



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

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. ✓

DATE: 29/04/2026

SIGNATURE

Case No: 2026-076504

In the matter between:

**SSA ACOUSTICS & SPECIALISED INSPECTIONS
(PTY) LTD**

Applicant

and

**SOUTH AFRICAN HEALTH PRODUCTS
REGULATORY AUTHORITY**

Respondent

JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

- [1] On 2 April 2026 Retief J granted an order calling on the Respondent to show cause, if any, on Tuesday 8 June 2026 why the interim relief granted in terms of paragraph 11 of that order should not be made final pending the final written determination of the Applicant's renewal applications. Paragraph 11 of the order reads:

*"11. The Respondent is directed, pending its final written determinations of the Applicant's renewal applications to, **within 12 hours** of service of this order, issue the Applicant with an interim written authority, as envisaged in terms of section 3A(2) of the Hazardous Substances Act 15 of 1973, as amended, as a means to facilitate interim regulatory control, in order to authorise the Applicant, on an interim basis, to possess, store, use, convey and/or cause to be conveyed the Group IV hazardous substances as it previously held under its expired authorities, on the same terms and conditions as those authorities, alternatively on such reasonable additional conditions as the Respondent may lawfully impose strictly for interim regulatory control".*

- [2] Apart from the rule *nisi* as contained in paragraph 11 of the order, the following order was also made:

"13. In the event that the Respondent fails to provide the written interim authority as directed in paragraph 11 for whatever reason, the Applicant shall, pending the outcome of the rule nisi referred to in paragraph 12 hereof or pending the outcome of the application if anticipated in terms of paragraph 15 hereof or pending final written determinations of its renewal applications if made prior to the 8 June 2026 or prior to the date of anticipation, be entitled to continue to possess, store, use, convey and/or cause to be conveyed the Group IV hazardous substances previously held under the Applicant's expired written authorities, on the same terms and conditions as previously applicable and as previously authorised by

the Respondent and, the Respondent during this time, shall be interdicted and restrained from:

- 13.1. taking any enforcement step against the Applicant founded solely upon the expiry of the Applicant's previous written authorities;*
- 13.2. treating the Applicant's previous written authorities as having lapsed for purposes of enforcement pending the Respondent's final determination of the Applicant's renewal applications;*
- 13.3. demanding surrender, seizure, or, cessation of custody of the radioactive sources presently in the Applicant's possession; and*
- 13.4. interfering with, prohibiting, or impeding the Applicant's continued safe possession, storage, conveyance, and use of the relevant Group IV hazardous substances in accordance with the terms previously applicable thereto;*
- 14. Pending the return day in paragraph 12, this order shall operate as an interim order with immediate effect.*
- 15. The Respondent is afforded leave, on or before the return day, to anticipate the return day, upon no less than 24 hours' written notice to the Applicant's attorneys".*

[3] The aforesaid order follows on averments made by the Applicant in the founding affidavit that the Applicant applied for the renewal of a lapsed licence issued by Respondent in terms of the Hazardous Substances Act 15 of 1973 ("HSA"). The licence lapsed on 31 March 2026 and, at the date of the launch of the application, the Respondent has not made final written determinations in respect of such renewal application. Applicant sets

out in the founding affidavit that, absent such a licence, the Applicant's day-to-day activities in relation to certain hazardous substances constitutes criminality.

- [4] In the order, Retief J found that the powers provided to the Director General of the Respondent in terms of section 3A(2) of the HSA caters for applications of persons who seek written authority to, *inter alia*, possess and deal with Group IV hazardous substances. It was held that such authority exists, apart from the power vested in the Director General to issue licences on application in terms of section 4. In consequence, so it was held, in certain circumstances as amplified in the sub-section of section 3A(2) dealing with employees, the ability to apply for written authority, supported the Applicant's counsel's contention that the Respondent possesses such statutory power to entertain authority in certain circumstances on application and, in these circumstances, when directed by the Court, must issue a written interim authority to the Applicant pending its own written final determinations.
- [5] Retief J. further held that, in the unlikely event that the court was incorrect regarding the interpretation of section 3A(2) of HSA, then a *lacuna* in the provisions of the HSA exists, catering for a justifiable remedy for the Director General to assist both the Applicant and itself. The learned judge further held that the Applicant, as a result of such *lacuna*, is forced into a situation where it unintentionally and without *mala fides* attracts the possibility of criminal sanction and the Respondent was urged in the order to finalise its decision within the reasonable time period of 60 days. In that regard Retief J further found that the Court exercised its inherent power when it granted the order having regard to all

the present circumstances brought to its attention and having regard to the provisions of the HSA.¹

- [6] On 22 April 2026 Respondent served a “Notice of anticipation in terms of Rule 6(8)” which reads as follows:

“BE PLEASED TO TAKE NOTICE that the Respondent hereby anticipates, in terms of Rule 6(8), the return day of the rule nisi issued on 1 April 2026 by the Honourable Madame Justice Retief, presently enrolled for hearing on 8 June 2026”.

- [7] The Respondent filed an answering affidavit in support of that application which can be summarised as follows:

[7.1] It disputes certain factual averments to the extent that the Respondent avers that the licence of the Applicant lapsed because the Applicant failed to submit the necessary documentation in support of the application for renewal of the licence timeously or at all;

[7.2] The affidavit elaborates on the interpretation of the relevant statutory provisions and seeks to display that the order of Retief J is wrong and based on a misinterpretation of HSA, resulting therein that the Respondent cannot comply with that part of the order which deals with interim authority to be granted by Respondent to the Applicant.

¹ Paragraph 8 of the order of Retief dated 2 April 2026.

[8] In the opposing affidavit the Respondent *inter alia* makes the following averments:

[8.1] That the order of Retief J was “*escalated*” internally and on 10 April 2026 it was decided that the rule *nisi* should be anticipated and the matter be opposed;

[8.2] That an opposing affidavit was prepared and finalised on 20 February 2026.

[9] In my view the Respondent’s attempt to anticipate the return date and bring this application on an urgent basis before this Court should fail, for the following reasons:

[9.1] Rule 6(8) of the Uniform Rules applies to an order that was granted *ex parte*. The order of Retief J was not granted *ex parte* but granted after service of the application on Respondent. From the Respondent’s opposing affidavit it appears that a senior employee was present when the matter was dealt with by Retief J, virtually on CaseLines, and provided submissions on the interpretation of the relevant statutory provisions. In my view, the provisions of Rule 6(8) of the Uniform Rules of Court is not available to Respondent *in casu*;

[9.2] It was submitted on behalf of Applicant that the application to anticipate the return date is in form brought under Rule 6(8), but in substance an application in terms of Rule 6(12)(c). I agree. It is thus incumbent on the party who invoke the provisions of Rule 6(12)(c) to display the required urgency.

[9.3] There is no proper explanation in the answering affidavit why the order which was granted on 2 April 2026, to the knowledge of an employee of the Respondent, is anticipated only now and on the roll of this Court during a week containing only 3

Court days with extremely short notice to the Applicant. In my view, insofar as any measure of urgency exists, it was purely self-created by the Respondent;

[9.3] The substance of the issue between the parties clearly relates to an interpretation of the provisions of the HSA. Whether or not the Director General has the power, based on an interpretation of HSA, to extend the validity of a lapsed licence is an important issue based on an interpretation of the provisions of HSA. It is not incumbent upon the Urgent Court to determine issues which requires careful consideration and potential complex legal issues, and which may have an important legal effect, because such matters cannot be properly ventilated in the urgent court by virtue of the nature of urgent court.²

[10] There is no reason why this matter cannot be disposed of on the return date, in the normal course with due allowance to the parties and the Court to consider the proper interpretation of HSA in order to arrive at a just determination of the issues.

In the result, the matter is struck off the roll and Respondent is ordered to pay the wasted costs.



**P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA**

² *Graduate Institute of Financial Sciences (Pty) Ltd v Insurance Sector Education and Training Authority (GI) Case No. 134433/2023 (16 January 2024).*

APPEARANCES

FOR APPLICANT

INSTRUCTED BY

RESPONDENTS

ADV S Aucamp

GOVENDER PATEL DLADLA INC.

ADV C Chabalala

Instructed by Koikanyang Inc.