

SOUTH AFRICA / JUDGMENT

Kopano Brickworks (Pty) Ltd v Greater Stilfontein Socio-Economic Empowerment Foundation and Others (6309/24) [2025] ZANWHC 24 (5 February 2025)

[2025] ZANWHC 24

COURT

North West High Court, Mafikeng

BEFORE

A Reddy

CASE / FILE NUMBER

6309/24

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION –

MAHIKENG

CASE NO: 6390/24

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO
Circulate to Regional
Magistrates: YES/NO

In the matter between: KOPANO BRICKWORKS
(PTY) LTD
APPLICANT
and
GREATER STILFONTEIN
SOCIO-ECONOMIC
EMPOWERMENT
FOUNDATION
FIRST
RESPONDENT
ARISE HEALTH
LABORATORIES
(PTY) LTD
SECOND RESPONDENT
NICOLOR (PTY) LTD

THIRD RESPONDENT
UNKNOWN PERSONS
FROM THE
KHUMA TOWNSHIP
FOURTH RESPONDENT
DATE OF

JUDGMENT

5 February 2025

This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 5 February 2025 at 16h00.

ORDER

1. This application is heard in terms of Rule 6(12) of the Uniform Rules of Court, and the prescribed rules and forms of service of this application are condoned.
2. The First, Second and Fourth Respondents, their agents, representatives or any persons acting under their instructions are hereby interdicted and restrained from-
 - 2.2. Entering or accessing the Remaining Extent of Portion 2 of the Farm Hartebeesfontein 422IP, (the "Farm").
 - 2.3. Removing, processing or causing the removal or processing of any materials, including but not limited to the Kopano Mine Dump, from the Farm.
3. The Third Respondent is hereby interdicted and restrained from-
 - 3.1. Receiving or processing any materials, including but not limited to the Kopano Mine Dump, originating from the Farm.
4. The First Respondent is ordered to pay the costs of this application on a party and party scale A.

JUDGMENT

REDDY J

Introduction

- [1] On 18 December 2024, in urgent court, the following order was granted.
1. THAT: This application is heard in terms of Rule 6(12) of the Uniform Rules of Court, and the prescribed rules and the forms of service of this application are condoned;
 2. THAT: The First, Second, Third and Fourth Respondents, their agents, representatives or any persons acting under their instructions are hereby interdicted and restrained from –

2.1 Entering or accessing the Remaining Extent of Portion 2 of the Farm Hartebeestfontein 422IP (the “farm”);

2.2 Removing, processing or causing the removal or processing of any materials, including but not limited to the Kopano Mine Dump, from the Farm

3. THAT: The Third Respondent is hereby interdicted and restrained from –

3.1 Receiving or processing any materials, including but not limited to the Kopano Mine Dump, originating from the Farm.

4. THAT: The First Respondent is ordered to pay the costs of this application on a party -party Scale A.

[2] On 20 January 2025, a communiqué dated 09 January 2025 was served before me requesting reasons for the abovementioned order. I now proceed to delineate same.

The parties

[3] The applicant is Kopano Brickworks Ltd, a company in business rescue. The first respondent is Greater Stilfontein Socio-economic Empowerment, on-profit company. The second respondent is Arise Health Laboratories (Pty) Ltd. The third respondent is Nicolor (Pty) Ltd. The fourth respondents are identified as The Unknown Persons from The Khuma Township Stilfontein.

[4] The first respondent opposed the application.

Background

facts

[5] The applicant commenced business rescue proceedings on 15 June 2022. Resultantly most of its assets have been sold in terms of an approved Business Rescue Plan. Quintessentially, what remains is The Farm, being an immovable property situated at the Remaining Extent of Portion 2 (A Portion of Portion 1) of the Farm Hartebeestfontein 422 Registration Division IP, North West Province.

[6] Situated on the Farm is a gold mine dump and residual bricks from the former brick manufacturing operations. This operation ceased during the business rescue process. The gold mine dump is valuable and can be processed and sold. On average it contains gold content of approximately 2 grams per ton.

[7] Presently, the respondents are engaged in unlawful conduct. To this end, the respondents are entering onto, removing, processing and selling the gold content and bricks from the gold mine dump. The latter are assets which the applicant is entitled to realise value from for the benefit of the creditors.

- [8] Any contention that the first and second respondents have allegedly concluded a Memorandum of Agreement (MOA) in terms of which it is claimed in the MOA that Village Main Reef (VMR) sold Buffelsfontein Gold Mine and Hartbeesfontein to the first respondent is misplaced. Moreover, no evidence was adduced confirming such acquisition or compliance with legislative requirements including section 11 approvals under the Mineral and Petroleum Resources Development Act 28 of 2002. Notwithstanding the absence of the latter, the gold mine dump can only be accessed with the consent of the applicant.
- [9] Additionally, the MOA provides that the second respondent shall process material from the Farm on behalf of the first respondent at the third respondent's Gold Refinery Plant. To this end, the applicant stated that "clause 1.2.3. of the MOA provides that the Second respondent would enter into an agreement with the Third Respondent for the processing of the Gold Mine Dump on a 50%/ 50% gold split basis. In respect of the 50% gold split income to be provided to Second Respondent by the Third Respondent. The Second Respondent would receive 30% (thirty percent). Whilst the First Respondent will be entitled to the balance of 70% (seventy percent...)". Furthermore, "clause 1.2.5. of the MOA provides that the Second Respondent shall compensate other parties from its 30% (thirty percent) income, the terms of which shall be agreeable between the Second Respondent and the other parties."
- [10] The applicant contended that it was not in possession of an executed agreement. Significantly, if an executed version existed, the applicant was entitled to exercise some control in relation to access of the gold mine dump and derive a benefit from a share of the proceeds. Importantly, the business rescue practitioner is enjoined with a discretion as to whether any contract concluded preceding the business rescue proceedings was for the benefit of the entity.
- [11] As of 12 November 2024, the third respondent reaffirmed that it had commenced to process materials from the gold mine dump, which aggravates the harm caused by the illegal accessing and processing of the gold mine dump. To deprecate this unlawful conduct, cease and desist letters were addressed to the first and third respondents. This communiqué did not trigger any reaction from the respondents.
- [12] The collective unlawful conduct of first, third and fourth respondents in the removal, processing and sale of content and the bricks from the gold mine dump had the inexorably consequence of diverting the proceeds of such activities from creditors. Distinctly, this conduct was causing significant and irreversible prejudice to the applicant and creditors.
- [13] The applicant contended that this application was inherently urgent, not only because business rescue proceedings are urgent in nature but appositely the applicant sought to foil the respondents' unlawful conduct. In addition, the Farm being the sole asset of the applicant, the respondents' actions posed immediate and irreparable harm which (i) depleted the remaining assets of the company, (ii) caused environmental liabilities that the applicant as the landowner would have to bear and (iii) undermined the orderly execution of the Business Rescue Plan.

- [14] On 12 November 2024, the applicant obtained knowledge of the respondents' unlawful conduct. Seized with this information the applicant sought to resolve the matter affably.

The respondents' version

- [15] Against a steady decline in mining operations in the Greater Stilfontein area and the socio-economic evils that follow, entities like the applicant signalled new hope for residents. This proved to be false dawn as the applicant fell under business rescue. This eventually resulted in a complete retrenchment of the applicant's entire work force. In 2021, the first respondent was formed as a community foundation with a view to resuscitating the economy within the Greater Stilfontein area.
- [16] It was contended that 'the first respondent was also engaged in the purchase of Buffelsfontein Gold Mine (Pty) Ltd shares as well as the Hartebeesfontein Gold Mine shares through a partnership it has with two entities, Zambezi Gold as well as Lifelong Resources. The seller of these shares is VMR which currently holds ownership of the above-mentioned companies. This followed a lengthy negotiated process, and an agreement had been signed by the first respondent and its partners. The parties await only the signature from the seller of these shares, being VMR and Heaven- Sent Gold Mine. It bears noting that the first respondent has signed a confidentiality agreement. This makes it impermissible to disclose the terms of the agreement without the appropriate consent.
- [17] Included, in assets in the sale agreement mentioned supra are several gold bearing mine dumps including Kopano Mine Dump, commonly referred to as Shaft 3 Rock Dump. Preceding the establishment of the applicant, VMR in May 2019, undertook to donate these gold bearing rock dumps to and for the benefit of the Greater Stilfontein. To this end, documentary evidence exists which corroborates this intent to donate same. Extrapolating from the letter of donation VMR unequivocally establishes itself as the owner of these rock dumps including Kopano Mine Dump.
- [18] The first respondent, has recurrently engaged VMR on the sale of these assets. Within this context VMR acquiesced to the first respondent conducting clean-up operations pending the conclusion of negotiations for the sale of the Buffelsfontein and Hartebeesfontein Gold Mine shares. As a result, the first respondent intended and has engaged in these clean-up operations through its subsidiary company, KPC Bathopele (Pty) Ltd, (Bathopele). VMR then contracted Bathopele to undertake clean-up operations which included the Kopano Mine Dump.
- [19] In December 2023, Bathopele undertook clean-up operations of gold bearing material which was processed at the third respondent's plant. The clean-up operations were halted until recently when the first respondent re-engaged that third respondent to process further material at its plant. On this occasion as a continuation of its clean-up project operations, the first respondent removed material from Kopano Mine Dump for processing at the third respondent's plant.

- [20] Additionally, the first respondent liaised directly with the applicant's business rescue practitioner, Mr Tebogo Christopher Raymond Maoto N.O (Maoto.N.O) whose founding affidavit to this end annexes a proposed sale agreement of the applicant's assets. These discussions involved the first respondent and Mbuso Management Solutions (Pty) Ltd (Mbuso) owned and led by Daddy Khuselo and former Executive Mayor Cllr James Tsolela. During internal discussions consensus was reached that Mr. Khuselo of Mbuso would head the discussions with Maoto which would centre on the purchase of the applicant's assets.
- [21] The respondents declared that during these discussions the first respondent was reliably informed that there were a group of people who were illegally removing gold bearing material from the Kopano Mine Dump. This illegal activity was being carried in the early hours of the morning. Identified individuals were proscribed from perpetuating same. The contention further advanced was that the respondents were later reliably informed that Maoto N.O had sold Kopano Mine Dump to Mr. Thabang Shomang, (Shomang).
- [22] Maoto N.O intended to introduce the respondents to the new owner of the Kopano Mine Dump. This undoubtedly piqued the interest of the respondents as it was mystifying how Kopano Mine Dump could have been sold when the first respondent was negotiating a sale agreement with VMR for the purchase of same with the assets as a collective. The meeting did not materialise. Maoto N.O and Shomang were a no show. The second respondent facilitated discussions between the parties which concluded in an agreement. In broad, the first respondent, through the cooperation of the second respondent resolved to start processing material from the Kopano Mine Dump. In terms of this agreement, it was envisaged that the second respondent would receive income equivalent to thirty percent (30%) of the proceeds from the processing of material from the Kopano Mine Dump and the second respondent would then in turn compensate the other parties including the applicant at a rate agreeable.
- [23] As to the ownership of Kopano Mine Dump, the contention was that the applicant has 'never owned any mine dump and could not and does not have any authority over the Kopano Mine Dump, even if it is to be proven that such mine dump is located on the land, a fact the first respondent denies. The first respondent has also been issued with an environmental authorisation attached hereto marked "E" by the Department of Mineral Resources and Energy as recently as 25 November 2024, a step towards being granted a prospecting right over the portion of land owned by the applicant.'
- [24] Concluding on the crisp issue of ownership, the respondents averred that the Kopano Mine Dump was amongst several mine dumps that were formed by old mining operations which preceded the Mineral and Petroleum Resources Development Act 28 of 2002. Given the timeframe that led to the creation of these mine dumps, these remain largely unregulated, therefore ownership of same remains with the company or individual that created them. In casu Kopano Mine Dump was created by the Buffelsfontein Gold Mine and remains the property of the latter. VMR is the owner of Buffelsfontein Gold Mine and was in the process of selling its shares to the first respondent and identified partners.

In Reply

- [25] In dealing with the disputed contention of ownership, the applicant declared that the applicant did not claim to be the owner of the Kopano Gold Mine. Instead, what has been consistently avowed was that the gold mine dump is situated on its land and as such, the land is the only asset to which it can lay claim to. It is the gold mine dump which is of value which can be processed and sold. Furthermore, the applicant was enjoined to realise value from it for the benefit of its creditors. In addition, the first respondent vacillates between disputed ownership to where the gold mine dump is geographically located. This position is simply disingenuous. Reinforcing the lack of candour of the respondents was the willingness to meet the purported new owners notwithstanding a stance that there is no gold mine on the applicant's land. The correct position in respect of the proposed meeting was that respondent insisted on the meeting as negotiations had fallen through.
- [26] In retorting to the lack of urgency because of the three-week period that lapsed before the application was served before this Court, the applicant avers that this proposition is at best flawed and riddled with illogical conclusions. The Courts have warned litigants against jumping the proverbial queue prior to fully reconnoitring mediation. To achieve same, various 'calls' were held with other respondents to circumvent litigation. The applicant approached the court when it was appropriate to do so after the collating all the necessary documentation and confirming the veracity thereof. To have approached this Court prematurely would have been prejudicial. Importantly, the first respondent glosses over the fact that the applicant will not receive substantial redress in due course which is fundamental to urgency, notwithstanding that business rescue proceedings are urgent in nature. Finally, the respondent's continuing unlawful conduct renders the matter urgent. Any proposition that the application was not urgent was ill-contrived.

Urgency

- [27] An applicant that seeks relief on an urgent basis must comply with the provisions of Rule 6 (12) (b) of the Uniform Rules which provides that

'In every affidavit or petition filed in support of the application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he would not be afforded substantial redress at a hearing in due course.'

- [28] An applicant that approaches the court on an urgent basis seeks to be granted preference and 'jumps the queue'. In an urgent application, an applicant files an affidavit setting out circumstances which render the matter urgent and sets out the reasons why he or she cannot be afforded substantial redress at a hearing in due course. Urgency is a matter of form. The test is whether an applicant will be afforded substantial redress in due course.

[29] Whether or not an application is urgent entails the exercising of a discretion. The principles on urgency are now trite- (a) the urgency must not be self-created, (b) mere lip service to the requirements of rule 6(12) will not do, (c) failure to comply with rule 6 (12) is fatal to an application and (d) there are degrees of urgency. When an applicant has departed from the normal time periods, he or she must justify in the affidavit the extent of the departure from the normal time and why he or she claims there could be no substantial redress at a hearing in due course. *Roets N.O. and another v SB Guarantee Company (RF) (Pty) Ltd and others* [2022] ZAGPJHC 754 para 26.

[30] Urgency is the very reason which justifies deviation from the times and forms as prescribed in the Rules. Where the application lacks urgency, the Court can on that basis decline to exercise its powers under Rule 6(12)(a). The trite position is to strike the matter from the urgent roll. *In re: Several matters on the urgent court roll* 2013

(1) SA 549 (GSJ), *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Services v Hawker Aviation Partnership and Others* 2006

(4) SA 292 (SCA) at [9], *Luna Meubel Vervaardigers (Edms) Bpk v Makin & Another (t/a Makin's Furniture Manufacturers)* 1977

(4) SA 135 (W) at 137F, *M M v N M and Others* (15133/23P) [2023] ZAKZPHC 122 (18 October 2023).

[31] *In East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) para [6] it was held

‘The import thereof is that the procedure set out in Rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled See *Luna Meubel Vervaardigers (EDMS) BPK v Makin and Another (t/a Makin's Furniture Manufactures)* 1977 (4) SA 135 (W) at 137F-G.6 and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The Rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.’

[32] *In Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (AD) at 782 A-G the following was stated regarding urgency:

‘In my view, in order to persuade the Court that the matter is urgent the Applicant must in the founding affidavit set out sufficient facts to enable the Court to decide whether urgent relief should be granted, in addition to making averments on the urgency the Applicant must set out facts that would support those averments. In dealing with this issue, the Court will, of course, consider the substance of the affidavit and not the technical requirements. In other words, the Court will look at the totality of the evidence set out in the founding affidavit and then from then

deduct from a reasonable inference that those facts support the case for urgency.’

[33] Notwithstanding the timelines set out, it was found that the applicant had met the jurisdictional requirements that govern urgency. The explanation proffered was reasonable. Moreover, it was found that the applicant would not be afforded substantial redress at a hearing in due course.

[34] In respect of the relief sought there appeared to be a confluence between interim and final relief. The applicant sought final relief. It is trite that the three requirements for a final interdict are, a clear right; a threat to breach such right (in the case of a

prohibitory interdict) or a refusal to act in fulfilment of such right (in the case of a mandatory interdict) and no other remedy.

[35] In *NCSPCA v Openshaw* [2008] ZASCA 78; 2008 (5) SA 339 (SCA) at para [20], it was held that an interdict is not a remedy for a past invasion of rights but is concerned with present or future infringements. It follows that an interdict is appropriate only when future injury is feared. Where a wrongful act giving rise to the injury has already occurred, it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated.

[36] The granting of an interdict is discretionary, and the remedy of the interdict itself has been described as unusual. The remedy of an interdict is termed discretionary in the sense that a court may not grant an interdict in circumstances where there is an alternative remedy available to an applicant for an interdict and which may satisfactorily safeguard the right sought to be protected. Put differently, the discretion of the court is bound up with the question whether the rights of the party complaining can be protected by an alternative and ordinary remedy. *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council* 1987 (4) SA 343 (T); *Burger v Rautenbach* 1980 (4) SA 650 (C) and *Grundling v Beyers* 1967 (2) SA 131 (W), *Transvaal Property Investment Co v SA Townships Mining and Finance Corp* 1938 TPD 521.

[37] In my view, the applicant had established the three requisite elements for the grant of an interdict. Resultantly there was no general discretion to refuse relief. *Hotz v UCT* 2017 (2) SA 485 (SCA) at para 20.

[38] Notwithstanding the judicial principle that costs are at the discretion of the court, there was no basis to deviate from the customary order that costs follow the result.

Order

[39] In the premises I reaffirm the order handed down.

A REDDY

JUDGE OF THE HIGH COURT OF

SOUTH AFRICA NORTH WEST DIVISION,

MAHIKENG

APPEARANCES

Date of Hearing: 13 December 2024 Date of Judgment: 18 December 2024 Date reasons requested: 9 January 2025 Date of requested placed before Judge: 20 January 2025 Date judgment handed down: 5 February 2025 Counsel for Applicant: Adv T Moloi Attorney for Applicant: Kganare & Khumalo Attorneys C/O Maleshane Attorneys 3590 Danville Ex34 Mahikeng Attorneys for First Respondent Rams Attorneys C/O: Setshedi Makgale, & Matlapeng Attorneys 20448 Andrew House Dibate, Mmabatho Mahikeng

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2025/24.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/kopano-brickworks-pty-ltd-v-greater-stilfontein-socio-economic-empowerment-foundation-and-others-unknown-topic-anwhc-2025>

Prepared on 12 October 2026 · Esheria