

14 January 2026

Appeal court declares SANRAL increase in service stations levies unlawful

The Appeal Court recently pronounced on levies charged to fuel retailers and other businesses that operate adjacent to the roads they operate. This comes as a relief to fuel retailers, many of whom are agribusinesses, that pay levies to SANRAL. SANRAL is the registered servitude holder of the road reserve next to national roads. In terms of SANRAL policy, SANRAL can levy a percentage on the gross sale of petroleum products and on the gross sale of all other products on the property. In 2021 these levy percentages were increased. This increase was done unilaterally without any consultation. SANRAL argued that this was a commercial matter and that the levy increases had no direct external effect on the public.

The appellant, a trust that wanted to construct and operate a filling station and rest facilities adjacent to a national road, argued that SANRAL is governed by the SANRAL Act and was obliged to follow a fair administrative process. The Pretoria High Court ruled in favour of SANRAL and found that although SANRAL performs a public function, the terms of the contract, particularly the levy percentages, were negotiated in a manner comparable to that of a commercial contract. The trust appealed against this decision.

The Appeal Court found that decisions by SANRAL to adopt the new policy and retrospectively apply the increased levy percentages in a proposed agreement was reviewable under the Promotion of Administrative Justice Act. It also found that SANRAL was an organ of state and performs public functions. The SANRAL Act also requires a public participation process for decisions such as this. Because no public participation process was followed the levy increases were reviewed and set aside. The policy titled 'Policy for Rest and Service Facilities on National Roads' that SANRAL adopted in terms of which the increases were affected was declared unlawful and of no force and effect. The matter was remitted to SANRAL for reconsideration and compliance with the SANRAL Act.

The implication of the court ruling is that a State-Owned Enterprise such as SANRAL, in making decisions that affect the public, must comply with the requirements of administrative justice and consult with affected parties prior to implementing policies such as the levy. The increase in the levies is invalid, and the current levies set in 2016 will continue to apply until such time as SANRAL determines a new levy through a proper public participation process.

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