IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 16333/12

DATE: 2013-06-06

In the matter between

ENGEN PETROLEUM Plaintiff

And

GUNDU SERVICES STATION Defendant

J U D G M E N T

BASHALL, J: In view of the length of the arguments for the respondent and the various and varied nature of the defences raised I shall set out the claims and defences in some detail. The applicant Engen Petroleum LTD carries on business throughout South Africa and elsewhere as a manufacturer and distributor in bulk petrol, diesel and chemicals. It is also the franchisor of "Quick Stop Convenience Stores" a chain of outlets at petrol stations.

In distributing its products the applicant in the context of this application uses a nationwide network of independently operated "Engen" service stations. In this matter the applicant developed a fuel filling station concluding agreements with the respondents'. I shall for convenience unless otherwise indicated refer to the 1st and 2nd respondents' as the respondents' and to the 3rd respondent as cited. On the premises of this filling station the applicant states that it has installed pumps, tanks and equipment ancillary thereto and earned by it in order to supply fuel and related products to the public. It has in conjunction therewith erected advertising signs and supplied material to identify the petrol station as an Engen service station. The cost of all of this says the applicant amounts to several million rand borne by the applicant. The applicant states that the appearance of the service station on the quality of the product sold at the petrol station's convenience store as well as the fuel and associated products, their storage and dispensing and the like are of paramount importance for both site goodwill and environmental, health and safety concerns.

Such sites are of limited availability, expensive to maintain and there is considerable competition for lucrative sites.

The site in question is situate at 594 Cornwell Street Tsakane Gauteng albeit a different description is used colloquially as to the address. The registered owner of the premises is the 1st respondent having acquired it from the Ezulwini Municipality. The 1st respondent is the lessee of the premises under a Head Lease. This Head Lease is

registered against the title of the site in the deeds registry constituting a real right in respect thereof in favour of the applicant. The lessor was the aforesaid municipality originally.

Further a personal servitude was concluded in favour of the applicant in respect of the site and likewise registered as K993/2003 the grantor again being the said municipality.

The Head Lease authorises a sub-lease without reference to the lessor and such a lease, termed and "operating lease" was concluded in writing with the 1st respondent on 26 August 2008. It covered apart from the obvious provisions certain ancillary aspects of the business of the service station such as bakery, quick shop, carwash, restaurant, movie, shop, Woolworths and the like. In the papers the respondents' took issue as to the existence of certain of these operations but that point is not germane to the judgment herein. It provided inconsiderable detail for the running of the service station and its facilities by the 1st respondent.

On 23 August 2011 the applicant appointed the 2nd respondent as Provisional Dealer at the service station to conduct the business of the service station for her own account. It is a relatively extensive document regulating her running of the operations of the service station and includes some restrictive provisions such as obliging her to purchase petroleum product of the applicant.

The founding affidavit takes up the narration thus.

"...The Operating Lease expired on 17 January 2011 and the applicant and the 1st respondent did not agree on a further lease period and accordingly the Operating Lease continued on a month to month basis subject to one calendar month's written notice of termination by either the applicant, the 1st respondent to the other (SIC).

12.4 On or about 22 November 2011, the applicant's attorneys addressed a letter to the 1st respondent in terms of which the applicant advised that it had elected to terminated (SIC) the Operating Lease in accordance with the terms thereof and terminated the Operating Lease, allowing the 1st respondent in excess of one calendar month in which to vacate the premises. A copy of the applicant's attorney's letter is attached hereto marked Annexure 'JT20'.

12.5 In terms of the letter of appointment the provisional appointment in respect of the 2nd respondent commenced on 01 February 2011 and the period of appointment was a 90 day period calculated from the commencement date and accordingly, the provisional appointment of the 2nd respondent terms of the letter of appointment expired on 01 May 2011.

12.6 Consequently, the Operating Lease for the 1st respondent has been validly cancelled in accordance with its terms and

the letter of appointment in respect of the 2nd respondent has expired by a fraction of time."

The respondents' however refused to vacate.

An order is sought in the following terms:

1. "Evicting the 1st and 2nd respondents' and all those occupying the property through or under the 1st respondent, alternatively, the 2nd respondent from the immovable property, being Erf 594 Tsakane Township registration division IR Gauteng, in extent 2501M squared held under deed of transfer number T.68714/2005 (herein after 'the immovable property');
2. Authorising and directing the sheriff of the above Honourable Court to take such steps as are necessary in order to give effect to Prayer 1 above.
3. ...
4. Ordering the 1st and 2nd respondents' to pay the applicant's costs of this application on the attorney and client scale."

The 2nd respondent has filed an answering affidavit stating she to be the managing member of the 1st respondent.

She applies for striking out with attorney and client costs on the basis that the applicant's contentions are frivolous add vexatious and, vexatious and irrelevant. The founding affidavit deals concisely and strictly with the agreements referred to and the notices given and the relief sought. There is no basis for such striking out and it was not pursued formally at the hearing correctly so and is refused.

Also in her finding affidavit there is a paragraph reading in relation to her late father who was a member of the 1st respondent.

1.5 "Insofar as might be necessary, I formally apply, as advised by counsel herein, in terms of Section 36 (1) (a) and (d) read with Section 36 (2) (c) for an order declaring my father's membership interest of the vacant and ineffective, at least, for the purposes hereof."

This does not appear to conform to an application sought for and was likewise not proceeded with at the hearing and nothing is placed before the Court as to any service and to the extent that it might be required as an application but is refused.

The deponent then moves on in her answering affidavit to "First point *in limine* – no cause of action."

This is premised on the following assertions:

"The parties' rights and *locus standi* derived from the 'dealership' or 'franchise' agreements and in particular Annexure JT7+. In addition thereto, applicant and 1st respondent are bound to each other in terms of Annexure JT3 (the notarial lease) as Tenant (the applicant) to landlord (1st respondent) – the 1st respondent being the successor entitled to the rights of landlords. My advocate has read through the annexure's and finds no clause anywhere that might entitle the applicant, *ex contractu*, or otherwise, to the relief set out in the notice of motion:

5.1 Moreover, nowhere in the founding affidavit, does the

applicant identify the grounds or the material facts relied on for the claim of the right of action to the prayers set out in the notice of motion.

5.2 There is a complete and a total absence of any averments that might be required to sustain a right of action for the prayers sought in the notice of motion.

5.3 Accordingly, the application must be dismissed with costs."

I might add ...[indistinct] but there has been no exception filed.

There is no merit whatsoever in the above assertion. There are full and material allegations necessary to sustain a cause of action. Breech and proper notice are alleged and proved. As will be seen below there is no issue on the merits. The respondent remains in occupation and the relief sought is appropriate to the cause of action.

The first point *in limine* has no merit and is dismissed.

The deponent moves on to a "Second point *in limine* – non joinder". This is formulated as follows:

"The prayers set out in the notice of motion, if at all properly grounded by material facts and allegations (which is denied), cannot be entertained by this Honourable Court without the citation and joinder of the Minister of Minerals and Energy and the offices of the Controller of Petroleum Products (herein after referred to as 'the controller'). In adumbration hereof:

6.1 All of applicant's rights, without exclusion, are premised on, founded on and predicated on the Petroleum Products Act 120 of 1977 as

amended from time to time (hereinafter referred to as 'the act') and Regulations promulgated there under and which will be referred to, for purposes hereof, collectively as the 'Law';

6.2 Accordingly, in terms of the 'Law', applicant's rights to contract and execute dealership agreements such as JT7+ are based on and subject to the Petroleum Products Act with the result that:

6.2.1 Applicant has no rights unless they are consonant with and not incongruous to the 'Law';

6.2.2 Any rights asserted by the applicant, ex contractu, which are

at variance whether or in congress with the 'Law' are either invalid or unenforceable.

6.2.3 The controller of Petroleum Products and the Minister of Mineral and Energy have a vested and direct interest equal to that of a *dominus* in all maters on the ground concerning and affecting the Petroleum Industry and business as a whole".

The deponent warms to this aspect with a series of assertions in the context of licensing under Act to which I will have to return later. The applicant's claim is based on contract and breech and its cause of action does not require or conceivably contemplate the joinder alleged. I agree with the applicant's submissions that it is clear that no other party has any legal interest in these *rei vindicatio* proceedings. There is no merit in the second point *in limine* which is dismissed.

Before proceeding to the third point *in limine* which is bound up in its premises relating to licensing I would observe that the answering affidavit comprises the first two points *rei supra* followed by the third point *in limine* and then moves to a counter application which effectively states that the termination of the lease and dealership agreement being accepted by the 1st respondent it, the 1st respondent, is entitled to cancellation of the lease and servitude and their setting aside.

There is apart from the point *in limine* with which I am dealing no answer on the merits other than as touched on in the points *in limine*.

As counsel for the applicant's observed in his Abbreviated heads of argument:

> "The material allegations in the founding affidavit appeared to be uncontested."

That is correct. Indeed counsel for the respondents' concedes that if his points *in limine* are not upheld then judgment must be given as prayed as set out above.

Counsel for applicant in opening referred to his Abbreviated heads and stated, understandably, that he had had some problem with the respondents' contentions and would be able to deal with them once he had heard the argument for the respondents' thereon.

I return now to the third point *in limine* and I will in considering it touch upon certain assertions made in the second point *in limine*.

The third point *in limine* is introduced as follows:

7. "Third point *in limine*: In accordance with the 'Law' as set out in paragraph 6.2 and 6.3 above, the relief sought by the applicant in the prayers of the notice of motion, cannot be entertained until and unless the applicant has first acquired the relevant permissions from the Controller to:

7.1 Alter market conditions in the locations;

7.2 Disrupt the site and retail licence conditions which prevail over the site;

7.3 Deviate from the terms of any wholesale or manufacturing license which the applicant might hold;

7.4 Applicant, nowhere alleges and (SIC) write under the 'Law' to give effect to the alterations and disruptions aforesaid and such rights reside exclusively in the Controller.

8. Generally, and subject to further adumbration in Argument, I assert the following (as advised):

8.1 Article 25 of the Bill of Rights protect property and prohibits the expropriation thereof without fair compensation. In this regard I humbly assert and contend ..."

Thereafter follow allegations as to the purchase of the property by the 1st respondent the history of the father of the 2nd respondent in respect thereof and his business dealings with the applicant, the formation of the 3rd respondent and transfer to it of the retail licence. There are allegations of advise by an unnamed bank in respect of which the deponent states that she has been advised by counsel to be "wrong and

baseless". She alleges also that insofar as an appointment of the deponent namely herself as a Provisional Dealer at the service station is concerned:

> 8.1.3.2 "It is in the respectful view of my legal advisers herein that it was a deliberate, material and fraudulent non-disclosure of the applicant to have failed in its founding affidavit to disclose that the 'appointment' was done by reason of the a foregoing facts."

The facts referred to relate to an alleged policy decision of the applicant to appoint natural and not artificial persons.

The deponent continues that the service station is closed. She attributes this to the following:

> 8.1.4 At the moment the petrol station is closed and has been closed since December 2011 by reason *inter alia*, of the dispute between ourselves and the applicant and also because the business lost in excess of R2 Million, during 2010 and 2011, in 3 armed robberies, has experienced difficulty in regaining its cash-flows and further because of the confusion brought about in my father's estate as a result of bad and inapt advises and mismanagement."

Eventually the deponent asserts:

> 8.2.3 Applicant's only remedy, if it wishes to discontinue business with the 1st respondent, is – subject to any claim for damages which the 1st respondent might acquire in this – to

take its appurtenances and brand paraphernalia and leave the site. I and my aunt will then be free to negotiate dealership arrangements with another petroleum company.

9. "How the a foregoing may cut across an re-define 'contractual' rights such as those contained in JT7+ is a matter that will be dealt with further in argument by my counsel. I am advised that it is sufficient to assert at this point that the a foregoing Articles, read with the 'Law' on the matter, have the effect that the applicant has no remedy, should it want to cease doing business with the 1st respondent, other than to withdraw from the site and that it is non-suited in respect of the claims made by the notice of motion.

10. The basis, foundation and root of both the notarial lease (JT4) and the Dealership a (JT7), as a whole, is the conduct and maintenance according to the 'Law' (i.e. the Petroleum Products Act and related Regulations as cited earlier) of the petrol-station business and related retail activities on the site;

10.1 In this regard, without derogating from the generality of the a foregoing assertion, I refer (as advised) in this instance to Clause 1 (d) of the Notarial Lease (Annexure JT4) (P39) read with Clause 3 (P40-1) and 6 (P42), especially Clause 6.2 and possibly the resolution of the 08 December 1998 of the applicant's Board of Directors referred to on Page 39 of the papers (which resolution I have not seen and the production

of which I call for herein) and also especially Clauses 1 and 2 (Page 59), 3 (P6). 4 (P61), esp. 4.3 and 4.4, of the Dealership Agreement (JT7+). These clauses make the centrality of continued operations under all relevant licences, clear and abundant."

This leads in the context of licensing to the Heads of Argument and address on behalf of the respondent. The "Argument for the respondents'" it is somewhat prolix and accompanied by diagrams and schedules which were altered during the hearing with the handing up of further submissions comprising in addition to the submissions in the respondents' practice note as to which (see below) and the Argument for respondent an Overview containing a replacement diagram but much of the submissions in this document were discarded, not however further argument on the National Environmental Management Act 107 of 1998 with which I will deal below. This document was followed by the handing up of a "Revised Argument for the respondent on R30 (1) (c) of the Site Retail License Regulation."

Perhaps the easiest overview of the argument for the respondents' is to have regard to the respondent's practice note which reads *inter alia* "issues raised: effect and impact of the Petroleum Products Amendment Act 2003 which came into effect in 2006, on 'franchise-operating' agreement; 'Head Leases' and 'Sub-Leases'; the Act as amended by the PPAA nullifies all and any private 'possessory'

rights other than those which exist under or stem from the 4 licenses permitted by the Act;

Nature and effect of the licensing regime created by PPAA 2003 on a private law;

Petrol Companies as such have no *locus standi* in *iudicio* in any matter falling into and under the PPA and Regulations; the only basis of any *locus standi* for petrol companies on matters falling under the Act are licenses held under the PPA.

Possessory rights over retail sites inhere exclusively in holders of Retail Licenses issued under the Act. Petrol Companies cannot act against licensed retailers or matters falling under the Act other than through the Controller and on any and on the basis only of Wholesaling or Site Licenses held under the Act. Manufacturing Licenses offer no *locus standi* for action against retailers;

Petrol Franchise Agreements, Operating Agreements, Head Leases and Sub-Leases are part of one transaction and are instruments of private personal law which cannot override or overreach the PPA;

Retail Licensee's Rights contain Goodwill which is 'property' and is protected by ART 25 of the Constitution;

"Specific performance of possessory attributes of Head Leases held by Petrol Companies, Sub-Leases granted by Petrol Companies, or of other commercial agreements between licensed Retailers and Petrol Companies is *contra bonos mores* and unenforceable;

Petrol Companies wishing to terminate a business relationship with a Licensed Retailer have no option but to remove their 'Franchise' from a site and seek redress in alternative remedies (*restituio*) (SIC) *integrum*; *rei vindicatio*, damages, enrichment (and no remedy for specific performance is available); An application for the eviction of Retail Licensee from a licensed site is a backdoor application for specific performance of the agreements by which a Retailer is privately enfranchised;

Repudiation: the conduct of Engen in this case amounts to a repudiation of the Private Commercial Agreements between Engen and 1st Respondent insofar as such have applicability; Repudiation accepted and agreements are ended; Basis of registration of Notarial Lease and servitude falls away; Registration must be cancelled".

With that I turn back to the Argument for the respondents'.

It is submitted that the 3rd respondent "holds the property under right or title from the People of the Republic of South Africa represented by the Controller of Petroleum Products" who issued Licence No R/2011/02342BN (3rd respondent). Neither BN nor the Controller are cited and Engen has not sought a joinder or to make out a case that BN holds 'under' and from the 1st respondent. In any event such a joinder will have no legs in law.

2.3.2 Non-joinder aside;

This Licensed

2.3.3.1 (1) This exclusive possessory rights over a site on which

retail operations in petroleum are being conducted in the license in a way that cannot be touched by anyone other than Controller;

2.3.3.2 (2) 'Belongs' to the people of the Republic of South Africa represented by Department of Minerals and Energy ...'

Section 38 of the Act is then cited which merely sets out that any license remains the property of the Department of Minerals and Energy.

In support the Heads of Argument continue:

2.3.3 "It would be foolish to think for a moment that this provision is concerned only with the piece of paper which constitutes the 'License' and not with what the 'License' stands for in Law.

2.3.3.4 In Law, the license represents a particular *vinculum iuris* between Republic and the Licensee into which no one, but Controller as the People's Appointee can make any inroads – especially 'Possessory' and 'Interdictory' inroads.

2.3.4 The long and the short of the matter is, that whilst this license stand:

2.3.4.1 There is absolutely nothing that Engen can have or hold that can ever entitle it to evict (or interdict) anyone from a 'site' on which Retail Operations are being conducted by such a license holder; There is no manner of means by which any Honourable Court in the country can help

Engen to evict (or interdict) any one – and no 200 or even 1000 page 'Franchise Agreement'; or any Notarial Head Lease or any volume of sub-leases or any volume of registered servitudes can make a dent in that reality ..."

They follow further arguments and a diagram of the "Law" which was during arguments supplanted in the Overview.

I will not quote in full the somewhat novel propositions that follow I suffice it to refer to the apparent summation of this aspect.

7.1.9 "The mode or model itself remains unchanged – as Applicant's annexure's show – but the Law has not; it has deliberately moved against it:

7.1.9.1 This does not mean that the Petrol Companies are 'Remediless'.

7.1.9.2 It means only that the Erf has shifted beneath their feet and that they are, perforce, on different ground the nature of which they have failed to realise and understand (or, pretend to not have realised or understood).

7.1.9.3 In short, what has happened is that the commercial 'paper' which they hold is absolutely useless in terms of both 'enforcement' and 'possession' or control 'retail sites'

7.1.9.4 This, all, leaves the Petrol companies, where consensus fails and 'divorces' are apposite, with no remedy other

than *restituio* in integrum alternatively or additionally, damages or unjust enrichment actions or specific *condictio's* (SIC) by which to recoup their financial outlay and possessions

7.2 Analysis of the Act confirms what has been set out thus far. It is best to begin with 'Site License'."

With that the argument addresses the site license conclude specifically and concluding

8.7 The law has quite correctly, as well astutely (SIC), recognised that the 'land' on which retailing activities are to occur and the 'land' alone;

8.7.1 Carries unavoidable obligations and accountabilities of its own in that it changes its *status quo* in the environment from a laid-back rustic existence to a dangerous, toxic and hazardous centre of industrial and commercial activity; that

8.7.2 This leads to the need to design a system of accountability which attaches to that piece of land *visa vie* the operations being conducted on it;

8.7.2.1 This factor also leads to realization that, legally 'site' license rights and obligations are 'real' and not 'personal' rights; and that

8.7.2.2 The site acquires, when licensed, a unique, rare, monopolistic and just about perpetual, commercial 'asset' in the valuable, sellable 'goodwill' that it otherwise cannot

have.

8.7.2.3 'Goodwill' is as solid a 'commercial property' in law as is any piece of real estate and falls within the meaning of 'property' in the Bill of Rights."

This then leads to their submission on the retail license that

9.1 "The 'Law' recognizes, correctly, that the holder of the Retail License has legal standing in the industry as the 'proprietor' of the business to which the Retail License pertains. This right arises and is constituted under the ground from Republic and not by reason of any 'franchise' agreement with a particular Petrol Company

9.2 Proprietorship is not a precept that can be scoffed at or disregarded or taken lightly simply because it is an intangible thing. It is, as much as any piece of real estate, part of Property Law which is its root, and it is central and critical to understanding the 'Law' and that 'proprietorship' is ingrained in the license (per Public Law) and not derived from any 'franchise' agreement (per Private and Personal Law)."

In the third set of submissions being the Revised Arguments *supra* argument is summarized on these aspects as follows

1. "It is submitted there is no difference between the 'retailer' going belly up (or selling it business) and the 'licensed activity' seizing to be going concern (SIC).

2. This particular article (R30)(1)(c) is not concerned with whether the Proprietor of a petrol station has, for instance, gambled the takings at the Casino and left the creditors unpaid.
3. It is concerned singularly with a 'license in question' – hence the term 'licensed activity' in the sense as used in SEC2A which prohibits specified 'activities' without a license.
4. This provision uses the precept of 'licensed activity' and not that of the 'retail business' or the 'retailing business' as in SRR15(3); R18(2); R25(1)(h) or the correlative term the 'business entity' SRR RR13(1) R23(2); R25(1)(a) or even that of 'ownership' of the retail business as SRR R17(b).
5. It is clear that what is correctly intended by SRR R22(1) R30(1)(c) is that the site to which the license pertains has to seize being viable, It is a matter fundamentally of cessante ratione legis cessat (SIC) ipsa lex and not a matter of the personal finances of the Proprietor.
6. This, accords with the overall objectives of licensing which under Act have to be pegged, peremptorily, to the 'viability' of and the need for retail sites (a matter ingrained also in the 'sustainable development' criterion of the environmental approval processes as well as the 'net present value' which kust (SIC) be established in the license application)."

The references to environmental approval process was the subject of

the further set of amending submissions introducing the new diagram referred to above with the deleted arguments relating thereto. There is however retained a series of submissions under the heading "The Role of Nema" these terminate with the following

"(51) By reason of global and international developments to which the RSA is a party, a 'Globally Harmonised System' (GHS) for the classification and labelling of 'dangerous goods' has been devised. This is now (Standard) (SANS10234 of 2008ED1). However it is to remember that at all times prior to SANS0234, the specific standards on the SABS 'dangerous goods' list relating not only to 'transport' but the building of 'dangerous goods' facilities including petrol stations remained applicable by the power of 'general law', on their own.

(52) There is no need to analyze the environmental or town planning laws in fine detail the point to notice that by convergence of ART24 of the Bill of Rights which protects the environmental and classification of petrol as 'dangerous goods' in line with global standards 'environmental laws' aforecited, the blanket Constitutional prohibition against violating, defacing, deforming, polluting or just disturbing the environment and landscape in its natural reposed, by way of the imposition thereon, whether for distribution, manufacturing or retailing, of 'dangerous

good', is the set standard and no 'right' can exist or arise anywhere in the RSA, to anyone, to make anyone of these impositions until and unless such a right is given by due process of the Law which facilitates the 'exception' to the standard ...

(55) In other words, judges and lawyers must place themselves on the same vantage point or throne that an integrated central government has over the entire canvass herein and understand that anyone thing is part of a greater scheme; the trick is to know and understand where the pieces touch each other since the touching is by necessary' ... (SIC)

The submissions on the National Environmental Management Act 107 of 1998 are completely irrelevant to the issue before this Court and have no bearing thereon. There is no factual basis laid in the papers for calling in aid the provisions of Nema.

As to the earlier submissions on licensing issues the respondents' have misconceived the intention and effect of the licensing provisions of the Act as amended. The affidavits lay no basis for the contentions advanced. Indeed many of the contentions submitted in the heads of argument, but of which but a few are quoted above, have no foundation in law or fact.

The concept of licensing by a central authority goes back to the earliest days of Roman Law usually in the form of concessions and for example mining by publicani (state concessions) see de Boer de

winning van Delfstoffen en Hetromeinse regt de Middeleeuse juristicia literature en het Franse regt. These were succeeded by similar provisions in the Transvaal Republic as to licensing which were then taken up in the present Mineral and Petroleum Development Act 28 of 2002 again concerned with licensing system. The purpose was often fiscal. A proliferation of divers licensing enactments grew with the increasing volume of legislation designed to govern all aspects of endeavour often such licensing systems were diverse amongst the constituent provinces of the Republic. The Interim Constitution Act 71 of 1991 and the Bill of Rights contained in the 1996 Constitution (proclamation 18 JJ16302 of 09 March 1995) introduced a new regime entrenching for example the Common Law Right of Freedom of Trade (Section 22) limitation on rights as off course permissible but only by a law of general application subject to the criteria set forth in Section 36 (1). The balancing of rights of individuals and society at large is achieved by both legislative provisions and administrative process. This in turn is subject to the requirements of administrative justice with *inter alia* the pillars of the promotion of Administrative Justice Act (PAJA) 3 of 2000 and the promotion of access to Information Act 2 of 2000.

The Petroleum Products Act 120 of 1977 was in the context of what I have set out immediately above relating to the new regime outdated and not in line with the Constitutional and administrative provisions to which I have just referred. Consequently there was enacted the Petroleum Products Amendment Act 58 of 2003 this was

brought into effect by proclamation R110/2006 JJ28638 of 17 March 2006 on which date it came into operation.

As pointed out by Stein at all LAWSA second addition Volume 9 "energy" Page 73 paragraph 153 footnote 1 it is intended to "promote the transformation of the South African Petroleum and Liquid Fuels Industry, by giving effect to the 'Charter for the South African Petroleum and Liquid Fuels Industry on empowering historically disadvantaged South Africans in the Petroleum and Liquid Fuels Industry', and through licensing. The Act also creates a legislative framework for a system aimed at the regulation of the liquefied petroleum gas and paraffin for the promotion of access to affordable petroleum products by low income consumers for household use. New provisions are inserted into the 1977 Act to deal with prohibition of certain activities: licensing, transformation of South African Petroleum and Liquid Fuels Industry transitional licensing provisions; system for allocation of licenses; and system for allocation of licenses for liquefied petroleum gas and paraffin.

The provisions of the 1977 Act dealing with the following subjects in the 1977 Act are reviewed in line with the objects highlighted in the memorandum of objects attached to the Act: the section dealing with offences and penalties, appeals; arbitration and regulations".

Nonconstat however the startling position contended for by the respondents' there is no warrant there for without no provisions of Act 55 of 2003 including Section 2 (d) the Charter for the South African

Petroleum and Liquid Fuels Industry in which Charter the applicant is itself listed as a participant or the regulations R286 of the 27 March 2006 let alone the original Act contemplate, countenance or intend the displacement of the applicant's rights at Common Law flowing from the contractual and real rights vested in it. The licensing provisions do not stultify the applicant's rights nor bar its entitlement to relief. It is on these rights that relief is sought and to which it is on the papers entitled. As pointed out above the material allegations in the founding affidavit appear uncontested the respondents' relying on their points *in limine* and special pleas without addressing the central averments in the founding affidavits in answer, leaving them for the most part therefore admitted. As to the counter claim it is submitted for the applicant's that it is spurious. I have set it out above. The averments by the respondent that because the 1st respondent allegedly accepts the repudiation it is entitled to the relief claimed does not disclose a cause of action. In the result

1. The points in limine and special pleas raised for the 1st and 2nd respondents' are dismissed with costs.
2. The 1st respondent counter claim is dismissed with costs.
3. An order is granted as prayed in the notice of motion in terms of prayers 1, 2 and 4 with, however the deletion of the words in paragraph 4 "on the attorney and client scale". It is merely the deletion of the attorney and client provision and the prayer.

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