



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 44180/21**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO  
(4) DATE: 04 NOVEMBER 2025  
(5) SIGNATURE: C.J COLLIS J

**In the matter between:**

**ASTRON ENERGY (PTY) (LTD)**

Applicant

and

**MEC: GAUTENG DEPARTMENT OF  
ECONOMIC DEVELOPMENT, AGRICULTURE,  
ENVIRONMENT AND RURAL DEVELOPMENT**

1<sup>st</sup> Respondent

**ACTING DEPUTY DIRECTOR: GENERAL:**

**NATURAL RESOURCES MANAGEMENT**

2<sup>nd</sup> Respondent

**GAUTENG: DEPARTMENT OF:**

**AGRICULTURE AND DEVELOPMENT**

3<sup>rd</sup> Respondent

**THE CITY OF JOHANNESBURG METROPOLITAN**

**MUNICIPALITY**

4<sup>th</sup> Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 04 November 2025.

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## JUDGMENT

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COLLIS J

### INTRODUCTION

[1] This is an application for judicial review, pursuant to sections 6 and 8 of the Promotion of Administrative Justice Act 3 of 2000

(‘PAJA’), for the review and setting aside of two decisions, namely:

1.1 The first, a decision taken 10 March 2021 by the MEC: Gauteng Department: Economic Development, Agriculture, Environment and Rural Development (‘the MEC’ or ‘First Respondent’) in terms of section 28(4) of the National Environmental Management Act, 107 of 1998 (‘NEMA’) by means of which the MEC dismissed Astron Energy (Pty) Ltd.’s (‘Astron’ or ‘the Applicant’s’) appeal<sup>1</sup> against the Directive<sup>2</sup>; and

1.2 Secondly, and to the extent necessary, a decision taken on 26 September 2019 by the Acting Deputy Director General: Natural Resource Management (‘the Director’ or ‘Second Respondent’) in terms of section 28(4) of NEMA by means of which the Director issued a Directive in relation to the hydrocarbon contamination of groundwater of the relevant erven<sup>3</sup> (‘the Directive’).

[2] This present application relates to four erven located in Wilropark Extension 5, Johannesburg<sup>4</sup> which is underlain by complex

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<sup>1</sup> Annexure LH13 (Astron’s appeal): pp 004-97 to 126.

<sup>2</sup> FA: p 003-3, para 7.1; Annexure LH1 (MEC appeal decision): pp 004-1 to 2.

<sup>3</sup> FA: p 003-3, para 7.2; Annexure LH2 (Directive): pp 004-3 to 8

<sup>4</sup> Annexure LH3 (site layout): p 004-9.

hydrogeology and a fractured (hard rock) aquifer<sup>5</sup>, namely:

2.1 Erf 1[...] on which the filling station, Roodekruin Motors, is situated ('the filling station')<sup>6</sup>. Ebisu Dealers CC owns the property and retails the sale of petroleum through Sasol<sup>7</sup>. Previously, Astron retailed the sale of petroleum at the property, but did not own it<sup>8</sup>;

2.2 Erf 1[...]2 also known as [...] K[...] Avenue owned by Mr Rabie, the owner of borehole BH1 ('BH1 – Rabie')<sup>9</sup>;

2.3 Erf 1[...]3 also known as [...]2 K[...] Avenue owned by Mr Masemula, the owner of borehole BH2 ('BH2 – Masemula')<sup>10</sup>; and

2.4 Erf 1[...]4 also known as [...]3 K[...] Avenue owned by Mr and Mrs Mpofu, the owner of borehole BH3 ('BH3 – Mpofu')<sup>11</sup>

## STATUTORY FRAMEWORK

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<sup>5</sup> FA: p 003-5.

<sup>6</sup> FA: p 003-4, para 9.1.

<sup>7</sup> RA: p 035-23, para 54.

<sup>8</sup> FA: p 003-5, paras 12-13.

<sup>9</sup> FA: p 003-4, para 9.2.

<sup>10</sup> RA: p 035-26, para 60.2

<sup>11</sup> FA: p 003-5, para 9.4.

[3] Petroleum and/or petroleum products are dangerous, hazardous substances which are controlled by national legislation, *inter alia* the Petroleum Products Act, 120 of 1977 and the Hazardous Substances Act, 15 of 1973.

[4] Section 28(1) of NEMA, read with section 24 of the Constitution, provides that every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing, or recurring ('the NEMA duty of care').

[5] In terms of this obligation, Astron, who handles petroleum and diesel products,<sup>12</sup> must therefore:

“take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, insofar as such harm... cannot reasonably be avoided or stopped, to minimize and rectify such pollution or degradation of the environment”.

[6] Section 28(3) of NEMA further provides that the kind of reasonable measures that must be taken may include measures to:

“(a) investigate, assess and evaluate the impact on the environment;

....

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<sup>12</sup> FA: p 003-7, para 20.

- (c) cease, modify or control any act, activity or process causing the pollution or degradation;
- (d) contain or prevent the movement of pollutants ...;
- (e) eliminate any source of the pollution or degradation; or
- (f) remedy the effects of the pollution or degradation”.

[7] In the event of a concern that *inter alia* a person, who has a right to use the land or premises, is causing, has caused or may cause significant pollution or degradation of the environment, the administrative procedure followed by the environmental authorities in terms of section 28 of NEMA is first to issue a notice of its intention to issue a directive, called a pre-directive, before taking the step to issue a directive.

[8] The pre-directive gives every person who causes, has caused or may cause significant pollution or degradation of the environment an opportunity to submit relevant information. This mechanism ensures that the relevant authority is appropriately informed before exercising its discretion to impose the powerful enforcement mechanism of a directive<sup>13</sup>. The consequences following the issue of a directive include potential liability and severe civil and criminal penalties in terms of

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<sup>13</sup> FA: p 003-9, para 23.

NEMA<sup>14</sup>.

[9] Section 28 of NEMA does not confer on the relevant decision-maker an arbitrary and uncontrolled power to issue a directive. The exercise of this discretionary administrative power must be reasonable and based on the correct facts and the circumstances of a particular case.

[10] As mentioned, on 26 September 2019, the Second Respondent issued a Directive in terms of s 28(4) of the National Environmental Management Act<sup>15</sup> (NEMA) against Astron in relation to the contamination of underground water in respect of four erven in Wilropark Extension 5, Johannesburg.<sup>16</sup>

[11] Astron appealed to the First Respondent in terms of s 28(4) of NEMA. On 10 March 2021 the First Respondent dismissed Astron's appeal.<sup>17</sup>

#### RELIEF SOUGHT

[12] In the present application, Astron seeks to have the two decisions reviewed and set aside, whereas the Respondents in turn had raised the procedural point of non-joinder of the owners

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<sup>14</sup> FA: p 003-6, para 16.

<sup>15</sup> No 107 of 1998.

<sup>16</sup> The Directive is Annexure LH2 to the Founding Affidavit.

<sup>17</sup> The appeal decision and reason therefore are set out in Annexure LH1.

of the erven and also whether the applicant has made out a case on the merits for the review to be granted.

[13] Before this Court it is only the First, Second and Third Respondents, who have been cited by the Applicant. The City of Johannesburg (CoJ) has applied to intervene to be cited as the fourth respondent and has filed papers opposing the relief sought by Astron. The intervention application is still to be determined by the Court.

[14] It is for this reason that this Court deems it prudent to first deal with the intervention by CoJ and thereafter to deal with the joinder applications by the remaining respondents before the merits of the review application are to be determined.

#### INTERVENTION APPLICATION

[15] The applicant (Astron) has not consented to the CoJ being a party to these review proceedings. It has adopted an approach that it will abide by this Court's decision, this on the intervention application.

[16] The applicant has also not opposed the intervention application by the CoJ. Absent any opposition, this Court will accept that on the merits a case has been made out for the CoJ to have an interest in

these proceedings and that it should be joined to these pending proceedings as a Fourth Respondent. Consequently, the intervention application is granted with no order as to costs. The CoJ is now joint as a Fourth Respondent.

#### JOINDER POINT IN LIMINE

[17] As mentioned the remaining respondents have raised the procedural points of joinder as a point in limine.

[18] In this regard the respondents contend that the owners of the relevant erven, as well as the CoJ, are necessary parties to these proceedings and should have been joined.<sup>18</sup> In the context of the discussion on joinder the owners of the relevant erven and the CoJ as shall be referred to as 'the identified parties'.

[19] Prior to filing its answering affidavit, the third respondents' attorneys, in a letter to Astron raised the issue of non-joinder in a perfunctory fashion.<sup>19</sup> Astron took the view that none of the identified parties have a material interest sufficient to warrant their joinder.

[20] Nonetheless, following a pragmatic approach to avoid any possible future arguments about joinder, Astron's attorneys wrote to

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<sup>18</sup> AA: pp 031-7 to 12, paras 8 to 24.

<sup>19</sup> Annexure MT1: pp 032-1 to 2; AA: p 31-12, paras 23 to 24; RA: pp 035-17, para 34.

the identified parties, copying the third respondents' attorneys.<sup>20</sup> The identified parties were given informal extra-judicial notice of the application and an opportunity to intervene in the proceedings.

[21] Accompanying the letter were copies of the pleadings as they existed at this date, namely the founding and supplementary founding affidavits. The first to third respondents raised a point in limine for non-joinder of the CoJ and the owners of the respective affected sites.<sup>21</sup>

[22] In this regard, it will be apposite to have regard to the provisions of Rule 10 which state as follows:<sup>22</sup>

“(1)...

(2)...

(3) Several Defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact, which if such defendants were sued separately, would arise in each separate action.”

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<sup>20</sup> RA: pp 035-17 to 18, paras 35 to 38; Annexure LH21A: pp 045-1 to 20.

<sup>21</sup> Caseline pages 031-7 to 031-8.

<sup>22</sup> Erasmus Superior Court Practice 2ed D1-123.

[23] The rule quoted above not only sets out the circumstances under which a joinder application should be made but also it sets out the procedure to be followed for the application itself. As such a party would be required to bring a substantive application in compliance with rule 6 and afford the party to be joined an opportunity to oppose such joinder if it elects to do so.

[24] A court when faced with a point of non-joinder the test is whether or not, a party has a direct and substantial interest in the subject-matter of the action, that is, a legal interest in the subject matter of the litigation which may be effected prejudicially by the judgment of the court.<sup>23</sup>

[25] In *Almalgamated Engineering Union v Minister of Labour*<sup>24</sup> it was stated that:

“if a party has a direct and substantial interest in any order the court might make in the proceedings or if such order could not be sustained or carried into effect without prejudicing that party, he is a necessary party and should be joined in the proceedings, unless the court is satisfied that he has waived his right to be joined.”

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<sup>23</sup> Unreported, WCC case no 20317/2017 dated 28 October 2022 at para [28]

<sup>24</sup> 1949 (3) SA 637 (A).

[26] In *Henry Viljoen (Pty) Ltd v Awerbuch Bros*<sup>25</sup> it was held that, a person might have a substantial interest in the result of the action and as such interest might be prejudicially affected by a judgment given in the proceedings, such person or body substantially interested should be given an opportunity of being heard in defence of such interest if it should so desire.

[27] In *Matjhabeng Local Municipality v Eskom Holdings (Pty) Ltd*<sup>26</sup> the Constitutional Court stated:

“The law on joinder is well settled. No Court can make finding adverse to any person’s interests, without that person first being a party to the proceedings before it.”

[28] Therefore, the law relating to joinder is clear. Non-joinder of a party with direct and substantial interest in the legal proceedings is fatal to the application or action and it will be for that party to make an election as to whether they wish to join the proceedings or not and to be given an opportunity to be heard.

[29] On behalf of the respondents on point the following arguments were advanced in respect of the non-joinder point. In its capacity as the SASOL lessee, and in their capacity as owners of the properties on

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<sup>25</sup> 1953 (2) SA 151 (O) at 152.

<sup>26</sup> 2018 (1) SA 1 (CC) (at 33E – F).

which BH1, BH2 and BH3 are situated, the respondents argued that the setting aside of the impugned decisions has serious consequences for the owner of the Sasol- branded filling station and the owners of the land on which the contaminated BH1, BH2 and BH3 are situated.

[30] Various statutory provisions impose obligations on the owners of land on which the contaminated BH1, BH2 and BH3 are situated and the owner of the Sasol- branded filling station which provisions have quite serious implications for them.

[31] In this regard firstly s 19 of the National Water Act<sup>27</sup> (the “NWA”), which is the over-arching, umbrella legislation for water resources in the country, provides as follows:

***Prevention and remedying effects of pollution***

*(1) An owner of land, a person in control of land or a person who occupies or uses the land on which —*

*(a) any activity or process is or was performed or undertaken; or*

*(b) any other situation exists, which causes, has caused or is likely to cause pollution of a water resource, must*

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<sup>27</sup> No 36 of 1998.

*take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.*

*(2) The measures referred to in subsection (1) may include measures to —*

*(a) cease, modify or control any act or process causing the pollution;*

*(b) comply with any prescribed waste standard or management practice;*

*(c) contain or prevent the movement of pollutants;*

*(d) eliminate any source of the pollution;*

*(e) remedy the effects of the pollution; and*

*(f) remedy the effects of any disturbance to the bed and banks of a watercourse.*

*(3) A catchment management agency may direct any person who fails to take the measures required under subsection (1)*

to—

*(a) commence taking specific measures before a given date;*

*(b) diligently continue with those measures; and*

*(c) complete them before a given date.*

[32] As such counsel for the respondents has argued that, as owners of the land on which the boreholes are situated, the owners of BH1, BH2 and BH3 are required to take the measures identified in s 19(1) and that if they fail to do so, directives may be issued against them in terms of s 19(3). They accordingly have a direct and substantial interest in the outcome of the review application.

[33] Secondly, s 40(1) of the National Environmental Management: Waste Act<sup>28</sup> (the “Waste Act”), which came into effect on March 2009, provides as follows:

***Transfer of remediation sites***

*“(1) No person may transfer contaminated land without informing the person to whom that land is to be transferred that the land is contaminated and, in the case of a remediation site, without notifying the Minister or the MEC and*

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<sup>28</sup> No 59 of 2008.

*complying with any conditions that are specified by them.”*

[34] In relation to the above section and in determining the disclosure obligations that s 40(1) imposes on the transferor of land, it is submitted that it bears emphasizing that the owner of the Sasol-branded station and the owners of land on which the contaminated BH1, BH2 and BH3 are situated remain obliged to disclose to potential buyers the following: the underground water from BH1, BH2 and BH3 located near the Sasol-branded filling station is contaminated with petroleum hydrocarbons present in the area; Astron had instructed the owners of the contaminated BH1, BH2 and BH3 to cease the use of the boreholes which were decommissioned and had reached agreements with them on 5 May 2017, 17 March 2020 and 30 July 2020; these agreements had been made without involving the environmental authorities (DWS, DFFE and GDARD) and CoJ; and that Astron had been issued with a Directive to address the underground water contamination at these sites.

[35] Thirdly the respondents relied on, clause 37 (b) of the COJ Public Health By-laws, which provides:

*Every owner or occupier of premises must ensure that any well, borehole or other excavation located on his or her premises . . . is not filled in a way, or with material, that may cause any adjacent well,*

*borehole or underground water source to be polluted or contaminated to an extent that may create a public health nuisance or a public health hazard.*

[36] In support of their non-joinder point, the respondents had placed reliance on the *Harmony Gold Mining*<sup>29</sup> decision, where the Supreme Court of Appeal held that a property owner is responsible for averting groundwater contamination.

[37] For the above reasons the respondents had argued that it is ultimately the responsibility of the owner of the Sasol-branded filling station and the owners of the land on which the contaminated BH1, BH2 and BH3 are situated to address the issue of underground water contamination.

[38] The owners of the land on which the contaminated BH1, BH2 and BH3 is situated and the owner of the Sasol-branded filling station on account of their direct and substantial interest in this review application, Astron was required to join them as parties and mere letters sent to them enquiring whether they are willing to participate in the review application is neither prescribed by the rule nor protective of their rights and interests. Astron further had no discretion to exercise in this regard. These arguments advanced by

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<sup>29</sup> *Harmony Gold Mining Company Limited v Regional Director Free State Department of Water Affairs* 2014 (3) SA 149 (SCA).

the respondents this Court agrees with.

[39] Astron at the time when the respondents raised a point in limine, should have prepared an application to join them, and not merely to dispatch letters to them informing them to join the proceedings if they elected to do so. The conduct adopted by Astron, offends the provision and procedure envisaged by the rule.

[40] Accordingly, the in-limine point of non-joinder raised by the respondents falls to be upheld and the review application adjourned until Astron regularizes the position by effecting the requisite joinder.

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

41.1 The City of Johannesburg Metropolitan Municipality is hereby admitted as the Fourth Respondent, with no order as to costs.

41.2 The Respondents point in limine of non-joinder is upheld with costs, including the costs of two counsel where so employed.

41.3 The review application is postponed *sine die* until the applicant formally complies with the provisions of Rule 10.

JUDGE OF THE HIGH COURT

## APPEARANCES

Counsel for the Applicant: Adv. R Michau SC  
Adv. A E Erasmus

Instructing Attorney: Richard Summers Inc.  
C/o Koekemoer Attorneys

|                             |                                           |
|-----------------------------|-------------------------------------------|
| Counsel for the             |                                           |
| First to Third Respondents: | Adv. V Soni SC                            |
|                             | Adv. L Gumbi                              |
| Instructing Attorney:       | Office of the State Attorney,<br>Pretoria |

Counsel for the Fourth Respondent: Adv. W Mokhare SC  
Adv. M Mokwena

Instructing Attorneys: SMM Attorneys

Date of Hearing: 13 August 2024

Date of Judgment: 04 November 2025