THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 458/2018

In the matter between:

GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT	**FIRST APPELLANT**
MEC FOR ECONOMIC, ENVIRONMENT, AGRICULTURE AND RURAL DEVELOPMENT	**SECOND APPELLANT**
CECILIA PETLANE NO	**THIRD APPELLANT**
LOURENS BADENHORST NO	**FOURTH APPELLANT**
GREATER MIDSTREAM FORUM	**FIFTH APPELLANT**

and

INTERWASTE (PTY) LTD	**FIRST RESPONDENT**
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS	**SECOND RESPONDENT**
DEPARTMENT OF ENVIRONMENTAL AFFAIRS	**THIRD RESPONDENT**

Neutral citation: *Gauteng Department of Agriculture and Rural Development & others v Interwaste (Pty) Ltd & others* (458/2018) [2019] ZASCA 68 (30 May 2019)

Coram: Navsa ADP and Swain, Zondi and Molemela JJA and Weiner AJA

Heard: 10 May 2019

Delivered: 30 May 2019

Summary: Waste management licence issued in terms of the National Environmental Management Act 107 of 1998 – whether expired by effluxion of time – relevance in prevailing circumstances of a compliance notice issued in terms of the Act.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Semenya AJ sitting as court of first instance):

1 The appeal is upheld with costs, including, where applicable, the costs of two counsel.

2 The order of the court below is set aside and substituted as follows:

'The application is dismissed with costs, including, where applicable, the costs of two counsel.'

JUDGMENT

Navsa ADP (Swain, Zondi and Molemela JJA and Weiner AJA concurring):

[1] This case demonstrates how, if litigating parties misconceive their rights and misidentify the main issue for adjudication, the decision by the court before which it is presented, inevitably, will be flawed. The present appeal, with the leave of the court below, ostensibly, principally concerns the validity of a compliance notice issued by an environmental management inspector, purportedly within the regulatory structure in terms of s 31L of the National Environmental Management Act 107 of 1998 (the NEMA).[1] The Gauteng Division of the High Court, Pretoria (Semenya AJ), at the

[1] The long title to the National Environmental Management Act 107 of 1998 (the NEMA) reads:
'To provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote co-operative governance and procedures for co-ordinating environmental functions exercised by organs of state; to provide for certain aspects of the administration and enforcement of other environmental management laws; and to provide for matters connected therewith.'

instance of Interwaste (Pty) Ltd (Interwaste), the first respondent in the present appeal, reviewed and set aside the decision of the third appellant, Ms Cecilia Petlane, an environmental management inspector employed by the first appellant, the Gauteng Department of Agriculture and Rural Development (the GDARD), to issue the compliance notice. In addition, the court reviewed and set aside a decision of the GDARD, in terms of which Interwaste's objection to the compliance notice was rejected. Furthermore, the court remitted the matter to the licencing authority in terms of the NEMA, for it 'to issue Interwaste a licence which complies, *inter alia*, with the provisions of section 51(1)*(e)* of the [National Environmental Management: Waste Act 59 of 2008 (the NEMWA)] stipulating the period of the validity of the licence as well as the period within which any renewal of the licence must be applied for'. The last mentioned order, rightly, is not being defended by Interwaste. It is an aspect to which I shall revert in due course.

[2] The six respondents in the court below, which included Ms Petlane, Mr Lourens Badenhorst, who is also an environmental management inspector, the Member of the Executive Council (the MEC) for Economic, Environment, Agriculture and Rural Development of the Gauteng Provincial Government, the GDARD, the Minister of Water and Environmental Affairs (the Minister) and the Department of Environmental Affairs (the Department) as well the Greater Midstream Forum (the GMF) were all ordered to pay Interwaste's costs. The GMF applied to intervene but did not file any affidavits. It confined itself to making written and oral submissions. It is against the orders referred to above that the present appeal by the GDARD, the MEC, Ms Petlane and Mr Badenhorst, in their official capacities, and the GMF, is directed. The Minister and his department did not participate in the appeal. The history leading up to the compliance notice being issued and events that followed are set out hereafter.

[3] Interwaste operated a waste disposal site within the Gauteng Province, called the FG site, pursuant to a waste management licence issued in terms of the NEMA on *25 November 2011*. The licence, peculiarly, under the title 'conditions', and itemised as

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It is clear that the NEMA has to be viewed as central legislation together with associated environmental legislation and common law principles.

condition 3.1(h), stipulated '[t]his waste management licence must be renewed within a period of four years from date of issue'. That 'condition' is at the centre of this appeal. I pause to note that s 51(1)*(e)* of the NEMWA, under the title 'contents of waste management licences', provides:

'(1) A waste management licence must specify –

. . .

(e) the period for which the licence is issued and period within which any renewal of the licence must be applied for.'

[4] For a proper appreciation of how the conceptual confusion alluded to at the commencement of this judgment and more fully explored later arose, it is necessary to have regard to clause 3 of the waste management licence in its entirety. It includes clause 3.1(h) referred to in the preceding paragraph and reads as follows:

'**3. Conditions**

3.1 Scope of Licence

a. Licencing of the activity is subject to the conditions contained in this licence, which conditions form part of the waste management licence and are binding on Interwaste (Pty) Ltd.

b. This licence is for the construction and operation of FG Waste Disposal site on Portion 15 of the farm Olifantsfontein 410 JR.

c. The site will receive 215 tons of general waste per day and 77 400 per annum.

d. Interwaste (Pty) Ltd shall be responsible for ensuring compliance with the conditions by any person acting on its behalf, including but not limited to, an agent, sub-contractor, employee or person rendering a service to FG Waste Disposal site.

e. The activities which are licenced must only be carried out at the property indicated above.

f. Any changes to, or deviations from, the project description set out in this licence must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for Interwaste (Pty) Ltd to apply for further authorisation in terms of the regulations.

g. This activity must commence within a period of **two (2)** years from the date of issue. If commencement of the activity does not occur within that period, the licence lapses and a new application for a waste management licence must be made in order for the activity to be undertaken.

h. This Waste Management Licence must be renewed within a period of **four (4)** years from the date of issue.

i. This licence does not negate Interwaste (Pty) Ltd's responsibility to comply with any other statutory requirements that may be applicable to the undertaking of the activity.'

These 'conditions' mirror, to some extent, the provisions of s 51(1) of the NEMWA in relation to what a waste management licence must specify.

[5] According to the GDARD, the licence, if regard is had to 'condition' 3.1(h), ought to have been renewed before 26 November 2015. It is common cause that the licence was not renewed. In the intervening period, on 12 December 2012, the GDARD, upon application by Interwaste, amended the licence. The amendment involved increasing the total daily and annual tonnage of waste that the site was entitled to receive and it involved an increase in the maximum height of the site. It did not purport to extend or otherwise affect the period of validity of the licence.

[6] On 24 March 2016, after the expiry of four years from the date of issue, Ms Petlane issued the compliance notice referred to at the commencement of this judgment. The material parts read as follows:

'I have reasonable grounds for believing that you Mr. Hanrè Crous have contravened **Condition 3.1 (a)** and **(h)** of the Waste Management Licence issued to Interwaste (Pty) Ltd in the following manner:

Condition 3.1 (a): "Licensing of the activity is subject to the conditions contained in this licence, which conditions form part of the waste management licence and are binding on Interwaste (Pty) Ltd".

Condition 3.1 (h): "This waste management licence must be renewed within a period of **four (4)** years from the date of issue".

In your representation to me dated 05 February 2016 you responded as follows:

"*Interwaste (Pty) Ltd maintains that the WML must specify the period for which the licence is issued and period within which any renewal of the licence must be applied for. The FG WML does not contain an expiry date or validity period and it is not possible to infer the validity period or expiry of the WML from the renewal period stipulated in the WML".*

The Department is not satisfied with your response and maintains that Interwaste (Pty) Ltd should have applied for the renewal of the WML issued to it for the following reasons:

- The WML dated 25 November 2011 was for the validity period of 4 years. Condition 3.1(h) is clear on the fact that the Licence must be renewed within a four year period.
- The addendum issued to the WML on 12 December 2012 cannot be regarded as a new authorization as the Addendum clearly makes reference to the fact that it is an addendum to the WML dated 25 November 2011 and clearly only amends certain conditions in the WML as pertains to activities to be undertaken. No amendment was made in relation to the validity period neither is there any reference to a new validity period in the Addendum. As such the validity period in the WML continues to find application – four years from issuance of the WML of 25 November 2011.
- The amended application number (Gaut 006/12 – 13/W0003) referred to on page 4 of Interwaste (Pty) Ltd's letter is used by the Department for amendments of existing licences and not used for new licences or authorisations. So the fact that a different application number was used for the amendment application does not make it a new application or a new licence.
- Regulation 42(5) of the 2010 EIA Regulations which deal with amended applications states: "If an application is approved, the competent authority must issue an amendment to the environmental authorization either by way of a new environmental authorization or an addendum to the existing environmental authorization". This regulation clearly makes a distinction between a "new environmental authorization" or an "addendum". The use of the word "or" denotes this as it implies that a decision on an amendment application can either be a new environmental authorization or an addendum to the existing environmental authorization.'

[7] The reference in the compliance notice to the amendment of the conditions was in response to Interwaste adopting the attitude that the four year expiry period, assuming it was stipulated, had to be calculated from the time of the amendment and that by the time of the issue of the compliance notice, that period had not yet expired.

[8] The compliance notice went further and instructed Interwaste to,'[u]pon receipt of this compliance notice **immediately cease** with all activities on site, until such time that Interwaste (Pty) Ltd has obtained and is in possession of a valid Waste Management License'.

[9] On the date of the receipt of the compliance notice, Interwaste applied, under s 31L of the NEMA, for a variation of the compliance notice so that it did not come into operation immediately. Section 31L reads as follows:

'(1) An environmental management inspector, within his or her mandate in terms of section 31D, may issue a compliance notice in the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied –

(a) with a provision of the law for which that inspector has been designated in terms of section 31D; or

(b) with a term or condition of a permit, authorisation or other instrument issued in terms of such law.

(2) A compliance notice must set out –

(a) details of the conduct constituting non-compliance;

(b) any steps the person must take and the period within which those steps must be taken;

(c) anything which the person may not do, and the period during which the person may not do it; and

(d) the procedure to be followed in lodging an objection to the compliance notice with the Minister or MEC, as the case may be.

(3) An environmental management inspector may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.

(4) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister or MEC has agreed to suspend the operation of the compliance notice in terms of subsection (5).

(5) A person who receives a compliance notice and who wishes to lodge an objection in terms of section 31M may make representation to the Minister or MEC, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.'

[10] On 30 March 2016 Interwaste filed its objection to the compliance notice and requested the MEC to use the power referred to in s 31L(5) of the NEMA, to suspend the operation of the compliance notice, until the objection was finally considered.[2] On 31

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[2] Section 31L(5) of the National Environmental Management Act 107 of 1998 reads as follows:

'A person who receives a compliance notice and who wishes to lodge an objection in terms of section 31M may make representations to the Minister or MEC, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.'

Section 31M provides:

'(1) Any person who receives a compliance notice in terms of section 31L may object to the notice by making representations, in writing, to the Minister or MEC, as the case may be, within 30 days of receipt

March 2016, Mr Badenhorst, in his capacity as an environmental management inspector, purportedly acting in terms of s 31L(3) of the NEMA, granted the application, suspending the operation of the compliance notice by 21 days. On 15 April 2016, Interwaste applied, once again, to have the compliance notice varied. Mr Badenhorst refused to do so. He advised that an application should be addressed to the MEC for suspension, in terms of s 31L(5) of the NEMA. That application, as indicated above, had already been lodged. It was not responded to. This led to an urgent application by Interwaste to the high court for an order in which the suspension of the compliance notice was sought, pending finalisation of the objection. After the application was served the MEC agreed to suspend the compliance notice. Interwaste subsequently supplemented its representations that formed part of its objection.

[11] During April 2016, Interwaste requested an opportunity to make oral representations, but that request was not responded to. On 7 June 2016 the MEC dismissed the objection and upheld the compliance notice. He directed that it would come into effect within 14 days of receipt of that decision. In addition, the MEC required that a rehabilitation plan in relation to the FG site be submitted within 30 days.

[12] According to Interwaste it was impossible to comply with the notice. It took the view that a new waste disposal crisis would be created. It insisted that there was no alternative immediately available landfill site that could cope with the tonnage that its site received on a daily basis. Interwaste was concerned, so it said, about the logistics of transporting and disposing of waste that the GDARD appeared not to have taken into consideration. Interwaste faced financial losses which it estimated at R360 000 per day. It was also concerned, so it alleged, about reputational damage. Interwaste considered that it had no choice but to approach the court below on an urgent basis to challenge the legality of the compliance notice.

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of the notice, or within such longer period as the Minister or MEC may determine.
(2) After considering any representations made in terms of subsection (1) and any other relevant information, the Minister or MEC, as the case may be-
(a) may confirm, modify or cancel a notice or nay part of a notice; and
(b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.'

[13] The application by Interwaste was opposed by the GDARD, the MEC and the Gauteng Department of Environmental Affairs. They pointed out that the conditions of the licence and the recently asserted uncertainty concerning the expiry of the licence and the period within which an application for renewal of the licence had to be made, did not appear to have troubled Interwaste, until it was faced with the consequences of the expiry of the licence. In relation to the Minister's directive concerning the rehabilitation of the site, they were emphatic that there is a statutory obligation to rehabilitate a site upon closure. The GDARD took issue with the assertion by Interwaste that there were no alternative sites to manage the waste that they had hitherto received and that a crisis would arise. It listed a number of alternative sites that could take up the waste previously destined for Interwaste's site. As stated above, GMF intervened in the dispute and presented written and oral submissions.

[14] Initially, the final relief sought by Interwaste was an order in the following terms:

'1. Reviewing and setting aside the compliance notice issued by the first respondent dated 24 March 2016 ("*the Compliance Notice*"), as amended;

2. Reviewing and setting aside the decision of the third respondent dated 31 May 2015 ("*the MEC's Decision*"), enforcing the Compliance Notice;

3. Substituting the MEC's Decision with a decision to cancel the Compliance Notice;

4. Alternatively to prayer 3, remitting the matter to the fourth respondent for a fresh decision by an official other than the first or second respondents;

5. Ordering any respondent who opposes the relief sought to pay the costs, including the costs of two counsel, on a joint and several basis.'

[15] Later, in an amended notice, further relief was sought in the following terms:

'4A. Reviewing and setting aside the fourth respondent's decision on 24 November 2011 to impose condition 3.1(h) in the applicant's waste management licence with licence register number Gaut: 002/10-11/W0030;

4B. For the purposes of the review in prayer 4A, granting an extension of time in terms of section 9 of the Promotion of Administrative Justice Act, No. 3 of 2000 ("**PAJA**") of the time period prescribed in section 7 of PAJA to the date of the filing of this amended notice of motion;

4C. Exempting the applicant from the obligation to exhaust the applicable internal remedy in terms of section 7(2)*(c)* of PAJA.'

[16] Semenya AJ, who adjudicated the matter in the court below, had regard to the nature of a compliance notice within the structure and scheme of the NEMA. In his view, Chapter 7 of the NEMA, entitled 'Compliance, enforcement and protection', provided for the enforcement of the NEMA within the environmental management setting. He recorded that a compliance notice must, in terms of s 31L(2)*(a)*, referred to in para 8 above, provide details of the offending conduct, and provide an opportunity for corrective steps to be taken and the period within which that should be done.

[17] The court below took into account that the compliance notice was issued on 24 March 2016, after the expiry of the four years from the date of issue of the waste management licence. The court reasoned as follows:

'[The compliance notice] requires Interwaste to comply with the impossible, the four (4) year period having expired. This could not be the intention of the legislature when conferring the power on an environmental management inspector to issue a compliance notice. A compliance notice properly issued must be one that calls on the waste management licence holder to address . . . conduct that is found to constitute non-compliance with a condition of licence. As I make the finding, there is no obligation on Interwaste to apply for a renewal of its waste management licence.'

[18] Semenya AJ went on to state:

'To call on Interwaste to comply with a condition of a waste management licence which has expired, is also a contradiction in terms. It is either the waste management licence is valid and capable of enforcement, or that waste management licence has expired by effluxion of time and therefore cannot be enforced by the environmental management inspectors. There are other reasons why the position adopted by the respondents is simply untenable. I deal with these below.'

[19] The court below noted that s 56 of the NEMWA deals with the revocation and suspension of waste management licences in appropriate circumstances, which it regarded as an indication that the legislature had made separate provision for a different entity, namely, the licensing authority, to deal with a cessation of the operations of a licence holder. In short, the court reasoned that there was justification for

concluding that a compliance notice was the wrong avenue for dealing with the termination of a licence by effluxion of time.

[20] Semenya AJ upheld the submission on behalf of Interwaste that the licence ought to have specified the validity of the licence period. This, he reasoned, is especially so, because of the provisions of s 51(1)*(e)* of the NEMA. He considered that the failure to so specify a period offended against the principle of legality. He concluded as follows:

'I would then remit the matter back to the licencing authority that the Interwaste licence amongst others must comply with section 51(1)(e) of NEMA and provide both for the period of validity of the licence as well as the period within which a renewal of the licence must be applied for.'

[21] The court below went on to make the following order:

'(a) The decision of the first respondent to issue a compliance notice is reviewed and set aside.

(b) The decision of the third respondent rejecting the objection to the compliance notice, is reviewed and set aside.

(c) The matter is remitted to the licencing authority to issue a licence which complies *inter alia* with the provision section 51(1)(e) of NEMA stipulating the period of the validity of the licence as well as the period within which any renewal of that licence must be applied for.

(d) First to Sixth respondents to pay costs of the applicant in relation to Part A of this application including costs of the application to compel the discovery of the full record.

(e) The respondents including GMF to pay the costs of this application, the one paying the other to be absolved, which costs would include the costs of employing two (2) counsel.'

It is against this order and the conclusions on which it is based that the current appeal is directed. As stated earlier, Interwaste does not seek to defend the order set out in (c) above and does not seek to hold GMF liable for its costs in the court below or in this appeal.[3]

[3] It is not for a court to order a licence to be issued when the legislation contemplates an informed decision being made by a specialised licencing authority. There are, of course, exceptional circumstances in which such an order may be made, provided that the jurisdictional facts are present and the result is a foregone conclusion, or where further delay would cause unjustifiable prejudice or the licencing authority cannot be relied upon to act in accordance with the law. That is not the case here. The order offended against the doctrine of the separation of powers and did not give due deference to the licencing authority. In this regard, see the discussion in C Hoexter *Administrative Law in South Africa* 2 ed (2011) at 148 et seq, as well as 552-557 and the authorities referred to. In respect of costs, there is of course the decision in *Biowatch Trust v Registrar, Genetic Resources & others* [2009] ZACC 14; 2009 (6) SA 232 (CC), on

[22] As stated earlier, 'condition' 3.1(h) is central to the dispute between the parties. The GDARD and the GMF contended that 3.1(h) does comply with s 51(1)*(e)*, in that both the period of the duration of the licence and the time within which a renewal could be applied for are set out therein. There is substance to the view of the GDARD, that the period for which the licence was issued and the period within which a renewal could be applied for only became obscure or opaque to Interwaste, when the continued operation of the site was challenged. In a letter dated 1 December 2015, the GDARD wrote to Interwaste as follows:

'The above matter has reference.

According to the Department's records the Waste Management Licence (WML) issued to FG Landfill Site on the 25th November 2011 expired on the 24th November 2015. Condition 3.1(f) of this licence states:

"*This Waste Management Licence must be renewed within a period of four (4) years from the date of issue*".

In view of the above, Interwaste (Pty) Ltd is required to submit proof to the Department that the WML was renewed prior to 24 November 2015 to allow your facility to continue with its operations within three (3) days upon receipt of this letter. . . .'

In response, in a letter dated 2 December 2015, Interwaste wrote:

'We refer to the Department's letter of 1 December 2015 (attached) regarding the renewal of an FG Landfill Site Waste Management Licence (WML) issued on 25 November 2011 (GDARD Ref: Gaut 002/10-11/W0030). Please note that the FG Landfill currently operates in terms of a WML for a GLB+ Class Landfill (attached), issued by GDARD on 12 December 2012 (Ref. No: Gaut 006/12-13/W0003), which needs to be renewed by 11 December 2016.

The original WML for the site referred to in the Department's letter (Gaut 003/10-11/W0030; 25/11/2011) was in fact for a GMB- Class Landfill, and has been superseded by the WML issued in December 2012, following an initial appeal and then a licence amendment process. Accordingly, the current FG Landfill WML (Gaut 006/12-13/W0003; 12/12/2012) is still valid and only needs to be renewed by 11 December 2016.

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which the Greater Midstream Forum (the GMF) could rely. The GMF is a non-profit voluntary association of companies and homeowners associations responsible and representing members, residents and businesses situated near and in close proximity to the FG site. It was concerned about Interwaste's activities at the FG site and its impacts on residents. It sought to protect environmental rights. The GMF thus sought to vindicate constitutional rights and Interwaste correctly did not seek to pursue the costs order.

Interwaste has however submitted a Waste Licence Variation Application to the DEA in terms of Sections 43(1)(a) and 54(1)(e) of the National Environmental Management: Waste Act ("NEMWA")(Act 59 of 2008, as amended), the main aim of which is to ensure alignment of the landfill's current WML with the most recent legal requirements for waste classification and disposal, most notably GN R. 634, 635 & 636 (23 August 2013), which were promulgated after the FG Landfill WML was issued in 2012.' (My emphasis.)

[23] Furthermore, in a report by external auditors, Prime Resources Environmental Consultants, dated May 2015, more than a year before the application leading up to this appeal was launched in the high court, the following appears:

'The FG Landfill Licence must be renewed within a period of four years from the date of issue, i.e. November 2015. It is recommended that Interwaste *urgently* approaches the Department to initiate the review process and update the licence to be aligned with Waste Classification and Management Regulations and the Norms and Standards for the Assessment of Waste for Landfill Disposal and for the Disposal of Waste to Landfill (2013).' (My emphasis.)

[24] Though confusingly characterised as a condition and not elegantly framed, 3.1(h), properly construed, does state that the licence is for a period of four years and that a renewal 'must' be sought before the expiry of that period. In construing the licence, regard should be had to the legislative context. In this regard the provisions of s 51(1)*(e)* are significant. The peremptory provisions of the legislation would have been uppermost in the minds of the licencing authority and the licensee. Even the framing of the time-periods as a 'condition' appears to have been prompted by the provisions of s 51(2) of the NEMWA, which lists conditions that may be specified by the licencing authority. Moreover, the licence has to be construed sensibly and not have an un-business-like result.[4] In my view the court below erred in concluding that there was no compliance with the provisions of s 51(1)*(e)*. What might have led to 3.1(h) being stipulated as a condition is a reading of s 51(1)*(e)* of the NEMWA as making it obligatory for a licence holder to apply for a renewal. The sub-section is couched in peremptory terms by the use of the word 'must'. However, it must surely mean that for

[4] See *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18. See also, *The City of Tshwane Metropolitan Municipality v Blair Atholl Homeowners Association* [2018] ZASCA 176; [2019] 1 All SA 291 (SCA) at 61 and 77.

the licence to extend beyond the initial licencing period there must be an application for a renewal in the event that a licence holder is so inclined.

[25] The conclusion that the time periods required to be specified by s 51(1)*(e)* of the NEMWA were indeed specified in the licence, leads to the ineluctable result that the validity of the licence terminated because of the effluxion of time. In *Minister of Safety and Security v South African Hunters and Game Conservation Association* [2018] ZACC 14; 2018 (2) SACR 164 (CC), the Constitutional Court, in dealing with the provisions of the Firearms Control Act 60 of 2000 and the expiry period of a firearm licence, said the following (at para 25):

'In the case of termination by effluxion of time under section 28(1)(a), the licence-holder would have known, at least from the time the licence was granted, that it would expire at the end of a specified period. It was clear from the outset that the licence was temporary. Furthermore, no administrative action is required to terminate the licence under section 28(1)(a). It terminates by operation of law. The procedure is fair without provision for the licence holder to make representations regarding the cancellation.'

[26] There is no substance to the suggestion on behalf of Interwaste that the four-year period of the validity of the licence ought to be extended by a further two years because of the application for an amendment to the licence, which was granted. The amendment related to volume of waste and to the height of the stacking of the waste. It had no impact on the time period. Ironically, the suggestion of the two-year extension must logically and compellingly mean an acceptance of the validity of a licence period, initially, of four years.

[27] As can be seen from the terms of the compliance notice set out in para 6 above, it was somewhat confused as to its purpose. The period for renewal had passed. Compliance could thus not be enforced. In the circumstances set out above, the compliance notice was superfluous. It served no practical purpose.[5] Focusing on the

[5] In *J T Publishing (Pty) Ltd & another v Minister of Safety and Security & others* 1997 (3) SA 514 (CC), the Constitutional Court said the following at para 15:
'. . .I interpose that enquiry because a declaratory order is a discretionary remedy, in the sense that the claim lodged by an interested party for such an order does not in itself oblige the Court handling the matter to respond to the question which it poses, even when that looks like being capable of a ready

validity of the compliance notice misconstrued the central issues, which were whether the licence had expired by the effluxion of time or whether there was ever a valid licence in existence. It is clear that the validity of the licence terminated because of the effluxion of time.

[28] Furthermore, the conundrum faced by Interwaste, and not sufficiently recognised by the court below, is that in the event that its submission concerning the failure of the licence to comply with the provisions of s 51(1)*(e)* were to be upheld, it would result, as held by the court below, in the FG site being operated without a valid licence. In those circumstances, it was not for a court to order the issue of a licence, but for Interwaste to take such steps as the NEMWA permitted, to legitimise its position as a waste operator. That it could only do by applying for a new licence. That did not occur. It is thus no wonder that Interwaste abandoned the order by the court below, in terms of which the licencing authority was ordered to issue a licence. It was, as pointed out above, legally untenable.[6]

[29] Interwaste, as indicated in its response to the compliance notice, set out in para 21 above, applied to the Minister for a variation of the waste management licence in terms of s 54(1) of NEMWA, which reads as follows:

'(1) A licensing authority may, by written notice to the holder of a waste management licence, vary the licence –

(a) if it is necessary or desirable to prevent pollution;

(b) if it is necessary or desirable for the purposes of achieving waste management standards or minimum requirements;

(c) if it is necessary or desirable to accommodate demands brought about by impacts on socio-economic circumstances and it is in the public interest to meet those demands;

(d) to make a non-substantive amendment;

(e) at the written request of the holder of the waste management licence; or

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answer. A corollary is the judicial policy governing the discretion thus vested in the Courts, a well-established and uniformly observed policy which directs them not to exercise it in favour of deciding points that are merely abstract, academic or hypothetical ones. . . .'

See also the decision of this court in *Rand Water Board v Rotek Industries (Pty) Ltd* 2003 (4) SA 58 (SCA), which, with reference to *Geldenhuys and Neethling v Beuthin* 1918 AD 426 pointed out that, in general terms, courts will not make determinations that have no practical effect.

[6] See footnote 4 above.

(f) if it is reviewed in terms of section 53.'

That application has no impact on the period of validity of the licence in terms of which Interwaste was granted permission to operate the FG site. It is common cause that no steps were taken by Interwaste to apply for a new licence or for a renewal. The licence, which is in issue in this appeal, expired by the effluxion of time. At the time that the case was heard in the high court, on 7 December 2017, the initial four-year period had expired and, even if one were to have added a further two years to that period, as contended by Interwaste, which, for reasons set out above, one could not do, the validity of the licence would, by the time of the hearing, already have expired. In the absence of a new licence or a valid renewal, Interwaste had no statutory authority to continue operating the waste disposal site.

[30] Although there appears to be some force in the reasoning of the court below, that in conventional terms one would not think of a compliance notice being used for the purpose of dealing with the expiry of a licence, there are, however, the provisions of s 31L(1)*(a)* of the NEMA, which are couched in terms wide enough to encompass any contravention of the law relating to waste disposal sites, including operating a waste disposal site without a licence. For the reasons set out above, that is an issue that it is not necessary to grapple with or finally settle.

[31] When the licencing authority and officials entrusted with the management and enforcement of the provisions of the NEMA and the NEMWA are rightly concerned about issues of public health and safety and environmental rights they should be given their due. In the present case they were fulfilling their statutory and constitutional duties. A waste disposal licence had expired or was otherwise invalid. There had been no application for renewal and there was no other authorisation for the continued operation of the FG site. In light of what is set out above, the high court ought not to have granted Interwaste any relief at all and ought to have concluded that there was no purpose or profit to be gained in dealing with the question of the propriety of the compliance notices. The application by Interwaste should have been dismissed with costs, including the costs of two counsel.

[32] The following order is made:

1 The appeal is upheld with costs, including, where applicable, the costs of two counsel.

2 The order of the court below is set aside and substituted as follows:

‘The application is dismissed with costs, including, where applicable, the costs of two counsel.’

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M S Navsa

Acting Deputy President

APPEARANCES

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For Fifth Appellant:	G W Amm Instructed by: Tim Du Toit & Co Inc., Pretoria Phasthoane Henney Attorneys, Bloemfontein
For Respondent:	D A Loxton SC (with him D Watson) Instructed by: Edward Nathan Sonnenbergs Inc c/o McRobert Attorneys, Pretoria Symington De Kok Attorneys, Bloemfontein