Original.

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 2025-092716

In the matter between:

BUZZA PROPS 3 (PTY) LTD	FIRST APPLICANT
TEN TEN SERVICE STATION (PTY) LTD	SECOND APPLICANT

And

DEKKER BROTHERS (PTY) LTD	FIRST RESPONDENT
BIG 5 HOLDINGS (PTY) LTD	SECOND RESPONDENT
MINISTER OF MINERAL AND PETROLEUM RESOURCES	THIRD RESPONDENT
CONTROLLER OF PETROLEUM PRODUCTS (KZN)	FOURTH RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant brought an urgent application by way of a Rule *nisi* seeking interim relief. The relief sought is to prevent First and Second Respondents or any other juristic person conducting the business of retailing petroleum products from dispensing or permitting to dispense from the immovable property Portion 8 of the Farm Lot 221, Empangeni petroleum products of any kind and in any quantity until such time as Applicants appeal, in terms of section 12A of The Petroleum Products Act 120 of 1977 against the decision of Fourth Respondent (the Controller of the petroleum products) to grant a site and retail licence to First and Second Respondent has been determined by Third Respondent (the Minister of Mineral and Petroleum Resources). The application is opposed by First Respondent and Second Respondent.

[2] First and Second Applicants are both holders of petroleum licences which were granted by Fourth Respondent and both conduct businesses of fuel filling stations. First Applicant at Portion 11 (of 4) of the Farm Lot 225 Empangeni and Second Applicant at 6 Fairway Drive, Zini River Estate, Mtunzini, KwaZulu-Natal.

[3] First Respondent has commenced conducting business at Kom Tot Rus Farm, Empangeni, KwaZulu-Natal and holds a site licence from Fourth Respondent in respect of Portion 8 of the Farm Lot 221, Empangeni No. 10379, situated at Gwalagwala Street. Second Respondent has a retail licence, issued by Fourth Respondent, that would permit it to operate a petroleum retailing facility.

[4] Respondents applied for their respective licences on 10 June 2023. Applicants lodged their objection thereto on 21 July 2023 for various reasons which are not necessary to deal with at this stage. There were also other objections.

[5] It is contended that First and Second Respondents site from which they conduct business is in close proximity to Empangeni. Applicants site is a mere 3.8 km from First

and Second Respondents site. First and Second Respondents site would draw customers from the same traffic flow and same market catchment area as that of Applicants. The situation of the various sites and the number of litreage which is pumped in the area is not an issue as far as the interim relief is concerned.

[6] On 28 August 2023 the Regional Petroleum Controller of KwaZulu-Natal concluded that there was no justification for the proposed site for First and Second Respondents.

[7] On 16 May 2024 Applicants were informed by Fourth Respondent that First and Second Respondents licence applications was approved. Applicants then appealed in terms of section 12A of the PPA against the Controller's approval of the site and retail licence. This was timeously lodged with the Minister on 28 June 2024.

[8] On 6 June 2024 when the deponent to the affidavit on behalf of First Applicant, one Donovan Balmer, passed Respondents site he noticed that they were operating and advertising diesel at a retail price of R19.96 per litre. Also, on 13 June 2024 an employee of Second Applicant attended the site and was assisted by a member of Second Respondent to obtain petroleum in a container.

[9] On the issue of urgency it was contended that on 13 June 2024 Applicants legal representative addressed a letter to Respondents advising them of the appeal againt the decision of the Controller. It cautioned Respondents against commencing retail activities and threatened that they would be interdicted if they did so. On 13 June 2024 Mr Dekker, a director of First Respondent, replied to the email requesting clarity as to the timing of the intended appeal and that they were in the process of commencing to construct in the near future.

[10] The appeal was lodged with the Minister on 28 June 2024 and on 10 February 2025 Applicants legal representative addressed correspondence to Respondents as they had commenced development on the site, informing them that the Minister had not yet made any decision and that if they did continue with their activities the High Court would be approached. No response was received. On 17 June 2025 he attended Respondents filling station and was able to fill up his vehicle.

[11] On behalf of First and Second Respondents it is contended that they were granted a licence by the controller, Fourth Respondent, and that this was appealed by Applicants. It is contended that the licence is enforceable and valid until set aside or suspended by the Minister. It is contended that the urgency was self-created by Applicants as they were well aware for some time that Respondents were constructing the site as appears from the letter of 13 June 2024. Further that Applicants knew on 10 February 2025 that construction was taking place. It is submitted that if the interim relief is granted that there would be irreparable harm to Respondents as they have already stocked up with fuel and that the balance of convenience also favours them and that the relief should not be granted.

[12] It was submitted on behalf of Applicants that the decision of the Supreme Court of Appeal in the matter of Gensigner and Neave CC & Others v Minister of Mineral Resources and Energy and 3 others 2025 (4) SA 84 (SCA) is applicable in this case as it relates to the interpretation of section 12A(1)(a) of the Petroleum Products Act 120 of 1977.

[13] In terms of the common law lodging an appeal has the effect of suspending the operation of the administrative decision appealed against pending the outcome of the appeal. It was therefore contended that the retail licence issued by the Controller to Respondents are suspended due to the lodging of the appeal to the Minister which still has to be determined. It was submitted that there was irreparable harm as customers

who would have filled up with them would be lost and may not even return in the future. Further that the balance of convenience favours the granting of the relief as there was no other alternative.

[14] In the Gensinger matter it held as follows in paragraph 20:

> "The Act grants a person, who is directly affected by the Controller's decision, the right to appeal to the Minister. The Act does not provide that an appeal against a Controller's decision does not suspend that decision. It follows that the Controller's decision will be suspended when a person who is directly affected by the Controller's decision appeals to the Minister against the Controller's decision. It has already been found that the Appellants are directly affected by the Controller's decision. The common law principle is applicable to the fact of this case, with result that the Appellants appeal in term of section 12A of the Act suspends the Controller's decision. The Minister has, for no apparent reason, not yet decided the Appellants appeal. The Respondents contention that the appeal has lapsed has no factual or legal basis."

In the order of the said judgment it states in paragraph 1:

> "1. It is declared that the provisions of the Petroleum Products Act 120 of 1977 (the Act) do not oust the common law principle that there is a presumption that an administrative decision is suspended by an appeal against that decision.
>
> 2. It is declared that the Applicants appeal, in terms of section 12A of the Act against the decision of the controller of petroleum products to approve the third and fourth Respondents application for site and retail licences and subsequently to issue those licences to them suspends the Controller's decision pending the finalisation of such appeal."

[15] It was therefore submitted that the licence which was granted by the Controller has been suspended pending the appeal and that accordingly Respondents were not entitled to trade and dispense petroleum products until the Minister's decision has been received. It was further submitted that the urgency was not self-created even though they knew some time before that construction may be starting and did start but that it was not have assisted them bringing an application at that stage because the construction could have been done in contemplation of the licence being granted. It was only once the appeal had been lodged and Respondents then commenced dispensing diesel or fuel products form the site that the urgency arose.

[16] It was submitted on behalf of Respondents that the urgency was self-created and that there had to be a Rule 28 amendment to the notice of motion as it did not contain a provision that the non compliance of the Rules be condoned as this is necessary and cannot just now be sought. It was submitted that Respondents had no proof of an appeal and therefore the interdict should not be granted. It was conceded that in terms of the Gensinger judgment that indeed it suspended the licence pending the appeal. It was however submitted that the balance of convenience had to be considered for interim relief and the apprehension of harm. It was submitted that there are costs involved for Respondents in paying rentals etc. It was submitted that fairness should be considered.

[17] In reply it was submitted that the notice of appeal was indeed served and that that is also apparent from the email of Respondents who questioned in the email what the time constraints for the appeal were going to be. It was submitted that the notice of motion can be amended at this stage and that the letter of 10 February 2025 made Respondents aware of the appeal. It was submitted that fairness does not come into the equation and that the relief in the notice of motion was to be sought.

[18] Firstly as far as the contention by Respondents that the notice of motion does not seek condonation for the Rules as the matter was brought as one of urgency it is in my view not even necessary to amend the notice of motion. There is a certificate of urgency signed for Applicants and in any event the fact that the matter was heard is indicative of the fact that it was treated as urgent. When an order is granted on urgency the condonation paragraph is not made part of the relief. The fact that the matter is heard is indicative that condonation was granted.

[19] The Gensinger judgment in my view is very clear as set out above. The quotations make it clear that the licence granted is indeed suspended. It refers specifically to the Petroleum Products Act and therefore there cannot be any doubt that the licence which was granted by the controller, Third Respondent, is suspended pending the outcome of the appeal to Fourth Respondent, the Minister. The fact that the Minister has taken so long is unfortunate and one understands that Respondents would become impatient as the appeal is taking so long but unfortunately there is nothing which this Court can do and it is clear from the Supreme Court of Appeal judgment that the licence of First and Second Respondents is suspended until the appeal is finalised.

[20] In my view having considered the judgment in the Gensinger case in the Supreme Court of Appeal it is not even necessary to consider all the other factors for interim relief as it is apparent from the said judgment that once an appeal has been lodged with the Minister then the position is that it suspends the licence which was granted by the Controller until the Minister has granted its ruling. Therefore in this situation as it is common cause that the Minister has not made a ruling that the licence granted by the Controller is suspended.

[21] Applicants are therefore in my view entitled to the interim relief sought as they made out a case therefore.

<u>Order</u>:

A Rule *nise* is granted in terms of paragraphs 1, 1.1, 1.2 and 2 of the notice of motion, the date in paragraph 1 to be 8 August 2025.

[redacted]

P C BEUIDENHOUT J.

JUDGMENT RESRVED ON: 23 JUNE 2025

JUDGMENT HANDED DOWN ON-LINE ON: 4 JULY 2025

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