

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

10 March 2009

STATUS: Immediate

*City of Johannesburg v Engen Petroleum (153/2008) [2009] 5 ZASCA (XX 2009)*

*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*

The Johannesburg High Court granted an application by the owner of a petrol filling station and its supplier for an order that the elevation of four lanes of Grayston Drive, above Katherine Street, in Sandton, Johannesburg, amounted to a permanent diversion of that portion of Grayston Drive for the purpose of s 67 of the Local Government Ordinance 17 of 1939 (T), in operation over the relevant period from 1992 to 1994. The section required notice to be given to adjacent property owners, lessees and occupiers, and made provision for them to object to a permanent diversion and to claim compensation for financial loss caused by such a diversion.

The City Council did not give notice to affected persons, apparently being under the impression that a vertical change to Grayston Drive did not amount to a diversion. On appeal against the order of the High Court the City Council argued that only lateral or horizontal deviations from a path or road constitute diversions, and that because the general plan of the area does not necessarily show any elevation or vertical change, the elevated portion of Grayston Drive did not amount to a permanent diversion.

The SCA today dismissed the appeal against the High Court order, finding that the construction of a flyover over Katherine Street, and the consequent elevation of four lanes above the intersection, did amount to a permanent diversion. The court held that nothing in the ordinance suggested that only

horizontal diversions were covered by s 67, the purpose of which was to compensate property holders for financial loss caused by a permanent change to a road.

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