



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NUMBER: 2024-023572

DELETE WHICHEVER IS NOT APPLICABLE		
(1)	REPORTABLE:	YES / NO
(2)	OF INTEREST TO OTHER JUDGE:	YES / NO
(3)	REVISED:	YES / NO
_____ DATE		

In the matter between:

PETROL GREEN FILLING STATION CC

APPELLANT

and

**MINISTER OF MINERAL RESOURCES AND
ENERGY**

FIRST RESPONDENT

CONTROLLER OF PETROLEUM PRODUCTS

SECOND RESPONDENT

VKB BELEGGINGS PROPRIETARY LIMITED

THIRD RESPONDENT

VKB FUELS PROPRIETARY LIMITED

FOURTH RESPONDENT

Coram: Le Grange AJ

This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

ORDER

1. The application for leave to appeal is dismissed.
 2. The applicant is ordered to pay the costs of the application for leave to appeal.
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JUDGMENT

Le Grange AJ:

- [1] Before this Court is an application for leave to appeal against an order granted on 12 March 2024 – striking the applicant’s application from the urgent roll due to a lack of urgency with costs on an attorney and client scale.
- [2] The (120 page) application saw the light on 4 March 2024 to be heard on 12 March 2024, and clearly (from the contents of the founding affidavit already) entailed an extensive, historical and well disputed issue(s).
- [3] To achieve the Thursday deadline the respondents were provided (effectively 2 days) until 09:00 on 7 March 2024 to (find its legal team, consult, draft and) file answering affidavits whereafter applicant

provided itself a 3-hour period to reply (i.e. before 12:00 on the same date).

- [4] In answer (on 11 March 2024 at around 13:00), the 2nd and 3rd respondents (respondents) attacked urgency and opposed the relief sought on multiple substantive grounds.
- [5] When the clock struck on 12 March 2024 at 10:00, the applicant has not yet filed its reply but elected to proceed without further ado.
- [6] The contents in the answering affidavit therefore stood as uncontested.

Urgency

- [7] The *only* grounds of urgency were set out in paragraphs 70 to 72 of the founding affidavit, which reads:

'70 My attorneys were notified by the Department on the 27th February 2024 of the Minister's decision.

71 On the 28th February 2024 my attorneys wrote to the Controller requesting in the main an undertaking that the Controller would not issue the licences pending action to be taken by us. I attach a copy of this letter hereto as annexure FA-14. There has been no positive response from either the Controller or the Minister.

72 3rd and 4th Respondents will be able to commence operations the instance they collect their licences. This is *matter of days*, as has been said, the damage to the Applicant's business will be *immediate* and irremediable.' Emphasis added.

- [8] The question then is whether '[In a] matter of days' is enough to pass muster.
- [9] It cannot be argued that the averment is simply too vague on the face of it.
- [10] The undisputed stated facts, which include the fact that the respondents were not (like the controller) requested to make an undertaking, give no further indication as to when this *possibility* may occur – i.e. today, tomorrow, next week or next month.

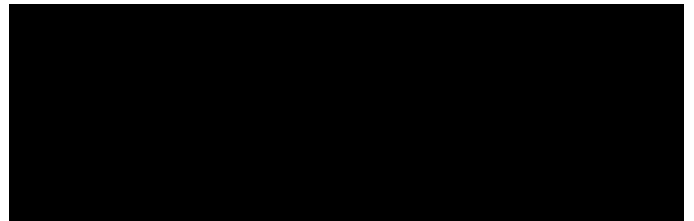
- [11] This was made worse when the applicant failed to deal with the extent of the urgency and to make out a case, by providing sufficient facts to justify the particular extent of the departure from the norm, i.e. the 10 days.¹
- [12] For this reason, this Court could not sensibly conclude that the matter is urgent and that the rules must be departure from to a certain extent.
- [13] The wolf was simply not pictured at the door but somewhere and possibly on the road.
- [14] The 2-day period (as granted) was not explained and accordingly not justified especially considering the extent and history of the matter. In the premises, this Court found that the periods set out was unfair and unreasonable in the instance.
- [15] Added hereto, the applicant was cordially invited to agree, to avoid the application being summarily struck from the roll, to a proper ventilation of the matter (which suggested no more than a week). This, being thrown back into the respondent's face, together with the aforementioned, necessitated this Court to grant a punitive costs order.

Leave to appeal

- [16] It has been conceded (by the applicant's counsel in argument) that an appeal will have no practical effect and would only result in a lengthy delay of the real issue(s) [and this Court may add considerable costs] – opposite to properly enrolling the matter or (as suggested by applicant's counsel) to push the real issue (i.e. the review, inter alia through a request for an earlier hearing date once the papers were in order) – which can certainly not be in the interest of justice.

¹ *Republikeinse Publikasie (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A); *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another* 1977 (4) SA 135 (W)

- [17] Fact has worsened this, when the applicant was again shown the door (on 25 March 2024) when it tried to re-enroll the matter (apparently as supplemented) for reasons of the applicant's live application for leave to appeal to be heard on 26 March 2024.
- [18] It is conceded that the Order is interim in nature and this Court finds that it is also not appealable.
- [19] This matter can further not, as suggested, be compared with, nor is it of similar nature and importance to, the manifestly urgent matters that was dealt with by the Constitutional Court as referred to by counsel.
- [20] This Court finds that to allowing the appeal would only add to the wasteful use of judicial resources and of legal cost as warned against².
- [21] In the premises, the application for leave to appeal is dismissed with costs.



A.J. LE GRANGE

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the applicant: B G Savvas on instruction of Murray Kotzé & Associates Attorneys

For the respondent: N Fourie on instruction of Werkmans Attorneys

Heard: 26 March 2024

Delivered: 3 April 2024

² *International Trade Administration Commission v SCAW South Africa* 2012 (4) SA 618 (CC) at para 49-50.