



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

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO

20 August 2025

DATE

SIGNATURE

CASE NO: 2022-058302

In the matter between:

MAFUBE COAL MINING (PTY) LTD

Applicant

and

**THE MINISTER OF MINERAL RESOURCES
AND ENERGY**

First Respondent

**THE DIRECTOR-GENERAL: DEPARTMENT OF
MINERAL RESOURCES AND ENERGY**

Second Respondent

**THE REGIONAL MANAGER: MPUMALANGA REGION,
DEPARTMENT OF MINERAL RESOURCES AND ENERGY**

Third Respondent

JAMENTS (PTY) LTD

Fourth Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 20 August 2025.

ORDER

The following order is made:

1. The Minister's appeal decision is reviewed and set aside.
2. The Minister's decision is substituted with the following:
 'The Fourth Respondent's appeal to the First Respondent is dismissed.'
3. The Respondents are ordered jointly and severally, the one paying the other to be absolved, to pay the costs of the Applicant including costs of senior counsel on scale C.

JUDGMENT

TOLMAY J

- [1] The applicant (Mafube) seeks an order that the first respondent's ("the Minister") decision to uphold the appeal of the fourth respondent ("Jaments") against the granting of a prospecting right in terms of the Mineral and Petroleum Resources Development Act¹ ("the MPRDA") to Mafube be reviewed and set aside in terms of section 8 of the

¹ 28 of 2002.

Promotion of Administrative Justice Act²(“PAJA”). Mafube seeks an order that this Court not remit the appeal back to the Minister for reconsideration but substitute the Minister’s decision with a decision dismissing the appeal, in terms of s 8(1)(c)(ii) of PAJA. The first to third respondents are referred to as the state respondents when referred to collectively.

- [2] The issue in this matter is whether the decision by the Minister to uphold the appeal of Jaments against the granting of a prospecting right to Mafube should be reviewed and set aside.

- [3] In November 2011, Mafube applied in terms of s22 of the MPRDA for a mining right to mine coal on several properties in the district of Belfast, Mpumalanga, including the property the remaining extent of portion 1 of Patattafontein 412 JS (“the disputed property”). Mafube had acquired a prospecting right over the properties from Anglo Operations (Pty) Ltd (“AOPL”) in 2009. A significant portion of the coal reserves lies on the disputed property.

- [4] The documents and information that Mafube submitted in its application, as prescribed in regulation 10 of the Mineral and Petroleum Resources Development Regulations (“the MPRD Regulations”) reflect that the disputed property formed part of Mafube’s application. The plan identifying the area of the application that Mafube was required to prepare and submit in terms of regulation 2(2), read with regulation 10(1), of the MPRD Regulations includes the disputed property. The Mining Work Programme that Mafube submitted does too. Other documents that Mafube submitted during the processing of its application, in particular its Environmental Management Programme and financial provision, show the same.

- [5] Mafube’s application was evaluated by the various sub-directorates of the Department of Mineral Resources and Energy (“the DMRE”) and, based on their input, the third

² Act 3 of 2000.

respondent (“the Regional Manager”) prepared a written recommendation to the second respondent (“Director-General”) that Mafube’s application be granted (“the August 2013 recommendation”). On 31 August 2013, the Director-General granted Mafube a mining right by signing the recommendation (“the August 2013 decision”). At the same time, he signed a power of attorney authorising the Regional Manager to notarially execute the mining right on his behalf (“the 2013 power of attorney”). The right was notorially executed in September 2013.

- [6] At this time though, the list of properties contained in the August 2013 recommendation, and also attached to the 2013 power of attorney, did not mention the disputed property. Mafube says that the error appears to have arisen in April 2012 when the DMRE, while preparing a list of the property descriptions to include in the header to a letter the Regional Manager sent on 19 April 2012 accepting Mafube’s application described the property as “the remaining extent of Patattafontein” instead of “the remaining extent of portion 1 of Patattafontein”.
- [7] In paragraph 2 of the acceptance letter, Mafube was requested to “*Kindly confirm that the properties which are mentioned above are the properties which you applied for in respect of the Mining Right.*”. Ms Mocke replied to the acceptance letter by way of fax on 20 April 2012 and stated that: “*I Carol-Anne Mocke, confirm that the properties as mentioned in this Fax are indeed the properties applied for.*”. The remaining extent of Patattafontein was never part of Mafube’s prospecting right or its application for a mining right. Another firm, Glencore Operations South Africa (Pty) Ltd (“Glencore”), already held a mining right for coal over this property. Neither the DMRE nor Mafube picked up the error in the list of properties at this time.
- [8] Mafube and the DMRE became aware of the error when Mafube attempted to register the notarially executed right at the Mineral and Petroleum Titles Registration Office (“the MPTRO”) and it pointed out a discrepancy between two of the attachments to the right. The mandatory plan showing the area of the right matched Mafube’s regulation 2(2) plan and included the disputed property but the list of properties, which was based on the list

prepared by the DMRE in April 2012, did not include the disputed property.

- [9] Mafube discussed the matter with the DMRE, and it was agreed that the Director-General should issue an amended power of attorney expressly authorising the Regional Manager to execute a right including the disputed property. The DMRE prepared a further recommendation to the Director-General in February 2014 confirming that the disputed property formed part of Mafube's application and recommending that the Director-General sign an amended power of attorney to make plain that the Regional Manager was authorised to include that property in the notarially executed right ("the February 2014 recommendation"). The Director-General accepted the recommendation ("the February 2014 decision") and signed an amended power of attorney on 25 February 2014 ("the 2014 power of attorney"), which was presented to the MPTR, which then in turn accepted and registered Mafube's right. The plan attached to the registered right reflected that the mining area included the disputed property.
- [10] Mafube commenced mining operations. As part of those operations and in 2018 it purchased a portion of the remaining extent of portion 1 of Patattafontein for R21.7 million and developed its mining operations on this area by establishing infrastructure such as a box cut, roads, water management and ultimately commenced mining on the area during 2020.
- [11] In January 2019, six years after Mafube had been granted its mining right, Jaments informed Mafube that it had submitted an application for a prospecting right over "portion 1" of Patattafontein, which had been accepted. There is no such property, but the coordinates of the area that Jaments provided to Mafube at the time showed that part of the proposed prospecting area was on part of the disputed property, although not the area that Mafube had purchased and was exploiting.
- [12] Mafube informed Jaments in September 2019 that it already held a mining right over the whole of the remaining extent of portion 1 of Patattafontein. Jaments however proceeded with its application. In April 2021, Jaments submitted a further application for

a prospecting right on the area of the disputed property that Mafube was at that stage mining. In June 2021, almost two years after Jaments was made aware of Mafube's mining right, Jaments submitted an appeal to the Minister against the Director-General's February 2014 decision to issue an amended power of attorney.

[13] Mafube opposed the appeal, but on 13 October 2022 the Minister addressed a letter to Mafube indicating that he had upheld the appeal. The Minister indicated in this letter that he had upheld Jaments appeal because:

13.1. Mafube never included the disputed property in its application.

13.2. The Director-General never in fact granted Mafube a mining right including the disputed property.

13.3. The procedure adopted by the Director-General to correct the omission of the disputed property from the list of properties attached to Mafube's notoriously executed mining right was unlawful.

[14] In November 2022, Mafube launched this application to review and set aside the Minister's appeal decision and to substitute it with a decision dismissing Jaments appeal. Mafube argues that the Minister's reasons are fundamentally flawed and not rationally connected to the information before him. In reaching his decision the Minister ignored relevant evidence while taking into account irrelevant evidence and made material mistakes of fact and law.

[15] As far as the Minister's first reason is concerned, all of the documents submitted by Mafube as part of its application indicate that the disputed property forms part of the properties. Mafube says the Regional Manager's acceptance letter, contains an obvious typographical error in that it refers to "the remaining extent of Patattafontein" instead of "the remaining extent of portion 1 of Patattafontein". Mafube could not have included the remaining extent of Patattafontein in its application, Glencore already held a mining right over it. No document submitted by Mafube as part of its application suggests that it ever

meant to include that property in the application. All the documents Mafube submitted refer to the disputed property.

- [16] As far as the Minister's second reason is concerned, Mafube says the respondents do not dispute that, as a matter of substance, Mafube's application was evaluated on the basis that it included the disputed property. In the circumstances, the August 2013 recommendation placed before the Director-General was obviously a recommendation to grant a right including the disputed property. The Director-General approved the recommendation by signing it ("the Grant Letter") and therefore decided to grant a mining right to Mafube as proposed in the recommendation. In the circumstances, the Director-General obviously granted Mafube a mining right including the disputed property.
- [17] Mafube says the third reason provided by the Minister is wrong and is not one of substance. Both Jaments and the Minister expressly acknowledge in this application that there were permissible procedures available to Mafube at the time to include the disputed property in its mining right and that Mafube could successfully have used those procedures in August 2013 to do so. Since the procedure actually followed by Mafube and the DMRE did not cause prejudice to anyone, in particular not Jaments (which only submitted its own application for a prospecting right five years later), and since Mafube relied on assurances by the DMRE that that procedure was permissible, it was unreasonable of the Minister to set aside Mafube's mining right simply because in his view the procedure was not technically permissible.
- [18] Mafube also raised the issue that the Minister failed to consider the delay by Jaments to lodge an appeal against the granting of the right. It was only in June 2021, more than 7 years after the Director-General had taken the 2014 decision to amend the 2013 power of attorney that Jaments submitted its appeal to the Minister.
- [19] The state respondents and Jaments complain that the original cover form for its

application, Form D as prescribed in the MPRD Regulations, can no longer be located, as well as, that the contents of the Regional Manager's acceptance letter, and a handwritten note on that letter from an employee, a Ms Carol-Ann Mocke, stating that the properties listed in the header to the letter were the properties applied for, point to the fact that the disputed property does not form part of the properties. However, the state respondents in their heads of argument say their case does not lie on the fact of whether the disputed property was included in the Form D or not but rather on the fact the Letter of Grant did not contain the disputed property.

[20] In his answering affidavit the Minister for the first time raised as further reasons for upholding the Jaments appeal that Mafube's application:

- 20.1. Was actually in respect of Leeuwfontein 81 or contained contradictory information as to the properties that formed the subject of the application and so should have been rejected as defective.
- 20.2. Was not accepted in respect of the remaining extent of portion 1 of Patattafontein with the result that the mandatory public participation process was not followed.
- 20.3. Was not granted over the remaining extent of portion 1 of Patattafontein because that property is not mentioned in the letter of grant.

[21] Mafube points out, correctly, that these further reasons are impermissible *ex post facto* rationalisations. The Minister was entitled to explain the reasons for his decisions in response to the review application, but he may not rely on new reasons which did not form part of the basis for his decision.³ Consequently neither the state respondents or Jaments can rely on these further reasons.

[22] Mafube argues that in making his decision, the Minister ignored relevant facts, while taking into account irrelevant facts. He made material errors of fact and law and his

³ Tsogo Sun Caledon (Pty) Ltd and Others v Western Cape Gambling and Racing Board and Another 2023 (2) SA 305 (SCA) at para 19; National Energy Regulator of South Africa and Another v PG Group (Pty) Ltd and Others 2020 (1) SA 450 (CC).

decision is not rationally related to the information before him. It is so unreasonable that no reasonable decision-maker could have made it. These are grounds of review under s8 of PAJA. It has been established that a single bad reason vitiates the entire decision, regardless of whether there may be other good reasons for the decision.⁴

[23] Section 16 of the MPRDA deals with the application for a prospecting right and reads in relevant part as follows:

‘(1) Any person who wishes to apply to the Minister for a prospecting right must simultaneously apply for an environmental authorisation and must lodge the application-

(a) at the office of the Regional Manager in whose region the land is situated;

(b) in the prescribed manner; and

(c) together with the prescribed non-refundable application fee.

[Sub-s. (1) amended by s. 12 (a) of Act 49 of 2008 (wef 8 December 2014).]

(2) The Regional Manager must accept an application for a prospecting right if-

(a) the requirements contemplated in subsection (1) are met;

(b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land; and

(c) no prior application for a prospecting right, mining right, mining permit or retention permit has been accepted for the same mineral on the same land and which remains to be granted or refused.’

The section makes it clear that an application for a prospecting right must be lodged with the Regional Manager in the prescribed form and the prospecting right must be accepted by the Regional Manager if the requirements have been met. There is no

⁴ Rustenburg Platinum Mines Ltd (Rustenburg Section) v Commission for Conciliation, Mediation And Arbitration 2007 (1) SA 576 (SCA) par.34, Sidumo and Another v Rustenburg Platinum Mines Ltd and Others 2008 (2) SA 24 (CC) at para 48; Westinghouse Electric Belgium Societe Anonyme v Eskom Holdings (SOC) Ltd 2016 (3) SA 1 (SCA) at paras 44-45.

evidence that Mafube did not comply with these requirements, an error however occurred in the description of the disputed property in the Grant Letter.

[24] Section 10 requires that the Regional Manager must in the prescribed manner make known that the application for a prospecting right has been accepted and call upon interested and affected parties to submit comments and objections.⁵ The state respondents say that the s10 notice does not refer to the disputed property consequently, the public was not notified of the alleged acceptance of Mafube's mining right application over the disputed property.

[25] The state respondents also argue that s2 of the National Environmental Management Act⁶ sets out environmental management principles which apply throughout the Republic to the actions of all organs of state that may significantly affect the environment. Section 2(4)(f) specifically provides that:

"The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured."

Mafube however points out that all these procedures were complied with.

[26] It was argued on behalf of the state respondents and Jaments that the power of attorney that Mafube relies on did not include the disputed property. In the opposing affidavit by the Minister, he says that the request to the Regional Manager to amend the power of attorney was a 'stunt' to circumvent s102 of the MPRDA. It must be pointed out that there is simply no evidence on the papers that Mafube acted in any inappropriate way that could justify the unfortunate choice of words. Mafube and the DMRE, which falls

⁵ Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others 2011 (4) SA 113 (CC) at para 32-33.

⁶ 107 of 1998 (NEMA).

under the Minister acted together to address the issue.

[27] Section 102, of the MPRDA, which deals *inter alia* with the amendment of mining rights reads as follows:

‘(1) *A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right, production right, prospecting work programme, exploration work programme, production work programme, mining work programme environmental management programme or an environmental authorisation issued in terms of the National Environmental Management Act, 1998, as the case may be, may not be amended or varied (including by extension of the area covered by it or by the additional of minerals or a shares or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister.*’(Emphasis added)

[28] The argument by the state respondents and Jaments is that a power of attorney can only be amended by making submissions to the Minister to have it amended. In this instance it was argued that an unsigned submission was made to the Director-General to amend the power of attorney. Consequently, the Director-General could not by law amend its own decision. When the Director-General signed the 2013 power of attorney, it became *functus officio*. The Director-General’s jurisdiction over the matter having been fully and finally exercised, its authority over the subject-matter has ceased up until such a time written consent is received from the Minister. The Director-General is only authorised to amend the power of attorney to bring it in line with an administrative decision, made to grant a mining right. He is not authorised to amend the power of attorney in an attempt to amend a mining right. The argument of the respondents moves from the premise that the disputed property was never included in the application for a mining right.

[29] The state respondents and Jaments argue that the proper procedure was not followed in amending the power of attorney signed on 30 August 2013. Therefore, the original

power of attorney remains in force and effect. Reliance was *inter alia* placed on *Firestone South Africa (Pty) Ltd v Genticuro AG*⁷ where the principle of *functus officio* was discussed. In that instance, the subject matter was a court order and although it was held that once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter, or supplement it. The reason is that it thereupon becomes *functus officio*.

[30] In *Retail Motor Industry Organisation and another v Minister of Water and Environmental Affairs and another*⁸ the Minister approved and published a plan drafted by the second respondent (“REDISA”). The appellants challenged the validity of the approval of the plan in an application for judicial review. Pending the outcome of the review, they sought and obtained an interim interdict preventing the implementation of the plan. The Minister then withdrew the plan and published the same plan minus the offending item. The appellants contend that the Minister was not entitled to withdraw the plan and, because that plan remained in existence until set aside in the review proceedings, she was not entitled to publish the second plan.

[31] It was explained that the *functus officio* doctrine is one of the mechanisms by means the law gives expression to the principle of finality.⁹ The facts in this matter are distinguishable from those in *Retail Motor Industry*. The disputed property was identified in the application, as well as the plans submitted. It was only excluded, or rather, inaccurately described in the Grant Letter. This error was not picked up by either the DMRE or Ms Mocke. The facts point to a mere clerical error and I am of the view that the *functus officio* principle does not find application here. The mining right was not amended. All the documents and plans submitted referred to the disputed property. The Grant Letter was based on those documents. At all material times the disputed property formed part of the application. The amendment of the Power of Attorney did not translate to an amendment of the mining right as envisaged in s10 of the PMRDA. It merely

⁷1977 (4) SA 298 (A). *Osterloh v Civil Commissioner of Caledon* 1856 2 Searle 240 at 243-244.

⁸ 2013 (3) All SA 435 (SCA).

⁹ Id. at para 23-25.

brought the Power of Attorney in line with the documents, plans and coordinates that supported the application and consequently in this instance the amendment of the Power of Attorney was not unlawful. The Minister's conclusion that the disputed property did not form part of the application is incorrect. So is his conclusion that the Director-General did not grant a mining right in respect of the disputed property.

[32] There is also the issue of the delay in launching the appeal. The Minister was duty bound to consider the delay but did not do so. Especially, in circumstances where Mafube has been acting on the right for a number of years and incurred considerable expenses in the process.

[33] Mafube relies *inter alia* on s6(2)(f)(ii) of PAJA which gives the Court the power to review administrative action that is not rationally connected to the purpose for which it was taken, the purpose of the empowering provision, the information before the administrator or reasons given by the administrator. In *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex Parte President of The Republic of South Africa and Others*¹⁰, The Constitutional Court Held:

*"It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the Executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action."*¹¹

[34] The Minister ignored relevant facts, whilst taking into account irrelevant facts. This much is clear as the Minister did not consider the documents, plans and coordinates that supported the application. The rationality test is an objective one and the court will

¹⁰ 2000 (2) SA 674(CC).

¹¹ Id. at para 85.

ask is there a rational objective basis justifying the connection made by the administrative decision-maker between the material made available and the conclusion arrived at¹². Within the context of this case, the Minister's decision to uphold the appeal does not meet the requirements for rationality.

[35] The Minister's decision should also be reviewed and set aside because it was taken whilst relevant considerations were not considered, as contemplated in s6(2)(e)(iii) of PAJA and was otherwise unlawful because it was based on a material error of fact, as contemplated in s6(2)(i) of PAJA. The Minister did not consider that all the documents submitted included the disputed property. He was therefore factually wrong when he concluded that Mafube did not include the disputed property in its application and by doing so he did not take into account relevant considerations. The fact that Jaments delayed for nearly two years before instituting the appeal is also relevant. Mafube was granted the right, initially in 2013 and it was confirmed by the 2014 decision. It was only in 2019 that Jaments indicated that it was launching a prospecting right application over the disputed property. After that Jaments waited nearly two years to appeal the 2014 decision. As a result, it is also not in the interests of justice to uphold the appeal.

[36] The court can make an order of substitution of the decision of an administrator in exceptional circumstances. Substitution is considered an extraordinary remedy under PAJA and should be exercised sparingly¹³. The court must be satisfied that it is just and equitable to grant such an order. It must determine whether the case presents exceptional circumstances. This involves assessing whether the administrator has shown bias, gross incompetence or whether the decision-making process was so flawed that remittal would be inappropriate or futile. In *Trencon* the Court explained:

¹² *Trinity Broadcasting, Ciskei v Independent Communications Authority of SA*, [2003] 4 All SA 589 (SCA) at para 21 (*Trinity Broadcasting*).

¹³ *Industrial Development Corporation of South Africa Ltd v Trencon Construction (Pty) Ltd and another* [2014] 4 All SA 561 (SCA) (*Trencon*).

‘The power of a court provided in section 8(1)(c)(ii)(aa) of PAJA to substitute or vary administrative action or to correct a defect resulting from an administrative action is extraordinary. It is exercised sparingly, in exceptional circumstances. In Gauteng Gambling Board v Silverstar Development, this Court described “exceptional” as follows:

“Since the normal rule of common law is that an administrative organ on which a power is conferred is the appropriate entity to exercise that power, a case is exceptional when, upon a proper consideration of all the relevant facts, a court is persuaded that a decision to exercise a power should not be left to the designated functionary. How that conclusion is to be reached is not statutorily ordained and will depend on established principles informed by the constitutional imperative that administrative action must be lawful, reasonable and procedurally fair.”¹⁴

- [37] This Court is in as good a position as the administrator to make a decision as all the facts that were before the Minister are before this Court. This Court has all the relevant information about the appeal and the reasons for the decision. The decision of the administrator is also a foregone conclusion as the Minister has made it clear through his answering affidavit that he has made up his mind and even revealed bias towards Mafube and a further delay will not be in the interests of justice¹⁵. The decision is not complex or policy-laden, substitution is therefore appropriate. The Court is privy to all the facts and is in the same position as the Minister to come to a decision. I am therefore of the view that exceptional circumstances do exist to justify this Court to substitute the decision of the Minister.

The following order is made:

1. The Minister’s appeal decision is reviewed and set aside.

¹⁴ Id. at para 17.

¹⁵ Douglas Hoërskool en ’n Ander v Die Premier van die Noord-Kaap Provinsiale Regering en andere, [1999] 4 All SA 146 (NC).

2. The Minister's decision is substituted with the following:

'The Fourth Respondent's appeal to the First Respondent is dismissed.'

3. The Respondents are ordered jointly and severally, the one paying the other to be absolved, to pay the costs of the Applicant including costs of senior counsel on scale C.



R TOLMAY

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

Counsel for applicant: Adv M Wesley SC instructed by Werksmans Attorneys.

Counsel for 1st to 3rd respondents: Adv H Modisa SC & Adv TT Sebata instructed by State Attorney Pretoria.

Counsel for 4th Respondent: Adv T Modise instructed by Moorosi Attorneys.

Date heard: 5 February 2025.

Date of Judgment: 20 August 2025.