

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2025-072038

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
28 October 2025	
DATE	SIGNATURE

In the matter between:

NORTHBOUND PROCESSING (PTY) LTD

Applicant

and

**THE SOUTH AFRICAN DIAMOND AND
PRECIOUS METALS REGULATOR**

First Respondent

RAPPA RESOURCES (PTY) LTD

Second Respondent

RAPPA HOLDINGS (PTY) LTD

Third Respondent

**TRUSTEES FOR THE TIME BEING OF THE
RAPPA EMPOWERMENT TRUST**

Fourth Respondent

THREE PALMS TRADING (PTY) LTD

Fifth Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

DJ Smit, AJ

Introduction

- [1] This is an application for leave to appeal against a judgment and order (“decision”) given on 30 June 2025. In this judgment, all terms used are as defined in the decision.
- [2] The applicants for leave to appeal (third and fifth respondents in the main application) are Rappa Holdings and Three Palms. Northbound, the applicant in the main application, opposed the grant of leave to appeal.
- [3] Rappa Holdings and Three Palms launched the application for leave to appeal on an urgent basis on 3 July 2025, three court days after judgment was given. By that time, the Regulator had released the refining licence in issue to Northbound as ordered in paragraph 2 of the decision.
- [4] When Rappa Holdings and Three Palms applied for leave to appeal, they foreshadowed that they would imminently bring an urgent application in terms of section 18 of the Superior Courts Act, 10 of 2013. They sought a set-down of the application for leave, together with the section 18 application, in the week of 21 July 2025. By agreement, the matter was set down for 24 July 2025.
- [5] Rappa Holdings and Three Palms brought the section 18 application on 21 July 2025, three court days before the matter would be heard. The relief sought in the section 18 application was to: (a) declare that the decision had the effect of a final order and was thus suspended by the application for leave to appeal; (b) if the decision does not have the effect of a final order, nevertheless suspending its effect pending the application for leave to appeal and any appeal; and (c) ordering Northbound to return its newly-released refinery licence to the Regulator and ordering the Regulator to return the refinery licence previously issued to Rappa Resources to Rappa Resources.
- [6] Northbound objected against the late filing of the section 18 application and, by agreement, the hearing of the application for leave to appeal did not proceed on 24 July 2025. Northbound filed its notice of intention to oppose the section 18

application on 4 August 2025 and its answering affidavit – together with a conditional counterapplication – on 22 August 2025. The conditional counterapplication sought an order that, if the decision was final in effect, its operation would not be suspended pending the outcome of the envisaged appeal.

- [7] Rappa Holdings and Three Palms did not file a replying affidavit, but indicated on 25 September 2025 that they would no longer seek the relief envisaged in the section 18 application, except for a declarator that the decision is final in effect. They also indicated that if that declarator is granted, they would concede the relief sought by Northbound in its conditional counterapplication

The grounds for leave to appeal

- [8] Before I set out the grounds on which Rappa Holdings and Three Palms seek leave to appeal, it is convenient to revisit the essence of the decision. The decision (insofar as relevant to the grounds on which an appeal is sought) was to issue an interim interdict compelling the Regulator to release a refinery licence to Northbound pending an action to be instituted by Northbound declaring that the sale of the refinery business to Northbound was valid. I was informed from the bar that the action was instituted within the time frames set out in the decision.

- [9] The essential grounds for the decision were as follows:

- a. The Regulator indicated to Northbound in correspondence dated 13 February 2025 that it “*is satisfied that Northbound complies in all respects with the requirements for the issuance of a Refining Licence, which licence has been issued on 10 January 2025*”. (My emphasis.)
- b. The Regulator set two preconditions for the release of the refinery licence to Northbound which, it was common cause, were either satisfied or within Northbound’s powers to satisfy.
- c. Thus, Northbound had a *prima facie* right to the release of the refinery licence based upon the fact that the Regulator had decided that Northbound had met all the statutory requirements for issuance of the licence, had

decided to issue it and Northbound had satisfied or could satisfy the additional requirements imposed for such release. In this regard, I found that the so-called *Oudekraal* principle precluded the Regulator from revisiting its decision to issue the licence and to release it upon satisfaction of its preconditions, despite the dispute that had arisen after these decisions had been taken about the validity of the sale of business.

[10] Rappa Holdings and Three Palms contend that I erred in several respects, which I summarise below:

- a. First, by finding Northbound was entitled to the release of the refinery licence in circumstances where – on a proper interpretation of the Precious Metals Act – the issuance of the refinery licence would only take place upon the physical release of the licence to Northbound.
- b. Second, by finding that Northbound was entitled to the release of the refinery licence despite contentions that Northbound did not meet the statutory requirements for the issuance of the licence.
- c. Third, by finding that Northbound was entitled to the release of the refinery licence despite what Rappa Holdings and Three Palms contend to be the invalidity of the sale of business to Northbound (which the supports the allegations that Northbound did not meet the statutory requirements for issuance of the licence).
- d. Fourth, by not attaching adequate weight to the harm that Rappa Holdings and Three Palms would suffer if the sale of business agreement is, in effect, upheld (at least until the action has unfolded).

[11] Rappa Holdings and Three Palms contended that the decision was appealable based upon it having the effect of a final order, alternatively (if it is an interim order) on the basis that the interests of justice favour its appealability.

[12] While Rappa Holdings and Three Palms state that their application for leave to appeal is directed against the whole of the order of 30 June 2025, none of the grounds of appeal were directed at paragraphs 1, 4, 5 and 6 of the order. Most

importantly, Rappa Holdings and Three Palms do not contend that I should not have struck their counterapplication from the roll for lack of urgency.

Discussion

- [13] The parties addressed comprehensive and helpful submissions regarding the nature of the order (whether final or interim), the interests-of-justice test in respect of the appealability of interim orders and the test for the grant of leave to appeal under section 17(1)(a) of the Superior Courts Act, i.e. that an appeal “*would have*” reasonable prospects of success or that there is some other compelling reason why the appeal should be heard.
- [14] In light of my conclusion, it is only necessary to deal with reasonable prospects of success and other compelling reasons, i.e. whether Rappa Holdings and Three Palms have met the test for leave to appeal to be granted.
- [15] In my view, the envisaged appeal would not have reasonable prospects of success. The reasons are as follows.
- [16] Northbound’s *prima facie* right to the release of the refinery licence is not dependent upon either the actual issuance of the licence to it, or the validity or lawfulness of the decision to issue the licence. The *prima facie* right is solely based upon the Regulator’s decision to issue the licence, and to release it upon satisfaction of certain extra-statutory preconditions – both as articulated in their letter of 13 February 2025.
- [17] It could be that Rappa Holdings and Three Palms are right in all respects upon which they attack the Regulator’s decision to issue and to release the licence, including on the statutory interpretation issue. In my view, that does not matter to the Regulator’s obligation to release the licence once it has decided to issue the licence, and to release it upon satisfaction of the conditions it has set. The Regulator is bound by the so-called *Oudekraal* principle as much as the court is.
- [18] Rappa Holdings and Three Palms cannot, through opposing the *mandamus* sought by Northbound, achieve a backdoor review of – or even interim relief suspending – an administrative decision that stands until it is set aside. Likewise,

absent a review (or at least interim relief in regard to the administrative decision), the Regulator cannot use self-help by backtracking on its own decision upon representations by a third party that the decision was unlawful or invalid or unwise. Not even in the counterapplication (to Northbound's main application) did Rappa Holdings and Three Palms seek such interim relief.

[19] Moreover, the harm which Rappa Holdings and Three Palms contend they suffer while the refinery licence is in Northbound's hands, does not flow from the issuance of the licence to Northbound. The cause of the harm is the implementation of the sale of business to Northbound, which divested Rappa Resources from its refining business. Whether that sale of business was valid (or should be overturned) was not the subject-matter of the decision, but is the subject-matter of the proceedings instituted pursuant to paragraph 3 of the order.

[20] In any event, given the concession by Rappa Holdings and Three Palms in regard to the section 18 application, the orders I made would remain in operation at least until the envisaged appeal has been determined. The harm on which Rappa Holdings and Three Palms rely would thus in any scenario endure for, at least, more than a year. In addition, even if the envisaged appeal were to be successful, the only effect would be to deprive Northbound of its refining licence. It would not restore the refining business to Rappa Resources.

[21] Thus, the "*compelling reasons*" upon which Rappa Holdings and Three Palms relied in their application for leave to appeal are irrelevant to the decision and an appeal court would likely not reach them. I did not finally decide (and neither, in my view, would an appeal court finally decide) whether:

- a. Under the Precious Metals Act, a refining licence can only be considered to be "*issued*" once physical possession of the licence has been transferred to the applicant for the licence.
- b. The sale of business agreement was valid or not (or void or voidable).
- c. The VAT claim formed part of the assets of Rappa Resources for purposes of assessing whether section 112 as read with section 115 of the Companies Act have been complied with.

[22] It follows that Rappa Holdings and Three Palms do not meet the requirements for leave to appeal under section 17(1)(a) of the Superior Courts Act and their application for leave to appeal should be dismissed.

[23] This renders moot the remaining relief sought in respect of the section 18 application, i.e. that the orders I made have final effect. The only remaining relevance of that declarator – given the concessions made by Rappa Holdings and Three Palms – is to underpin the appealability of the decision. Once Rappa Holdings and Three Palms do not meet the requirements of section 17(1)(a) of the Superior Courts Act, it matters not whether the orders I granted are interim or final or appealable or not – leave to appeal should not be granted.

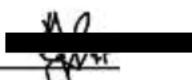
Costs

[24] It was not contentious at the hearing that, in the event I were to dismiss the application for leave to appeal, costs should follow the event in respect of both the section 18 application and the application for leave to appeal. I will so order.

Order

[25] I make the following order:

1. The application for leave to appeal is dismissed with costs, including the costs of two counsel with counsels' fees to be taxed on scale C.
2. The section 18 application brought by Rappa Holdings and Three Palms is dismissed with costs, including the costs of two counsel where so employed with counsels' fees to be taxed on scale C.


DJ SMIT

**ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

Date of hearing: 1 October 2025

Date of judgment: 28 October 2025

For the applicant (respondent in the application for leave):

IP Green SC with L Seegels-Ngcube instructed by Nochumsohn Pretorius

For the third and fifth respondents (applicants in application for leave):

L Hollander instructed by APA Attorneys