

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 89753/2024

DATE: 20-08-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 20 August 2024



SIGNATURE

10 In the matter between

BP SOUTHERN AFRICA PTY LTD

1st Applicant

AQUARELLA INVESTMENTS

2nd Applicant

and

BOY NO 50 TRADING PTY LTD

Respondent

J U D G M E N T E X T E M P O R E

20 **WILSON, J:** The applicant, BP, is a well-known supplier of fuel to garage forecourts throughout the country. The second applicant, Aquarella, owns a garage forecourt on which the respondent, Boy 50, currently sells fuel.

BP and Aquarella approached me on an urgent basis for relief authorising BP to de-brand Boy 50's filling station, and to eject Boy 50 from the garage forecourt. The basis

for this application is three-fold. First, BP says that it has terminated its agreement to supply Boy 50 with fuel and accordingly Boy 50 has no right to pass off the fuel it sells as BP fuel. Secondly, Aquarella says that it has terminated the lease in terms of which Boy 50 is entitled to occupy the garage forecourt. This was done for non-payment of amounts due under the lease.

Thirdly, the matter is brought on an urgent basis because BP became aware at the end of July of a test done
10 on the fuel being sold at the garage, which demonstrated that the fuel was not BP fuel, and that it had in fact been mixed with paraffin. The fuel is hazardous because the temperature at which it will ignite is significantly lower than is safe, and certainly significantly lower than the temperature at which BP fuel ignites. The sale of fuel and the storage of fuel at the forecourt therefore presents an acute and ongoing safety risk, both to people in the vicinity of the garage and those who may fill up their cars at it.

These material facts are not disputed in Boy 50's
20 answering affidavit. Boy 50 simply complains about various undertakings that it says BP made to Boy 50 to amend, regularise, or continue its relationship with BP. These undertakings arise from meetings that took place earlier this year. Whatever those extra-contractual negotiations were, they do not affect the validity of BP's termination of the

supply agreement, and they do not affect the validity of Aquarella's termination of the lease agreement. There is nothing I can see in Boy 50's answering affidavit that even begins to make out a case that they do.

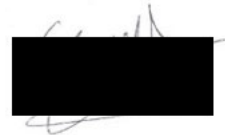
Boy 50 further argues that Aquarella is debarred from approaching this court for urgent relief by an arbitration clause in the lease agreement. However, the arbitration clause specifically reserves the rights of either party to any arbitration to approach the court for urgent relief on any
10 matter arising from the lease. It seems to me that the clause is broad enough to apply, on any sensible interpretation, whether a dispute has been referred to arbitration or not.

I was informed during argument of a counter-application in which Boy 50 apparently seeks relief setting aside the termination of its lease agreement with Aquarella and the termination of its supply agreement with BP. That application has not been brought on an urgent basis. Nor has it been enrolled before me. It only came to the
20 applicants' attention during argument, and in any event makes out no better case to impugn the applicants' terminations of the lease agreement and the supply agreement than the answering affidavit does.

In all those circumstances there is simply no basis on which the relief BP and Aquarella Investments seek can be

resisted. This is manifestly an urgent application, given the undisputed fact that the fuel being supplied by Boy 50 is hazardous and prone to ignition at temperatures significantly below fuel safety standards and below the temperature at which BP fuel would ordinarily ignite. Considerations both of law and of public safety impel me to make an order in terms of the draft handed up by the applicant's counsel, which I have signed, dated and marked X.

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WILSON, J
JUDGE OF THE HIGH COURT
20 August 2024

16 x 11

20 AUG 2024

Wilson J

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO.: 89753/2024

Before the Honourable Wilson J

On this the 20TH day of August 2024

Matter number on the roll: 3

In the matter between:

BP SOUTHERN AFRICA (PTY) LTD

First Applicant

AQUARELLA INVESTMENTS 481 (PTY) LTD

Second Applicant

and

BOY NO 50 TRADING (PTY) LTD

Respondent



GP
DRAFT ORDER

HAVING heard Counsel, read the papers filed on record and considered the matter:

IT IS ORDERED THAT:

1. That the Applicants' non – compliance with the Rules of the above Honourable Court in regard to the service and time limits be condoned; and that this

20 AUG 2024

Wilson J

application be heard as one of urgency in terms of the provisions of Rule 6 (12) of the Uniform Rules of Court;

2. That the Respondent be ordered to permit the designated representatives of the First Applicant unhindered access to the Property described as erven 49 and 50 Theta Extension 3 Township, Registration Division IQ, Province of Gauteng, measuring 2572 square meters in extent and held by Title Deed T37166/2008 ("the Premises") for the purposes of de-branding the petrol filling station situated at the Premises from all bpSA branding, signage and other material identifying the Premises as having any form of association with bpSA, **within 1 Business Day** of this Order; and
3. That the Respondent (and all persons occupying the Premises through the Respondent or in terms of any association with it) be ordered to vacate the Premises **within 5 Business Days** of this Order; and
4. That the Respondent pays the costs of this application, in line with ~~scale C~~ ^{Scale B¹⁴} as contemplated in Rule 69 of the Uniform Rules of Court.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG	
Private Bag X7, Johannesburg 2000	BY ORDER OF COURT
2024 -08- 20	
GLD-JHB-006	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG	THE REGISTRAR OF THE COURT

20 AUG 2024

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Wilson J

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GAUTENG LOCAL DIVISION,
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GAUTENG LOCAL DIVISION,
JOHANNESBURG

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