



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, PIETERMARITZBURG**

CASE NO: 11300/24P

In the matter between:

CYGNISOL (PTY) LTD

APPLICANT

and

THE CONTROLLER OF PETROLEUM PRODUCTS

FIRST RESPONDENT

BRA CASS (PTY) LTD

SECOND RESPONDENT

VUSI ANTON KUBHEKA

THIRD RESPONDENT

BP SOUTHERN AFRICA (PTY) LTD

FOURTH RESPONDENT

MINISTER MINERAL OF RESOURCES AND ENERGY

FIFTH RESPONDENT

ORDER

The following order is made:

1. The points in limine raised by the second respondent are dismissed.
2. It is declared that the second respondent's retail licence, issued on 5 December 2019, lapsed by operation of law on 5 December 2020 in terms of regulation 24(1) of the Regulations Regarding Petroleum Product Site and Retail Licences GN R286 in GG 28665 of 27 March 2006.
3. The decisions of the first respondent dated 2 October 2023, and 6 November 2023 are reviewed and set aside.

4. All antecedent procedural steps taken after the lapse are declared ultra vires and invalid.
5. The second respondent is directed to surrender the lapsed licence to the first respondent within 14 days.
6. The first and second respondents shall pay the costs of this application, jointly and severally, including the costs of senior counsel.

JUDGMENT

Delivered: 26 November 2025

Masipa J

Introduction

[1] This is a review application in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) in which the applicant, Cygnisol (Pty) Ltd (Cygnisol), seeks to review and set aside a series of decisions taken by the first respondent, the Controller of Petroleum Products (the Controller), relating to the regulatory status of Bra Cass (Pty) Ltd's (Bra Cass), ie the second respondent, retail petroleum licence. The impugned decisions culminated in a communication issued on 6 November 2023, wherein the Controller withdrew a prior notice advising Bra Cass that its retail licence had lapsed in terms of regulation 24 of the Regulations Regarding Petroleum Product Site and Retail Licences¹ (the Regulations) and then asserted that the licence 'remains valid.' Cygnisol contends that the licence had, in fact, lapsed automatically by operation of law as early as 5 December 2020, and that no statutory provision empowered the Controller to revive or reinstate a licence that had already ceased to exist.

[2] It is Cygnisol's case that the Controller's attempt to resuscitate the licence, after correctly acknowledging its lapse in a written notice dated 31 August 2023, was ultra vires, irrational, and unlawful. It argues that the revival of a non-existent licence not only contravened the enabling legislation, but also prejudicially altered the regulatory

¹ Regulations Regarding Petroleum Product Site and Retail Licences GN R286 in GG 28665 of 27 March 2006.

and competitive landscape in which legitimate operators, including Cygnisol, are expected to conduct business.

[3] Bra Cass opposes the application exclusively on the basis of three preliminary points. It contends, first, that Cygnisol failed to exhaust internal remedies by not appealing to the Minister in terms of s 12A of the Petroleum Products Act 120 of 1977 (the Act). Second, it argues that Cygnisol lacks the necessary locus standi to bring these proceedings. Third, it asserts that Cygnisol was brought outside the time limits prescribed by PAJA. Each of these objections must be examined before the merits may be addressed.

Factual background

[4] Bra Cass was issued a retail licence by the Controller on 5 December 2019, in terms of s 2A of the Act. In accordance with regulation 24(1) of the Regulations, the licence-holder was required to commence retailing activities at the licensed site 'within a period of 12 months after the date on which the retail licence was issued, failing which the licence shall lapse.' The requirement is peremptory and forms an integral part of the legislative design, which aims to prevent speculative holding of licences and to ensure that licensed sites become operational within a predictable and regulated timeframe.

[5] It is undisputed that Bra Cass did not commence operations by 5 December 2020, nor at any time thereafter. It is equally undisputed that Bra Cass did not apply for an extension under regulation 24(2), which permits the Controller to extend the 12-month period 'once only and for a period not exceeding six months for a total period not exceeding 18 months' upon good cause shown. After the expiry of this maximum 18-month period which, on these facts, lapsed on 5 June 2021, the licence was conclusively extinguished by operation of law.

[6] On 31 August 2023, nearly three years after the statutory commencement deadline had passed, the Controller issued a formal notice to Bra Cass advising it that its licence had lapsed ex lege in terms of regulation 24(1). The Controller further directed Bra Cass to surrender the physical licence within 14 days, as required by regulation 30(2), which provides that a licence ceases to be valid when the licensed

activity is no longer conducted as a going concern, and that the licence-holder must surrender it within 14 days. The notice constituted a clear and unambiguous acknowledgment by the Controller that the licence had come to an end.

[7] Despite this, Bra Cass submitted representations, dated 15 October 2023, requesting relief. The Act and the Regulations contain no mechanism for representations or remedial intervention once a licence has lapsed. Nevertheless, on 2 October 2023, the Controller issued a notice of intention to cancel the licence an inherently illogical step, as cancellation presupposes the existence of a valid licence.

[8] Following further exchanges, on 6 November 2023, the Controller withdrew the intention to cancel notice and informed Bra Cass that its licence remains valid. Cygnisol became aware of this decision on 8 November 2023, when reasons were provided to it. Concerned by the irregularity of the decision, Cygnisol submitted a request in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA) seeking the underlying documents. These were provided on 15 February 2024, after which Cygnisol launched this review application on 22 July 2024.

Statutory and regulatory framework

[9] Regulation 24(1) provides that failure to commence activities within 12 months results in the licence lapsing. Regulation 24(2) permits a single six-month extension. No provision exists for late condonation, reinstatement, or revival. Regulation 30 sets out the consequences of cessation of a licensed activity and requires surrender of a licence that is no longer valid.

[10] South African courts have consistently interpreted the concept of ‘lapse’ as denoting finality. In *Pietermaritzburg Corporation v Union Government*,² the court held that to lapse is to ‘come to an end altogether’. In *Minister of Law and Order v Zondi*,³ Thirion J stated that lapse means to fall away or pass away finally. The Supreme Court of Appeal (SCA) in *Manyasha v Minister of Law and Order*,⁴ confirmed that once a statutory right lapses, it ceases to exist and cannot be revived.

² *Pietermaritzburg Corporation v Union Government* 1935 NPD 36 (*Pietermaritzburg Corporation*) at 38.

³ *Minister of Law and Order and Others v Zondi* 1992 (1) SA 468 (N) (*Zondi*) at 470H/I onwards.

⁴ *Manyasha v Minister of Law and Order* 1999 (2) SA 179 (SCA) (*Manyasha*) at 188C onwards.

Most recently, in *Energi Licences (Pty) Ltd v Controller of Petroleum Products*,⁵ the court held that a retail licence that lapses under regulation 24 cannot be reinstated by administrative fiat. See *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute*.⁶

[11] These authorities make clear that the statutory scheme provides no scope for revival of a lapsed licence.

Points in limine

Exhaustion of internal remedies

[12] The Bra Cass argues that Cygnisol ought to have appealed the Controller's decision to the Minister under s 12A of the Act before resorting to judicial review. Section 12A, however, is permissive as it states that an aggrieved party 'may appeal', and is not peremptory.

[13] More fundamentally, an internal appeal presupposes a valid administrative decision capable of being appealed. In *Koyabe and Others v Minister of Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)*,⁷ the Constitutional Court held that internal remedies must not shield unlawful action from scrutiny, particularly where the decision-maker has acted outside the powers conferred by statute. Here, the Controller acted without jurisdiction, because the licence had already lapsed and no longer existed. A jurisdictional nullity cannot form the subject of an internal appeal.

[14] The reliance on *Pine Glow Investments (Pty) Ltd v Minister of Energy and Others*⁸ is misplaced. In *Pine Glow*, the Controller had taken a valid decision within jurisdiction, and the failure to pursue the statutory appeal rendered the review premature. Here, by contrast, the Controller acted on a licence that had ceased to

⁵ *Energi Licences (Pty) Ltd v Controller of Petroleum Products* [2024] ZAGPPHC 301 (*Energi Licences*) para 9.

⁶ *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* [2014] ZACC 6; 2014 (3) SA 481 (CC) (*Kirkland*) see para 105.

⁷ *Koyabe and Others v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)* [2009] ZACC 23; 2010 (4) SA 327 (CC) para 36.

⁸ *Pine Glow Investments (Pty) Ltd v Minister of Energy and Others* [2025] ZASCA 75; [2025] 3 All SA 314 (SCA).

exist and therefore acted outside jurisdiction. The statutory appeal mechanism does not apply.

Locus standi

[15] Cygnisol is a licence-holder operating a filling station in close proximity to the Bra Cass site. Its commercial interests are therefore directly affected by the unlawful revival of a lapsed licence. In *United Watch & Diamond Co and Others v Disa Hotels and Another*,⁹ the court held that a direct and substantial interest in the outcome suffices for standing.

[16] More recently, in *Gensinger & Neave CC and Others v Minister of Mineral Resources and Energy and Others*,¹⁰ the SCA confirmed that competing retailers have standing where unlawful administrative conduct distorts market conditions and prejudicially affects their operations. Cygnisol acted on the assumption correct at the time that Bra Cass's licence had lapsed and invested substantial resources accordingly. Its standing is clear.

Delay

[17] Section 7(1) of PAJA requires the review to be brought within 180 days of becoming aware of the decision and the reasons. Cygnisol received the reasons through PAIA on 15 February 2024 and launched this application on 22 July 2024, within the prescribed period.

[18] In *National Council of and for Persons with Disabilities v Independent Communications Authority of SA*,¹¹ the SCA reaffirmed that the 180-day period commences when reasons are furnished. Further, where reasons are inadequate or delayed, s 5 of PAJA permits an applicant to seek written reasons, and PAIA remains a legitimate route for pre-litigation disclosure. The choice not to invoke rule 53 prior to bringing review proceedings does not render the application late.

⁹ *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* 1972 (4) SA 409 (C).

¹⁰ *Gensinger & Neave CC and Others v Minister of Mineral Resources and Energy and Others* [2024] ZASCA 49; 2025 (4) SA 84 (SCA) (*Gensinger*) paras 24-28.

¹¹ *National Council of and for Persons with Disabilities v Independent Communications Authority of SA* [2025] ZASCA 161 paras 12-18.

[19] Even if there were any delay, it should be condoned under s 9 of PAJA, given the Controller's manifestly unlawful revival of a lapsed licence.

The merits

[20] Turning to the merits, the dispute centres on the proper interpretation and effect of regulation 24 of the Regulations. That provision is couched in clear, imperative language, and, when read in the context of the Act, conveys that the commencement of operations within the prescribed timeframe is a prerequisite for the continued existence of a retail licence. Regulation 24(1) states that a licensed retailer 'must commence' activities within 12 months,' failing which the licence shall lapse.' The force of these words, together with the carefully limited extension mechanism in regulation 24(2), underscores a regulatory purpose aimed at preventing speculative licence-holding and ensuring orderly, timely entry of operators into the retail petroleum sector.

[21] On the facts, Bra Cass failed to commence operations by 5 December 2020 and did not seek an extension within the six-month period allowed under Regulation 24(2). The longstop date of 5 June 2021 passed without compliance. The licence therefore lapsed automatically. This conclusion is not dependent on any administrative declaration, as the lapse occurs by operation of law.

[22] The jurisprudence is unequivocal. As discussed earlier, in *Pietermaritzburg Corporation*,¹² *Minister of Law and Order v Zondi*,¹³ it was said that a lapsed right 'fall away or pass away finally,' and *Manyasha*. As alluded to earlier, in *Kirkland*¹⁴ the court held that '[t]he regulatory scheme does not permit the Controller to breathe life back into a licence that has ceased to exist.

[23] Against this legal framework, the Controller's actions after 31 August 2023 cannot stand. Once he acknowledged that the licence had lapsed, he had no power thereafter to entertain representations, to issue a cancellation notice, or to declare that the licence remains valid. These actions all presupposed the existence of a valid

¹² *Pietermaritzburg Corporation* at 38.

¹³ *Zondi* at 470I.

¹⁴ Fn 6 above.

licence. A decision-maker cannot exercise powers contingent upon an existing legal object when that object has ceased to exist. The Controller was functus officio regarding the Bra Cass licence.

[24] The Controller's attempted revival of the licence on 6 November 2023 was therefore ultra vires. It was taken in the absence of jurisdictional facts, contrary to mandatory statutory provisions, irrational in the circumstances, and unlawful in terms of s 6(2)(a)(i), s 6(2)(b), s 6(2)(f)(ii), and s 6(2)(i) of PAJA. The irrationality lies in purporting to revive a licence that had already lapsed ex lege.

[25] Cygnisol's evidence demonstrates the prejudice caused by the unlawful decision. Cygnisol invested in establishing its filling station in reliance on the statutory framework and the absence of an operational licence at the Bra Cass site. The Controller's unlawful revival of the lapsed licence disrupted the regulatory environment and unfairly introduced unlawful competition. The SCA in *Gensingier* emphasised that market participants are entitled to expect that regulatory decisions will be lawful, rational, and consistent. That expectation was undermined here.

[26] In these circumstances, the Controller's decisions must be reviewed and set aside.

Conclusion

[27] For all these reasons, the preliminary points raised by the Bra Cass cannot be sustained. On the merits, Bra Cass's retail licence had lapsed by operation of law in accordance with regulation 24, and the Controller's subsequent attempts to revive it were unlawful and invalid.

Order

[28] The following order is made:

1. The points in limine raised by the second respondent are dismissed.
2. It is declared that the second respondent's retail licence, issued on 5 December 2019, lapsed by operation of law on 5 December 2020 in terms of regulation 24(1)) of the Regulations Regarding Petroleum Product Site and Retail Licences GN R286 in GG 28665 of 27 March 2006.

3. The decisions of the first respondent dated 2 October 2023, and 6 November 2023 are reviewed and set aside.
4. All antecedent procedural steps taken after the lapse are declared ultra vires and invalid.
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6. The first and second respondents shall pay the costs of this application, jointly and severally, including the costs of senior counsel.

Masipa J

Appearances

Counsel for the applicant:

Ms L K Olsen

Instructed by:

Richard Evans & Associates, Kloof

Counsel for the second respondent:

Mr S Mohammed

Instructed by:

DBM Attorneys, Newcastle

Heard: 10 November 2025

Delivered: 26 November 2025