REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 4684/2025

(1) REPORTABLE: YES/**NO**
(2) OF INTEREST TO THE JUDGES: YES/**NO**
(3) REVISED.
……………………
……………………

DATE: 19/ 01/ 2026 SIGNATURE…[redacted]

In the matter between:

PHOTI GQ INVESTMENTS t/a TOTAL ENERGIES NOBODY	Applicant
And	
65 TWIN CITY PROPERTY 2 (PTY) LTD	First Respondent
CAT MAN 65 (PTY) LTD	Second Respondent
CONTROLLER OF PETROLEUM PRODUCTS	Third Respondent
MINISTER OF MINERALS AND PETROLEUM PRODUCTS	Fourth Respondent
POLOKWANE LOCAL MUNICIPALITY	Fifth Respondent
NETWORTH PROPERTIES (PTY) LTD	Sixth Respondent
SAND HAWKS (PTY) LTD	Seventh Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **19 January 2026**.

JUDGMENT

Makoti AJ

Introduction

[1] This application first came before me on an urgent basis. I heard the matter from 4 July 2025. Things shifted during the first day of the hearing. At the hearing, it happened that one of the parties introduced what was said to be freshly obtained evidence which had material implications for the case. The evidence was a supposed official document which had the potential to render the application, as it stood then, moot. The production of this document resulted in the parties agreeing to stand the matter down to allow each of them an opportunity to study it and to deal with its contents. Each party was to supplement their filed papers as necessary.

[2] I will later deal with the substance of this document. For now it suffices to say that I could no longer treat this application as urgent. I will therefore not address urgency in this judgment. In any case, considering the voluminous nature of the documents involved in this matter, I stood the matter down to be heard on 25 July 2025.

[3] For the sake of convenience I start by identifying the *dramatis personae* in this matter as follows:

[3.1] Photi GQ Investments CC t/a Total Energies Nobody (Photi), the applicant;

[3.2] Controller of Petroleum Products (the CPP), the first respondent;

[3.3] 65 Twin City Property 2 (Pty) Ltd (Twin City), the second respondent;

[3.4] Cat Man 65 (Pty) Ltd (Cat Man), the third respondent;

[3.5] The Minister of Minerals and Petroleum Products (the Minister), the fourth respondent;

[3.6] The Polokwane Local Municipality (the Municipality), the fifth respondent;

[3.7] Networth Properties (Pty) Ltd (Networth), the sixth respondent; and

[3.8] Sand Hawks (Pty) Ltd (Sand Hawks), the seventh respondent.

[4] At the heart of this application are official decisions allegedly taken by the CPP and which Photi avers it has taken on appeal. The decisions will become clear when I delve into the substance of the application.

The facts serving before me

[5] Photi is a known business entity which plies its trade in the petroleum industry. Its operational base is at Ga-Mothiba (Nobody) which lies along the R71 provincial road. The company is aggrieved by the development of a petroleum retail station to the east of Polokwane, at or near Dalmada which lies on the R71. Photi seeks to bring to a temporary halt the processes undertaken by Twin City, Cat Man and / or Networth to construct a petroleum station. It seeks

extensive interdictory orders against the first two respondents in this application.

[6] The application is brought under the auspices of the Petroleum Products Act[1] (the Act), which regulates the production and sale of petroleum products in the Republic. Both the Minister and the Controller are the functionaries who are reposed with legislative powers under the Act. The Minister and the Controller have not filed any papers, possibly because the interdictory relief does not directly affect them. Twin City, Cat Man, Networth and the Municipality filed papers to oppose the application. Sand Hawks also did not oppose the application.

[7] The construction of the petroleum station is being undertaken by or on behalf of Twin City and Cat Man on a property known as **Portion 68 of East Ridge Extension 3, Krugerburg 993 LS** (the Dalmada station).

[8] The location of the petroleum station under construction is approximately 10 kilometres eastwards from Polokwane's city centre. The R71 is said to carry sizeable daily traffic into town and outwardly, and is used for various purposes including travelling to and from work. By way of approximation, the distance from Polokwane city centre to the Dalmada station is 26 kilometres.

[9] I mention these distances as they became topical when counsel finally presented their arguments.

[10] In essence, the purpose of the application is to interdict the commencement of construction of the Dalmada station. In the alternative, Photi seeks to stop continuing construction of the petroleum by way of interdict. Photi's reasons for seeking interdictory relief is premised on an appeal that it alleges it has

[1] Act No. 120 of 1977.

lodged against the decision of the Controller to grant, permit, license or authorise Twin City and Cat Man to develop the Dalmada station.

[11] This said, the relief sought is not limited to the development and construction of the Dalmada station. Photi prays for additional orders interdicting Twin City and Cat Man, or anybody else operating in concert with them, from commencing with the retailing of petroleum products on the station. As I alluded to earlier, the interdictory relief prayed for is interim in nature pending final determination of the dispute which Photi alleges to be before the Minister[2]. It was submitted that Photi is intent on pursuing the dispute further through the courts should it not get a favourable decision from the Minister.

[12] For obvious reasons, I cannot foretell what the decision will be. Thus, considering the human and legal limitations I am subject to, I intend to adjudicate the matter based only on its merits as disclosed in the facts before me and the law. Also, my view is that it will be in the best interests of justice that a case of this nature is dealt with in that fashion so as to avoid the prospect of any of the parties returning to Court if I make a decision based on technicalities.

[13] On a further note, in customary fashion, Photi seeks that costs of the application be awarded against Twin City and Cat Man, and any of the respondents that may join them in opposition. So, on the tenor of the notice of motion, it appears that the Minister, the Controller and Sand Hawks are inoculated from a potentially adversecosts order.

[14] I earlier mentioned a decision by the parties that the matter must be stood down. Upon the matter standing down the first and second respondents lodged an application for leave to file a further affidavit in order to introduce

2 Section 12A of the Petroleum Products Act.

new evidence. The test for filing a further affidavit was set out in *Hano Trading CC v JR 209 Investments (Pty) Ltd and Another*[3] where it was held that Rule 6(5)(e):

> **"establishes clearly that the filing of further affidavits is only permitted with the indulgence of the court. A court, as arbiter, has the sole discretion whether to allow the affidavits or not. A court will only exercise its discretion in this regard where there is good reason for doing so."**

[15] As I understand it, the document with new information contained a decision to extend the license that was granted to the first and second respondents. It clearly had a bearing on the application and it was appropriate that it be introduced into the proceedings, even belatedly.

[16] In any event I gave the parties an opportunity to address me on the document's contents. Having heard counsel, I am happy to permit this new evidence.

Summary of the defenses raised by the respondents

[17] All the opposing respondents took issue with urgency. I have already said that I will not be deal with this issue. The question of urgency simply no longer arises.

[18] The first and second respondents jointly filed a single answering deposed to by a Mr. Maphiri. Standing atop their answer is a technical objection regarding the composition of the founding affidavit. They contended that the deponent to the founding affidavit was not authorised to institute the application on behalf of Photi. The point is dismissed as it was raised unprocedurally.

[3] 2013 (1) SA 161 SCA.

[19] I am fortified in reaching the decision above based on the *dictum* in *Limpopo Provincial Council of the Legal Practice Council v Chueu Incorporated and Other*[4] where the Court said that:

> **"[21] Since then, the issue of authority has been dealt with in a number of decisions of this Court. The position is now established that the manner to challenge the authority of a litigant is to utilise rule 7(1) of the Uniform Rules of Court. The original understanding of rule 7(1) was that it only applied to the mandate provided to attorneys. However, this Court in *Unlawful Occupiers, School Site v City of Johannesburg* (*Unlawful Occupiers*), citing *Eskom v Soweto City Council* and *Ganes and Another v Telecom Namibia Ltd*, held that the remedy for a respondent who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant is provided for in rule 7(1)."**

[20] I must then proceed to deal with the merits of the application.

[21] On the merits the first two respondents contended that Photi failed to satisfy the requirements for interim interdicts. This contention is a theme amongst the respondents, albeit based on different premises. The first two respondents specifically argued that no harm would befall Photi on the mere basis that the construction of the petroleum station continues.

[22] Connected to the point of harm, they further disputed that the noting of an appeal in terms of section 12A had the effect of halting construction of the petroleum retail premises.

[23] The Municipality, being implicated on this score, asked for condonation for the late delivery of its answering affidavit. I am inclined to grant it. Its affidavit addressed the history of the various processes and decisions that were taken since the development of the petroleum station was first conceived. Like Twin City and Cat Man, the Municipality also pleaded that the interim interdict asked for should not be granted on the mere basis that there is a pending appeal.

[4] Limpopo Provincial Council of South African Legal Practice Council v Chueu Incorporated Attorneys and Others (459/2022) [2023] ZASCA 112 (26 July 2023).

According to it too, Photi has failed to satisfy the requirements for interim interdicts.

[24] Networth's opposition was also grounded on the contention that the application did not satisfy the requirements for interim interdict. Additionally, it raised a point that there was no pending internal appeal before the Minister. Over and above that, it argued that Photi was not directly affected by the impugned decision(s). Networth also complained about non-service or what it called ineffective service. This last point is dismissed as it has has filed an answering affidavit in any event.

[25] Importantly, the parties differed as to the legal implications of section 12A of the Act. Thus, the statutory provision is the best place to begin as I consider the merits. I will, upon deciphering the effect of the legislative stipulation, deal with the contentions concerning the requirements for interim interdicts.

Legislative framework

[26] Section 12A of the Act is central to the dispute in this matter. Most of the parties dealt with the provision in their papers - most certainly Photi. It reads thus:

> **"(1) Any person directly affected by a decision of the Controller of Petroleum Products may, notwithstanding any other rights that such a person may have, appeal to the Minister against such decision.**
>
> **(2) An appeal in terms of paragraph (a) shall be lodged within 60 days after such decision has been made known to the affected person and shall be accompanied by—**
>
> **(a) a written explanation setting out the nature of the appeal;**
>
> **(b) any documentary evidence upon which the appeal is based.**
>
> **(3) The Minister shall consider the appeal, and shall give his or her decision thereon, together with written reasons therefor, within the period specified in the regulations."**

[27] The provision first identifies who may raise an appeal. To that extent the words used in section 12A of the Act admit no controversy. Three important things must be said here. First, it is that an appeal procedure is open to anyone who is directly affected by the decision. Second, the decision must be that of the Controller. And third, the appeal in term of this provision is made to the Minister. Section 12A lucidly communicates the question of who may appeal.

[28] Our jurisprudence tells us that the words used in statutes must play a role in determining the meaning or intention of legislative provisions.[5] Words used in statutes, considered within context, are pivotal in the exercise of judicial interpretation.[6]

[29] Simply, section 12A requires a party filing an appeal to show how it is affected by the decision. Photi identified itself as a close corporation which owns Total Energies Nobody, a petrol station at Ga-Mothiba. It trades in petroleum products pursuant to a license that it has held since 28 August 2008. Its trade in petroleum products began in 2012.

[30] For its business, Photi feeds off traffic travelling on the R71 provincial road. It seems to me undeniable that its business will be affected by the impugned decision. Fortunately, that is not for me to decide and I can only leave it to the Minister's when it deals with the appeal.

[31] However, a legislative *lacuna* exists, one may say, in that the Act does not say whether the lodging of an appeal suspends the Controller's decision. As I understand it, it is for that reason that the respondents contended that the lodgment of an appeal does not have the effect of suspending the decision of the Controller. That issue recently exercised the SCA in *Gensinger and Neave*

[5] Finbro Furnishers (Pty) Ltd v Registrar of Deeds, Bloemfontein 1985 (4) SA 773 (A).

[6] Novartis v Maphil (20229/2014) [2015] ZASCA 111; 2016 (1) SA 518 (SCA); [2015] 4 All SA 417 (SCA) (3 September 2015) paras 26 – 28.

CC and Others v Minister of Mineral Resources and Energy.[7] There, that Court answered the question by stating that:

> **"[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 does not suspend that decision. It follows that 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. ... 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 ..."**

[32] The fact here is that there is an appeal pending before the Minister. I say this even though there was a contrary argument by Networth in its papers and orally before me. The argument was to suggest that the appeal was not properly filed with the Minister and therefore there was no appeal to begin with. That contention is without merit. I say this based on the evidence before me, which evidence shows the manner in which the appeal was lodged, belying that argument.

[33] Relying on the famed *Oudekraal*[8] principle, the Municipality's argument was that the decision sought to be interdicted retains validity until it is set aside. The argument is misplaced as it is not applicable for the present purposes. Here Photi is dealing with the temporary restraining of processes of construction and retailing in petroleum products because it has lodged an appeal and not a review The argument cannot fly in the wake of *Gensinger*.

[34] The Municipality's next contention was that the decision in *City of Tshwane Metropolitan Municipality v Afriforum and Another*[9] was against *Gensinger*. If that was correct, it would never be possible to grant interdicts against organs

7 Gensinger and Neave CC & Others v Minister of Mineral Resources and Energy [2024] ZASCA 49; 2025 (4) SA 84 (SCA) (15 April 2024).

8 Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6) SA 222 (SCA).

9 2016 (6) SA 279 (CC).

of State. As I understand that case, Afriforum could not sustain its argument that it stood to suffer irreparable harm, and also that the balance of convenience did not favour the granting of the interdict orders which it had applied for.

[35] There is another contention which deserves mention, being that Photi cannot be granted the interdict without challenging the Controller's decision. I struggle to understand this as I understand an appeal to be just that, a challenge to the substance of the impugned decision. I say this because the Minister, when sitting as appeal authority, may alter or set aside the decision on the merits. What Photi is expecting is that the decision will be overturned. This is a remedy established in terms of the legislation. Most certainly, it is necessary that the internal remedy in the form of appeal be embarked upon before the decision may be challenged in Court proceedings.[10]

Whether Photi has made out a case to be granted interim interdict

[36] All the participating respondents contend that interim interdict should not be granted as Photi has failed to satisfy the requirements. They come to that position from different vantage points. The strongest point of opposition was that the sale of petroleum products was already taking place at the development site, which was refuted on behalf of Photi.

[37] It is obvious why that point was made, and I deal with it even before I pay attention to the individual requirements that an applicant for interdictory relief must meet. Tokota J eruditely explained in *Bikitsha v Bikitsha and Others*[11] that an interdict is intended to prevent future conduct, not conduct that has passed. He did so echoing the tenor of Moseneke DCJ, who wrote in *National*

[10] Koyabe and Others v Minister for Home Affairs and Others (CCT 53/08) [2009] ZACC 23; 2009 (12) BCLR 1192 (CC) ; 2010 (4) SA 327 (CC) (25 August 2009).
[11] Bikitsha v Bikitsha and Others (2807/21) [2022] ZAECMHC 13 (17 May 2022).

Treasury and Others v Opposition Against Urban Tolling Alliance and Others[12] that:

> **"50. Under the *Setlogelo* test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation *pendente lite.*"**

[38] The principle cited is accurate but the dearth of evidence to back up the contention is palpable. The evidential burden is borne by the party alleging to provide sufficient proof that trading was already taking place. I am not so persuaded. In any case, this ground of opposition addresses only the prayer in paragraph 2.2 of the Notice of Motion. It does not concern the remaining prayers sought by Photi, and certainly would not dispose of the application.

Prima facie right

[39] The first consideration is whether Photi has shown a *prima facie* right which is protectable in law. It trades in petroleum products, and it wants to protect its business. The respondents contend that Photi does not have a *prima facie* right to seek interim relief as it had failed to raise an objection when information was published concerning the impending business development on 03 May 2024.

[40] Some time ago I came across an argument of a similar nature that was raised successfully in *Areva NP Incorporated in France v Eskom Holdings Soc*

[12] National Treasury and Others v Opposition to Urban Tolling Alliance and Others (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012).

Limited and Others[13] where the Court denied a party *locus standi* to challenge a decision, saying that:

> **"[39] The proposition implied in WEBSA's second defence is as bad as would be the proposition that, if one brother submitted a bid for a tender in his own right and lost it to a competitor, any of his brothers or sisters may institute legal proceedings in his or her own right to have the award of the tender reviewed and set aside just because the two siblings belong to the same family. The issue here is about separate legal entities. In my view, Eskom's decision to award the tender to Areva did not affect any of <u>WEBSA's rights or interests because WEBSA did not bid for the tender in its own right</u>." [Emphasis added]**

[41] In that judgment reference was made to an earlier authority in *Giant Concerts CC v Ronaldo Investments (Pty) Ltd and Others*[14] in which it was held that a litigant who approaches Court in its own interest must show that an impugned decision directly affects its rights or interests, potential or otherwise. Further that the interests must be real, not hypothetical nor academic.

[42] Earlier in this judgment I dealt with the question of who may institute an appeal: that being any person that is affected by a decision of the Controller. It is unthinkable how a party may be allowed to institute an appeal in terms of section 12A of the Act but be denied a right to complain before Court when another is acting in a manner that may render the appeal redundant. In *Gensinger* it was held, in respect of a similar point, that:

> **"[28] In the circumstances, since the appellants will be directly affected by the Controller's decision, they have the right to appeal to the Minister against the Controller's decision. It accordingly means that the appellants had standing to institute the application."**

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13 Areva NP Incorporated in France v Eskom Holdings Soc Limited and Others (CCT20/16, CCT24/16) [2016] ZACC 51; 2017 (6) BCLR 675 (CC); 2017 (6) SA 621 (CC) (21 December 2016).

14 Giant Concerts CC v Ronaldo Investments (Pty) Ltd and Others [2012] ZACC 28; 2013 (3) BCLR 251 (CC) para 41.

[43] Also, I am reminded of Mogoeng CJ once saying, in *City of Tshwane Metropolitan Municipality v Afriforum and Others,*[15] that the threshold for determining whether a party has established *prima facie* right is low and may even be open to doubt. He said:

> **"[50] Afriforum relies partly on section 31 of the Constitution as the *prima facie* right sought to be protected with the restraining order pending the finalisation of the review proceedings. Fortunately, the right is only required to be *prima facie*, though open to some doubt. It need not be clear. … How this right finds application to street names is not readily apparent to me. Happily, as I said, it is acceptable that the right may be open to some doubt. For this reason, I will assume without deciding that Afriforum has established a *prima facie* right."**

[44] On the facts of this case, especially in light of the fact that Photi filed an appeal to challenge the decision of the Controller, it has been demonstrated that it has established a *prima facie* right.

<u>Reasonable apprehension of irreparable harm</u>

[45] Photi contends that the introduction of new petrol station will divert customers and sales from itself. Further that it will suffer revenue losses that it could not recoup. It fears closure if the new petroleum station is not interdicted, and should it start operations.

[46] On behalf of Twin City and Cat Man it was contended that the harm which Photi alleged to apprehends was speculative. This is to say that the argument lacks details to fully inform the Court what the extent of the harm is that Photi reasonably anticipates will befall it. The contention went further to say that the

[15] City of Tshwane Metropolitan Municipality v Afriforum and Another (157/15) [2016] ZACC 19; 2016 (9) BCLR 1133 (CC); 2016 (6) SA 279 (CC) (21 July 2016).

construction of property poses no harm to Photi and therefore it has not demonstrated that it will suffer irreparable harm.

[47] There is a reason why construction is continuing. In my mind the only reason for construction to be happening is to commence business once the buildings are suitable to use. It would make no business sense for the developers to spend funds on construction absent an intention to use the properties for trading purposes. No reasonable businessperson would do that. Also, it was not merely in respect of the construction that the application was instituted. It covers also the question of trading which, quite conceivably, could have business implications for Photi once trading begins.

[48] In *Fuel Retailers Association and Another v Minister of Mineral Resources and Energy and Others*[16] the issue of harm was dealt with in the following manner by Poterill J:

> **"[35] On the one hand counsel for Sulnisa and Mayfield argued that the effect of prayer 6 is final, but on the other hand argued the balance of convenience requirement of an interlocutory interdict. I am satisfied that the applicants have a *prima facie* right, though open to some doubt. The harm herein is an irremediable breach of the second applicant's rights, as well as the rights of the retailers that Fuel Retailers are there to establish and maintain."**

[49] Sadly, I could not ascertain with specificity from the above judgment what were the rights that the second applicant sought to protect. But Poterill J was satisfied that there was a breach of the applicants' right, hence the outcome.

[50] In this case Photi seeks to protect its business rights, fearing that it stands to lose business and income due to the new petrol station. I was told during the hearing that Photi's complaint of potential loss of business is not sustainable as there are a number of petrol stations around the area where the

[16] Fuel Retailers' Association and Another v Minister of Mineral Resources and Energy and Others (2024-123240) [2024] ZAGPPHC 1267 (6 December 2024).

development is taking place. Also that between the development and Photi's, in Dalmada, existing petrol station there is another station which is operating.

[51] It may be so that there are other petrol stations around, numerous even. This case is not concerned with them, but rather the Dalmada station's development. I am not convinced that it can be said that Photi's business will not be affected at all, to whatever degree, because there are other existing stations. The law allows anyone who stands to be affected by a decision of the Controller in relation to the new development to appeal.

[52] All that the person has to do is to plead the fact and show on reasonable grounds that it stands to suffer irreparable harm if interdictory relief is not granted. Photi has done so. this, in my view, would entitle it to an interim interdict, provided, of course, that the remaining two requirements are also satisfied.

<u>Balance of convenience</u>

[53] The question here is how the applicant's interests will be affected if an interdict is not granted. Relatedly, how the respondents' interests will be affected if a temporary interdict is granted. The appeal which is pending before the Minister should be decided without any waste of time, all things being equal. It is in the interests of all the parties that a decision on the appeal is finalized expeditiously.

[54] The business entities, more so the first and second respondents, are the ones that can reasonably claim inconvenience if an interdict is granted. While I accept that the Municipality was cited as a party and is entitled to participate in the application, the position that it has adopted in its opposition of the application is unfathomable. It has concerned itself with irrelevant facts (such

as pre-zoning advertisement) rather than the impugned decision of the Controller – which is the subject of this litigation.

[55] Our law is that:[17]

> **"[In] an application for a temporary restraining order there will invariably be at least two competing interests. And those interests are inextricably linked to the harm a respondent is likely to suffer in the event of the order being granted and the harm likely to be suffered by an applicant if the relief sought is not granted."**

[56] In *Li Kui Yu* the court was called to prevent *"an offence of a serious kind, namely that of interfering with the administration of justice by taking an action which is bound to prevent the Court granting a remedy."*[18] That is similar to what Photi is seeking in this case.

[57] Photi acknowledges that Twin City and Cat Man may incur holding costs, however, that it faces permanent loss if the interdict is not granted. I agree that a temporary restraint on further progress with the construction works will not cause undue inconvenience on any of the respondents. Further that the respondents ought not to have proceeded with construction once the appeal was lodged. Respecting legal processes is imperative, and the respondents must live with the consequences of not doing so

[58] Internal appeals play an important role in the resolution of formal disputes, particularly disputes related to administrative decisions. They are not merely there to while away time or as boxes to tick. The Minister must decide the appeal and, if Photi fails, the respondents will proceed with the business

17 City of Tshwane Metropolitan Municipality v Afriforum and Another, supra at para [62].

18 Li Kui Yu v Superintendent of Labourers 1906 TS 181 at 194.

developments. The importance of internal appeal was considered by the court in *Bengwenyama*[19] in respect of which it held thus:

> **"[50] Allowing an internal appeal under section 96 of the Act in the circumstances of this case will enhance the autonomy of the administrative process and provide the possibility of immediate and cost-effective relief prior to aggrieved parties resorting to litigation. An internal appeal process will also allow the Minister to develop guidelines for the proper application of the Act in future decisions.**

[59] It will be recalled that the legislation that was under consideration in the case referred to above did not even provide for internal appeal. By contrast, the Act considered in this case has catered for it. The appeal process should therefore be respected even if there is some pressing exigency to see the businesses opening their doors for trade.

<u>Existence of alternative remedies</u>

[60] Despite the many attempts that were undertaken by Photi in seeking to have the Controller and the Minister comply with their statutory obligations, there has been no movement from either of these two functionaries. That is worrisome, and it leaves Photi in an invidious position. At the same time, the respondents are proceeding with construction regardless of the appeal.

[61] Before me it was argued that trading has already begun and therefore the court is no longer in a position to grant the interdict asked for. That smells like a plan concocted to delay decision-making to the point of no return. In situations such as the present court must intervene. And I do so.

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19 Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others (CCT 39/10) [2010] ZACC 26; 2011 (4) SA 113 (CC) ; 2011 (3) BCLR 229 (CC) (30 November 2010).

[62] The application succeeds. With that said, I see no reason why the costs of the litigation should not follow the result. Photi is entitled to be awarded costs and on scale B.

Order

[63] I have already heard that construction has already begun on the petrol station site. Thus, I can only interdict future work and not what has already been started.

[64] The following order is made:

[a] The first and second respondents, including any of its subcontractors, employees or business partners are hereby interdicted and restrained from continuing with the construction, installation, erection and the commissioning of the activities associated with the development of a fuel filling station at Portion 68 of East Ridge Ext 3 on Krugersburg 993 LS, cnr R71 Road (Grobler Street) and Roas A, East Ridge Ext 3, Polokwane.

[b] The first and second respondents, including any of its subcontractors, employees or business partners are hereby interdicted and restrained from commencing with the retailing of petroleum products at Portion 68 of East Ridge Ext 3 on Krugersburg 993 LS, cnr R71 Road (Grobler Street) and Roas A, East Ridge Ext 3, Polokwane.

[c] The orders in terms of paragraphs [a] and [b] above shall apply from the date of this order pending the final determination of the appeal

lodged by the applicant with the Minister of Mineral Resources and Energy.

[d] The first, second, fifth and sixth respondents are liable to pay the costs of this application, jointly and severally with any one paying and the others to be absolved; and the costs shall be calculated on party and party scale B.

[redacted]

M. Z. MAKOTI
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION

APPEARANCES:

APPLICANT	:	**ADV E VAN AS**
		VZLR ATTORNEYS
		C/O CORRIE NEL & KIE ATTORNEYS
		POLOKWANE
1ST & 2ND RESPONDENTS	:	**ADV M S MONENE**
		ADV M I TSHISIKULE
		MPHELA MOTIMELE ATTORNEYS
		POLOKWANE
5TH RESPONDENT	:	**ADV V MOYO**
		KGATLA INC. ATTORNEYS
		POLOKWANE
6TH RESPONDENT	:	**ADV F MARX**

DE BRUIN OBERHOLZER ATTORNEYS
POLOKWANE

DATE HEARD	**:**	**25 JULY 2025**
DATE DELIVERED	**:**	**19 JANUARY 2026**