



## 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:** 26 May 2021

**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*

*Engen Petroleum Limited v Rissik Street One Stop CC and Another* (Case no 209/2020) [2021] ZASCA 63 (26 May 2021)

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Today the Supreme Court of Appeal (SCA) upheld the appellant's appeal. The appeal was against the judgment and order of the Limpopo Division of the High Court, Polokwane (the high court) in terms of which it granted the stay of the eviction proceedings against the respondents and an order interdicting the appellant from taking any steps that would affect the operations of the service station business pending the outcome of the arbitration processes in terms of s 12B of the Petroleum Products Act 120 of 1977 (the Act). The appeal was with the leave of the high court.

The issue was whether it was competent for the high court to order the stay of the eviction proceedings instituted against the respondents and grant an interim interdict against the appellant on the basis that the respondents had submitted a request to the Controller of Petroleum Products (the Controller) to refer the dispute to arbitration in terms of s 12B of the Act.

The appellant, Engen Petroleum Limited (Engen) was a lessee of a premises in terms of a notarial deed of lease it concluded with the owner of the premises. In terms of the notarial deed of lease, Engen had the right to sublease the premises. The first respondent, Rissik Street Engen conducted a fuel retail business from the premises in terms of the agreement of lease and operation of service station (lease agreement) it concluded with Engen. Mr Knoesen, the sole member of Rissik Street Engen, was the second respondent.

Engen brought an application in the high court in which it sought to evict Rissik Street Engen and Mr Knoesen from the premises. The basis of Engen's claim was that Rissik Street Engen and Mr Knoesen's occupation of the premises had become unlawful by virtue of the fact that the lease agreement had expired by effluxion of time. Rissik Street Engen opposed the application and filed a counter-application wherein it sought a stay of the proceedings, pending a decision by the Controller. Engen opposed the counter-application contending that Mr Knoesen's insistence on remaining in occupation of the premises until he had sold the business was misconceived to the extent that there was no intrinsic value to the business without there being a valid and binding lease in place. The high court granted an order staying the proceedings and interdicting Engen from taking any steps that would adversely affect the operation of the service station business, pending the outcome of the arbitration process referred to the Controller.

In its grounds of appeal Engen challenged the findings and the conclusions of the high court on various grounds. The SCA held that ordinarily, Engen was entitled to seek the eviction of Rissik Street Engen and Mr Knoesen from the premises, if they continued to occupy the premises after the expiry of a notice period. It rejected Rissik

Street Engine and Mr Knoesen's contention that, despite the termination of the lease agreement, they were entitled to remain in occupation of the premises and to continue to trade thereon until they sold the business as a going concern. This was because they did not contend that the non-extension of the lease agreement constituted an unfair contractual practice which meant that the arbitrator to be appointed, could not decide what had not been referred to him or her.

The SCA held that in the circumstances of this case it was not open to Mr Knoesen to rely on the right to sell the business as a form of security against eviction. Further, the SCA was of the view that where the contract had ended and no complaint was referred to arbitration to seek its extension, the effect of the stay granted by the high court was to grant a remedy in the interim that could not be obtained by way of final relief in the arbitration. A stay granted on this basis was not a competent exercise of the court's power.

The SCA held that the high court improperly exercised its discretion and that for that reason it was entitled to interfere. In the circumstances, the SCA upheld the appeal with costs and set aside the orders of the high court. The eviction order against Rissik Street Engine and Mr Knoesen was granted.

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