

NEW FAIRMOUNT HOTEL v ZAMBIA NATIONAL TOURIST BOARD

Supreme Court

Ngulube, C.J, Lewanika DCJ, and Chibesakunda J.J.S.

27th September, 2001 and 13th December, 2001

(SCZ Judgment No. 16 OF 2001)

Flynote

Administrative law – Licensing – Hotel discotheque - Enactment of new law- effect on existing amenities.

Headnote

The issue in this case was whether or not a hotel which was already in existence and already accustomed to running a discothèque at the time when the Tourism Act Cap. 155, came into force was required to obtain a separate authorization or licence to operate the discotheque.

Held:

- (i) An existing hotel is not exempt from the requirement to apply for a discotheque licence and the holding of a discotheque is not an integral part of hotel business so as not to require a separate licence from the one held under the Hotel's Act.

I. Suba of Messrs Kuta Chambers, for the appellant.

A. Dudhia of Messrs Musa Duhhia and Company, for the respondent.

Legislation referred to:

1. Tourism Act Cap. 155 ss 2, 13, 22
2. Hotels Act Cap. 153.
3. Casino Act Cap. 157.
4. Liquor Licensing Act Cap. 167

Judgment

NGULUBE C.J., delivered the Judgment of the court.

The issue in this case was whether an hotel which was already in existence and already accustomed to running a discotheque at the time when the Tourism Act Cap. 155, came into force was required to obtain a separate authorization or licence to operate the discotheque. The Tourism Act introduced a requirement that tourist enterprises be licensed and in Section

2, the definition given is:-

"tourist enterprises" includes the construction of an hotel; a tour-operating business; a travel agency business; an air charter business; a vehicle or vessel leasing business; a restaurant or café; a discotheque; a convention center; and such other enterprise catering for tourists as the minister may, by statutory instrument, declare;"

Another Section – Section 13 – bars any person from operating any tourist enterprise unless they have previously applied to and obtained from the Zambia National Tourist Board established under the Act a licence or authorisation in that behalf. In order to provide for those tourist enterprises which were already in existence and in operation at the time the Act was passed, Section 22 provided that-

"Every person who, at the commencement of this Act, is carrying on any tourist enterprise other than the management of an hotel, shall, within six months after such commencement, apply to the Board for a licence."

In an effort to resist the obtaining of a licence or authorization for its discotheque, the appellant hotel launched proceedings for certiorari to quash the respondent's decision to demand a licence be obtained and for declarations that the hotel could hold all sorts of musical concerts without a discotheque licence. The learned trial judge dismissed an argument that an existing hotel was exempt from the requirement to apply for a disco licence or that the holding of discos was an integral part of hotel business so as not to require a separate licence from the one held under the Hotel's Act, CAP, 153. The judge considered that it was only the management of an hotel as such which was exempt under Section 22 of the Tourism Act while a discotheque would be considered along the same lines as the casinos which are licensed separately under the Casino Act, Cap 157 or the hotel bar licenses which are obtained separately under the Liquor Licensing Act, Cap. 167. These were found not to be intrinsically part of the core business of an hotel, which is essentially the accommodation of the public in which lodgings are provided and provisions are supplied. We have distilled this rough and ready description from the Hotels Act.

In this appeal, it has been argued and submitted that the hotels are exempt from all the provisions of the Tourism Act by virtue of S. 22 of the Act, that in contrast, the Casino Act and the Liquor Licensing Act do not make provisions for such exemption. Miss Suba argued that if existing hotels were not required to be licensed de novo and if they did not require for instance their restaurants to be licensed separately, why should a disco already in existence be licensed separately? She sought to draw a distinction between a disco outside the hotel and one within the hotel and submitted that the latter was an integral part of the hotel and should be licensed separately. It was further argued that as hotel business includes concerts, these must include discotheques so that if there is exemption for existing hotels, the sole authority for licensing tourist enterprises should not require a separate disco licence.

Mr Dudhia supported the learned trial judge's finding that, on a correct reading of S. 22, the exemption did not apply to discos; it only applied to management of hotels. The management of an hotel does not include the running of a disco which is not an essential or integral part of a hotel business. It was pointed out that in this particular case, the disco is almost a separate service whereby patrons are charged an entry fee.

We have considered this matter. The language of the sections we have quoted, especially section 22, is self-explanatory. First and foremost, the Tourism Act distinguishes between construction of a hotel (S.2) and management of a hotel (S.22). What was exempt was clearly the need for permission to construct a hotel – which is a tourist enterprise – when this was a fait accompli in respect of existing hotels. This provision accorded with common sense. Next,

the section (S.22) gave a grace period of six months within which any other existing tourist enterprise had to apply for a licence, even where none was required before. The disco in this case fell under this latter category.

In truth, the learned judge was on firm ground and we must uphold him. This appeal is unsuccessful and costs follow this event, to be taxed if not agreed.

Appeal dismissed