



**IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
(MBOMBELA MAIN SEAT)**

Case No.: 2025-089763

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
<u>03 DECEMBER 2025</u> DATE	<u>NGWENYA AJ</u> SIGNATURE

In the application between:

**TRANSVAAL GOLD MINING ESTATES
LIMITED**

First Applicant

SABIE MINES (PTY) LTD

Second Applicant

And

**EMLANJENI REVOLUTION (PTY)
LTD**

First Respondent

**THABA CHWEU LOCAL
MUNICIPALITY**

Second Respondent

DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT

LAND AND ENVIRONMENTAL AFFAIRS,

MPUMALANGA

Third Respondent

JUDGMENT

NGWENYA AJ

[1] This is an application for leave to appeal against the judgment and order I granted in favour of the Applicant on the 09th of July 2025.

[2] The substantive order that I granted is that: *'the First Respondent is interdicted from unlawfully removing or processing the mining dump situated on Farm Waterval 168 JT, pending the determination of the relief sought in part B'.*

[3] The order is interlocutory in that its existence depends on the outcome of Part B of the application.

[4] The Respondent has listed ten grounds of appeal. However, the argument focused on paragraphs 20-23 of my judgment. This is also reflected in the heads of argument.

[5] Counsel for the First Respondent argued that the findings in paragraphs 20-23 of the judgment have a final effect and therefore the order I made is appealable.

Counsel further submitted that the order is appealable based on the interests of justice. I agree that an interlocutory order is appealable if it has a final effect and, most importantly, if the interests of justice permit.

[6] However, I disagree that the order has a final effect. In any case, the First Respondent does not say the substantive order has a final effect; it instead says it's the findings in paragraphs 20-23 that have a final effect. It is trite that an appeal lies against the substantive order and the findings(reasons). I address this aspect below.

[7] In the First Respondent's heads of argument, it is submitted that my finding that the Applicants established a prima facie right because they mined the farm before 1950 disposes of the matter or a substantial part thereof. This is not the only reason I found that the Applicants established a prima facie right. In addition, I found that the First Applicant holds mining rights under the new mining laws on the farm, and that the Applicants issued environmental guarantees on the farm (see paragraphs 24.2 and 24.3 of the judgment). Therefore, even if I am wrong on the point raised by the First Respondent, that does not affect the substantive order, as I shall demonstrate below. In any case, the decisive question is ownership of the mining dump. I made no finding or an order on this question. This will be determined in part B.

[8] Accordingly, the First Respondent has not demonstrated that it is in the interest of justice that leave to appeal should be granted.

[9] If I am wrong on the above, I still find that leave to appeal should be refused on the following reasons:

9.1 The grounds of appeal amount to nothing but criticism of this court's findings (reasons). The First Respondent submits that the court's findings in paragraphs 20-23 have a final effect, instead of the substantive order. As already stated above, an appeal lies against the substantive order and not the reasons.

9.2 Even if my reasons in paragraphs 20-23 are wrong, the First Respondent still has to convince this court that a different reasoning would affect the substantive order.

9.3 In *Cape Empowerment Trust Ltd v Fisher Hoffman Sithole 2013 (5) SA (1) 183 (SCA)*, the SCA held as follows at paragraph 39:

"[39] In the result, I agree with the ultimate conclusion arrived at by Davis J, albeit for different reasons. This renders it unnecessary to decide on the correctness of his reasoning, since an appeal does not lie against the reasons for judgment but against the substantive order made by the court a quo..."

9.4 Accordingly, the Applicant's Counsel's submission that the First Respondent is appealing against the reasons and not the substantive order is correct.

[10] As a result of the above, I do not need to determine whether there are prospects of success in the appeal.

[11] In the premises, I make the following order:

1. The application for leave to appeal is dismissed with costs on High Court scale B.

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T S NGWENYA
ACTING JUDGE OF THE HIGH COURT,
MPUMALANGA, MBOMBELA

Date of hearing: 12 August 2025

Date of judgment: 03 December 2025

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