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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 22689/2024

In the matter between:

**OTTERY SERVICE STATION (PTY) LTD
t/a SASOL OTTERY**

First Applicant

EAGLE CREEK INVESTMENTS 40 (PTY) LTD

Second Applicant

And

**COLD STONE TRADING AND INVESTMENTS
(PTY) LTD t/a SHELL OTTERY**

First Respondent

FAMPAR TRADING (PTY) LTD

Second Respondent

SHIRAAZ ABOOBACKER KALLA

Third Respondent

MOHAMMED ZAIN KALLA

Fourth Respondent

THE MINISTER: MINERAL RESOURCES AND ENERGY	Fifth Respondent
THE CONTROLLER: PETROLEUM PRODUCTS (WESTERN CAPE PROVINCE)	Sixth Respondent

Delivered: Electronically on 13 January 2025

JUDGMENT

[3] The second application involves a counterapplication by the first to the fourth respondents. They seek an order that the judgment and order issued by Mthimunya AJ on 2 December 2024 be suspended under section 18(1) of the Superior Courts Act 10 of 2013 (*“the Superior Courts Act”*). This suspension would remain in effect

for the duration of any application for leave to appeal, and any leave to appeal that may be granted. Additionally, the respondents seek an order that for the period in which any application by the respondents for leave to appeal the aforesaid order of this Court or any appeal that may be pending therein, the applicants' officials are prohibited from directly engaging with or directly addressing any official of the Department of Minerals and Energy or the Controller of Petroleum Products.

The Parties

[4] The first applicant is Ottery Service Station (Pty) Ltd with registration number 2005/041419/07, a private company duly registered in terms of the statutes of the Republic of South Africa. It trades under the name Sasol Ottery at the corner of Ottery and New Ottery Roads, Ottery East, Western Cape.

[5] The second applicant is Eagle Creek Investments 40 (Pty) Ltd, with registration number 2003/030733/7, a private company duly registered in terms of the statutes of the Republic of South Africa. Its main place of business is also situated at the corner of Ottery and new Ottery Roads, Ottery East, Western Cape Province. The second applicant underwent a name change and was previously known as Cavalier Retail Centre Ottery (Pty) Ltd. In the main application and the judgment of this Court, its name is still reflected as being Cavalier Retail Centre Ottery (Pty) Ltd.

[6] The first respondent is Cold Stone Trading and Investments (Pty) Ltd, with registration number 2020/705202/07, a private profit company duly registered in terms of the statutes of the Republic of South Africa. It trades under the name and style of Shell Ottery at 1[...] New Ottery Road, Ottery East, Western Cape.

[7] The second respondent is Fampar Trading (Pty) Ltd, with registration number 2021/391592/07, a private profit company duly registered in terms of the statutes of the Republic of South Africa. It owns erf 4[...] Ottery, situated at 1[...] New Ottery Road, Ottery East, Western Cape Province, where Shell Ottery trades.

[8] The third respondent is Shiraaz Aboobacker Kalla, an adult businessman who resides in Makhado, Limpopo Province. The Fourth respondent is Mohammed Zain Kalla, an adult businessman who similarly resides in Makhado, Limpopo Province. The third respondent is the sole director of the second respondent. The third and the fourth respondents are the co-directors of the first respondent.

[9] The third and the fourth respondents are cited in this application because they are the representatives of the first and the second respondents, as the first and the second respondents are juristic persons and can only act through natural persons being its directors. As it will be demonstrated later in this judgment, in case the first and the second respondents are in contempt of court, the directors of the first and the second respondents are also in contempt of court. They are the persons who must serve such sanction as may be imposed by the court.

[10] The fifth respondent is the National Minister of Mineral Resources and Energy. The applicants cited the Minister in her representative capacity as envisaged in the Petroleum Product Act 120 of 1977 (*"the PPA"*) and its regulations. The Minister is the internal appeal authority envisaged in section 12A of the PPA.

[11] The sixth respondent is the Controller of Petroleum Products for the Western Cape Province (*"the Controller"*). The Controller in this case is a functionary as envisaged in the PPA and its regulations and controls the allocation of petroleum resources in the Western Cape Province. The Controller is the authority that issues site and retail licenses permitting license holders to trade in petroleum products. The applicants seek no relief against the Minister and the Controller in this application. The applicants contend that the Minister and the Controller were cited due to their potential interest in this application. The Minister and the Controller did not file opposing papers in this matter.

Background Facts

[12] The applicants are licensed operators of a fuel service station known as Sasol Ottery. They have been licensed since 2007 but operated prior to that. In August 2024, the applicants discovered that despite their objections, the Controller of

petroleum products had issued site licences, as envisaged in the PPA, in favour of the first and second respondents. Subsequent thereto, the applicants immediately lodged an internal appeal with the Minister of Mineral Resources and Energy in terms of section 12A of the PPA against the Controller's decision to do so, which appeal was subsequently supplemented. The internal appeal to the Minister remains pending.

[13] The applicants relied on the judgment of the Supreme Court of Appeal of *Gensingher and Neave CC and Others v Minister of Mineral Resources and Energy and Others*,¹ (“*Gensingher*”) in which the Supreme Court of Appeal held that an internal administrative appeal lodged with the Minister against the decision of the Controller suspends the site and retail licence approved by the Controller. Based on this decision and the fact that the first and the second respondents traded in petroleum products nearby and in direct competition with the applicants, the applicants brought an urgent application for an order interdicting and restraining the first and second respondents from operating a fuel retail service station on erf 4[...] Ottery Cape Town pending the determination of the applicant's internal appeal to the Minister in terms of section 12A of the PPA.

[14] The applicants' interdict application was heard on 28 October 2024. On 2 December 2024, Mthimunye AJ delivered a written judgment. In accord with the *Gensingher* decision, the Court issued an order interdicting and restraining the first and second respondents from operating a fuel retail service on erf 4[...] Ottery pending the outcome of the internal appeal to the Minister of Mineral Resources and Energy. On the same day the judgment was delivered, the first and second respondents served upon the applicants an application for leave to appeal.

[15] Among others, in their application for leave to appeal, the respondents emphasised the position they expressed during the hearing of the interdict application: they believe that the Supreme Court of Appeal's decision in *Gensingher* is legally flawed. Despite the court interdict, the first and second respondents continued their trade in petroleum products, disregarding the court order. To this end, the

¹ (223/2023) [2024] ZASCA 49 (15 April 2024).

applicants asserted that the respondents are in contempt of the court order as they continue to trade in petroleum products despite the interim interdict restraining them from doing so.

[16] The applicants stated that the first and second respondents, who are controlled by the third and fourth respondents, filed an application for leave to appeal against this Court's judgment and order. This establishes two key facts: first, that the order against them is valid and, second, that the first to fourth respondents were aware of the existence of the order. The applicants asserted that the order granted by the court on 02 December 2024 was interim in nature and was not suspended by the filing of the application for leave to appeal.

[17] On 05 December 2024, the applicants sent a letter to the respondents in which the first to the fourth respondents were referred to section 18(2) of the Superior Courts Act, which stipulates that unless a court in exceptional circumstances decides otherwise, the operation of the interim order is not suspended by an application for leave to appeal or a subsequent appeal. In the letter, the order of this Court was quoted. The letter pointed out that this Court's order was an interlocutory order that did not have the effect of a final judgment.

[18] The letter also demanded that both respondents comply with the court order and stop trading immediately. The respondents were informed in the letter that should they fail to adhere to the demand and fail to confirm by close of business on Friday, 6 December 2024, that they will not trade pending the applicants' appeal, the applicants would bring an urgent application for contempt of court and that if that becomes necessary, costs would be sought on a punitive scale.

[19] Despite the letter being sent to the first to fourth respondents, it was ignored. Meanwhile, the respondents submitted representations to the Minister regarding the applicants' appeal against the Controller's decision. These representations included references to a case they had filed in the Constitutional Court to challenge the *Gensinger* case. The applicants also attached receipts of fuel purchases on 09 December 2024 from the respondents to prove the ongoing trade despite the court

order. The applicants applied that the respondents be held in contempt and that the court grant the relief sought in the notice of motion.

[20] On the other hand, the respondents contended in their answering affidavit and the counterapplication that the interdict granted by this Court is fully and unarguably final in effect and particularly for its duration. The respondents further asserted that the order granted by this Court is a final order and, at worst, an order that is final in effect. The respondents stated that the interim interdict issued by the court on 2 December 2024 is final in nature and was suspended by the lodging of the appeal on 2 December 2024 and by their subsequent filing of leave to appeal at the Constitutional Court.

[21] According to the respondents, the suspension of the order occurred axiomatically in terms of section 18(1) of the Superior Courts Act, and this Court's interim interdict cannot fall under section 18(2) of the Act. Simply put, the respondents contended that the two applications for leave to appeal filed in this Court and in the Constitutional Court suspended the order in terms of section 18(1) of the Superior Courts Act. Whilst suspended, the respondents asserted that there can be no contempt of court.

[22] In the counterapplication, the respondents averred that the second and third respondents have an exclusive supply and franchising agreement with Shell. On 11 December 2024, the respondents received a call from Shell advising them that Shell had received notice from the Department that their petrol station had to cease trading immediately. Shell did not immediately offer the respondents a copy of the alleged notification from the Department but insisted that there was a court order obliging the respondents to close the station and that Shell was not going to proceed with the scheduled fuel deliveries. As a result, the forecourt was therefore compelled to close on Thursday evening on 12 December 2024. The convenience store, however, remained open but without vehicular traffic. This reduced sales to a trickle than what they were supposed to be.

[23] The respondents expressed their objections to an email authored by the applicants' representative, Ms Johnson, addressed to the Department's official,

Tsholofelo Moradi. In this correspondence, it was alleged that the respondents were operating in violation of a court order. Ms Moradi brought this correspondence to Shell's attention via an email dated 12 December 2024, which prompted Shell to stop the fuel supply to the respondents. According to the respondents, this complaint to Shell had the effect, if not the aim, of subverting and defeating the ends of justice and successfully and/or illegally sabotaging the operation of section 18(1) of the Superior Courts Act.

[24] To this end, in the counterapplication, the respondents seek an order that the advice sent by email on 12 December 2024 by Tsholofelo Moradi to Shell advising Shell of the court order against the respondents be declared unlawful, and of no legal force and effect and to be disregarded.

Principal Submissions by the Parties

[25] At the hearing of the application, Mr Van Den Bogert SC, the applicants' Counsel, submitted that the interim interdict granted by this Court on 2 December 2024 was interim in nature and not final. Counsel asserted that the interim order was granted pending the adjudication of an appeal to the Minister in terms section 12A of the PPA. Pending the adjudication by the Minister on the real dispute between the parties, that is, the question whether there is a need for a further competing station in the area where the applicants operate their fuel filling station, nothing prevents the opposing respondents from approaching the court for a variation or an upliftment of the interim interdict should circumstance change.

[26] Mr Van Den Bogert submitted that the interdict remains open to alteration. It is not final and definitive of the rights of the parties. Counsel submitted that its very reading confirms that it is merely interlocutory in nature because it reads "*Pending the applicants' internal appeal to the minister of mineral resources and energy...*" Counsel submitted that once the appeal has been finalised, the interim interdict ceases to operate.

[27] Regarding the contempt application, Mr Van Den Bogert asserted that it was not disputed that the court order, being the subject of this contempt application, was

issued. Counsel further submitted that the four opposing respondents have notice of the court order and have conceded that they have not complied with it. This, therefore, places an evidential burden on the opposing respondents to establish that the non-compliance with the court order was not wilful and mala fides. Counsel submitted that the respondents are in contempt of the court order issued on 2 December 2024. Mr Van Den Bogert implored the court to grant the relief sought in the notice of motion.

[28] On the other hand, Mr Savvas submitted that the order made by Mthimunye AJ is not merely final in effect but clearly and indisputably a final interdict. Counsel argued that the argument of the applicants that the order is interlocutory is to be dismissed as irresponsible. This is because the court order is not part of, attached to, or emanates from any ongoing, pending, or envisaged litigation. Mr Savvas submitted that the order is not interlocked with or intervene in any proceedings cognisable under or by the Superior Courts Act or the Rules of Court.

[29] Mr Savvas explained that the interim order is not intermediary to any active court process and, importantly, there is no door, window or the slightest crack for any subsequent court or forum to relook at, or reconsider, review or revisit the facts which concretise the court's order or judgment. Mr Savvas further asserted that the order is fully final but subject to a simple factual resolutive condition that occurs outside the jurisdiction of a court of law and over which a court of law has no control, say, or involvement.

[30] It was Counsel's further submission that the order in question is not interlocutory to anything, and therefore, the interdict ordered by Mthimunye AJ became suspended when the application for leave to appeal was launched on 2 December 2024. In addition, Counsel asserted that the order became doubly suspended when leave to appeal was lodged with the Constitutional Court. Mr Savvas implored the court to dismiss the applicants' contempt application with a punitive costs order.

[31] As far as the counterapplication is concerned, Mr Savvas impugned the applicants' complaint in an email dated 12 December 2024 addressed by Ms

Johnson, the director of the first applicant to the Department of Mineral Resources and Energy, that the first and second respondents were trading despite the interim interdict restraining them from doing so. According to Mr Savvas, this led to the Department sending an email to Shell's head office informing them to close the respondents' sites. On 12 December 2024, Shell's headquarters confronted the respondents, demanding they shut down the filling station.

[32] Mr Savvas submitted that it was unlawful for the applicants to address a complaint to the Department, which subsequently requested Shell to stop trading at the respondents' site. In Mr Savvas' view, granting the counterapplication would ensure that no one improperly influences officials in the Department without the respondents being notified in advance. Counsel prayed that the court dismiss the applicants' contempt application and grant the counterapplication.

Issues to be decided

[33] There are three critical questions for consideration in these two applications. The first principal question that this Court is enjoined to consider is whether the order granted by Mthimunye AJ on 02 December 2024 is an interim order as envisaged in section 18(2) of the Superior Courts Act or is it a final interdict envisaged in section 18(1) of the Act. Secondly, if the Court finds that the interim order is interim as envisaged in section 18(2) of the Superior Courts Act, in that case, this Court must determine whether the respondents are in contempt of court for acting in defiance of the order.

[34] Thirdly, this Court is called upon to determine whether a declaratory order sought in the counterapplication prohibiting the applicants from directly engaging with or directly addressing any official of the Department of Minerals and Energy or the Controller of petroleum products should be granted pending the respondents' application for leave to appeal.

Relevant Legal Principles and Discussion

[35] This case focuses on the application of sections 18(1) and 18(2) of the Superior Courts Act regarding the interim order granted on 2 December 2024. The critical question is whether the order given by Mthimunye AJ on 2 December 2024 is an interim order as envisaged in section 18(2) or a final order as contemplated in section 18(1) of the Superior Courts Act. Before I can consider this order's import and effect, I find it appropriate to present the exact wording of the contested order dated 2 December 2024, along with the relevant statutory provisions of the Superior Courts Act. The pertinent part of the order states as follows:

“Pending the Applicants’ internal appeal to the Minister of Mineral Resources and Energy in terms of section 12A of the Petroleum Products Act 120 of 1977, the first and second respondents are interdicted and restrained from operating a fuel retail service station on erf 4[...], Ottery, Cape Town, Western Cape, situated at 1[...] New Ottery, Western Cape until the final determination by the Minister.”

[36] The relevant part of section 18 of the Superior Courts Act provides as follows:

“Suspension of decision pending appeal

(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court

does not so order and that the other party will not suffer irreparable harm if the court so orders.”

[37] As discussed above, at the hearing of this application, the applicant's Counsel, Mr Van Den Bogert, submitted that the order quoted above is an interim order in terms of section 18(2). Mr Van Den Bogert submitted that the order in the main judgment makes it clear that it is interim in nature. On the other hand, Mr Savvas submitted that an interim interdict, which is not granted pending another court application, is final in effect.

[38] The argument of Mr Savvas seems to be that where a court will probably not reconsider the interim interdict, it is final in effect. The respondents' argument also proposes that it must be the court that finally decides the dispute between the parties, and it cannot be the Minister, as in this case. The respondents' argument further suggests that if the determination of the right of the parties is contingent on an administrative functionary, the interdict granted pending such determination is final in effect.

[39] Against this backdrop, I turn to consider the first primary question, whether the order quoted above is final or interim in nature and thereafter the other disputed issues raised above.

Is the order dated 2 December 2024, interim or final in effect?

[40] Central to this matter is the interpretation of the court order issued by Mthimunye AJ on 02 December 2024. Specifically, the question at hand is whether the order is final in effect or interim, as envisaged in sections 18(1) and 18(2), respectively, of the Superior Courts Act. In *Firestone South Africa (Pty) Ltd v Enticer AG*,² Trollip JA, observed that the basic principles applicable to construing documents also apply to the construction of a court's judgment or order: the court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules. Thus, as in the case of

² 1977 (4) SA 298 (A) at 304D.

a document, the judgment or order and the court's reasons for giving it must be read as a whole to ascertain its intention.

[41] In *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Limited and others*,³ it was held that the starting point is to determine the manifest purpose of the order. While in *Natal Joint Municipal Pension Fund v Endmen Municipality*,⁴ Wallis JA, described the process of interpretation as involving a unitary exercise of considering language, context and purpose. It is an objective exercise where, in the face of ambiguity, a sensible interpretation is to be preferred to one which undermines the purpose of the document or order.

[42] Section 18 of the Superior Courts Act regulates the suspension of decisions pending appeal proceedings. In terms of section 18(1), the execution of a judgment having a final effect is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out and no effect can be given thereto, except with the leave of the Court in terms of section 18(3), which granted the judgment.⁵ However, if the order granted is an interim order as envisaged in section 18(2), there would be no automatic suspension of the order pending an appeal.⁶

[43] The purpose of this rule as to the suspension of a judgment on the noting of an appeal is to prevent irreparable damage from being done to the intending appellant, either by levy under a writ of execution or by execution of the judgment in any other manner appropriate to the nature of the judgment appealed from.⁷ In determining whether the order is final, it is essential to bear in mind that not merely the form of the order must be considered but also, and predominantly, its effect.⁸ The

³ *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Limited and Others* 2013 (2) SA 204 (SCA) para 13.

⁴ 2012 (4) SA 593 (SCA) para 18.

⁵ *South African Motor Industry Employers' Association v South African Bank of Athens Ltd* 1980 (3) SA 91 (A) at 96H.

⁶ *Cash Crusaders Franchising (Pty) Ltd v Cash Crusaders Franchisees* 2024 (4) SA 141 (WCC) at para 42.

⁷ *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd (supra)* at 542D and 545A.

⁸ *South African Motor Industry Employers' Association v South African Bank of Athens Ltd (supra)* at 96H.

filing of an application for leave to appeal would suspend the order if it were a section 18(1) type order, that is, if it is a final order or an interim order which is final in effect.

[44] In *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd*,⁹ the Court observed that in a wide and general sense, the term 'interlocutory' refers to all orders pronounced by the Court upon matters incidental to the main dispute, preparatory to, or during the progress of the litigation. However, orders of this kind are divided into two classes: (i) those which have a final and definitive effect on the main action; and (ii) those known as 'simple (or purely) interlocutory orders' or 'interlocutory orders proper', which do not.

[45] The Court held that statutes relating to the appealability of judgments or orders that use the word 'interlocutory' or other words of similar import refer to simple interlocutory orders. In other words, it is only in the case of simple interlocutory orders that the statute is read as prohibiting an appeal or, making it subject to the limitation of requiring leave. Final orders, including interlocutory orders having a final and definitive effect, are regarded as falling outside the purview of the prohibition or limitation.

[46] Reverting to the present matter, it is common cause that the order made on 2 December 2024 was granted pending the determination of an appeal to the Minister in terms of section 12A of the PPA. The interdict, in my view, remains open to alterations. There is no dispute between the parties that the interim interdict granted by the court on 2 December 2024 will only operate pending a decision to be made by the Minister of Mineral Resources and Energy in respect of the appeal that the applicants lodged in terms of the provisions of the PPA. The appeal can be decided at any time by the Minister. In that appeal, the Minister will determine whether there is a need for another competing filling station to trade in proximity to the applicants' filling station.

⁹ 1977 (3) SA 534 (AD) at 549F– 551H.

[47] Once the appeal has been adjudicated upon, whether it is for or against the applicants, the interdict will come to an end and will have no further effect anymore. Therefore, the interdict has the nature of an interim order, and the submission by the respondents that it has the effect of a final judgment is mistaken and cannot be correct. Notably, the judgment and the reasons in the interdict application confirms the interim nature of the order sought and granted. As previously stated, the order is self-evidently of an interim nature. The wording and effect of the order do not have the effect of a final order in its reading. Nor did the court, in its judgment, state that the order is final. As such, it is an interlocutory order and falls squarely within the purview of section 18(2) of the Superior Courts Act.

[48] Finally, on this point, the respondents' Counsel endeavoured to argue that where a court will not reconsider the interim interdict as it depends upon an administrative functionary's decision, such an order is final in effect. Mr Savvas posited that an interim interdict, which is not granted pending another court action, is final in effect. Counsel suggested that it must be the court that finally resolves the dispute between the parties; it cannot be the Minister, as in this case. This argument, in my view, is erroneous and misses the point. In a wide and general sense, the term "interlocutory" refers to all orders pronounced by the Court, upon matters incidental to the main dispute, preparatory to, or during the progress of, the litigation.¹⁰ The pending appeal before the Minister concerns the central dispute between the parties. The interdict in this case is intended to preserve the *status quo* while awaiting the Minister's decision.

[49] Significantly, I find the decision of the full Court in *Helen Suzman Foundation and Another v Minister of Home Affairs*,¹¹ particularly pertinent and on point to the disputed issues in this matter. In that case, the court considered an application by the Helen Suzman Foundation and the Consortium for Refugees and Migrants in South Africa in which they sought a declarator that an interim order that the court earlier granted was interim in nature as contemplated in section 18(2) of the Superior Courts Act.

¹⁰ *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd (supra)* at 549F.

¹¹ 2023 JDR 4339 (GP).

[50] Amongst others, the interim order in that case provided that pending the conclusion of a fair process and the Minister of Home Affairs' further decision within 12 months, it was directed that the existing Zimbabwean Exemption Permit shall be deemed to remain valid for the next 12 months and that no holder of the exemption would be arrested, ordered to depart, or be detained for purposes of deportation in terms of section 34 of the Immigration Act and for reasons related to him or her not having a valid exemption certificate in his or her passport.

[51] The Minister's opposition to the application for a declaratory order was on the basis that although the order was couched as an interim order, its effect was that of a final order as envisaged in section 18(1). The Minister contended that the order was final in nature and that the Minister was entitled to appeal it.

[52] The full court was required to consider whether the temporary order was interlocutory in nature as contemplated in Section 8(2) of the Superior Courts Act and, if so, whether the court should issue a declarator that should provide certainty as to the legal position. The court considered the matter and stated as follows:

“[25] It is not correct that the requisites for a final order apply in respect of this court's interim order. The judgment made it clear that the order that is being granted is aimed at preserving the *status quo*. The requisites for a final order as stated in the *Zweni* judgment do not apply to the judgment and order given by this Court. The rights of the ZEP holders as stated in the order are not definitive, firstly, in that they are subject to the determination by the Minister and may be altered when the Minister has conducted a fair hearing as contemplated in the interim order; secondly, the existing ZEPs shall be deemed to remain valid for the next (12) twelve months pending the conclusion of a fair process; thirdly, the Minister's decision has been set aside temporarily until he concludes a fair process within 12 months; and fourthly, the Minister's powers to act in terms of section 31(2)(b) of the Immigration Act have not been usurped.

[26] For these reasons, it is found that the Minister's contention that the interim order has the effect of a final judgment is rejected. We consider below whether a declarator compelling the Minister to comply with the interim order pending any appeals contemplated by the Minister should anyway be granted.

[27] The order is self-evidently of an interim nature. The wording of the order is not having an effect of a final judgment in its reading. Nor did the court in its judgment state that the order is final. The Court deemed a period of 12 months sufficient for the Minister to complete a fair process.” (footnotes omitted)

[53] Similarly, in this case, the Minister will determine the dispute between the parties. Mthimunye AJ's judgment indicated that the order is of an interim nature. The reasons articulated for the order, along with the order itself, clearly indicate that it is of an interim nature. It does not dispose of all the issues between the parties. As such, it is an interlocutory order and falls squarely within the purview of section 18(2) of the Superior Courts Act. The contention that this order has the effect of the final judgment is untenable and falls to be rejected. The respondents' application for leave to appeal filed in this Court on 2 December 2024 and in the Constitutional Court on 17 December 2024 did not suspend the operation of the interim interdict issued by this Court. I now turn to considering the second disputed issue.

Are the respondents in contempt?

[54] It is not in dispute that the court order, being the subject matter of this contempt application, was issued. It is also not in dispute that the four respondents have received notice of the court order and have not complied with it. The respondents defied the court order. Notwithstanding the court interdict, they continued to trade in petroleum products. More so, I agree with the views expressed by the applicants' legal representative that the fact that the first and the second respondents, who are controlled by the third and fourth respondents, launched an application for leave to appeal against the judgment and order of this court, establishes two facts, namely, that the order exists and that the first to the fourth respondents knew about the existence of the order.

[55] The defence raised by the respondents for non-compliance with the court order is that their counsel advised them that there is no case of contempt in this matter and that the interdict granted by this court is fully and unarguably final in effect. Furthermore, the respondents asserted that the two applications for leave to appeal that have been filed suspended the order in terms of section 18(1) of the Superior Courts Act. Whilst suspended, the respondent contended that there can be no contempt.

[56] I must stress that the approach and stance adopted by the respondents and their Counsel to ignore the order of this court is very worrying and disturbing to say the least. The advice of Counsel cannot supersede or prevail over a court order. It is a dangerous thing for a litigant to ignore an order of court wilfully.¹² More so, it is a crime to unlawfully and intentionally disobey a court order. Court orders must be obeyed until they are set aside, or chaos may result if people are allowed to disregard them without consequences.¹³

[57] Section 165(5) of the Constitution makes orders of court binding on all persons (including the respondents) to whom and organs of state to which it applies.¹⁴ These obligations must be fulfilled. It is crucial to uphold the integrity of the judicial system and ensure that contempt of a court order is not tolerated, as such conduct not only threatens the rule of law but also erodes public trust in the judiciary. Discernibly, continual non-compliance with court orders imperils judicial authority.¹⁵ Disregarding judicial authority should be unequivocally condemned and denounced in the strongest terms possible.

[58] In my opinion, if the respondents held a steadfast belief that the order issued by the court was definitive in its effect, they should have pursued a declaratory order from this court to affirm that understanding. I am of the firm view that it was not open

¹² In *Bezuidenhout v Patinise Sitrus Beherend Bpk* 2001 (2) SA 224 (E) at 228F-230A, Froneman J stated that an order of a court of law stands and must be obeyed until set aside by a court of competent jurisdiction.

¹³ *Culverwell v Beira* 1992 (4) SA 490 (W) at 494A-E.

¹⁴ *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 (CC) at para 26.

¹⁵ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* 2018 (1) SA 1 (CC) at para 48.

for the respondents to flagrantly disregard the court order pursuant to the view they held that it was final in effect. This outright repulsive position is simply unacceptable. Contempt of court is inimical to the rule of law and strikes at the heart of the constitutional state.

[59] Most significantly, in *Minister of Home Affairs and Others v Somali Association of South Africa and Another*,¹⁶ the Supreme Court of Appeal emphasised that there is an unqualified obligation on every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The court observed that it cannot be left to the litigants to themselves judge whether or not an order of court should be obeyed. There is a constitutional requirement for complying with court orders, and judgments of the courts cannot be any more explicit on that score.

[60] Generally, an applicant seeking an order for contempt of court must prove that (a) an order was granted against the alleged contemnor, (b) that the alleged contemnor was served with the order or had knowledge of it, (c) that the contemnor had failed to comply with the order, and (d) the non-compliance must be wilful and mala fide.¹⁷ Once these elements are established, wilfulness and mala fides are presumed against the respondents, who then attracts an evidentiary burden to negate these presumptions.¹⁸ Should the respondents fail to discharge this burden, contempt will have been established.

[61] In relation to onus, a distinction is drawn between applications where the respondent's incarceration is sought and coercive contempt applications.¹⁹ Where sanction for committal to prison is sought, the standard of proof must be beyond a reasonable doubt.²⁰ However, in civil mechanisms designed to induce compliance

¹⁶ 2015 (3) SA 545 (SCA) para 48; *S v Mamabolo (E TV and Others Intervening)* (2001 (1) SACR 686 (CC) at para 24.

¹⁷ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others (supra)* at para 73; *Fakie N.O v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA).

¹⁸ *Snowy Owl Properties 284 (Pty) Ltd v Celliers and Another* (1295/2021) [2023] ZASCA 37 (31 March 2023) para 22.

¹⁹ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others (supra)* para 67.

²⁰ *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 (CC) at paras 35 – 36.

short of committal to prison, such as is the case here, proof on a balance of probabilities is sufficient.²¹

[62] Evidently, the existence of the order, the respondents' knowledge thereof, and non-compliance is essentially undisputed in this matter. The respondents bore the duty to show that their default was not mala fide. The respondents rely solely on their Counsel's advice that the interim interdict is final in effect and that the filing of the leave to appeal suspended the order.

[63] As correctly pointed out by Mr Van Den Bogert, what is conspicuously absent from the answering affidavit of the opposing respondents is any version of the respondents' own interpretation of this court's order. The third and fourth respondents are directors of the first and second respondents. They are astute businessmen. Indeed, they understood the import of the interim order, hence they appealed against it. Based on a simple reading, this order is interlocutory and will only operate for an interim period. Its interpretation requires no rocket science. It is plain, and it is clear.

[64] It is not excusable for the respondents to rely on Counsel's advice to ignore a court order, particularly where the advice is not reasonably sustainable. From the totality of the evidence placed before this Court, I am satisfied that the respondents are in contempt of the court order issued on 2 December 2024.

[65] I am mindful that the first and the second respondents are juristic persons. However, a director of a company who, with full knowledge of an order of court against the company, causes the company to disobey the order is himself guilty of contempt of court. By his act or omission, such a director aids and abets the company to be in breach of the court order against the company.²² Thus, the third and fourth respondents are guilty of contempt of court.

²¹ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at para 17.

²² *Minister of Water Affairs and Forestry v Scillonian Gold Mine Co Ltd* 2006 (5) SA 333 (W) at para 16.8.

[66] Even if I am wrong in my interpretation of the order that it was interim in nature, based on the *Gensinger* judgment, I am of the view that the retail license issued by the Controller to the respondents was suspended when the applicants lodged an appeal against the decision of the Controller to issue that license. The respondents' disagreement with the decision in *Gensinger* does not grant them the right to ignore the court order and continue trading. It is important to note that *Gensinger* was decided by the Supreme Court of Appeal, which is the highest court of appeal in matters other than constitutional issues. Accordingly, that court's decision must be respected.

[67] Pursuant to the *Gensinger* case, while the applicants' appeal is pending before the Minister, the decision to grant the licence to the respondents cannot be executed, and no effect can be given to it. Simply put, the suspension of the order by the lodgement of appeal means that the respondents cannot trade until the Minister makes a final determination.

[68] The argument Mr Savvas presented during the hearing of this application—that the Supreme Court of Appeal erred in its judgment in *Gensinger* by allowing third parties, such as the applicants, to appeal against a decision made by the Controller—is fundamentally flawed. Section 12A(1) of the PPA provides that 'any person directly affected by a decision of the Controller of petroleum products may, notwithstanding any other rights that such a person may have, appeal to the Minister against such decision.'

[69] Evidently, the Controller's decision to issue a retail licence to the respondents will directly affect the commercial rights or interests of the applicants as contemplated in section 12A of the PPA. Simply put, the sale of petroleum products at the applicants' outlets will be negatively affected.

Should the respondents' Counterapplication be granted?

[70] Pursuant to the finding made hereinabove, I deem it unnecessary to deal with the counterapplication in detail. In my view, the finding above disposes the counterapplication. In any event, I hold the view that the counterapplication was

bound to fail as the respondents sought declaratory orders and an interdict without dealing with the trite requirements of an interdict.

Costs

[71] The applicants' legal representative has requested that the court order the respondents to pay costs on an attorney-and-client scale to express its displeasure with the respondents' contemptuous conduct. It is a trite that a court considering an order of costs exercises a discretion which must be exercised judicially.²³ In my view, the respondents flagrantly disregarded a court order which was very clear and easy to understand. The respondents also disregarded the *Gensinger* case which informed the granting of the interim interdict. Such conduct must be denounced.

[72] A deliberate failure to comply with a court order issued in civil proceedings is deemed contempt and constitutes a criminal offense. This Court must indeed display its displeasure with the contemptuous conduct of the respondents. In my view, a cost order on an attorney and client scale is fitting in this matter.

[73] Finally, I have noted with deep concern the unsavoury diction used by the respondents against the applicants in their answering affidavit and in their Counsel's heads of argument. In my opinion, the unpleasant diction in these documents is extremely unfortunate and has no place in court documents.

Order

[74] In the result, the following order is granted:

74.1 The application is heard on an urgent basis, and the applicants' noncompliance with the Rules of Court insofar as it pertains to the time periods and methods of service is condoned as envisaged in Rule 6(12) of the Uniform Rules of Court.

²³ *Ferreira v Levin NO and Others; Vreyenhoek and Others v Powell NO and Others* 1996 (2) SA 621 (CC); *Motaung v Makubela and Another, NNO; Motaung v Mothiba NO* 1975 (1) SA 618 (O) at 631A.

74.2 It is declared that the first, second, third and fourth respondents are in contempt of this Court's order issued under the above case number granted by Mthimunye AJ on 02 December 2024.

74.3 The third and fourth respondents are committed to prison for a period of (03) three months.

74.4. The order in 74.3 above, is suspended for a period of one year on condition that:

74.4.1 The first and the second respondents forthwith comply with this court's judgment and order of 2 December 2024, and

74.4.2 The first and the second respondents immediately cease to trade and desist from operating fuel retail services station on erf 4[...] Ottery, Cape Town, Western Cape Province, situated at 1[...] New Ottery Road, Ottery East, Western Cape Province.

74.5 Should the first and the second respondents fail to comply with this order within a period of 24 (twenty-four) hours from the time of the granting of this order, the Registrar of this Court is authorised to issue the required warrants for the arrest of the third and fourth respondents, and the members of the South African Police Services shall be authorised to arrest the third and fourth respondents and hand them to the relevant prison authorities of the Department of Correctional Services, who shall detain them in prison to serve their sentence as envisaged in order 74.3 above.

74.6 The first to fourth respondents shall pay the cost of this application and the counterapplication jointly and severally, one paying the other to be absolved on an attorney and client scale.

**LEKHULENI JD
JUDGE OF THE HIGH COURT**

APPEARANCES

For the Applicants: Advocate Van Den Bogert
Instructed by: Duvenhage Attorneys - Pretoria

For the first, second, third and fourth Respondents: Advocate Savvas
Instructed by: Murray Kotze & Associates