

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: MAT4766/2025-091418

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
DATE <u>01/08/2025</u> SIGNATURE 	

In the matter between:

TIBANI SHOPPING CENTRE (PTY) LTD

FIRST APPLICANT

TIBANI CONVENIENCE CENTRE (PTY) LTD

SECOND APPLICANT

And

MOSOMANE MAPHALA KLAAS

FIRST RESPONDENT

NADAIR SOLUTIONS (PTY) LTD

SECOND RESPONDENT

CONTROLLER OF PETROLEUM PRODUCTS

THIRD RESPONDENT

MINISTER OF MINERAL AND PETROLEUM

RESOURCES

FOURTH RESPONDENT

MEC: LIMPOPO PROVINCIAL DEPARTMENT OF

ECONOMIC DEVELOPMENT, ENVIROMENTAL

JUDGMENT

KGANYAGO J

- [1] The first applicant is the land rights holder for Engen Tibani Convenience Centre situated at Portion 37 of the farm Matlala location, Tibanefontein, Limpopo. The first applicant's property has been zoned and approved by competent authorities for the retailing of petroleum products. The Department of Mineral Resources has granted and issued the first applicant with a site licence. The second applicant is the holder of a retail licence granted and issued by the Department of Mineral Resources giving it the right to sell petroleum products from Engen Tibani Filling Station.
- [2] On 23rd January 2023 the first respondent had lodged a new to industry site licence application with the Controller of Petroleum Products (Controller). On the same date the second respondent lodged a retail licence application. The applicants on learning the intention of the respondents to establish a new filling station, lodged an objection to their licence applications. According to the applicants, the Controller did not notify them of the outcome of the applications by the respondents. The applicants were only notified on 12th February 2024 that the respondents' applications were granted on 11th August 2023 after the enquiry to the Controller by the applicants' attorneys.

- [3] On 1st March 2024 the applicants lodged an interim appeal against the decision to grant the respondents' licences. Thereafter the applicants filed an application under Promotion of Access to Information Act 2 of 2000 in order to assess the merits of their appeal. On receipt of the documents the applicants supplemented its appeal which was also served on the respondents on 9th May 2024. The applicants' challenge to the Controller's decision focuses on (i) the lack of a valid landowner permission, (ii) the absence of a valid record of decision or environmental authorisation, and (iii) the failure to demonstrate any actual need or economic viability for the new site and retail licence.
- [4] According to the applicants, on 2nd April 2024 they observed the first preliminary construction of the filling station on the site by the respondents. However, on 8th April 2024 the construction ceased, and the applicant believed that the construction ceased as the respondents were aware of the pending internal appeal, and that they have stopped pending the outcome of the appeal. However, during late November 2024 the applicants observed renewed movement on the site, whilst no large-scale construction had occurred, two large underground fuel tanks were delivered on the site on 18th November 2024. On 20th November 2024 the applicants' attorney submitted a formal request to Limpopo Department of Economic Development, Environmental and Tourism (Department) urging for an urgent investigation, and if warranted, the immediate issue of a cease and desist notice. However, the Department declined to issue a cease and desist notice until the investigation was complete.
- [5] On 29th November 2024 the environmental management inspector conducted a site inspection, and found no personnel actively working. However, the inspector observed two large fuel tanks, a partially constructed building, two

steel pillars, and equipment indicative of a future filling station. On 11th December 2024 the control environmental officer notified the applicants' attorneys that construction had ceased, but had not yet verified the tank capacities or legality of the installation. The applicants' attorneys made several follow-ups, but the attitude of the Department was that a cease and desist notice could not be issued until the tanks were installed or connected, and that until then no contravention had occurred.

[6] On 8th May 2025 the applicants observed that construction had once again recommenced on the site, despite the applicants pending appeal and ongoing investigation by the Department. On 12th May 2025 the applicants' attorneys sent letters to the Controller of Petroleum Products, the Department and respondents attorneys notifying them of what they have observed at the site, and that the installation of three tanks without any record of decision or environmental authorisation was illegal. On 15th May 2025 the Department informed the applicants' attorneys that their inspector had visited the site and the respondents had presented the inspector with a copy of an environmental authorisation which was issued on 11th February 2025. The Department notified the applicants attorneys that they would not take any enforcement action as the facility was authorised.

[7] On 15th May 2025 the applicants' attorneys requested copy of the respondents' environmental authorisation application as they were never advised of such application, or given the opportunity to participate, had not observed any site notice or advertisement of the application. The Department declined to furnish the applicants with the application or any related documentation. The Department notified the applicants attorneys that they would first need to submit

a formal access to information request before any documents would be released. On 29th May 2025 the applicants lodged another appeal with the Member of the Executive Council (MEC) for Economic Development, Environment and Tourism Limpopo challenging the decision of the Department of 11th February 2025 to grant the environmental authorisation to the respondents. On 6th June 2025 the MEC has acknowledged receipt of the applicants' appeal.

[8] Notwithstanding the pending two internal appeals by the applicants, the respondents have persisted in construction activity on the site. On 30th May 2025 the applicants' attorneys addressed a formal letter to the respondents calling upon them to immediately halt all construction and installation of infrastructure, given the appeal and the consequential legal suspension of the environmental authorisation. The applicants' attorneys requested the respondents to give an undertaking that no further work would continue until the appeal was resolved, failing which the applicants would institute an urgent application. On 3rd June 2025 the respondents through their attorneys rejected the applicants' demand, stating that the respondents are allowed by the respective authorities to proceed with their current operations, and that they intend to continue construction as far as is legally permissible.

[9] That led to the applicants instituting the current urgent interdict application in which they are seeking the following orders:

"1. Dispensing with forms, service and time periods prescribed in terms of the Uniform Rules of Court, and directing that the matter be heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.

2. The first and/or second respondents are interdicted and restrained from:

2.1. Commencing, continuing, or proceeding with any construction, installation, erection, or commissioning activities associated with the development of a fuel filling station, including the installation of underground fuel tanks, on stand no. 20206, Cloetesdam village, Ga-Matlala, Polokwane, Limpopo Province.

2.2. Commencing with retail of petroleum products from stand no. 20206, Cloetesdam village, Ga-Matlala, Polokwane, Limpopo Province.

2.3. The prohibition in paragraphs 2.1 and 2.2 shall apply not only to the first and second respondents, but also to any contractors, subcontractors, employees, representatives, or agents of the first or second respondent acting on their behalf with knowledge of this order. In particular, the first and second respondents are directed to ensure that all such parties within their control or acting on their instructions desist from the aforementioned activities, so as to give full and immediate effect of this order.

3. The relief in paragraphs 2 to 2.3 above shall operate as an interim interdict and remain in force until the final determination of:

3.1. The applicants' pending internal appeal to the Minister of Mineral Resources and Energy (Fourth Respondent) in terms of section 12A of the Petroleum Act, 120 of 1977 against the decision of the Controller of Petroleum Products (Third Respondent) to grant a site licence to first respondent and retail licence to the second respondent; and

3.2. The applicants' internal appeal to the MEC for Economic Development, Environment and Tourism (Fifth Respondent) under section 43 of the National Environmental Management Act 107 of 1998 ("NEMA") against the Limpopo Department of Economic Development, Environment and Tourism's decision to grant an Environmental Authorisation ("EA") to the first respondent for the construction of a new petroleum filling station on stand 20206, Cloetesdam village, Ga-Matlala, Polokwane, Limpopo Province.

3.3. In the event that the aforesaid internal appeals are not upheld, the final determination of a review application instituted by the applicants to review and set aside the fourth and fifth respondents' decisions on the respective internal appeals under the Promotion of Administrative Justices Act 3 2000.

4. If the internal appeal is not upheld, and the applicant fails to institute judicial review proceedings within 180 days of the date of the Minister's decision, or within such extended period as may be permitted by a court under the Promotion of Administrative Justices Act 3 of 2000, the interdict granted in paragraph 2.1 to 2.3 shall lapse and cease to have any force or effect.

5. The first and second respondents, and any other respondents who opposes this application jointly and severally, the one paying the other to be absolved".

[10] The first and second respondents (respondents) are opposing the applicants' application. The respondents in their answering affidavit have raised three points *in limine*, the first is that of lack of urgency in the applicants' application; the second is that the applicants' application is academic and moot; and the third is that of lack of locus standi by the applicants. With regard to the alleged mootness of the applicants' application, the respondents have submitted that the construction work is almost near completion and is estimated to be 99% and the only outstanding aspects is minor work and the final paving. The applicants knew about the construction work since October 2024, and allowed the respondents to continue with its construction work for almost 9 months without approaching the courts, and therefore the proverbial horse has bolted. Regarding locus standi the respondents have submitted that the applicants are not the directly affected persons as the applicants are 6.7 km away from the intended filling station by the respondents; there are no less than 12 other filling stations in the vicinity, clearly showing a need for filling stations; there is another filling station opposite that of the applicants; the applicants are situated on the R567 and draw its clients mainly from that route whereas the respondents clients base will be limited to the area between Tibane, Taung and Ga-Ramakara; and that the applicants and the respondents literally serve different

communities, wherein the applicants serve Tibane whilst the respondents serve Ga-Ramakara.

- [11] On the merits the respondents have submitted that the relevant authorities have refused to issue compliance notices or cease and desist directives as the respondents were acting in accordance with their issued licences and authority. The respondents avers that they have commenced with construction work from the 14th May 2024 being the date on which they were issued with licenses, and that any appeals that were delivered to the Minister prior to that date was premature. The respondents' disputes that when the inspector from the Department visited the site, construction work had ceased, but that they were at all material times busy with their construction work as there was no reason not to continue. The respondents submit that the proverbial horse has already bolted in that the construction work is almost completed, and the respondents would be able to retail soon.
- [12] The respondents concede that on 3rd June 2025 they have refused to give an undertaking to cease construction work. The respondents dispute that the applicants pending appeals suspends the operation of their licences. The respondents submit that they are not aware of any pending appeals against the decision by the Controller to issue them with licences, and therefore there is nothing prohibiting them from continuing with their construction activities. It is the respondents' contention that the construction activities by them is based on the licences issued to them on 14th May 2024.
- [13] The applicants' urgent application was set down for the 24th June 2025. On that date the only issue that was dealt with was respondents' point *in limine* of alleged lack of urgency of the application. The court ruled that the matter was

urgent and it was enrolled as urgent. However, due to time factor the merits was not dealt with and the parties agreed that matter be postponed to the 18th July 2025 for arguments on merits. In the meantime, the parties agreed on an interim order been granted as per the applicants notice of motion which will be valid until the 18th July 2025. On 18th July 2025 Virtual Petroleum brought an application to be joined to the proceedings as the seventh respondent, and that application was dismissed. Before merits of the application could be argued, the applicants notified the court that the MEC had disposed their appeal in which he had dismissed it. Further that they have already filed a review of the MEC's decision and that they are still pursuing the interim interdict on the basis that it be granted pending the outcome of their review application.

- [14] The applicants are seeking an interim interdict against the respondents pending the finalisation of their appeal to the Minister or possibility of a review of the Minister's decision and the pending review of the MEC's decision. The applicants appeal with the MEC has been finalised whilst that of the Minister is still pending. The applicants have already filed a review application against the MEC's decision to dismiss their appeal. This court is limited to deal with the interim interdict only. What this court must determine is whether the applicants have satisfied the requirements for the granting of an interim interdict. This court must also determine whether the launching of the internal appeals and review applications suspend the operations of both the site and retail licences. The requirements for the granting of an interim interdict have been restated in a list of decided cases, and they are (i) a prima facie right that might be open to doubt; (ii) reasonable apprehension of irreparable harm; (iii) the balance of convenience favourable to the grant of the interdict; and the absence of any other adequate remedy.

- [15] The granting of an interim relief pending action is within the discretion of the court to either grant or withhold. In *Knox D'Arcy Ltd and Others v Jamieson and Others*¹ EM Grosskop JA said:

"That a court has a discretion whether or not to grant a temporary interdict has often been said ... Thus, in *Messina (Transvaal) Development Co Ltd v South African Railways and Harbours* 1929 AD 195 at 215-16 Curlewis JA said:

'In an application for an interim interdict pending action, the Court has a large discretion in granting or withholding an interdict. Where there is merely a possibility, not practical certainty of interference or injury, as the present case, the Court will be reluctant to grant an interdict, especially if the party seeking the interdict will have other means of redress and not suffer irreparable damage. And a court is entitled to and must regard the possible consequences, both to the applicant and to the respondent, which will ensue if an interdict be granted or withheld'".

- [16] Regarding the issue of mootness, the respondents have submitted that the construction work is almost 99% complete, and therefore not 100% complete. That 1% that is still outstanding is sufficient to keep a live dispute which is capable of been adjudicated upon. Therefore, there is no merit on the respondents' point *in limine* and is dismissed. With regard to the point *in limine* of lack of locus standi, it is not in dispute that the applicants have existing site and retail licences which are been lawfully operated in same radius within which the respondents intend to operate theirs. According to the applicants they stand to suffer commercial harm by the respondents' new establishment. The respondents will be the applicants' competitors, and the applicants sees that as unlawful competition. Whether that is indeed unlawful or not is for the Minister to decide in the pending appeal. The applicants have a right to protects their

¹ 1996 (4) SA 348 (A) at 360G-J

interests against any unlawful competition if proven. I am therefore satisfied that the applicants have locus standi in this matter, and the respondents' point *in limine* is dismissed.

[17] It is not in dispute that the Controller of Petroleum Products have issued site and retail licences to the respondents' new establishment, whilst the Department has granted the respondents environmental authorisation. It has been established that the applicants have standing in this application, and are therefore directly affected by both the decision of the Controller and that of the Department. Section 12A(1) of the *Petroleum Products Act*² (Act) provides that any person directly affected by the decision of the Controller of Petroleum Products may appeal to the Minister against such a decision. Subsection 2 provides that the appeal shall be lodged within 60 days. The applicants have timeously lodged such an appeal and it is still pending. The appeal to the MEC against the decision of the Department has been finalised and the applicants have already launched a review application against the decision of the MEC.

[18] What this court must determine is whether the pending internal appeal before the Minister against the decision of the Controller suspend the operation of the site and retail licences issued in favour of the respondents. In *Gensinger and Neave CC & Others v Minister of Mineral Resources and Energy*³ Bloem AJA said:

[29] It is the accepted common law rule of practice in our courts that, generally, the execution of a judgment 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 which granted the judgment. Regarding appeals against

² 120 of 1977

³ [2024] ZASCA 49; 2025 (4) SA 84 (SCA) (15 April 2024) at paras 29 and 30

administrative decisions, the common law principle is that, where an administrative decision has been taken and an appeal has been noted against the decision, there is a presumption that the administrative decision is suspended by the appeal against such decision, unless the applicable legislation provides that such decision is not suspended by an appeal. Legislation may expressly or by necessary implication provide that an appeal does not suspend the decision appealed against. The rule of automatic suspension was applied in *Max v Independent Democrats and Others* because, amongst others, there was neither a statutory provision nor a provision in the code of conduct of the political party in question to suggest that the rule should not apply.

[30] 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 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 facts of this case, with the result that the appellants' appeal in terms of s 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 basis".

[19] The case at hand is not distinguishable from the *Gensinger* case. It has been found that the applicants are the affected parties, they have timeously lodged their appeal with the Minister against the decision of the Controller. The Minister has not yet make a decision regarding that appeal. The applicants' appeal in terms of section 12A of the Act therefore suspend the Controller's decision in this matter. What must further be determined is whether the pending review application or intended review application in case the Minister dismisses the applicants' appeal will also suspend the Controller's decision and the decision of the Department.

- [20] It is not in dispute that the decisions of both the Department and the Minister in matters of this nature amounts to administration action which may be reviewed under PAJA. The party aggrieved by such a decision in bringing a review application will be invoking a remedy available him/her which in the interest of justice should be allowed to run its course. If the respondents are permitted to proceed with their construction work despite the pending review application and it happens that the applicants are successful in their review applications, they will not be able to undo a fully completed structure which by then will be operational. Under the circumstances, the interest of justice compels the suspension to be extended to cover the applicants review or intended review applications.
- [21] It has already been established that the applicants are the affected parties. By lodging the internal appeal with the Minister the applicants are exercising their statutory right provided for in the Petroleum Products Act. In my view, the applicants have established a prima facie right. With regard to irreparable harm, should the project be allowed to be constructed to finality despite the pending appeal and review or intended review applications by the applicants, by the time they are finalised and the applicants are successful, the proverbial horse would have bolted. The applicants would suffer economic loss which would be difficult to quantify. To prevent the proverbial horse from bolting, the balance of convenience favours the granting of the interim interdict. I have already pointed out that the economic loss which the applicants might suffer will be difficult to quantify in case they opt to institute a damage claim against the respondents. The applicants therefore have no adequate alternative remedy, and the interim interdict is the only remedy that might limit the possibility of any harm. I am therefore satisfied that the applicants have satisfied the requirements for an

interim relief pending the appeal to the Minister and also pending finalisation of their review against the MEC or intended review that might be instituted against the Minister.

[22] In the result the following order is made:

22.1 The first and/or second respondents are interdicted and restrained from:

22.1.1 Commencing, continuing, or proceeding with any construction, installation, erection, or commissioning activities associated with the development of a fuel filling station, including the installation of underground fuel tanks, on stand no. 20206 Cloetesdam village, Ga-Matlala, Polokwane, Limpopo Province.

22.1.2 Commencing with the retail of petroleum products from stand no. 20206, Cloetesdam village, Ga-Matlala, Polokwane, Limpopo Province.

22.1.3 The prohibitions in 22.1.1 and 22.1.2 shall apply not only to the first and second respondents, but also to any contractors, subcontractors, employees, representatives, or agents of the first or second respondents acting on their behalf with knowledge of this order. In particular, the first and second respondents are directed to ensure that all such parties within their control or acting on their instructions desist from the aforementioned activities, so as to give full and immediate effect to this order.

22.2 The order in paragraphs 22.1.1 to 22.1.3 above shall operate as an interim interdict and remain in force until the final determination of:

22.2.1 The applicants' pending internal appeal to the Minister of Mineral Resources and Energy (Fourth Respondent) in terms of section 12A of the

Petroleum Products Act, 120 of 1977 against the decision of the Controller of Petroleum Products (Third Respondent) to grant a site licence to the first respondent and retail licence to the second respondent.

22.2.2 In the event of the aforesaid internal appeal is dismissed, the final determination of a review application instituted by the applicants to review and set aside the fourth respondents' decision on the internal appeal under the Promotion of Administrative Justice Act 3 of 2000; and

22.2.3 The applicants' pending review application instituted under case number 111806/2025, to review and set aside the fifth respondent's decision to dismiss the applicant's internal appeal in terms of section 43 of the National Environmental Management Act 107 of 1998 ("NEMA") against the decision of the Limpopo Department of Economic Development, Environmental and Tourism to grant an Environmental Authorisation for the construction of a petroleum filling station on stand no. 20206, Cloetesdam village, Ga-Matlala, Polokwane, Limpopo Province.

22.3 The first and second respondents are to pay the costs of this application jointly and severally, the one paying the other to be absolved on party and party scale B.



KGANYAGO J

**JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE**

APPEARANCES:

Counsel for the appellant	: Adv E van As
Instructed by	: A Kock & Associates
Counsel for the respondent	: Adv BG Savvas
Instructed by	: Murray Kotze Associates
Date heard	: 18th July 2025
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