



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT
OF APPEAL**

FROM: The Registrar, Supreme Court of Appeal
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STATUS: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Lepelle Industrial and Mining Supplies CC v Streaks Ahead Investments (Pty) Ltd and Others (Case No 429/2019) [2020] ZASCA 133 (20 October 2020)

Today the Supreme Court of Appeal (the SCA) handed down judgment in an application for leave by Lepelle Industrial and Mining Supplies CC (Lepelle) to appeal against an order of the full court of the Gauteng Division of the High Court, Pretoria. The matter concerned an interim interdict, granted by the high court, which was overturned by the full court on appeal.

On 24 November 2016, the Gauteng Division of the High Court, Pretoria (Baqwa J) granted an interdict against three parties, Streaks Ahead Investments (Pty) Ltd (Streaks Ahead), Boroka Filling Station CC (Boroka), and Erf 344 Ontwikkeling (Pty) Ltd (Erf 344). The interdict prohibited them from any further construction on a property in Namakgale, Phalaborwa, in Limpopo Province. It also prohibited them from any trading activities and/or retailing of petroleum products on the property. Lepelle conducts business as Impala Service Station, a retailer of petroleum products, situated at the entrance to Namakgale Township. Baqwa J granted the interdicts on the basis that Lepelle had established that Boroka was trading in unlawful competition with it. The high court found that a prima facie case had been made out that the site licence issued to Streaks Ahead, as the erstwhile owner

of the property, was invalid. At the time that it was issued by the Controller of Petroleum Products in terms of the Petroleum Products Act, ownership of the property had already passed to Erf 344. As a result, it was found that a case had been made out to set aside the retail licence which had been issued to Boroka.

Streaks Ahead, Boroka and Erf 344 appealed against the granting of the interdicts. On 29 March 2019, the full court (Tuchten, Kubushi and Van Nieuwenhuisen JJ) upheld the appeal and set aside the high court orders. The full court found that the invalidity of a site licence does not automatically invalidate a retail licence. It found that since the retail licence was not invalid, unlawful competition with Lepelle had not been established.

Lepelle's application for special leave to appeal against this order was referred for oral argument before the SCA and for determination of the appeal if leave to appeal was granted.

The SCA approached the matter upon a narrower basis than the full court. The common cause facts established that when the interdict application was launched, construction of the shopping complex and filling station had already been completed. There was therefore no basis for the interdict relating to further construction activity. The common cause facts also established that neither Streaks Ahead nor Erf 344 were engaged in the retail trade of petroleum products. Accordingly, no basis existed for the high court to grant the order prohibiting them from continuing such trading activity. There was therefore no prospect that the full court's orders setting aside the high court's orders would be overturned on appeal.

Insofar as the interdict against Boroka was concerned, the SCA found that it was not necessary to consider the full court's findings on the interrelationship between site and retail licences issued in terms of the PPA. The SCA noted that more than six years had elapsed between Boroka commencing its business activities and the hearing of the application for leave to appeal. What Lepelle sought to achieve by appealing the full court's order was to place the SCA in a position where it would issue an interim interdict pending a review of the decisions to issue site and retail licences. No progress had been made in the prosecution of the review application. The SCA found that the lapse of time so altered the balance of convenience against the grant of such an order that, even if the other

requirements for an interdict were met, there was no prospect that a discretionary remedy would be granted in Lepelle's favour.

The SCA further found that, in any event, Lepelle had failed to establish, even prima facie, that Boroka was trading unlawfully. It was common cause that the internal appeal to the Minister of Energy had been dismissed and that the Minister had directed the Controller to deal with the irregular issue of a site licence to Streaks Ahead when it was no longer the owner of the property. This was done when the Controller transferred the site licence to Erf 344. At no stage had the Controller cancelled the retail licence issued to Boroka. It was therefore lawfully trading in petroleum products having been allowed to do so pending the transfer of the site licence to Erf 344.

The SCA therefore dismissed the application for leave to appeal against the full court's order. It ordered Lepelle to pay the costs of the application. In the case of Erf 344's costs it ordered Lepelle pay punitive costs. It did so on the basis that, from the outset, no case had been made out against Erf 344 for any of the orders it had sought. Lepelle had however, persisted in its application and put Erf 344 to unnecessary expense even before the SCA.