



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. ✓
DATE: 16/01/2026
SIGNATURE [REDACTED]

Case no. 44631/2020

In the matter between:

BLACK CHROME MINE (PTY) LTD

Applicant

(formerly Umnotho weSizwe Resources (Pty) Ltd)

and

CHEETAH CHROME SOUTH AFRICA (PTY) LTD

1st Respondent

DILOKONG CHROME MINE (PTY) LTD

2nd Respondent

HANS KLOPPER N.O.

3rd Respondent

CHRISTOPHER REY N.O.

4th Respondent

MINISTER OF MINERAL RESOURCES AND ENERGY

5th Respondent

DIRECTOR-GENERAL OF THE DEPARTMENT OF MINERAL
RESOURCES AND ENERGY

6th Respondent

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

The judgment and order are published and distributed electronically.

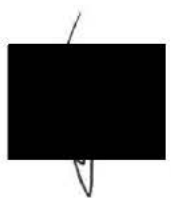
PA VAN NIEKERK, J

INTRODUCTION:

[1] Applicant applies for leave to appeal against the whole of the judgment and order handed down by this court on 27 October 2025 ("the judgment"). In terms of the judgment this court dismissed an application to declare that the construction and operation of a certain mining shaft and related infrastructure as described in the notice of motion in the application was unlawful, and also dismissed ancillary interdictory relief against First Respondent. Applicant in this application was the applicant in the main application and Respondents in this application were the respondents in the application. For sake of convenience, the same acronyms as used in the judgement will be used hereunder.

[2] The background facts to the judgment are set out in paragraphs [4] to [16] and need not be repeated herein, save for the following concise summary of the relevant facts:

[2.1] DCM was the holder of a mining right and on 18 March 2008 the Minister approved an amended EMP in terms whereof DCM commenced the construction of surface structures to facilitate the sinking of a mining shaft on land leased from



the Pulana Maroga Community Trust. The features of the amended EMP are described in paragraph [7] of the judgment, and two shafts to be constructed and which were a vital requirement for purposes of the amended EMP were depicted to be on land which forms part of the mining area in respect of which UWS later acquired a mining right.

- [2.2] The mining right awarded to DCM related to the mining area in respect of mineral areas numbers 3 and 4 on the Farm Maandagshoek 245, Registration Division KT, Limpopo Province and a portion of Portion 1 of the Farm Mooihoek 255, Registration Division, KT, Limpopo Province. The DCM mining right was transferred to First Respondent in terms of a registered cession on 18 February 2021 after due process was followed under section 11 of MPRDA.
- [2.3] Applicant holds a mining right over a portion of Portion P1 and the whole of Portion 2 of the Farm Mooihoek 255, Registration Division KT, Limpopo Province ("the UWR mining area"). It is common cause that the DCM mining area and the UWR mining area are contiguous but do not overlap.
- [2.4] The DCM mining right was converted to a new order mining right during 2014. The requirements and process followed in this regard are set out in paragraph [12] of the judgement.
- [2.5] During 2016, DCM was placed in business rescue and eventually the DCM mining right was transferred to First Respondent. For purposes of such transfer, consent had to be granted by the Minister in terms of Section 11 of MPRDA and it is common cause that such consent was duly granted;



- [2.6] At all relevant times during the processes referred to above, the necessity to sink mining shafts on the land where the impugned shaft was sunk, was a material consideration and formed part of the rationale of the amended EMP as well as the DCM MWP. This fact was thus known to the Minister on every occasion when the Minister granted permission and/or approved the amended DCM EMPD and DCM MWP.
- [2.7] In summary, the impugned mining shaft was constructed by DCM on land in terms whereof UWR acquired a mining right, presently held by Applicant. The impugned shaft is one of two shafts indicated on the EMP and MWP, was approved by the Minister, and is required for purposes of the mining operations previously conducted by DCM and presently conducted by First Respondent as the specific mining area in relation to which mining rights were granted to DCM and thereafter transferred to First Respondent cannot readily be accessed otherwise;
- [3] Central to the dispute in the application is the contention of the Applicant that the sinking of the TMT shaft on land which falls within the mining area of the Applicant is unlawful with reference to the definition of "mining" and "mine" as contained in MPRDA, because section 5A of MPRDA prohibits mining outside a mining area in respect of which a mining right is granted. Based on the Applicant's interpretation of "mining" and "mine" as it appears in section 1 of MPRDA, the crux of Applicant's case was namely that the sinking of the TMT shaft on land which falls within the "mining area" of the Applicant's mining right, constitutes "mining" or a "mine" and thus offends the provisions of Section 5A of MPRDA which prohibits mining on land in respect of which no mining right is awarded. In response, Respondents contended that the construction of the impugned shaft and associated infrastructure does not fall under the definition of "mine" or "mining" as it



appears in MPRDA, but is an activity incidental to mining, and therefore permissible under subparagraph (b) of the definition of "mining area" in section 1 of MPRDA. Further issues were raised by the parties which are dealt with hereunder.

- [4] This court analysed the Applicant's argument of unlawfulness, based on the Applicant's interpretation of MPRDA and the effect of such interpretation in the judgment.¹ This court held that the material issue for determination related to an interpretation of the meaning "incidental operations" as it appears in subparagraph [b] under the definition of "mining area" and the definition of "mine" as it appears in MPRDA in the context of the relevant facts of the matter, and found that the court is enjoined by virtue of the provisions of Section 4 of MPRDA to interpret any provision of MPRDA to arrive at any reasonable interpretation which is consistent with the objects of the Act and which must be preferred over any other interpretation which is inconsistent with the objects of the Act.² Based on the aforesaid legislative prescript relating to the interpretation of MPRDA, this Court found that the interpretation which the Applicant advocates the court to apply will have substantial detrimental consequences, contrary to the objects of MPRDA and therefore that the court is enjoined to interpret, in the context of the relevant factual matrix, the erection of the TMT shaft not to constitute "mine" either as a verb or a noun as defined in MPRDA, but to interpret the construction of the TMT shaft as an "incidental operation" as defined in subparagraph [b] of the definition of "mining area" as it appears in the MPRDA.³
- [5] The application was also dismissed because this court found that the exercise of a mining right in terms of an approved MWP is not unlawful,⁴ and the fact that the application is in

¹ See: Judgment, para. [29] to [36]

² See: Judgment, par. [25] on page 17 and paragraph [31]

³ See: Judgment, par. [33] to [35]

⁴ See; Judgment, paragraph [37] to [43]



effect a disguised review of the Minister's decisions to approve the section 11 application. Absent compliance with section 96 of MPRDA, such a review is not permissible.⁵

APPLICANT'S GROUNDS FOR LEAVE TO APPEAL:

- [6] As a **first ground** Applicant submitted that this court incorrectly interpreted the definition of "mine" in the relevant factual matrix. Concisely stated, Applicant's submission is that the purpose of the TMT shaft is to enable an expansion of mining operations, and absent the shaft, DCM could not access minerals that are located in the area over which it had a right to mine. The impugned shaft is a necessary and integral step in the process of DCM "trying to win its minerals" which brings the construction of the shaft within the ordinary grammatical meaning of the definition of "mine" expressed as a noun as well as a verb.
- [7] In Heads of Argument filed on behalf of Applicant, the Applicant elaborates to submit on the relevant facts that the construction of the TMT shaft is distinguishable from other listed activities which are regarded as "incidental" to mining and reiterates that the construction of the TMT shaft is integrally related to, and is immediately and directly necessary, for the winning of minerals that are covered by the DCM mining right as a result of which it falls squarely within the definition of "mine".
- [8] As a **second ground** Applicant submitted that the finding of this court namely that the construction of the TMT shaft did not violate Section 5A of MPRDA because DCM had a duty to conduct its mining operations in terms of the amended EMP and MWP is unsustainable because the approval of the amended EMP and the MWP imposed on DCM a duty to mine in accordance with their provisions, but did not extent the area over

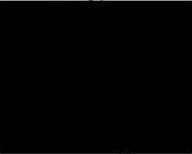
⁵ See; Judgment, paragraph [44] to [47]



which it had an exclusive right to mine. Essentially, Applicant submits that neither the EMP nor the MWP can alter the limited real rights and duties contained in a registered mining right.

- [9] As a **third ground** of review Applicant submitted that this court erred when it held that the application was in substance a review of the Minister's decision to grant the converted mining right and approved its transfer to Cheetah, which is impermissible in the light of Section 96 of the MPRDA. In this regard Applicant submitted that this ground was not pleaded by the Respondents and that it was therefore not open for this court to *mero motu*, without affording UWR an opportunity to file an affidavit dealing with it, to dismiss the application on that basis. It was further held that the aforesaid finding is bad in fact and in law as the Minister's decision to approve the transfer to Cheetah is not relevant to the relief sought by UWR and has no bearing on the issue whether the construction of the TMT shaft was lawful.

- [10] Finally, Applicant submitted that there are **other compelling reasons** why a court of appeal should entertain the appeal because the matter concerns the important issue whether the holder of a mining right who wants to access minerals on land in which it has a mining right may lawfully construct infrastructure on land in respect of which another party has an exclusive right to mine. Furthermore, so submitted the Applicant, the legal issues in this matter are nuanced and complex and requires a contextual consideration to interpret the provisions of MPRDA. Furthermore, so submitted the Applicant, the practical and economic impact of the judgment on Applicant is significant and affects the public, including existing and prospective holders of mining rights as well as third parties on whose land such infrastructure will potentially be constructed.

- [11] The aforesaid grounds for appeal will be considered individually hereunder.
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SECTION 17 OF THE SUPERIOR COURTS ACT:

- [12] The application is brought under Section 17(1)(a)(i) of the Superior Courts Act 2013 *alternatively* Section 17(1)(a)(ii) of the Superior Courts Act. Applicant referred to authority in terms whereof the Supreme Court of Appeal reiterated that an appeal lies against a court order, and not its reasons.⁶ It needs to be remarked that it is now trite law that an applicant in an application for leave to appeal faces a more stringent test under Section 17(1)(a) of the Superior Courts Act compared to the repealed Supreme Court Act 59 of 1959, and that a mere possibility of success or an arguable case that is not hopeless is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.⁷ The legislator's use of the word "would" in Section 17(1)(a)(i) of the Superior Courts Act imposes a most stringent and vigorous threshold.⁸
- [13] By virtue of the provisions of Section 17(1) of the Superior Courts Act it follows that this court is enjoined not to grant leave to appeal unless the Applicant can show that there is a reasonable prospect, based on a sound rational basis, that another court will uphold an appeal and grant the relief as claimed in the Applicant's Notice of Motion in the main application.
- [14] Based on the aforesaid considerations, the Applicant's grounds for leave to appeal are dealt with hereunder.

⁶ See: *Absa Bank Ltd v Mkhize and two similar cases*, 2014 (5) SA 16 (SCA) at par. [64]

⁷ See: *MEC for Health, Eastern Cape v Mkhitha* 2016 JDR 2214 (SCA) at para. [16] and [17]

⁸ See: *City of Johannesburg Metropolitan Municipality v Spectrum (Pty) Ltd & Others* 2022 JDR 3708 (GJ) at para. [6] to [7]

FIRST GROUND: INCORRECT INTERPRETATION OF THE DEFINITION OF "MINING":

[15] This court considered the factual matrix underlying the construction of the TMT shaft and concluded that the construction of the shaft does not constitute a "mine" or "mining" but relates to activities incidental thereto. This conclusion was arrived at after due consideration of the provisions of the definition of "mining area", "mining operation" and "mine" as appear in Section 1 of MPRDA.⁹ Applicant submitted that this approach was incorrect as it is in essence an outcomes-based approach which was held to be impermissible. Applicant advocated an interpretation based on a textual, contextual and purposive reading of the relevant provisions of the act to arrive at the conclusion that the sinking of the impugned shaft is in fact a mine or mining as defined in the act, and not an incidental activity to mining.

[17] In the judgment the effect of Section 4 of MPRDA was dealt with¹⁰ and the effect of the interpretation which the Applicant advocated the court to apply was dealt with in paragraph [33] of the judgment. It must be noted that the adverse consequences of such an interpretation, clearly against the objects of MPRDA, was not disputed by Applicant in the application. In terms of section 4(1) of MPRDA the court is enjoined to follow any reasonable interpretation which is consistent with the objects of MPRDA. Section 4(2) of MPRDA enjoins the court not to follow the common law when it is inconsistent with MPRDA, which therefore enjoins this court to follow a reasonable interpretation enjoined by section 4(1) of MPRDA, even when it is an outcomes based interpretation, in order not to be inconsistent with the objects of MPRDA. Section 4(1) of MPRDA only limits the interpretation followed by the court to be a reasonable interpretation.

⁹ See: Judgment, para. [23] to [24]

¹⁰ See: Judgment, page 17 par. [25]



[18] In my view it was thus incumbent on Applicant to illustrate that this court's interpretation was unreasonable. Put otherwise, Applicant must show that there is a sound rational basis to find that there is a reasonable prospect that another court will conclude that the interpretation which this court followed, with due regard to the facts of the matter and the objects of MPRDA, is so unreasonable that another court will interfere. It must be stressed that there is no complete list of activities in MPRDA classified as "incidental" activities to mining, neither is there any specific list of activities which are classified to constitute a "mine" or "mining". There is no provision in MPRDA which classify activity of sinking and/or operation of a mine shaft. Both parties advanced reasonable interpretations of the relevant sections of MPRDA to arrive at a conclusion that it is a "mine" or an activity "incidental" to mining. This court followed the interpretation which will not offend the objects of MPRDA.

[19] Applicant failed to show that the interpretation followed by this court was unreasonable within the context of the objects of MPRDA. As a matter of fact, Applicant did not attempt to deal with the effect of section 4 of MPRDA on the interpretation issue in the Notice Of Application For Leave To Appeal. On this ground alone, the application for leave to appeal should be dismissed.

SECOND GROUND: THE EFFECT OF THE EMP AND MWP:

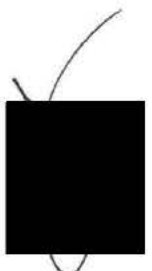
[20] Concisely stated, Applicant's contention is namely that neither the EMP nor the MWP can alter the limited real rights and duties contained in a registered mining right. It was submitted that the Minister's approvals of the amended EMP and MWP did not extent, or purported to extent, the content of DCM's mining right.



- [21] This ground for appeal, in my view, is over simplistic and ignores the fact that a mining right is granted with due regard to an approved EMP and MWP. As set out in the judgment the grant of a mining right as well as the exercise of a mining right is subject to various conditions, including an environmental authorisation. The holder of a mining right is also enjoined to exercise that right in accordance with the MWP as Section 25(2)(c) of MPRDA mandates the holder of a mining right to following the MWP.¹¹ The DCM mining right thus placed a statutory obligation on DCM to follow the MWP, which provides for the impugned shaft to be constructed on a designated portion of land.
- [22] Where the Minister grants a mining right, to be exercised in terms of an approved MWP, and where Section 25(2) of MPRDA enjoins the holder of a mining right to actively conduct mining in accordance with the MWP, any such mining activity duly conducted in terms of the MWP cannot be held to be unlawful. Applicant's contention that the fact that the Minister granted the mining right subject to an approved MWP is irrelevant, can thus not be upheld. In my view there is no sound rational basis advanced by the Applicant that another court will conclude that the exercise of a mining right in terms of an approved MWP, thereby in compliance with section 25(2) of MPRDA, can be held to be unlawful.
- [23] In my view, there is therefore also no merit in this ground for appeal.

THIRD GROUND: THE APPLICATION IS NOT A DISGUISED REVIEW:

¹¹ See: judgment, par. [26] and [37] to [43]



- [24] Section 96 of MPRDA prevents access to the court for review of an administrative decision contemplated in terms of the Act unless the remedies in terms of Section 96(1) was exhausted.¹²
- [25] In my view there is no sound rational basis to conclude that another court will find that the effect of the relief as claimed by the Applicant is not essentially an attempt to pursue an appeal against the Minister's Section 11 approval for the transfer of DCM mining right to Cheetah or a review of any of the previous decisions in terms whereof the amended EMP and/or MWP was approved because any finding that the sinking of the TMT shaft is unlawful clearly implies that the approval of the Minister for the amended EMP, MWP or the conversion of the DMC mining right as well as the Section 11 approval to transfer the mining right was unlawful as it enables a contravention of Sections 5A and 25(2)(c) of MPRDA. Applicant should thus have exercised its rights of appeal in terms of section 96 of MPRDA against the decision of the Minister when consent was granted to transfer the mining right to First Respondent. It is common cause that such an appeal was lodged by Applicant prior to the institution of the application and then abandoned when this issue was raised in the answering affidavit.
- [26] This very principle was already dealt with by another court¹³.
- [27] Where there is a statutory provision which limits this court's jurisdiction to entertain any dispute, the court is enjoined to raise such an issue and is not constrained by the pleading of the parties.¹⁴

¹² See: *Judgment, par. [27]*

¹³ See: *Shanduka Resources (Pty) Ltd v Western Cape Nickle Mining (Pty) Ltd 2017 JDR 0285 (WCC) on para. [45] to [55]*

¹⁴ See: *Shanduka Resources (Pty) Ltd v Western Cape Nickle Mining (Pty) Ltd, 2017 JDR 0285 (JCC) at par. [54]*
Cusa v Tao Ying Metal Industries & Others 2009 (2) SA 204 (CC) at par. [68]

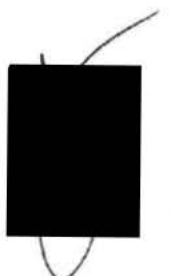
[28] It was submitted that Applicant was prejudiced by not being afforded the opportunity to deal with this issue during the hearing of the matter. This argument of Applicant is self-serving, because the facts illustrate that there was an appeal lodged by Applicant against the Minister's section 11 consent decision which the Applicant then withdrew when this issue was raised in the answering affidavit. Applicant provided no explanation for this conduct in the replying affidavit. Most importantly, these facts illustrate that the Applicant was aware of its obligations under section 96 of MPRDA, and appreciated that the correct remedy was an internal appeal under section 96 of MPRDA. In my view there was an obligation on Applicant to explain this strange modus operandi. This ground of appeal can therefore also not be upheld and this issue, alone, is dispositive of the application.

FOURTH GROUND: COMPELLING REASONS:

[29] In my view there is no merit in the Applicant's submission that there are compelling reasons why leave to appeal should be granted, for the following reasons:

[29.1] The interpretation issue as it arose in this application is fact specific, with due regard to the provisions of Section 4 of MPRDA, and was based on facts which are mostly common cause in the application. In my view there is no specific contentious legal interpretation which warrants a court of appeal to be seized with the matter;

[29.2] The issues which arose in this application are, contrary to the submission made by Applicant, not issues which concerns the general public. The issues may affect the parties to the litigation and the local communities where the mining operations are conducted but clearly not the broader public;



[29.3] The effect of the judgment and order on the Applicant, insofar as the economic implications thereof are concerned, are not compelling reasons to grant leave to appeal. Should this be held to be the case, any party who is adversely affected in an economic sense will automatically be entitled to leave to appeal.

CONCLUSION:

[30] In the premises, Applicant failed to advance any sound rational basis to conclude that another court will uphold the relief as claimed in the application's notice of motion.

[31] I therefore make the following order:

1. The application for leave to appeal is dismissed;
2. Applicant is ordered to pay the costs of the application including costs of two counsel, to be taxed on Scale C.

**P A VAN NIEKERK
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA**

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INSTRUCTED BY:

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FOR SECOND TO FOURTH RESPONDENTS:

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