



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 2 June 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal.

Pine Glow Investments (Pty) Ltd v The Minister of Energy and Others (1264/2023) [2025] ZASCA 75 (2 June 2025)

Today the Supreme Court of Appeal (SCA) unanimously dismissed an appeal by Pine Glow Investments (Pty) Ltd (Pine Glow) against an order of the full court of the Mpumalanga Division of the High Court, Mbombela (Roelofse AJ, Vukeya J and Greyling-Coetzer AJ, sitting as a court of appeal). It also directed Pine Glow to pay the costs of the appeal of the third respondent Erf 6 Highveld Technopark Investments (Pty) Ltd (Erf 6) and the fourth respondent NAD Property Income Fund (Pty) Ltd (NAD), such costs to include the costs of two counsel where employed.

The issue in the appeal was whether a decision by the Controller of Petroleum Products (the Controller) which awarded a retail licence to Erf 6 and a site licence to NAD pursuant to the provisions of the Petroleum Products Act 120 of 1977 (the Act), should have been reviewed and set aside at the instance of Pine Glow. Pine Glow had been unsuccessful with its review in both the Mpumalanga Division of the High Court (the court of first instance) and on appeal to the full court of that division (the full court). Only Erf 6 and NAD (collectively the respondents) opposed the appeal.

Erf 6 and NAD had applied unsuccessfully to the Controller for respectively a retail licence and a site licence in respect of a site in Acornhoek (the site). In an appeal against such refusal in terms of s 12A of the Act to the Minister of Minerals and Energy (the Minister), the Minister upheld the appeal, set the Controller's refusal of the applications aside and remitted the site and retail licences back to the Controller for re-evaluation taking into consideration information submitted and other documentation obtained during the appeal process (the Minister's decision).

Pine Glow's complaint is against the portion of the Minister's decision remitting the decision, as to whether the licences should be granted, to the Controller. It contends that this is unlawful as the Minister was required to decide the appeals and was not empowered to refer the applications back to the Controller. It accordingly argued that the Minister failed to take a decision, as contemplated in s 6(3)(b) of the Promotion of Administrative Justice Act 3 of 2000 (the PAJA), and further that the Minister had not provided reasons for his decision. It contended that any decision taken by the Controller pursuant to the Minister's decision would be ultra vires and of no legal force and effect, as would be any licences issued by the Controller pursuant thereto.

The Controller responded that: since the enactment of the licensing system in 2006, decisions by the Minister to refer matters back for reconsideration by the Controller had never been challenged; and that administrative action continues to have legal consequences until reviewed and set aside in an appropriate forum.

After undertaking various enquiries, a second site visit, visits to competitors in the area of the site, and obtaining further information including information from Pine Glow pursuant to a visit to it, the Controller approved the applications and issued the retail and site licences (the Controller's decision). On 10 December 2020 Pine Glow brought an application, pursuant to the provisions of the PAJA, to review and set aside the Minister's decision and the Controller's decision. Pine Glow abandoned its challenge to the Minister's decision before the review came to be adjudicated before the court of first instance.

The court of first instance dismissed the review of the Controller's decision, concluding that: the Minister was entitled to refer the matter back to the Controller. The appeal to the full court against the decision of the court of first instance was dismissed. The full court concluded inter alia that: the Minister's decision and the Controller's decision were separate administrative acts as contemplated in the PAJA; s 7(2)(a) of the PAJA required Pine Glow to exhaust internal remedies provided for in any law before taking any administrative action on review; s 12A provided such a remedy; Pine Glow had failed to exhaust such remedy, or to apply to be exempted from the obligation to do so; and Pine Glow's review application was accordingly premature.

The SCA held that the Minister's decision and the Controller's decision constitute administrative action as contemplated by the PAJA. Further, that the decision to remit the licence applications fell within the wide powers conferred on the Minister in terms of s 12A, which are not circumscribed in any way and not confined to only either upholding or dismissing the appeal. The power to remit the licence applications to the Controller are necessarily implied. Further, the remittal also did not entail the Controller freshly making a new determination on the same material on which he had previously decided. The Controller was not *functus officio*.

Section 12A(3) provides in the most general terms that the Minister shall consider the appeal and shall give his 'decision thereon', that is without any restriction on what the decision might be. It does not follow that because a power to refer the decision back was not conferred expressly, that it would not be competent as part of 'the decision thereon' which the Minister may reach.

Being separate and distinct administrative action, any party aggrieved by the Controller's decision, such as Pine Glow, could appeal to the Minister, as provided in terms of s 12A. Section 7(2) of the PAJA requires that no court shall review administrative action in terms of that Act unless any internal remedy provided had first been exhausted. An appeal to the Minister in terms of s 12A is such a remedy. Pine Glow had not contended that it is not an adequate remedy. Pine Glow however failed to invoke that remedy. There were also no grounds for Pine Glow to be exempted from that obligation. Pine Glow's failure to have appealed the Controller's decision to the Minister is fatal to its prospects of success in the review.

The SCA also found that that the alternative grounds of appeal, namely that the Controller's decision was allegedly procedurally unfair or that he was allegedly biased, should have formed the subject of an internal appeal, but were in any event not established.

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