

SOUTH AFRICA / JUDGMENT

Glencore Operations SA (Pty) Ltd v Mahuma and Others (2202/2024) [2025] ZANWHC 96 (23 May 2025)

[2025] ZANWHC 96

COURT

North West High Court, Mafikeng

BEFORE

J T Djaje

CASE / FILE NUMBER

2202/2024

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Policy

IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

Case

Number: 2202/2024

Reportable:

YES / NO

Circulate

to Judges: YES / NO

Circulate

to Magistrates: YES / NO

Circulate

to Regional Magistrates: YES / NO

In

the matter between:

GLENCORE
OPERATIONS SA (PTY) LTD
Applicant
And
MAHUMA
DONALD
1ST
Respondent
ALL
INDIVIDUAL OR GROUP OF PERSONS WHO
EITHER
INDEPENDENTLY OF OR IN ASSOCIATION
WITH
THE FIRST RESPONDENT OR ANY OTHER
PERSON
GATHER FOR THE PURPOSES OF
CONDUCTING PROTEST
ACTION INCLUDING THE
BLOCKADING
OF THE APPLICANT'S
RHOVAN
OPERATIONS OR FOR ANY OTHER
PURPOSE
2ND
Respondent
THE
MINISTER OF POLICE
3RD
Respondent
THE
PROVINCIAL COMMISSIONER OF POLICE,
NORTH
WEST PROVINCE
4TH
Respondent
THE
STATION COMMANDER, BETHANIE POLICE STATION
5TH
Respondent
PUBLIC
ORDER POLICING UNIT, KLIPGAT
6TH
Respondent

Heard:

6
MARCH 2025

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be on 23 MAY2025.
ORDER
The following order is

made: 1.
The Rule Nisi
issued and the interim orders granted against the First and Second Respondents on 6 MAY 2024
by the Honourable Mr Justice Peterson ADJP, and extended on 8 August 2024 by the Honourable Mr Justice Masike AJ, are confirmed.

2.
The First and Second Respondents are

interdicted from: 2.1
interfering with or disturbing in any way
the Applicant's operations at the Rhovan operations situate at the premises and/or disrupting
and/or closing down the Rhovan operations
and/or in way from threatening or inciting such conduct at the Rhovan operations;

2.2
blockading any roads and entrances and
exits providing access to and egress from the Rhovan operations
(including but not limited
to the R556 (Sun City road) and Plot Road
(road D109) entrances to the Rhovan Operations ("access roads") and/or from threatening
or inciting others to such conduct;

2.3
preventing and/or interfering with and/or
disturbing in any way all vehicles from using the access roads,
including but not limited
to purposes of ingress to and egress from
the Rhovan operations;

2.4
harming and/or intimidating and/or
harassing any person, including but not limited to occupants of
vehicles using the access roads,
and from inciting such conduct; and

2.5
inciting any persons to conduct unlawful
activities at the Rhovan operations.

JUDGMENT

DJAJE DJP

[1] This matter first came before court on 6 May 2024 as an urgent application and for a Rule Nisi to be issued calling upon the respondents to show cause why a final order should not be granted in the following terms:

“2.1 Interdicting the first and second respondents from:

2.1.1 interfering with or disturbing in any way the applicant’s operations at the Rhovan operations situate at the premises and/or disrupting and/or closing down the Rhovan operations and/or in any way from threatening or inciting such conduct at the Rhovan operations;

2.1.2 blockading any roads and entrances and exits providing access to and egress from the Rhovan operations (including but not limited to the R556 (Sun City road) and Plot Road (road D109) entrances to the Rhovan Operations (“access roads”) and/or from threatening or inciting others such conduct;

2.1.3 preventing and/or interfering with and/or disturbing in any way all vehicles from using access roads, including but not limited to purposes of ingress to and egress from the Rhovan operations;

2.1.4 harming and/or intimidating and/or harassing any person, including but not limited to occupants of vehicles using the access roads, and from inciting such conduct; and

2.1.5 inciting any persons to conduct unlawful activities at the Rhovan operations;

2.2 Directing the third, fourth, fifth and sixth respondents:

2.2.1 to prevent, combat and investigate criminal conduct perpetrated on the access roads;

2.2.2 to conduct daily regular patrols of the applicant’s Rhovan operations to ensure that such access roads are free of obstructions and are safe for use by the public and the employees and contractors of the Rhovan operations;

2.2.3 to attend to all other necessary police activities as prescribed by law for the purposes of maintaining law and order and ensuring the access roads are (and remain) free and clear of blockading to enable safe use.

2.3 Costs of the application against the first respondent and second respondent on the attorney and client scale, jointly and severally, the one paying the other to be absolved;

2.4 No order as to costs in the event of no opposition alternatively costs of this application on the attorney and client scale by those of the third, fourth, fifth and sixth respondents who elect to oppose this application.

3. Directing that the rule nisi set out in paragraph 2.1 (inclusive of

2.1.1 to 2.1.5) and paragraph 2.2 (inclusive of 2.2.1 to 2.2.3) above shall operate with immediate effect as an interim interdict, pending the return date for final determination of this application and confirmation thereof.

4. Directing that the fifth respondent shall provide to the applicant and the Sheriff of the High Court the necessary personnel and assistance to give immediate effect to any order of this Court against the first and second respondents and will take all such steps as may be required and necessary in order to give effect to any order of this Court.
5. Directing those of the respondents that wish to show cause on the return day why a final order should not be made in terms of paragraph 2.1 to 2.5 above must serve on the applicants and file with the Registrar of this Honourable Court, a notice of intention to oppose and any answering affidavit by no later than ten (10) court days before the return day;
6. The applicant is granted leave to effect service of this Rule Nisi and the application papers on the:

6.1 first respondent (i) by the Sheriff of this Honourable Court care of Batlele Holdings (Pty) Ltd situate at 1756 Bethanie East, Bethanie, Northwest Province; and (ii) via email b[...]; and (iii) by forwarding a copy of the application papers and Rule Nisi by WhatsApp message to the first respondent's mobile phones with numbers 0[...] (the first respondent's spouse's cell number) and 0[...] (the first respondent's cell phone number) and stating the following:

“Glencore Operation South Africa (Pty) Ltd (“the applicant”) has instituted an application against you and several other respondents. It will ask the High Court in Mahikeng for an order against you in terms of prayers 2.1 (inclusive of 2.1.1 to 2.1.5), 2.3 and 2.5 of the Notice of Motion. You are entitled to oppose the application. A copy of the application papers have also been emailed to the email address you use; namely b[...].com. You can also obtain a copy of the application papers by contacting Ms Nicolene Neethling of the applicant's attorneys by telephone on 0[...] to arrange to collect a copy of the application papers at the address where the applicant has indicated in its Notice of Motion that it will accept service and notice of all processes in this application as per the Rule Nisi order, you are also directed to bring the existence and content of the Application, the Rule Nisi and of the return day to the individuals comprising the second respondent cited in the Notice of Motion”,

6.2 second respondent by the Sheriff of the Above Honourable Court displaying a copy of the application papers and Rule Nisi (i) at the Rhovan operation bus stop situated on the Plot Road (D109) access road to the Rhovan operations; and (ii) on a pole situated on the R556 (Sun City road) access road to the Rhovan operations which pole is in the nearby vicinity to where the first and second respondents are blockading the access road to the Rhovan operations; and (iii) at the applicant's Business Hub offices situate at the Bethanie Sports Grounds; and (iv) ordering the first respondent to bring the existence and content of the application and the Rule Nisi to the second respondent;

6.3 third respondent at 231 Pretorius Street, 7th Floor, Wachthuis Building, Pretoria; and care of the State Attorney situate at First Floor, East Gallery, Mega City Complex, Corner Sekame Road & Dr James Moroka Drive, Mmabatho, Mahikeng, Northwest Province;

6.4 fourth respondent (i) via email to Lt. General S Kwenia at K[...] and (ii) by the Sheriff of this Honourable Court at 1[...] P[...] M[...] Street, Potchefstroom;

6.5 fifth respondent (i) via email to Colonel S Hlunwani at h[...]; and (ii) via the Sheriff of this Honourable Court at 0[...] T[...] A[...] Street, Bethanie;

6.6 sixth respondent (ii) via email at k[...] and k[...] and (ii) via Sheriff of this Honourable Court at Farm 4[...] JQ, Portion 249 Mashamplane, Klipgat.”

[2] An interim order was granted on 6 May 2024 and extended on 8 August 2024 against the respondents. On the return date of 6 March 2025, the matter was opposed by all the respondents. The applicant and the third to sixth respondents agreed on a draft order in the following terms which was made an order of court:

“1. The Rule Nisi issued and the interim orders granted against the First and Second Respondents on 6 MAY 2024 by the Honourable Mr Justice Peterson ADJP, and extended on 8 AUGUST 2024 by the Honourable Mr Justice Masike AJ, are confirmed.

2. The First and Second Respondents are interdicted from:

2.1 interfering with or disturbing in any way the Applicant's operations at the Rhovan operations situate at the premises and/or disrupting and/or closing down the Rhovan operations and/or in way from threatening or inciting such conduct at the Rhovan operations;

2.2 blockading any roads and entrances and exits providing access to and egress from the Rhovan operations (including but not limited to the R556 (Sun City road) and Plot Road (road D109) entrances to the Rhovan Operations (“access roads”) and/or from threatening or inciting others to such conduct;

2.3 preventing and/or interfering with and/or disturbing in any way all vehicles from using the access roads, including but not limited to purposes of ingress to and egress from the Rhovan operations;

2.4 harming and/or intimidating and/or harassing any person, including but not limited to occupants of vehicles using the access roads, and from inciting such conduct; and

2.5 inciting any persons to conduct unlawful activities at the Rhovan operations.

3. Costs of the application against the First Respondent and Second Respondent on the attorney and client scale, jointly and severally, the one paying the other to be absolved.”

[3] The matter proceeded only against the first and second respondents. Reference to respondents herein is to the first and second respondents. The applicant at the commencement of the proceedings abandoned the point in limine of authority by the first

respondent. The relief sought by the applicant herein is an interdict from disrupting its operations. The applicant conducts mining and smelting operations known as Rhovan Vanadium operations outside Bethanie in the North West Province. The applicant employs more approximately 650 employees, 430 of which are members of the local community of Bakwena ba Mogopa and 330 contractors per day.

- [4] In April 2024 the community indicated that they would embark on a protest action and block the entrances to the Rhovan operations on 29 April 2024. Indeed, on 29 April 2024 the first respondent blocked and stopped a private vehicle of an employee who was transporting colleagues to a shift. He demanded that the employee join the strike and threatened to burn his vehicle if he did not. This was confirmed by the said employee, Mr Godfrey Mphilo in a confirmatory affidavit. There were more threats made by the first respondent to other employees including Mr Wolmarans. The blockade to the entrances took place with tyres being burnt and persisted to 30 April 2024.
- [5] As a result of the blockade, trucks transporting raw materials for the Rhovan operations could not leave the premises. As a result of the blockages the applicant suffered financial loss. The applicant argued that it has satisfied all the requirements of an interdict.
- [6] The respondents contend that the applicant's operations do not benefit the community as the residents of Bethanie continue to endure poverty and unemployment. It was submitted that the applicant does not consult the community on its obligated Social and Labour Plan commitments. It was argued that the community has attempted to engage the Department of Minerals Resources and Energy about the applicant's failure to comply with its Social and Labour Plan in the community, but to no avail. The respondents' case is that the protests and demonstrations were the last resort and the only way to express their grievances against the applicant.
- [7] The issue in this matter is whether the applicant has satisfied the requirements of an interdict. The requirements for a final interdict are trite and they are clear right, reasonable apprehension of irreparable harm and absence of alternative remedy. See *Setlogelo v Setlogelo* 1914 AD 221.
- [8] The applicant argued that it has a clear right to operate and conduct its business without any interference. The applicant is not conducting any unlawful activity and is entitled to have access to its operations. In addition, the applicant has an obligation towards its employees and ensure their safety. The respondents argued that the right to assemble and protest is enshrined in the Constitution and any restriction thereto must be warranted.
- [9] It is not denied that the respondents have assembled to protest against the applicant. In its submission the respondents have not disputed the right that the applicant must carry out mining operations. The issue by the respondents is on the fulfilment of the Social and Labour Plan by the applicant in the community of Bakwena ba Mogopa. In my view there is no doubt that the applicant does have a clear right herein.

- [10] The applicant in its papers established that because of the blockage to its premises, there is a financial loss suffered. There is also interference with the contractors and safety of the employees. It was submitted that the loss and harm that befell the applicant, there is no alternative remedy besides the granting of an interdict against the respondents. The respondents argued that the applicant has not been able to identify the individual persons who they allege are causing disruptions that result in the loss. Arguing further that the applicant is seeking an interdict against unidentified persons. This failure by the applicant will result in this Court granting interdictory relief that infringes on the respondents constitutionally protected right to protest.
- [11] It is not disputed that the respondents who are represented by the first respondent protested against the applicant. The first respondent deposed to an affidavit on behalf of the second respondent. However, there was no confirmatory affidavit by anyone to confirm the correctness of the affidavit by the first respondent and no explanation why. The first respondent in his version of what transpired refers to 'we', which is an indication that he was participating with other persons. As far as the blockade is concerned, the first respondent in the answering affidavit stated that: "I deny that I threatened Mr Mphilo and blocked his car. In my interaction with Mr Mphilo, I warned him that his actions in trying to transport his colleagues in his private car might endanger their lives, as some of the protesters were not happy with his actions. I thereafter offered to transport him to the Applicants Rhovan operations in my car, his colleagues were never intimidated or threatened to do anything."
- [12] The above statement by the first respondent is a clear indication that there was a blockade and Mphilo was allowed to pass by being transported in the first respondent's vehicle. There was also a threat of violence to Mphilo and his colleagues. The respondents had taken control of the access to the applicant's premises. The first respondent in his answering affidavit further stated that they did not completely block the emergency exit of the applicant's premises. It means that there was a blockade, be it partial or complete to the applicant's premises. This statement by the first respondent is evidence that the respondents had taken control of the applicant's access routes.
- [13] In a media statement issued by the Bakwena Ba Mogopa Traditional Authority on 30 April 2024, it was stated as follows "Bakwena Ba Mogopa have vowed to keep the Rhovan operations shut down until the co-shareholder (Glencore) meets with morafe to iron out all the differences and hopefully have a fresh start which should translate into mutual respect which has been longed for by morafe wa Bakwena Ba Mogopa." This statement is more confirmation of the actions of the respondents in interfering with the operations of the applicant. On 6 May 2024 the secretary of the Traditional Authority addressed a letter to Mr Andrian Burgman of the applicant in which it was again stated that "the community has decided to maintain their stand still position, which involves a community strike until a mutually acceptable agreement is reached between the community and Glencore".

- [14] The Constitutional Court in *Commercial Stevedoring Agriculture and Allied Workers' Union and Others v Oak Valley Estates (Pty) Ltd and Another* [2022] ZACC 7 dealt with interdicts as follows:

"[19] In a constitutional order, interdicts occupy a place of importance. In granting an interdict a court enforces "the principle of legality that obliges courts to give effect to legally recognized rights". An interdict is intended to protect an applicant from the actual or threatened unlawful conduct of the person sought to be interdicted. Thus, for an interdict to be granted, it must be shown, on a balance of probabilities (taking into account the Plascon-Evans rule, where final relief is sought on motion), that unless restrained by an interdict, the respondent will continue committing an injury against the applicant or that it is reasonably apprehended that the respondent will cause such an injury. The requirement of a reasonable apprehension of injury was explained by the then appellate division in Nordien:

"A reasonable apprehension of injury has been held to be one which a reasonable man might entertain on being faced with certain facts. The applicant for an interdict is not required to establish that call mom on the balance of probabilities flowing from the undisputed facts, injury will follow: he has only to show that it is reasonable to apprehend that injury will result. However, the test for apprehension is an objective one. This means that on the basis of the facts presented to him, the judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant."

- [20] Plainly, if the evidence is insufficient to establish any link between the respondent and the actual or threatened injury, the apprehension of injury cannot be reasonable. Put differently, it follows that there must be some link between the respondent and the alleged actual or threatened injury....."
- [15] The applicant approached this court to prevent unlawful conduct by the respondents against its Rhovan Operations. As indicted above, the respondents do not deny engaging in action that interferes with the operations. The actions of the respondents endured for over a week and there was no indication that it would stop unless the applicant approached court for an interdict. The first respondent deposed to the answering affidavit stating that he acts on behalf of the second respondent as well in opposing the application. This dispels the argument that the second respondent is unidentifiable. I see no reason why the Rule Nisi should not be confirmed against the first and second respondent.

Costs

- [16] The respondents argued that no cost order should be made against them in case the applicant is successful. The applicant and the respondents have a relationship that requires further engagement in matters relating to community development. It is unfortunate that the respondents in resolving the differences resorted to interfering with the operations of the applicant. However, I am of the view that a cost order against the respondents would severely strain such a relationship and as such I am not inclined to grant any cost order.

Order

[17] Consequently, I make the following order:

J T DJAJE

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

NORTH WEST HIGH COURT

APPEARANCES

DATE OF HEARING

: 6 MARCH 2025

DATE OF JUDGMENT

: 23 MAY 2025

COUNSEL FOR THE APPLICANT

: ADV ROELOFFZE

COUNSEL FOR THE 1ST & 2ND RESPONDENTS : ADV L MOKGOROANE

COUNSEL FOR THE 3RD TO 6TH RESPONDENTS : ADV JOUBERT SC

With ADV MOWILA

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