



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

CASE NO: 2025/036849

(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES / ☒ NO
(3)	REVIEWED: ☒ YES / ☐ NO
22 April 2025 DATE	 SIGNATURE

In the application by

MAMOKEBE INVESTMENTS (PTY) LTD

Applicant

And

MINISTER OF MINERAL AND ENERGY

1st Respondent

**DIRECTOR GENERAL: DEPARTMENT OF MINERAL
RESOURCES**

2nd Respondent

**REGIONAL MANAGER: MPUMALANGA REGIONAL
DEPARTMENT OF MINERAL RESOURCES**

3rd Respondent

MAMOKEBE COLLIERY (PTY) LIMITED

4th Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order:

1. The application is dismissed with costs on scale C.

[2] The reasons for the order follow below.

Introduction

[3] The applicant approached the court on an urgent basis for the following relief:

- 3.1 That the first, second and third respondents are directed and ordered to refrain from prosecuting, processing or giving effect to the transfer of mining right MP10341MR to Mamokebe Colliery (Pty) Ltd or any other party;
- 3.2 That the order in para 3.1 shall endure as an interim order, pending the final adjudication of the applications instituted in the High Court of South Africa, Gauteng Division, Pretoria, under case numbers (i) 2023-100053, (ii) 2023-067386 and (iii) 2023-071300.

The Parties

[4] The applicant is a company involved in mining of coal as the holder of a mining right on the farm Grootspuit in the district of Wakkerstroom. The mining right applied for in 2021 was eventually issued 21 May 2024 with the commencement date of the right as 5 April 2024 and would endure for a period of 10 years.

[5] Before being granted the mining right the company was granted a prospecting right on the same property on 16 September 2010 for a period of 5 years. The prospecting right was renewed for a period of 3 years in 2015.

[6] The first respondent, the Minister of Mineral Resources and Energy, is the executive authority of the relevant department in terms of sect 11 of the Mineral and Petroleum Resources Development Act¹ (MPRDA)

[7] The second respondent is the Director General of the Department of Mineral Resources and Energy cited in his capacity as the highest ranking civil servant of the mentioned department.

[8] The third respondent is the Mpumalanga Region Regional Manager of the Department of Mineral Resources in his capacity as the administrative head of that particular region in terms of section 8 of the MPRDA.

[9] The fourth respondent was granted leave to intervene in the application by order of Mnquibisa-Thusi J on 2 April 2025 due to its interest in the application as the entity to which the mining right of the applicant is to be transferred.

Background

[10] The applicant was incorporated in 2006 initially as Adzam Trading 161 (Pty) Ltd on 13 September 2006. The name was changed to Mamokebe Investments (Pty) Ltd on 13 November 2006. Matsimele Francina Motjoadi (Motjoadi) and

¹ Act 28 of 2002

Kgaapu Stanley Mphahlele (Mphahlele) was appointed as directors of the applicant. There has been some changes of directors but for purposes of this judgement it is only Motjoadi and Mphahlele who remain relevant.

[11] The shareholders of the applicant was Motjoadi (51%) and Mphahlele (49%) until 2016 when they entered into a shareholder's agreement with Alucento (Pty) Ltd, trading as Rubicon Consortium Coal Mining, in terms of which the latter purchased 70% of the sharecapital. The end result of this transaction was that Motjoadi remained with 15.3% of the sharecapital and Mphahlele with 14.7%.

[12] The shareholders agreement furthermore provided that the majority shareholder could appoint 3 directors and Motjoadi 2.

[13] The majority shareholder duly appointed 3 directors who at the time of the commencement of the litigation was Potlaki Maine, Mirriam Bibi Adam and Protus Francis Mhawukelwa Sokhela

[14] On 9 December 2022 Motjoadi and Mphalele, were removed as directors in terms of an ordinary resolution of the shareholders in accordance with section 71(1) of the Companies Act². Motjoadi has since passed on in August 2024.

[15] Shortly before being removed as directors of the applicant, Motjoadi and Mphahlele incorporated a new company, Mamokebe Collieries (Pty) Ltd and was appointed as its directors on 22 November 2022, being the same date as its incorporation.

[16] A further two directors were added on 22 July 2024 namely Phillipus Johannes De Wit and Sthembiso Arnold Kubeka.

[17] On 10 April 2024 and thus after being removed as directors Motjoadi and Mphahlele, in their capacity as directors of the applicant entered into a sale of

² Act 71 of 2008

shares agreement with Kubeka (Pty) Ltd (Kubeka) in terms of which they as holders of 100% of the shares of the applicant sold 51 % of their shares (Motjoadi 26% and Mphahlele 25%) to Kubeka. The effect of this transaction was that Kubeka was entitled to appoint two directors to the Board of Directors of the applicant. After this transaction, the two former directors remained with a shareholding of 24% and 25% respectively and Kubeka a 51% shareholding.

[18] After the sale of shares the new directors of the applicant was Motjoadi, Mphahlele, Phillipus Johan De Wit and Sthembiso Arnold Kubeka, the latter two being appointed by Kubeka (Pty) Ltd.

The litigation chronology

[19] There is a protracted litigation history between the applicant and the fourth respondent as well as between their directors and shareholders.

[20] The disputes are as follows:

- 20.1 Motjoadi, Mphahlele and the applicant, as represented by Motjoadi and Mphahlele, launched an application on 10 July 2023 to have the 2016 shareholders agreement with Alucento declared null and void and secondly to declare the appointment of the three directors appointed by Alucento in terms of the mentioned shareholders agreement namely Adam, Jansen and Maine as null and void. This matter is pending under case number 2023-067386 in this court
- 20.2 An urgent application was launched under case number 2023-071300 in this court by Matjoadi, Mphahlele and the applicant as represented by Matjoadi and Mphahlele on 19 July 2023 to prevent Alucento (Pty) Ltd and the directors of the applicant from convening meetings of the Board of Directors in respect of Mamokebe Investments and staying the operation of resolutions carried at the meeting of 19 July 2023 pending the outcome of the application mentioned in paragraph 15.1.

This matter was struck off the roll due to lack of urgency.

- 20.3 Matjoadi and Mphahlele launched an urgent application citing as respondents Alucento (Pty) Ltd, the four directors of the applicant, the applicant and the Companies and Intellectual Property Commission on 3 October 2023 under case number 2023-100053 for the rectification of the share register of the applicant to the effect that the applicants were the shareholders of the shares in the applicant from 2006 until the date of the application, setting aside the appointment of the directors of the applicant, setting aside the removal of Matjoadi and Mphahlele as directors of the applicant, setting aside the appointment of the Chief Executive officer, Dr Adam of the applicant, interdicting the convening of meetings of directors or shareholders and interdicting the CEO of representing the applicant in any manner pending the outcome of the application mentioned in paragraph 15.1.
- 20.4 Mphahlele launched an urgent *ex parte* application under case number 6453/2024 in the High Court in Middelburg on 7 December 2024. This application was launched in the name of the applicant as represented by Mphahlele to interdict the SAPS from closing the illicit mining operations conducted on the area of the mining right. The directors of the applicant intervened in the application and had the *rule nisi* discharged on 7 February 2025.
- 20.5 The Kubeka Organisation (Pty) Ltd as shareholder together with the directors de Witt and Kubeka, brought an urgent application in the Middelburg High Court under case number 775/2025 against the majority shareholder of the applicant, Alucento and the SAPS. This application was struck for want of urgency.
- 20.6 On 26 February 2025, the applicant and a director, Shokela, launched an urgent application under case number 2025-028369 which came before me in the urgent court. The relief sought at that stage was to

remove the names of the directors, Mphahlele, Kubeka and de Witt, instilled as a result of the shareholders agreement of 7 April 2024 and interdicting those directors from acting on behalf of or representing themselves as directors of the applicant.

- 20.7 This application was settled and an order operating as an interim interdict pending the final adjudication of the matters referred to in par 20.1, 20.2 and 20.3 was granted by agreement. The effect of the order was that the directors of the applicant was restored as directors and that Mphahlele was also so restored and shall remain a director of the applicant pending the finalisation of the matters in 20.1-20.3.

[21] The applicant submitted the application for the transfer of the mining right to the fourth respondent which application was submitted on behalf of the applicant by Matjoadi in her capacity as a director of the applicant and is dated August 2024, despite being removed as a director and the litigation in this regard still pending..

Urgency

[22] The applicant contends that the application is urgent on the basis of an announcement made by Ms Dlamini, employed at the third respondent, to the effect that the office of the third respondent had already recommended the transfer and forwarded the recommendation to the Head Office of the Department and is awaiting final approval which is immanent and that the transfer could only be prevented from occurring was through a court interdict.

[23] This announcement was conveyed to the applicant after the Department was informed on 7 March 2025 of the court order and that the Board of Directors had resolved to withdraw the application for the transfer of the mining right with immediate effect. The Department was requested to confirm that the processing of the transfer will not be proceeded with. No such confirmation was forthcoming

[24] On 10 March 2025, the Department was again requested not to proceed with

the processing of the transfer application and to provide an undertaking to that effect. The Department acknowledged receipt of the communication and referred the applicant's representatives to Ms Dlamini in so far as the undertaking was concerned.

[25] The CEO of the applicant, Dr Adam attended to the offices on 12 March 2025 and delivered a hard copy of the court order of 7 March as well as the resolution of 7 March. Ms Dlamini agreed to meet with a delegation of the applicant. It was during this meeting that the announcement mentioned in paragraph 21 was conveyed.

[26] The applicant further contends that the effect of the granting of consent by the first respondent is that the mining right is transferred resulting in the loss of that asset to the applicant. The basis of this contention is that all the other processes for the transfer and registration of the mining right in terms of the Mining Titles Registration Act ³(MTRA) is a mere formality. The applicant further contends that the first respondent does not have a discretion in the granting of the consent as the MPDRA obliges the first respondent to consent to the transfer when the jurisdictional factors mentioned in sect 23 have been found to have been met.

[27] The jurisdictional factors mentioned in section 23 of the MPDRA deals with requirements to be complied with in respect of the operations of the new holder, guarantees to be provided as well as viability and sustainability factors. The applicant contend that the majority of the factors have already been assessed and found to be compliant and that the first respondent will consequently be obliged to grant consent for the transfer.

[28] The applicant denies that there are any other legal remedy and that when the right has been transferred it has been lost in perpetuity by the applicant.

[29] The contentions by the respondents are essentially that the application is not urgent as the first respondent has not made a decision and that the application

³ Act 67 of 1967

is to interdict future administrative action. They further contend that the granting of an interdict would amount to an infringement of the separation of powers and that the first respondent should be allowed to exercise his statutory obligations.

[30] The first three respondents contends that the applicant has alternative remedies namely sect 96 of the MPRDA in terms of which the applicant can lodge an appeal and apply for the administrative action to be suspended pending the outcome of the appeal.

[31] The fourth respondent essentially raises the same grounds in opposition of the urgency of the application. It raises the further opposing point that the urgency is self-created as the applicant has had knowledge of the application for consent since January 2025.

Discussion

[32] The discussion shall deal with the requirement of urgency first.

[33] The applicant states that it became aware of the application for the transfer of the mining right in January 2025 when a contract miner, Greenlands, informed the directors of the applicant that the fourth respondent had submitted an application for the transfer of the mining right to the fourth respondent.

[34] Between January and April 2025 the applicant brought the urgent application on 26 February and which culminated in the order granted on 7 March which restored the directors of the applicant as such so that they could resolve to withdraw the transfer application.

[35] This does not amount to undue delay neither does it constitute self-created

urgency.⁴

[36] The meeting referred to in paragraph 25 occurred after the order of 7 March 2025 which restored the directorship of Mphahlele and the resolution of the Board of Directors withdrawing the application both of which were provided to the third respondent. .

[37] There is consequently no application for the transfer of the mining right before the first applicant for consideration and as such the first respondent has no basis to consider the application any longer.

[38] Section 96 of the MPRDA 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 in the prescribed manner to-

(a) the Director-General, if it is an administrative decision by a Regional Manager or an officer; or

(b) the Minister, if it is an administrative decision by the Director-General or the designated agency.

(2) 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.

(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 No. 3 of 2000), apply to any court proceedings contemplated in this section.

[39] This right of appeal does not deal with an appeal based on a decision by the first respondent to grant consent. The section deal only with an appeal to the first

⁴ Chung-Fung (Pty) Ltd v Maifair Residents Association and Others (2023/080436) [2023] ZAGPJHC 1162 (13 October 2023). Dynamic Sisters Trading (Pty) Ltd v Nedbank Limited (081473/2023) [2023] ZAGPPHC 709 (21 August 2023)

respondent based on a decision by a subordinate official or entity such as the Director General or the designated agency appointed in terms of section 70 of the MPRDA.

[40] For a transfer of a mining right or an interest in such right the written consent of the Minister is required in terms of section 11(1) of the MPRDA.

[41] As there is no appeal to the Minister based on his own decision this provision does not constitute an alternative remedy.

[42] After the consent of the first respondent have been obtained the process of registration of the transfer has to occur. This is done in terms of the MTRA.

[43] Registration of a transfer of a mining right in terms of the MTRA occurs when the registrar affixes his signature thereto.⁵

[44] Before registration, the registrar is required to examine all documents submitted to him for registration. If the registration is not permitted by the MTRA or any other law or as to which any other valid objection exists the registrar shall reject the registration of such document.⁶

[45] In the process of examination of any document presented to him for registration, the registrar has the power to require the production of proof by way of affidavit of any fact necessary to be established in connection with any matter sought to be performed by him.⁷

[46] The granting of the consent by the first respondent for the transfer of the mining right consequently does not constitute the transfer of the right. It is a mere step in the process. The registrar is entitled to entertain objections to the registration and has to satisfy himself as to compliance with the applicable

⁵ Sect 13(1) Mining Titles Registration Act.

⁶ Sect 5(1)(b) Mining Titles Registration Act

⁷ Sect 6(1)(a) Mining Titles Registration Act

requirements in respect of registrability of the transfer of the mining right.

[47] The MTRA provides for an alternative remedy to be exercised during the registration process. The applicant can avail itself of the right to object to the registrar and can even provide the registrar with factual evidence under oath in its objection.

Conclusion

[48] Based on the reasons above I make the order in paragraph 1



E Raubenheimer

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be

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DATE OF ARGUMENT: 10 April 2025

DATE OF JUDGMENT: 22 April 2025