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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-050686

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE **16 MARCH 2026**

SIGNATURE

In the matter between:

OLIFANTSFONTEIN RESOURCES FACILITY (PTY) LTD

Applicant

and

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

First Respondent

**GAUTENG DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT AND ENVIRONMENT**

Second Respondent

VALUMAX MIDRAND (PTY) LTD

Third Respondent

CEDRIC BISSET

Fourth Respondent

CHRISTIENE MORRIS

Fifth Respondent

DAVID MORRIS

Sixth Respondent

PAUL CLAASSEN obo GREAT MIDSTREAM ESTATE AND MR STEVEN PRETORIUS	Seventh Respondent
MIGUEL ANTONIO BENTO	Eighth Respondent
KELLY ZA	Ninth Respondent
HELGARDT SLABBERT obo VALUMAX MIDRAND (PTY) LTD	Tenth Respondent
DAVID ALLANBY	Eleventh Respondent
FEBVEST CLOSE CORPORATION	Twelfth Respondent
DAVID ALLANBY obo GLEN AUSTIN CONSERVANCY	Thirteenth Respondent
SHARON TIEPELT	Fourteenth Respondent
KATHERINE BEZUIDENHOUT	Fifteenth Respondent
FRANCOIS BEZUIDENHOUT	Sixteenth Respondent
THEODOR WILHELM VAN DEN HEEVER N.O.	Seventeenth Respondent
NINA DE JONG	Eighteenth Respondent
ALAN FOK	Nineteenth Respondent
ULI BAHMANN	Twentieth Respondent
ANKA BAHMANN	Twenty-first Respondent
DIRK BAHMANN	Twenty-second Respondent
JOHAN DAVID DE JONG	Twenty-third Respondent
DEREK SMART	Twenty-fourth Respondent
ANTIONETTE DE JONG	Twenty-fifth Respondent

MARIKA SILLO	Twenty-sixth Respondent
GLEN AUSTIN RESIDENTS ASSOCIATION	Twenty-Seventh Respondent
JULIA GOODMAN obo RANDJESFONTEIN CONSERVANCY	Twenty-eighth Respondent
PAUL CLAASSEN	Twenty-ninth Respondent
MICHAEL WRAY MARSHALL	Thirtieth Respondent
HESTER STEVENSON	Thirty-first Respondent
MARK BRIGHT	Thirty-second Respondent
LORAN BRIGHT	Thirty-third Respondent
CANDICE CARTMELL	Thirty-fourth Respondent
THEO HEYMANS	Thirty-fifth Respondent

This Judgment is handed down electronically by circulation to the Applicant's Legal Representatives and the Respondents by email, publication on Case Lines. The date for the handing down is deemed 16 March 2026.

JUDGMENT

WANLESS J

Introduction

- [1] At the heart of this dispute is the validity and operation of a waste management licence ("WML") for a landfill facility in the Midrand area. The Applicant seeks urgent interim relief pending the finalisation of a review application seeking to

set aside an administrative appeal decision that overturned its licence amendment.

- [2] The parties are cited as above. For the sake of clarity and convenience, this judgment will adopt the nomenclature used during the hearing. The Applicant is Olifantsfontein Resources Facility (Pty) Ltd ("*ORF*" or "*the Applicant*"). It is the holder of the disputed amended WML and the developer of the landfill site in question. The First Respondent is the MEC: Gauteng Department of Agriculture, Rural Development and Environment ("*the MEC*") and the Second Respondent is the Gauteng Department of Agriculture, Rural Development and Environment ("*GDARD*"). Both the First and Second Respondents, represented by the State Attorney, are the licensing and appeal authorities. Critically, they did not oppose the relief sought by the Applicant and, in correspondence filed of record, conceded that the Applicant's appeal submissions were not considered, agreeing to a remittal of the appeal.
- [3] The Third Respondent is Valumax Midrand (Pty) Ltd ("*Valumax*"), a property developer and a key opposing party in the application. The Seventh Respondent is Paul Claassen on behalf of the Greater Midstream Forum ("*the GMF*"), a voluntary association representing thousands of residents and developers. The Tenth and Twenty-Ninth Respondents are aligned with this group. Collectively, this group is referred to as "*the Claassen Respondents*". Valumax and the Claassen Respondents are the applicants in the counter-application.
- [4] The remaining opposing respondents, which include the Fourth, Fifth, Sixth, Eighth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Twentieth, Twenty-First, Twenty-Second, Twenty-Fourth, Twenty-Seventh, Twenty-Eighth and Thirty-Fifth Respondents are a group comprised of individual residents and community/conservancy organisations in the broader Glen Austin and Randjesfontein areas. They are collectively referred to as "*the Allanby Respondents*", after Mr David Allanby, the deponent to their answering affidavit. The Ninth, Sixteenth to Nineteenth, Twenty-Third, Twenty-Fifth, Twenty-Sixth

and Thirtieth to Thirty-Fourth Respondents, are cited as such but did not participate in the proceedings.

- [5] The Applicant instituted the application as an urgent application in terms of subrule 6(12) of the Uniform Rules of Court on 6 December 2024 and seeks, *inter alia*, the following relief pending the final determination of its application to review and set aside the MEC's decision of 15 September 2022:

"That the applicant, pending the final determination of the application to review and set aside the decision of the first respondent, upholding the appeal(s) submitted by the third to thirty fifth respondents in relation to the Part 2 Amended Waste Management License, Ref: G[...] granted on 24 March 2022 by the second respondent to the applicant, ("the amended license") is authorised to conduct and perform all activities, exercise all rights and carry out all obligations, permitted in terms of the amended license."

- [6] The Applicant initially sought costs only against the First and Second Respondents but, during argument, amended this stance to seek costs against any party opposing the application, *alternatively*, that costs be costs in the review.
- [7] The Claassen Respondents oppose the main application and, on 5 February 2025, instituted a counter-application seeking, in essence, to interdict the Applicant and the First and Second Respondents from giving effect to an agreement to remit the appeal back to the MEC for reconsideration pending the finalisation of the review. The matter was initially enrolled in the urgent court on 11 February 2025. By agreement between the parties, Adams J granted an order removing the matter from the urgent roll and placing it on the special allocation roll for a three-day hearing. Importantly, the order reserved all parties' rights on the issue of urgency and interdicted the First and Second Respondents from remitting the appeal decision pending the final determination of the counter-application.
- [8] The matter was heard by this Court as a special motion on 20 and 21 October 2025. At the conclusion of argument and by agreement the matter was postponed *sine die* for judgment. Further, the parties were granted leave to file

supplementary heads of argument, primarily in respect of the issue of the Applicant's *locus standi*, which was raised at the hearing, in a “*supplementary note*”, by the Claassen Respondents. The Applicant filed its supplementary Heads of Argument on 24 October 2025 and the Claassen and Allanby Respondents filed their responses on 30 and 31 October 2025, respectively. Judgment was thereafter reserved.

Background

Factual History

[9] The factual matrix of this dispute is extensive and spans over a decade. The following summary provides the essential context.

- 9.1 The property on which the landfill site is situated is owned by Summer Symphony Properties 264 (Pty) Ltd (“*Summer Symphony*”), a company related to but distinct from the Applicant. Summer Symphony's directors include one Willebordus Martinus Strydom, the deponent to the Applicant's founding and replying affidavits.
- 9.2 The genesis of the project was in 2011 and the initial application for a WML was for a general waste landfill site. On 28 October 2014, GDARD granted Summer Symphony a partial WML for the site, authorising the disposal of building and demolition waste (a Class D landfill). The reasons for the partial grant included the existence of another general waste facility (*the FG Landfill site, operated by Interwaste*) in the vicinity and the need for further assessments.
- 9.3 The licence was subsequently amended in March and September 2015 to, *inter alia*, correct site co-ordinates and adjust the required buffer zone from 800m to 400m. Critically, the licence was renewed on 9 October 2019, with an erratum issued on 3 December 2019. These renewals maintained the authorisation for building and demolition waste

only. The licences contained standard conditions, including requirements for rezoning, commencement of activity within two years, and the need for a water use licence (“WUL”).

- 9.4 On 24 March 2022, GDARD granted a Part 2 amendment to the WML (Ref: G[...]). This “*amended licence*” was granted to the Applicant, namely Olifantsfontein Resources Facility (Pty) Ltd. It changed the landfill classification from Class D to Class B, thereby authorising the disposal of general domestic waste in addition to building and demolition waste. Also, It increased the buffer zone to 800m. The Applicant had, in the interim, expended substantial capital in developing the site, constructing infrastructure including landfill cells and a leachate dam (*essential for domestic waste*).
- 9.5 The granting of the amended licence was met with approximately 44 appeals from various parties, including Valumax; the GMF and individual residents. The Applicant and GDARD filed comprehensive responses to the grounds of appeal with the MEC.
- 9.6 On 15 September 2022 the MEC upheld the appeals and set aside GDARD's decision to grant the amended licence. The MEC's decision was based, *inter alia*, on findings that the Part 2 amendment process was incorrect for the inclusion of a listed activity; that the site had not been rezoned and that the buffer zone was unenforceable in light of existing residential developments. Crucially, the Applicant was not formally notified of this decision.
- 9.7 The Applicant only became aware of the decision through indirect means. It made numerous attempts to obtain the decision and the record from GDARD, to no avail. On 4 October 2023, the Applicant obtained a preservation order (*an Anton Piller-type order*) from this Court to secure the record of proceedings. The record was finally obtained in early 2024.
- 9.8 On 8 May 2024, the Applicant instituted a review application (Part B) against the MEC's decision. Due to the multitude of respondents and a

lack of co-operation in accepting service the Applicant was compelled to bring an application for substituted service, which was granted on 14 October 2024. The present urgent application for interim relief (Part A) was instituted on 6 December 2024.

Procedural History

[10] The matter was set down for hearing in the urgent court on 11 February 2025. On that day, Adams J made an order by consent. The order:

- 10.1 Enrolled the counter-application of the Claassen Respondents in terms of subrule 6(12), without pronouncing on its urgency, with all rights on urgency reserved.
- 10.2 Interdicted and restrained the First and Second Respondents from remitting the MEC's appeal decision back to the MEC for reconsideration, pending the final determination of the counter-application.
- 10.3 Removed both the main urgent application and the counter-application from the urgent roll and placed them on the special allocation roll.
- 10.4 Reserved the costs of all parties.

[11] The matter was allocated for hearing before this Court, as a Special Motion, on 20 to 22 October 2025. Argument was heard over two days, namely 20 and 21 October 2025. At the end of the hearing, by agreement and to ensure comprehensive adjudication of all the issues, the following order was made:

- 11.1 The matter was postponed *sine die* and judgment reserved.
- 11.2 The Applicant was granted leave to file supplementary Heads of Argument in response to the supplementary note filed by the Claassen Respondents on the issue of *locus standi*.

- 11.3 The Claassen and Allanby Respondents were granted leave to file further Heads of Argument in response.
- 11.4 All parties duly filed their supplementary submissions by the deadlines of 24, 30 and 31 October 2025.

The facts

[12] The following facts are either common cause or cannot be seriously disputed by any of the parties, namely:

- 12.1 The Applicant, ORF, was registered as a company on 13 May 2016. Summer Symphony Properties 264 CC was a separate entity that was converted into Summer Symphony Properties 264 (Pty) Ltd on 7 August 2020. The Applicant is *not* the result of a conversion of Summer Symphony CC.
- 12.2 A series of WMLs were granted, initially to Summer Symphony, culminating in the amended licence of 24 March 2022, which was granted in the name of the Applicant, authorising the disposal of domestic waste. Multiple appeals were lodged against the granting of the amended licence. The MEC upheld these appeals and set aside the amended licence on 15 September 2022.
- 12.3 The Applicant was not formally notified of this decision by the MEC or GDARD. Thereafter, the Applicant, after an Anton Piller type application, instituted a review application against the MEC's decision, which is pending.
- 12.4 The Applicant has never conducted waste management activities under the amended licence. It has, however, incurred significant expenditure in developing the site, including constructing the infrastructure required for the disposal of domestic waste (*such as the leachate dam*).

- 12.5 The First and Second Respondents (*the MEC and GDARD*), in correspondence dated 31 January 2025, proposed that the matter be resolved by remitting it back to the MEC for reconsideration, taking into account the Applicant's representations. This proposal constitutes a concession that the Applicant's submissions were not considered in the initial appeal process.
- 12.6 The area surrounding the landfill site is plagued by extensive and ongoing illegal dumping, creating a pressing environmental and public health crisis.

Issues

[13] This Court is called upon to decide the following issues in respect of the main application and the counter-application.

The application

[14] These issues are:

- 14.1 Whether the matter is urgent or, as argued by the Respondents, constitutes an abuse of process.
- 14.2 Whether the Applicant has the necessary *locus standi* to bring this application.
- 14.3 Whether the relief sought by the Applicant is competent in law, particularly in light of the doctrine of separation of powers and the provisions of PAJA.
- 14.4 Whether the Applicant has met the well-established requirements for an interim interdict, namely:
- (a) a *prima facie* right, even if open to some doubt;
 - (b) a well-grounded apprehension of irreparable harm if the interim relief is not granted;

- (c) that the balance of convenience favours the granting of the relief;
- (d) that the Applicant has no other satisfactory remedy.

14.5 An appropriate order as to costs.

The counter-application

[15] The issues are:

- 15.1 Whether the Claassen Respondents have made out a case for the interdictory relief they seek.
- 15.2 An appropriate order as to costs.

The respective cases of the parties in the application

Applicant's case

[16] The Applicant's case is founded on procedural unfairness. It argues that the MEC's decision to uphold the appeals and set aside its amended WML was fatally flawed because its detailed submissions and those of GDARD, were never placed before or considered by the MEC. This, it submits, is a clear violation of the *audi alteram partem* principle and a breach of its right to just administrative action as enshrined in section 33 of the Constitution and the *Promotion of Administrative Justice Act 3 of 2000* ("PAJA").

[17] In support of its case, the Applicant relies heavily on correspondence from the State Attorney dated 31 January 2025, which proposed remitting the appeal to the MEC for reconsideration, "*which will take into account the statement by the Applicant*". The Applicant argues that this is an unequivocal admission by the

decision-maker itself that its submissions were overlooked, rendering the review a foregone conclusion on this ground alone.

[18] On the requirement of a *prima facie* right the Applicant points to the amended licence of 24 March 2022, which bears its name, as *prima facie* proof of its entitlement to conduct the activities in question. It submits that the MEC's procedurally flawed decision to deprive it of that right is precisely the right it seeks to protect pending the review.

[19] Regarding irreparable harm the Applicant details its dire financial position. It has incurred substantial accumulated losses and is entirely dependent on third-party funding to meet its monthly operating costs. It argues that further delay will not only exacerbate these losses but also allow Valumax to continue developing residential units within the agreed buffer zone, thereby potentially sterilising the landfill site and rendering any ultimate success in the review moot. It further points to the public interest, citing the ongoing environmental degradation caused by illegal dumping in the area, which its facility is designed to alleviate.

[20] In respect of the balance of convenience the Applicant argues that the Respondents, who are located many kilometres from the site (*the closest being 4.3km away*), will suffer no direct prejudice if the interim relief is granted. In contrast, its own potential prejudice is severe. It submits that its operations are subject to strict regulatory oversight and that any failure to comply with the licence conditions would be subject to enforcement action by GDARD, mitigating any alleged risk to the environment or residents. The public interest in having a lawful, managed waste disposal facility to combat the illegal dumping crisis, it submits, strongly favours the granting of the interim relief sought.

[21] Finally, the Applicant contends that there is no other satisfactory remedy. The review process is pending and will take time to finalise. In the interim, it faces financial ruin and the erosion of its rights through the ongoing encroachment of the buffer zone. The relief sought is precisely tailored to preserve the *status*

quo ante (the situation before the unlawful appeal decision) pending the final determination of its rights.

The Claassen Respondents' case

- [22] The Claassen Respondents (*primarily Valumax and the GMF*) oppose the application on several broad fronts. They argue that the application is an abuse of process due to the Applicant's inordinate delay in launching it. They point to the fact that the MEC's decision was made in September 2022 and the urgent application was only launched in December 2024, nearly two years and three months later. They submit that any urgency is self-created.
- [23] The central pillar of their opposition is the Applicant's alleged lack of *locus standi*. They argue, based on CIPC searches, that the Applicant is a separate entity from Summer Symphony, the original licence holder and that there is no evidence that the licence was lawfully transferred to the Applicant in terms of section 52 of the *National Environmental Management: Waste Act 59 of 2008* ("*NEMWA*"). They contend that the amendment to the licence, which changed the holder's name, was merely an administrative amendment under section 54, not a transfer, and that the Applicant therefore never became the holder of the licence.
- [24] It was further submitted that the relief sought is incompetent. Citing the decision of the Constitutional Court In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* ("*OUTA*"),¹ and the doctrine of separation of powers, it is submitted that this Court cannot grant an order authorising an activity that requires a licence when that licence has been lawfully set aside by the competent authority. They also rely on the judgment of Mooki J in *Alpine House CC v Gauteng Provincial Liquor Board*,² for the proposition that such relief is only competent in review proceedings themselves. They also argue that the amended licence is incapable of implementation due to the presence of

¹ 2012 (6) SA 223 (CC).

² (064786/2024) [2024] ZAGPPHC 685.

houses within the required buffer zone (which, they argue, should be 1000m under the guidelines) and because the site has not been rezoned for domestic waste.

[25] On the merits of the interim interdict, they submit that the Applicant has failed to establish a *prima facie* right, as it has no licence. There is no irreparable harm, as the Applicant has never conducted the activities and has survived for years on sand mining and donations. The balance of convenience, they argue, overwhelmingly favours protecting the environment and the thousands of residents living near the site from the potential harm of a landfill, rather than protecting the Applicant's commercial interests.

[26] The Claassen Respondents also raise non-joinder, submitting that Summer Symphony (*the landowner*); the Ekurhuleni Metropolitan Municipality; the Department of Human Settlements and the Minister of Water Affairs, all have a direct and substantial interest in the matter and should have been joined.

The Allanby Respondents' case

[27] The Allanby Respondents (*the residents and conservancies*) support the opposition of the Claassen Respondents but place a greater emphasis on the environmental and health impacts. They submit that the Applicant's professed urgency is baseless, given the delay and that the application is an abuse of process designed to circumvent the statutory appeal and review mechanisms.

[28] They also take the point regarding the absence of a Water Use Licence. In this regard, these respondents point to the Environmental Impact Report and the conditions of the renewed licence, which state that a water use licence must be applied for. While a water use licence was granted, it was granted to "Summer Symphony Properties CC". It was submitted that, as the Applicant is a different entity, it does not hold a valid water use licence, making any attempt to commence operations immediately unlawful.

[29] The Allanby Respondents, in respect of the essential requirements for an interim interdict, focus on the lack of a *prima facie* right (*given the lack of a*

water use licence and the zoning restrictions) and the overwhelming prejudice to the environment and public health, which they submit outweigh the Applicant's financial concerns.

The respective cases of the parties in the counter- application

The Claassen Respondents' case

[30] The counter-application was triggered by the correspondence between the Applicant's attorneys and the State Attorney (*acting on behalf of the MEC and GDARD*) in early February 2025, in which it was proposed that the matter be resolved by remitting the appeal back to the MEC for reconsideration.

[31] The Claassen Respondents argue that such a remittal would be unlawful. They submit that the MEC is *functus officio* and that his decision of 15 September 2022 stands until it is set aside by a court of law on review. A mere agreement between the Applicant and the MEC/GDARD cannot circumvent the pending review proceedings or the rights of the other interested and affected parties who were not party to that agreement. They therefore submit that they have a clear right to have the review process run its course lawfully.

[32] It was further submitted that they will suffer irreparable harm if the appeal is remitted without due process, as their hard-won appeal victory would be effectively nullified without their participation. The balance of convenience, they submit, favours maintaining the *status quo* pending the review.

The Applicant's case

[33] The Applicant opposes the counter-application. It argues that the proposed remittal was simply a sensible and pragmatic way to resolve the core procedural irregularity. Further, it points out that the First and Second

Respondents have conceded that its submissions were not considered and a remittal would cure this defect efficiently.

- [34] It submits that the counter-application is legally unsustainable, particularly if the Claassen Respondents rely on the same strict interpretation of PAJA that they advocate in the main application. If, as they argue, interim relief can only be granted by the review court, then their counter-application, which seeks to interdict the executive from acting, must meet the stringent *OUTA* test of exceptional circumstances, which the counter-application has failed to do.

The Allanby Respondents' case

- [35] The Allanby Respondents supported the counter-application, aligning themselves with the submissions of the Claassen Respondents.

The law

- [36] The legal framework governing this matter is multifaceted, encompassing as it does, administrative law, environmental law and the common law principles of interim relief.

The Constitutional and Statutory Framework

- [37] Section 33 of the Constitution guarantees everyone the right to administrative action that is lawful, reasonable and procedurally fair. This right is given effect to by PAJA³

³ Promotion of Administrative Justice Act 3 of 2000 (hereafter referred to as "PAJA").

[38] Subsection 6(2) of PAJA sets out the grounds upon which a court may review administrative action, including that it was procedurally unfair,⁴ or that relevant considerations were not considered⁵

[39] Section 8 of PAJA empowers a court to grant just and equitable relief in review proceedings. Critically for this matter, subsection 8(1)(e) of PAJA provides that this may include "*an interdict or other temporary relief*".

[40] The relevant environmental legislation is the *National Environmental Management: Waste Act 59 of 2008* ("NEMWA"). Subsection 20(b) of NEMWA prohibits the commencement or conducting of a waste management activity without a licence. Subsection 67(1)(a) of NEMWA criminalises such conduct. Sections 49 to 55 of NEMWA govern the granting, content, variation and transfer of WMLs.

The principles pertaining to interim relief

[41] The requirements for an interim interdict are well-established in our law, having first been enunciated in *Setlogelo v Setlogelo*.⁶ An applicant must establish:

41.1 a *prima facie* right, even if open to some doubt;

41.2 a well-grounded apprehension of irreparable harm if the interim relief is not granted and the applicant ultimately succeeds in establishing its right;

41.3 that the balance of convenience favours the granting of interim relief; and

41.4 that the applicant has no other satisfactory remedy.

[42] In *Webster v Mitchell*,⁷ the court refined the correct approach in establishing whether to grant interim relief, stating that the court must take the facts as set out by the applicant, together with any facts set out by the respondent which

⁴ Subsection 6(2)(c) of PAJA Act 3 of 2000.

⁵ Subsection 6(2)(e)(iii) of PAJA Act 3 of 2000.

⁶ 1914 AD 221.

⁷ 1948 (1) SA 1186 (W).

the applicant cannot dispute, and consider whether, having regard to the inherent probabilities, the applicant could obtain final relief at trial. If the respondent's version throws serious doubt on the applicant's case, the applicant should not succeed. The Constitutional Court confirmed this test in *OUTA*.

[43] *OUTA* is of particular relevance. The Constitutional Court held that when an interim interdict is sought against the exercise of public power the court must carefully consider the potential "*separation of powers harm*". An interdict which intrudes into the exclusive terrain of the executive may only be granted in the clearest of cases, after a careful assessment of its impact.

Interim relief under PAJA

[44] Subsection 8(1)(e) of PAJA explicitly empowers a court to grant temporary relief in proceedings for judicial review. In *Welgevonden Lodge No 57 (Pty) Ltd v Limpopo Provincial Liquor Board*,⁸ Makgoba JP confirmed that this power includes the authority to grant relief to avoid injustice and hardship pending a review and that such relief has been granted for time immemorial, particularly in liquor licensing matters.

[45] In *National Gambling Board v Premier, KwaZulu-Natal and Others*,⁹ the Constitutional Court clarified that an application for an interim interdict is not the same as the main dispute. A court hearing such an application can determine whether a *prima facie* right to the relief sought in the court with jurisdiction has been made out.

[46] This Court is not persuaded by the reasoning in *Alpine House CC v Gauteng Provincial Liquor Board*,¹⁰ to the extent that it suggests that relief under subsection 8(1)(e) of PAJA can only be granted by the court hearing the final review. Such a narrow interpretation would defeat the very purpose of interim

⁸ 2021 JDR 2260 (LP)

⁹ 2002 (2) SA 715 (CC)

¹⁰ (064786/2024) [2024] ZAGPPHC 685.

relief, which is to preserve the *status quo* or prevent irreparable harm *pendente lite*. A litigant cannot be expected to wait for the review court to sit before seeking protection against imminent and irreversible prejudice. The more purposive interpretation, which aligns with the Constitutional Court's guidance in *National Gambling Board*, is that an applicant must establish a *prima facie* right to the relief which is to be sought in the court having jurisdiction and that the court hearing the interim application has the power to grant that temporary relief.

Locus Standi and the role of pleadings

[47] It is trite that an applicant must make out its case in its founding affidavit.¹¹ The facts establishing the applicant's right to apply for relief, including its locus standi, must appear from the applicant's founding affidavit. An applicant cannot make out its case in reply.

[48] Where a respondent raises a special defence going beyond a bare denial the evidential burden to prove that defence rests on the respondent.¹² However, in determining a dispute of fact in motion proceedings for final relief, the court applies the *Plascon-Evans* rule, considering the facts stated by the respondent together with the admitted facts in the applicant's affidavits. This applies irrespective of where the onus lies.¹³

Discussion

The application

¹¹ *Shapiro v SA Recording Rights Association Ltd* 2008 (4) SA 145 (W).

¹² *Mobil Oil Southern Africa (Pty) Ltd v Mechin* 1965 (2) SA 706 (A).

¹³ *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) at paragraph [4].

Locus standi

[49] The attack on the Applicant's *locus standi* was the focal point of the Claassen Respondents' supplementary submissions. These Respondents correctly pointed out that the averment by the Applicant in paragraph 6 of the Applicant's Founding Affidavit, namely that the Applicant was converted from Summer Symphony CC, was factually incorrect. This was conceded by the Applicant's Counsel during argument.

[50] However, this concession does not end the enquiry. The question is whether the Applicant, on its founding papers, established that it is the holder of the amended WML and thus has standing to seek relief to protect the rights flowing from it. This Court, for the reasons set out hereunder, finds that it did.

[51] The Founding Affidavit, at paragraphs 49 and 50, sets out a detailed history of the licences. Critically, it is alleged that on 24 March 2022, "*GDARD granted ORF a Part 2 Amended Waste Management License...*". The licence is attached to the affidavit as an annexure thereto. Under the heading "*Holder of Licence*" the name "Olifantsfontein Resource Facility" appears. However, in reaching the decision to grant the licence, under the "*Amendment*" section, it is stated, *inter alia*, that "*The name of the holder of the licence stated throughout the Waste Management Licence, i.e. Summer Symphony Properties 264, is hereby amended to read as Olifantsfontein Resource Facility throughout the Waste Management Licence.*"

[52] In the premises, the Founding Affidavit places before this Court a *prima facie* case that the Applicant is the entity to whom the amended licence was granted. The licence document itself is the best evidence of this fact, and the argument of the Claassens Respondents that this was merely an amendment to the name of the licence holder and not a transfer to a separate legal entity is not the correct conclusion to reach. Whilst it is correct that the document does not state "*Summer Symphony is now trading as ORF*", it does state that the holder's name has been amended to read "Olifantsfontein Resource Facility".

Prima facie, this must mean that the entity holding the licence is now the entity named “*Olifantsfontein Resource Facility*”, which is the Applicant.

- [53] The Claassen Respondents, in raising this point, went beyond a bare denial. They attached CIPC searches to demonstrate the separate corporate existence of Summer Symphony CC, Summer Symphony (Pty) Ltd and the Applicant. This constituted a special defence, placing an evidential burden on them. However, they did not provide any evidence from the licensing authority, GDARD, to support their interpretation that the change was merely a name change and not an amendment to reflect a new holder.
- [54] The *locus standi* argument is also tied to the MEC's decision. Even if the Applicant was not the holder before the MEC's decision, the decision itself had the effect of setting aside a licence which, on the face of the document itself, was granted to the Applicant. The Applicant, as the entity directly affected by that administrative action, clearly has standing to challenge it on review and to seek ancillary interim relief.
- [55] This view is fortified by the conduct of the First and Second Respondents, who have dealt with the Applicant as the affected party throughout this litigation and have even proposed a remittal of the appeal. In the premises, the attack on the Applicant's *locus standi* must fail. The Applicant has established, on a *prima facie* basis, that it is the holder of the amended WML and has standing to bring this application.

Urgency and alleged abuse of process

- [56] The application was instituted as an urgent application in December 2024, more than two years after the MEC's decision. On the face of it, this is a significant delay. However, a holistic examination of the chronology of this matter reveals a different picture.

- [57] The Applicant was not formally notified of the MEC's decision. It spent a considerable period attempting to engage with GDARD to obtain the decision and the record. When these efforts failed, it was compelled to bring an Anton Pillar type application in October 2023, a year after the decision. This was a necessary step to uncover the grounds of the decision and the process followed. The record was only obtained in early 2024.
- [58] The review application was launched in May 2024. The Applicant then faced what has been described as "*the Herculean task*" of serving the voluminous application on no less than 35 respondents, many of whom were uncooperative, necessitating a substituted service application in October 2024. The present urgent application was launched immediately thereafter, in December 2024.
- [59] The Claassen Respondents argued that the Applicant should have launched a Part A application for interim relief together with its review application in May 2024. Whilst this may have been "*procedurally*" more elegant, it does not render the subsequent application an abuse of process. The Applicant's primary focus was on securing the review. Once the review was instituted and the difficulties in serving the respondents became apparent, it turned its attention to the interim relief. The delay is largely attributable to procedural obstacles in its path, many of which were imposed by the respondents themselves.
- [60] Furthermore, the Respondents have consistently stated that they do not seek a striking out for lack of urgency, but rather a dismissal of the application on its merits, with the delay forming part of the "*abuse of process*" argument. If the matter is not urgent, the appropriate remedy is to strike it from the roll, not to dismiss it. The Claassen Respondents' stance indicates the recognition that the substantive issues must be decided. The delay, while lengthy, is not so inordinate and unexplained as to constitute an abuse of process, especially given the conduct of the parties and the fundamental unfairness at the heart of the Applicant's case. The urgency is real and the Applicant faces financial ruin and the potential sterilisation of its rights through ongoing development in the

buffer zone. In the premises, and insofar as it is necessary, this judgment will include an order in respect of urgency.

The competency of the relief

[61] The Claassen Respondents submit that the relief sought is incompetent because it would require this Court to step into the shoes of the executive and grant a right to operate without a licence, contrary to the provisions of section 20 of NEMWA. This argument is misplaced.

[62] The Applicant is not asking this Court to issue a licence. It is asking this Court, pending the final determination of the review, to be allowed to operate under a licence that was *already* granted by the competent authority (GDARD) but was subsequently set aside in an appeal process that, on the First and Second Respondents' own admission, was procedurally flawed.

[63] This distinction is crucial. The application is not an application for a *de novo* licence. It is an application to preserve rights that were, *prima facie*, unlawfully taken away. The decisions relied upon by the Claassen Respondents, such as *Interwaste* and *OUTA*, are distinguishable. In *Interwaste*, the licence had expired by effluxion of time and no licence was in existence. Here, the amended licence did exist and was operative for a period before being set aside. In *OUTA*, the court was concerned with an interdict that would halt the exercise of executive power pending a final decision. Here, the executive power (*GDARD's decision to grant the licence*) has already been exercised. The MEC's subsequent appeal decision is the subject of the review.

[64] The relief sought is precisely the type of temporary relief contemplated by subsection 8(1)(e) of PAJA. As held in *Welgevonden Lodge*, our courts have an inherent power to grant *pendente lite* relief to avoid injustice. The Applicant has a pending review. It seeks to avoid the injustice of being forced into insolvency or having its rights permanently eroded while it waits for that review to be determined. The order, if granted, will be subject to all the conditions of the

amended licence, including the buffer zone; rezoning requirements and the need for a water use licence. The Applicant would be obliged to comply with these and GDARD would remain the monitoring and enforcement authority. This does not intrude into the executive's terrain in a manner warned against in *OUTA*;. It amounts to a temporary preservation of the disputed *status quo*.

Alleged non-joinder

[65] As set out earlier in this judgment,¹⁴ the Claassen Respondents also raise non-joinder, submitting that Summer Symphony (the landowner); the Ekurhuleni Metropolitan Municipality; the Department of Human Settlements and the Minister of Water Affairs, all have a direct and substantial interest in the matter and should have been joined.

[66] It is common cause that the property on which the landfill site is situated is owned by Summer Symphony. Further, it cannot be disputed that Summer Symphony is a company related to but distinct from the Applicant. Summer Symphony's directors include Willebordus Martinus Strydom, the deponent to the Applicant's founding and replying affidavits.¹⁵

[67] On that basis, it is difficult to understand the basis upon which it is contended that Summer Symphony has a direct and substantial interest in these proceedings such that its non-joinder should be fatal to the application. Summer Symphony is the owner of the land but it is not the holder of the amended licence. The rights that the Applicant seeks to protect pending the review are the rights flowing from the amended licence, which are held by the Applicant, not the landowner. While Summer Symphony may have a commercial interest in the success of the Applicant's operations (*as a related entity*), this does not constitute a direct and substantial legal interest in the subject matter of the litigation. The relief sought does not purport to bind Summer Symphony or affect its rights of ownership over the property. The

¹⁴ Paragraph [31] *ibid*.

¹⁵ Subparagraph 9.1 *ibid*.

landowner's interests are, at best, indirect and consequential. Non-joinder is only fatal where a party has a direct and substantial interest in the issues forming the subject matter of the litigation, being a legal interest which may be affected prejudicially by the judgment. That is not the case here.

[68] Turning to the Ekurhuleni Metropolitan Municipality, the basis for its alleged necessary joinder is said to be its zoning authority over the property. The Applicant accepts that the property requires rezoning for the activities authorised under the amended licence. Indeed, this is a condition of the licence itself. However, the interim relief sought by the Applicant does not seek an order from this Court authorising any departure from the applicable zoning scheme. The order, if granted, would simply permit the Applicant to operate under the amended licence pending the finalisation of the review, subject to all conditions contained therein, including the requirement to obtain the necessary rezoning. The Municipality's powers as zoning authority are not threatened or usurped by this application. Should the Applicant fail to obtain the required rezoning, it will be in breach of the licence conditions and subject to enforcement action. The Municipality remains free to exercise its statutory powers in relation to any application for rezoning that may be lodged. Its interests are therefore not directly affected by the interim relief sought.

[69] The Department of Human Settlements is said to have an interest by virtue of housing developments in the vicinity. This interest is, at best, indirect. The Department is not the developer of any of the properties in question, nor does it hold any rights or bear any obligations that would be directly affected by an order authorising the Applicant to operate under the amended licence pending the review. The concerns of residents regarding the impact of the landfill on their properties and living conditions are adequately represented by the numerous resident respondents who are already party to these proceedings.

[70] The Minister of Water Affairs is said to have an interest because of the water use licence issue. The amended licence contains a condition requiring the holder to obtain a water use licence. The Applicant has placed before this Court a water use licence, albeit one issued in the name of "Summer Symphony Properties CC". It may well be that this water use licence requires amendment

or to be re-issued in the Applicant's name. However, the interim relief sought does not purport to validate any non-compliance with water use authorisations. The order proposed by the Applicant expressly provides that the authorisation to operate is subject to all the terms and conditions contained in the amended licence and the Applicant remains obliged to comply with all applicable legislative requirements, including those relating to water use. The Minister's powers to enforce compliance with water use legislation are in no way curtailed by this order. The Minister, if so advised, remains entitled to take any enforcement action should the Applicant operate without a valid water use licence. The Minister's interests are therefore not directly and substantially affected by the interim relief.

[71] In any event, it is well established that a court hearing an application for interim relief is not required to insist on the joinder of every conceivably interested party to the same extent as might be required in proceedings for final relief. The purpose of interim relief is to preserve the position pending the final determination of rights. Provided that the order does not finally determine the rights of non-joined parties or prejudicially affect them, their absence is not fatal. In the present case, the order sought is temporary and preserves the rights of all parties to be fully heard in the review proceedings. The entities whose joinder is sought will suffer no prejudice as they remain entitled to participate in the review application itself, where their interests, if any, can be fully ventilated.

[72] In the premises, the objection based on non-joinder cannot be sustained and is dismissed.

The requirements for an interim interdict

Prima facie right

[73] The Applicant has established a *prima facie* right, even if open to some doubt. Its right is twofold. First, it has a right to the amended WML, which was granted by GDARD and upon which it relied to make substantial investments. The document bears its name. Second (*and more importantly for the purpose of the present relief sought*), it has a clear right to just administrative action. The concession by the MEC and GDARD that the Applicant's appeal submissions were not considered, clearly establishes a *prima facie* case that the appeal decision was procedurally unfair and liable to be set aside. The review application has strong prospects of success on this ground alone.

Irreparable harm

[74] The Applicant has demonstrated a well-grounded apprehension of irreparable harm. In this regard, the financial harm is detailed and undisputed. As set out by the Applicant, such financial harm consists of accumulated losses exceeding R16 million; ongoing monthly losses exceeding R 940 000.00 and reliance on depleting third-party funding. If the interim relief is not granted the Applicant faces the very real prospect of insolvency before the review is finalised. Whilst it may be true that the Applicant may be compensated for financial loss the complete destruction of a business clearly satisfies the requirement of irreparable harm.

[75] Perhaps even more significantly the Applicant has shown that Valumax is continuing to develop residential units within the agreed 400m buffer zone. The Applicant's authorisation (*the 2014 licence*) predates much of this development. If this encroachment continues unchecked, it may render the buffer zone entirely unenforceable, effectively sterilising the Applicant's right to operate even if it is ultimately successful in its review. This is a classic example of harm that cannot be remedied by a subsequent court order. The right, once destroyed by the conduct of a third party, cannot be restored.

Balance of convenience

- [76] The balance of convenience strongly favours the Applicant. The prejudice to the Applicant if the relief is not granted is potentially irreversible. On the other hand, the prejudice to the Respondents, if relief is granted to the Applicant, is, on the application papers before this Court, largely speculative.
- [77] The Claassen Respondents are a developer and a forum representing residents located more than 4 km from the site. The Allanby Respondents are individuals and conservancies even farther from the site (many over 15 km). Their primary concerns relate to potential odour; health risks and a decrease in property values. These concerns, whilst understandable, are not supported by any expert evidence on behalf of these respondents. They are bare allegations and conclusions. In contrast, the Applicant's application was supported by a comprehensive environmental impact assessment; specialist reports and the approval of the competent authority, namely GDARD.
- [78] The public interest weighs heavily in favour of the Applicant. The area is facing a waste management crisis. The Kaalspruit River is being choked by illegal dumping, posing a significant environmental and public health risk. The Applicant's facility offers a lawful; managed and environmentally responsible solution to this crisis. Allowing it to operate, even temporarily, serves the public interest.
- [79] The concerns about the buffer zone are addressed by the fact that the interim relief is subject to the conditions of the amended licence. The Applicant must operate within that 800 m buffer. If its operations cause a nuisance, it is subject to enforcement by GDARD. The concerns about the water use licence are similarly addressed. The licence condition remains and the Applicant must comply. This Court is not waiving these conditions but is merely allowing the Applicant to operate subject to them.

No other satisfactory remedy

- [80] The Applicant has no other satisfactory remedy. Whilst the review application is the final remedy, it will not provide the urgent and interim protection the Applicant requires. The Applicant cannot wait for the review to be heard while it faces financial collapse and its rights are actively being eroded by developments in the buffer zone.
- [81] The argument that the Applicant could apply for a new licence is disingenuous. The Applicant had a licence. It was taken away through a flawed process. To require it to start the entire process afresh would ignore the unfairness that occurred and punish the Applicant for the executive's failings. Furthermore, a new application would take years; involve a new public participation process and would likely be opposed by the same respondents, leaving the Applicant in an even worse position.
- [82] Having found that the Applicant has satisfied all the requirements for an interim interdict and that the relief sought is competent, this Court concludes that the application must be successful.

The counter-application

- [83] The order this Court intends to make in respect of the application, which will regulate the position pending the review, effectively renders the counter-application moot. However, even if it were not moot, it would have to be dismissed, for the reasons set out hereunder.
- [84] The Claassen Respondents sought to interdict the Applicant and the First and Second Respondents from giving effect to an agreement to remit the appeal to the MEC. However, as the Applicant's Counsel correctly pointed out, the relief sought in the counter-application is itself an interim interdict against the exercise of executive power. It must therefore meet the stringent test as set out in OUTA. The Claassen Respondents have failed to show that this is the "*clearest of cases*" or that "*exceptional circumstances*" exist. The MEC and GDARD, as the parties to the proposed remittal, are not opposing the counter-

application and have, in fact, consented to the underlying remittal proposal. To interdict them from doing so at the behest of private parties, without a compelling case that the remittal would be unlawful, would itself be an improper intrusion into executive affairs.

- [85] Moreover, the underlying agreement was contingent on the agreement of all interested parties. They did not agree. Therefore, no unlawful action is imminent. The counter-application was based on a fear of future conduct that had not materialised and could not materialise without court sanction. It must therefore fail.

Conclusion

- [86] At the heart of this matter is the fundamental right of “*procedural fairness*”. The MEC made a decision with profound consequences for the Applicant; the environment and the community, without considering the Applicant's detailed submissions. This is a fundamental breach of the Applicant's constitutional right to just administrative action.

- [87] The Applicant has established a strong *prima facie* case that the MEC's decision was procedurally flawed. It has been demonstrated that it faces irreparable harm, both financial and in the erosion of its rights, if it is not allowed to operate pending the finalisation of its review. The balance of convenience, considering the speculative nature of the Respondents' alleged prejudice and the pressing public interest in addressing the waste management crisis, overwhelmingly favours the Applicant. It has no other satisfactory remedy. The counter-application is without merit and must be dismissed. It sought to prevent a resolution of the very procedural flaw that lies at the heart of this dispute.

Costs

[88] The issue of costs engages this Court's discretion, which must be exercised judicially having regard to the facts of the case. The general rule is that costs follow the result.

[89] The Applicant has been successful in the application. The Claassen and Allanby Respondents have vigorously and at length opposed the application, raising numerous defences, which have been unsuccessful. They should therefore be held to be liable for the Applicant's costs.

[90] The Applicant initially sought costs only against the First and Second Respondents. Since those respondents did not oppose the application the Applicant's Counsel correctly sought costs against the opposing respondents. In the exercise of this Court's discretion, it would be just and equitable if the costs of the application were paid by the respondents who opposed the application. These are the Claassen and Allanby Respondents. Such costs must include the costs reserved on 11 February 2025, relating to the urgent proceedings on that day,

[91] In respect of the counter-application, it would be just and equitable for the Claassen Respondents to pay those costs. Whilst the counter-application was not instituted by the Allanby Respondents, they supported it. In the premises, it would be just and equitable if the Allanby Respondents were also ordered to pay those costs.

[92] As to the scale of those costs, it is evident that the application and counter-application were not only voluminous but also complex. Having regard, *inter alia*, thereto, it would be just and equitable if the costs payable were awarded on scale C.

Order

[93] This Court makes the following order:

1. The Applicant's non-compliance with the forms and service provided for in the Uniform Rules of Court is condoned and the application is heard as one of urgency in terms of subrule 6(12).
2. Pending the final determination of the application under case number 2024-050686 to review and set aside the decision of the First Respondent dated 15 September 2022 (*"the review application"*) the Applicant, Olifantsfontein Resources Facility (Pty) Ltd, is hereby authorised to conduct and perform all activities, exercise all rights and carry out all obligations permitted in terms of the Part 2 Amended Waste Management Licence, Ref: G[...], granted on 24 March 2022 (*"the amended licence"*).
3. The authorisation in paragraph 2 hereof is subject to all the terms and conditions contained in the amended licence and the Applicant remains obliged to comply with all applicable legislative requirements, including but not limited to, those relating to zoning, water use and environmental management.
4. The counter-application is dismissed.
5. The Third, Seventh, Tenth and Twenty-Ninth Respondents (*"the Claassen Respondents"*) and the Fourth, Fifth, Sixth, Eighth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Twentieth, Twenty-First, Twenty-Second, Twenty-Fourth, Twenty-Seventh, Twenty-Eighth and Thirty-Fifth Respondents (*"the Allanby Respondents"*) are ordered, jointly and severally, the one paying the others to be absolved, to pay the costs of the application, such to include the costs reserved by the order of Adams J dated 11 February 2025 and the costs of the counter-application.
6. The costs set out in paragraph 5 hereof are payable on the party and party scale (SCALE C).

BC WANLESS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

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