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

CASE NO: 2024-023572

(1) REPORTABLE: Yes/ No

(2) OF INTEREST TO OTHER JUDGES: Yes/ No

(3) REVISED.

DATE

SIGNATURE

In the matter between:

PETROL GREEN FILLING STATION CC

Applicant

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

JUDGMENT

MBONGWE J:

INTRODUCTION

[1] The Applicant approached this court on urgency in terms of Rule 6(12) on 02 April 2024 seeking the re-enrolment of the urgent application it had

launched on 12 March 2024, but was dismissed for lack of urgency with costs – an order that was challenged by the Applicant in an application for leave to appeal which was in turn dismissed in a judgment dated 3 April 2024.

[2] A day before the judgment was to be handed down, the Applicant brought an application akin to the present seeking the re-instatement of its dismissed urgent application and other extensive interdictory relief against the Respondents. The application was opposed by the Third and the Fourth Respondents. The matter was removed from the roll with costs reserved on the ground that the judgment on the application for leave to appeal was due to be handed down on the following day.

[3] Relying on the Judge President's Consolidated Directive 1 of 2024, the Applicant approached this court seeking the relief stated in para 2, above. Asked if there has been a change in the circumstances of the case since the initial urgent application, counsel for the Applicant mentioned two aspects of developments which necessitated the approach to this court on urgency. The relevant developments will appear shortly hereunder. The application for re-enrolment was granted. The main application for the relief stated in para 2 commenced and was opposed by the Third and Fourth Respondents. The hearing was adjourned until Friday 5 April 2024.

BRIEF FACTUAL MATRIX

[4] The Third Respondent had applied to the Department of Mineral Resources and Energy headed by the First Respondent for Trading Licence. The application was opposed by the Applicant before the Second Respondent, a representative of and processor of applications of this nature on behalf of the First Respondent. Initially the Second Respondent had declined the application. However, following an appeal to the First Respondent in terms of section 12A (1) of the Petroleum Products Act 120 of 1977 Act, the First Respondent overturned the decision of the Second Respondent and directed

the latter in February 2024 to issue the licence to the Third Respondent upon its compliance with certain requirements by the 30 March 2024.

- [5] The Applicant alleged to have, firstly received information from the Third Respondent that it had complied with the requirements to be issued with the licence and that it may receive the licence anytime to commence trading on its premises situated in the same vicinity as the Applicant. It is apparent that the real issue between the Applicant and the Third and the Fourth Respondents turns on competition in the sale of fuel.
- [6] In the second instant, the Applicant alleged to have been informed by its manager that one of its petrol attendants has been poached by the Third Respondent to come and work for the Third Respondent – an indication, so the Applicant contended, that the Third Respondent could commence operating anytime soon.
- [7] The events in paras 5 and 6 prompted the Applicant to launch the urgent Application seeking the following orders:

“Pending the finalization of Part B of this Notice of Motion and with immediate effect:

- a. That the Second Respondent (the Controller of Petroleum Products) is interdicted from issuing a Site and Retail Licence certificates to the 3rd and 4th Respondents respectively in respect of the site at erf 1[...], Vrede, Free State.
- b. The 3rd and 4th Respondents are interdicted from concluding and operating a fuel filling station at Erf 1[...], Vrede, Free State ;
- c. The decision of the 1st Respondent (the Minister of Mineral Resources and Energy) of the 27th February 2024 on appeal to him, is suspended;

d. The 12 month period stipulated in Regulation 24 of the Regulations for Site and Retail Licences is suspended as from the 27th February 2024.”

[8] In response to the question what entitles it to the relief sought, the Applicant’s counsel stated that the Applicant has notified the First and Second Respondents of its intention to have the decision of the First Respondent to overturn the decision of the Second Respondent and the directive for the latter to issue the licence to the Third Respondent reviewed and set aside. To this end the Applicant has requested, in terms of Rule 53, to be provided with the records of the proceedings before the First Respondent leading to the impugned decision.

[9] What concerned this court was that the Applicant does not take issue and in fact admits that the Act bestows appellate authority on the First Respondent to determine appeals brought to him by any party aggrieved by a decision made by the Second Respondent. The awkward controversy in the Applicant’s case is that, despite this knowledge, the Applicant contends that its challenge is buttressed on the contention that the First Respondent does not engage in the inspection and assessment of all aspects necessary for the consideration of an application for a licence and, therefore, cannot overturn the decision of the Second Respondent.

[10] In opposition, counsel for the Third Respondent read out a number of grounds upon which the First Respondent had not only raised criticism of mistaken considerations in the assessment and decision of the Second Respondent, but also pointed out facts that ought to have been considered. The First Applicant was entitled to act as he did in the exercise of his authority to determine appeals.

[11] In the end this court was not persuaded that the Applicant had a case and instead, the court agreed with the Third Respondent’s contention that the Applicant sought to merely delay its commencement of operations and to thwart competition.

[12] The urgent application was dismissed with costs on 5 April 2024, including the costs that were reserved when the matter was removed from the roll on 26 March 2024.

**MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Date of hearing: 2 & 5 April 2024

Date of order: 5 April 2024

Date of delivery of judgment: 30 May 2024

APPEARANCES:

For the Applicant: Adv BG Savvas
Instructed by: Murray Kotzé & Roberts Attorneys

For the Third and Fourth Respondent: Adv N Fourie
Instructed by: Werksmans Attorneys

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 30 MAY 2024.