

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 017060/2024

(1) REPORTABLE: NO/YES
(2) OF INTEREST TO OTHER JUDGES: NO/YES
(3) REVISED: NO/YES

08 OCTOBER 2025
DATE

SIGNATURE

In the matter between:

TEMPELHOF FILLING STATION (Pty) Ltd

Applicant

and

THE CONTROLLER OF PETROLEUM PRODUCTS
SOUTH AFRICAN NATIONAL ROADS AGENCY SOC Ltd
MUSINA LOCAL MUNICIPALITY
EAGLE CREEK INVESTMENTS 154 (Pty) Ltd
MMJ LOUW ACCOUNTING ASSOCIATES 1070 CC
SHELL DOWNSTREAM SOUTH AFRICA (Pty) Ltd

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal

representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 08 October 2025.

JUDGMENT

MAKHOBABA, J

- [1] The Fourth Respondent is the owner of immovable properties situated at portions 6, 7 and 8 of the Farm Uitenpas, Musina. Certain portions of the properties are being leased to Boabab Truck Park (Pty) Ltd t/a Boabab Cross border Services (Boabab).
- [2] Boabab has been subleasing certain portions of the properties to Olico Wholesale since January 2021. Same is a registered and authorised Petroleum Wholesaler.
- [3] Olico uses the property for the purposes of conducting the business as a fuel wholesaler and fuel depot.
- [4] During 2018 the Fourth Respondent submitted an application to the First Respondent in order to procure a site license for portion 6 of the farm Uitenpas, Musina.
- [5] The Fourth Respondent published a notice thereof in local circulating newspaper in order to obtain input from interested parties, wherein interested parties are invited to provide objections.
- [6] The First Respondent was satisfied that there is a need for a further filling station and that the Fifth Respondent's filling station will not affect the financial and economic viability of other filling stations in the area.
- [7] On the 21st of October 2021, the First Respondent approved the site and retail licenses with certain conditions for documents to be provided, which documents were provided.
- [8] The Fourth and Fifth Respondents collected their respective site and retail licenses and subsequently commenced with the construction of a fuel filling station.

- [9] During July 2022 up to October 2022, the Fifth Respondent commenced with business of the fuel filling station under the brand of Elegant Fuel.
- [10] This is an application launched by the Applicant in accordance with the provisions of Rule 53, in which it seeks a review and the setting aside of the decision by the First Respondent to issue a site and retail licenses, used for the purposes of conducting a filling station.
- [11] The Applicant also sought an interim interdict in terms of part A of the notice of motion. Although, an interim order was issued, with a return date, such an order was subsequently discharged, and part A of the application was dismissed.
- [12] The Applicant subsequently petitioned the Supreme Court of Appeal and leave to appeal against this order was granted to the full court of this division.
- [13] On 26 November 2024, the Applicant brought an urgent application, and only the Fourth and Fifth Respondents opposed the application. Holland-Muter dealt with the urgent application.
- [14] Paragraph 3 of Holland-muter's Judgment reads as follows:¹
"[3] the applicant avers that although the rule nisi was discharged by Nyathi J, the application for leave to appeal revived the rule nisi. The Applicant also in the alternative seeks an interim interdict in terms of which the Fourth and Fifth Respondents be interdicted from continuing with any construction activities and related activities pending the finalisation of the review application. Such sought interim interdict is similar to the interim interdict discharged by Nyathi J earlier."
- [15] In paragraph 12 Holland-Muter J says the following:²
"[12] this court cannot entertain an alternative for interlocutory relief already discharged by Nyathi J. the alternative prayer for an interim order, similar to the discharged interim interdict and based on the same evidence is dismissed with costs."
- [16] Counsel for the Respondents contended that the Applicant sought to have the review application adjudicated upon on an urgent basis.

¹ Caselines 008-3

² Caselines 008-5

- [17] I disagree with the counsel for the Respondent. In my reading of Holland-Muter J's Judgment, I could not find anywhere, where he decided on the review on this matter in terms of Rule 53. The point of *res judicata* is dismissed.
- [18] The Applicant's fuel filling station is situated in next to the N1 (North) freeway. That is towards the Beit – Bridge border gate.
- [19] Whereas the Fifth Respondent's filling station is situated on the N1 (South) and it is 7 kilometres away from the Applicant's filling station.
- [20] The grounds for review by the Applicant are as follows:
- 20.1. Whether the licenses were lawfully granted
 - 20.2. Whether the licenses have lapsed, as no trading activities were commenced within twelve months from the date the licenses were issued.
 - 20.3. That the property owned by the Fourth Respondent is not zoned correctly in order to conduct the business of a filling station at the property.
 - 20.4. That there is no need for a filling station to be constructed and therefore the licenses should have been refused.
- [21] In my view it is clear from Annexures AA18 and AA19³ that SANRAL has approved the Respondents formal access from the N1 freeway.
- [22] The Respondents have shown that they have the necessary consent from the local municipality to operate a filling station from the property.⁴
- [23] It is further my view that, the Applicant failed to show how the Respondents business will affect its business in a negative way.
- [24] On 21 October 2021, the First Respondent approved the site and retail licenses for the Respondents. The Fourth and Fifth Respondents collected their respective licenses and commenced with the construction of a fuel filling station.
- [25] In July 2022 the Respondents commenced retailing activities which is within the twelve months period.
- [26] Furthermore, it is my view that the grounds of review as raised by the Applicant have no merit and are dismissed.
- [27] I make the following order:

³ Caselines 001-138 and 139

⁴ Caselines 001-174

27.1. The application is dismissed.

27.2. Costs on an attorney and client scale, including the costs of two counsel.



D. MAKHOB A J
JUDGE OF THE HIGH COURT
PRETORIA

Date of Hearing: 26 August 2025

Judgment delivered: 08 October 2025

Appearances

For Applicant: Adv B.G. Savvas

For Respondent (4th and 5th): Adv J. HERSHENSOHN SC