



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Crompton Street Motors v Bright Idea Projects 66 (Pty) Limited**

**CCT 19/20**

**Date of hearing: 9 March 2021**  
**Date of judgment: 3 September 2021**

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#### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Friday, 3 September 2021 at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against a judgment and order of the High Court of South Africa, KwaZulu-Natal Division, Pietermaritzburg.

In February 2003, Chevron South Africa (Pty) Limited, granted Crompton Motors (the applicant) the right to operate a Caltex Service Station on its premises in terms of written franchise and lease agreements. The franchise agreement was set to lapse on 28 February 2018. In December 2011, Chevron ceded and assigned its rights and obligations in terms of the franchise agreement to Bright Idea Projects (the respondent). On 25 August 2017, the applicant was informed in writing that the agreement between the parties would terminate by effluxion of time on 28 February 2018. The applicant was requested to vacate the premises by that date. The applicant responded by stating that it was in the process of drafting an application for arbitration and would not be vacating the premises.

On 16 February 2018, the respondent launched an application at the High Court for the ejection of the applicant from the premises. The applicant opposed the application and delivered a conditional counter-application for an order directing the respondent to provide it with a new franchise agreement, and an order declaring that the applicant was entitled to conduct business on the premises for a further five years, commencing on 1 March 2018. On 22 February 2018, whilst the case was pending in the High Court and before the end of the franchise agreement, the applicant lodged a request for the dispute to be referred to arbitration with the Controller in terms of section 12B of the Petroleum Products Act. In its request, the applicant submitted that the refusal by the respondent to, *inter alia*, extend

the franchise agreement, amounted to an unfair and unreasonable contractual practice as envisaged in the Petroleum Products Act. The applicant thereafter filed its answering affidavit setting out its defence, including an application to stay the proceedings.

In respect of the stay application, the High Court held that the applicant had failed to follow the procedure prescribed by section 6(1) of the Arbitration Act. This was because the applicant applied for a stay in its answering affidavit when it should have done so after delivery of its notice of intention to oppose, but before it took any further steps in the proceedings. The High Court thereafter considered whether it could nevertheless exercise its discretion in terms of section 6(2) of the Arbitration Act to order a stay of the proceedings. The High Court declined to do so and refused to stay the proceedings on the grounds that it would be a waste of time and costs to stay the proceedings; and because the agreement had lapsed; the refusal by the respondent to conclude a new agreement or extended the existing agreement could not amount to an “unfair contractual practice” that could be corrected by an arbitrator in terms of section 12B. Accordingly, it issued an order evicting the applicant from the premises. An application for leave to appeal was dismissed by the Supreme Court of Appeal. On 22 January 2020 an application for the reconsideration of the order was also dismissed.

Aggrieved by the outcome, the applicant applied for leave to appeal to this Court. The applicant’s core submission is that when a matter has been referred to the Controller in terms of section 12B of the Petroleum Products Act, the jurisdiction of the High Court is ousted and that a High Court does not have the discretion to refuse to stay the proceedings once such a request has been made. The applicant relied on this Court’s judgment in *Business Zone*, which it submitted created a rule that section 12B offers a statutory guarantee to elect to resolve the dispute in terms of the section 12B arbitration process rather than through court proceedings and such election suspends court proceedings.

The applicant submits that where a request to the Controller is made and a High Court is faced with an election to stay proceedings, it has no choice but to stay the proceedings pending the arbitration. The applicant contends that to find otherwise would usurp the Controller’s powers in terms of section 12B and deny the applicant their right to access a specialised statutory dispute resolution mechanism, which is guaranteed by section 34 of the Constitution.

The respondent submits that there is nothing in the Petroleum Products Act that gives rise to the ouster of the High Court’s jurisdiction, or which would deprive a court of its common law power to decide an eviction application. The respondent contends that *Business Zone* does not create such a rule, and in any event, it is distinguishable from this matter on the facts and the merits. This is because on the facts, *Business Zone* was concerned with the cancellation of an existing contract and not an already lapsed agreement, and *Business Zone* did not address the issue whether the refusal to enter into a contract constitutes an unfair or unreasonable contractual practice.

In the respondent’s view the High Court made factual findings that the franchise and lease agreements had lapsed and, therefore, the respondent no longer had an existing contractual

relationship with the applicant. The respondent submits that the equitable and reasonable standard set out in the Petroleum Products Act does not apply where there is no existing contract. Further, if the applicant's contention is accepted by this Court, it would undermine the parties' freedom to contract. The respondent adds that the Petroleum Products Act does not afford the arbitrator the power to create a contract between parties that never existed, nor does the arbitrator have the power to override the rights of ownership and the right to obtain an eviction order.

In a unanimous judgment penned by Mhlantla J (Mogoeng CJ, Jafta J, Khampepe J, Madlanga J, Majiedt J, Theron J, Tlaletsi AJ and Tshiqi J concurring), the Constitutional Court granted leave to appeal but dismissed the appeal. It held that section 12B, and the Petroleum Products Act, in general, do not assign jurisdiction exclusively to the arbitrator over disputes, nor is the dispute resolution mechanism in section 12B mandatory and ought to be exhausted before parties may approach the High Court. Parties have a choice between the section 12B arbitration and the High Court litigation. Accordingly, this Court rejected the claim that the High Court's jurisdiction is ousted.

On a court's discretion to refuse a stay application, this Court held that a Judge considering whether to stay proceedings where there has been an application to stay in light of a section 12B referral, must find compelling reasons to refuse the stay. The court must take into consideration the purpose and benefits of arbitration, especially the benefits for retailers who have fewer resources and bargaining power than wholesalers. Regarding this matter, this Court held that the High Court considered several factors in concluding that there were "sufficient" reasons to refuse to stay the proceedings. In this regard, the High Court was entitled to take into consideration judicial resources, and importantly, although courts are cautioned against making stay decisions based on premature assessments of what arbitration would or would not decide, in this instance the High Court was entitled to consider the fact that the agreement had lapsed for two reasons. First, the franchise and lease agreements had a fixed termination date, and the applicant should have approached the Controller timeously to arbitrate on the reasonableness of the duration and terms of the agreement. Second, the respondent informed the applicant of its decision not to renew the lease five months before its expiry date, and the applicant referred the request to the Controller a mere six days before the agreement was to lapse. The undue delay was to its detriment.

This Court also held that *Business Zone* did not create a binding precedent for courts regarding the question whether the refusal to extend a *lapsed* agreement or enter into a new agreement was a contractual practice, that issue was not before this Court. The High Court's finding on this point was therefore not in conflict with *Business Zone* or the Petroleum Products Act, and it could not be said that the High Court was influenced by the wrong principles of law. In the result, this Court issued an order granting leave to appeal but dismissing the appeal with costs.