchu Sun and Naledi Sun²⁵, fell within what was to become one demarcated zone, namely Zone I.²⁶

21 Devenish *et al* 2000:225.

22 Northern Province Casino and Gaming Act: section 89(1).

23 GN 79 Northern Province Provincial Gazette 2001-04-04 gave notice of an application to change the ownership of the casino licence holder.

24 Free State Gambling and Racing Act 6/1996: section 93(1).

25 National Gambling Board of South Africa Annual Report 2000:24.

26 Zone 1 was one of the four zones demarcated as a guidelines area where a casino licence may be awarded in terms of the GN 9 Free State Province Provincial Gazette 1999-02-22.

3.1.2

The question faced by the Free State Gambling and Racing Board ("the Board"), as provincial gambling regulatory body, was how to bring the *de facto* casino-licensing situation in line with the zone guidelines. Various scenarios spring to mind, bearing in mind firstly that the existing licences continued to operate without a time limit, unlike in the Eastern Cape, and secondly, that the powers of the Board are set out and limited by the provincial Act.²⁷ As "(t)he enabling statute determines the scope and content of administrative power", the provincial legislation determines the scope and content of the power of the Board. The only available options to the Board, in terms of the Act, were the provisions relating to suspension, revocation, abandonment or transfer of an existing licence.

Firstly, the question could be asked whether the Board could suspend or revoke one or both of the existing licences under these circumstances. The answer had to be negative, as suspension and revocation could only take place in terms of section 39 of the provincial Act, in very specific instances of non-performance on behalf of the operator. *In casu* there was no evidence of such non-performance.

Secondly, the question could be asked whether the operator could be forced to abandon one of the licences. Again the answer had to be negative. Section 52(1) of the provincial Act does not empower the Board to make or enforce such a decision. The term 'abandonment' presumes a unilateral willingness or decision by the operator to that effect as indeed done by SISA in the contract under discussion in paragraphs 3.1.3 and 3.2. The Board could thus not enforce such hypothetical 'abandonment'.

A third option could have been to transfer one of the existing licences to another zone. Although SISA would still fall within the limits set by the National Gambling Act, this scenario would strategically be undesirable, as two casinos would fall within the same feeding area: precisely what the zoning attempted to avoid.

3.1.3

The negotiated solution was concretised in a contract between the Board and SISA dated 17 November 2000 in Bloemfontein. On 19 December 2000 Tsogo Sun Gaming and Entertainment filed an objection to the agreement to the effect that the agreement is "flawed and likely to be set aside by a Court of Law".

3.1.4

The question this note attempts to answer is whether indeed the agreement is fatally flawed and likely to be set aside by the courts if so challenged. In other words, was the decision by the Board to enter into the contract lawful? The discussion contains, firstly, a summary of the contract, secondly, an

²⁷ Burns 1998:139.

overview of the objection and, lastly, a discussion of the relevant administrative law principles.

3.2 The contract

The agreement between the Board and SISA related only to the awarding of the casino licence in Zone I, the Bloemfontein area. The stated purpose of the agreement was to integrate SISA's two existing casino licences in the Thaba'Nchu area into the gambling structure that was approved for the Free State province. The contract states that:

[...] the terms and conditions ... have been negotiated and agreed upon in good faith and trust with the main object of arriving at a conclusion that would be in the best interest of and most beneficial for the Free State province and its people.

The terms of the agreement, in short, are the following:

3.2.1

SISA's obligations are: firstly, SISA would abandon its Naledi Sun casino licence on the date coinciding with the issuing of the last three casino licences in the province. If the Board did not issue these licences, SISA could continue to operate Naledi Sun. The agreement was to be regarded as a package and not intended to be severed; secondly, SISA would pay the Board R12 million within 90 days of the date of signature of the agreement, to secure the exclusive right to conduct a casino in Zone I; thirdly, SISA would comply with any other conditions and criteria which the Board may prescribe; and lastly, SISA may cede and assign its rights and obligations to a third party subject to prior written consent of the Board.

3.2.2

The obligations of the Board are, firstly, that the Board grants SISA exclusive rights to conduct a casino licence in Zone I for 10 (ten) years from the date of payment of the R12 million and, secondly, that the Board agrees not to call for new casino applications in this Zone.

3.2.3

Other relevant clauses include, firstly, the provision that, should any legal challenge to the agreement not be settled within two years of payment of the R12 million, the agreement would lapse and restitution would take place; secondly, that any dispute between the parties would first be submitted to arbitration, and lastly, that the principles of secrecy and confidentiality as set out by the legislation apply to the agreement and the Board shall publish in the provincial Gazette and be open for inspection; comments must be lodged within 30 days and further proceedings must commence within 60 days.

3.3 The objection

The objection by Tsogo Sun can be summarised as follows:

The main contention was that the decision by the Board to enter into the contract was not fair. Established principles of an open, transparent and competitive casino licensing process were not adhered to. These principles are contained in the enabling national and provincial legislation as well as the Main Report on Gambling²⁸ upon which the legislation was based. The commitment to these principles by the Free State Provincial Government was specifically noted. Commitment to:

[...] a professional, transparent and just regulation of the gambling industry by the Independent Regulatory Authority, the Board and absolute integrity by the political and Government leaders and officials in relation to the industry. The Provincial Government would endeavour that the Board would be in a position to advertise the requests for proposals for the first licences as soon as possible following publication of the Free State Provincial Government Gambling Policy in February 1999. Tsogo Sun was advised by your Board on 06 September 2000 that discussions with SISA had caused the issue of the Request for Proposals ("RFP") to be delayed.

From the wording it is unclear whether the discussions prior to September 2000 also related to a RFP for Zone I.

The fact remains that the Board did not invite applications for a casino licence in Zone I.²⁹ As no casino applications had been called for in Zone I, Tsogo Sun argued that the process could not be regarded as having taken place in an open, transparent and competitive environment. No competing applications were invited, no opportunity to comment had been given to interested parties on the nature of that business and no public hearings had been held. In short, the merits of the licence could not be judged.³⁰

3.4 Discussion

3.4.1 Confidentiality

The contract refers to confidentiality in terms of the provincial legislation, i.e. that the board must act in a transparent and open manner.³¹ The publication of the contract for public inspection in the provincial Gazette was not only a contractual duty, but also a necessity in terms of the legislative requirements.

28 RP 85/1995 70.

29 Free State Province Provincial Gazette 2000-12-08.

30 Another issue raised in the objection related to the market dominance of, and shareholding by the State in SISA and that it created a growing suspicion and the perception that the "... casino licensing process has in reality been intended to 'legitimise' SISA, through the pretence of competition for those licences". Tsogo Sun stated further that this caused a decrease in investment confidence in the industry.

31 Free State Gambling and Racing Act: section 11 as read with section 27.

3.4.2 Time limits

The public notice of the contract, as required by the contract, was published in the Gazette. It stated:

Any proceedings pertaining to this agreement must be commenced within a period of 60 (sixty) days from date of publication of this notice.³²

The question that may be asked is whether this provision is binding on a third party wishing to take the decision of the Board under judicial review. The Board may only act in terms of powers given to it by the enabling legislation. There is no power given to the Board to decrease the time period within which to bring such a review and thereby limit the rights of possible aggrieved parties. As the provincial Act makes provision for a review to the High Court, no time limit, apart from reasonableness is applicable.³³ Where review proceedings are contemplated in terms of the Promotion of Administrative Justice Act 3/2000 ("AJA"), the time limit of 180 days would apply.³⁴

The provision of 60 days published in the Gazette thus attempts to give more power to the Board than it has in terms of the legislation and is thus *ultra vires*. The provision should thus be regarded as *pro non scripto*.

3.4.3 A contract to secure a licence?

It is settled law that the granting of a licence is a unilateral administrative act or disposition that may be granted or refused at the discretion of the issuing body. A licensing applicant may not contract with the authority to grant a licence, as licensing is not a contract between the authority and the applicant.³⁵ In the Free State scenario the contract was however technically not entered into for the purpose of issuing a new licence, but for the abandonment of an existing licence and for the payment of a further fee to ensure the exclusive right to continue to conduct a casino in Zone I.

The contract states that SISA may cede and assign its rights and obligations to a third party, subject to the consent of the Board and subject to the provisions of sections 40 and 43 of the provincial Act. This is similar to what SISA has done in the North West Province and what they are in the process of doing in the Northern Province.

Section 40 deals with the transfer of a licence from one person to another and the removal of a licence from one premise to another under certain circumstances. Should such an application be made, the sections relating to the application procedure, fees, objections and public inspections as well as investigations and police reports are applicable again.³⁶ This section does not aim to reopen the casino licensing process to other parties. Section 43

32 No 133 Free State Province Provincial Gazette 2000-11-24.

33 Free State Gambling and Racing Act: section 72 as read with Harms 2001:484.

34 Promotion of Administrative Justice Act 3/2000: section 7(1).

35 Devenish *et al* 2001:105; Burns 1998:102.

36 Free State Gambling and Racing Act: section 40(6) makes the requirements of sections 24-28 applicable to such an application.

relates to the maximum financial interests that a person may hold in a business to which the licence relates and is not relevant for our purposes.

From a practical point of view, it should be noted that the Bloemfontein area is the only remaining major metropolitan centre without a casino licence. Should SISA transfer its licence at Thaba’Nchu to a third party, they would in effect forfeit the opportunity to operate a casino in the Bloemfontein area.

The question that should be asked is whether SISA may move or transfer the premises of the casino licence from Thaba’Nchu to Bloemfontein city? Indeed, it is possible in terms of the legislation, subject to the approval of the Board and after the requirements mentioned above have been met. This hypothetical move could be done without SISA having to go through a competitive process where other applications are also invited and considered. However, the re-awarding of a licence to SISA for the new hypothetical premises in Bloemfontein city would be within the discretion of the Board.

Technically, the contract under discussion cannot be construed as an agreement for a new casino licence. What might be regarded as strange is the payment of the R12 million exclusivity fee. In terms of section 58(1) of the Act the exclusivity fee is a one-time payment payable for the granting of a casino licence for the first time. From the outside it would seem that SISA gave up its Naledi licence and paid R12 million for the right to something that they already have in terms of section 93(1). However, the payment of the amount could be regarded as necessary under the current regulatory scheme, as the section can be construed as being applicable to all first time licences falling under this Board and Act.

3.4.4 Transitional legislative provisions

As far as the objection by Tsogo Sun regarding the principles of transparency, fairness and equity is concerned, it is trite law that these principles are applicable to all casino-licensing processes (see paragraph 3 above). However, the Free State provincial legislation specifically creates the opportunity, in the transitional provisions, for an existing casino licence ‘to be deemed to have been issued’ in terms of the new provincial Act.³⁷ This provincial Act repealed the Act applicable to that casino until that time. No licensing application process was required for these ‘deemed’ licences. The licence application procedures provided for in the provincial Act are, as a result of these transitional provisions, not applicable to the existing licences such as the Thaba’Nchu Sun licence.

3.4.5 Legitimate expectation

The question may be asked whether any of the parties created a legitimate expectation in the mind of Tsogo Sun to the effect that RFP’s would be issued and licence applications would be requested for Zone I. If a legitimate

³⁷ Free State Gambling and Racing Act: section 93(1).

expectation could be proven, Tsogo Sun might have a claim against the Board for the setting aside of its decision to enter into the contract and not to issue RFP's for Zone I.

A legitimate expectation normally exists where there was firstly, either an express undertaking or official promise or, secondly, where there had been an established regular practice to that effect.³⁸ Devenish describes the principle of legitimate expectation as intrinsically just a manifestation of the principle of fairness.³⁹

3.4.5.1

Tsogo Sun, in its objection, mentioned that it had discussions with the Board regarding the RFP's. An RFP is the invitation document where the Board requests and provides guidelines as to the application for a casino licence. They had been advised that the RFP's were delayed as a result of discussions with SISA. It is not clear what the content of these discussions was. If it could be proven that the Board made an official promise or gave an express undertaking that the RFP's would also relate to Zone I, Tsogo could argue that they had a legitimate expectation that the Board would issue RFP's for Zone I. Any undertaking by the provincial government is not relevant as only the Board is entitled to issue RFP's and award casino licences in terms of the provincial and national Acts. Any promise by a politician cannot create a legitimate expectation.⁴⁰

However, seen in the light of the clear right that SISA had in terms of the transitional provisions of the provincial legislation, such an undertaking by the Board would have been in contravention of the legislation and regarded as *ultra vires*. It would not have been expedient for the Board, in terms of the legislation read with the zoning guidelines, to issue RFP's for Zone I as licences had already been awarded in that zone. The existing licences were 'deemed to have been issued' in terms of the provincial legislation.

3.4.5.2

If Tsogo Sun would want to argue that they had a legitimate expectation based on an established regular practice, the issue of the other existing SISA licences has to be investigated. As mentioned above, the Eastern Cape legislation differs from the Free State legislation on this point, making it irrelevant for our discussion. In both the North West and Northern Provinces the existing licences were also 'deemed to have been issued' in

38 Devenish *et al* 2001:315. For examples of an express undertaking creating a legitimate expectation, see *inter alia* *Gencor SA Ltd v Transitional Council for Rustenburg* 1998 2 SA 1052 T; *Claude Neon v City Council of Germiston* 1995 3 SA 710 W. For examples of a regular practice creating a legitimate expectation, see *Administrateur, Transvaal v Traub* 1989 4 SA 731 A, the *locus classicus* on this point.

39 Devenish *et al* 2001:318; Kriel 1999:87; *Khani v Premier, Vrystaat* 1999 2 SA 863 O:869H-I.

40 *Bushbuck Ridge Border Committee v Government of the Northern Province* 1999 2 BCLR 193 T.

terms of the provincial legislation. No RFP's were issued for these areas to other possible applicants and no casino licensing process was followed. The position in these provinces would not assist Tsogo Sun's argument as no existing practice to invite casino licence applications in these 'deemed to have been issued'-casino licences had been established. In fact, an argument could be made out that there was an existing practice not to issue RFP's in these circumstances.

3.4.5.3

With the available facts, any argument by Tsogo Sun, based on a legitimate expectation, would probably not be successful.

3.4.6 Just administrative action

The final question that has to be answered is whether the Board, when entering into the contract, had to adhere to the constitutional principles of just administrative action, i.e. should they have acted lawfully, reasonably and procedurally fair? The basis for this question is section 33 of the Constitution as read with the AJA. The Board, as an Organ of State is subject to the direct application of the Bill of Rights.⁴¹

The principle of 'just administrative action' is however specifically applicable to 'administrative actions'. Section 1(i) of the AJA:

(A)ministrative action means any decision taken ... by an organ of state ... which adversely affects the right of any person and which has a direct, external legal effect ...". A 'decision' relates to '... any act ... of an administrative nature.⁴²

The question is whether entering into a contract qualifies as such an 'administrative action'?

It is submitted that, as far as the Thaba'Nchu Sun casino licence is concerned, the entering into the contract is not an administrative action, as the requirements of the definition of 'administrative action' have not been met. The contract merely confirms the existing rights of SISA to the Thaba'Nchu casino licence. There was no need to enter into a contract on this point as SISA already had the casino rights in terms of the legislation. The Board did not use its discretion in any way or make a decision in this regard. To fall within the ambit of the definition, the rights of a person have to be affected. It is argued that Tsogo Sun did not have any right to a casino licensing process in Zone I. The legislation excluded that possibility.

There is another ground on which the contract does not qualify as an administrative action. The definition requires that the administrative action or decision must also have a 'direct, external legal effect'. This part of the

41 Constitution: section 8(1) read with section 239 as confirmed in *Esikhehleri v Mpumalanga Gaming Board* (TPD) 1997-05-07 case number 2111/1997.

42 Promotion of Administrative Justice Act: section 1(v).

contract, confirming the status of the Thaba’Nchu casino did not bring any change in the existing legal effect of the casino. It merely confirmed a continuation of the *status quo*.

Henderson argues that the determination of an ‘administrative action’ depends on the nature and the effect of the action.⁴³ It is submitted that the nature of the contract on the point of the Thaba’Nchu Sun is a mere confirmation of the legal position and in effect a continuation of the *status quo*.⁴⁴ The Board still has to comply with the principles of legality and lawfulness, as it is implicit in the Constitution. The board may only act within its scope of powers and in good faith. It may also not act arbitrarily.⁴⁵

If one accepts that the entering of the contract was not an ‘administrative action’ as set out in the AJA, it is not the end of the constitutional enquiry as to whether the board’s actions had to be lawful, just and procedurally fair. In terms of three recent Constitutional Court judgments, it merely means that the courts would require a less demanding standard when measuring the decisions and actions of the Board.⁴⁶

It is submitted that the Board, *prima facie*, on the face of the contract, appears to have met these requirements: it acted within its powers as set out in the legislation; it acted in good faith and did not do so arbitrarily.

4. Conclusion

Notwithstanding the two legal issues discussed in this note, it should be clear that the transition of the casino licences into the South African regulatory system was handled with responsibility, especially in view of the quantity of litigation within the regulatory system in general.⁴⁷ The Northern Province issue is unfortunate and should be immediately rectified by notice in the Government Gazette.

Although the route followed in the Eastern Cape with regard to the existing SISA licences is to be preferred, it is submitted that the Free State Board acted within the perimeters of the law and the constitutional principles. Their decision to enter into the contract confirming the status of the Thaba’Nchu Sun, although seemingly unnecessary, cannot be regarded on the facts available as fatally flawed. It is not likely to be set aside by a court of law as argued by Tsogo Sun.

43 Henderson 1998:635.

44 See also *Celeske v Premier of the Eastern Cape* 1997 12 BCLR 1746 Tk.

45 Hoexter 2000:506. In the *Fedsure* matter, a further requirement that mimics ‘reasonableness’ was investigated by the court. This statement is however controversial and a full discussion hereof falls outside the scope of this note. See in general Devenish 2000:80-107.

46 *Fedsure Life Association v Greater Johannesburg Metropolitan Council* 1999 1 SA 374 CC; *President of the Republic of South Africa v South Africa Football Rugby Union* 2000 1 SA 1 CC and *Pharmaceutical Manufacturers Association of South Africa: in re Ex parte President of the Republic of South Africa* 2000 2 SA 674 CC.

47 Carnelley 2001:131-154.

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