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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No.: **3794/2022**

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

PETROL GREEN FILLING STATION CC

Applicant

and

VKB FUELS (PTY) LTD

First Respondent

VKB BELEGGINGS (PTY) LTD

Second Respondent

VRYSTAAT KOÖPERASIE CC

Third respondent

THE MINISTER: MINERAL RESOURCES AND ENERGY

Fourth Respondent

THE CONTROLLER OF PETROLEUM PRODUCTS

Fifth Respondent

CORAM: VAN RHYN, J

HEARD ON: 2 FEBRUARY 2023

DELIVERED ON: 22 MARCH 2023

[1] On 11 August 2022 Petrol Green Filling Station CC (the “applicant”) launched an application against VKB Fuels (Pty) Ltd, first respondent and VKB Beleggings (Pty) Ltd, second respondent, two private companies and the third respondent, Vrystaat Koöperasie CC for an order in terms whereof the first and second respondents are interdicted from conducting the sale of petroleum products from Erf [...], Vrede, Free State Province (the “property”). The interdict is to operate for so long as there is no licence duly issued by the fifth respondent, the Controller of Petroleum Products (“the “Controller”) in respect of the relevant property. The Minister: Mineral Resources and Energy (the “Minister”) is cited as the fourth respondent. The Minister filed a notice to abide by the decision of this court.

[2] The application is opposed by the first, second and third respondents (“VKB”). The application for an interdict was brought by the applicant on the basis that the first and second respondents are illegally conducting the retailing of fuel at a newly built fuel filling station at the property. The property is situated across the road from Erf [...], the property on which the applicant is conducting a fuel filling station.

[3] It is alleged by the applicant that VKB has been retailing diesel to its members from two above ground storage tanks situated on Erf [...], Vrede for several years. During 2021 a new petrol station was built on Erf [...], Vrede. The deponent to the applicant’s founding affidavit, Mr J L van Tonder made certain enquiries and learned that VKB had acquired Erf [...] and consolidated Erf [...] with Erf [...]. After such consolidation, Erf [...] and Erf [...] are reflected as Erf [...], being the relevant property in respect of this application.

[4] Subsequent to the consolidation process VKB applied to the Controller for an amendment of the licence that existed in respect of Erf [...] with the result that the licence would apply to the property. The Controller granted the amendment. During July 2021 the applicant lodged an appeal to the Minister against the amendment granted by the Controller. The Minister upheld the appeal.

[5] On 5 July 2022, the applicant, through its attorney at Pretoria, demanded that the first and second respondent cease from retailing fuel at the property. On 13 July 2022 the first and second respondents, through a letter from their attorney, responded that the selling of fuel will continue and that VKB is applying for “new” Licences. In VKB’s answering affidavit it is stated that there is no need for an interdict as VKB is not retailing fuel in Vrede.

[6] From the answering affidavit it is evident that the decision of the Minister was delivered on 7 March 2022 in terms whereof certain amendments to VKB’s licences were set aside (“the appeal decision”). The appeal decision is not disputed by VKB. In response the Controller cancelled all VKB’s fuel licences on 28 June 2022 (“the cancellation decision”).

[7] On behalf of VKB it was argued that, since the controller issued the notice in terms of the provisions of section 2A(2)(a) to cease retailing fuel at Vrede on 5 August 2022, VKB had stopped trading on the same day.

[8] This application has a long history regarding the change of hands in the ownership of the applicant, numerous correspondence exchanged between the parties, a counter application and further interlocutory applications. There are other related matters, such as the application for review brought by VKB against the appeal decision of the Minister. Furthermore, the cancellation decision issued by the Controller is now the subject of a pending internal appeal brought by VKB on 29 August 2022.

[9] Both the main application and the counter-application were enrolled by VKB to be heard on 2 February 2023. In the counter application VKB seeks a declarator that the fuel retail licence issued to the applicant on 22 September 2015 is no longer valid. Prior to the commencement of the hearing of both the main and the counter-application, the parties reached an agreement in terms whereof the counter-application be removed from the Free State Division of the High Court, Bloemfontein and be transferred to the Gauteng Division of the High Court, Pretoria.

[10] The parties furthermore agreed that an application will be made on an unopposed basis in the Gauteng Division of the High Court, Pretoria for the consolidation of the counter-application with the proceedings pending under Case No 022108/2022 in the Gauteng Division of the High Court, Pretoria. The agreement to remove the counter-application and transfer same to the High Court, Pretoria was set out in a draft order which was made an order of this court.

[11] At the hearing of the main application Mr Savvas, counsel on behalf of the applicant, argued that the main application is not ripe for hearing and should not have been enrolled for hearing by VKB.

[12] The retail of fuel products at a site is regulated by the Petroleum Products Amendment Act¹ and the Regulations for Site and Retail Licences². In section 1 “retail” is defined as: “the sale of petroleum products to an end-consumer at a site and retailer shall be interpreted accordingly”. The definition of “retail licence” is: “a licence to conduct the business of a retailer”. In terms of the provisions of section 2A(1)(d) of the Act a person may not retail prescribed petroleum products without a retail licence.

[13] A person who wants to sell prescribed petroleum products to end-users has to apply for a licence in terms of subsection (1) of the Act and must, in the case of a retail and wholesale licence, be the owner of the business concerned and do so in the form and manner prescribed by the Act. Section 2B of the Act provides that the Controller of Petroleum Products must issue licences in accordance with the provisions of the Act, which, in the case of a site, there has to be a corresponding valid retail licence.³

[14] In terms of the Act, licences for filling stations are “land locked” in the sense that they apply strictly- down to GPS coordinates specified in the licence application – to a location on a defined piece of land. On behalf of the applicant it was contended that VKB, on the pretence that only the number of the erf has changed from Erf [...] to Erf [...] applied to the Controller for, basically, a clerical amendment

¹ Act 58 of 2003.

² As contained in No R 286, GG 28665 of 27 March 2006.

³ Section 2B(3)(c).

of the erf number to reflect the property from where the retail of fuel is to be conducted. The applicant therefore contends that VKB ignored the Minister's ruling and continued to operate illegally. Hence the application for an interdict. On the grounds that VKB stopped retailing from the property, the application for an interdict was not enrolled for hearing.

[15] Ms Fourie, counsel on behalf of VKB argued that even though VKB does not agree with the decision of the Controller to issue a notice to cease trading in respect of VKB, no retail of fuel has been conducted since 5 August 2022. The applicant issued the application for an interdict on 11 August 2022, after taking cognisance of VKB's decision to stop any retail at the property. Regarding the merits of the interdict, it was submitted that the applicant does not have a valid retail licence and is not entitled to retail fuel. Therefore, the applicant does not have standing to bring this application.

[16] It is common cause that VKB has ceased to retail fuel at the property since 5 August 2022, a period of almost 6 months prior to the hearing of this application for an interdict. The applicant, however, argued that VKB disregarded the Minister's rulings since 3 March 2022 and efforts to settle the matter amicable through the parties' attorneys were futile. Since VKB has raised the invalidity of the applicant's licence, the Minister has requested an investigation regarding these allegations. VKB furthermore seeks an order in the internal appeal that the licence of the applicant be declared invalid.

[17] Mr Savvas, not only in his Heads of Argument and Practice Note, but also at the commencement of this matter argued that the matter is not ripe for hearing and should not have been enrolled by VKB at this stage. I agree with this submission. The question whether the applicant has a valid licence impacts upon the *locus standi* of the applicant in the application for an interdict. The question as to the validity of VKB's licence is also pending before other *fora*. These challenges are not irrelevant to the application at hand. The appropriate forum to deal with these issues are the internal appeal and review procedures which has already been initiated by VKB.

[18] This matter is not ripe for hearing and had been prematurely set down. The issue as to costs should be addressed at a later stage subsequent to the finalisation of the issues regarding the validity of VKB's licence and the *locus standi* of the applicant.

[19] ORDER:

1. The application is removed from the roll.
2. Costs to stand over for later adjudication.

VAN RHYN, J

On behalf of the Applicant:

Instructed by:

ADV B G SAVVAS

J L JORDAAN ATTORNEYS

BLOEMFONTEIN

On behalf of the 1st, 2nd and 3rd Respondents:

Instructed by:

BLOEMFONTEIN

ADV. N FOURIE

SYMINGTON DE KOK ATTORNEYS