



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

Case No.: 2026-198968

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED NO
<u>04 September 2026</u>	
DATE	SIGNATURE

In the matter between:

MCANTHONY SHIKHUMBELE KHOZA

APPLICANT

And

PRECIOUS ENERGY (PTY) LTD

FIRST RESPONDENT

(Registration Number: 2015/247387/07)

MATSAMO TAXI RANK

SECOND RESPONDENT

(an unidentified entity trading as “TAXI ENERGY”)

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

JUDGMENT

FOURIE AJ:

INTRODUCTION:

- [1] In the application at hand, the Applicant seeks, by way of urgent application, final interdictory relief against the First Respondent, which can only be described as a legality interdict seeking the First Respondent to refrain from certain illegal activities which can be summarised, for purposes of this Judgment, as the selling of petroleum products to end-consumers as a retailer.
- [2] This Court was tasked firstly to determine whether the Applicant had sufficiently met the threshold for the matter to be dispensed with on the Urgent Motion Court roll of 1 September 2026, and if so, thereafter, whether the Applicant had sufficiently advanced facts that sustained the relief sought, being final interdictory relief.

- [3] Although the application was issued against several respondents, specifically as interested parties and as the relevant statutory bodies that deal with matters relating to petroleum products, when the matter was heard, same was only opposed by the First Respondent, being the only party against whom relief was sought.

MATERIAL FACTS:

- [4] All the evidence presented to this Court indicates that the Applicant and the First Respondent are, at least in some way, competitors in the sale of petroleum products in the same geographical region.
- [5] The facts of the matter can crisply be summarised by stating that the Applicant, as a competitor of the First Respondent, alleges that the First Respondent has established a facility for the sale of petroleum products. The Applicant concedes that the First Respondent has a wholesale licence to conduct wholesale petroleum sales but alleges that the First Respondent does not have a retail petroleum licence and, as such, is precluded from the sale of petroleum products to end-consumers.
- [6] The Applicant alleges that, contrary to the activities for which the First Respondent was licensed, and in the initial stages of August 2026, the First Respondent commenced activities as a retailer for petroleum products.
- [7] In support of the Applicant's allegations, it alleges photographs depicting the facility set up by the First Respondent, photographs of petrol pumps indicating small quantities of petroleum being sold to end-consumers, and till slips evidencing the sale of diesel in small quantities, i.e R 200.00.

- [8] In the latter part of July 2026, the Applicant requested the Department of Mineral and Petroleum Resources to investigate the activities being conducted by the First Respondent, which concluded that, when the site of the First Respondent was attended on the 5th of August 2026, no retail activities were observed at the site. It is necessary to highlight, however, that the complained-of retail actions only commenced after 5 August 2025, and then from 10 August 2026.
- [9] It is noteworthy from the relief sought by the Applicant that the Applicant does not seek to interdict any lawful activities being conducted by the First Respondent. The Applicant seeks merely that the First Respondent be interdicted from conducting the activities of a retailer of petroleum products if the First Respondent does not have a license authorising him to do so.
- [10] Although the Court is mindful that the interdict as sought by the Applicant would only impact the First Respondent in so far as illegalities are perpetrated, the Applicant still needs to convince the Court on the principles applicable to the granting of interdicts that they are entitled to the relief they seek.
- [11] The easiest way for the First Respondent to rebut the notion that they were illegally conducting themselves would no doubt have been for the First Respondent to respond to the allegations of the Applicant by simply presenting the Applicant and the Court with proof of its retail licence. Such a retail licence was not annexed to the answering papers of the First Respondent nor was a reason for the absence thereof advanced.
- [12] The First Respondent further fails to in any way deal with the allegation that the First Respondent is not entitled to conduct the activities of a petroleum retailer as alleged by the Applicant. It is further also not

seriously contested by the First Respondent that the First Respondent is, at the time of the application, in the process of selling petroleum products from the facility as stated. In the evaluation of the prevailing legal principles, it stands to reason that the First Respondent would only be acting lawfully if it were either selling petroleum products as a wholesaler or possessed the relevant certification to conduct the activities of a retailer.

[13] The crux of the First Respondent's opposition to the application is that this Court is precluded from dealing with the current application as the First Respondent submits the only party who is authorised to investigate the activities of the First Respondent and to put a stop to same, if necessary, would be the Department of Mineral Resources and Energy and not the Court.

[14] The argument by the First Respondent is that the Department has a period of 90 days to investigate the complaints of the Applicant and to conduct its activities flowing from its own investigation within the 90-day period, during which time the Court would be precluded from dealing with or intervening in the matter at all.

URGENCY:

[15] At the hearing of the matter, the Court already ordered the matter to be regarded as urgent and to be dealt with on the Urgent Court Roll of 1 September 2026. The reasons for same are incorporated in the current Judgment.

[16] The principles relating to urgency are well known, and there is no justification for restating principles that are continually applied in our Courts on a daily basis, specifically pertaining to urgency.

- [17] In so far as it is necessary, the manner in which the test in respect of urgency has evolved has been dealt with by this Court and this Court shall merely confirm those principles as set out in the matter of *Witbank Taxi Association*¹.
- [18] In the current matter, no real complaint was levied by the Respondent in their ability to adequately present their opposition when the matter was ultimately heard.
- [19] Urgency is dealt with under the same principle as *points in limine* in that the Court, in evaluating urgency, needs to consider the submissions made by the Applicant, and evaluate same against the relief sought by the Applicant to see whether a matter can be accepted as urgent or not.
- [20] When dealing with matters in which illegal actions are alleged, the Court will evaluate the principles relevant to urgency as enunciated in *East Rock* and *Luna Meubelvervaardigers*² but the Court needs similarly to evaluate the principles as stated by the Court in *Hotz*³ in which the Court stated that, once a Court has made a ruling pertaining on whether or not the actions of a Respondent is unlawful, the Court cannot grant legal recognition and enforcement of such unlawful conduct, and subsequently an application for interdict should stand. The dictum of *Hotz* rings true not only when the Court evaluates whether an interdict needs to be granted, but also when evaluating whether the matter ought to be dealt with on an urgent basis. If acts of illegality indeed exist, and a Court fails to deal with such acts and prohibit such actions at the earliest available opportunity, the essence of the same would be that, at least to some degree, the Court would be giving recognition and allowance for such illegal acts

¹ *Witbank Taxi Association v Local Taxi Association and Another* (2026-069702) [2026] ZAMPMHC 15 (9 April 2026).

² Incorporated in the reference for *Witbank Taxi Association supra*.

³ *Hotz v UCT* (230/20160) 2016 ZASCA 159.

to proceed. Similarly, where illegal actions are alleged against a Respondent, such a Respondent is deserving of their name being cleared without a sword of potential illegality hanging over their heads.

- [21] Considering the relief sought, the timeframes relevant to the matter at hand and all ancillary facts presented to this Court, the Court was satisfied that the matter was sufficiently urgent to be dealt with as such.

APPLICABLE LEGAL PRINCIPLES:

- [22] The Court has found in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Others*, where the SCA held that⁴:

“A real, genuine bona fide dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact set to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him, but even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to prove an answering (or counter-failing evidence) if they be not true or accurate, but instead of doing so rests his case on a bare or ambiguous denial, the Court would generally have difficulty in finding that the test is satisfied. I say (generally) because factual averments seldom stand apart from the broader matrix of circumstances, all of which need to be borne in mind when arriving at a decision. A litigant may not

⁴ *Wightman t/a JW Construction V Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at 13.

necessarily recognise or understand the nuances of the bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party, but when he signs the Answering Affidavit he commits himself to its contents, inadequate as they may be and will only in exceptional circumstances be permitted to disavow them. There is as a serious duty imposed upon a legal adviser who settles an Answering Affidavit to ascertain and engage the facts which his client disputes and to reflect such disputes fully and accurately in the Answering Affidavit. If that does not happen, it should come as no surprise that the Court takes a robust view of the matter.”

- [23] In evaluating whether the defence raised by the Respondent is *bona fide* and real, a short evaluation on those terms is necessary.
- [24] *Bona fide* refers to the Latin phrase “in good faith” or honestly.
- [25] Whether the defence is real would be evident from the supporting evidence provided by a Respondent when alleging their defence. If a Respondent makes a vague or unsubstantiated claim, it would not pass the threshold of convincing the Court dealing with the matter that the defence has any substance and is to be regarded as real.
- [26] It would only be in circumstances of a Court being convinced of the *bona fides* of a Respondent’s defence, substantiated sufficiently, for the Court to be able to accept the defence as real, that the general principles of *Plascon-Evans* with reference to *Stellenbosch Farmers Winery* would find application, and rightly so, as the Court in those matter already expressed

that vague denials or far-fetched or clearly untenable defences would justify a rejection of a purported defence.⁵

[27] This Court reiterates the dictum as per *Soffiantini, supra*, that a Respondent must provide enough evidence to the Court for the Court to be able to ascertain whether denials are not fictitious or aimed at delay.

[28] Where a party is in possession of facts that would aid the Court to ultimately come to a decision that is just under the circumstances, it ought to be expected of that party to convey all the material facts in respect of the matter to the Court. Not to do so is done at a party's own peril⁶.

[29] The Applicant approached the Court for a prohibitory final interdict. The granting of a final interdict requires three requisites, all of which must be present for such an order to be obtained⁷. Although the *locus classicus* on the point of final interdicts dates back to 1914, the fact that principles as

⁵ The general rule when dealing with disputes of fact in motion proceedings is as set out in **PLASCON EVANS PAINTS LTD v VAN RIEBEECK PAINTS (PTY) LTD** [1984] ZASCA 51; 1984 (3) SA 623 (A), where the court referred to Stellenbosch Farmers' Winery (Pty) Ltd 1957 (4) SA 234 (C) at 235 E-G, held as follows:

"..... Where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondent together with the admitted facts in the applicant's affidavits justify such an order In certain instances the denial by the Respondent of a fact alleged by the Applicant may not be such as to raise a real, genuine or bona fide dispute of fact (*Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at pp 1163-5. If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under rule 6(5)(g) of the uniform rules of court and the court is satisfied as to the inherent credibility of the applications factual averments, it may proceed on the basis of the correctness thereof and include this fact amongst those upon which it determines whether the applicant is entitled to the final relief which it seeks More over, there may be exceptions to this general rule, as for example where the allegations or denials of the respondent are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers."

Our courts are required to robustly approach disputes of fact in *Soffiantini v Mould* 1956 (4) SA 160 (E), the court outlined this approach and stated as follows:

"In the case of *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 T at 1165 Murray, then AJP said: "A bare denial of the applicant's material averments cannot be regarded as sufficient to defeat the applicant's right to secure relief by motion proceedings in appropriate cases. Enough must be stated by respondents to enable the Court to conduct a preliminary examinationand to ascertain whether denials are not fictitious intended merely to delay the hearing. *Soffiantini v Mould*, at 154 E-H."

⁶ *Skosana v Road Accident Fund* (3257/23) [2026] ZAMPMHC 5; [2026] 1 All SA 588 (MM) (2 February 2026)

⁷ *Setlogelo v Setlogelo* 1914 AD 221

set out in *Setlogelo supra* have withstood the test of time is evident in the value it adds to the judicial certainty and well-reasoned premise on which final interdicts are to be obtained. In order to be successful, an Applicant needs to show:

[29.1] A clear right.

[29.2] An injury actually committed or reasonably apprehended; and

[29.3] The absence of any other satisfactory remedy available to the Applicant.

[30] The first two requirements for a final interdict are not seriously contested on the papers, nor are any significant opposing allegations made that would lead the Court to disregard the evidence presented by the Applicant in respect of those elements.

[31] The simple question this Court is tasked with determining is whether an alternative remedy is available to the Applicant, namely, an investigation by the regulatory authorities, which could preclude the Court from granting a final interdict as prayed for.

[32] At its core, an interdict should do no more than protect the rights of an Applicant from unlawful conduct⁸.

[33] In *Cream Majenta 127 (Pty) Ltd t/a BP Lyndon Park*⁹, the Court stated that:

⁸ *Durban University of Technology v Zulu and Others* [2017] ZAKGPHC 16 (3 March 2017)

⁹ *Cream Majenta 127 (Pty) Ltd t/a BP Lyndon Park v Shell South Africa Marketing (Pty) Ltd* (6629/2009) [2009] ZAGPPHC 107

‘.....where it appears, either from a reading of the enactment itself, or from that plus a regard to surrounding circumstances, that the legislature has prohibited the doing of any act either wholly or partly in the interest of any person or class of persons, any such person can claim an interdict to enforce the prohibition without proof of damage....’

[34] The right of a party to approach the Court to seek protection against the actions of another which is prohibited by law is well-established¹⁰.

[35] This Court shall not embark upon a study of the relevant definitions embedded in the Petroleum Products Act, 120 05 1977, save to confirm that Section 2A(1)(c) and (d) of the aforesaid Act state that:

‘A person may not

- (c) hold or develop a site without there being a site licence for that site;
- (d) retail prescribed petroleum products without an applicable retail licence, issued by the controller of petroleum products.

[36] The First Respondent’s submissions that this Court will be encroaching on powers of the Department by granting the current interdict are incorrect. By granting the interdict the Applicant is seeking, the Court would do nothing more than to preclude acts of illegality. The Court is not embarking upon an investigation into whether the First Respondent is permitted to dispense petroleum products as a wholesaler or a retailer, nor is the Court investigating or taking away any of the powers conferred upon the Department by statute. By granting the Order the Applicant seeks, the Court merely gives recognition to the express provisions of the Act, and states that the First Respondent, as for any other person, is precluded from illegally conducting themselves.

¹⁰ Milestone Beverage CC and Others v The Scotch Whisky Association (1037/2019) [2020] ZASCA 105; 2021 (2) SA 413 (SCA).

- [37] If the First Respondent produced a valid retail licence at the hearing of this matter authorising them to conduct themselves as a retailer for petroleum products, the application could not have succeeded.
- [38] The Applicant complains that the First Respondent is conducting their business as a retailer without a valid retail licence. The First Respondent has not in opposition to the application provided any facts that stand in opposition to the allegations as made by the Applicant. Accordingly, there exists no dispute of fact on the question of whether or not the First Respondent indeed possesses a valid retail licence.
- [39] By seeking the order in the manner in which the Applicant is, the Respondent is not precluded from conducting services as a wholesaler for petroleum products, as they are seemingly authorised to do, and the First Respondent is also not precluded from conducting themselves as a retailer for petroleum products but only once they are properly certified and licensed to same by the relevant regulatory authorities. Absent the relevant licenses therefor, it is unthinkable that the First Respondents would contend for any right to conduct themselves as a retailer of petroleum products.
- [40] The argument advanced by the First Respondent is seemingly that, under all circumstances, a party, even if doing so illegally, will be allowed to operate as a retailer for petroleum products in the initial 90-day period during which the regulator would be entitled to investigate their actions, and only thereafter would members of the public be allowed to intervene by seeking the Court's assistance by way of interdict or review if the Department did not sufficiently act.

- [41] The aforesaid is a proposition that not only allows for illegalities to be perpetrated, but for which no authority exists.
- [42] Irrespective of the legal principles a party requests the Court to apply or the Rules of principles under which a matter is brought to be tried by the Court, it ought to be known and accepted that no Order of Court could in any way afford recognition to acts of illegality.
- [43] At its core, an application for interdict is a discretionary remedy available to a Court to intervene and preclude acts of illegality. It is an inconceivable notion that a Court would apply its discretion in any way to give standing or recognition to any possible illegal actions.
- [44] As such and for all the reasons as stated aforesaid, the attempted defence as raised by the First Respondent cannot be sustained, and the Applicant's application needs to succeed.

COSTS:

- [45] The general proposition pertaining to costs is that a successful litigant ought to be compensated for the costs incurred that were necessitated due to a matter being brought to Court. In the current matter, the Court already stated that, if a bona fide defence existed, opposing the matter would have been the easiest task, and the First Respondent could have explained that their actions were not illegal for several reasons. The First Respondent failed to do so and elected to oppose the matter on a technical point. Even though the First Respondent was allowed to pursue a technical defence, once this defence is found to be without merit, it casts a shadow over the alleged actions perpetrated by the First Respondent.

[46] In the current matter the Court sees no reason why costs ought not to follow suit.

ORDER:

[47] For the aforesaid reasons, the following Order is made:

[47.1] The application is enrolled and heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and the Applicant's non-compliance with the ordinary forms, service requirements and time periods is condoned.

[47.2] The Applicant is granted leave to cite the Second Respondent by the description as appearing in the Notice of Motion being the presently unidentified entity or person conducting business under the name (Taxi Energy) at the facility described in paragraph 3 below.

[47.3] Service of the application upon the Second Respondent by the Sheriff in the following manner is authorised as good and sufficient service:

- a. Affixing a copy to the conspicuous part of the premises known as the Remainder of Portion 19 of the Farm Schoemansdal 581 JU, Mpumalanga, situated at the Matsamu Taxi Rank on the R570, at approximately

GPS Co-ordinates: -25.6778787028593,
31.508710216004783 (the facility); and

- b. Handing a copy to any person apparently over the age of 18 years and apparently in charge of the facility.

[47.4] With immediate effect, and upon service of this Order, the First and Second Respondents, and each of them, together with their directors, members, employees, and any other person acting through or on their behalf with knowledge of this Order, are interdicted and restrained from selling petroleum products to any end-consumers at or from the facility as contemplated by the definition of “retail” in the Petroleum Products Act, 120 of 1977, unless and until:

- a. A valid site license issued under the PPA is in force in respect of the facility; and
- b. A valid retail license issued under the PPA is in force authorising the relevant retailer to retail petroleum products at the facility.

[47.5] The First and Second Respondents, and each of them, are interdicted and restrained from operating or holding out that they operate a petroleum retail facility at the facility, whether under the name “Taxi Energy”, “Taxi Energy Diesel”, or

otherwise, unless and until the requirements in paragraph 47.4 (a) and (b) are satisfied.

[47.6] The Sheriff is authorised and directed to take all steps necessary to give effect to paragraphs 4 and 5 of this Order, including attending the facility to ensure that retail sales cease. Any member of the SAPS must render such reasonable assistance to the Sheriff as the Sheriff may request for the safe and effective execution of this Order.

[47.7] The First Respondents shall pay the costs of this application on a party and party Scale B.

[47.8] The Sheriff shall serve this Order forthwith upon the First Respondent at its registered address and upon the Second Respondent at the facility in the manner as authorised in paragraph 3.



HF FOURIE
ACTING JUDGE OF THE HIGH COURT,
MPUMALANGA DIVISION

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