THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 702/2023

In the matter between:

TRANSASIA 444 (PTY) LTD	**APPELLANT**
and	
THE MINISTER OF MINERAL RESOURCES AND ENERGY	**FIRST RESPONDENT**
DIRECTOR-GENERAL: DEPARTMENT OF MINERAL RESOURCES AND ENERGY	**SECOND RESPONDENT**
THE REGIONAL MANAGER: KWAZULU-NATAL REGION	**THIRD RESPONDENT**
UMSOBOMVU COAL (PTY) LTD	**FOURTH RESPONDENT**
TRANSASIA MINERALS SA (PTY) LTD	**FIFTH RESPONDENT**

In re:

UMSOBOMVU COAL (PTY) LTD	**APPLICANT**
and	
THE MINISTER OF MINERAL RESOURCES AND ENERGY	**FIRST RESPONDENT**
DIRECTOR-GENERAL: DEPARTMENT OF MINERAL RESOURCES AND ENERGY	**SECOND RESPONDENT**
THE REGIONAL MANAGER: KWAZULU-NATAL REGION	**THIRD RESPONDENT**

And

Case no: 707/2023

In the matter between:

TRANSASIA MINERALS (SA) (PTY) LTD **APPELLANT**

and

THE MINISTER OF MINERAL RESOURCES AND ENERGY **FIRST RESPONDENT**

DIRECTOR-GENERAL: DEPARTMENT OF MINERAL RESOURCES AND ENERGY **SECOND RESPONDENT**

THE REGIONAL MANAGER: KWAZULU NATAL REGION **THIRD RESPONDENT**

UMSOBOMVU COAL (PTY) LTD **FOURTH RESPONDENT**

TRANSASIA 444 (PTY) LTD **FIFTH RESPONDENT**

In re:

UMSOBOMVU COAL (PTY) LTD **APPLICANT**

and

THE MINISTER OF MINERAL RESOURCES AND ENERGY **FIRST RESPONDENT**

DIRECTOR-GENERAL: DEPARTMENT OF MINERAL RESOURCES AND ENERGY **SECOND RESPONDENT**

THE REGIONAL MANAGER: KWAZULU NATAL REGION **THIRD RESPONDENT**

Neutral citation: *Transasia 444 (Pty) Ltd v The Minister of Mineral Resources and Energy and Others* (702/2023) *& Transasia Minerals (SA) (Pty) Ltd v The Minister of Mineral Resources and Energy and Others* (707/2023) [2024] ZASCA 145 (23 October 2024)

Coram: MOLEMELA P, ZONDI DP and UNTERHALTER JA and MANTAME and DIPPENAAR AJJA

Heard: This appeal was, by consent between the parties, disposed of without an oral hearing in terms of s 19*(a)* of the Superior Courts Act 10 of 2013.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and release to SAFLII. The date for hand down is deemed to be 23 October 2024 at 11h00.

Summary: Failure to cite party with direct and substantial interest in application to compel disclosure of records held by the Director-General of the Department of Mineral Resources and Energy relating to the application for the Ministerial consent for the transfer of a mineral right under s 11 of the Mineral and Petroleum Resources Act 28 of 2000 – disclosure order erroneously sought and granted as contemplated by rule 42(1)(a) of the Uniform Rules of Court – order issued by court considering rescission supplementing the disclosure order incompetent – order set aside and substitution order granted.

ORDER

On appeal from: Gauteng Division of the High Court**,** Pretoria (Millar J, sitting as court of first instance):

In relation to Transasia 444 (Pty) Ltd's appeal under case number 702/2023:

1 The appeal succeeds.

2 The order issued by Millar J on 29 August 2022 is set aside and substituted with the following:

'(a) The application for rescission succeeds.

(b) The default order granted by Mngqibisa-Thusi J, on 8 July 2022, under case number 10531/2022, is hereby set aside.

(c) The application for the joinder of the applicant as the fourth respondent in the disclosure application under case number 10531/2022 is granted.

(d) The applicant is granted leave to oppose the disclosure application and to file its answering affidavit within (15) fifteen) days from the date of this order.

(e) The fourth respondent in the rescission application (Umsobomvu Coal (Pty) Ltd) is ordered to pay the applicant's costs.'

3 The fourth respondent is ordered to pay the appellant's costs of appeal including the costs of the application for leave to appeal both in the high court and in this Court.

In relation to Transasia Minerals (SA) (Pty) Ltd's appeal under case number 707/2023, the following order is issued:

1 The appeal succeeds.

2 The order issued by Millar J on 29 August 2022 is set aside and substituted with the following:

'(a) The applicant is granted leave to intervene as an applicant in the application for leave to appeal.

(b) The applicant is granted leave to oppose the disclosure application and to file its answering affidavit within 15 (fifteen) days from the date of this order.

(c) The fourth respondent in the rescission application (Umsobomvu Coal (Pty) Ltd) is ordered to pay the applicant's costs in the intervention application.'

3 The fourth respondent is ordered to pay the costs of appeal including the costs of application for leave to appeal both in the high court and in this Court.

JUDGMENT

Zondi DP (Molemela P and Unterhalter JA and Mantame and Dippenaar AJJA concurring):

[1] The two appeals were heard simultaneously, as the issues they raise are substantially similar, notwithstanding that they were not formally consolidated. The appellant in the matter under case number 702/2023 is Transasia 444 (Pty) Ltd (Transasia 444) and under case number 707/2023 the appellant is Transasia Minerals (SA) (Pty) Ltd (Transasia Minerals). Transasia 444 and Tranasia Minerals, though they are separate entities, are owned by a common shareholder, Transasia BVI, which is incorporated and registered in the British Virgin Islands.

[2] The two appeals concern the validity of the order made by Millar J of the Gauteng Division of the High Court, Pretoria in an application for rescission of the order made by Judge Mngqibisa-Thusi of the same division on 28 June 2022. The main issue before Millar J was whether Mngqibisa-Thusi J's order should be rescinded. Instead of expressly granting or dismissing the application for rescission, Millar J issued an order which substantially changed the terms of Mngqibisa-Thusi J's order.

[3] The facts which gave rise to these appeals are largely common cause and are the following. Transasia 444 and Transasia Minerals have been involved in a long-standing dispute with the fourth respondent, Umsobomvu (Pty) Ltd (Umsobomvu). The dispute relates to the transfer of certain mining rights Umsobomvu sold to Transasia 1 (Pty) Ltd, (Transasia 1) which the latter subsequently assigned to Transasia 444. Umsobomvu disputed the validity of the sale agreement and cancelled it. Transasia 444 disputed Umsobomvu's right to cancel the agreement and sought to enforce it.

[4] Transasia 444 applied to the second respondent, the Director-General of the Department of Minerals and Energy (Director-General) for ministerial consent in terms of s 11 of the Mineral and Petroleum Resources Development Act 28 of 2002 (the

MPRDA) for the transfer of the mineral rights to it. In support of the application, Transasia 444 submitted to the Director-General various documents, some of which were confidential, while others belonged to third parties, including Transasia Minerals. Umsobomvu opposed the application. Despite its opposition, the Minister gave his consent to the transfer of Umsobomvu's mineral rights to Transasia 444. Umsobomvu was aggrieved by the decision and lodged an appeal in terms of s 96 of the MPRDA.[1] To prosecute the appeal, Umsobomvu was entitled to the record of the decision, subject to disclosure under confidentiality protection.

[5] On 28 June 2022, Umsobomvu sought and obtained from the Gauteng Division, Pretoria an order (Mngqibisa-Thusi J's order) directing the first respondent (Minister of Mineral Resources and Energy), the Director-General and the third respondent, (the Regional Manager: KwaZulu-Natal Region), (collectively referred to as the Department) to deliver all the records in respect of the appeal that Umsobomvu had brought in terms of s 96 of the MPRDA . When this application was brought, Transasia Minerals and Transasia 444 were not joined as parties, nor did they receive notice of the application. Both were entitled to service of the application and to be cited as parties to the application as they are both affected persons as envisaged in regulation 74(1) to the MPRDA. Some of the documents which were sought to be disclosed contained material which they claimed to be confidential.

[6] Mngqibisa-Thusi J's order reads as follows:

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[1] Section 96 of the MPRDA headed, 'Internal appeal process and access to courts' provides as follows:
(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)*.
(3) No person may apply to the court for the review of an administrative decision contemplated in subsection (1) until that person has exhausted his or her remedies in terms of that subsection.
(4) Sections 6, 7(1) and 8 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), apply to any court proceedings contemplated in this section.'

'The Third respondent is directed to deliver all records required in terms of the Applicant's notice of appeal in terms of Section 96 read with Regulation 74 of the Mineral and Petroleum Resources Development Act, 2000 ('MPRDA and Application for the withdrawal of the decision in terms of s 103(4)(b) and Application for suspension of the decision in terms of s 96(2)(a) in respect of the decision made by the Director-General concerning the application made by Transasia Minerals 444 (Pty) Ltd (registration number 2011/003954/07) (Transasia 444) for Ministerial consent in terms of Section 11 of the MPRDA for the transfer of mineral right with reference number KZN30/5/1/2/2/10021MR in respect of the property Farm terrace 3707 Portion 8 of the Farm Winkel no 5054, Remainder and Portion 1 of the Farm Eastkeal no 5138 Farm Lot W no.8610, the Farm Corby Rock no 11509, Remainder of Portion 3, Remainder of Portion 4 and Portions 12 and 15 Farm Hazeldene no 12649 ('Appeal') in compliance with Regulation 74(8) of the MPRDA within 5 days of the granting of the Order.'

Mngqibisa-Thusi J did not furnish reasons for her order.

[7] Aggrieved by the order of Mngqibisa-Thusi J, Transasia 444, on 15 July 2022, brought an urgent application in the Gauteng Division, Pretoria seeking its rescission. It simultaneously sought leave to be joined as the respondent in the disclosure application and to be allowed to file its answering affidavit within 15 days from the date of the order. Transasia 444's complaint was that the order that was obtained by Umsobomvu was granted without notice to it, even though Umsobomvu was aware that it was an interested party. Tranasia 444 contended that, as an interested party, it ought to have been joined as a party to the proceedings. The application for rescission was brought under rule 42(1)(a) of the Uniform Rules of Court, alternatively under the common law.

[8] Rule 42(1)(*a*) provides:

'The court may . . . *mero motu* [of its own accord] or upon the application of any party affected, rescind or vary:

(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby . . .'.

[9] The rescission application was heard by Millar J, who, after hearing arguments, granted the following order without reasons:

'1 By 5 September 2022, Third Respondent will deliver to the Applicant and the Fourth Respondent a complete index of all copies of all documents pertaining to the Record of

Decision concerning the application made by the Applicant in terms of section 11 of the Minerals and Petroleum Resources Development Act, 2002 ("MPRDA") ("the Index").

2. By no later than 12 September 2022, the Applicant will instruct the Third Respondent regarding which documents contained in the Index and the record is / are confidential.

3. The documents so identified by the Applicant shall be produced by the Third Respondent as part of the Record, but under a separate folder to be titled “Confidential Portion of the Record”, by no later than close of business on 23 September 2022.

4. For avoidance of doubt, the confidential and non-confidential parts so compiled must contain a copy of each and every document in the Record in its original format (and may not be redacted).

5. Only the legal representatives of the Fourth Respondent and the experts employed by the fourth Respondent who sign the confidentiality undertaking attached as Annexure “A” (“the Confidentiality Undertaking”) hereto and submit the Confidentiality Undertaking to the Applicant's attorneys, shall be entitled to receive and inspect the Confidential Portion of the Record.

6. For avoidance of all doubt, the Fourth Respondent and its directors and shareholders and employees shall not be entitled to receive or inspect the contents of the Confidential Portion of the Record.

7. Insofar as the Fourth Respondent (acting on advice received from its legal representatives and/ or experts who have signed the Confidentiality Undertaking), wish to challenge the classification of a particular document as a confidential document, the dispute in this regard will be referred to by the Fourth Respondent and the Applicant to a retired judge who will be appointed by the parties within 24 hours of a dispute being declared. The retired judge so appointed will act as an expert and not as an arbitrator; and will decide his/her own procedure, and whether or not evidence and argument is required and if so how it is to be presented. His/her decision on either of these issues will be final and binding on the parties. If the parties cannot agree to the identity of the retired judge to be appointed within 24 hours, the Chairperson of the Johannesburg Bar shall be required to make such an appointment and shall be requested to do so on an urgent basis. The determination of the dispute will be treated by the parties and the expert as an urgent matter. Any issues concerning the interpretation and/or application of the confidentiality undertaking which may arise shall be referred to the retired judge on the same basis.

8. All submissions to the Minister making reference to the Confidential Portion of the Record will be treated confidentially by the Fourth Respondent and submissions will be treated in the same vein as the Confidential Portion of the Record.

9. Costs of two counsel from 15 July 2022 to the date of hearing (including the date of hearing) are to be paid by the Applicant to the Fourth Respondent on a party and party scale.'

This order followed the terms of the draft order that was handed up in court by counsel for Umsobomvu. The order in the terms as proposed by Umsobomvu did not find favour with counsel for Transasia 444. He objected to it, stating that his instructions were merely to seek rescission of Mngqibisa-Thusi J's order and for Transasia 444 to be given an opportunity to oppose the main application. Millar J did not provide reasons for his order, and none were requested by Transasia 444 before launching its application for leave to appeal.

[10] Transasia 444 sought leave to appeal against the order of Millar J and sought condonation for the late filing of its application for leave to appeal. Transasia Minerals joined the fray. It applied for leave to be joined as an applicant in the application for leave to appeal and the rescission application, alternatively to intervene in the application for leave to appeal and/or application for rescission. In turn, Umsobomvu responded by bringing an application to compel compliance with the Mngqibisa-Thusi J's order and to hold the Department and Transasia 444 in contempt for failure to comply with it; alternatively, for an immediate execution of the order in terms of s 18(3) of the Superior Courts Act 10 of 2013. Although all three applications served before Millar J on 20 January 2023, he only dealt with the application for leave to appeal and the intervention application. He left the remaining application for determination at a later stage.

[11] Millar J granted Transasia Minerals leave to intervene as the applicant in the application for leave to appeal and dismissed Transasia 444's application for leave to appeal with no order as to costs. In his judgment on the application for leave to appeal and the intervention application, Millar J for the first time shed light on why he had granted his original order. He explained that he had granted Transasia Minerals leave to intervene in the appeal for it to be able 'to exercise its rights together with Transasia

444 *inter alia* in terms of paragraphs 2 and 7' of his order of 29 August 2022. In other words, according to Millar J the order that he fashioned affords Transasia Minerals and Transasia 444 the right to have a say on what documents the Department could release to the attorneys for Umsobomvu. He stated that in considering the rescission application he had regard to the MPDRA and regulation 74(8), regulating appeals, which requires the Regional Manager, upon receipt of the notice of appeal, to send all records pertaining to the decision appealed against to all identified affected persons.

[12] According to Millar J, Umsobomvu, being one of the parties contemplated in the regulation, was entitled to be furnished with the record. In his view, Umsobomvu was, however, not entitled to the documents in respect of which the appellants claimed confidentiality or documents which were not relevant to the appeal and to which Umsobomvu had no objection to their exclusion from the appeal record. Notably, Millar J's order does not stipulate in explicit terms whether he granted or refused rescission, and his reasoning does not provide clarity. He says at para 30 of the judgment:

'The order made on 29 August 2022, insofar as the rescission of the order of 28 June 2022 was refused, accommodated, without objection by Umsobomvu, the rights and interests of Transasia 444 (and now Transasia Minerals also).'

Millar J also says at para 19 of the judgment that his order does not vary Mngqibisa-Thusi J's order *'but serves, in conjunction with [Mngqibisa-Thusi J's] order, to impose a regime in terms whereof the interests of Transasia 444 (and also Transasia Minerals) could be represented and protected- in the way they would have been had either been before the court on 28 June 2022'.* (Own emphasis.) Millar J rejected Transasia Minerals' contention that the order he issued on 29 August 2022 was not a variation of Mngqibisa-Thusi J's order in its terms. He explained that his order was an addition to the order of Mngqibisa-Thusi J and had to be read in conjunction with it.

[13] Aggrieved by the order of Millar J dismissing leave to appeal, both Transasia 444 and Transasia Minerals petitioned this Court for leave to appeal. Leave to appeal was granted by this court on 22 June 2023.

[14] Both Transasia 444 and Transasia Minerals submitted that Millar J's order was a nullity to the extent that it varied the final order of Mnqgibisa-Thusi J, alternatively, that Millar J erred in refusing rescission. I disagree with the first proposition. Millar J's

order is not a nullity. I accept that it is not a model of clarity, and it is ambiguous, but the fact that it lacks clarity does not render it a nullity. Millar J should ideally have furnished his reasons for his order before the hearing of the application for leave to appeal. But be that as it may, his intention must be ascertained from the language of the judgment on the application for leave to appeal as construed according to the usual, well-known rules.[2] As in the case of a document, the judgment and his reasons for giving it, must be read as a whole to ascertain his intention.[3] It is now settled that, when interpreting a document, including a court order, the point of departure should be the language in question, read in context while also having regard to the purpose of its provision and the background.[4]

[15] The Constitutional Court, in *Democratic Alliance in re Electoral Commission of South Africa v Minister of Cooperative Governance and Others*,[5] had this to say regarding the interpretation of court orders:

'The order with which a judgment concludes has been described as the "executive part of the judgment", because it defines what the court requires of the parties who are bound by it. For this reason, it was said in *Ntshwaqela* that although the order must be read as part of the entire judgment, and not as a separate document, the order's meaning, if clear and unambiguous, cannot be restricted or extended by anything else stated in the judgment. The modern approach is not to undertake interpretation in discrete stages but as a unitary exercise in which the court seeks to ascertain the meaning of a provision in the light of the document as a whole and in the context of admissible background material. This principle applies to the interpretation of court orders, as decisions of this Court make plain.

The principle is unaffected by the circumstance that, for reasons of urgency, the order preceded the reasons. Analogously, in *International Trade Administration Commission*, this Court said that, in interpreting a court's order, regard could be had to the court's subsequent judgment on an application for leave to appeal. A court order is made for particular reasons

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[2] *Firestone South Africa (Pty) Limited v Genticuro AG* [1977] 4 All SA 600 (A); 1977 (4) SA 298 (A) at 304D-E.
[3] *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* [2012] ZASCA 49; 2013 (2) SA 204 (SCA) para 13.
[4] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.
[5] *Democratic Alliance in re Electoral Commission of South Africa v Minister of Cooperative Governance and Others* [2021] ZACC 30; 2022 (1) BCLR 1 (CC) para 12-13.

and for particular purposes, and although these may be discerned from the order itself, greater light is shed on them by the judgment.' (Footnote omitted.)

[16] Properly construed, in the light of the judgment given on the application for leave to appeal, the effect of Millar J's order, although it does not say so in explicit terms, was to refuse rescission. This is, in fact, what he himself says in paragraph 30 of the judgment referred to in para 12 above. The effect of the refusal was that Mngqibisa-Thusi J's order remained extant. Instead of confirming Mngqibisa-Thusi J's order, Millar J then reformulated it. He was of the view that it was competent for him to supplement Mngqibisa-Thusi J's order by imposing a confidentiality regime which would regulate the manner in which the appellants' documents, which were in possession of the Department, were to be disclosed to Umsobomvu. His explanation for doing so is that, in his view, putting in place a confidentiality regime in the order was necessary in order to address the concerns raised by the appellants which Mngqibisa-Thusi J's order had failed to do. In my view this was wrong. He either had to grant or refuse rescission. If he had granted rescission, the question of a proper confidentiality regime could have been traversed once the appellants had filed papers in the disclosure application. If the rescission application had been correctly refused, Mngqibisa-Thusi J's order, being an order to compel disclosure, was an interlocutory order, capable of amendment depending on the exigencies of the situation.

[17] The order of Millar J should be set aside. It was incorrect. He was faced with the application for rescission under rule 42(1)(a), alternatively under the common law. All that was required of him was either to grant rescission if a case for It was made out or dismiss it, if he was not satisfied that the order had been erroneously sought or erroneously granted. Based on the evidence that was presented to him, which was not disputed, Millar J should have granted rescission. The appellants had not been joined as parties to the main application before Mngqibisa-Thusi J. Nor did they receive notice of the application. Both were entitled to service of the application and to be cited as parties to the application because they were owners of the material which the Director-General and/or the Minister were required to disclose. They were therefore clearly interested parties. This fact was well known to Umsobomvu's attorneys when they brought the application to compel.

[18] In the notice of appeal in terms of s 96 of the MPRDA that preceded the application to compel, Umsobomvu's attorneys identified the appellants as affected parties as contemplated in regulation 74(1)(*b*) of the MPRDA Regulations and again, in the correspondence that exchanged between the parties they were identified as such. Mngqibisa-Thusi J's order was therefore erroneously sought or granted within the meaning of rule 42(1)(*a*).

[19] It was made in the absence of the appellants, who had a direct and substantial interest in the proceedings by virtue of the fact that they were the owners of the confidential material that was sought to be disclosed. Since they have a legal interest in the subject-matter of the main application, they should have been served with the application to compel.[6] The appellants were necessary parties, and they ought to have been joined. The appellants' non-joinder rendered the proceedings irregular.

[20] Madlanga J, in *Morudi and Others v NC Housing Services and Development Co Limited and Others*,[7] quoted with approval the following *dictum* by Brand JA in *Judicial Service Commission v Cape Bar Council*:[8]

'It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned. The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one.' (References omitted.)

[21] In *Amalgamated Engineering Union v Minister of Labour*,[9] this Court held:

'Indeed it seems clear to me that the Court has consistently refrained from dealing with issues in which a third party may have a direct and substantial interest without either having that party joined in the suit or, if the circumstances of the case admit of such a course, taking other adequate steps to ensure that its judgment will not prejudicially affect that party's interests.'

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[6] *De Villiers and Others v GJN Trust and Others* [2018] ZASCA 80; 2019 (1) SA 120 (SCA) para 22.
[7] M*orudi and Others v NC Housing Services and Development Co Limited* [2018] ZACC 32; 2019 (2) BCLR (CC) para 29.
[8] *Judicial Service Commission v Cape Bar Council* [2012] ZASCA 115; 2013 (1) SA 170 para 12.
[9] *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637(A) at 659.

[22] It follows therefore that when Mngqibisa-Thusi J granted the order in the absence of the appellants, she committed a procedural irregularity. She could not validly grant an order in the main application without the appellants having been joined. Therefore, Millar J was in error to have, in effect, refused the application for rescission of the order of Mngqibisa-Thusi J.

[23] The next question is whether the matter should be remitted to the high court for the consideration of the rescission application. Having regard to the fact that the entire record is before this Court, and that the matter was fully argued before us, it would serve no useful purpose other than to delay the finalisation of these proceedings to uphold the appeal and remit the matter back to the high court for it to consider the rescission application. In these circumstances, it would be in the interest of justice to uphold the appeal, set aside the order of Millar J, rescind the order granted by Mngqibisa-Thusi J and grant Transasia 444 leave to oppose the disclosure application.

[24] Transasia Minerals' position is different to that of Transasia 444. It was not a party to the rescission application that was brought by Transasia 444. It only joined the dispute at the stage of the application for leave to appeal when it sought to be joined in the application for leave to appeal and the rescission application, alternatively to intervene in the application for leave to appeal and/or in the rescission application. Transasia Minerals supported the rescission application. Millar J granted it leave to intervene as an applicant in the application for leave to appeal but he dismissed Transasia 444's application for leave to appeal. This meant that although Transasia Minerals was granted leave to intervene in the application for leave to appeal, it was not afforded an opportunity to prosecute the appeal since the application for leave to appeal was refused. Transasia Minerals is not entitled to a rescission remedy because it was not a party to the rescission application. It will, however, enjoy the benefit of the rescission granted by reason of the success of Transasia 444's appeal. And in consequence, Transasia Minerals is granted leave to oppose the disclosure application.

The order

[25] In relation to Transasia 444 (Pty) Ltd's appeal under case number 702/2023:

1 The appeal succeeds.

2 The order issued by Millar J on 29 August 2022 is set aside and substituted with the following:

‘(a) The application for rescission succeeds.

(b) The default order granted by Mngqibisa-Thusi J, on 8 July 2022, under case number 10531/2022, is hereby set aside.

(c) The application for the joinder of the applicant as the fourth respondent in the disclosure application under case number 10531/2022 is granted.

(d) The applicant is granted leave to oppose the disclosure application and to file its answering affidavit within (15) fifteen) days from the date of this order.

(e) The fourth respondent in the rescission application (Umsobomvu Coal (Pty) Ltd) is ordered to pay the applicant’s costs.’

3 The fourth respondent is ordered to pay the appellant’s costs of appeal including the costs of the application for leave to appeal both in the high court and in this Court.

In relation to Transasia Minerals (SA) (Pty) Ltd’s appeal under case number 707/2023, the following order is issued:

1 The appeal succeeds.

2 The order issued by Millar J on 29 August 2022 is set aside and substituted with the following:

‘(a) The applicant is granted leave to intervene as an applicant in the application for leave to appeal.

(b) The applicant is granted leave to oppose the disclosure application and to file its answering affidavit within 15 (fifteen) days from the date of this order.

(c) The fourth respondent in the rescission application (Umsobomvu Coal (Pty) Ltd) is ordered to pay the applicant’s costs in the intervention application.’

3 The fourth respondent is ordered to pay the costs of appeal including the costs of application for leave to appeal both in the high court and in this Court.

_____

D H ZONDI

JUDGE OF APPEAL

Heads of argument prepared by:

Case number: 702/2023

For the appellant:	B C Stoop SC
Instructed by:	Hammond-Smith Attorneys, Pretoria
	Matsepes Inc, Bloemfontein

Case number: 707/2023

For the appellant:	T N Ngcukaitobi SC
Instructed by:	R Baloyi Inc, Johannesburg
	Matsepes Inc, Bloemfontein.