REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(MPUMALANGA DIVISION, MBOMBELA)

(1)	REPORTABLE:NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
[redacted]	22/04/2024

CASE NO: 954/2024

In the matter between:

OMARURU MINERALS (PTY) LTD Applicant

and

MANKELE COMMUNITY TRUST First Respondent

J28 MINING RESOURCE (PTY) LTD Second Respondent

MG SECURITY SERVICES Third Respondent

THE MINISTER THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY Fourth Respondent

ALL OTHER PERSONS ACTING ON OR CARRYING INSTRUCTIONS ON BEHALF OF THE FIRST AND SECOND RESPONDENT Fifth Respondent

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 22 April 2024 at 10:00.

J U D G M E N T

MASHILE J:

[1] The Applicant ("Omaruru") applies to Court on urgent basis seeking relief that the operation of the order of this Court granted on 8 April 2024 should not be suspended as a result of the leave to appeal launched on 11 April 2024. The essence of the order was that the First and Second Respondents ("the Respondents") or depending on the context, ("the Trust") and ("J28 Mining") should restore possession of the property described as the remaining portion and extent of Portion 3 of the farm, Elandshoogte 207 JT in the Magisterial district of Nelspruit ("the property"). to Omaruru. The application is founded on the provisions of Section 18(1) as read with 18(3) of the Superior Courts Act, 10 of 2013. I will discuss the provisions of these sections later below.

[2] In its judgment of 8 April 2024, this Court found that Omaruru was in peaceful and undisturbed possession of the property when the Respondents unlawfully, forcefully and without a court order ejected it. This was despite the fact that Omaruru did not hold a valid license to be on the property save for an expired one, which it was in the process of renewing. In short, Omaruru satisfied the Court that it was entitled to the remedy of spoliation notwithstanding that it could not prove legal entitlement to its occupation save

for the peaceful and undisturbed possession. In consequence, this Court granted final interdict against the Respondents until they can legally evict Omaruru.

[3] Following the granting of the remedy of spoliation to Omaruru on 8 April 2024, on 9 April 2024, the Respondents launched the leave to appeal application. The application meant that the order of this Court dated 8 April 2024 became automatically suspended by virtue of the provisions of Section 18(1). It is the automatic suspension that this current application seeks to achieve such that the order remains executable. Its foundation is that the leave to appeal has no merit and that it has been noted merely to secure the suspension of the order.

[4] Central therefore to this matter is whether or not Omaruru has shown that it has satisfied the requirements of Section 18(1) and (3).

[5] Section 18 is headed: *Suspension of decision pending appeal.* Subsections (1) and (3) thereof respectively provide as follows:

> *(1) Subject to subsections (2) and (3), and unless the Court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.*
>
> *"(2) … … …*
>
> *(3) A Court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the Court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the Court does not so order and that the other party will not suffer irreparable harm if the Court so orders."*

[6] The jurisdictional factors that Omaruru must establish to become entitled to an order suspending the effect of the leave to appeal are:

6.1 Presence of exceptional circumstances;

6.2 Irreparable harm if the order is not granted; and

6.3 The Respondent will not suffer irreparable harm if the order is granted.

[7] Turning firstly to the existence of exceptional circumstances. It is extraordinary that the Respondents have been found to have spoliated the property from Omaruru yet they want to continue occupying the property unlawfully. Countenancing the persistence of that state of affairs will encourage disdain of the rule of law, which is so respected and cherished by this country. A finding that this is not exceptional will be aberrant.

[8] In the second place, Omaruru must show that it will suffer irreparable harm if the order is not granted. Omaruru's possession of the property is linked to the mining of gold. Its displacement from the property means that it has lost the opportunity to mine the gold while the Respondents continue with their unlawful possession and mining activities on the property utilizing infrastructure of Omaruru. The irreparable harm is evident – loss of mining of gold, depletion of the gold by the Respondents who are conducting illegal mining activities and unauthorised use of infrastructure. It needs to be underscored that Omaruru's possession of the expired mining license and the current application to renew it are irrelevant considerations.

[9] The next issue that Omaruru must show to succeed is that the Respondents will not suffer irreparable harm if the order is granted. Irreparable harm cannot occur to the Respondents in circumstances where their possession is illegal and, in addition, are conducting illegal mining. To allow a perpetuation of the current situation would constitute endorsement of their illegal activities, which is inimical to the remedy of spoliation. Thus, the continued spoliation coupled with illegal mining activities on the property conducted by the Respondents accentuated the need to attend to this matter on urgent basis.

[10] In the result, the application succeeds and I make the following order:

1. This application is heard as one of urgency in terms of Rule 6(12), the requirements of the Rules of Court in respect of the notice and service are dispensed with and the departure of Omaruru therefrom is condoned;

2. The suspension of the court order granted by this Court on 08 April 2024, under the above case number brought about as a result of the pending application for leave to appeal, is uplifted in terms of Section 18(1) read with 18(3) of the Superior Courts Act, 10 of 2013;

3. The order is effected and/or implemented and/or executed with immediate effect;

4. The First and Second Respondents are jointly and severally liable, the one paying the other to be absolved, for the costs of the Applicant.

[redacted]

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B A MASHILE

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

APPEARANCES:

Counsel for the Applicant:	**Adv J Scallan**
Instructed by:	**MC Incorporated Attorneys**
Counsel for the Respondent:	**Adv A Milazi**
Instructed by:	**Milazi AA Incorporated**
Date of Judgment:	**22 April 2024**