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

Case No: **2025-187776**

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED:

DATE: 17 NOVEMBER 2025

SIGNATURE

In the matter between:

D EDWARDS CC T/A CAMPGROUND MOTORS

First Applicant

COTTAGE MOTORS CC

Second Applicant

CLAYTON HETHERINGTON N.O.

Third Applicant

SALLY HETHERINGTON N.O.

Fourth Applicant

DALE AMSTEL KOHLBERG N.O.

Fifth Applicant

and

SILWOOD CENTRE CC

First Respondent

BRIXICLOX (PTY) LTD

Second Respondent

THE CONTROLLER OF PETROLEUM PRODUCTS

Third Respondent

ASTRON ENERGY (PTY) LTD

Fourth Respondent

ENGEN PETROLEUM LIMITED

Fifth Respondent

**THE MINISTER OF MINERAL RESOURCES AND
ENERGY**

Sixth Respondent

In re:

Case No. **2022-010738**

SILWOOD CENTRE CC

First Applicant

BRIXICLOX (PTY) LTD

Second Applicant

and

THE CONTROLLER OF PETROLEUM PRODUCTS

First Respondent

ASTRON ENERGY (PTY) LTD

Second Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 17 November 2025.

JUDGMENT

RETIEF J

INTRODUCTION

[1] The first to fifth applicants [collectively the applicants] seek an interim interdict to prevent the first respondent, Silwood Centre CC [Silwood] and the second respondent, Brixiclox (Pty) Ltd [Brixiclox] from commencing with the construction of and operating a fuelling station on the remainder of erf 4[...] situated at 4[...] S[...], Rondebosch, Cape Town [the site] [interim relief].

[2] The applicants' interim relief is brought by way of urgency and is couched in a Part A pending the final determination of Part B. Part B, firstly concerns the rescission and setting aside of a prior Court order which was granted by Lukhaimane AJ on the 7 November 2022 in case number 10738/2022 [the order] in favour of Silwood and Brixiclox [collectively the respondents]. The applicants seek to rescind and set aside the order which directed the third respondent, the controller of petroleum products [the controller] to issue Silwood with a site licence and, to accept and consider Brixiclox's retail licence [rescission relief]. The rescission relief is brought in terms of uniform rule 42(1)(a) and the common law. Other than the rescission relief, the applicants bring a judicial review of the controller's decision to grant both the site and retail licences in terms of the Promotion of Administrative Justice Act 3 of 2000 [PAJA]. Both the rescission and PAJA relief in Part B [main application] were brought in their entirety with the interim relief.

[3] The respondents oppose both the interim relief and main application and have launched a counter application seeking to declare the applicants' extant internal appeal brought on the 4 December 2024 in terms of section 12A of the Petroleum Act 120 of 1977 [the Act] against the controller's decision to approve the retail licence [appeal], null and void [declaratory relief]. The declaratory relief was not brought on an urgent basis nor argued on the date of the hearing. The fourth to sixth respondents have filed a notice to abide and the controller has not

opposed the interim relief nor filed any papers. Interim relief is sought against the sixth respondent.

[4] The applicants contend that the nub of the interim relief is to preserve the status *quo*, the position prior to the prospect of the site being used for a fuelling station again. Procedurally this has partially been achieved notwithstanding the fact that the controller has issued a site to Silwood and retail licence to Brixiclox. The development of the fuelling station on the site has been placed on hold pending the finalisation of an appeal lodged with the City Council of Cape Town [City] and the retail of petroleum products has been placed on hold pending the finalisation of the internal appeal process.

[5] However, on the 30 September 2025 the applicants contend that their procedural advantage was disturbed by the City granting the respondents a consent use right to use the site as a fuel service station. Now that their appeal with the City has been refused, the applicants argue if the status *quo* is not urgently preserved in the interim, they will suffer harm which, they will not be recover irrespective of the outcome of the main application.

[6] To this end, the applicants have brought both Part A and B by the 13 October 2025. The record to be considered in Part B too has been filed. Any consequential procedural delay in the determination of the main application has therefore been curtailed in this way.

[7] Before dealing with the interim relief the aspect of its urgency as well as a self-standing application to strike which was brought by the applicants and filed on the 6 November 2025 requires attention. Regarding the strike relief, Counsel for the applicants appeared to hold instructions to argue and move for the relief at the date of this hearing. In light of the fact that the notice of motion foreshadowed a different intention, namely, to move for the strike relief at the hearing of the main application, this Court enquired whether he indeed at this stage intended to argue it. After consideration, Counsel confirmed that it would only be moved at the main application, but this Court was asked to consider the necessity of the applicants to

bring the strike relief when considering the content of the answering affidavit filed by the respondents as a factor when considering costs.

[8] To this end, this Court sets out the basis for its ruling on urgency and why it then entertained the merits of the interim relief.

URGENCY

[9] The aspect of urgency was debated at length. The highwater mark of the applicants' argument was that urgency was triggered by their knowledge of their unsuccessful appeal by the City on the 30 September 2025 regarding the land use zoning of the site. In short, the respondents applied to the City seeking various authorisation in terms of the City's Municipal Planning Bylaw of 2015 [Bylaws] to enable them to develop the site in a particular manner. Notwithstanding, the applicants still contend that the general business zoning 1 in terms of the Bylaws does not permit, as a primary use, a fuel station on the site.

[10] The unsuccessful outcome of the City appeal, argues the applicants, means that the respondents are now able to use the site for a fuel station and now armed with a site licence by order, Silwood can begin construction to develop the site for the retail of petroleum products. In other words, for the first time since the applicants possessed knowledge of the order in November 2024, the commencement of certain activity on the site has now fully been sanctioned. The status *quo* being disturbed and the need to preserve now becomes urgent to prevent harm.

[11] Before launching their envisaged Part A on an urgent basis, the applicants, on the 1 October 2025, a day after the knowledge of the City appeal, attempted to obtain a written undertaking from the respondents *via* their attorney of record. In this way they sought to acquire an undertaking from the respondents not to commence with construction on the site, as authorised by the City, prior to the determination of the main application.

[12] The request for an undertaking was not simply met with: ‘no we don’t hold instructions to provide you with an undertaking’ but rather the following: “*We consider you to be inept and incompetent and not deserving of any serious consideration by ourselves or our clients.*” This reply appears to strike at the competency of the applicants’ attorneys and does not engage with subject matter. As will become clearer this tone and avoidance of dealing with the applicants’ allegations spilt over in the respondents’ answering affidavit. The strike relief suddenly becomes clearer.

[13] The applicant’s contention that they had no other option then but to launch the interim relief on an urgent basis and this they did without delay.

[14] The thrust of the respondents attack regarding urgency in argument was based on the applicants’ knowledge of the order, *ex facie* their letter dated the 10 March 2025 in which the deponent to the respondents’ affidavit states:

“26.1.4 In RC28 which is dated the **10th of March 2025** the EMAIL (*applicants’ attorneys – own emphasis*) confess clearly and unequivocally that they knew of and had possession of court order in 10736/2022 and knew of its contents, which they then obviously gleefully regurgitated in their letter together with their own ill-conceived and meritless interpretation.”

[15] Flowing from paragraph 26.1.4, the respondents contend that the applicants have provided no valid explanation why it’s taken them four (4) months to seek out the urgent court. Furthermore, other than to contend why the City appeal is a red herring, the respondents do not engage with the date of the 30 September 2025 upon which the applicants contend urgency was triggered.

[16] The applicants do not rely on the knowledge of the order disturbing the status *quo*, resulting in urgent interim relief. This was explained by the other procedural steps taken by them to ensure the status *quo*. Furthermore, the respondents Counsel conceded that not factual disputes arise from the filed

papers. In consequence, the allegation of harm and the facts in support thereof which will flow if the interim relief is not granted, on an urgent basis, was not placed in dispute.

[17] The respondents' Counsel also argued that although urgency is in the discretion of the Court, it would be better to deal with the merits of the matter, i.e., the interim relief.

[18] This Court having regard to the arguments and for the reasons set out above and placing weight on both parties expressed need to deal with the merits of the interim application, this Court ruled that the matter was urgent, and it is enrolled as such. Argument on the merits followed.

DISCUSSION OF MERIT OF INTERIM RELIEF

[19] The respondents have not, *ad seriatim*, dealt with any of the applicants' allegations in support of the interim relief. The respondents did not consider each material allegation as prescribed by the uniform rules. Instead, the deponent, a member of the Silwood and, on behalf of Brixiclox, merely rejected the entire founding affidavit and in the preamble to the rejection stated under oath that:

"2.3 The founding affidavit is peppered with insane assumptions, unacceptable hearsay, baseless speculation, groundless opinions, unsubstantiated and baseless dogma as well as blatantly obtuse statements. We do not propose to deal with each and every such averment, therefore, unless there is anything in this affidavit that is fully and entirely reconcilable with the founding affidavit, the founding affidavit is rejected by us as false and baseless;"

[20] Without the respondents providing the applicants nor this Court with exactly which averments they, in the founding affidavit, consider entirely reconcilable with their own version, none is apparent. It is not for the applicants nor for the Court to trail through the answering affidavit to find the answer. In consequence, reading

the answering affidavit without any clarification, the applicants' founding affidavit appears to be rejected as false and baseless in its entirety.

[21] Conversely, and in argument at the hearing, the respondents' Counsel repeatedly conceded that no factual disputes arise on the papers. The founding papers do not stand to be rejected as false on that concession alone. The applicants' Counsel rightly accepted the concession and argued that if the applicants' allegation that it will suffer harm should the status *quo* not be preserved is as a fact not disputed, nor the facts in support thereof, such should justify the interim relief itself. This too, he argued was apparent due to the lack of the respondents specifically denying those allegations *ad seriatim* on the papers. The consequence is that the prerequisites of interim relief are met in that, a *prima facie* right to be protected from such harm arises as alleged and therefore established. Flowing then, a reasonable apprehension of irreparable harm must surely have been established. Harm translates into prejudice. In this way, the balance of convenience must tip in favour of the applicants as any prejudice suffered by the respondents by granting the interim relief will not be cured by not granting the interim interdict as the internal appeal is still pending. Considering the all the prerequisites of an interim interdict as a whole, then the absence of an alternative remedy after the applicants have sought and undertaking from the respondents and from the controller, is the only suitable remedy since the site licence by order remains effective. The applicants should then be entitled to their interim relief.

[22] The respondents' Counsel understood the weight of the concession he made that is why the thrust of his argument which followed, was to place emphasis on the Court's discretion having regard to the applicants' prospects of success in the main application.

Preliminary issues raised in the main application

[23] The respondents in answer to the main application raise a number of preliminary issues relating to non-joinder of the City, mis-joinder of the fourth respondent, Astron Energy (Pty) Ltd [Astron]. The applicants do not seek relief

from Astron. They too seek to disturb the applicants standing to launch the main application.

[24] Having regard to the argument on the papers of joinder and mis-joinder, the respondents' Counsel, in argument, confined his attack to the standing issue in bringing the main application. This is simply because the prospects of success of joinder issues, at this stage, won't necessarily be a factor determining the success of the merits. In amplification, the applicants do not seek relief from Astron and Astron has filed a notice to abide. Furthermore, as far as the City as a party is concerned, the respondents on their own version refer to the City's decision a red herring as its decision does not affect the main application.

[25] Returning then to the standing issue regarding the rule 42(1)(a) rescission relief, the respondents contend that the applicants are not affected parties, they were not cited in the 2022 when the order was granted and as for those reasons, they lack the standing to bring the rescission relief. This argument is too narrow. On the common cause facts, the order was taken in the absence of the applicants. Such absence includes the absence of a party who has an interest in the subject matter of the judgment or order, such being sufficiently direct and substantial to enable him or her to have intervened in the original application upon which the judgment was given or order granted.¹ Flowing from the commentary and on the objective facts, the word "*absence*" must surely then include the applicants who were not joined at the material time and/or wished if they could have, intervened.

[26] The applicants in their founding affidavit allege that their interest and standing arises as their status as neighbours in close proximity of the site, the first applicant which operates a fuelling station under a Shell franchise is situated 40 meters from the site, the second applicant which operates a fuel station is located 200 meters from the site and the Trust, the third applicant is the owner of property 20 meters from the site.

[27] Besides that, procedurally, it can never be said the applicants are not affected parties, this much is conceded by the respondents who, accept, albeit at

¹ Erasmus Superior Court Practice, Farlam, Fichardt and Van Loggerenberg, B1-308, 2007

least the first and second applicants, as competitors in the same market. Furthermore, the City entertained the applicants' objections against the respondents' application as parties who could be affected by their decision. Affected parties surely have a sufficiently direct and substantial interest in the outcome of the relief sought in 2022. The answer to this rhetorical question has been demonstrated by the applicants who have lodged an appeal in respect of the decision to issue a retail licence. All of this is dealt with by the applicants in their founding papers. Such is sufficient for this a Court to find that the applicants will succeed to ward of this preliminary issue.

Prospect of success of the rescission relief

[28] To appreciate the argument is to take cognisance of certain background facts. The most relevant is that previously and on the 11 February 2007, the controller issued a site licence to Chevron South Africa (Pty) Ltd, now Astron [Chevron], for the operation of a fuel retail facility which was to be conducted by Zingwa Motors CC t/a Premier Motors [Zingwa]. Zingwa, on the same day, was issued a retail licence.

[29] On the 28 November 2017, Zingwa ceased trading and in December 2017, Zingwa and Chevron attended to the decommissioning of the site and the removal of fuel tanks, pipe works, pumps and electrical cables. In 2017 Chevron's lease it concluded with Silwood, expired. On the 16 January 2018, the controller received a letter from both the Zingwa and Chevron informing it that Zingwa had closed for business. The controller on the 25 January 2019 confirmed in letters the surrender of such licences.

[30] On the 21 July 2021 after the lease between Silwood and Chevron had expired, Silwood submitted an application to the controller for the transfer of the site licence from Chevron to it. Thereafter on the 4 August 2022 Silwood and Brixiclox brought the 2022 application and obtained the order. In essence, the applicants argue that Silwood now sought to have a historic cancelled and surrendered site licence transferred to it as the site owner by Court order. This it

done by asserting that the surrender of the licences was unauthorised and, as such, the cancellation thereof erroneous.

[31] Other than the fact that the order was sought in the applicants' absence, the applicants base the rescission relief on the assertion that the respondents failed to disclose material facts to the Court which, if disclosed, would have prevented the order from being granted and that the provisions of PAJA were circumvented. The latter based on the fact that the controller's *de facto* made a final decision to accept the surrender of the licences as expressed in the letters dated 25 January 2019. That final decision stands and was never reviewed and set aside to accommodate the premise upon which the order was sought and granted in the first place [PAJA point].

[32] The respondent did not argue the PAJA point. Other than relying on what the respondent's Counsel termed, "*the undeniable and irrefutable basis is section 2D of the Act to validate the manner of the transfer of the site licence*" by order to Silwood nothing more in argument was raised.

[33] Both Counsel on the 2D argument invited the Court to consider the Constitutional Court [CC] matter of Snyders N.O. v Louistef (Pty) Ltd and Others.² In so doing, this Court considers paragraph 12 in which the CC stated:

"[12] The new dispensation under the PPA (Petroleum Products Amendment Act, 2003 – own emphasis) appears to be based on site licences being issued only to owners of property. The transitional provisions, however, allowed lessees who were operating as site licence holders to continue doing so and, in addition, to transfer these site licences to new lessees and new owners during the existence of the lease in terms of which it held the site licence. This exceptional entitlement is in line with the overall eventual scheme that site licences should be issued only to owners. When the lease of a new lessee expires, the site licence can then be acquired (own

² **CWA Snyders NO as Trustee of the Louis Snyders Familie Trust v Louistef (Pty) Ltd and Another** [2017] ZACC.

emphasis) only by an owner. There is no casus omissus (omitted eventuality – own emphasis). Existing owners (Silwood – own emphasis) may, in the absence of a lessee holding the site licence under the transitional provisions, in their own right apply (own emphasis) for site licences.”

[34] At the time Silwood applied for a 2D transfer in July 2021, the applicants contend, *inter alia*, there was no valid site licence to transfer, because, the licence had been accepted as surrendered, there was no going concern as contemplated in terms of section 2B(3) of the Act, there was no valid retail licence to speak of and, the lease agreement had already expired. All of this together rendering any transfer of a site licence legally incompetent.

[35] The respondents accepted that if there is no valid retail licence there can be no valid site licence. The Brixiclox applied for a retail licence and, prayer 2 in the order directed the controller to consider it. It flows then that if its surrender in 2019 was accepted then no valid site licence could have been transferred at the material time.

[36] Having regard to the arguments this Court finds that there is sufficient evidence to support the argument by the applicants that a prospect of success has been demonstrated.

[37] The rescission relief and PAJA relief are brought in terms of different and distinct means, the enquiry into both of them is thus distinct. However, both are brought under Part B. The prospect of success demonstrated in one is sufficient to establish a prospect regarding certain prayer brought in Part B, constituting success. Notwithstanding, the respondents did not argue the prospects of success of the PAJA application although the respondents’ Counsel did not relinquish what was stated on the papers nor in written argument.

[38] The prospects of success regarding the PAJA relief are not as compelling as the rescission relief. The respondents’ argument that the ‘decision’ vis-à-vis the site licence was not an administrative action but by Court order is compelling

hence the rescission relief and this Court merely notes that the internal appeal regarding the retail licence is not final.

[39] Notwithstanding as reasoned, because the prospect of success in the recission is compelling and its outcome may cater for a disturbance of the status of the site licence, the PAJA relief may not even become necessary.

[40] Furthermore, no opposition exists regarding the interim relief affecting the sixth respondent, the Minister of Mineral Resources [the Minister]. The Minister has filed a notice to abide. Be that as it may, having regard to all the facts, the discharge of the applicants in meeting the requirements of interim relief including the prospect of success, as discussed, to enable this Court to exercise its discretion has been met. Part A must succeed.

COSTS

[41] There is no reason why costs should not follow the result. However, the applicants in argument seek punitive costs on attorney client scale. Although this Court appreciates that it may have been necessary for the strike relief, such was not ventilated before it.

[42] The Court hearing the main application, when the issues on the papers and how raised, including as against the legal teams, will be 'in full flight,' that the Court will be in a better position to decide what weight to place on the applicants grievances and how to show a measure of its displeasure, if so inclined.

[43] Therefore, at this interim stage, this Court is not inclined to do so.

[44] The following order:

1. The forms and service required by the Uniform Rules are dispensed with, any non-compliance therewith as there may have been on the part of the Applicants are condoned and the matter is enrolled on an urgent basis, as contemplated in Uniform Rule 6(12) of the Uniform Rules of this Court.

2. Pending the determination of Part B of this application, the:
 - 2.1 First and Second Respondents are interdicted and restrained from commencing any construction, renovations or building works for a fuel service station at Erf 4[...], the property situated at 4[...] S[...] Road, Rondebosch, Cape Town ("Site");
 - 2.2 First and Second Respondents are interdicted and restrained from commencing to operate, the operation of or trading as fuel service station at the Site;
 - 2.3 the Sixth Respondent is interdicted and restrained from considering any applications by the First and/or Second Respondents for the issue and/or approval of any consents, approvals or licences in terms of the Petroleum Products Act 120 of 1977.
3. The First and Second respondents, jointly and severally are ordered to pay the costs of this application on a scale as party and party, Counsel's fees taxed on scale B.

L.A. RETIEF

Judge of the High Court

Gauteng Division

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