

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 2486/2023

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
.....	
DATE <u>30/9/25</u> SIGNATURE <u>[Redacted]</u>	

In the matter between:

BETHUEL SEKGOKOLO KADIAKA

FIRST APPLICANT

NDEBAZE DESMOND BALOYI

SECOND APPLICANT

MAKOENA DOMINIC NGOEPE

THIRD APPLICANT

MASALESA JEREMIAH MESO

FOURTH APPLICANT

KOENA MATLALA

FIFTH APPLICANT

ALEXANDER MATEMANA KGOBE

SIXTH APPLICANT

VALERIE MOKOKA

SEVENTH APPLICANT

RACHEL NGWASHENG

EIGHTH APPLICANT

TLOU LESLEY MATLALA

NINTH APPLICANT

TSHEPO MOJELA

TENTH APPLICANT

LEKHURENG DEVELOPMENT FORUM

ELEVENTH APPLICANT

and

LAPON MINING (PTY) LTD

FIRST RESPONDENT

SYLVANIA NORTHERN PLATINUM (PTY) LTD

SECOND RESPONDENT

IBHUBESI DRILLING (PTY) LTD

THIRD RESPONDENT

GUDANI CONSULTING

FOURTH RESPONDENT

PAN PALLADIUM SOUTH AFRICA (PTY) LTD

FIFTH RESPONDENT

DEPARTMENT OF MINERAL RESOURCES &ENERGY

SIXTH RESPONDENT

MINISTER OF AGRICULTURE, LAND REFORM AND

RURAL DEVELOPMENT

SEVENTH RESPONDENT

PAULINA KGOBE

EIGHTH RESPONDENT

WILLIAM KGOBE N.O

NINTH RESPONDENT

CHIPANA KGORO

TENTH RESPONDENT

BAKONE BA MATLALA A THABA

ELEVENTH RESPONDENT

TRADITIONAL COUNCIL SAPS MATLALA

TWELVE RESPONDENT

JUDGMENT

MULLER J:

[1] It is rare that all the people agree all the time on everything. This case, which deals with mining rights and community consent, is no exception.

[2] The applicants launched an urgent application in 2023. The relief claimed was contained in Part A and Part B of the notice of motion. On 9 May 2025 the application was stayed by an order of court pending the joinder of Paulina Kgobe (the eighth respondent) as well as any other member of the community.

[3] The very next day the joinder application was granted by Naude-Odendaal J. In addition, an order was also granted that a meeting scheduled for 11 May 2025 shall proceed as arranged. The order stated that a decision taken at that meeting to dispose or not dispose of the farm Lopucella 693 LR¹ for mining related activities shall be kept in abeyance pending the final resolution of the present application. (I will return to the meeting elsewhere in the judgment.)

[4] Subsequent to the answering affidavit having being delivered, the applicants amended their notice of motion. Part A and B was discarded and replaced with the relief now claimed:

¹ Also described as the farm La Pucella 693 LR.

- (a) A declarator that the public community meetings held at the private residences of the eighth and ninth respondents are unlawful and that the decisions taken at those meetings for the disposal of the farm Lapucello 693 LR in favour of the first, second and fifth respondents for purposes of mining are of no force and effect and set aside.
- (b) A declarator that the applicants, alternatively, the community members of Lekhureng Village are the lawful occupiers of the farm Altona 696 LR² and the farm Lapucella 693LS as defined within the meaning of a community in terms of the Interim Protection of Informal Land Rights Act,³ alternatively, declaring that the applicants are holders of informal land rights in the said farms;
- (c) A declarator that the present mining activities by the first respondent on the farm Altona 696 LR constitute an arbitrary deprivation of the applicant's informal rights and interest to the farm owing to lack of consent required by and as such is in contravention of section 25(1) of the Constitution and section 2(1) of Interim Protection of Informal Land Rights Act, Act 31 of 1996 read with section 5A of the Mineral and Petroleum Resources Development Act, Act 20 of 2002
- (d) a declarator that the mining activities of farm Lapucello 693 LR by the second, third and fifth respondents constitute an arbitrary deprivation of the applicants' informal rights in the said farm and that such conduct was in contravention of section 25(1) of the Constitution and section 2(1) of the

² Also described as the farm Altona 696 LR.

³ Act 31 of 1996. The application of the Act was extended until 31 December 2025.

Interim Protection of Informal Land Rights Act, read with section 5A of the Mineral and Petroleum Resources Development Act.⁴

- (e) A declarator that the applicants as a minority group is entitled to be represented, heard consulted make submissions and participate in meetings convened for the purposes of considering the disposal of farms or portions of the farms Altona 696 LR and Lapucella 693 LR.
- (f) A declarator that any consent or decision or action that purports to be consent in terms of section 2 of the Interim Protection of Informal Land Rights Act, Act 31 of 1996 issued by the seventh, eighth, ninth, tenth and eleventh respondents to the first, second and fifth for purposes of exercising any right issued by the sixth respondent in terms of the Mineral and Petroleum Resources Development Act, Act 20 of 2002 without the participation of the applicants at a public neutral venue is unlawful and constitutionally invalid.
- (g) Alternatively, that first, second and fifth respondents be ordered to exhaust the dispute resolution mechanism provided by section 54 of the Mineral and Petroleum Resources Development Act, Act 20 of 2002 in the event consent to enter and commence activities on the two farms cannot be obtained for whatever reason from the lawful occupiers of the farms.

[5] The first, second, fifth, eighth, ninth to eleventh respondents, initially, opposed the application. The eighth to eleventh respondents have since withdrawn their opposition. The second and fifth respondents failed to deliver answering affidavits despite their giving notice

⁴ Act 20 of 2002.

to oppose the application. Only the first respondent delivered an answering affidavit in opposition of the application.

[6] The *locus standi* of the applicants is disputed. The Lekhureng Development Forum is the eleventh applicant and is cited in the founding affidavit as an informal and unregistered community-based association without a constitution founded by the all the applicants. Thirteen persons all of whom are cited as applicants signed a resolution in terms whereof the Lekhureng Development Forum nominated the deponent to depose to any document required in the matter.

[7] The deponent, who is cited as the first applicant, identified himself as an adult unemployed male acting in his own name as a member of the community of Lekhureng village which is adjacent to the farm Altona 696 LR which is the subject matter of this application and in the public interest. The remaining applicants are all cited as residents of Lekhureng village. In addition to the first applicant, only the third, fourth, fifth and sixth applicants made confirmatory affidavits.

[8] The Lekhureng Development Forum is not a *universitas personarum* which is an entity that have the capacity to own property and of acquiring rights and obligations separate from its members. In terms of the common law, an unincorporated association is not a legal entity distinct from its members.

[9] Rule 14(2) provides that a partnership, a firm or an association⁵ may sue or be sued in its name. In *Ex-TRTC United Workers Front and Others v Premier Eastern Cape Province*⁶ the court explained:

⁵ In terms of rule 14(1) "association" means any unincorporated body of persons, not being a partnership.

⁶ 2010 (2) SA 114 ECB).

"To understand the purpose and import of rule 14(2), it is necessary to look at its framework and what the position was before its promulgation. As stated, the rule enables a partnership, a firm and an unincorporated association to sue and be sued in their own names. As will be shown, rule 14(2) owes its existence to the rules of practice with regard to the joinder of parties to proceedings and the legal nature and characteristics of these legal figures. Broadly stated, and as a right in the case of 'joint owners, joint contractors and partners, in all of which cases there exists a joint financial or proprietary interest and also where the other party has a 'direct and substantial interest in the result of the decision of this issue."⁷

With reference to the *locus standi* of an unincorporated association the learned judge continued:

"By contrast, an unincorporated association refers to an association which does not have a legal persona separate from its constituent members. 'Corporate' has a correspondingly opposite meaning. An unincorporated association is regarded as merely an aggregation or collection (a body) of natural persons. Accordingly, if the term 'unincorporated association' is used, it refers to nothing more than a collection of individuals who, as I will indicate hereunder, are bound to one another by contract and who act jointly in pursuit of a common purpose. It has no existence on its own. It consequently cannot own property and has no locus standi to sue or to be sued in its own name. In legal proceedings by or against the association, every member must as a result be cited as a plaintiff or a defendant, as the case may be."⁸

[10] The eleventh applicant as an unincorporated association or body has no *locus standi*. However, rule 14(2) allows individual members to be cited in the name of the association but the individual members is regarded as if they had been cited individually. In this matter the individual members have also been cited individually. The first to the tenth

⁷ Par 7.

⁸ Par 13.

applicants are all members of Lakhureng traditional community. As such, they in their personal capacities have the necessary *locus standi*.

[11] The applicants purport also to act in the public interest in terms of section 38(d) of the Constitution. In order to found *locus standi* on that ground each applicant must show that he/she is genuinely acting as such. The court must have regard to the range of persons or groups on whose behalf they purport to act who may be affected by the orders sought and the opportunity of those persons have had to present evidence and argument.⁹ The applicants do not represent a majority of the members of the Lakhureng community, as the evidence will demonstrate. It is not necessary to make a final decision in this regard as the court is satisfied that each individual applicant has *locus standi*.

[12] The tenth respondent is cited as the Chipana Kgoro. It purports to be an entity or body consisting of the council leadership of the Chipana village.

[13] The mining right in respect of the farm La Pucella and the farm Altonna 696 LR was purchased by the first respondent from the fifth respondent. The right was ceded and transferred with the consent of the sixth respondent to the first respondent on 23 March 2018.

[14] It is undisputed that the farm Altonna is a state-owned property which is situated adjacent to area of the Lakhureng community.¹⁰ There are no villages situated on the farm. It is utilised by the Lakhureng community for grazing.¹¹

⁹ *Lawyers for Human Rights v Minister of Home Affairs* 2004 (4) SA 125 (CC) par 18.

¹⁰ “community” means any group or portion of a group of persons whose rights to land are derived from shared rules determining access to land held in common by such group.”

¹¹ The applicants who signed confirmatory affidavits stated that they are all lawful occupiers of the farm Altonna.

[15] The eighth respondent is the headwoman of the Lekhureng village situated on the farm La Pucella.¹² The ninth respondent is the secretary of the Lekhureng Steering Committee on Mining. The eleventh respondent is the Ba Matlala A Thaba Traditional Council. The tenth respondent is the Chipana Kgoro which is a non-existing entity of Chipana Village which is also situated on the farm La Pucella.

[16] It is common cause that the traditional community of Lekhureng has an "informal right to land" in respect of the farm La Pucella in terms of the provisions of the Interim Protection of Informal Land Rights Act.¹³ Section 1(2)(b) provides that the community is deemed to be the owner of farm La Pucella for purposes of section 42 of the Minerals Act.¹⁴

Section 211 of the Constitution recognises the institution, status and role of traditional leadership as well as institutions of traditional authority that observes customary law, subject to applicable legislation. Section 211(3) obliges a court to apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law. The Traditional and Khoi-San Leadership Act¹⁵ and the Limpopo Traditional Leadership and Institutions Act¹⁶ are legislation that deals specifically with customary law and practices of traditional leadership and traditional institutions.

[17] The Traditional and Khoi-San Leadership Act provides that:

"A community may be recognised as a traditional community if it—

¹² It is assumed that she is also the headwoman of the Chipana village.

¹³ The traditional community of Lekhureng, is a "tribe". "**tribe**" includes-(a) any community living and existing as a tribe; and (b) any part of a tribe living and existing as a separate entity."

¹⁴ Act 50 of 1991 The Act was repealed except for the definition of "precious metal" and "unwrought precious metal".

¹⁵ Act 3 of 2019.

¹⁶ Act 6 of 2005. Hereinafter called "the Limpopo Act".

- (a) has a system of traditional leadership at a senior traditional leadership level recognised by other traditional communities;
- (b) observes a system of customary law;
- (c) recognises itself as a distinct traditional community with a proven history of existence, from a particular point in time up to the present, distinct and separate from other traditional communities
- (d) occupies a specific geographical area;
- (e) has an existence of distinctive cultural heritage manifestations; and
- (f) where applicable, has a number of headmanship or headwomanship.”

[18] A “traditional community”¹⁷ in terms of the Limpopo Act is a “community” that has been recognised by the Premier as a “traditional community” in terms of section 3. The Limpopo Act provides for the establishment of a Traditional Council at the same time as the community is recognised as a traditional community. It is common cause that the Lekhureng traditional community has a headwoman and has a Traditional Council, namely, the Bakone Ba Matlala a Thaba Traditional Council.¹⁸ They exercise authority over the geographical area of the traditional community demarcated by the Premier in terms of the Limpopo Act. It must, therefore, be accepted that the Lekhureng community may be described as a group or portion of a “traditional community” in terms of customary law which has been recognised by the Premier.¹⁹

¹⁷ “**traditional community**” means a traditional community recognized as such in terms of section 3.”

¹⁸ Section 4(1) provides: “The Premier must, when recognising a traditional community in terms of section 3(4), and with due regard to the needs of the traditional community concerned, determine the number of councilors for its traditional council to be established in terms of subsection (2): Provided that the total number must not exceed 30.”

¹⁹ The same reasoning applies to the inhabitants of Chipana village.

[19] The Lekhureng traditional community, in my view, has an established informal right to land in respect of the farms or land situated within their demarcated geographical area. It would lead to total chaos and bloodshed if traditional communities may acquire rights to land in areas not allocated to them by mere occupation, use or access to that land. The purpose of the Interim Protection of Informal Land Rights Act is to provide interim protection of the rights of communities which occupy, use and have access to land in terms of customary law that are not otherwise adequately protected. The Act is not a tool to invite for the unlawful occupation, use or access to land outside of the allocated geographical area of a traditional community and does not aim to legalize any such unlawful use or occupation of land.

[20] No informal right to land had been established by the traditional community in respect of the farm Altonna which is situated outside the territorial area of the Lekhureng community. No direct evidence has been put forward by the applicants that express permission had been granted to the Lekhureng community by the owner of the farm Altonna for use of the farm for any purpose. It is, however, common cause that the community have grazing rights. It is accepted for purposes of this judgment that permission had been tacitly granted to the community of Lekhureng to use the land for grazing purposes only. No other purpose has been suggested by the applicants. The Lekhureng traditional community occupies the farm Altonna *precario*. Permission to occupy may be withdrawn at any time by the owner, provided that the owner does not act arbitrarily or capriciously towards the community, despite not having done so for many years,²⁰

²⁰ *Lechoana v Cloete and Others* 1925 AD 536, 545-546.

Section 1(1)(f) of the Interim Protection of Informal Land Rights Act, excludes vesting of any right or interest based purely on temporary permission being granted by the owner or lawful occupier of the land in question, on the basis that such permission may at any time be withdrawn by such owner or lawful occupier. In my judgment no informal right in land in respect of the farm Altonna has been established by the evidence of the applicants.

[21] The applicants referred extensively to an incident that occurred in 2013, when certain machinery was employed to remove earth from the farm Altonna which was stopped by members of the Lekhureng community who called the police to investigate. A Steering Committee on Mining (the ninth respondent) was elected at the Kgoro of Lekhureng in 2013 to act as conduit between the mining companies and the communities.

[22] The first respondent, as previously stated, acquired its mining right in 2018 from the fifth respondent. The events of 2013 are largely irrelevant as far as they concern the first respondent.

[23] A pre-resolution meeting was held with the Chipana Community on 8 December 2019. The community voted at a meeting held at 5 March 2023 in favour of the mining activities on the farm La Pucella.

[24] The applicants in the replying affidavit conceded that the community at Chipana village voted in favour of mining. They aver, however, that it was because of police presence at the meeting which intimidated members of the community to dispel any form of dissent. The community also did not understand what the meeting was about.

[25] The Lekhureng community held a pre-resolution meeting on 23 February 2023 at the Kgoro at Lekhureng village to conduct mining activities in respect of the farm La Pucella.

No objection was raised against the proposed mining activities which is not denied by the applicants in the replying affidavit.²¹ It is undisputed that due notice was given of the meeting.

[26] The deponent to the founding affidavit stated, however, that he and the fourth respondent were threatened with a sjambok by a member of the Community Police Forum when they disputed the legitimacy of the venue, the steering committee and the resolutions taken at the meeting. It resulted in them leaving the meeting.

[27] The first respondent denied this allegation and stated that the deponent and some of his co-applicants partook in the discussions of the meeting until such time that they became disruptive and decided to leave the meeting.

[28] Pursuant to the pre-resolution meeting of 23 February 2023 a further meeting had to be convened. That meeting was supposed to be held on 23 September 2023. The meeting did not take place due to financial difficulties experienced by the first respondent. The meeting was re-scheduled for 11 May 2025.

The applicants brought an urgent application to interdict the meeting. The application was stayed on 9 May 2025 by order of Kganyago J, pending the joinder of the headwoman and other community members.

[29] Naude-Odendaal J granted the joinder on 10 May 2025 and permitted the meeting to proceed, subject to the attendance of the community and the applicants. It was further ordered that any decision to dispose or not dispose of the farm La Pucella for purposes of

²¹ In reply it is stated: "The contents of these paragraphs are noted without admission thereof."

mining and related projects shall not be implemented pending the finalization of this application.

[30] The said meeting proceeded as scheduled. Only two members of the applicants attended. One left during the meeting and the other voted against the resolution for permission in terms of section 2 of the Interim Protection of Informal Land Rights Act.

[31] The meeting was postponed to 29 June 2025 at the insistence of the officials of the sixth respondent who was of the view that the number of community members that attended was too low.

[32] On 29 June 2025 the meeting was held. The community resolved to authorise the first respondent to undertake mining activities, smelt ore and to apply for a water-use license on the farm La Pucella.

[33] Section 2 of the Interim Protection of Informal Land Rights Act, provides:

"(1) Subject to the provisions of subsection (4), and the provisions of the Expropriation Act 1975 (Act No 63 of 1975), or any other law which provides for the expropriation of land or rights in land, no person²² may be deprived of any informal right to land without his or her consent.

(2) Where land is held on a communal basis, a person may, subject to subsection (4), be deprived of such land or right in land in accordance with the custom and usage of that community.

(3) Where the deprivation of a right in land in terms of subsection (2) is caused by a disposal of the land or right in and by the community, the community shall pay appropriate compensation to any person who is deprived of an informal right to land as a result of such disposal.

²² "'person' includes a community or a part thereof."

(4) For purposes of this section the custom and usage of a community shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate."

[34] It was held in *Maledu and Others v Itereleng Bagatla Mineral Resources (Pty) Ltd and Another*,²³that:

"96 Most significantly, IPILRA provides that no person may be deprived of any informal right to land without his or her consent. Where land is held on a communal basis, a person may be deprived of such land or right in land in accordance with the custom or usage of the community concerned, except where the land in question is expropriated.

97 However, in instances where land is held on a communal basis, affected parties must be given sufficient notice of and be afforded a reasonable opportunity to participate, either in person or through representatives, at any meeting where a decision to dispose of their rights to and is to be taken. And this decision can competently be taken only with the support of the majority of affected persons having an interest in or rights to the land concerned, and who are present at such meeting."

[35] It is clear that the majority of the community in terms of their custom disposed of the informal right to land at a meeting specifically convened for that purpose in favour of the first respondent as required by section 2(4) the Interim Protection of Informal Land Rights Act, despite opposition from the applicants. There is therefore no arbitrary dispossession of any informal right to land which is a communal right.

[36] The applicants are a minority of members of the community. Their claim that members of the community were intimidated by the police presence at the meeting and that

²³ 2019 (2) SA 1 (CC) par 96-97.

they had no understanding what the purpose of the meeting was is unfair to each community member that participated and voted. It was also raised for the first time in the replying affidavit.

[37] The defence that the venue of the meeting at the Kgoro is not neutral is simply a conjured-up reason for the applicants to attack the legitimacy of an otherwise legitimate meeting. There is no merit in the contention that members of the community are unable to express themselves at the Kgoro because it is a hostile environment. Save for the averment no evidence has been adduced of prior incidents of intimidation or incidents where the rights of community members were violated or where participation in meetings were discouraged by whoever in power at the kgoro.

[38] On the contrary, the Kgoro traditionally is the centre where community members meet and where various issues concerning their community are discussed. Traditional Council meetings are held there. It ostensibly is the centre of the community. It was also at this very venue where a Steering Committee on Mining was elected in 2013, then without demur. There is no reason in law why a meeting should be held at a so-called neutral venue, other than the Kgoro where meetings and discussions are traditionally held.

[39] The applicants referred to meetings held and resolutions taken between 2013 and 2016. These events took place prior to the acquisition of the mining right by the first respondent when different parties were involved. It is not of assistance in respect of the steps taken by the first respondent to obtain consent from the Lekhureng community to conduct mining activities. The first respondent was not a party to any of the meetings and resolutions prior to 2018 when the first respondent first entered the arena.

[40] It is not disputed that there had been difficulties when the first respondent first proceeded to commence to clear certain areas on the farm Altonna in preparation to commence with bulk sampling

Section 5 of the Mineral and Petroleum Resources Development Act provides:

- "(1) A prospecting right, mining right, exploration right or production right granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967 (Act 16 of 1967), is a limited real right in respect of the mineral or petroleum and the land to which such right relates
- (2) The holder of a prospecting right, mining right, exploration right or production right is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law.
- (3) Subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may—
- (a) enter the land to which such right relates together with his or her employees, and bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purpose of prospecting, mining, exploration or production, as the case may be;
 - (b) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;
 - (c) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;
- (cA) subject to section 59B of the Diamonds Act, 1986 (Act 56 of 1986), (in the case of diamond) remove and dispose of any diamond found during the course of mining operations;

- (d) subject to the National Water Act, 1998 (Act 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting, mining, exploration or production purposes, or sink a well or borehole required for use relating to prospecting, mining, exploration or production on such land; and
- (e) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act.

5A No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without—

- (a) an environmental authorisation
- (b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and
- (c) giving the landowner or lawful occupier of the land in question at least 21 days written notice."

[41] In *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another supra* the common law position in respect of a holder of a mineral right was restated by the Constitutional Court:

"It is apposite at this juncture to observe that a mining right confers on the holder of such right certain limited real rights in respect of the mineral and the land to which it relates. In particular, it entitles the mining right holder to enter the land to which such right relates "together with his or her employees, and bring onto that land any plant, machinery or equipment, and build, construct or lay down any surface, or underground infrastructure which may be required for the purpose of", amongst others, mining, removal and disposal of

any mineral to which such right relates as maybe found during mining. These rights are, however, subject to the other provisions of the MPRDA.

It bears emphasising that the provisions of section 5(3) of the MPRDA echo two fundamental principles of the common law. First, that the owner of the land to which a mining right relates is obliged to allow the holder access to his or her land to do whatever is reasonably necessary for the effective exercise of the mining holder's rights.

Second, the mining right holder is in turn obliged to exercise his rights *civiliter modo* (in a reasonable manner) so as to cause the least possible inconvenience to the rights of the owner. Accordingly, the common law requires of both the landowner and the mining right holder to exercise their respective rights alongside each other to the extent that it is reasonably possible to do so. It therefore fosters a situation where the right of the landowner and the mining right holder co-exist. This is buttressed by section 53(2) of the MPRDA which provides that farming or any use incidental thereto – which is what the applicants were doing on the farm before the award of the mining rights – does not fall within the purview of section 53(1). The latter section requires any person who intends to use the surface of any land in a way which may be contrary to any object of the MPRDA or likely to impede such object to apply to the Minister for approval of such intended use.”²⁴

[42] The community of Lekhureng is the lawful occupier of the farm Altonna. Permission to occupy the farm was granted to the community of Lekhureng, despite the allegation in the confirmatory affidavits that occupation was granted to each of the applicants individually, by the owner.²⁵ No evidence was presented in support of these assertions.

Section 54 of provides that the holder of a mining right or permit-

²⁴ Para 56-57; *Hudson v Mann* 1950 (4) SA 485(T) at 488B-H; *Finbro Furnishings (Pty) Ltd v Registrar of Deeds, Bloemfontein* [1985] ZASCA 71 [1985] 4 All SA 388 (A) 415; *Trojan Exploration Company (Pty) Ltd v Rustenburg Platinum Mines Ltd* [1996] ZASCA 74, [1996] 4 All SA 121 (A) at 126A-E.

²⁵ The confirmatory affidavits of the applicants.

"must notify the relevant Regional Manager if that holder is prevented from commencing or conducting...mining operations because the owner or the lawful occupier of the land in question ...refuses to allow such holder to enter the land."

[43] Section 54 could have been applicable if the Lekhureng traditional community denied the first respondent permission to enter the farm Altonna to conduct mining activities. That is not the case.

[44] The approach to declaratory orders is that the court must first be satisfied that the applicants have an interest in an existing future or contingent right or obligation. The court will exercise its discretion to refuse or grant the orders sought once the court is satisfied that the applicants have shown that they have such an interest.²⁶

It was held in *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others*:²⁷

"It is quite clear that before it makes a declaratory order a Court must consider all relevant circumstances. A declaratory order is a flexible remedy which can assist in clarifying legal and constitutional obligations in a manner which promotes the protection and enforcement of our constitutional and its values."

[45] The attorney of the applicants on 13 February 2025 delivered a notice in terms of rule 7(1) in which the authority of the attorney who acts on behalf of the first, eighth, ninth and eleventh respondents was questioned after the application had been set down for hearing in May 2024.²⁸

²⁶ *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 ((6) SA 205 (SCA) par 18.

²⁷ 2005 (2) SA 359 (CC) para 107.

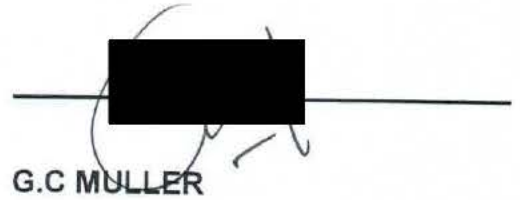
²⁸ Delivery of such a notice late in the proceedings is an abuse of the process the purpose of which is simply employed to harass the other party.

[46] The applicants have failed to make out case for the declaratory relief sought. It was never in dispute that the Lekureng and Chipana traditional community has an informal right to the farm La Pucella, which they occupy. The applicants unfairly purported to portray the members of Lekhureng and Chipana villages as ignorant, ill-advised, and easily intimidated simply because they disagreed with the applicants. The wishes of the members of the communities of Lekhureng and Chipana villages must prevail as they have exercised their rights in favour of the mining activities on their land which cannot be ignored.

[47] In the result, the application stands to be dismissed with costs.

ORDER

The application is dismissed with costs against the first to tenth applicants jointly and severally, the one paying the other to be absolved.


G.C MULLER

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPLICANT : MR F NDLOVU

INSTRUCTED BY : NDLOVU ATTORNEYS

FOR THE RESPONDENTS :

INSRUCTED BY : CLARENCE MANGENA ATTORNEYS

DATE HEARD : 07 AUGUST 2025

DATE DELIVERED : 30 SEPTEMBER 2025