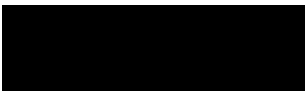




IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No:2023-128106

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
27 March 2024	
DATE	SIGNATURE

In the matter between:

ENERGI LICENCES (PTY) LTD

Applicant

Versus

THE CONTROLLER OF PETROLEUM PRODUCTS

1st Respondent

KHAZAMULA PROPERTIES (PTY) LTD

2nd Respondent

NKANGALA DISTRICT MUNICIPALITY

3rd Respondent

THEMBISILE HANI LOCAL MUNICIPALITY

4th Respondent

**MEC FOR AGRICULTURE,
RURAL DEVELOPMENT, LAND AND
ENVIRONMENTAL AFFAIRS**

JUDGMENT

COWEN J

1. The applicant, Energi Licences (Pty) Ltd has applied to this Court on an urgent basis for an interim interdict restraining the second respondent, Khazamula Properties (Pty) Ltd, from distributing or selling petroleum products from a property in Vlaklaagte, Mpumalanga. The property is known more fully as Erf 2, Cnr R573 Moloto Road and R544 Verena Road, Buhlebesizwe, Vlaklaagte, Mpumalanga, and I refer to it as ‘the site’. The site is located directly across the road from the applicant’s own petrol station.
2. The interim interdict would operate on an interim basis pending the finalization of a review application, which the applicant instituted in December 2023 to set aside the second respondent’s site and retail licences. These were issued by the first respondent, the Controller of Petroleum Products (the Controller) in terms of the Petroleum Products Act 1970. The date of issue recorded on both licences is 20 April 2021.
3. The second respondent has opposed the application contending that it is not urgent and that any urgency is self-created. The second respondent also contends that

the application should be dismissed because, it says, the requirements for an interim interdict are not met.

4. The submission that urgency has been self-created in respect of the interim interdict must in my view hold sway. The review application was instituted in December 2023. The second respondent avers in the founding affidavit that after service of the review application an above ground storage tank was suddenly installed on the site. Pursuant to that advice and on 28 February 2024, the applicant sought an undertaking from the second respondent that no trading would take place until the review was finalized. The second respondent responded the following day refusing to give the undertaking. In those circumstances, the applicant instituted the application.
5. In response, the second respondent explains that there was construction work on the site as far back as July 2023, continuing until September 2023 and then recommencing in November 2023 until the builder's break in December 2023. The review was then instituted without any application for interim relief. Construction recommenced in mid-January 2024 and continued until end February 2024. The storage tank was delivered to the site on 22 February 2024. In these circumstances, it is alleged that the applicant was fully aware that the second respondent was constructing the filling station but did nothing for a period of several months. At no stage during the construction did the applicant make an enquiry of the second respondent or send them a letter.
6. In order to further substantiate urgency, the applicant's counsel was compelled to argue based on material not directly before the Court and which is not self-evident. However, my attention was also duly drawn to relevant parts of the founding

affidavit in the main application. But these support the contention of prior knowledge of what was ensuing and self-created urgency. Indeed, the applicant itself points out that in July 2023, when the construction works were noticed, it instructed its attorney to investigate the situation.

7. I am also persuaded by the second respondent's submission that the applicant has not demonstrated that it cannot get substantial redress in the normal course. In this regard, the founding affidavit was scant and the relevant allegations insufficiently substantiated.
8. The applicant has, however, simultaneously sought urgent relief directing the first respondent, the Controller, to produce the Rule 53 record which has not been timeously filed, thereby delaying the prosecution of the review application. At this juncture the review application is unopposed and set down on the unopposed roll for 3 July 2024. I am satisfied that this relief should be granted. The first respondent did not oppose the application. The Rule 53 record is late. The applicant demanded its production twice during February 2024 with no response. I am satisfied that the review must be expeditiously finalized in all of the circumstances of this case. *A fortiori* in circumstances where no interim relief is in place.
9. In this regard, at least one issue that is at stake in the review – the only one canvassed during the urgent application – is an important one that should be ventilated swiftly because if the applicant is correct, then this means that there is systemic illegality ensuing in the administration of petroleum site and retail licences and illegality in this case. Lapsing provisions relating to licences serve important regulatory purposes, with, *inter alia*, financial and socio-economic consequences.

In this regard, it is apparent that notwithstanding the date of recordal of the date of issue of a licence, or notification thereof, the Controller adopts the view that the date of issue is in fact the date of collection of a licence, which can be at a significantly later date as is reflected on the licence itself, as in this case. Under Regulation 24(1) of the Regulations for Site and Retail Licences, a licensed retailer must commence its retailing activities within a period of 12 months after the date on which a retail licence is issued to the licensee, failing which the licence shall lapse. A licence can be extended under Regulation 24(2) for a total period of 18 months. It is common cause that the licences in this case were, according to the terms of the licence, issued on 20 April 2021. They were extended for a six-month period but only well after 12 months from that date, with the result that they were extended until 28 February 2024. If the date of issue was as recorded on the licence, then the licences lapsed in April 2022 and could only have been extended until October 2022, and as contended by the applicants, are invalid.

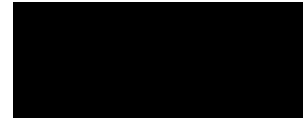
10. The dispute is of obvious significance to the lawful and orderly conduct of the petroleum industry and not only to the parties. I pause to note that circumstances such as these can sensibly be brought to the attention of the Deputy Judge President should the matter become opposed and an expedited date for the hearing of the review be sought.

11. I make the following order:

11.1. The applicant must serve a copy of this order on the first respondent through the sheriff.

11.2. The first respondent is directed to deliver the Rule 53 Record within ten days of the date of service of this order and shall pay 10% of the applicant's costs on a party and party scale.

11.3. Save as aforesaid, the application is struck from the urgent roll with costs.



SJ Cowen

**Judge of the High Court,
Pretoria**

Date of hearing: 22 March 2024

Date of judgment: 27 March 2024

Appearances:

Applicant: Adv BG Savvas instructed by Murray Kotze & Associates Attorneys

Second Respondent: Adv S Nel instructed by Weavind and Weavind Inc