




**THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

**CASE NO. 2692/2022**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>25 May 2026</u>	
DATE	SIGNATURE

In the matter between:

**NAD PROPERTY INCOME FUND (PTY) LTD**

**1<sup>ST</sup> APPLICANT**

**ERF 6 HIGHVELD TECHNOPARK  
INVESTMENTS (PTY) LTD**

**2<sup>ND</sup> APPLICANT**

And

**NELSON WISANE TIVANE**

**1<sup>ST</sup> RESPONDENT**

**ELEGANT FUEL (PTY) LTD**

**2<sup>ND</sup> RESPONDENT**

**THE BUSHBUCKRIDGE  
LOCAL MUNICIPALITY**

**3<sup>RD</sup> RESPONDENT**

**THE MPUMALANGA PROVINCIAL  
GOVERNMENT DEPARTMENT OF  
AGRICULTURE, RURAL DEVELOPMENT,  
LAND AND ENVIRONMENTAL AFFAIRS**

**4<sup>TH</sup> RESPONDENT**

**THE MINISTER OF ENERGY FOR**

**THE REPUBLIC OF SOUTH AFRICA**

**5<sup>TH</sup> RESPONDENT**

**THE CONTROLLER OF PETROLEUM  
PRODUCTS IN THE NATIONAL  
DEPARTMENT OF ENERGY**

**6<sup>TH</sup> RESPONDENT**

***CORAM: MANGENA AJ***

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## **JUDGMENT**

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**Delivery:** This matter was heard on 21 May 2026, and judgment was reserved. This judgment was delivered by uploaded to *CaseLines* on 25 May 2026.

### **Mangena AJ:**

[1] NAD Property Income Fund (Pty) Ltd and Erf 6 Highveld Technopark Investments (Pty) Ltd brought an application for leave to appeal the whole of the judgment and order delivered on 11 March 2026 dismissing their application with costs. They say that the court ignored their version regarding the time they became aware of the facts regarding the existence of the filling station, namely in May 2022 when they saw a canopy and other things associated with a petrol station being constructed. They also say that the court was wrong to consider the delay defence when same was not raised in the answering affidavits by any of the respondents. By accepting the defence not raised in the papers, so the argument went, the court violated trite principles in motion proceedings.

[2] They further contend that the court was wrong to dismiss the application on the sole ground of delay because there were other two issues which were required to be determined as separate and distinct issues unrelated to the PAJA review. The two issues are a declaratory order relating to the lapse of the retail licence in terms of Regulation 24 of the Petroleum Products Act and the final interdict relating to the construction of the filling station in contravention of the National Building Regulations and Building Standards Act, 103 of 1997.

[3] When the application was heard, I hinted to the parties that the submissions made by Mr Venter, counsel for the applicants, on the failure to consider the prayers for a declaratory order and the final interdict are "keeping me awake" in the sense that they are worth considering. I indicated that I will consider the papers filed in view of the submissions made before giving my ruling on the application for leave to appeal.

[4] I have indeed gone back to the judgment as well as the pleadings and I am not persuaded that Mr Venter is correct in his submissions.

[5] On the issue of the delay rule, it is not correct that the views of the applicants were ignored. They were considered together with those of the respondents albeit raised in an interlocutory proceeding. I do not accept the argument that the court can disregard a pertinent fact raised in the interlocutory proceedings and persisted with during the oral submissions solely on the basis that it is not in the answering affidavit. As I understand it, when a court is called upon to consider the matter, it does so by considering all submissions including evidence, defence or facts raised in the interlocutory proceedings for as long as those facts, defence or evidence is relevant to the determination of the issue in dispute. As stated in the judgment, the issue regarding the inordinate delay was raised well in time and there was no prejudice when it was raised once again in the heads of argument.

[6] Secondly the submissions by Mr Venter that the 180 days is calculated from the date the applicants became aware of the decision is not supported by case law. See *Aurecon SCA*, para 16 which was confirmed by the constitutional court, [2017] ZACC 5.

[7] With regard to the interdict, there is in my view and upon reflection, no merit on this point. The interdict was sought as a temporary relief pending the final resolution of part B which was a review of the administrative decisions made by Bushbuckridge Local Municipality. In the judgment I made reference to paragraph 29.1 of the founding affidavit which made it clear that part B was solely a review of the decisions made by the municipality on the "subject property".

[ 8] I now turn to the last point which is the declaratory relief regarding the alleged lapsing of the retail licence in terms of Regulation 24 of the Regulations made under Petroleum Products Act. A declaratory relief is contingent upon the existence of a right. The applicants have predicated this declaratory relief on the basis that the administrative decisions were unlawful and negatively affect their operations. They failed to make a case to have them reviewed and set aside and consequently no contingent right exists for them to get a declarator.

[9] In the result, the application for leave to appeal stands to fail and the applicants should pay the costs.

[10] It is ordered that

1. Application for leave to appeal is dismissed
2. Applicants are ordered to pay the costs on a party and party scale B of the High Court tariffs.



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**IM MANGENA**  
**ACTING JUDGE OF THE HIGH COURT**

**FOR THE APPLICANT:  
INSTRUCTED BY:**

**ADV A VENTER  
IVAN PAUW AND PARTNERS**

**FOR THE 1<sup>ST</sup> RESPONDENT:  
INSTRUCTED BY:**

**MR RICHARD SPOOR  
RICHARD SPOOR ATTORNEYS**

**FOR THE 2<sup>ND</sup> RESPONDENT:  
INSTRUCTED BY:**

**ADV B SAVVAS  
MKA ATTORNEYS**

**FOR THE 3<sup>RD</sup> RESPONDENT:  
INSTRUCTED BY:**

**ADV TS NGWENYA  
PN MADONSELA ATTORNEYS**

**DATE HEARD:**

**21 May 2026**

**DATE OF JUDGMENT:**

**25 May 2026**