



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No:

52347/2020

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

5 January 2026

In the matter between:

**THE MINISTER OF MINERAL RESOURCES
AND ENERGY**

Applicant

and

INDUSTRIAL ZONE (PTY) LTD

First Respondent

**CENTRAL RAND GOLD SOUTH AFRICA (PTY) LTD
(in liquidation)**

Second Respondent

WELCOME NORMAN JACOBS NO

Third Respondent

JOHANES HENDRIKUS DU PLESSIS NO

Fourth

Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

Fifth Respondent

and

RIVERLEA MINING FORUM

Intervening

Party

In re:

INDUSTRIAL ZONE (PTY) LTD

Applicant

and

THE MINISTER OF MINERAL RESOURCES

AND ENERGY

First Respondent

CENTRAL RAND GOLD SOUTH AFRICA (PTY) LTD

Second Respondent

(in liquidation)

WELCOME NORMAN JACOBS NO

Third Respondent

JOHANES HENDRIKUS DU PLESSIS NO

Fourth

Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

Fifth Respondent

NEUKIRCHER J:

1] Three applications were set down for hearing:

- a) the first is a counter-application (the rescission application) to the main application¹. It is brought by the present applicant (the Minister)² and he seeks to rescind an order granted by Mnyovu AJ on 19 February 2024 (the contempt order). The rescission application is brought in terms of Rule 42(1)(a);
- b) the second is an application for condonation for the late filing of the Minister's replying affidavit in the rescission application. This is opposed by the first respondent (Industrial Zone);
- c) the third is an application by the Riverlea Mining Forum (Riverlea) for leave to intervene in the contempt application³ and the rescission application. Riverlea seeks a wide range of relief including the imprisonment of the Minister and a structural interdict against the Minister.

The application for condonation

2] It is appropriate to first deal with the application for condonation for the late filing of the Minister's replying affidavit. When it was originally filed, the Minister's two-page replying affidavit was filed unsigned. Interestingly enough, attached to that two-page document were signed affidavits of deponents who set out certain pertinent facts that were relevant to the issue of the rescission. It cannot, and certainly no effort

¹ Which, in the context of this application, is a contempt of court application brought against the Minister of Mineral Resources and Energy (the Minister), to declare that he is in contempt of an order granted against him by Bokako AJ on 29 September 2021 (the 2021 order)

² The parties are referred to as cited in the rescission application

³ Riverlea seeks leave to intervene "in the application" – in the context of the issues before me and their further relief and given the argument before me, it is clear that it seeks leave to intervene in the contempt application

was made to argue otherwise, be argued that the substance of the Minister's reasons for the rescission application is not set out in those confirmatory affidavits. In fact, all the Minister's short affidavit essentially does is to refer to those annexures and affirm their content.

3] The signed version of the Minister's two-page affidavit was indeed filed rather late – there was no attempt made by the Minister to argue otherwise.

4] Industrial Zone put up an argument that it had been substantially prejudiced by the late filing as the rescission application had been delayed due to the Minister's non-compliance with the rules. But the opposition, in my view, is not genuine. Industrial Zone was in full possession of the Minister's replying affidavit (albeit unsigned) and the annexures thereto (which were indeed in order). The fact that the Minister's signed affidavit was filed late is simply of no moment and takes the matter nowhere. It is certainly, in this instance, of importance to have the Minister's full version before the court. The opposition was, in my view, a waste of time and money and was completely unnecessary – especially because the Minister's affidavit is two pages long and it relies on the very annexures that were properly deposed to from the get-go.

5] Thus, the application for condonation is granted. Because I am of the view that the opposition was unreasonable, Industrial Zone is ordered to pay the costs of that application, to be taxed in accordance with Scale C. The costs shall include the costs consequent upon the employment of one senior counsel and one junior counsel.

The rescission application

Background

6] The genesis of the present dispute is to be found in the original main application which was launched by Industrial Zone against, *inter alia*, the Minister during October 2020. In that application, Industrial Zone sought the following relief:

“1. That the First Respondent⁴ be ordered to initiate the procedures outlines in section 45 and/or 46 of the Mineral and Petroleum Resources Development Act, 28 of 2002, within 30 days of this order, alternatively within such time as the above Honourable Court may determine, in respect of the mining operations conducted on the following properties:

1.1 Vogelstruisfontein 231 IQ;

1.2 Langlaagte 224 IQ;

1.3 Mooifontein 225 IQ;

1.4 Vierfontein 231 IQ;

1.5 Diepkloof 319 IQ;

1.6 Paardekraal 226 IQ;

1.7 Turffontein 96 IR.”

(the affected land)

7] The background to this is the following: Industrial Zone is a property developer who owns the affected land described above. In 2009 the second respondent in the main application (CRG)⁵ became the holder of a mining right in respect of the affected land.⁶

⁴ The Minister

⁵ Central Rand Gold South Africa (Pty) Ltd

⁶ The events that led to this are not relevant to the issues before this court. They were relevant to the grant of the 2021 order

8] The Minister approved CRG's mining right and CRG exercised a decision to mine with the effective date being 27 February 2009.

9] Amongst other obligations, CMG was obliged to undertake any rehabilitation in respect of the affected property when it ceased its mining activities. This obligation also falls to CMG, *inter alia*, as a holder of the mining right over the affected area.

10] Industrial Zone states that CMG ceased its mining activities on the affected land on 2 May 2019 and has taken no steps to rehabilitate the land. An Independent Financial Provisioning Assessment Report, dated June 2016, was prepared on behalf of CMG for the purpose of providing a rehabilitation guarantee to the Department. According to this report, R45 million would be required to rehabilitate the land mined by CMG.⁷

11] CMG was placed in final liquidation on 2 May 2019 and it is therefore clearly unable to discharge its obligations.

12] In the main application, Industrial Zone approached court to obtain relief in terms of s45 and s46 of the MPRDA. It is not necessary to quote *verbatim* the extensive provisions of s45 and s46 of the MPRDA. In essence, these entitle the Minister to recover cost in respect of, *inter alia*, any prospecting or mining activities that result in ecological degradation, pollution or environmental damage or those which are harmful to the health, safety or well-being of affected persons.

⁷ Industrial Zone contends that at least R126 439 717 will be required – but nothing turns on this at present

13] In the event that the holder of the permit fails to comply with its obligations under the permit issued, the Minister may then take steps to protect the health and well-being of any affected person, to remedy any ecological degradation and to stop pollution of the environment. The Minister may use funds appropriated for that purpose by Parliament and recover those funds from the permit holder.⁸

14] Section 46 makes provision for the Minister to instruct the Regional Manager to take the necessary steps if the permit holder, for example and as in this case, has been liquidated.

15] The main application was launched in October 2020. It was not opposed by the Minister and on 29 September 2021 an order was granted in the terms set out in paragraph 6 *supra*. It is common cause that the Minister does not seek to appeal that order, nor to rescind it nor to vary its terms and that the court is therefore *functus officio* in respect of that order.

16] Despite the order being granted on 29 September 2021 it was only served on the State Attorney by sheriff on 10 June 2022. No explanation has been provided by Industrial Zone for this inordinate delay of almost eight months.

17] It is common cause that the Minister not complied with the terms of the 2021 order. The reason for this failure is, however, in dispute.

⁸ Section 45

18] On 18 March 2023 Industrial Zone initiated contempt proceedings. The relief sought by it is the following:

- “1. That the [Minister] be found to be in contempt of the court order issued out of this Honourable Court on 28 September 2021 by the Honourable [Ms] Justice Bokako AJ (*“the order”*);
2. That the [Minister] be committed to imprisonment for contempt of court for a period of 30 (thirty) days;
3. That prayer 2 *supra* be suspended for a period of 30 (thirty) days on condition that the [Minister] report to this Honourable Court within 30 (thirty) days from date of service of this order and inform the court on the following:
 - 3.1 what steps have been taken since 28 September 2021 to initiate the procedures, as outlined in Sections 45 and/or 46 of the Mineral and Petroleum Resources Development Act, 28 of 2002 (*“the MPRDA”*);
 - 3.2 what measures have been taken to remedy and/or rehabilitate the affected land;
 - 3.3 what measures have been taken to recover the rehabilitation guarantee to rehabilitate the affected land; and
 - 3.4 has the [Minister] and/or the Minister of Environmental Affairs and/or the Director-General instructed the Regional Manager (situated in the region of the affected land) to take the necessary measures to rehabilitate the affected land;
4. Should the [Minister] fail to comply with this court order, that the applicant be allowed to approach this court for an order for the [Minister’s] committal to prison, on the same papers, duly supplemented if necessary...”

19] It is common cause that the contempt application was not served personally on the Minister. Instead, it was served on the State Attorney on 11 April 2023 at 15h35 by the Sheriff. It is also common cause that the Minister has not been cited in his personal name, but rather in his official capacity, *nomine officio*. This is despite the fact that paragraph 2 of the notice of motion seeks the direct imprisonment of the Minister for contempt.

20] On 4 October 2023 the Minister as well as the Minister of Environmental Affairs, filed a Notice of Intention to Oppose the application for contempt. Their instructing attorney is Mr Mathebule of the office of the State Attorney, Pretoria.

21] The application for contempt of court was set down for hearing on 19 October 2023. On that date, Lenyai J granted the following order:

- “1. The application for contempt of court is postponed to 19 February 2024.
2. The first and fifth respondents are ordered to file their answering affidavit(s) in the application for contempt on/before 2 November 2023.
3. If the first and fifth respondents fail to file their answering affidavit in the application for contempt of court on/before 2 November 2023, the applicant is entitled to enrol the application for contempt of court on duly supplemented papers for hearing on 19 February 2024 on the unopposed motion roll...”

22] Thus, on the objective facts of this timeline, the contempt application was served on 23 April 2023 on the Minister’s representative; the State Attorney entered an appearance to defend on 4 October 2023; on 29 October 2023 the application was postponed to afford the Minister an opportunity to file an answering affidavit by 2

November 2023. The Lenyai J order was served on the State Attorney on 20 October 2023.

23] Despite the terms of this order, no answering affidavit was filed and on 19 February 2024 Mnyovu AJ granted the order set out in paragraph 18 *supra* (the contempt order).

24] On 27 March 2024 the Minister filed an affidavit titled *“First Respondent’s reporting affidavit as directed in the order by Justice Mnyovu AJ dated 19 February 2024”* (the reporting affidavit). The reporting affidavit states that its purpose is twofold:

- a) it has firstly been filed to comply with paragraph 3 of the contempt order; and
- b) it secondly supports the Minister’s recission application in terms of Rule 42(1)(a).

25] It is not for this court to decide whether the Minister’s explanation for his failure to comply with the 2021 order is adequate. It is however clear from the Minister’s reporting affidavit that he has not complied with the 2021 order. What is common cause, is that this reporting affidavit was filed timeously and thus the Minister has escaped the consequences of paragraph 2 of the contempt order ie the imprisonment provision.

26] This aside, however, the finding of contempt stands and it is this finding that the Minister now wishes to rescind.⁹

27] According to the Minister, he only became aware of Bokako AJ and Mnyovu AJ's orders on 27 March 2024 – this is the same date that he deposed to the reporting affidavit. He states that this is when Mr Pieter Alberts – the head of the Department's Legal Division – brought these proceedings to his attention. He states:

“5. The first when I personally became aware of the main application, the Order made by Bokako AJ dated 28 September 2021...the application for contempt of Court and the Order made by the honourable Mnyovu AJ dated 19 February 2024...was on the day when I signed this affidavit when Mr Pieter Alberts the head of my department's legal division brought these proceedings to my attention. Mr Alberts' confirming affidavit will accompany this affidavit.

6. At no stage before my signing this affidavit was I personally advised of or personally served with, any of the Court proceedings. As appears from the papers, service was consistently effected at the Office of the State Attorney, Pretoria, never on me personally. The State Attorney at no stage brought any of the Court proceedings to my personal attention.”

28] And in paragraph 21 of his affidavit, the Minister repeats:

“The Court proceedings, as I have already stated, were not served on me personally and also never brought to my attention until the day when I deposed to this affidavit.”

29] In support of the Minister's allegations, confirmatory affidavits were filed: one by Mr Vezi and one by Mr Alberts. Mr Vezi is the Regional Manager designated by the Minister in terms of 27 of the MDRPA. He states:

⁹ Although the counter-application seeks the rescission of the entire order

“5. The Regional Manager, Gauteng, was first advised of the Bokako Order in June 2023 when it was emailed to my Office by the legal department of the Department of Mineral Resources and Energy (DMRE”).”

30] Mr Alberts’ affidavit is a generic confirmatory affidavit.

31] It was only when the replying affidavit was filed that allegations of substance emerged from the Minister and Mr Alberts. The Minister’s stance remained firm: he was not represented at court on 19 February 2024 when the order of contempt was granted; he only became aware of the proceedings on 27 March 2024 when he signed the reporting affidavit; he never had any intent to act in contempt of the 2021 order.

32] Mr Alberts’ affidavit was also more comprehensive. According to him, he received the 2021 order from Industrial Zone’s attorneys on 19 October 2021. His reason for ignoring the main application is:

“6. Although I received prior correspondence from the Office of the State Attorney in June 2021¹⁰ in relation to the main application which was launched in 2020, I have not had sight of the application which appears not to have reached my office.

7. Had I been aware of its contents, I would in all probability have advised the Department to oppose the application...”

33] Thus, according to Mr Alberts:

¹⁰ ie four months before Bokako AJ’s order was granted

- a) he was made aware of the impending main application by the State Attorney in June 2021, but he made no effort to find out what that application was or to obtain a copy of it;
- b) he may, or may not, have advised the Department to have opposed it.

34] This unfortunate *laissez-faire* stance punctuates the State's affidavits throughout.

35] Mr Alberts then states that he attempted to resolve the issues with Industrial Zone's attorneys when he was notified of the court order but "[u]nfortunately due to my workload and other official commitments and responsibilities, I failed to attend to this matter as diligently as I should have". It is clear that for another ten months Mr Alberts ignored the order until on 30 August 2022 the State Attorney emailed him "requesting the Department to attend to the matter to avoid a possible contempt of court application." No dates are given as to when any of these events occurred.

36] But Mr Alberts did not focus on compliance with the 2021 order and instead focused on an internal appeal filed in respect of the mining licenses regarding the affected property. Ten months later, on 13 June 2023, the State Attorney again urged the Department to attend to the order and on 15 February 2024 the State Attorney informed him that the contempt application had been set down for hearing on 19 February 2024. Mr Alberts states that, despite his request, the regional office failed to provide him with urgent instructions. On 19 April 2024 the State Attorney informed Mr Alberts that the order had been granted.

37] But interestingly, Mr Alberts does not detail his, or anyone in his Department's, efforts to obtain copies of either the main application or the contempt application. He also does not explain how it came about that the State Attorney entered an appearance to defend on behalf of both Ministers without a specific instruction to do so – this especially bearing in mind that the main application was not defended by the State Attorney. Given the Minister's version set out in his reporting affidavit, this too seems to have been overlooked.

38] One must, at this stage, bear in mind that the contempt application had been served on the State Attorney on 11 April 2023. Thus it is difficult to conceive how, on 13 June 2023 when it had been in possession of the contempt application since April 2023, the State Attorney only asked the regional office to prioritize and process an internal appeal - that had been filed in respect of the mining license on the affected land - to avoid any possible contempt of court application, and failed to urge that the Department furnish him with instructions.

39] Mr Alberts again emphasises:

“17. The Minister only became aware of the main application and the contempt of court order when I brought it to his attention on the day he deposed to the reporting affidavit...”

40] He also states:

“33.1 I confirm having received the correspondence, emails and phone calls referred to in these paragraphs. As explained in the beginning of this affidavit, I was hopeful that the matter would be resolved internally. Also... operational matters of this nature is normally not brought to the Minister's attention until

such time as the Department submits to him a recommendation for his consideration. As explained, my workload regrettably did not allow me to attend to this matter as diligently as I would have hoped...”

and

“ 21.2 ...[I] confirm that the Minister only became aware of the main application and the contempt of court application when I requested him to depose to his reporting affidavit...”

41] Mr Mathebula, the State Attorney who is the attorney of record in this matter, also deposed to a confirmatory affidavit. His affidavit can only be described as containing the bare bones of an explanation. There are no call notes, no emails, no letters sent to either Mr Alberts or anyone else in the Department or the Minister, attached. He states:

“35. The court proceedings were brought to the attention of Mr Pieter Alberts who explains what happened on his side. I understood that Mr Alberts was dealing with the matter.

36. I knew that the application for contempt was enrolled for hearing on 19 February 2024 and I proceeded to court on that day to oppose the matter, but I was unfortunately delayed.

37. By the time I arrived in the motion court of Mnyovu AJ, I was informed that an order had already been taken against the [Minister] and that the court file had been uplifted by [Industrial Zone’s] legal representatives presumably to have the order issued by the Registrar.

38. I immediately approached that Office where I encountered Adv Groenewald and his attorney who had taken the order in my absence. I tried to reason with them in an attempt to have the order reversed, by consent, but they refused.”

42] It is unfortunate that Mr Mathebula does not explain how he brought either the main application or the contempt application to the attention of Mr Alberts, nor how he came to enter an appearance to oppose the contempt application, nor how the order granted by Lenyai J came to be, nor how it was that he went to court on 19 February 2024, nor why he was delayed.

43] The court is thus left with all these unanswered questions. But I am also left with the positive and insistent assertions by both the Minister and Mr Alberts that at no stage prior to 27 March 2024 was the Minister made personally aware of the court orders or the application for contempt of court.

44] Industrial Zone argues that the objective of s2(2) of the State Liability Act 20 of 1957 is to ensure that the Executive Authority is afforded effective legal representation by the State Attorney. It argues that Section 2(2) provides:

“(2) The plaintiff or applicant, as the case may be, or his or her legal representative must—

- (a) after any court process instituting proceedings and in which the executive authority of a department is cited as nominal defendant or respondent has been issued, serve a copy of that process on the head of the department concerned at the head office of the department; and
- (b) within five days after the service of the process contemplated in paragraph (a), serve a copy of that process on the office of the State Attorney operating within the area of jurisdiction of the court from which the process was issued.”

45] It concedes that the application was not served personally on the Minister but it argues that it was served on the State Attorney who represents the Minister and that this suffices.

46] Whilst all of this is good and well, what Industrial Zone fails to acknowledge is that the provisions of s2(2)(a) of the State Liability Act are equally applicable.

47] Leaving aside the issues of personal citation and service for a moment, Industrial Zone clearly failed to comply with the imperative condition in s2(2)(a) of the State Liability Act ie, service on the head of the department, and this in respect of both the main application and the contempt of court application.

48] But Industrial Zone further argues:

- a) that Bokako AJ's order is attached to the founding affidavit of the contempt application;
- b) that the Minister defended the proceedings on 4 October 2023;
- c) that the application was postponed because of the notice to oppose and the Minister was afforded an opportunity to file answering papers by 2 November 2023;¹¹
- d) that this order was served by Sheriff and by hand on the State Attorney and was also emailed to Mr Mathebula;
- e) that the State Attorney being on record for the Minister, meant that the order was not granted in his absence;

¹¹ Interestingly none of the party's state whether there was an appearance on behalf of the Minister or whether the dates were by agreement

- f) that there were no facts which would have precluded Mnyovu AJ from granting the order – all the relevant facts were before the court at the time.

49] According to Industrial Zone, the facts demonstrate that the Minister had knowledge of the orders and the application:

- a) on 6 December 2021 its attorneys addressed a letter to Mr Alberts. Attached to that letter is the order of Bokako AJ;
- b) follow-up emails were sent to Mr Alberts on 10 February 2022, 26 May 2022 and phone calls were made, but to no avail.

50] On the Minister's version:

- a) he was kept in the dark for a period of more than two years¹²;
- b) the State Attorney did not act on instructions from him when he filed the notice to oppose the contempt application;
- c) the State Attorney did not inform him of the order of Lenyai J;
- d) it appears that the State Attorney was not in possession of specific instructions, and certainly not his instructions, when he attended court on 19 February 2024.

51] Industrial Zone argues that, on the probabilities, the State Attorney acted on the instructions of his client, the Minister. If that is so, then the Minister must have known of the court orders and failed to comply with them.

¹² From 2021 until 27 March 2024

52] The argument is that once a party is represented, it is no longer necessary to directly inform the party of the steps being taken against them – their legal representative is notified and that is precisely what occurred here.

53] Mr Badenhorst argues that although the 2021 order is not in dispute, this fact alone does not absolve Industrial Zone from complying with the procedural requirements of personal citation and personal service in order to obtain a contempt order.

54] He argues that in *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*¹³ the Constitutional Court emphasized the principle that public officials cannot be held in contempt of court and face personal consequences, such as imprisonment, unless they are properly cited in their personal capacities and served:

“[92] The law on joinder is well settled. No court can make findings adverse to any person’s interests without that person first being a party to the proceedings before it. The purpose of this requirement is to ensure that the person in question knows of the complaint to that they can enlist counsel, gather evidence in support of their position, and prepare themselves adequately in the knowledge that there are personal consequences – including a penalty for committal – for their non-compliance. All of these entitlements are fundamental to ensuring that potential contemnors’ rights to freedom and security of the person are, in the end, not arbitrarily deprived.”

55] Mr Badenhorst also argues that the exclusion of the Minister in his personal capacity resulted in his exclusion as a party in the contempt application and he was

¹³ 2018 (1) SA 1 (CC) pars 90-104

therefore absent in every sense of the word.¹⁴ The fact that the Minister was cited *nomine officio* as Minister does not cure this defect and therefore the order was erroneously sought and erroneously granted in his absence.

56] It was also argued that the 2021 order was served on the Minister 177 days late – the order makes provision that the Minister is to comply within 30 days of the order being granted¹⁵. Because it was served so late, the Minister was automatically in contempt and compliance was made impossible within the stipulated time period. In my view the argument is specious: it is quite obvious that, it being served so late, the Minister could never be held to be in contempt for that reason alone. Any court would therefore interpret the order purposively and would expect compliance within 30 days of service of the order.

57] But the issue is whether the contempt order is to be rescinded in terms of Rule 42(1)(a).

58] Mr Maritz argues that the entirety of the State's affidavits demonstrate that the Minister was aware of the 2021 order and the contempt order notwithstanding the fact that he was cited *nomine officio* and not served personally:

- a) the State Attorney received service of all the applications and court orders and had sent them to the Department;
- b) Mr Alberts admitted receiving correspondence from Industrial Zone's attorneys together with the 2021 order;

¹⁴ *Morudi and Others v MC Housing Services and Development Co Limited and Others* (CCT270/17) [2018] ZACC 32 (25 September 2018)

¹⁵ My emphasis

- c) it is unlikely that Department officials would have kept the Minister in the dark about all of this;
- d) the notice to oppose must be construed as having been filed on instructions of the Minister;
- e) because of this Notice, the status of the contempt application changed from unopposed to opposed;
- f) Lenyai J's order was served multiple times on the State Attorney;
- g) it all begs the question: why would the State Attorney attend court on 19 February 2024 unless instructed to do so by the Minister?

59] Mr Martiz argues that the Minister's version is so untenable and far-fetched that it should be rejected¹⁶. He argues that, in any event, the requirement for personal service and standard of proof as set out in *Fakie NO v CCII Systems (Pty) Ltd*¹⁷ flow from the constitutional right to be protected from deprivation of freedom arbitrarily or without just cause. He argues that where the Minister has already complied with paragraph 3 of the contempt order, the threat of incarceration has been removed and there are therefore no consequences that flow from the finding of contempt. There are therefore no inroads made into the Minister's constitutional right to freedom. All that remains is the finding that he is in contempt and this order has no teeth.

60] In any event, so the argument goes, even if I find that the requirements of Rule 42(1)(a) have been met, that does end the matter: the rule still confers upon the court a discretion – this is derived from the word “may” in the rule.

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

¹⁷ 2006 (4) SA 326 (SCA)

61] *In Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others*)¹⁸ the majority court stated:

“[53] It should be pointed out that once an applicant has met the requirements for rescission, a court is merely endowed with a discretion to rescind its order. The precise wording of rule 42, after all, postulates that a court “may”, not “must”, rescind or vary its order – the rule is merely an “empowering section and does not compel the court” to set aside or rescind anything. This discretion must be exercised judicially”

62] The argument is that it is very clear from the Minister’s reporting affidavit that he has no intention of complying with the 2021 order and that he has taken the view that it was wrong on its merits. Were this court to rescind the contempt order, it will be a theoretical exercise because it does not put to bed the 2021 order – it still stands.

63] In *Van Der Merwe v Bonaero Park (Edms) Bpk*¹⁹ and *Nkosi v ABSA Bank Ltd*²⁰ the courts refused to grant a rescission even though the applicants had met the Rule 42(1)(a) requirements.

64] In *Van Der Merwe*, the court refused to rescind the order because an eventual re-hearing on the merits would have most likely resulted in an order being granted

¹⁸ (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021)

¹⁹ 1998 (1) SA 697 (T)

²⁰ (53195/2019) [2023] ZAGPPHC 431 (6 June 2023)

anyway. The court thus found that the interests of justice would not be served by granting the rescission.

65] In *Nkosi*, Vivian AJ stated:

“36. Accordingly, it is a judicial exercise of the discretion to refuse to rescind an order where the rescission will have no practical effect and merely cause delay. The Court roll is notoriously busy. Litigants who do not exercise their right to be heard when properly notified cannot expect as of right to be granted a rescission based on a dilatory defence when all that the rescission is likely to achieve is delay...

45. The conduct of the Applicant creates the impression that the rescission will cause delay, but no more, the Applicant shows no real intention to take advantage of the pause created by the notice. He does not say what he would have done had he received the notice. It will simply be another matter clogging the Court’s roll. It would not be in the interests of justice to rescind the order.”

66] And so the argument advanced is that it is not only highly likely that the Minister knew of the 2021 order, and that he was represented when the contempt order was granted, but that this court should not exercise its discretion in his favour because it is clear from the reporting affidavit that he has no intention of complying with the 2021 order and that he is, in every sense of the word, therefore in contempt of court.

The application for intervention

67] Riverlea is a non-profit company established in terms of the relevant provisions of the Companies Act, 2008 to represent the interests of the Riverlea community in matters pertaining to the mining activities in the area. It is a development situated west of Johannesburg which was constructed in the early 1960's during the apartheid era as part of the Group Areas Act. It was designated primarily for Coloured communities and is a historically disadvantaged area.

68] The area is adjacent to Langlaagte, the site where George Harrison discovered gold in 1886, leading to the Witwatersrand Gold Rush. This discovery marked the beginning of extensive mining activities in the area.

69] As a result of the disparities caused by the housing policies, coupled with the environmental degradation and safety concerns caused by the mining in the area, the community is plagued with environmental and safety issues associated with the mining activities. According to Riverlea, these have become all the more difficult because of the mining activities of CRG and because of the Minister's failure to rehabilitate the site since the closure of the mine and CRG's liquidation in 2019.

70] Riverlea seeks leave to intervene (the intervention application) as an applicant in both the contempt application as well as a respondent in the rescission application. The notice of motion is extensive. It not only seeks its and other respondents' joinder, but it also seeks *inter alia* the following relief:

- "4. Prayer two of the order issued by Mnyovu AJ's order on 19 February 2024 is implemented within seven days of the grant of this order and the [Minister] is committed to prison.

5. Alternatively to prayer three²¹ above, the following supervisory order is granted:

5.1 The DMRE and the Minister must report to this court within three months of either the dismissal or upholding of the counter-application on:

5.1.1 The appointment of a new contractor to rehabilitate the site because Amatshe as an applicant for a mining right is conflicted and cannot do so.

5.1.2 The integrated rehabilitation planning envisaged for the Langlaagte site, including complete assessment of the affected area to determine the nature and extent of the rehabilitation required and an analyses of the affected area, evaluation of specialised rehabilitation option and all other measures required to restore the open mining pit to a useable site.

5.1.3 Financial provision for closure of the mine.

5.1.4 The proposed operational phases for progressive rehabilitation including timeframes for their delivery.

5.1.5 Plans to engage with the community on the rehabilitation of the site.

5.1.6 Measures that will be taken to reverse the environmental degradation at the site, including addressing water contamination, soil toxicity, increased levels of radiation and appropriate dust control measures.

5.1.7 The removal of waste and rubble.”

²¹ Which was the removal of Amatshe as the provider to rehabilitate the affected land

71] The intervention application also seeks to join four further respondents: the Minister of Police, the National Commissioner of the South African Police Service (SAPS) the Gauteng Commission of SAPS²² and Amatshe Mining (Pty) Ltd. Amatshe is only sought to be joined insofar as it may have an interest in Riverlea's relief. The first three respondents are sought to be joined because Riverlea argues that they have a material interest in executing the order sought that the Minister be committed to prison. For reasons not relevant to this judgment, Amatshe has fallen out of the picture and therefore has no interest in the relief sought, nor can any relief be sought against it by Riverlea in these proceedings.

72] According to Riverlea, the site is plagued by the:

- a) illegal underground and surface mining;
- b) turf wars between the miners;
- c) increase in the crime rate;
- d) destruction of necessary infrastructure such as roads leading to a local Primary School;
- e) illegal dumping of toxic, hazardous and other waste at the site of the unrehabilitated pit;
- f) destruction of the historic heritage site, the George Harrison Park;
- g) environmental degradation through increased dust levels, toxic residue in soil samples, water contamination, exposure to exceptionally high levels of radiation at the Primary School and in the community as a whole resulting in health issues;

²² Collectively referred to as "the other State respondents"

- h] distinct possibility of sinkholes in certain sections of Riverlea that endanger the welfare of the community and cause damage to property;
- i] real risk of the school's closure because of reduced enrolment as a result of illegal mining and the fact that the mining pit has not been rehabilitated. This threatens both the rights of learners in the broader community to access to education and the job security of teachers.

73] Riverlea's direct and substantial interest is rooted in the violations of the community's fundamental rights to *inter alia* equality, dignity, freedom of security of the person, the right to life, the right to a safe environment, the right to a health and well-being, the violation of the best interests of the child principle and the right to education.

74] Riverlea argues that its intervention is essential as it is abundantly clear from the Minister's reporting affidavit that he has no intention of implementing the 2021 order. It argues that it therefore approaches this court in its own capacity and in terms of s38²³ of the Constitution to protect the broader interests of the community. No argument was presented that Riverlea did not have the requisite *locus standi*.

75] Riverlea argues that the 2021 order is final and binding and that the Minister has neither sought to appeal it nor review it nor rescind it – as already stated, this is common cause before this court. It also argued that, to date, the Minister has not

²³ "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened and the court may grant appropriate relief, including a declaration of rights, The persons who may approach a court are-

(a) anyone acting in their own interest;

...

(c) anyone acting as a member of, or in the interest of, a group of persons..."

complied with the provisions of that order – this too is common cause. It argues that there is no reason to excuse the Minister from complying with the 2021 order and that the Minister therefore remains in contempt and must be committed to imprisonment for contempt of court.

76] According to it, the two court orders of 2021 and 2024 give effect to the rights of the Riverlea residents and uphold the community's right to a safe and clean environment which the Minister's obdurate stance and refusal to comply with the 2021 order, put in danger. Thus, Riverlea's intervention is aimed at the enforcement of its rights which it seeks to do in, for example, the opposition to the rescission application.

77] Rule 12 provides:

"Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet..."

78] In *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)*²⁴ the Constitutional Court stated:

"The test for joinder requires that a litigant has a direct and substantial interest in the subject matter of the litigation, that is, a legal interest in the subject matter of the litigation which may be affected by the decision of the Court. This view of what

²⁴ 2015 (5) SA 600 (CC) par 56

constitutes a direct and substantial interest has been explained and endorsed in a number of decisions by our courts.”

79] The Minister argues that Riverlea has failed to make out a case of a direct and substantial interest in the outcome of the recission and contempt applications as:

- a) it was not a party to the main application. As there is no recission or variation sought of that order, Riverlea cannot have any interest in the outcome of the recission application as that focuses on the contempt application itself;
- b) Riverlea also cannot be joined in the main application as this court is *functus officio* in respect of the 2021 order;
- c) that, if a recission is granted of the contempt order, it will put the parties back in the position as if the contempt order had not been granted at all and the parties must then make their argument to court as to why the Minister is or is not in contempt of the 2021 order.

80] But least one forgets, this court is not seized with determining whether or not the Minister is, in fact, in contempt of the 2021 order. The Minister is not required to show “good cause” for the recission for an application under Rule 42(1)(a) and, insofar as the court “may” grant or refuse a recission, the merits of the contempt were not argued. In fact, Mr Maritz specifically argued that any threat of incarceration was removed because the Minister had filed his reporting affidavit. His argument regarding whether the recission should be granted was aimed mainly at the issue of

whether or not the Minister's version regarding personal knowledge should be accepted or rejected.

81] In determining whether or not Riverlea has sufficient direct and substantial interest to intervene in the rescission application, the purpose would be to give voice to its rights under the Constitution which it says are directly affected by the Minister's non-compliance. It states:

"The RMF therefore has a direct interest in the enforcement of Bokako AJ's order which seeks to enforce these rights and the rescission of the contempt order which seeks to sanction the Minister for his failure to implement such order. The order relates to the rehabilitation of land surrounding Riverlea including the land adjacent to the TC Esterhuysen primary school and upholds the community's right to a safe and clean environment. It cannot be gainsaid that this is a legal interest.

82] When considering whether or not Riverlea has a direct and substantial interest in the enforcement of the 2021 order, it is important to bear in mind the following:

- a) firstly, Riverlea's stated interests are similar to those of Industrial Zone which states in its answering affidavit:

"18.3 The remedial measures must be commenced forthwith by the [Minister] because the affected land is in close proximity to residential areas and public schools. Unrehabilitated mining land poses a significant health and safety risk to the surrounding communities.

18.4 The development of the land by the applicant will lead to several positive outcomes for the surrounding communities such as job creation, reduction in crime and a safe environment. It has been

illustrated by Central Rand Gold that mining the affected land in unviable due to numerous environmental factors, primarily the flooding of the water bin, so I am advised by my attorneys, that there would be no justification to grant the mining right to Amatshe.”²⁵

18.5 In addition, it would be preferable for the surrounding community, for the land to be rehabilitated without further delay and made safe instead of being further mined by Amatshe.”

83] In my view, the issue is not whether the Minister is in contempt of the 2021 order as at date hereof – the issue is whether or not the contempt order was erroneously sought and erroneously granted in his absence.

84] Part of the evaluation is whether the test, set out in *Fakie NO* and *Pheko*²⁶, was met: that an order was granted against the contemnor, that he had been served with the order or had knowledge of it and that he had failed to comply with it.

85] In my view, in order to exercise the discretion vested with the court under Rule 42(1)(a), the court must carefully weigh the issues relevant to each case. Each set of facts is unique. Whilst the overarching principles set out in *Fakie NO*, *Matjhabeng*, *Pheko (2)* and *Zuma*²⁷ set the tone for the backdrop against which the facts are to be analysed, they give no hard and fast rule for whether a discretion may or may not be exercised in any given circumstance – that is for the court adjudicating the matter to decide based on the facts before it.

²⁵ Amatashe is no longer in the picture according to the Minister

²⁶ *Supra*

²⁷ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021 (5) SA 327 (CC)

86] *In casu*, in the main application the Minister was cited *nomine officio*. He is the responsible functionary appointed by the MPRDA and tasked with overseeing the implementation of the MPRDA. Thus, in my view, it was entirely appropriate that he was not cited in his personal capacity in the main application as a mandamus was sought in terms of the provisions of s45 and s46 of the MPRDA.

87] However, when it came to the contempt application, the position is entirely different. There, the Minister's direct incarceration was sought. Our courts have, on several occasions, emphasized the crucial importance of personal notice to the contemnor in these circumstances: this is in order to bring to his/her notice the consequences of further non-compliance with the order granted. The purpose of personal notice is "...to ensure that the person in question knows of the complaint to that they can enlist counsel, gather evidence in support of their position, and prepare themselves adequately in the knowledge that there are personal consequences – including a penalty for committal – for their non-compliance"²⁸

88] Here, it is common cause that this Minister was not cited personally, was not served personally and it also appears that the provisions of s2(2)(a) of the State Liability Act were not complied with by Industrial Zone.

89] Whilst the actions of the State functionaries are most certainly lamentable and are to be frowned upon, the Minister, Mr Alberts and the State Attorney have all stated under oath that the Minister only acquired knowledge on 27 March 2024 when he deposed to the reporting affidavit. Perhaps had this issue been referred to trial, cross-examination may well have revealed that the Minister had indeed acquired

²⁸ *Matjhabeng supra*

knowledge at a far earlier date, but no referral to evidence was sought and it is therefore not possible to go behind these statements made under oath.

90] Certainly, given all the questions surrounding the manner in which the State handled this matter make Mr Maritz's invitation to reject the Minister's version as far-fetched and untenable, very attractive. However, given what I have stated *supra*, I am of the view that to do so would not be the correct exercise of my discretion.

91] I must also take into account that the Minister's version of why he has not complied with the order is set out in his reporting affidavit. Industrial Zone and Riverlea argue that the Minister's explanation is proof of the fact that he does not intend to comply with the 2021 order, that he is therefore in contempt and that therefore to rescind the order would serve no purpose and is not in the interest of justice.

92] But these arguments are not tenable: firstly, contempt must be discerned at the time that the order for contempt is sought – to justify non-compliance with essential substantive prerequisites *ex post facto* cannot be countenanced. Furthermore, at the outset I was informed that it was not for this court to delve into the merits of the Minister's reporting affidavit in order to determine whether or not the reason for non-compliance sufficed. The argument was that the facts of the reporting affidavit were only relevant insofar as they related to Rule 42(1)(a).

93] This being so, the merits of the Minister's defence were neither fully before this court²⁹ nor were they fully argued. Thus, to invite the court to dismiss the recission because, in any event, there is no merit in it and it is clear that the Minister remains in contempt of the 2021, would amount to little more than a trial by ambush in this matter. To dismiss the application for recission on this basis would, in my view, be an incorrect exercise of the court's discretion.

94] In my view, the finding of contempt in the absence of the important jurisdictional requirements of personal citation and personal service resulted in a fatal procedural irregularity. As a result, the order was both erroneously sought³⁰ and was erroneously granted. It was also granted in the absence of the Minister as the State Attorney was acting on behalf of the State functionary and not the Minister personally when an appearance to oppose was filed.

95] My view on the issue of recission is fortified by the fact that, notwithstanding that the Minister has complied with paragraph 3 of Mnyovu AJ's order, Riverlea is in any event seeking his direct imprisonment. Thus, where it is common cause that he is not personally cited and has not personally been served, this relief is incompetent. Thus, on the facts set out supra, as well as on this basis, the application for leave to intervene in the recission application must be refused.

96] In my view, the finding of contempt on its own carries with it consequences for the Minister personally. Even though he has complied with the provisions of paragraph 3 of the order to avoid incarceration, were his reporting affidavit to be

²⁹ Because "good cause" is not a requirement under Rule 42(1)(a)

³⁰ Industrial Zone knew that no personal service had taken place and should therefore never have moved the order – it was erroneously sought.

found to be deficient (in the event that such proceedings were instituted), he would be unable to defend the finding of contempt as, in that regard, the court would also be *functus officio*. Thus, the issue is not a moot one – the Minister is entitled to present a case to vindicate a position that he is not in contempt of the 2021 order.

97] This all being so, the order of Mnyovu AJ must be rescinded.

98] This then brings me to the issue of whether Riverlea's structural interdict should be granted. Industrial Zone has pointed out that the relief sought is not competent. The Minister opposes Riverlea's relief.

99] I agree that the relief is not competent in the present proceedings as it has no bearing on whether or not the Minister is in contempt of the 2021 order. Given the extent of the relief sought, it may have had a bearing on the terms in which the 2021 order was granted. It may also have a bearing on the reasons a court may ultimately find the Minister in contempt - and on this I make no finding on whether the Minister is actually in contempt or not - or the terms it determines would be sufficient for the Minister to purge his contempt. Suffice it to state that I find that the structural interdict sought is not competent at this stage and that that relief should be dismissed.

100] But Riverlea's application to be joined as an applicant in the contempt application itself must be granted.

101] Usually a person who was not a party to the proceedings in which the order was granted would not have *locus standi* to bring a contempt application. In my view, however, the 2021 order directly affects the rights and interests of Riverlea – the intention of the order is to ensure the rehabilitation of the affected land so that it can be developed³¹. This is in the interests not just of Industrial Zone, but also the nearby communities. The rehabilitation of the land is also intended to have a positive effect on the woes that presently plague Riverlea. In my view, it is clear that Riverlea's interests go to the heart of the community's health, welfare, education, safety and daily existence. There can be no better proof of their direct and substantial interest in the compliance with the 2021 order than this.

102] In my view, Riverlea's intervention in the contempt application will not only serve the purpose of vindicating the rule of law, but will serve to underscore the Minister's obligations imposed by the 2021 court order. In stating this, I emphasise that I make no finding on whether or not the Minister is or is not in contempt of the 2021 order.

Costs

103] Even though Riverlea has not succeeded in most of the relief sought, they have succeeded in their request to intervene in the contempt application. I am therefore of the view that they should be awarded costs, to be taxed in accordance with Scale C and shall include the costs consequent upon the employment of one senior counsel and one junior counsel.

³¹ This is what is alleged by Industrial Zone in the main application

104] As to the costs of the recission application: although the recission is to be granted, I am of the view that the Minister must pay the costs of the application - which costs shall be taxed in accordance with Scale C and shall include the costs consequent upon the employment of one senior counsel and one junior counsel - for the alarmingly lackadaisical manner in which he and his officials have acted. Their conduct is simply unacceptable.

Order

1. Condonation for the late filing of the Minister's replying affidavit is granted.
2. Industrial Zone is ordered to pay the costs of the application for condonation, which costs are to be taxed in accordance with Scale C and shall include the costs consequent upon the employment of one senior counsel and one junior counsel.
3. The application for recission of judgment is granted.
4. The order of Mnyovu AJ dated 19 February 2024 is rescinded and set aside.
5. The Minister is ordered to pay the costs of Industrial Zone for the recission application, excluding the costs set out in paragraphs 1 and 2 of this order, which costs are to be taxed in accordance with Scale C and shall include the costs consequent upon the employment of one senior counsel and one junior counsel.
6. Riverlea Mining Forum is granted leave to intervene as an applicant in the application for contempt of court brought by Industrial Zone dated 18 March 2023.

7. The remainder of the relief sought in the application for leave to intervene is refused.
8. The Minister is ordered to pay the costs of the application for intervention, which costs are to be taxed in accordance with Scale C and shall include the costs consequent upon the employment of one senior counsel and one junior counsel.
9. Riverlea shall file its affidavit and/or any further application, in the contempt of court application, on/before 16 February 2026.
10. The Minister is ordered to file an answering affidavit in the contempt of court application, no later than 30 days after Riverlea has filed its affidavit and/or further application.
11. The remainder of any affidavits, practice notes and heads of argument in the contempt of court application shall be filed in terms of the Uniform Rules of Court and/or Practice Directives of this Division.

NEUKIRCHER J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected, and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 5 January 2026.

Appearances

For the applicant	:	Adv C Badenhorst SC, with him Adv CT Vetter
Instructed by	:	State Attorney, Pretoria
For the first respondent	:	Adv MC Maritz SC, with him Adv J H Groenewald
Instructed by	:	DDP Attorneys
For the Intervening Party	:	Adv T Ngcukaitobi SC, with him Adv R Tulk, Adv K Plaatjies, Adv T Masuku and Adv B Nortje
Instructed by	:	R Baloyi Inc
Date of hearing	:	11 November 2025
Date of judgment	:	5 January 2026