

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES/NO
8 May 2025	
DATE	SIGNATURE

Case No: 2024-087647

In the matter between:

ULRIC IMPORT EXPORT LIMITED

Applicant

And

MAPOCHS RESOURCES (PTY) LTD

First Respondent

INTERNATIONAL RESOURCES PROJECTS LIMITED

Second Respondent

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on Case Lines. The date for hand-down is deemed to be 9 May 2025.

JUDGMENT

MYBURGH, AJ:

Introduction: The core facts

- [1] The applicant ("the applicant" or "Ulrich") is a mining contractor, the first respondent ("Mapochs") is the owner of mining rights in respect of a mine situated near Steelpoort ("the Mine") and the second respondent ("IRPL") is an affiliate of Mapochs. The relationship between Mapochs and IRPL is contractual in nature. The details are not important for present purposes.
- [2] Ulric previously conducted mining operations on the Mine in terms of a contract between itself and IRPL. The ore which was mined was initially stockpiled on site and then transported by truck to the port of Maputo, from which it was then exported by or at the instance of Ulric. Ulric was obliged to pay IRPL at an agreed rate for quantities of ore removed.
- [3] The relationship appears to have been beset with difficulties. Operations and the sale of ore did not proceed at the pace which the parties had intended. Indeed, it seems that operations were, at times, suspended for extended periods.
- [4] Matters came to something of a head on 24 June 2024 when IRPL purported to terminate the mining contract. Ulric disputed the lawfulness of the cancellation.
- [5] On the same day Ulric caused security personnel employed by a third party ("Nduma") to be deployed at the Mine and sought permission from IRPL for that purpose. The permission was not forthcoming; however, the Nduma personnel nevertheless remained in attendance. It appears from the correspondence which passed between the parties that there were two guards in total. Precisely what they were tasked to do and what role they actually performed are the subjects of some controversy. I will accordingly revert to this topic at an appropriate juncture
- [6] The parties then became involved in negotiations. The goal which Ulric sought to achieve appears to have been the reinstatement of the contract and the continuation of the mining operations. During this time the Mine was idle, and no ore was being shipped. There was accordingly no income.

- [7] On 30 July 2024, Ulric received a report from Nduma to the effect that a number of trucks bearing Mozambican registration plates had arrived at the Mine. Nduma also reported that its personnel had been handed a letter, signed by the CEO of Mapochs in terms of which it was requested to confirm that its personnel would not interfere with daily operations at the mine, which were said to include *“loading, hauling and any other business activities conducted at the Mapochs Mine”*.
- [8] Ulric responded by causing its attorneys to address a letter to Mapochs’s attorneys recording that it did not consent to the removal of ore from the stockpile and that legal proceedings would follow if any attempt was made to remove any of the ore. That letter appears not to have evoked any response.
- [9] During the evening of Wednesday 31 July 2024, Ulric received a report to the effect that the trucks had been loaded and had then left. The quantity of ore which had been so removed was said (by the applicant) to have been approximately 350 metric tonnes.
- [10] On the following day, 1 August 2024, more trucks arrived and a further quantity of ore, said by the applicant to have amounted to approximately 1505 metric tonnes, was removed.

The application

- [11] The respondents’ conduct in causing ore to be removed from the Mine as set out above prompted Ulric to launch these proceedings. The founding papers were served on Mapochs during the afternoon of 2 August 2024, which was a Friday.¹ In terms of the notice of motion the respondents were given until noon on Monday 5 August 2024 to deliver their answering papers. The notice also recorded that the matter was to be heard at 10H00 on Tuesday 6 August 2024. No provision was made for the delivery of a replying affidavit.
- [12] The substantive relief sought comprised restoration to possession of the Mine and the ore which had been removed from it as well as an interdict prohibiting

¹ It is not clear whether the second respondent was ever properly served; however, nothing turns on that for present purposes.

the respondents from removing any more ore from the Mine pending the outcome of an arbitration to be instituted by either the applicant or the second respondent within 30 days. The relief to be claimed in the arbitration was not specified in the notice of motion; however, it appeared from the founding papers that Ulric disputed the validity of the cancellation. It also appeared that the second respondent considered the applicant to be indebted to it in an amount exceeding forty million US dollars. Thus, one could infer that the issues in the arbitration would, in all likelihood, include the lawfulness of the cancellation and financial claims.

- [13] In their answering papers the respondents took issue in relation to the alleged urgency of the matter and in relation to the merits. I will deal with each issue separately hereunder, but first I will deal with what transpired in relation to the hearing.

The hearing

- [14] Given the timing of the application and the practice directives which apply in this court, the matter had not been included on the roll for the week of 6 August 2024. The applicant accordingly approached the senior judge with a request that the matter be enrolled notwithstanding the applicant's failure to comply with the applicable practice directives. The matter was then passed to me without any order having been made – i.e. I had, in the first instance, to decide whether to permit the enrolment of the matter for hearing in the week in question.
- [15] I pause to mention that the applicant had not filed a replying affidavit. However, Mr Ben-Zeev, who appeared for the applicant, informed me that he nevertheless wished to proceed – i.e. the applicant did not seek an opportunity to deliver replying papers.
- [16] My initial view, as conveyed to Mr Ben-Zeev, was that the nature of the matter was not such as to justify such a gross departure from the established procedures. However, as I had capacity due to other matters having stood down, I ultimately agreed to hear the matter without making any finding in relation to the issue of urgency.

[17] As I heard argument on all issues and as I have reached a view in relation to the merits, I believe it to be appropriate that I give a judgment on the merits. That said, I also believe it would be remiss of me not to say something about the alleged urgency of the matter and the manner in which the applicant chose to proceed.

Urgency

[18] Uniform Rule 6(12)(b) requires a party who alleges that a matter is urgent to explicitly set out its case as to why it will not be able to obtain satisfactory relief by way of a hearing in due course.

[19] The rules are not to be disregarded simply because some degree of urgency may attach to a given matter. On the contrary, there are varying degrees of urgency, and the rules may only be departed from to the extent that that may be appropriate given the exigencies of the matter under consideration. In some cases an application may be brought on virtually no notice and all forms and time periods may be dispensed with. In others, a hearing in a few weeks' time may suffice. Practitioners must, in setting a timetable, also have due regard to the likelihood of opposition and, if opposition seems likely, allow sufficient time for the proper exchange of papers prior to the enrolment of the matter. All of this is so well established as not to require any authority however I nevertheless refer to the decision in *I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd & another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd & Another*² in which the position is succinctly set out.

[20] It is also necessary to comply with local rules which, these days, take the form of practice directives. What is required in this court is that matters which are alleged to be urgent must be filed with the registrar by noon on the Thursday of the week preceding the week in which a hearing is sought. The practice directives also stipulate that the papers should be complete by that time and that practice notes should have been filed. While it is so that departures may be condoned, this will only be done in exceptional cases. In this regard it is to be borne in mind that the

² [1981] 2 ALL SA 378 (C). See also *In re: Several matters on the urgent court roll 2013* (1) SA 549 (GSJ).

Johannesburg court is an exceptionally busy one and that there are always many litigants clamouring to be heard on the urgent roll. It must also be appreciated that it is difficult for judges to perform their functions properly when matters are dumped on them at the last minute without having had a proper opportunity to acquaint themselves with the papers or to consult applicable authorities.

[21] The issue was recently addressed in the Judge President's consolidated practice directive 1 of 2024 in which it was made clear that parties should take care not to overstate the urgency of their matters and to depart from the established procedures only to the extent that such departures may be absolutely necessary. There have also been several recent judicial pronouncements on this issue. Indeed, the current position is that an applicant's attorney may attract an order of costs *de bonis propriis* if it should be found that the urgency of a matter was overstated.

[22] In argument before me, Mr Ben-Zeev laid considerable emphasis on the jurisprudential nature of the *mandament* and the reason for its existence in support of the applicant's case in respect urgency.³ While it is true that applications in which a *mandament* are sought are invariably dealt with on the basis that some urgency attaches to them, it is not so that every such application falls to be dealt with as one of extreme urgency. At the risk of repetition, each case falls to be dealt with on its own facts.

[23] What the applicant sought in this instance was to be placed in possession of a mine which had been dormant for some time in circumstances where it would not have been permitted to resume mining operations or to cause any of the ore to be removed. I do not see how such a matter could properly be regarded as urgent. On the contrary, a hearing on a semi-urgent basis would have sufficed in relation to that aspect of the matter.

[24] To the extent that any urgency attached to the matter, that had to do with the removal of ore at the instance of the respondents. That, however, did not justify the extreme urgency with which the matter was brought. This was especially so as the applicant's only interest in the ore was of a financial nature and

³ Essentially, to deter people from taking the law into their own hands.

respondents had given an undertaking to keep a record of all ore removed from the Mine. Indeed, it appeared from the applicants own founding papers that it had had no difficulty in keeping track of the quantities of ore removed – something which I imagine could probably have been done with reasonable accuracy simply by counting truckloads.

[25] The applicant's wholesale disregard for the rules and practice directives was simply not justified. At best, the exigencies of the matter may have justified enrolment in the following week following compliance with the relevant practice directives.

[26] I mention these issues as I do not think that I could have been faulted if I had refused to permit the matter to be enrolled or if I had enrolled it and then struck it from the roll. However, as I have come to view on the merits and do not think that it would be appropriate for me to burden another judge with having to read the papers and hear argument, I will say no more in this regard.

The claim to be restored to possession (mandament van spolie)

[27] The requirements for the *mandament* are well known. They are possession (*detentio*) and the necessary intent (*animus possidendi*). Both elements must have been present at the time of the alleged dispossession. That this is so, is well established, and it was not argued otherwise. I will accordingly say no more in this regard.

[28] What exactly is required in order to satisfy the first requirement varies from case to case. Thus, a party may be held to have been dispossessed even though he or she was not present at the time. This typically occurs in respect of immovable property. In other cases, physical detention may be required. This is typically the case in respect of movables. There are many shades in between, and each case falls to be dealt with on its own merits having regard to the evidence presented.

[29] *In casu* Ulric's case is that it was in possession of the Mine when the alleged act of dispossession occurred. The respondents' case is that it was not. It is accordingly necessary to consider the evidence, bearing in mind the incidence of the onus and the rules which relate to disputes of fact in motion proceedings.

- [30] The deponent to the founding affidavit, a certain Mr Liu stated that Ulric was originally given possession pursuant to the contract between it and the IRPL. He furthermore averred that Ulric had initially been dispossessed on 10 May 2024 – this when, according to him, security personnel who had been hired by IRPL instructed Ulric's employees to cease operations. Elsewhere in the affidavit Mr Liu stated that Ulric had been in possession by virtue of having caused Nduma to place security guards at the mine for the purpose of maintaining possession of the ore present on the mine - which I understood to refer to the ore which had been stockpiled. That, as I have indicated , occurred on 24 June this year.
- [31] In their answering affidavit the respondents denied the charge of dispossession. While they did not deny that Ulric had been prevented from removing ore from the Mine as of 10 May 2024,⁴ they denied that that the applicant had at any time been dispossessed. The respondents' case in relation to that issue was that the actual site operations had been conducted by two entities which Ulric had sub-contracted for that purpose and that those subcontractors had voluntarily withdrawn from the mine on 5 June, thereby giving up possession. They furthermore denied that Ulric had at any time thereafter, regained possession.
- [32] The respondents' evidence in relation to the voluntary withdrawal of resources from the site on or about 5 June was not disputed. This has therefore to be accepted as a fact. Thus, the question which arises is whether Ulric , at any time after 5 June, regained possession and, if so, whether it was still in possession when the alleged act of spoliation occurred.
- [33] As I have already indicated, Ulric's case on that issue rested on the appointment of the Nduma personnel – allegedly for the purpose of "*maintain(ing) possession of the ore present on the mine*". The respondents' version on this issue was that the presence on the Nduma personnel on Mine had been unauthorised⁵ and furthermore that their function , as conveyed to them by Ulric, had simply been to provide security for the idle operations. The objective evidence on that issue was the justification which Ulric offered in respect of the intended presence of the guards on site. That justification was contained in a letter from Ulric to IRPL

⁴ This on account of alleged unpaid debts

⁵ They were described as trespassers.

dated 24 June 2024. The heading read “*Request for Independent Security Services at S10 and S11 for the duration of De-establishment period*”, and the purpose of the proposed security personnel was said to be “*to provide security for the idle operations and to “secure the safety of the S10 and S11 complex during the current operational stoppage*”. No mention was made of a retaking or reinforcement of possession.

[34] I would add that it was also not asserted in the correspondence which passed between the parties and their respective attorneys at that time that Ulric remained in occupation notwithstanding the withdrawal of resources and personnel from the mine earlier that month. On the contrary the first mention of a right of possession was made in a letter from Ulric’s attorneys on 30 July in which it was alleged that Ulric enjoyed a lien over the stockpiled ore.

[35] Given the nature of the proceedings, the so called *Plascon Evans* rule⁶ applies. The implication is that the matter falls to be determined essentially on the respondents’ version. I mention this as, while an order restoring restoration of possession does not finally determine any substantive rights (for example ownership), such an order is not subject to reconsideration by another court and is therefore a final one.⁷ There is nothing about the respondents’ version that strikes me as in any way far-fetched or so improbable that it may safely be disregarded. On the contrary, the respondents’ version is consistent with the common cause facts. It has therefore to be accepted. Indeed, the respondents’ version would fall to be accepted even if that rule were not to be applied – for there is a great deal of difference between simply posting a few guards for the purpose of providing security and establishing possession.

[36] The result is that Ulric has failed to establish that it was in possession at the time of the alleged spoliation. The claim to be restored to possession must accordingly fail.

⁶ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)

⁷ *Metlika Trading Ltd and Others v Commissioner for SARS* [2004] 4 All SA 410 (SCA)

The claim for an interdict

[37] The requirements in respect of an interim interdict are well known. They are: a) a right, which may be open to some doubt (frequently referred to as a “*prima facie* right”) ; b) injury/harm committed or reasonably apprehended – although a past injury will not suffice; c) the absence of an alternative remedy in law; and d) a balance of convenience in favour of the applicant. It is also well settled that a strong balance of convenience can compensate for a weakness in respect of the first element, and *vice versa*. Hence the courts’ assessment of the balance of convenience is frequently decisive.⁸

[38] *In casu* the high-water mark of the applicant’s case, as I understood it, was that it might succeed in establishing, in the proposed arbitration, that the cancellation of its contract with the second respondent had been unlawful. Building on that, its case, as I understood it, was that it would, in those circumstances, become entitled to remove and sell the ore in question and so earn profits. Assuming my understanding to be correct, I have some doubt as to whether it can fairly be said that the first requirement was in fact satisfied. A mere possibility of success in the proposed arbitration is not, to my mind, sufficient - for the right may only be open to *some* doubt. Nevertheless, I will continue on the assumption that the applicant has succeeded in satisfying the first requirement.

[39] On the assumption that a right has been established, it is not necessary to consider whether there has been an invasion of that right. On the contrary, that the right has been invaded and that such invasion is of a continuing nature is, on that assumption, common cause.

[40] Turning to the third leg of the enquiry, the respondents’ case is that the applicant has an alternative remedy in damages. Given that the applicant’s only interest in the mining operations generally is the generation of profit, I think this must obviously be correct. This is also not a matter in which it would be impossible to accurately assess the quantum of damages, nor was that alleged to be the case. On the contrary, the nature of the operation is such that the respondents will, of necessity, have to keep records of quantities of ore sold and revenues received.

⁸ See generally Prest: The Law and Practice of Interdicts (Juta) 49-50 and authorities cited.

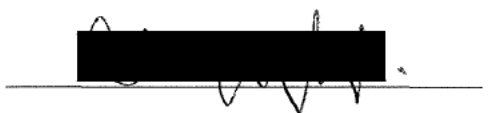
The respondents have moreover given an undertaking on oath to that effect. The applicant will also readily be able keep track of the quantities removed - if not with complete accuracy, then at least quite accurately. That this is so, appears from the figures contained in its own papers.

[41] As to the last requirement, it is inconceivable that the balance of convenience could best be served by preventing the removal and sale of the ore. That, after all, is how mines earn income, and it is in the interest of all concerned that income should be generated. In this regard, it is to be borne in mind that it is not only the commercial interests of the immediate parties which are affected. There are also sub-contractors, service providers and employees whose interests fall to be considered. It was also not alleged or argued that the respondents are men of straw and hence that the applicant would have no prospect of recovering any damages which may be awarded to it. The balance of convenience accordingly weighs heavily in favour of the respondents.

[42] I accordingly make the following order.

Order.

1. The application is dismissed with costs, such costs to include the costs of two counsel.
2. Counsels' costs and charges shall be taxable according to scale C.


G S MYBURGH
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES:

For the Applicant:

Mr O Ben-Zeev

Instructed by:

Teng Hung Han Incorporated

For the Respondents:

P Ngcongo & C Petersen;

Instructed by:

Werksmans Attorneys

Date of Hearing:

8 August 2024

Date of Judgment:

9 May 2025