

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case no: 2025-195441

In the matter between:

JOHANNES KRUGER

Applicant

and

**SYNCHROPLEX (PTY) LTD
(Reg No: 2009/006022/07)**

1st Respondent

**THE MINISTER OF THE DEPARTMENT OF
MINERAL RESOURCES AND ENERGY**

2nd Respondent

**THE REGIONAL MANAGER: DEPARTMENT
OF MINERAL RESOURCES AND ENERGY,
NORTHERN CAPE**

3rd Respondent

THE MINISTER OF WATER AND SANITATION

4th Respondent

**THE MUNICIPAL MANAGER: DAWID KRUIPER
LOCAL MUNICIPALITY**

5th Respondent

Coram: MAMOSEBO J.

Heard: 04/11/2025.

Delivered: 05/12/2025.

Summary: Urgent application – Applicant seeks supervisory or structural interdict to prevent illegal mining from taking place or continuing to take place – Three grounds of illegality are alleged: (a) no valid water use licence; (b) lack of all other “relevant licences and permits”; and (c) no proof of zoning of the property for mining – No case made out for the relief sought.

ORDER

The following order is made:

1. The application is dismissed with costs, including the costs of two counsel. Such costs to be taxed on Scale C.
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JUDGMENT

Mamosebo J

- [1] The applicant seeks, on an urgent basis, an order in a form of a supervisory interdict, interdicting and restraining the first respondent from conducting “illegal” mining activities on the Farm Areachap No 426 in the Magisterial District of Gordonia, measuring 19239 hectares in extent (“the property”). The supervisory interdict sought is such that all mining activities are to be interdicted, unless and until the following has been sought and obtained by the first respondent:

- (a) a valid Water Use Licence;
- (b) all other relevant licences and permits required for the purpose of lawfully conducting mining activities from the property; and
- (c) proof of zoning of the property to permit the conduct of mining activities at the property.

The applicant then prays that the first respondent be granted leave to approach the Court once it has complied with all the statutory requirements for the aforementioned order to be amended.

- [2] The applicant, Mr Johannes Kruger, is a director of the first respondent and brought the application based on his fiduciary duties as well as in the interest of the public. The first respondent, Synchroplex (Pty) Ltd (“Synchroplex”) with Registration number 2009/006022/07, is a company registered and incorporated in terms of the company laws of the Republic of South Africa. The second respondent is the Minister of the Department of Mineral Resources and Energy as the minister responsible for the administration of the Mineral and Petroleum Resources Development Act¹ (“the MPRDA”). The third respondent is the Regional Manager: Department of Minerals and Energy, Northern Cape, as the officer designated by the Director-General of the Department of Minerals and Energy in terms of s 8 of the MPRDA to perform delegated functions in terms of the MPRDA or any other law. The fourth respondent is the Minister of Water and Sanitation responsible for the administration of the National Water Act² (NWA). The fifth respondent is the Municipal Manager: Dawid Kruiper, Local

¹ 28 of 2002.

² 36 of 1998.

Municipality, as the accounting officer in terms of s 2 of the Local Government: Municipal Systems Act³, and responsible for the implementation and enforcement of the Land Use Management Scheme in accordance with the Spatial Planning and Land Use Management Act⁴.

- [3] All the respondents were duly served. The second to the fifth respondents did not participate in these proceedings which are opposed only by the first respondent, represented by Adv A Subel SC, assisted by Adv H Pretorius. For the applicant is Adv PF Louw SC, assisted by Adv D Vetten.
- [4] Apart from this urgent application, the applicant had also brought an urgent application in July 2025 in the Gauteng Division of the High Court, Pretoria, seeking to interdict the Synchroplex's shareholders' meeting to be held on 16 July 2025 in which a resolution would be taken for his removal as director of Synchroplex. The parties have agreed to refer that dispute for arbitration to be arbitrated by a retired Judge of the Supreme Court of Appeal (SCA), Judge Malan, in December 2025. I also take note of a Notice of Motion marked "RA3" of an application brought in the Gauteng Division of the High Court which is pending before that court.
- [5] Be that as it may, I will only concern myself with the urgent application before me. The applicant is adamant that until the dispute referred for arbitration is settled, he still owes his fiduciary duties to Synchroplex and is entitled to information thereto. On the

³ 32 of 2000.

⁴ 16 of 2013.

contrary, it was contended on behalf of Synchroplex that the applicant's purported concerns about the legality of Synchroplex's mining operations are not genuine. His only concern is to exert pressure on the company in the underlying feud between shareholders and directors to maximise his settlement in the shareholding dispute. The applicant vehemently disputes these contentions.

[6] It is common cause that the first respondent is a holder of a mining right awarded to it in terms of s 23(1) of the MPRDA on 05 March 2025, with the commencement date of 10 February 2025. Unless cancelled or suspended in terms of clause 13 of the mining right and or s 47 of the MPRDA, it will continue to be in force for a period of thirteen (13) years ending on 09 February 2038. The holder must commence with the mining operations within a year from the date upon which the mining right becomes effective.

[7] The issues that stand for determination are the following:

- 7.1 Whether the application should be heard on an urgent basis;
- 7.2 Whether the applicant is seeking an interim or final interdict; and
- 7.3 Whether he has satisfied the requirements for an interdict.

Urgency

[8] Rule 6(12) of the Uniform Rules of Court stipulates that:

- ‘(a) In urgent applications the Court or a Judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in

accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit.

- (b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.'

[9] In his founding papers, the applicant explained that for the period 2 to 29 September 2025, he exchanged correspondence with the first respondent and its attorney requesting to be placed in possession of documents relating to the mining operations of the first respondent. After the 29th of September 2025, he caused an investigation to be conducted, and it is only after receiving feedback from Mr John Maré, the consultant and managing director of M2 Environmental Connections (Pty) Ltd, and Mr Geza Douglas Nagy, a businessman and town planner of Boston and Associates Urban Planners, that he was convinced that the first respondent carried out illegal mining. He attempted to convene a board meeting on 02 October 2025, but it was unsuccessful. A virtual board meeting only took place on 09 October 2025, but he was still not placed in possession of the sought documents.

[10] Mr Louw, for the applicant, submitted that although urgency was initially based on the averment that Synchroplex's mining operations would imminently commence by the end of October 2025 after the blasting certificate was issued, it became apparent after the advice rendered to the applicant by his experts that mining activities had already started. Mr Louw relied on the definition of mining as dealt with in *Benhaus Mining (Pty) Ltd v Commissioner*,

*South African Revenue Service*⁵ and *Ezulwini Mining Company (Pty) Ltd v Minister of Mineral Resources and Energy and Others*⁶ in maintaining that Synchroplex has commenced mining and the activities are illegal. The applicant contends that he will not obtain substantial redress in due course as the relief he seeks is for the Court to halt the illegal mining by Synchroplex. He further contends that the environment and social considerations will be prejudiced by these mining activities without the necessary licences or permits.

[11] At paragraph 30 of his founding affidavit, the applicant stated that he instructed his attorneys to brief counsel to prepare the application over the weekend of 18 and 19 October 2025. What really nudged the applicant to have the urgent application set down for 04 November 2025 was that he was under the impression that Synchroplex's mining activities were commencing before the end of October 2025, as alluded to during the board meeting convened on 09 October 2025. The Court notes as also submitted by the first respondent that, despite the applicant's knowledge that mining would commence by the end of October 2025, 12 days still lapsed before he brought the application. The applicant did not proffer any explanation for the 12-days delay.

[12] In countering the aspect of urgency, Mr Subel, for the first respondent, submitted that there is no urgency, or should the Court find any, it is self-created. Counsel, invoking *Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC and*

⁵ 2020 (3) SA 325 (SCA) para 31.

⁶ 2023 JDR 1815 (SCA).

*Others*⁷, argued that this Court's urgent intervention is not warranted where the applicant, despite knowing of the alleged infringement complained of earlier, dragged his feet in approaching the court for relief. In substantiation of this submission, counsel pointed out that on 25 July 2025, the applicant directed an email at one of Synchroplex's directors alerting him that his next step was to interdict the company to stop all mining operations. Following an exchange of correspondence and some documents between the parties, on 25 September 2025 the applicant's attorney wrote an email to Synchroplex's attorneys which started in this fashion: '*We are presently preparing an urgent application which will issue out of the Northern Cape Division, Kimberley...*' Surprisingly, the applicant did not disclose the email in his founding affidavit even though it shows that he had already started preparing for the urgent application at least by 25 September 2025, long before 21 October 2025 when the application was finally launched. (Own emphasis.)

- [13] The fact that the applicant threatened to bring the application for an interdict as far back as 24 July 2025 to halt the mining operations unless he was furnished with the demanded documents, means that he only issued the application almost three months later. He had again threatened to bring an urgent application on 01 September 2025 while his attorneys confirmed in an email dated 25 September 2025 that they were preparing the application. That would then mean that it took the applicant one month to issue this application, so argues the first respondent. The applicant's version is that he only became certain on 29 September 2025 after being advised by his experts that any mining activity conducted by Synchroplex

⁷ 2004 (2) SA 81 (SE) paras 33 – 34.

would be illegal. On this version, it took him 22 days to file the application for which, in all the presented scenarios, there is no full explanation for the delay. It is trite that for urgent applications, ‘if there is some delay in instituting the proceedings, an applicant has to explain the reasons for the delay.’⁸

[14] It was contended on behalf of Synchroplex that the applicant has not made out a case why he claims that he will not be able to obtain substantial redress at a hearing in due course. The argument being that if he wishes to interdict the mining activities by Synchroplex under the guise that they are unlawful, nothing would prevent him from pursuing that same course even after the mining activities have commenced. Synchroplex asked that the matter be struck from the roll for lack of urgency, or be dismissed on the merits.

[15] The principles regarding urgency are trite.⁹ In *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin’s Furniture Manufacturers)*¹⁰ Coetzee J remarked:

‘Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure

⁸ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 para 9.

⁹ *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin’s Furniture Manufacturers)* (“Luna”) 1977 (4) SA 135 (W) at 139F – 140A; See generally *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (*Supra*) fn 8.

¹⁰ *Luna Supra* at 137D –F.

from the norm, which is involved in the time and day for which the matter be set down.’

- [16] The application lacks the requisite elements of the degree of urgency and under normal circumstances, I would have struck it off the roll. The applicant had ample time within which to bring the application but failed to do so. The parties had submitted that the issues of urgency and the merits are intertwined, and it would pose a challenge to argue urgency without touching on the merits. I allowed the parties to argue the matter in full.

Interim or final interdict?

- [17] The requirements for a final interdict are well established, namely, (a) clear right, (b) an injury actually committed or reasonably apprehended and (c) the absence of similar protection by any other ordinary remedy.¹¹ Similarly, it is established law that an applicant seeking only an interim interdict needs to establish a *prima facie* rather than a real right.¹² It is in light of this distinguishing requirement that one must be clear on the relief sought so as to apply the correct legal standard on the merits of the case. Needless to say that, in determining the nature of the relief sought, substance generally prevails over form.¹³

- [18] In his founding affidavit, the applicant claims a *prima facie* right. He seeks an interim interdict pending the production of the necessary authorisations confirming that Synchroplex is acting

¹¹ *Setlogelo v Setlogelo* 1914 AD 221 at 227; *Hotz and Others v University of Cape Town* 2017 (2) SA 485 (SCA) para 29.

¹² *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A) at 691D.

¹³ *Municipal Manager: Qaukeni Local Municipality and Others v F V General Trading CC* 2010 (1) SA 356 (SCA) para 26.

lawfully in its mining activities. His right is also based on the assertion that he is entitled to the documents specified in the notice of motion as a director carrying out his fiduciary duties. In the written submissions by Mr Louw, the following submissions are made: That this application is a public law matter bringing to the Court's attention what emerges as common cause illegal mining activities conducted by Synchroplex. That the illegality is evidenced by Synchroplex's description of its own activities and the evidence of the applicant's experts. Finally, that the Court is obliged to act to end the illegal conduct and ensure that the rule of law is upheld.

- [19] According to the applicant, Synchroplex must be interdicted and restrained from carrying out any mining activities at Farm Areachap Number 426 until it has procured the necessary authorisations. He maintains that Synchroplex does not have such authorisations and is therefore acting illegally which this Court should not sanction.
- [20] In as far as the irreparable harm requirement is concerned, the applicant repeats his claim of preventing the illegality from either commencing or continuing. He is silent in respect of the third requirement of available alternative remedies. Mr Louw conceded during his oral submissions that the relief sought has a final effect and only then, from the bar, added that there is no other remedy available.
- [21] On the other hand, Mr Subel for the respondent submitted that what the applicant seeks cannot be interim pending final relief because he is not planning to return to court to seek final relief. Instead, he

is seeking a structural interdict in which Synchroplex must itself return to court to amend the order upon satisfying the court that the commencement of the mining operations will be lawful. Mr Subel submitted that the approach sought for this structural interdict is unorthodox. To bolster the argument that prayer 2 in the notice of motion is not interim in nature because the applicant is seeking final relief, Mr Subel referred this Court to *Pikoli v President of the Republic of South Africa and Others* where Du Plessis J insightfully remarked:

‘[O]ne of the aims of an interim interdict is to preserve the status quo pending the final determination of the rights of the parties to pending litigation. The interim interdict does not involve a final determination of the parties’ rights and it does not affect such final determination.’¹⁴

- [22] While the applicant’s founding papers and counsel’s written submissions referred to the relief sought as ‘an interim supervisory interdict’, Mr Louw ultimately conceded during his oral submissions that the relief sought is final in effect and therefore a final interdict. I find that the concession was correctly made for indeed the relief sought is final in effect.¹⁵ I proceed to deal with the merits of this application on the aforesaid basis.

Analysis

- [23] The upshot of the applicant’s case is that the first respondent’s imminent or/and ongoing mining is/will be illegal and unlawful in that there are issues with the zoning of the property, Water Use

¹⁴ 2010 (1) SA 400 (GNP) at 403H – 404A.

¹⁵ *Anderson and Another v Silver Unicorn Coal and Minerals (Pty) Ltd and Others* 2025 JDR 2140 (GP) para 22.

Licence (WUL), and other “relevant licences and permits”. The first respondent is adamant that it was still involved with site establishment and also awaiting a blasting permit before it can commence with the clean-up operations to establish the site for drilling which must precede blasting. The company would further finalise a blasting programme and pit designs, obtain quotes for the blasting work, and determine the availability of blasting contractors.

- [24] Where there is a dispute of fact, the *Plascon -Evans* principle¹⁶ finds application. The principle was reiterated in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*¹⁷ to this effect:

‘Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter’s allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers...’

- [25] In relation to the zoning argument, the applicant, relying on Mr Nagy’s affidavit, contended that Synchroplex does not have the correct zoning permit and is impermissibly mining in an area zoned Category C Agricultural Area. Mr Nagy investigated the zoning of the property on request by applicant’s attorneys, OWP Partners. His findings were that a mining right was granted over the property comprising:

¹⁶ *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

¹⁷ 2008 (3) SA 371 (SCA) para 12.

- (i) Remainder of the farm Areachap No. 426 measuring 19108.4188 HA by Areachap Plase (Pty) Ltd held under Deed of Transfer T704/1973; and
- (ii) Portion 2 of the farm Areachap No. 426 measuring 129.9941 HA by Cullinan Refractories Ltd (Registration number 1971/007066/06) held under Deed of Transfer T1708/2006.

He found that the zoning area to which the mining right relates is Category C Agricultural Areas, a finding he said was confirmed verbally by the Directorate Development and Planning of the Dawid Kruiper Municipality without specifying the name of the person who made the confirmation and the date on which it was made. Mr Nagy contended that he was unable to obtain a zoning certificate.

- [26] Mr Nagy further opined that the primary use of the property in issue in terms of the Scheme Regulations is Agriculture, defined as:

‘The breeding of animals on natural veld, land and pasture, boarding stables, stock, feeding- or auction pens, the processing of products produced on the farm, the cultivation of crops and at most one single residential house and other buildings that is reasonably relevant to the main agricultural activity on the farm, including *bona fide* staff housing.’

He went on to explain that secondary use(s) which may be considered by the Municipality are Second Residential Unit, Farm Stall, Nursery, Equestrian Facilities and Animal Hospital. He wrote further that the Municipality may also consider consent uses like

guest house and occupational practice. He concluded that the agricultural zoning does not include mining activities.

[27] This is what appears at paragraph 24 of Mr Nagy's affidavit:

'Mining activities under the Scheme Regulation falls under the Category E-Industrial Areas more specifically E.E.1: Extractive Industry means: "an industry which practices the extraction of raw materials from the earth, whether by means of surface or underground methods and may include, but not limited to the refinery of such extracted materials in order to facilitate in the transportation thereof, as well as any other relevant land uses that are normally associated with an extractive industry, e.g. offices, recreational facilities for staff, caretaker's quarters, etc. but does not include the subdivision of individual portions of any unit thereof.'"

Mr Nagy's conclusion cautions against any commencement of mining activities as a contravention of the Scheme Regulations which may attract a general penalty or an offence with a possible criminal sanction.

[28] On the other hand, in its answering affidavit, Synchroplex explained that although the mining right covers the entire farm historically zoned as agricultural, a portion of the farm has been designated for Extractive Industry located on Portion 2 of the farm which is where Synchroplex intends to conduct its mining. Synchroplex went further and produced a zoning certificate marked "GS12" produced by the Dawid Kruiper Municipality. In his replying affidavit, the applicant takes issue with the fact that the certificate ought to have been produced before litigation because it has contributed to the bringing of the application.

- [29] In both the written and oral argument by Mr Louw, it was submitted that the mining area is vast and Portion 2 is only 20% of the total area. If Synchroplex wanted to mine only on Portion 2 it would have limited itself to that area and not the entire farm. But this contention, in my view, is scratching where it does not itch. Synchroplex has deposed to an affidavit clearly stating that its mining operations will be limited to Portion 2. The applicant seems to be morphing its argument because it is now moving away from the entire farm being zoned for agriculture to questioning why Synchroplex is not mining on the entire farm. Clearly, Mr Nagy's position was overtaken by the production of the certificate and must fall away.
- [30] Mr Louw relied on *Maccsand (Pty) Ltd v City of Cape Town and Others*¹⁸ in which the Constitutional Court pronounced that mining cannot take place until the land in question is appropriately rezoned. This case does not assist the applicant because Portion 2 on which Synchroplex will be mining is already zoned for that purpose, and no rezoning is necessary. It therefore follows that the zoning certificate annexed to the papers as "GS12" lays this challenge under prayer 2(c) to rest. Simply put, I accept that Portion 2 is zoned for mining activities.
- [31] I now proceed to deal with the argument relating to other "relevant licences and permits". The applicant further raised his concern regarding Synchroplex not having obtained approval for its Environmental Impact Assessment (EIA) and Environmental Management Programme (EMPr) which is refuted by Synchroplex.

¹⁸ 2012 (4) SA 181 (CC) para 48.

To bolster his concern, the applicant relied on the affidavit by Mr Maré who, on request by the applicant's attorneys, evaluated Synchroplex's environmental regulatory compliance in respect of Farm Areachap 426.

[32] Mr Maré recorded at paragraph 11 of his affidavit that Synchroplex needs an approved EIA and the EMPr in terms of the National Environmental Management Act¹⁹ (NEMA); a Waste Management Licence in terms of the National Environmental Management Waste Act²⁰ (NEMWA); and a Water Use Licence in terms of the NWA for the following water uses:

- (a) Section 21(a): Taking water from a water resource;
- (b) Section 21(b): Storing water;
- (c) Section 21(c) and (i) if the 7.3 km pipeline traverses drainage lines;
- (d) Section 21(f): Discharging of water containing waste;
- (e) Section 21(g): Disposing of waste in a manner which may detrimentally impact on a water resource; and
- (f) Section 21(j): Removing or discharging water found underground.

[33] Despite his searches, Mr Maré could not find any confirmation that Synchroplex has applied for an Environmental Authorisation. He concludes his affidavit by stating that it appears that Synchroplex does not have a WUL for the uses that he specified above, neither does it have an approved EIA or EMPr nor a Waste Management Licence (WML).

¹⁹ 107 of 1998.

²⁰ 59 of 2008.

[34] Synchroplex attached a copy of the Environmental Authorisation annexed to its answering affidavit as “GS13” granted on 13 June 2024 in terms of s 24 of NEMA and Regulation 24(1)(a) of the 2014 NEMA Regulations. Synchroplex had submitted the EIA and EMPr which have been approved by the Department of Mineral Resources and Energy. Two inspectors had visited the property on 19 June 2025 to inspect its compliance with the EIA and EMPr, mining right, environmental audit reports, and the Environmental Authorisation. They did not mention any non-compliance. Synchroplex is assisted by Milnex Environmental Consulting Services for environmental compliance issues and ongoing onsite mining consulting services.

[35] The applicant wrote the following at paragraph 20 of his replying affidavit under the heading; the Environmental Authorisation:

‘In this part of my affidavit I rely on advice that I received from Mr Maré. Mr Maré considered the Environmental Authorisation annexed as “GS13” to the answering affidavit and he advised me that this does constitute environmental authorisation required under the relevant environmental legislation.’

[36] Mr Louw made the submission that the applicant’s challenge also stems from s 5A of the MPRDA, dealing with the prohibition relating to illegal act, which stipulates:

‘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.'

Synchroplex has produced both the mining right as well as the environmental authorisation. It is inconceivable how the applicant can still rely on this section in substantiation of his allegations that Synchroplex's mining operations are illegal.

[37] Synchroplex does not deny that it does not have a WML yet. However, in refuting the accusation of illegal activity due to not having this licence, it contends that it is not required to have this licence at this immediate commencement phase.

[38] Section 20 of NEMWA stipulates:

'No person may commence, undertake or conduct a waste management activity, except in accordance with –

- (a) The requirements or standards determined in terms of s19(3) for that activity; or
- (b) A waste management licence issued in respect of that activity, if a licence is required.'

[39] Section 19 of NEMWA deals with listed waste management activities and provides that:

- '(1) The Minister may by notice in the Gazette publish a list of waste management activities that have, or are likely to have, a detrimental effect on the environment.
- (2) The Minister may amend the list by-
 - (a) adding other waste management activities to the list;

- (b) removing waste management activities from the list; or
 - (c) making other changes to the particulars on the list.
- (3) A notice referred to in subsection (1)-
- (a) must indicate whether a waste management licence is required to conduct the activity or, if a waste management licence is not required, the requirements or standards that must be adhered to when conducting the activity;
 - (b) may exclude certain quantities or categories of waste or categories of persons from the application of the notice if the waste in question is-
 - (i) of such a small quantity or temporary nature that it is unlikely to cause pollution to the environment or harm to human health; or
 - (ii) adequately controlled by other legislation;
 - (c) may contain transitional and other special arrangements in respect of waste management activities that are carried out at the time of their listing; and
 - (d) must determine the date on which the notice takes effect.'

[40] Synchroplex explained at paragraph 106 of its answering affidavit that the list of waste management activities for which a licence is required is contained in the NEMWA "List of Waste Management Activities that have, or are likely to have, a Detrimental Effect on the Environment", published under GN 921 n GG 37083 of 9 November 2013.

[41] Synchroplex explained at paragraph 107 of its answering affidavit that it is not undertaking any mining operations at this juncture that trigger any of the thresholds for the activities in Categories A, B or C of the "List of Waste Management Activities". There will therefore be no disposal of process residues to land, and no hazardous waste generation beyond normal construction or general

waste streams which are governed by the environmental management programme and standard waste handling provisions. It goes on to list the activities at paragraph 109 of the answering affidavit which will trigger the need to apply for the licence. At the stage when it reaches the activities requiring a WML it will certainly apply.

[42] This is a question of interpretation. The SCA in *Natal Joint Municipal Pension Fund v Endumeni Municipality*²¹ made these salutary remarks:

‘Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax...’

[43] My reading of s 20 of NEMWA is that obtaining a WML depends on the activities as some activities may not require a licence. I say so based on the provision of s 20(b) considering its ordinary language and syntax.²² The activities undertaken by Synchroplex in the immediate commencement phase, as deposed to in the answering affidavit, may not prohibit their commencement of operations without a Waste Management Licence if one reads (b) to say a Waste Management Licence issued in respect of that

²¹ 2012 (4) SA 593 (SCA) para 18.

²² Importantly, there is nothing in this interpretation that leads to any absurdity or that renders the statute inoperable. See generally *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC) para 28.

activity, if a licence is required. Synchroplex's explanation in the paragraphs quoted above is sensible. I therefore find the allegation that there are illegal mining activities taking place without the WML unsubstantiated. (Own emphasis.)

- [44] In relation to the WUL issue, it is common cause that Synchroplex does not hold such a licence. Mr Maré expressed a view that it is illegal for Synchroplex to even continue with the preparatory work and conduct blasting without a water use licence. According to Mr Maré's advice, the activities that Synchroplex intends to undertake trigger s 21 of the NWA. The applicant's counsel submitted in his written heads of argument that Mr Maré and not Mr Steyn is an expert, insinuating that the former's views/opinions should be accepted by this Court and afforded more weight.

- [45] In paragraph 11 of his founding affidavit, the applicant wrote:

'It is a requirement of the Mining Right that the first respondent complies with all laws applicable to the land and the use of the land for purposes of mining. This includes:

- 11.1 That the respondent, to the extent that the mining activities to be conducted under the Mining Right involve any of the Water Uses set out in s 21 of NWA, has a valid Water Use Licence ("WUL") issued in terms of NWA.'

- [46] Section 21 of the NWA deals with water use and provides:

'For the purposes of this Act, water use includes-

- (a) taking water from a water resource;
- (b) storing water;
- (c) impeding or diverting the flow of water in a watercourse;

- (d) engaging in a stream flow reduction activity contemplated in section 36;
- (e) engaging in a controlled activity identified as such in section 37(1) or declared under section 38(1);
- (f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (g) disposing of waste in a manner which may detrimentally impact on a water resource;
- (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- (i) altering the bed, banks, course or characteristics of a watercourse;
- (j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- (k) using water for recreational purposes.’

[47] Mr Maré deposed to an affidavit in which he opined at paragraph 7 thereof as follows:

‘The property is definitely subject to a Water Use Licence application. From the Mining Works Programme it is clear that large volumes of water will be required to operate the mine. There seems to be a possibility to source water from the Upton Water Bord’s supply line which is located 7.3 km’s due east of the property. If water is to be provided from a Water Service Provider, then there is no need to apply for a s21(a) water use in terms of the National Water Act 36 of 1998 (NWA).’

[48] Synchroplex has applied for but has not obtained the WUL yet. It was argued on behalf of Synchroplex that despite Mr Maré having stated in his affidavit that Synchroplex will definitely need a WUL, his affidavit fell short of naming the specific activities that trigger the need for its immediate procurement. In its answering affidavit, Synchroplex explains that the mechanical site preparation and

blasting do not involve water abstraction or dewatering. It will, however, ensure that it is compliant with the requirements for a WUL before engaging in mining activities that will require water being taken from a source. Synchroplex further stated that it may be a period of one year before such activities will occur.

[49] This is what appears in Chapter 4 of the NWA pertaining to the use of water which is significant:

‘As this Act is founded on the principle that National Government has overall responsibility for and authority over water resource management, including the equitable allocation and beneficial use of water in the public interest, a person can only be entitled to use water if the use is permissible under the Act. This Chapter is therefore of central significance to the Act, as it lays the basis for regulating water use. The various types of licensed and unlicensed entitlements to use water are dealt with in detail.

Part 1: General Principles

This part sets out general principles for regulating water use. Water use is defined broadly, and includes taking and storing water, activities which reduce streamflow, waste discharges and disposals, controlled activities (activities which impact detrimentally on a water resource), altering a watercourse, removing water found underground for certain purposes, and recreation. In general, a water use must be licenced unless it is listed in Schedule 1, is an existing lawful use, is permissible under a general authorisation, or if a responsible authority waives the need for a licence. The Minister may limit the amount of water which a responsible authority may allocate. In making regulations the Minister may differentiate between different water resources, classes of water resources and geographical areas.’

[50] I am persuaded by the first respondent’s submissions that the current activities involve dry mining of site preparation for which it does not need a WUL. Synchroplex made it clear that it awaits a

WUL and that it shall not conduct any other activities until it acquires the licence. This Court has no reason to believe otherwise. In any event, should Synchroplex elect to follow the Upington Water Supply route, there will not be a need for a licence.

[51] In summary, the applicant's case centres around the perceived illegality of the mining operations by Synchroplex. I have considered his case and the relief he is seeking. In amplification, the applicant attached two affidavits of Messrs Maré and Nagy which in my view did not take his case further. First and foremost, Synchroplex is a mining licence holder. Portion 2 is zoned for mining. There is a valid Environmental Authorisation. The two outstanding licences, namely, the Water Use Licence and the Waste Management Licence have been applied for and not obtained yet. I am persuaded by the submissions made on behalf of Synchroplex that it will not engage in activities requiring the two licences before they are obtained. There is nothing in the papers that contradicts its submission that both licences are awaited. The applicant has therefore failed to make out a case for a supervisory interdict.

[52] On the question of costs, there is no reason why costs should not follow the result. Both parties had senior and junior counsel which is justifiable. There is no reason why the order should not cover both counsel.

Order

[53] In the result, the following order is made:

1. The application is dismissed with costs, including the costs of two counsel. Such costs to be taxed on Scale C.


M.C. MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:

Adv. PF Louw SC

Adv. D Vetten

Instructed by:

OWP Partners, Sandton

c/o Elliott Maris, Kimberley

For the First Respondent:

Adv. A Subel SC

Adv. H Pretorius

Instructed by:

Adams and Adams, Pretoria.