

SOUTH AFRICA / JUDGMENT

Monageng Family Mining Services (Pty) Ltd v Ramokoka and Others (UM76/2019) [2020] ZANWHC 21 (27 February 2020)

[2020] ZANWHC 21

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks

CASE / FILE NUMBER

UM76/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

Case

Number: UM76/2019

In

the matter between:

MONAGENG
FAMILY MINING SERVICES
Applicant
(PTY) LTD
(Registration Number:
2004/005211/07)
and
CHIEF
E. RAMOKOKA
1st
Respondent
BAPHALANE
TRADITIONAL COMMUNITY
2nd

Respondent
BILAL
IHSAN BEREND
3rd
Respondent
(Identity
Number: 700[...])
JHE
BODENSTEIN 4th
Respondent
(Identity
Number: 580[...])
BOITUMELO
PLEASURE TSELE 5th
Respondent
(Identity
Number: 850[...])
TEBOGO
RAMOKOKA
6th
Respondent
ABRAHAM
RADEBE
7th
Respondent
JERRFEY
NANISA MASILELA
8th
Respondent
MOKOPANE
NCHABELENG
9th
Respondent
THABO
MOTLHABANE
10th
Respondent
SIBUSISO
NDLOVU 11th
Respondent
SPENCELY
MOTLOUNG
12th
Respondent
ANDILE 13th
Respondent
ANYONE
ACTING UNDER THE AUTHORITY
14th
Respondent
AND LEADERSHIP OF THE

FIRST TO THE
THIRTEEN
RESPONDENTS
SAMANCOR
CHROME LIMITED
15th
Respondent
(Registration
Number: 1926/008883/06)
KEFILWE
MANYAKWA
16th
Respondent
KGO
FENTSE CONSULTING (PTY) LTD
17th
Respondent
TTLOK
HOLDINGS (PTY) LTD
18th
Respondent
REORAPETSE
TRADING (PTY) LTD
19th
Respondent
THATOMASIMO
SA MINERALS (PTY) LTD
20th
Respondent
SHUMANI
EDMOND MABIRIMISA
21st
Respondent
MINISTER
OF POLICE
22nd
Respondent
THE PROVINCIAL
COMMISSIONER OF
SOUTH AFRICAN POLICE
NORTH
WEST
PROVINCE 23rd
Respondent
MINISTER
OF MINERAL RESOURCES
24th
Respondent

SERVICE:

SURVEY GENERAL:

NORTH
WEST
PROVINCE 25th
Respondent
MINISTER OF RURAL
DEVELOPMENT
AND
LAND
REFORM 26th
Respondent
ORDER
(i)
The rule
nisi issued
out of this Court on 04th
June 2019 as amended on 01st
August 2019, is discharged;
(ii)
The applicant is
ordered to pay the costs of the application to the 15th,
22nd
to 24th
and 27th
to 31st
respondents, on the High Court scale and as between attorney and
client;
(iii)
The counter
application by the 15th
respondent as contained in paragraph [15] of this judgment succeed
with costs;
(iv)
The applicant is
ordered to pay the costs of the 15th
respondent's counter application on the High Court scale and as
between attorney and client. Such costs to include the costs
consequent upon the employment of senior counsel.
(v)
The 24th
respondent's counter application as contained in paragraph [16]
of this judgment succeeds with costs;
(vi)
The applicant is
ordered to pay the costs of the 24th
respondent's counter application on the High Court scale and as
between attorney and client basis. Such costs to include
the costs
consequent upon to the employment of two counsel (senior and junior).
(vii)
The counter
application by the 27th

to 31st
respondents as contained in paragraph [17] of this judgment, is
dismissed with costs;
(viii)
The 27th
to 31st
respondents are ordered to pay the costs of their counter application
to the 24th
respondent on the High Court scale on a party-and-party basis,
jointly and severally, the one paying the other to be absolved.
Such
costs to include the costs consequent upon the employment of two
counsel (senior and junior);

JUDGMENT

HENDRICKS DJP

INTRODUCTION

- [1] The Monageng Family Mining Services (Pty) Ltd (applicant) launched an urgent ex parte application on 03 June 2019 out of this Court. On 04 June 2019, Gura J granted an order in the following terms:

“IT IS ORDERED

1. THAT: Leave is hereby granted to enroll this application as an urgent application and thereby dispensing with the forms and service

provided for in the rules of Court, to the extent necessary and this in accordance with the provisions of Rule 6 (12) of the Uniform Rules of Court;

2. THAT: Pending the determination of this matter on the return date, the First to the Twenty First Respondents are hereby interdicted and restrained from unlawfully interfering in or obstructing the Applicant's mining business conducted at the mine situated on Portion 3 of the Farm Tweelaagte 175 JP, in terms of the Mining Permits lawfully issued in favour of the Applicant, in particular that:-

2.1 the First to the Twenty First Respondents are hereby interdicted and restrained from disrupting mine operations of the Applicant or intimidating or threatening or coercing the representatives and employees of the Applicant and any of the entities working at the Applicant's mine situated on Portion 3 of the Farm Tweelaagte 175 JP;

2.2 the First to the Twenty First Respondents are hereby interdicted and restrained from disrupting mine operations, intimidating, threatening, or coercing the Contractors, Sub-Contractors and Clients of the Applicant and any of their representatives or employees wherever they may situate;

2.3 the First to the Twenty First Respondents are hereby interdicted and restrained from intimidating or threatening or coercing the representatives and employees of any of the entities providing transportation of chrome ore or equipment or machinery or employees to and from the mine situated at Portion 3 of the Farm Tweelaagte 175 JP;

2.4 the First to the Twenty First Respondents are hereby interdicted and restrained from carrying out any illegal mining activities on any portion of Portion 3 of the farm Tweelaagte 175 JP and/or any portion of any of the farms bordering Portion 3 the farm Tweelaagte 175 JP;

3. THAT: Pending the determination of this matter on the return date, Twenty Second and Twenty Third Respondents are hereby interdicted and restrained from unlawfully interfering in or obstructing or sabotaging the Applicant's mining business conducted on Portion 3 of the Farm Tweelaagte 175 JP, in terms of the Mining Permits lawfully issued in favour of the Applicant, in particular that:-

3.1 the Police Officers stationed at Sun City Police Station and the Organized Crime Unit under the supervision/ command of Captain Mthombeni and Warrant Officer Freddy working under the authority, or command or management of the Twenty Second and Twenty Third Respondents are hereby interdicted and restrained from interfering in or obstructing or sabotaging the Applicant' mining business conducted on Portion 3 of the Farm Tweelaagte 175 JP in terms of the Mining Permits lawfully issued in favour of the Applicant;

3.2 the Twenty Second and Twenty Third Respondents are hereby directed and ordered to deploy a Task Team to be stationed in Tweelaagte to ensure quick response and intervention whenever unlawful acts of violence or intimidation OR harassment or blockage and barricading of the roads occurs.

3.3 the Twenty Second and Twenty Third Respondents are hereby directed and ordered to deploy a Task Team of Specialized Detectives to take over the Investigations of the Armed Robbery and Theft case opened under CAS 177/5/2019 (SUN CITY) and all related cases, which were previously reported at the Sun City Police Station by the Applicant or its Employees or Contractors;

3.4 the Twenty Second and Twenty Third Respondents are hereby directed and ordered to deploy a Specialized SAPS Task Team to investigate and track down the armed gang(s) that carried out the armed robbery and theft of the Applicant' chrome material at the Applicant's mine situated at Portion 3 of the farm Tweelaagte 175 JP;

3.5 the Twenty Second and Twenty Third Respondents are hereby directed and ordered to attend to opening and registering the Case Dockets in respect of all the incidents (cases) reported by the Applicant or its Employees and/or Contractors, at the Sun City Police Station and which incidents (cases) the Police had refused to register case docket(s);

3.6 the Twenty Second and Twenty Third Respondents are hereby directed and ordered to take all reasonable steps necessary to assist the Department of Mineral Resources to stop and prevent unlawful mining activities from being carried out on any portion of Portion 3 of the farm Tweelaagte 175 JP and / or any portion of Portion 3 of the farm Tweelaagte 175 JP;

4. THAT: Pending the determination of this matter on the return date, the Twenty Fourth Respondent to the Twenty Six Respondents are hereby interdicted and restrained from unlawfully interfering in or obstructing or sabotaging the Applicant's mining business conducted

on Portion 3 of the Farm Tweelaagte 175 JP, in terms of the Mining Permits lawfully issued in favour of the Applicant, in particular: -

4.1 all applications in respect of Mining Permits or Prospecting Right over Portion 3 of the Farm Tweelaagte 175 JP, which were lodged with the DMR (Twenty Fourth Respondent) on or after the year 2009 whilst the Applicant's application for prospecting right was/is pending or applications which were lodged during the subsistence of the three

- (3) Mining Permits issued by the Department of Mineral Resources (DMR) in. favour of the Applicant, are hereby declared null and void.

4.2 the Twenty Fourth to the Twenty Six Respondents are hereby directed and ordered to permanently remove or delete from their Computer Database System the bogus map, which was used to support SAMANCOR CHROME LIMITED's application for prospecting right;

4.3 the Twenty Fourth to the Twenty Six Respondents are hereby directed and ordered to institute Disciplinary Proceedings against any of their officials who was responsible for the unlawful uploading of the bogus map which was used to support SAMANCOR CHROME LIMITED's application for, prospecting right onto their Computer Database Systems;

4.4 the Twenty Fourth Respondent is hereby directed and ordered to attend to finalizing the Applicant's application for prospecting right within seven (7) days of this Court Order;

4.5 in the event that the Twenty Fourth Respondent fails to comply with this Court Order, the Applicant is hereby granted leave to approach this Honourable Court on an urgent basis with the same papers and/or supplemented should it become necessary, for an order compelling the Twenty Fourth Respondent to issue a Letter of Grant in favour of the Applicant and within 30 days thereafter grant prospecting right in favour of the Applicant;

4.6 the Twenty Fourth Respondent is hereby directed and ordered to do whatever maybe reasonably necessary with the assistance of the SOUTH AFRICAN POLICE SERVICE, to stop and prevent all unlawful mining activities from being carried out on any portion of Portion 3 of the farm Tweelaagte 175 JP and/or any portion of any of the farms bordering Portion 3 of the farm Tweelaagte 175 JP.

5. THAT: Costs on a scale as between attorney and client to: be paid, by Respondents, jointly and severally with the one paying and the others to be absolved.
6. THAT: A rule nisi is hereby issued returnable on 01st August 2019, calling upon the Respondents to show cause, if any, to this Honourable Court as to why the orders in paragraphs 2, 3, 4 and 5 above cannot be made final?
7. THAT: The orders in paragraphs 2, 3 and 4 above shall operate with immediate effect.
8. THAT: The Applicant is hereby directed to serve this Court Order (Interim Interdict) upon the Respondents by any means possible

including (but not limited to) Personal Service, via Email, Facsimile, Text messaging and Whatsapp messaging.

9. THAT: The Applicant is hereby directed to serve this Interim Interdict, Notice of Motion and Founding Affidavit together with all annexure thereto upon the Respondents or their known associates, as appears in paragraphs of this application.”

[2] This order was subsequently served on the 1st to 26th respondents. Some of the respondents filed opposing papers. The 22nd and 24th respondents in addition filed an application on the 26th July 2019 for reconsideration of the order granted on 04 June 2019. The application for reconsideration was argued on 28th June 2019 and judgment was reserved. To date of this judgment, no judgment on this reconsideration application was handed down. The 24th respondent also filed a counter application. Five (5) parties filed an application to intervene. Their intervention were granted and they became the 27th to 31st respondents. They too filed opposing papers and a counter application. The matter was set down for 01st August 2019 before Gura J. With the judgment on the reconsideration application still outstanding since 28th June 2019, the parties agreed to have the intervening parties admitted as parties to the main application. The provisional order of 04th June 2019 was consequently amended.

[3] Gura J granted an amended order in the following terms on the 01st August 2019:

1. THAT: By agreement between the parties, the order granted on 4 June 2019 by this court is substituted by the following order and the following parties are admitted to this application:
 - 1.1. Tweelaagte Mine (Pty) Ltd as twenty seventh respondent;
 - 1.2. Molemi Raborife as twenty eighth respondent;
 - 1.3. Reamaribeng Licas Monageng as twenty ninth respondent;
 - 1.4. Pontsho Ernest Raborife as thirtieth respondent;
 - 1.5. Kgalalelo Obeg Ramorife as thirty first respondent.

2. THAT: A rule nisi is hereby issued returnable on 02-03 December 2019, calling upon the Respondents to show cause, if any, to this Honourable Court as to why paragraphs 2, 3, 4 and 5 below cannot be made an order of this court.
3. THAT: The First to the Twenty First Respondents and the Twenty Seventh to the Thirty First Respondents are interdicted and restrained from unlawfully interfering in or obstructing the Applicant mining business conducted at the mine situated on Portion 3 of the farm Tweelaagte 175 JP, in terms of the Mining Permits lawfully issued in favour of the Applicant. In particular the First to the Twenty First Respondents are interdicted and restrained from:-
 - 3.1. disrupting the mine operations of the Applicant or intimidating or threatening or coercing the representatives and employees of the Applicant and any of the entities working at the Applicant's mine situated on Portion 3 of the farm Tweelaagte 175 JP;
 - 3.2. disrupting mine operations, intimidating, threatening, or coercing the Contractors, Sub Contractors and Clients of the Applicant and any of their representatives or employees wherever they may be situated;
 - 3.3. intimidating or threatening or coercing the representatives and employees of any of the entities providing transportation of chrome ore or equipment or machinery or employees to and from the mine situated at Portion 3 of the farm Tweelaagte. 175 JP; and from
 - 3.4. carrying out any illegal mining activities on any portion of Portion 3 of the farm Tweelaagte 175 JP and/or any portion of any of the farms bordering Portion 3 of the farm Tweelaagte 175 JP.
4. THAT: The Twenty Second and Twenty Third Respondents are interdicted and restrained from unlawfully interfering in or obstructing or sabotaging the Applicant mining business conducted on Portion 3 of the farm Tweelaagte 175 JP, in terms of the Mining Permits lawfully issued in favour of the Applicant. In particular:
 - 4.1. the police officers stationed at Sun City Police Station and the Organised Crime Unit under the supervision/command of Captain Mthombeni and Warrant Officer Freddy working under the authority or command or management of the Twenty Second and Twenty Third Respondents are interdicted and restrained from interfering in or obstructing or sabotaging the Applicant mining business conducted on Portion 3 of the farm Tweelaagte 175 JP in terms of the Mining Permits lawfully issued in favour of the Applicant;
 - 4.2 The Twenty Second and Twenty Third Respondents are directed and ordered to deploy a Task Team to be stationed at Tweelaagte to ensure quick response and intervention whenever unlawful acts of violence or intimidation or harassment or blockage and barricading of the roads occurs,
 - 4.3. The Twenty Second and Twenty Third Respondents are directed and ordered to deploy a Task Team of Specialised Detectives to take over the Investigations of the armed robbery and theft case opened under CA 177/5/2019 (SUN CITY) and all related cases, which were previously reported at the Sun City Police Station by the Applicant or its employees or contractors;

4.4 The Twenty Second and Twenty Third Respondents are directed and ordered to deploy a Specialised SAPS Task Team to investigate and track down the armed gang(s) that carried out the armed robbery and theft of the Applicant chrome material at the Applicant's mine situated at Portion 3 of the farm Tweelaagte 175 JP;

4.5. The Twenty Second and Twenty Third Respondents are directed and ordered to attend to opening and registering the Case Dockets in respect of all the incidents (cases) reported by the Applicant or its employees and/or contractors,. At the Sun City Police Station and which incidents (cases) the Police have refused to register case docket(s);

4.6. The Twenty Second and Twenty Third Respondents are directed and ordered to take all reasonable steps necessary to assist the Department of Mineral Resources to stop and prevent unlawful mining activities from being carried out on any portion of Portion 3 of the farm Tweelaagte 175 JP and/or any portion of any of the farms bordering Portion 3 of the farm Tweelaagte 175 JP;

4.7. The Twenty Fourth to the Twenty Sixth Respondents are interdicted and restrained from unlawfully interfering in or obstructing or sabotaging the Applicant's mining business conducted on Portion 3 of the farm Tweelaagte 175 JP, in terms of the Mining Permits lawfully issued in favour of the applicant. In particular:

4.8. All applications in respect of Mining Permits or Prospecting Rights over Portion 3 of the farm Tweelaagte 175 JP, which were lodged with the Department of Mineral Resources ("DMR") (Twenty Fourth Respondent) on or after the year 2009 whilst the Applicant's application for a prospecting right was pending or applications which were lodged during the subsistence of the three (3) Mining Permits issued by the DMR in favour of the Applicant, are declared null and void;

4.9. The Twenty Fourth to the Twenty Sixth Respondents are directed and ordered to institute disciplinary proceedings against any of their officials who were responsible for the unlawful uploading of the bogus map which was used to support SAMANCOR CHROME LIMITED'S application for a prospecting right onto their Computer Data Base System;

4.10. The Twenty Fourth to the Twenty Sixth Respondents are directed and ordered to attend to finalising the Applicant application for a prospecting right within seven (7) days of the Court Order granted on the return date;

4.11. In the event that the Twenty Fourth Respondent fails to comply with the aforesaid Court Order, the Applicant is granted leave to approach this Honourable Court on urgent basis with the same papers duly supplemented should it become necessary, for an order compelling the Twenty Fourth Respondent to issue a Letter of Grant in favour of the Applicant and within 30 days thereafter grant a prospecting right in favour of the Applicant;

4.12. The Twenty Fourth Respondent is directed and ordered to do whatever may be reasonably necessary with the assistance of the South African Police Service, to stop and prevent all unlawful mining activities from being carried out on any portion of Portion 3 of the farm Tweelaagte 175 JP and/or any portion of any of the farms bordering Portion 3 of the farm Tweelaagte 175 JP.

5. THAT: The order in paragraph 3 shall operate with immediate effect.
6. THAT: Costs on a scale as between attorney and client to be paid by such Respondents who oppose this application, jointly and severally, the one paying and the other/s to be absolved.
7. THAT: The twenty seventh to the thirty first respondents are ordered to file
 - 7.1. their notice to oppose if any by no later than 16 August 2019; and
 - 7.2. their answering affidavit(s), if any, by no later than 30 August 2019,
8. THAT: The applicant is ordered to file its replying affidavits (to all answering affidavits filed by all respondents), if any, by no later than 20 September 2019;
9. THAT: All parties are ordered to file their heads of argument by no later than 15 October 2019.
10. THAT: The Registrar is ordered to place the court file of this case before the trial Judge not later than 28 October 2019.”

[4] On the 02nd December 2019, Leeuw JP postponed the matter until 21st January 2020 because of its alleged urgency. The matter then served before this Court on 21st January 2020. On the morning of the 21st January 2020, Adv. Rafedile who previously appeared for and on behalf of the 01st to 04th and 06th respondents, telephoned my registrar and asked her to inform me that he holds no brief to further appear on behalf of his clients in this matter. Out of courtesy he thought it best to inform the Court. Adv. Gededger who appeared on behalf of the applicant, placed it on record that Adv. Rafedile also informed him that he holds no brief to further appear on behalf of his clients. This is also the reason why he did not file any heads of argument. Furthermore, because the case of the 01st to 04th and 06th respondents are aken to the case of the 27th to 31st respondents, they elected not to further participate in these proceedings without formally withdrawing from it. Much as it is appreciated that Adv. Rafedile chose to alert the Court about his situation, he was supposed to appear and formally withdraw because he was still on record or alternatively his instructing and /or correspondent attorney should have filed a notice of withdrawal. This is still good practice but it was however not done. Be that as it may, after listening to the submissions made by the respective

counsel, judgment was reserved on 21st January 2020.

BACKGROUND

- [5] During January 2010, the applicant submitted an application for a mining permit under reference number 1279MP in respect of the property known as Portion 3 of farm Tweelaagte 175JP. On 28 January 2010 the Regional Manager: North West Region rejected the applicant's application for the reason that the applicant failed to comply with the requirements of section 27(3)(a) of the Act, in that it failed to submit the relevant title deed of the area applied for.
- [6] On 1 February 2010, the applicant submitted another application for a mining permit. The application was received by the Department of Mineral Resources under reference number 1285MP. On 8 February 2010 and in a record of decision dated 8 February 2010, the Regional Manager: North West Region recommended that the application be accepted in terms of section 9(1)(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("the MPRDA"). The record of decision records that the application was received on 1 February 2010 as a third application of the day; that there is an existing prospecting right held by Investment Proprietary Limited for all minerals excluding chrome; and that there is also a mining permit

application by the same applicant under reference number 1279MP for chrome. The application in question was rejected.

- [7] On 8 February 2010, the Regional Manager: North West Region addressed a letter to the applicant in which he advised the applicant that the application for a mining permit of chrome in terms of section 27 of the Act has been accepted. In the letter he also requested the applicant to submit an environmental management plan on or before 8 April 2010 and to consult with the land owner or lawful occupier and any other affected party. Furthermore, to submit the result of such consultation to his office on or before 9 March 2010.
- [8] On 8 June 2010 the application for a mining permit by the applicant was approved under permit number 29/2010. The applicant was advised of the approval per letter dated 8 June 2010. The validity period of the permit was two (2) years renewable

for three (3) times. Each renewed period may not exceed one (1) year. This was communicated to the applicant. It also records its validity period. The mining permit would therefore, in its own terms, expire on 7 June 2012 unless renewed as provided in the permit.

- [9] On the same date namely 1st of February 2010, the applicant made another application for a mining permit in respect of the same property, namely Portion 3 of farm Tweelaagte 715JP. The mining permit was made under reference number 1286MP. It was also processed during the same period as reference number 1285MP and was also granted on the same date namely 8th of June 2010, under permit number 31/2010. The permit was issued in similar terms to the previous one under number 29/2010 and was valid until 7 June 2012.

[10] On 17 February 2010, the applicant made another application for a mining permit. This time the application was made under reference number 1292MP and was in respect of the same property being Portion 3 of farm Tweelaagte 175JP. This application was also approved on 8 June 2010 and the applicant was issued with permit number 30/2010. The permit was valid for a period of two (2) years from 8 June 2010 meaning it lapsed on 7 June 2012. The above mining permits were in respect of areas extending for 1,5 hectares each. This means that the three (3) mining permits

collectively covered an area of 4,5 hectares in extent, since they were adjacent to each other.

[11] Mining permit number 30/2010 records an extension or a renewal from the 13 August 2014 to 12 August 2015. This is despite the fact that the mining permit itself

was valid from the 8th of June 2010 to the 7th of June 2012, on which latter date the mining permit automatically lapsed. On 11 April 2012, the applicant applied for renewal of permit numbers 29/2010 and 31/2010. No decision was taken on the applications for renewal until the permits lapsed or expired by effluxion of time on 7 June 2012.

[12] It appears that beyond the lapse of these two permits, the office of the Regional Manager: North West Region purported to renew the applicant's mining permits despite the fact that they had lapsed or expired by effluxion of time. I will later on this judgment deal with the validity of these permits in greater detail. Suffice to state that these permits were at some stage also suspended because it was alleged that the applicant were mining outside the area allocated and specified on the permits.

[13] The applicant alleged that the respondents intimidated and interfered with their mining activities. Hence, they approached the Court for interdictory and ancillary relief on an ex parte urgent basis, which order was granted by Gura J on 04th June 2019, as amended by the order of 01st August 2019. As alluded to earlier, no reasons or judgment for the granting of these orders were provided. It has now been overtaken by the subsequent events.

[14] The application by the applicant before this Court on 21st January 2020 was for confirmation of the rule nisi granted on 04th June 2019, as amended by the order of 01st August 2019. Contrary to this, are the applications by the respondents and in particular the 15th; 22nd; 24th; and 27th to 31st respondents, that the rule nisi should be discharged. Further that the counter applications filed by the 15th; 24th and 27th to 31st respondents should be granted, with costs on the punitive scale as between attorney and client.

THE COUNTER APPLICATIONS

[15] In the counter application filed by the 15th respondent, it seeks an order in the following terms: An interdict restraining the applicant from:-

- conducting mining operation in the area in respect of which Samancor (15th respondent) holds a prospecting right namely, a portion of the Remaining Extent of Portion 1 of the farm Tweelaagte 175 JP, a portion of Portion 3 of the farm Tweelaagte 175 JP and Portion 5 of the farm Tweelaagte 175 JP (Samancor's Prospecting Area");
- entering Samancor's Prospecting Area;
- an order directing the applicant to remove its mining equipment and machinery capable of being used for mining purposes from Samancor's Prospecting Area;
- a costs order against the applicant.

[16] The counter application filed by the 24th respondent are diametrically opposed to the case of the applicant. An order in the following terms are prayed for:

- that the decision to grant and issue the mining permits under No. 29/2010, 30/2010 and 31/2010 in favour of the applicant, Monageng Family Mining Services (Pty) Ltd, in respect of Portion 3 of the farm Tweelaagte I 75JP, is unlawful and invalid;
- that the said mining permits be accordingly set aside;
- Alternatively, that it be declared that mining permits No. 29/2010, 30/2010 and 31/2010 expired by effluxion of time on 7 June 2012 and that the approval of the renewals recorded on the said permits are unlawful and invalid;
- that the decision to renew and the approved renewals of the permits be set aside;
- that the applicant be directed to cease all mining operations at Portion 3 of the farm Tweelaagte 175JP and to rehabilitate the area within ninety (90) days from the date of the court order sought and that applicant must submit its rehabilitation report to the department.

[17] Apart from the intervention prayers in paragraphs (1) and (2) in the counter application by the 27th to 31st respondents, an order in the following terms are prayed for:-

- (3) that the Twenty Fourth Respondent, is interdicted from granting and/or finalising the prospecting permit application lodged or submitted by the Applicant, pending the finalisation of the investigation of the Land Titles Adjustment process by the Land Titles Adjustment Commissioner, Ms L. Du Plessis and such ancillary relief;
- (4) that the First to Fifth Intervening Applicant be and are hereby granted an interdict restraining the Applicant from illegal mining on Portion 3 of the Farm Tweelaagte 175 JP, save for the right to mine chrome dumps (rehabilitation), which does not involve digging any whole or drilling or excavating the ground on Portion 3 of the Farm Tweelaagte 175 JP;
- (5) that the Twenty Fourth Respondent, is ordered and directed to investigate, and report to court its findings and remedial action taken or to be taken for dealing with any party responsible for unlawful and illegal mining, digging any whole or drilling or excavating the ground on Portion 3 of the Farm Tweelaagte 175 JP, within 30 days of this order;

- (6) that Members of the South African Police Services are directed to enforce the terms of this order.
- (7) that pending finalisation of the investigation of the Land Titles Adjustment process by the Land Titles Adjustment Commissioner, Ms L Du Plessis, the above mentioned order shall operate as an interim interdict.

Prayers

- (5) and (6) were purposed to be abandoned.

THE VALIDITY OF THE APPLICANT'S PERMITS

[18] The validity of the applicant's mining permits is vitally important to determine whether the rule nisi should be confirmed or discharged and whether the counter applications should succeed and be granted. As already alluded to earlier on in this judgment, the applicant were granted three permits namely 29/2010, 30/2010 and 31/2010.

[19] Permit 29/2010 was issued on 08 June 2010 and was valid for a period of two (2) years which expired on 07 June 2012. This permit purports to be

renewed for the period 25 March 2019 to 24 March 2020. This is the first renewal of this permit. There is an unaccounted period of seven

- (7) years during which this permit was not renewed. The submission by Adv. Gededger is that although the applicant applied timeously for the renewal before the expiry date of this permit, the Minister (24th respondent) only granted the requisite extension after the passage of the seven (7) year period. Adv. Matebese SC submitted that it can never be that the renewal application was pending for a period of seven (7) years. There is something untoward this. Much as this seems to be unbelievable, on the face of it, it appears to be the case. Therefore, the 24th respondent filed the counter application to set aside the permit alternatively a declaration of invalidity. I will deal with the

counter application in more detail later on in this judgment.

[20] Permit 30/2010 was also issued on 08 June 2010 valid for a period of two years and expiring on 7 June 2012. Although there is no evidence in the

founding affidavit that this mining permit has ever been renewed, a letter from the Director-General dated 22 March 2019 indicates that a renewal application was submitted and remains pending. However, this is disputed in the affidavit by the Minister of Mineral Resources, (24th respondent), which states that "No application was made for the renewal of permit number 30/2010".

- [21] With regard to permit 30/2010, it is quite apparent that it has lapsed. It is contended on behalf of the applicant that an application was made for its renewal. The correspondence between the applicant and the 24th respondent is of importance. In terms of a letter from the Regional Director, an extension was proffered.
- [22] Adv. Gededger submitted that because of the content of this letter, the permit is still valid because an extension is proffered. Adv. Matebese SC on behalf of the 24th respondent contended otherwise. He submitted to the contrary that the terms of the old act is very clear and that the said permit had expired. The Regional Director does not have the necessary authority to order an extension. In the absence of a valid application for an extension and the granting thereof by a person cloth with the necessary authority, the permit had expired. The effect thereof is that the applicant does not have any locus standi insofar as this permit is concerned.
- [23] Permit 31/2010 was issued on 8 June 2010 for a period of two years expiring on 7 June 2012. The permit states that it may be renewed for three periods. Each period may not exceed one year. In accordance with this requirement, the permit was renewed three times, each for a period of one year. The third approved renewal period commenced on 5 June 2018 and ended on 4 June 2019.
- [24] Therefore, insofar as permit 31/2010 is concerned, it is clear that this permit was valid up until 04th June 2019, when the initial ex parte order was granted. By then, so it was submitted on behalf of the applicant, was this permit valid. Adv. Matebese SC submitted that the permit expired on 04th June
2019. The permit is no longer valid. When the order of 01 August 2019 was granted, this permit has lapsed. Even more so on the return date, 21st January 2020. This Court can no longer regard this permit as valid and grant an order confirming the rule nisi. I am in agreement with this contention.
- [25] This Court should look at the validity of this permit at this stage because the confirmation of the rule nisi is now before this Court for adjudication. It is common cause that there is no pending application for extension of this permit, which in any event cannot be done because in terms of the act, a permit can only be extended on three (3) occasions for a period of one (1) year each. It goes without saying that this permit has lapsed. Therefore, with regard to permits 30/2010 and 31/2010, the applicant have no locus standi as these permits have lapsed.
- [26] In addition, in terms of the act, a permit could only be issued for an area not exceeding 1.5 hectares in total. It was not the intention of the legislature that three (3) permits be granted to a maximum of 1.5 hectares each on land adjacent to each other in order to comprise 4.5 hectares. The old act is clear that the maximum area should comprise 1.5 hectares. The new act states that the area is increased to a maximum of 5 hectares. However, the new act does not work retrospectively. Furthermore, the permit was applied for before the new act came

into operation. This Court should therefore apply the applicable law relevant to this permit as it was at that time. The three (3) permits granting the applicant mining rights over areas adjacent to one another totalling 4.5 hectares is a circumvention and flaunting of the provisions of that act. Hence, on this basis too,

the counter application should be granted setting aside these permits, alternatively declaring it invalid.

[27] Adv. Gededger submitted that the counter application by the 24th respondent is bad in law and cannot be granted by this Court. According to him, the 24th respondent should have issued a notice in terms of section 47 of the old act, affording an opportunity to the affected party (“the

applicant”) to make representations. In addition, the 24th respondent should have brought a review application and cannot take a short cut and bring a counter application in these proceedings.

[28] In reply to this contention, Adv. Matebese SC submitted that this procedure is appropriate. Reliance was placed on the matter of Merafong City Local Municipality v AngloGold Ashanti Limited 2017 (2) SA 211 (CC), in particular paragraphs [81] to [83] and [97] to [106] thereof. I find the dictum in the Merafong case, supra, quite apposite in this matter. Not only does it make sense but it is also cost effective. The interested and affected litigants are before Court and a case has been made out and replied to. It defies all logic that a litigant in a matter such as this, is debarred from bringing a counter application or counter challenge on the issues before Court and has to institute review proceedings in a separate application. It is illogical to do so. In my view, it was quite appropriate for the 24th respondent to have instituted the counter application or counter challenge.

[29] As far as the merits of this counter application by the 24th respondent is concerned, I am in full agreement with the fact that the old act specified that the total area for mining could not accede 1.5 hectares in total. Section 27 of the old act is unambiguous and very clear. It was in contravention of this act that three (3) mining permits were granted to the applicant on adjacent pieces of land, covering a total area of 4.5 hectares. In my view this was a circumvention of the provisions of the old act. Based on the principle of legality, this cannot be condoned. This Court should not and cannot perpetuate such an illegality. Therefore, over and above the fact that two of three permits 30/2010 and 31/2010 have expired, all the permits must be declared invalid and must be set aside. This include permit 29/2010, which as already alluded to earlier, on the face of it seems to be valid up until 03 March 2020.

THE COURT ORDER OF 01 AUGUST 2019

[30] Gura J granted an order in the following terms:

4.8 all applications in respect of Mining Permits or Prospecting Right over Portion 3 of the Farm Tweelaagte 175 JP, which were lodged with the DMR (Twenty Fourth Respondent) on or after the year 2009 whilst the Applicant's application for prospecting right was/is pending or applications which were lodged during the subsistence of the three

(3) Mining Permits issued by the Department of Mineral Resources (DMR) in favour of the Applicant, are hereby declared null and void.

4.9 the Twenty Fourth to the Twenty Six Respondents are hereby directed and ordered to permanently remove or delete from their Computer Database System the bogus map, which was used to support SAMANCOR CHROME LIMITED's application for prospecting right;

4.10 the Twenty Fourth to the Twenty Six Respondents are hereby directed and ordered to institute Disciplinary Proceedings against any of their officials who was responsible for the unlawful uploading of the bogus map which was used to support SAMANCOR CHROME LIMITED's application for, prospecting right onto their Computer Database Systems;

4.11 the Twenty Fourth Respondent is hereby directed and ordered to attend to finalizing the Applicant's application for prospecting right within seven (7) days of this Court Order;

4.12 in the event that the Twenty Fourth Respondent fails to comply with this Court Order, the Applicant is hereby granted leave to approach this Honourable Court on an urgent basis with the same papers and/or supplemented should it become necessary, for an order compelling the Twenty Fourth Respondent to issue a Letter of Grant in favour of the Applicant and within 30 days thereafter grant prospecting right in favour of the Applicant;

4.13 the Twenty Fourth Respondent is hereby directed and ordered to do whatever maybe reasonably necessary with the assistance of the SOUTH AFRICAN POLICE SERVICE, to stop and prevent all unlawful mining activities from being carried out on any portion of Portion 3 of the farm Tweelaagte 175 JP and/or any portion of any of the farms bordering Portion 3 of the farm Tweelaagte 175 JP.

The effect of this order is that the court per Gura J prescribed inter alia to the 24th respondent how to go about performing its duties by inter alia ordering the 24th respondent to permanently remove or delete the map from their database; to institute disciplinary actions against the officials who uploaded the map on the database; ect. It behoves no argument that this amounts to over-reaching into the realm of the functions of the Executive. I need not say more.

[31] Paragraphs 4.1 to 4.6 of the order of 01 August 2018 by Gura J reads:

4.1. the police officers stationed at Sun City Police Station and the Organised Crime Unit under the supervision/command of Captain "4.1 Mthombeni and Warrant Officer Freddy working under the authority or command or management of the Twenty Second and Twenty Third Respondents are interdicted and restrained from interfering in or obstructing or sabotaging the Applicant mining business conducted on Portion 3 of the farm Tweelaagte 175 JP in terms of the Mining Permits lawfully issued in favour of the Applicant;

4.2. The Twenty Second and Twenty Third Respondents are directed and ordered to deploy a Task Team to be stationed at Tweelaagte to ensure quick response and intervention whenever unlawful acts of violence or intimidation or harassment or blockage and barricading of the roads occurs;

4.3. The Twenty Second and Twenty Third Respondents are directed and ordered to deploy a Task Team of Specialised Detectives to take over the Investigations of the armed robbery and theft case opened under CA 177/5/2019 (SUN CITY) and all related cases, which were previously reported at the Sun City Police Station by the Applicant or its employees or contractors;

4.4. The Twenty Second and Twenty Third Respondents are directed and ordered to deploy a Specialised SAPS Task Team to investigate and track down the armed gang(s) that carried out the armed robbery and theft of the Applicant chrome material at the Applicant's mine situated at Portion 3 of the farm Tweelaagte 175 JP;

4.5. The Twenty Second and Twenty Third Respondents are directed and ordered to attend to opening and registering the Case Dockets in respect of all the incidents (cases) reported by the Applicant or its employees and/or contractors, at the Sun City Police Station and which incidents (cases) the Police have refused to register case docket(s).

4.6. The Twenty Second and Twenty Third Respondents are directed and ordered to take all reasonable steps necessary to assist the Department of Mineral Resources to stop and prevent unlawful mining activities from being carried out on any portion of Portion 3 of the farm Tweelaagte 175 JP and/or any portion of any of the farms bordering Portion 3 of the farm Tweelaagte 175 JP.”

[32] These orders too amount to over-reaching. Adv. Gededger, whilst on the one hand conceding that this is in fact over-reaching, submitted on the other hand that this Court can dictate to the police and in particular the 22nd respondent to establish a task team and how to do their work. I do not agree. The interim order and in particular paragraphs 4.1 to 4.6 as granted by Gura J, cannot be confirmed. It seems to me that Adv. Gededger have a problem with the police and in particular with the Special Investigative Unit (Hawks), whom he said acted as bodyguards for and accompanied members of the 15th respondent (Samancor) and trespass onto the mining area of the applicant. This, so he submitted, is proof of a collusion between the members of 15th respondents and the 22nd and 23rd respondents which, according to him, amounts to State capture. I do not intend to deal with these allegations in any detail. Suffice to say that it is unsubstantiated, vague and baseless and not supported by any tangible and trustworthy evidence.

THE 15TH RESPONDENT’S PROSPECTING RIGHT

[33] Samancor (15th respondent) was granted a prospecting right. This is a bone of serious contention between the applicant and the 15th respondent. The applicant alleges that this is irregular because in terms of the Mineral and Petroleum Resources Development Act, a party cannot be granted a prospecting right over a property for which there is an existing mining right, albeit in the form of mining permits. In other words, two entities cannot each

have a mining and prospecting right over the same property. This is based on the fact Portion 3 of the farm Tweelaagte 175JP, was never sub-divided and the applicant have mining permits in respect of Portion 3 of the farm Tweelaagte 175JP. According to Adv. Gededger, it is improper that a prospecting right was granted to the 15th respondent over Portion 3 of the farm Tweelaagte 175 JP. No one but the applicant can be granted permission for prospecting on Portion 3 and the applicant did in fact applied for such prospecting rights.

[34] There was much debate about the exact area over which the applicant have mining permits. Although an application for sub-division was made as far back as 1954, Portion 3 was never sub-divided. It is therefore common cause that Portion 3 of the farm Tweelaagte 175 JP was never sub-divided. Hence, the contention by Adv. Gededger that in terms of the act, a prospecting right could not have been lawfully granted to the 15th respondent.

[35] The prospecting right application and certificate of the 15th respondent make reference to Portions 7, 8 and 9 of the farm Tweelaagte 175JP. That this is an error is beyond question. Upon realising that there is an error in the description of the property by reference to Portions 7, 8 and 9 which does not exist, the 15th respondent applied for rectification. The certificate was accordingly endorsed and the mistake was rectified.

[36] It is quite apparent that although the area called Portion 3 was never sub-divided into Portions 7, 8 and 9, the area of the prospecting right of the 15th respondent is distinctly different from the area of the mining permits of the applicant. This is perfectly clear from the applicant's permits, the 15th respondent's prospecting certificate and the evidence presented. The applicant contended that because no sub-division of

Portion 3 into Portions 7, 8 and 9 are registered in the Deeds Office, no prospecting right could have been granted to the 15th respondent, in terms of the act.

[37] It is quite apparent that the act try to avoid a situation where two different entities obtain mining and/or prospecting rights over one and the same area. That this is so, behoves no argument. However, I find it odd that the legislature would have intended that because an area, how vast it may be, is registered and not sub-divided, only one mining or prospecting right can be granted. Portion 3 of the farm Tweelaagte 175JP is a very vast area. The mining permits clearly state exactly where on Portion 3 the applicant could mine, albeit mining of the dumps only. It defies all logic that no other prospecting right could be issued and registered in the name of a different entity on a distinctly different area and quite separate from the mining area of the applicant, but also on Portion 3 of farm Tweelaagte 175JP. Not only does it make no economical sense but it makes no sense at all.

[38] Adv. Lazarus SC, on behalf of the 15th respondent, submitted that the area of the prospecting right of the 15th respondent is distinctly different from the area according to the mining permits of the applicant. This submission is borne out by the co-ordinates that are inscribed on the mining permits and the prospecting rights respectively. Therefore so it was further

contended, is there no impediment for the granting of the prospecting right to the 15th respondent. It cannot be that because the area is only described in the Deeds Register as Portion 3 of the farm Tweelaagte 175JP, that in terms of the act, no prospecting right can be granted to another entity, however vast the area might be and even though the two areas are far apart and are not at all overlapping. I fully agree with this submission.

[39] In my view because the two areas comprising of the mining permits of the applicant on the one hand and the prospecting rights of the 15th respondent on the other, is not only distinctly different but also far apart, the two areas does not overlap into one and the same area. Therefore, the prospecting right of the 15th respondent is valid and as such, the 15th respondent has the necessary locus standi to not only defend this application, but also to ensure that its prospecting right is not infringed upon. Hence, the counter application by the 15th respondent.

[40] There is another aspect that needs to be considered by this Court and that is the actual area in which the applicant are mining. In terms of the report filed, it is clear that the applicant is not mining in the area as stipulated on the mining permits, but are mining in the area as indicated on the prospecting right/permit of the 15th respondent. This is in contravention of the said mining permits of the applicant. This is not contested by the applicant. It is

therefore understandable why it is so strenuously contended by the applicant that the prospecting permit of the 15th respondent is invalid because it could not have been granted for an area over which the applicant have mining permits, to wit Portion 3 of the farm Tweelaagte 175JP. The mining permits are very specific with regard to the area of mining. It does not encompasses the whole of Portion 3 of the farm Tweelaagte 175JP. The applicant was in terms of the mining permits confined to the specific area as stipulated on the mining permits and were not at all granted leeway to mine the whole of Portion 3 of the farm Tweelaagte 175JP, merely because it is not sub-divided. According to Mr Kirchoff, it's clear that the applicant are mining outside the area as specified on the permits.

[41] Speaking of mining, Adv. Masilo on behalf of the 27th to 31st respondents, brought it to the attention of this Court that the applicant did not apply for actual mining into the surface (underground), but only to mine the chrome ore dumps in the specified area. That this is so, is quite apparent from the application forms submitted by the applicant for the permits. The permits however refer to mining and does not specify the mining of the dumps only. Adv. Gededger contended that because the permit only refers to mining and does not stipulate the mining of the dumps only as applied for by the applicant, the applicant are entitled to mine into the surface (underground), despite its applications only to mine the dumps. The

applicant got more than it bargained for.

- [42] I have a serious problem with this. The applicant knows very well that it only applied for the mining of the chrome dumps and yet when it got the mining permits and saw that it does not specify the mining of the chrome dumps only, it embarked on actual underground mining activities and took advantage of this fact. This is, to say the least, disingenuous and cannot be condoned. This, in my view, is a further reason why the permits must be cancelled in terms of the 24th respondent's counter application.

INTERDICTIONARY RELIEF

- [43] The applicant seek final interdictory relief against the respondents and must establish a clear right, an infringement of the right actually committed or reasonably apprehended and the absence of an alternative remedy. In *Greef v Cooper and Others* 2019 (3) SA 203 (WCC) at paragraph [32] the following is stated:

"[32] The requirements for a final interdict are trite. An applicant is required to establish a clear right, an infringement of the right actually committed or reasonably apprehended, and the absence of an alternative remedy..."

- [44] As alluded to earlier, permits 30/2010 and 31/2010 have expired. Even permit 29/2010 has expired due to effluxion of time and the purported renewal thereof is invalid. This being the case, the applicant has therefore failed to establish a clear right entitling it to an interdict. The right that the applicant seek to protect does not exist and can therefore not be protected by an interdict. Adv. Matebese SC submitted, quite correctly in my view, that on this basis alone, the application for an interdict should fail. I agree.

- [45] The 27th to 31st respondents applied for a prospecting permit which was refused. They lodged an appeal against the refusal of the prospecting right. The appeal was dismissed on 25th August 2015. The 27th to 31st respondents filed a counter application in which they sought interdictory relief against the applicant and the 24th respondent for the alleged protection of their prospective right for a prospecting permit. This can however not be done. An interdict is not a remedy for past invasion of rights but is concerned with present or future infringements. It 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. Unless this is so, an interdict cannot be granted. In *National Council of Societies for the Prevention of Cruelty to Animals (NCSPCA) v Openshaw* [2008] ZASCA 78; 2008 (5) SA 339 (SCA) at paragraph [20] it is stated:

"[20] An interdict is not a remedy for past invasion of rights but is concerned with present or future infringements. It 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. The requisites for the right to claim an interim interdict are:

- (a) A prima facie right. What is required is proof of facts that establish the existence of a right in terms of substantive law;
- (b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
- (c) The balance of convenience favours the granting of an interim interdict;
- (d) The applicant has no other satisfactory remedy.”

[46] The relief sought by the 27th to 31st respondents in their counter application is bad in law in that the alleged right that is allegedly threatened, does not exist and is incapable of being protected. The interdictory relief sought cannot be granted and must therefore be refused. This much Adv. Masilo on behalf of the 27th to 31st respondents conceded, quite correctly in my view. However, he submitted that their defence to the application by the applicant

should stand. This being the case, the 27th to 31st respondents are substantially successful and should be awarded a cost order in their favour and on a punitive scale.

[47] Furthermore, the applicant knew that the 27th to 31st respondents have a vested interest in this matter but deliberately decided not to join them in these proceedings. To add to this, when the 27th to 31st respondents filed their joinder application, the applicant opposed it. This, despite the fact that the applicant knew very well that the 27th to 31st respondents are interested parties and must be joined in these proceedings. The behaviour of the applicant in this regard demonstrate its mala fides. I am in agreement with this contention by Adv. Masilo.

[48] The structural interdict sought by the 27th to 31st respondents is incompetent in law insofar as it will, if granted, amounts thereto that this Court directs or mandate the 24th respondent to act contrary to sections 41 and 205 of the Constitution of the Republic of South Africa Act 105 of 1996. This cannot be granted as it will result in judicial over-reach. So too, can this Court not grant the relief for access to information sought by the 27th to 31st respondents. This will amount to by-pass the Promotion of Access to Information Act 2 of 2000 (PAIA). An application for access to information in terms of the provisions of this act (PAIA), ought to have been made by the 27th to 31st respondents. For the aforementioned reasons, the counter application of the 27th to 31st respondents cannot succeed and must therefore be refused with costs.

THE APPLICATION IN THE GAUTENG DIVISION

[49] The applicant launched a similar urgent application in the North Gauteng Division of the High Court on 10th May 2019. This application was served on the 24th respondent's department, who opposed the application. The application was thereafter removed from the roll. On the 03rd June 2019, hardly a month later, the applicant instituted the current application in this Division on an ex parte basis.

[50] No notice whatsoever was given to any of the respondents. It was contended on behalf of the 22nd to 24th as well as the 27th to 31st respondents that it was disingenuous of the applicant to do so and that it amounts to an abuse of the court processes. No cogent reason is advanced why the application could not be served on the respondents, in particular the 24th respondent whose department was served in the Gauteng application. Furthermore, it was not disclosed by the applicant that it has lodged a similar application in the Gauteng Division which was removed but is still pending. Seeing that the applicant chose to bring this application on an ex parte basis, it was expected that this information should have been divulged to the court (Gura J), when the interim order was sought on 04th June 2019. This behaviour of the applicant is reprehensible.

NO NOTICE WAS GIVEN

[51] The 22nd, 24th, 25th and 26th respondents are all organs of the State. The applicant was duty bound to give 72 hours' notice before instituting any application

against them in terms of section 35 of the General Law Amendment Act 62 of 1955. This, the applicant fail to do. The applicant decided to approach the court on an extremely urgent ex parte basis without any notice and in less than 24 hours. The application was issued on 03 June 2019 and the order was granted on 4 June 2019. This, together with the fact that the applicant did not disclose to the court (per Gura J) that it had instituted a similar application in Gauteng, warrants to a punitive costs order to mark this Court's disapproval and disquiet with such disingenuous actions by the applicant.

[52] Adv. Gededger contended that the 1st to 4th and 6th respondents who were not represented and present before this Court on the date of hearing of the application for a final interdict (the return date namely 21 January 2020), does not oppose the relief sought. A final order should therefore be granted against them. He contended that this is so especially because the intimidation and threats are not denied by them. This argument is premised on the contention that the mining permits are valid and enforceable and that the applicant therefore has the necessary locus standi. As alluded to earlier, these permits (29/2010, 30/2010 and 31/2010) have expired due to the effluxion of time. This include permit 29/2010 as well even though it may appear not to have expired. It will however be declared invalid. The substratum of the instituted application therefore falls away. This being the case, the applicant does not have any protectable right and the requisite interdictory relief insofar as the mining rights are concerned, falls off. The rule nisi will be discharged.

OTHER ASPECTS AND POINTS IN LIMINE

[53] There are other aspects raised by the respective parties which are encompassed in points raised in limine and during argument. Because I decided not to deal with certain issues in a piecemeal fashion but to rather deal holistically with

the matter, all the points raised (in limine and otherwise) were indeed taken into account, although not specifically mentioned in this judgment. No judgment can ever be all inclusive especially where the papers and documents filed voluminous and exceed 2500 pages. Suffice to say that all the aspects and issues raised were indeed considered by this Court in order to arrive at a just decision.

CONCLUSION

[54] In my view, the rule nisi initially granted on the 04th June 2019 and amended by the order of 01st August 2019, should be discharged with costs. The counter applications of the 15th and 24th respondents should succeed with costs. The counter application of the 27th to 31st respondents should be dismissed with costs. Insofar as costs are concerned, costs should follow the result. The applicant must pay the costs of the respondents (15th, 22nd to 24th and 27th to 31st) on the High Court scale as between attorney and client for the application. Such costs to include the costs consequent upon the

employment of two counsel (senior and junior), where applicable. As a result of the importance of this case to all the parties concerned; the voluminous papers and documents filed in excess of 2500 pages; as well as the complexity of the matter, the employ of senior counsel was warranted. The counter application lodged by the 27th to 31st respondents should be dismissed with costs, such costs to also include the costs consequent upon the employment of two counsel,

where applicable, on a party-and-party basis and also on the High Court scale.

[55] Consequently, the following order is made:

R. D. HENDRICKS

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

APPEARANCES:

DATE OF HEARING

: 21 JANUARY 2020

DATE OF JUDGMENT

: 27 FEBRUARY 2020

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22ND – 24TH

: ADV. Z. MATEBESE SC

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27TH – 31ST

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