

SOUTH AFRICA / JUDGMENT

Sedibeng Iron Ore (Pty) Ltd and Another v Rexton Holdings (Pty) Ltd and Others (2772/2017) [2019] ZANCHC 47 (27 May 2019) [2019] ZANCHC 47

COURT

Northern Cape High Court, Kimberley

BEFORE

BM Pakati

CASE / FILE NUMBER

2772/2017

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Source record

Reportable: YES/NO
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to Magistrates: YES/NO
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to Regional Magistrates: YES/NO
IN
THE HIGH COURT OF SOUTH AFRICA
(NORTHERN
CAPE DIVISION, KIMBERLEY)
Case
No: 2772/2017
Heard
on: 04/02/2019
Delivered
on: 27/05/2019
In
the matter between
SEDIBENG
IRON ORE (PTY) LTD
First Applicant
ISAACS
KLIPFONTEIN CC, representing
THE
KLIPFONTEIN COMMUNITY
Second Applicant
And

REXTON
HOLDINGS (PTY) LTD
First Respondent
HERMANUS
NICOLAAS STEENKAMP
Second Respondent
GORDON
ANDREW McCRAE
Third Respondent
BENNIE
STEENKAMP
Fourth Respondent
THE
NORTHERN CAPE PROVINCIAL
GOVERNMENT
Fifth Respondent
THE
DEPARTMENT OF ROADS AND
PUBLIC
WORKS
Sixth Respondent
THE
DEPARTMENT OF MINERAL RESOURCES
Seventh Respondent

JUDGMENT

PAKATI J

- [1] This is the return day of the rule nisi I granted on urgent basis on 17 November 2017 with the return day of 01 December 2017, upon notice to the respondents. I granted the order in favour of the applicants, Sedibeng Iron Ore (Pty) Ltd (“Sedibeng”) and Isaacs Klipfontein CC (“the CC”) representing the Klipfontein Community, thereby restraining the first to fourth respondents, their employees and subcontractors from entering and/or conducting any operations and removing any manganese ore on the Farm Klipfontein 437 Magisterial District of Postmasburg (Hay), Northern Cape Province. Mr Hermanus Nicolaas Steenkamp, Mr Bennie Steenkamp (“the Steenkamps”), The Northern Cape Provincial Government (the “NC Provincial Government”), the Department of Roads and Public Works (“Public Works”), the Department of Mineral Resources (the “DMR”), the second, fourth, fifth, sixth and seventh respondents respectively, do not oppose the current application. Only the first and third respondent (“the respondents”) oppose it.

- [2] On 17 November 2017 when the matter was heard Mr Charlton Rex represented the first respondent, Rexton Holdings (Pty) Ltd (“Rexton Holdings”), and the second and third respondents, Mr Hermanus Nicolaas Steenkamp and Mr Gordon Andrew McCrae, appeared in person. On 01 December 2017 the matter became opposed and was postponed to the opposed roll of 23 February
2018. On 28 November 2017 Rexton Holdings served and filed its answering affidavit dated 27 November 2017 and its supplementary affidavit on 30 November 2017 through its attorneys of record. On 22 February 2018 Towell & Groenewaldt Attorneys served and filed a special power of attorney dated 20 November 2017 on behalf of Rexton Holdings. On 30 November 2017 Messrs Bosman Giyose Dyasi Incorporated also served and filed a notice of intention to oppose on behalf of Rexton Holdings as well as a notice of appointment as attorneys of record. The same day Messrs Bosman Giyose and Attorneys Incorporated filed a notice of withdrawal of opposition and as attorneys of record.
- [3] On 31 January 2018 the applicants filed their replying affidavit dated the same date. On 14 February 2018, six court days before the hearing of the matter on the opposed roll of 23 February 2018, Bosman Giyose Dyasi Incorporated served and filed an answering affidavit on behalf of Mr McCrae and purportedly for Rexton Holdings. This was followed by a notice in terms of Rule 7 (1) of the Uniform Rules of Court in respect of Towell & Groenewaldt Attorneys filed on 16 February 2018.
- [4] On 23 February 2018 Mamosebo J made the following order by agreement between the parties:

‘IT IS ORDERED

1. THAT the abovementioned rule nisi be and is hereby extended and the matter postponed to 17 August 2018, to the opposed roll;
2. THAT the First and Second Applicants undertake not to process, remove or sell the manganese ore dumps, subject to the First Applicants’ mining right;
3. THAT the Fifth, Sixth and Seventh Respondents are directed to serve and file Affidavits pertaining to the subject matter of this application on or before 31 March 2018;
4. THAT costs be and is hereby reserved.’

- [5] The State Attorney served and filed explanatory affidavits on behalf of the NC Provincial Government, Public Works and the DMR, fifth to seventh respondents respectively on 29 March 2018. On 23 July 2018 the applicants' attorneys served and filed their further replying affidavit replying to Rexton Holdings and Mr McCrae's answering affidavits dated 14 February 2018 and also the fifth to seventh respondents' explanatory affidavits dated 29 March
2018. Rexton Holdings and Mr McCrae also served and filed a further affidavit on 08 August 2018 without having obtained leave to do so.
- [6] On or about 14 August 2018 the applicants served and filed a notice stating that the matter was not ripe for hearing on the merits due to a number of issues that had to be addressed or adjudicated on before hearing it on the merits. On 17 August 2018 I dealt with the points in limine raised and made the following order:
- '[1] The Rule Nisi is extended until 07 December 2018.
- [2] The first answering affidavit filed on 28 November 2017 by Mr Charlton Rex is the first respondent's and it stands.
- [3] The first and third respondents' further affidavit filed on 08 August 2018 is struck out as requested by Adv Nel.
- [4] The second answering affidavit filed on 14 February 2018 on behalf of 3rd respondent is the 3rd respondent's and it stands, and the replying affidavit filed on 23 July 2018 is the applicants' and it stands.
- [5] The parties are granted leave to file their supplementary affidavits, the applicants on or before 17 September 2018 and the respondents, to reply and/or supplement, on or before 17 October 2018, and the applicants reply on or before 16 November 2018.
- [6] The parties are to file their supplementary heads of argument on merits and
- [7] Costs are costs in the application.'

THE APPLICANTS' VERSION

- [7] It is common cause that Sedibeng is the holder of a converted mining right issued by the DMR on 08 April 2009. Its mine plan covers the entire Klipfontein Farm 437 and is conducted in phases for over thirty years. On 12 August 2011 Sedibeng and Klipfontein community concluded a written agreement (Annexure "FA4") and Adamus CC represented the community. The alleged agreement was to the effect that Klipfontein community granted Sedibeng access to and use of the properties forming part of the mining area so that it would exploit its mining rights and relocate the community to specific designated areas within the mining area. Sedibeng would in return pay the community about R100 000-00 per month as compensation for its interest on the land upon which mining is operated. The Maremane community was also paid R50 000-00 per month for the use of unsurfaced road. The

Klipfontein community would reside within the mining area but not in those parts where mining work was done. Most of their families were employed by Sedibeng.

- [8] Sedibeng states that there were a number of waste dumps which contained low grade iron ore which it created and were integral to its rehabilitation obligations that were owned by it under its mining right. The dumps and stockpiles were under Sedibeng's possession and control. It says that it was required to control the egress and ingress from the property to ensure compliance with the Mine Health and Safety Act[1]. It alleges further that the stock piles and dumps form part of its mine work and environmental management programme. It argues that its mining right includes the right to mine iron ore stock piles.
- [9] Sedibeng alleges further that in terms of section 5 of the Mineral and Petroleum Resources Development Act ("MPRDA")[2] it enjoys a limited right which was lawfully obtained. It affords it the right to undisturbed access and use of the farm exercised at all material times in order to conduct its mining right and comply with the mining permit. Section 5 provides:

'5. Legal Nature of prospecting right, mining right, exploration right or production right, and rights of holders thereof.-

- 1) A prospecting right, mining right, exploration right or production right granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967, (Act No. 16 of 1967), is a limited real right in respect of the mineral or petroleum and the land to which such right relates.
- 2) The holder of a prospecting right, mining right, exploration right or production right is entitled to the rights referred to in the section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law.
- 3) Subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may-
 - (a) Enter the land to which such right relates together with his or her employees, and bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purpose of prospecting, mining, exploration or production, as the case may be;
 - (b) Prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;
 - (c) Remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;
- (cA) Subject to section 59B of the Diamonds Act, 1986 (Act No. 56 of 1986), (in the case of diamond) remove and dispose of any diamond found during the course of mining operations;

- (d) Subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting, mining, exploration or production purposes, or sink or borehole required for use relating to prospecting, mining, exploration or production on such land; and
 - (e) Carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act.'
- [10] According to Sedibeng on 01 December 2016 Rexton Holdings purportedly entered into a written lease agreement for one year with the NC Provincial Government. According to this agreement Rexton Holdings was granted a prospecting right over Klipfontein Farm. Sedibeng states that this was to circumvent section 3 (6) of the Northern Cape Land Administrative Act[3]. After Rexton Holdings entered into the agreement it attempted to remove manganese ore from the farm during the beginning of 2017 with the knowledge that Sedibeng and Klipfontein community disputes its claims to the said manganese ore. On 10 November 2017 the Steenkamps broke one of the two locks to the gate at the main entrance of the farm. This gate was used by the Klipfontein community members. One of these locks was replaced by a lock of Rexton Holdings. The Steenkamps, in the company of an unknown person, entered the farm and proceeded to the manganese ore. After that they locked the gate and left with the lock they had replaced.
- [11] Sedibeng states that the removal of manganese ore dumps by Rexton Holdings and Mr McCrae would interfere with its rights as its mining activities were conducted on the same farm area and adjacent areas where Rexton Holdings intends to conduct its operations. The applicants clearly set out the location of the manganese dumps and pits in relation to its mining area and activities in its affidavit, the argument goes. This also appears from Dr Avinash Bisnath's report as well as the appendices.
- [12] The applicants allege that the respondents' statements lack bona fides and frank answers to the applicants' supplementary affidavit. They allege further that the respondents' operations would be unlawful and illegal should they not comply with the applicable legislation and because of that the rule nisi ought to be confirmed.
- [13] According to Sedibeng, Rexton Holdings applied for a prospecting right on the false assumption that Sedibeng mines on Portion 3 of Farm 445. It formally objected to the said application and contested Rexton Holdings' allegation. It indicated to it that its mining right extends over the entire Klipfontein Farm 437 and that its mine work programme extends in phases for over thirty years. Sedibeng argues that the anticipated prospecting activities of Rexton Holdings would encroach on its mining right but Rexton Holdings persists despite the objection by Sedibeng.

[14] Notwithstanding the objection raised Rexton Holdings was granted the prospecting right. On 16 November 2016 Sedibeng lodged an appeal against the granting of the said prospecting right in terms of section 96 (1) and requested the Director General to suspend such prospecting right in terms of section 96 (2) of the MPRDA. The request for the suspension was granted and it remains suspended pending the appeal. Section 96 (1) and (2) provide:

96 Internal appeal process and access to courts

- (1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this Act may appeal within 30 days becoming [sic] aware of such administrative decision in the prescribed manner to-
 - (a) the Director-General, if it is an administrative decision by a Regional Manager or any officer to whom the power has been delegated or a duty has been assigned by or under this Act;
 - (b) the Minister, if it is an administrative decision that was taken by the Director-General or the designated agency.
- (2) (a) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Director-General or the Minister, as the case may be.
 - (b) Any subsequent application in terms of this Act must be suspended pending the finalisation of the appeal referred to in paragraph (a). ‘

[15] It is important to identify common cause facts in this matter which are:

15.1 Sedibeng is the holder of a converted mining right permitting it to mine for iron ore over Farm 437, Klipfontein as well as over Portion 3 of the Farm 445 as alluded to earlier;

15.2 The CC was previously known as QCK Lezmin 4447 CC and was formed by members of Isaacs, Beukes, Jansen and McCarthy families in order to claim transfer of Farm Klipfontein. Rexton Holdings and Mr McCrae do not dispute that the Isaacs, Beukes, Jansen and McCarthy families moved to Klipfontein Farm during October 1993;

15.3 Rexton Holdings launched an application to have it declared the lawful owner of the manganese dumps under Case Number 1157/2015 which application, they say was withdrawn by the first respondent. In the first and third respondent's supplementary affidavit it is alleged that the matter was in fact not withdrawn but settled. This is a contradiction on the version of the respondents;

15.4 Rexton Holdings' prospecting right granted over Klipfontein Farm was suspended on 24 January 2017 and referred to Reginal Mining Development and Environmental Committee (REMDEC) for consideration. Currently it does not have any prospecting right over Klipfontein Farm; and

15.5 Rexton Holdings should conduct its activities (either reworking of the historical manganese dumps or prospecting activities) in a manner that it does not interfere with Sedibeng's mining operations.

[16] Rexton Holdings concedes the following factors:

16.1 That it launched an application to interdict the Klipfontein community members from interfering with its removal of manganese ore dumps under Case Number 1843/2016. An interim order was granted in its favour but the rule was later discharged. It was ordered to pay the costs of Klipfontein community on a scale as between attorney and client and Sedibeng's costs of its application to intervene on a party and party basis;

16.2 That Rexton Holdings and Mr McCrae confirm in their supplementary affidavit deposed to by Mr McCrae that the basis for the dismissal of the said application was Rexton Holdings' failure to disclose all the relevant information in the prior agreements and the full history of the matter where Rexton Holdings was advised to launch an application on an ex parte basis; and

16.3 That Rexton Holdings and Mr McCrae admit that on 10 November 2017 the Steenkamps broke the lock of the gate to gain access to Klipfontein Farm.

[17] The applicants allege that they have no alternative remedy at their disposal in order to stop the illegal unlawful conduct of the respondents than to approach this Court. They allege further that they have satisfied the requirements of a final interdict and have made out a case for the relief sought. They contend that its mining activities in terms of its mining programme will be disrupted and would be unable to exercise the required control over inter alia, the health and safety aspects of its mining activities and would probably be in breach of its obligations in terms of the mining

legislation. Sedibeng contends that it has established a clear right that it seeks to protect. The CC occupied and has been residing on the farm since May 1993 and therefore claims to have a prima facie and bona fide claim for ownership and transfer of Klipfontein Farm into its name, the argument goes. The applicants submit further that in the event that the CC has no rightful claim to the farm, its members still have the right of bona fide possessors over the farm and those rights would be infringed if the relief sought is not granted.

[18] According to the applicants they have clearly set out the location of manganese dumps and pits regarding its mining activities which is also shown by the reports compiled by Dr Avinash Bisnath as well as his appendices. Further reports were compiled by Mr Jaco Swartz and Ms Alta Van Dyk, an Environmental Assessment Practitioner, which will be dealt with later in the judgment. Rexton Holding and Mr McCrae did not attach any documents showing the location of the dumps and pits as well as the active mining area.

REXTON HOLDINGS AND MR McCRAE'S CASE

- [19] Rexton Holdings and Mr McCrae challenge the authority of Mr Shrivastava, the General Manager of Sedibeng, and request him to produce a resolution by Sedibeng's board of directors which he did not submit at the time. They allege that section 4 of the Mine Health and Safety Act granted him no authority to institute these proceedings on behalf of Sedibeng. It submits that only the board of directors of a company authorises legal proceedings for the company. They state that due to the absence of authority the rule stands to be discharged with costs payable by Mr Shrivastava in his personal capacity. Mr Nel, on behalf of the respondents submit that the issue is not about an attorney who was not authorised but Mr Shrivastava, the general manager of Sedibeng, who claims that he had authority to institute the proceedings. For this assertion he relies on *Cullinan Holdings Limited v Lezmin 2766 CC*, *Griffiths & Inglis (Pty) Ltd v Southern Cape Blasters (Pty Ltd and Levinsohn's Meat Products (Edms) Bpk v Addisionele Landros, Keimos, en 'n ander*. [4]
- [20] Mr Van Tonder, for the applicants, argues that the cases relied on cannot be followed and he referred to *ANC Umvoti Council Caucus and Others v Umvoti Municipality* [5] where Gorven J had this to say:

'[15] In *Ganes and Another v Telecom Namibia Ltd*⁹ the Supreme Court of Appeal dealt with similar issues as the present ones arising from the papers in that matter. Streicher JA held:

'There is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorised. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See *Eskom v Soweto City Council* 1992

(2) SA 703 (W) at 705C – J.)'

[16] Rule 7(1) provides as follows:

'Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.'

[17] The dictum in Ganes's case held that the use of this rule provides the remedy to be employed by a respondent to challenge whether the initiation of litigation on the part of an artificial person has been authorised. Flemming DJP reasoned as follows in the Eskom case referred to:

'The care displayed in the past about proof of authority was rational. It was inspired by the fear that a person may deny that he was party to litigation carried on in his name. His signature to the process, or when that does not eventuate, formal proof of authority would avoid undue risk to the opposite party, to the administration of justice and sometimes even to his own attorney

The developed view, adopted in Court Rule 7(1), is that the risk is adequately managed on a different level. If the attorney is authorised to bring the application on behalf of the applicant, the application necessarily is that of the applicant. There is no need that any other person, whether he be a witness or someone who becomes involved especially in the context of authority, should additionally be authorised. It is therefore sufficient to know whether or not the attorney acts with authority. As to when and how the attorney's authority should be proved, the Rule-maker made a policy decision. Perhaps because the risk is minimal that an attorney will act for a person without authority to do so, proof is dispensed with except only if the other party challenges the authority. See Rule 7(1). Courts should honour that approach. Properly applied, that should lead to the elimination of the many pages of resolutions, delegations and substitutions still attached to applications by some litigants, especially certain financial institutions.'

[18] This underlying rationale was endorsed and expanded on by Brand JA when he dealt with a ground of appeal relating to lack of

authorisation in *Unlawful Occupiers, School Site v City of Johannesburg*, to the following effect:

'[14] At the hearing of the appeal, counsel for the appellants conceded that she could not support this ground of appeal. I think the concession was fairly made. The issue raised had been decided conclusively in the judgment of Flemming DJP in *Eskom v Soweto City Council* 1992

(2) SA 703 (W), which was referred to with approval by this Court in *Ganes and Another v Telecom Namibia Ltd* 2004

(3) SA 615 (SCA) at 624I - 625A. The import of the judgment in *Eskom* is that the remedy of a respondent who wishes to challenge the authority of a person allegedly acting on behalf of the purported applicant is provided for in Rule 7(1) of the Uniform Rules of Court . . .

- [15] These remarks by Flemming DJP must be understood against the background that Rule 7(1) in its present form was introduced by way of an amendment only in 1987. Prior to the amendment an attorney was obliged to file a power of attorney whenever a summons was issued in an action, but not in motion proceedings. The underlying reason for the distinction, so it was said, was that in motion proceedings there is always an affidavit signed by the applicant personally or by someone whose authority appears from the papers (see eg *Ex parte De Villiers* 1973
- (2) SA 396 (NC)). On the basis of this reasoning it is readily understandable why, before 1987, the challenge to authority could be directed only at the adequacy of the averments in the applicant's papers and pre-1987 decisions regarding proof of authority should be read in that light.
- [16] However, as Flemming DJP has said, now that the new Rule 7(1) remedy is available, a party who wishes to raise the issue of authority should not adopt the procedure followed by the appellants in this matter, ie by way of argument based on no more than a textual analysis of the words used by a deponent in an attempt to prove his or her own authority. This method invariably resulted in a costly and wasteful investigation, which normally leads to the conclusion that the application was indeed authorised. In the present case, for example, the respondent's challenge resulted in the filing of pages of resolutions annexed to a supplementary affidavit followed by lengthy technical arguments on both sides.'
- [21] The applicants submit that the challenge by the respondents has no merit because the respondents have not presented the minimum of evidence showing that Sedibeng is not properly before court. The applicants allege that Rexton Holdings and Mr McCrae have also failed to serve a notice in terms of Rule 7 (1) of the Uniform Rules of Court though they were procedurally entitled and required to.
- [22] In *Cullinan supra* the resolution was not signed by the directors but by the deponent himself which is not the case in the instant case. Section 66
- (1) of the Companies Act [6] provides that the business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.
- [23] *Henney J in GRAHAM v PARK MEWS BODY CORPORATE AND ANOTHER*[7] held:
- 'Although there was no resolution taken at a formal meeting in respect of the second respondent's manganese rules, it had to be borne in mind that the respondents were faced with an application brought on an urgent basis. Whether a formal resolution is required in order to give an individual the necessary authority to act in legal proceedings on behalf of a juristic person depends on the circumstances of each case. The Court was satisfied that the second respondent was in fact authorised to act for the first respondent.'

[24] In the instant case the resolution signed by the board of directors dated 12 December 2018 and filed on 08 January 2019 records:

‘IT WAS RESOLVED THAT:

Either of Mr Naveen Shrivastava (GM – Operations) and Mr Tau Koaho (Mine Manager) is individually authorised to sign all documents and do all things as may be required to advance the litigation under case number 2772/2017 in the High Court, Northern Cape Division, Kimberley.

FURTHER RESOLVED THAT:

All steps taken by Mr Naveen Shrivastava to date in instituting the proceedings under case number 2772/2017 are hereby ratified by the Board.’

[25] The resolution further gives Mr Shrivastava authority to advance the litigation against the respondents. The respondents received copies of the said resolution on 08 January 2019. I am satisfied that Mr Shrivastava had authority to institute and advance litigation on behalf of the company considering the resolution signed by the board of directors.

[26] The respondents contend that Sedibeng’s mining activities would not be affected if they would be allowed to remove manganese ore dumps from the farm. Instead it would benefit Sedibeng’s future mining activities. Rexton Holdings and Mr McCrae dispute that the CC is either conducting business or occupying the immovable property. They further dispute that Klipfontein community is farming. According to them the landowner, the NC Provincial Government, disputes that the second applicant or anyone for that matter is entitled to receive transfer of the immovable property. If the CC had any claim for transfer of the immovable property, that claim has, according to the respondents, prescribed. The CC therefore has no vested rights entitling it to claim a final interdict, the argument goes.

[27] The respondents allege further that Sedibeng’s mining right pertains to the removal of iron ore in terms of its mining right and permit. It has nothing to do with mining of manganese or the historical dumps and the ownership of the said dumps vests in the NC Provincial Government. This means that neither the first nor the second applicant would claim any rights in respect thereof. Moreover, Sedibeng’s rehabilitation obligations regarding its mining right does not entitle it to any rights to the manganese and stockpiles. According to the respondents historically the manganese and iron ore were mined on the property as a result of which a number of historical dumps and pits were found on the property. Rexton Holdings state that Sedibeng’s converted mining right does not give it right to the historical dumps created before the enactment of the MPRDA and therefore the MPRDA does not regulate the historical dumps.

- [28] According to the respondents the allegations by Sedibeng that the respondent should comply with National Environmental Management Act[8] (NEMA), the Mine and Health Safety Act[9], the Waste Act and the National Environmental Management, Biodiversity Act[10] are unsubstantiated and they place no facts showing that Rexton Holdings acts in contravention of same to the extent that it detrimentally affect its mining right or the second applicant's possession of the farm for residential or farming purposes.
- [29] Rexton Holdings argues that the fact that the CC's residents stay on the farm and conduct farming activities does not entitle it to the manganese ore dumps but would at best entitle them to be bona fide possessors. It states in no certain terms that the property would not be transferred to the CC. The right to the dumps was granted to Rexton Holdings by the Memorandum of Understanding ("MOU") and that right precedes transfer of ownership to the second respondent if transfer would be granted to the CC, the respondents argue. The mentioned MOU was entered into by the fifth respondent and Rexton Holdings on 30 October September 2014. Its purpose was to give Rexton Holdings right to process and dispose of the historical mine dumps and access Farms Klipfontein 437 and Portion 3 of farm 445. At the time the Isaacs and McCarthy families prevented it from acting in terms of the MOU. Rexton Holdings approached court under Case Number 1157/2015 against the said families which the respondents later withdrew as alluded to earlier. The dispute between Sedibeng and Rexton Holdings arose when Sedibeng alleged that Rexton Holdings was extracting manganese ore and therefore involved in illegal mining activities in contravention of the MPRDA. An inspection was conducted by Mr Nematatani, of the DMR, who found that no illegal mining activities were conducted by Rexton Holdings.
- [30] Rexton Holdings confirm what the applicants state that a prospecting right was granted to it by the DMR to prospect manganese. In this regard Sedibeng lodged an appeal regarding this right which proceedings are still pending before the Minister of the Department of Mineral Resources. Pursuant to the appeal, Rexton Holdings has since stopped its prospecting activities pending finalisation of the appeal.
- [31] Rexton Holdings confirms that in order to conduct its activities of reclaiming the historical dumps it had to construct a separate access road of 6.9km fenced off with 13 km fencing from the property at the cost of R5 million. It sunk three boreholes with solar panels in order to remove the historical dumps, the argument goes. About 30 000 tons of manganese was processed from the dumps and approximately R160 000-00 advance was made to Isaac Klipfontein CC's with its knowledge and consent. Rexton Holding say that the site where the dumps were reclaimed is about 300 hectors in size and located about 6.3 km away from the nearest mining activities of Sedibeng. To this end Sedibeng uses a separate access road to its site which does not support the allegation of the respondents' interference with Sedibeng's mining activities, it argues.

[32] The CC's farming activities and two houses are situated well away from the historical dumpsite and Rexton Holdings' removal and processing of the historical dumps does not interfere with its activities. In support of this assertion Annexures "GAM 3" to "GAM 5" (Google Earth Maps) were attached with pins on the maps. Rexton Holdings say that the historical dumps are movables.

[33] On 18 July 2018 Rexton Holdings' attorney of record requested an inspection in loco on the property to finalise its reply in respect of the appeal relating to the prospecting right and technical issues raised by

Sedibeng in their geological report. Sedibeng in response granted access only to Rexton Holdings' attorney, the geologist on condition they would be accompanied by Sedibeng's mine manager. Rexton Holdings argues that this is unreasonable and restricted

access which would prevent Rexton Holdings' directors to accompany its team and consult under privileged circumstances with

its expert and attorney of record during the said inspection. The interim order assists Sedibeng to prevent any access by Rexton

Holdings hence the allegation by Rexton Holdings that Sedibeng abuses the interim order by gaining advantage over it in this application as well as the pending appeal. The motive of the applicants is purely of a commercial nature and not to enforce legislative requirements, the argument goes.

[34] According to Rexton Holdings it suffers loss of considerable revenue to the value of R15 million per month since the applicants obtained the interim order. This is so because Rexton Holdings is prevented from removing and processing the historical dumps. It argues further that Sedibeng is not bona fide in launching this application because the respondents are not interested in the manganese on the property due to the economic value of the dumps and the relative ease and low costs at which the dumps can be processed and sold.

[35] The respondents allege that section 53 of the MPRDA constitutes an alternative remedy which would prohibit the grant of an interdict. The applicants submit that the remedy provided by section 53 is in addition to and does not prohibit interdictory relief. Section 53 of the MPRDA provides:

'53. Use of land surface rights contrary to objects of Act-

(1) Subject to subsection (2) any person who intends to use the surface of any land in any way which may be contrary to any object of this Act or which is likely to impede any such object must apply to the Minister for approval in the prescribed manner.'

[36] DALE ET AL in SOUTH AFRICAN MINERAL AND PETROLEUM LAW[11]:

‘The administrative remedy provided by section 53 is in addition to, and does not supplant the available judicial remedies. Section 53 thus falls to be considered in the light of the primary and ancillary rights accorded to holders of prospecting, mining, exploration and production rights and mining permits by sections 5 (2) and (3) and 27 (7). Those rights are accordingly subject to the corollary that the landowner or occupier may not do anything to impede or restrict the exercise of such rights by such holder. Accordingly, although the remedies now flow from the statutory rights accorded to the holders of rights and permits in terms of the MPRDA, whereas prior to the MPRDA the remedies flowed from the ancillary surface-use rights accorded to the holders of common-law mineral rights, it is submitted that the main judicial remedy available to the holder, namely an interdict against adverse surface-use, is the same remedy as that that was previously available.’

[37] The first and third respondents say that paragraph 7.3 of the mining right limits the right to mine for iron as follows:

‘The holder shall not ...interfere with or prejudice the interests of occupiers and/or owners of the Surface of the Mining are except to the extent to which such interference or prejudice is necessary for the purposes of enabling the holder to properly exercise the holder’s rights under this mining right.’

According to the respondents Sedibeng has no rights in respect of the mining of manganese ore or manganese dumps which lie in heaps above the ground on a particular surface as alluded to earlier. Its rights are limited to mining of iron ore, use of water and activities related to that.

[38] The issue for determination is whether the applicants are entitled to a final interdict.

[39] Rexton Holdings and Mr McCrae’s version has no detail and a bare denial. Their denial of facts is unsubstantiated. They file no report that clearly shows the whereabouts of the manganese dumps and pits as alluded to earlier. They deny the expert reports of Ms Alta Van Wyk, Dr Bisnath and Mr Jaco Swartz without attaching reports contradicting the said reports. There is no commitment on their part to comply with the legislative requirements in order to be able to remove the manganese ore dumps. In addition to that they deny that the Klipfontein community exists on the farm and state: “Some family members of the Isaacs family, the Beukes family, McCarthy family and the Jansen family adopted the Klipfontein Community in order to elicit unwarranted sympathy from the court.” In their answering affidavit dated 14 February 2018 the first and third respondent state at paragraph 43.4:

‘I deny that the removal of the manganese ore is in contravention of the MPRDA, which does not apply to the processing and disposal of manganese ore dumps, Health and Safety Act, Waste Act and environmental protection law. In any event, the applicants do not

state the provisions they alleged are contravened by the first respondent and the respect in which it is alleged that the first

respondent is in contravention of the specified law. Accordingly the respondents are unable to provide a comprehensive answer to the allegations, which allegations are in any event denied.'

[40] The respondents deny that there is any good point advanced by the CC in its claim for transfer of Klipfontein Farm and vehemently deny that the CC awaits transfer of the farm. This is contrary to what is mentioned in "A14", a written agreement titled Heads of Agreement between Rexton Holdings, QCK Lezmin and Mogothlo Mining. Clause 5 records:

'5. TRANSFER OF THE LAND

5.1 It is recorded that currently the Northern Cape Provincial Government is the custodian of farm Klipfontein 437 and Portion 3 of Farm 445.

5.2 It is further recorded that Lezmin is despite resolution NC 84/2003 dated 27th October 2003 is still not the registered owners of farm Klipfontein 437 and Portion 3 of Farm 445.

5.3 Rexton assist to expedite the transfer of farm Klipfontein 437 and Portion 3 of Farm 445 to Lozmin.

5.4 This agreement will remain in force after transfer of the farm Klipfontein 437 and Portion 3 of Farm 445 from the custodian Northern Cape Provincial Government (Department of Roads and Public Works) to Lozmin.'

[41] Sedibeng was not made aware of the settlement of Case Number 1157/2015 mentioned supra because it argues that Rexton Holdings secretly wanted to continue with its illegal mining activities (removing manganese from the dumps) without complying with the necessary legislation.

REQUIREMENTS FOR A FINAL INTERDICT

[42] The requirements for the right to claim a final interdict are: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of similar protection by any other remedy.[12]

CLEAR RIGHT

[43] Sedibeng alleges that it has a clear right alternatively a prima facie right to the relief sought and has no alternative remedy. It has a mining right over the Klipfontein Farm and its mining activities are and have been conducted in terms of the relevant legislation. The second applicant, in its representative capacity of the Klipfontein

community, has been in undisturbed possession of the farm, and in occupation since May 1993. It awaits transfer of Klipfontein Farm into its own name. The applicants allege further that the CC has the rights of a bona fide possessor over the farm and these rights would be infringed if the relief sought is not granted.

[44] Significantly, Rexton Holdings and Mr McCrae did not attach a map or any kind of document or description of the exact location of the manganese dumps and pits with reference to Sedibeng's mining area. Instead they rely on Sedibeng's old approved mining works programme for all their submissions in this regard.

[45] The maps and photos attached to Dr Bisnath's reports clearly show that from the location of the historical manganese dumps the removal of manganese cannot be conducted without interfering with Sedibeng's mining areas both active and future mining area. In his report he states:

'The author wishes to categorically state that the effect of two independent companies operating simultaneously will be disastrous.' He states further that: 'In order to process any historical dumps a Waste Management licence is required under the updated Waste Act.'

[46] Regarding the legislation that Rexton Holdings has to comply with in order to be able to mine the dumps it states: 'The first respondent in conducting its reclaiming activities, will comply with all applicable legislative requirements.'

[47] Rexton Holding states further:

'The applicants are not enforcers of environmental and other applicable legislation. Nowhere in the papers have any of the applicants stated how any possible non-compliance, which is still denied, will affect their rights and/or activities.'

[48] This is a casual answer which does not show bona fides with the first and third respondents. If the respondents have to comply with necessary legislation then they have to without the applicants being enforcers of legislation.

[49] The legislative requirements in order for Rexton Holdings to lawfully reclaim the historical manganese dumps are also echoed by the contents of the explanatory affidavit deposited to by Mr Pieter Frederik Swart for the DMR dated 29 March 2018. Paragraphs 21 and 22 of same record:

'21.1 The establishment and reclamation of mine dumps and stockpiles of similar waste from or incidental to a mining operation must comply with the new regulations regarding the planning and management of residue stockpile residue deposits from prospecting, mining, exploration or production operation published under the National Environmental Management Waste Act, 59 of 2008

21.2 A waste management license under NEMWA is required for creation of residue stockpile. Applicants for Waste management licenses must undertake an Environmental Impact Assessment (EIA) process in accordance with the NEMA (National Environmental Management Act 107 of 1988).

21.3 The license is issued in terms of section 20 (b) of NEMA and Regulations regarding the planning and management of residue stockpiles and residue deposits.

21.4 Since September 2014 waste management license has to be obtained for the established of new residue stockpiles and deposits resulting from activities requiring a right or permit in terms of the MPRDA.

22 The National Environmental Management Amendment Act of 2014 (NEMLA) amended the provisions of NEMWA. The amendment of NEMWA provides that stockpiles must be managed in a prescribed manner on any site demarcated for that purpose in the related environmental plan. The Minister of Mineral Resources is vested with permitting and administrative powers relating to the implementation of NEMWA in the mining sector.

23 It is essential that the applicable prescripts are followed by both the applicants and all the parties to obtain and conduct mining operations.'

This means that the first and third respondents have to comply with the necessary legislation.

AN INJURY ACTUALLY COMMITTED OR REASONABLY APPREHENDED

[50] Although the respondents argue that the CC does not have a prima facie and bona fide claim for ownership and the transfer of the immovable property into its name the CC and its members have the rights of bona fide possessors which would be at stake if the relief sought is not granted.

[51] In CAPITAL ESTATE AND GENERAL AGENCIES (PTY) LTD AND OTHERS v HOLIDAY INNS INC AND OTHERS[13] Rabie JA held:

'I now turn to the appellants' contention that the interdict was wrongly granted because the respondents failed to establish any actual injury suffered by them, or any reasonable apprehension of injury. The Court a quo held: "The potential prejudice to the applicants is manifest". It was contended before us that no such prejudice has been proved. I do not agree. It can hardly be doubted, I think, that in endeavouring to conclude franchise agreements with the owners of hotels and motels, as set out above, the second appellant is attempting to capitalise on the respondents' reputation in the hotel trade, and in my view its conduct is likely to be prejudicial to the respondent.'

[52] Williamson J in FREE STATE GOLD AREAS LTD v MERRIESPRUIT (ORANGE FREE STATE) GOLD MINING CO. LTD & ANOTHER[14] stated:

'The applicant for an interdict has not got to establish that, on a balance or preponderance of probabilities flowing from the undisputed

facts, injury will follow. If that is what a Court would have to find as established it would mean of course that the Court must find that injury will in fact result; it is on the application of that very test that a Court in a civil case makes findings of fact.'

[53] In the instant case I am of the view that the respondents' operations would be detrimental to the mining activities of Sedibeng as well as the CC and its members. Mr Jaco Swart concludes in his report attached to the applicants' supplementary affidavit thus:

‘7.

Conclusion

A study of selected excerpts from the Mine Health and Safety Act and its Regulations indicate that both the generic and specific

obligations placed on the Employer are such that compliance therewith is not practical where a third party enters the geographical mining environment.

Not only does practical compliance become problematic, a real increase in physical risk will follow for all involved.

This physical risk will be exacerbated as accountability for the Manganese Operator will become vague. It is submitted that the Act its Regulations were not drafted with consideration of non-Employers working within the same footprint (or contiguous to it) of an existing Employer and that compliance, and enforcement will be unrealistic, manifesting in increased physical risk to both Sedibeng Iron Ore and Manganese operator employees.

In terms of specific liability and its impact on the Sedibeng Iron Ore mining operation, various iterations are possible.

This would include administrative actions by the Regulator and specific liability on conviction in a competent court.

In terms of administrative action, Sections 54 and 55 of the Act poses serious practical considerations for the Employer.

Where an incident, accident or occurrence takes place on the mine, a Department of Mineral Resources Inspector may give any instruction

deemed necessary in the interest of health and safety. This typically takes the form of an instruction halting all or some mining

activities pending the implementation of measures dictated by the DMR.

Various Rexton Holdings activities could lead to Section 54 significant risks on any surface mine, stopping all mine haulage activities as a result of an incident involving Rexton Holdings vehicles or mine vehicles and unauthorised Rexton Holdings employees. This would have the immediate impact of halting production.

Section 55 allows for administrative fines to be levelled on the Employer, where the Employer, in the eyes of an inspector, is in breach of a legal obligation. The quantum of such administrative fine is up to R1 000 000. While the Act allows for an appeals process, this is extremely onerous as fines are to be settled prior to an appeal being made. This could be concurrent with and instruction to halt mining activities in terms of Section 54.

Again this would have serious potential implications for Sedibeng Iron Ore. An example would be where Sedibeng Iron Ore plans a blast and secures the perimeter. In terms of Regulation, the Employer has a responsibility to ensure that persons do not enter the blast and exclusion zone prior to the blast being set off. Where Rexton Holdings employees enter this exclusion and blasting zone, where Sedibeng Iron Ore has no authority over such employees, the Employer would be in strict breach of its legal obligation and may be subject to a fine and sanction. This places the mine at a distinct disadvantage from both a direct financial perspective in terms of the potential fine but also from the financial impact of production losses due to mine stoppages.

In terms of strict liability for non-compliances with legal obligations in Act due to activities taking place on the mine over which Sedibeng Iron Ore has no direct control, Section 91 applies.

It stipulates that non-compliance with Act, Regulations, instruction, prohibitions, including those issued by the Chief Inspector, for example the MCOP on Trackless Mobile Machinery is an offence.

Section 92 stipulates the penalties for offences (including fine or imprisonment not exceeding 6 months where a specific penalty is not allowed for).

Specific Sections have defined penalties in terms of Schedule 8, table 1. This includes a R1 000 000 or 5 years' imprisonment for non-compliance with the general, broad obligation as contained in Section 2.

For any accident resulting in serious injury or illness, through a negligent act or omission, the employer may be fined up to R3 000 000

or a period of imprisonment not exceeding 5 years.

From the above it is clear Sedibeng Iron Ore will face significant legal risk where Rexton Holding perform activities either on and within the Sedibeng Iron Ore mining rights authorisation area or area immediately adjacent thereto, given the fact that the Employer, being Sedibeng Iron Ore, would have no control or oversight over Rexton Holdings activities.

While the very real risk must be considered, attention must at all times be directed to the actual physical risk that the Rexton Holdings' activities would pose to its own employees, the public at large and Sedibeng Iron Ore.'

[54] Despite the fact that the respondents dismiss Ms Van Dyk's report as 'generic in nature' and dispute the requirements of a waste management licence, the report is not seriously disputed.

[55] Ms Van Dyk summarised her conclusions as follows:

'SUMMARY OF CONCLUSIONS:

- Activities undertaken by Rexton Holdings (Pty) Ltd must be supported by an approved Environmental .i.t.o NEMA and includes notifying the landowners and lawful occupiers of the land in question;
- A Waste Management Licence is required in terms of NEMWA to reclaim mine residue deposits/ stockpiles;
- Based on the ecological sensitivity of the area, DAFF permits may be required should there be an impact on certain protected plant species;
- A Water Use Licence is required in support of the management of contaminated storm water and for any other possible water uses in terms of Section 21 of the NWA;
- An application is required with SAHRA when certain thresholds of vegetation are cleaned in order to protect heritage and culture resources'

[56] Dr Bisnath expressly states that the effect of two independent companies operating simultaneously would be disastrous. He further states that in order to process any historical dumps a Waste Management license would be required under the updated Waste Act 59 of 2008. He states further that the removal of the manganese would not be conducted without interfering with Sedibeng's mining areas referring to active and future mining. All these reports have been confirmed under oath.

[57] Regarding Dr Bisnath's report Rexton Holdings indicates that the report has been fully addressed in the appeal process and that the decision in respect of prospecting manganese lies solely within the jurisdiction of the seventh respondent. This decision is still pending as alluded to earlier. It should be remembered that the seventh respondent forwarded a letter dated 24 January 2017 to Rexton Holdings which records:

'APPEAL IN TERMS OF SECTION 96 (2) OF THE MPRDA BY CUZEN RANEREE ATTORNEYS ON BEHALF OF SEDIBENG IRON ORE (PTY) LTD AGAINST THE GRANTING OF A PROSPECTING RIGHT TO REXTON HOLDINGS (PTY) LTD IN RESPECT OF THE FARM KLIPFONTEIN 437, SITUATED IN THE MAGISTERIAL DISTRICT OF HAY, NORTHERN CAPE PROVINCE

NC 30/5/1/1/2/11329 PR

The abovementioned appeal received on the 11th November 2016 has reference.

After careful consideration of all facts presented before me, I Mr David Msiza, Acting Director-General of Department of Mineral Resources, hereby suspend a decision made by the Deputy Director-General: Mineral Regulation to grant a prospecting right to Rexton Holdings (Pty) Ltd pending finalisation of an internal appeal in terms of section 96

(1) of the MPRDA on the property indicated above for the following reason:

The appellant as a converted mining right holder will suffer prejudice as it alleged it was not consulted by the third party as required by law.’ My underlining

[58] I do not agree with the respondents’ submissions regarding the reports. They have failed to file counter-reports. Therefore those reports stand uncontroverted.

[59] Rexton Holdings states that in the normal course of events it would expect co-operation in order to coordinate their operations. It says that the majority of the historical manganese ore dumps are located 2 kilometres to the north of Sedibeng’s approved mining area. It says further that the balance of the manganese ore dumps constitutes a smaller proportion of the total 1.8million tonnes of historical manganese ore dumps and could easily be removed to the centralised dry screening area.

[60] In my view the respondents speculate when they submit that the first applicant failed to indicate the expected time of the progression of their mining operations. They also suggest that the dry-screening processing and removal of the historical dumps would have long been completed even before Sedibeng closes its current mining operations in the south to move north. They relate to these as important considerations in Dr Bisnath’s report which depicted the location of manganese dumps and pits and the active mining area which they dispute. For instance, the maps and photos attached to this report show clearly that from the location of the dumps and pits the removal of manganese could not be conducted without interfering with the first applicant’s mining areas.

[61] The respondents claim that the reports by Bisnath, Swartz and Van Dyk are unsubstantiated yet they only filed one report compiled by Kweneng Group dated 13 August 2018. In this report the only reference to the location of the manganese dumps on the property is found in one paragraph which records:

‘The DMT letter (2017) and report (2011) both fail to acknowledge the existence of Manganese stockpile in the north of Klipfontein 437 which were created by historical activities. This together with the historical open pits alone is sufficient evidence of the existence of Manganese which is mineable from the surface on Klipfontein 437.’

Notably, this report was not confirmed under oath.

[62] According to the respondents Sedibeng is required by the MPRDA to consult the land owner in respect of the use of surface rights. Be that as it may, it is common cause that Sedibeng is the holder of a converted mining right with reference Number NC 75 MRC/Protocol Nr 36/2009 to mine for iron ore over Farm 437, Klipfontein, as well as Portion 3 of the Farm 445 as alluded to earlier. How it became the owner of such right is not relevant for the purposes of these proceedings.

[63] Although the respondents rely on the MOU, at this stage it should be noted that that their prospecting right has been suspended and is subject to an appeal pending before the seventh respondent. Until then the respondents would not be in a position to prospect for either the historical manganese or iron ore dumps from the property. The respondents have no valid prospecting right and therefore have no access to the property.

[64] In *PLASCON EVANS PAINTS LTD v VAN RIEBEECK PAINTS (PTY) LTD* Corbett JA[15] held:

‘Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers.’

[65] Shongwe JA cited with approval the remarks of Eloff AJ in *TRUTH AND VERIFICATION TESTING CENTRE CC v PSE TRUTH DETECTION CC AND OTHERS*[16] held:

‘I am also mindful of the fact that the so-called “robust, common sense approach” which was adopted in cases such as *Soffiantini v Mould* 1956

(4) SA 150 (E) in relation to the resolution of disputed issues on paper usually relates to a situation where a respondent contents himself with bald and hollow denials of factual matter confronting him. There is, however, no reason in logic why it should not be applied in assessing a detailed version which is wholly fanciful and untenable.’

[66] I am satisfied that the applicants’ mining activities would be disrupted resulting in Sedibeng being unable to exercise the required control over, amongst others, the health and safety aspects during its mining activities and be in breach of its obligations in terms of relevant mining legislation. The applicants have therefore made out a case for the relief sought.

COSTS

[67] The outstanding issue is costs. Mr Van Tonder, on behalf of the applicants, requests that the respondents be ordered to pay costs on a scale as between attorney and client scale jointly and severally the one paying the other to be absolved, including the costs of 17 November 2017, 01 December 2017, 23 February 2018, 17 August 2018 and 07 December 2018. No costs order is sought against second, fourth, fifth, sixth and seventh respondents.

[68] Mr Nel, for the respondents, submits that the applicants have not managed to make out a case for the relief sought and that rule nisi be discharged with costs.

[69] It is a fundamental principle that a party who succeeds should be awarded costs and this rule should not be departed from except on good grounds.[17] The award of costs is a matter wholly within the discretion of the court, but this is a judicial discretion and must be exercised on grounds upon which a reasonable person could have come to the conclusion arrived at.[18] There is no reason why in this case the costs should not follow the result. I take into consideration the manner in which the respondents

have conducted this application as indicated above. No order as to costs in respect of the second, fourth, fifth, sixth and seventh

respondents.

In the circumstances I grant the following order:

1. The rule nisi granted on 17 November 2017 is hereby confirmed.
2. First and third respondent, Rexton Holdings and Mr Gordon Andrew McCrae, are ordered to pay costs of the application on the scale as between attorney and client including the costs of 17 November 2017, 01 December 2017, 23 February 2018, 17 August 2018 and 07 December 2018, jointly and severally the one paying the other to be absolved.

BM PAKATI

JUDGE-NORTHERN CAPE DIVISION, KIMBERLEY

On behalf of the 1st & 2nd Applicant: Adv AG Van Tonder

VAN DE WALL INC

On behalf of the 1st & 3rd Respondents:

Adv P Nel

ENGELSMAN MAGABANE INC

On behalf of the 5,6 & 7 Respondents

Ms N Mlomo

THE STATE ATTORNEYS

[1] Act 29 of 1996

[2] Act 28 of 2002

[3] Act 6 of 2002. Section 3 (6) of this Act provides: 'The Premier may not dispose of any immovable property unless she or he has caused a notice to be published in a newspaper circulating in the district in which the land is situated, calling upon interested parties to submit representations in writing to the contemplated disposal, within a period mentioned in the notice, which period may not be shorter than 21 days, following the day upon which the notice appeared in the newspaper: Provided further that this subsection and subsection (7) shall not apply where the disposal concerns the letting for a period not exceeding twelve months without an option to renew.'

[4] Saffii Citation Case Number (51762/2016) [2016] ZAGPPHC 7538 (26 August 2016); 1972 (4) 249 (C); 1981 (2) SA 562 (NC) at 567C-G.

[5] 2010 (3) SA 31 (KZP) at paras [15] to [18].

[6] Act 71 of 2008.

[7]

[2012] 1 ALL SA 167 (WCC) at 168d-e

[8] Act 107 of 1998

[9] Act 29 of 1996

[10] Act 10 of 2004

[11] At page 458-459.

[12] Setlogelo v Setlogelo 1914 AD 221 at 227; Masuku v Minister of Justice & Others 1990 (1) SA 832 (A) at 840-841

[13] 1977 (2) SA 916 (A) at 930H-931A

[14] 1961 (2) SA 505 (W) at 518A [15]

[1984] ZASCA 51; 1984 (3) SA 623 (A) at 635B.

[14] 1961 (2) SA 505 (W) at 518A

[15]

[1984] ZASCA 51; 1984 (3) SA 623 (A) at 635B.

[16] 1998 (2) SA 689 (W) at 689H-J.

[17] South African Association of Personal Injury Lawyers v Heath [2000] ZACC 22; 2001

(1) SA 883 (CC) at 912; see also Union Government v Gass 1959 (4) SA 401 (A) at 413C-F

[18] Beinash v Wixley [1997] ZASCA 32; [1997] 2 All SA 241; 1997 (3) SA 721 (A) ; see also Norwich Union Fire Insurance Society Ltd v Tutt 1960 (4) SA 851 (A) at 854C-E

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Prepared on 12 October 2026 · Esheria