



- (1) Reportable: Yes
(2) Of interest to other Judges: Yes
(3) Revised

Signature

Date

THE LABOUR APPEAL COURT OF SOUTH AFRICA, JOHANNESBURG

Case no: JA116/2024 & JA117/2024

In the matter between:

UASA

First Appellant

NATIONAL UNION OF MINEWORKERS (NUM)

Second Appellant

and

ANGLO AMERICAN PLATINUM LIMITED

First Respondent

RUSTENBURG PLATINUM MINES LIMITED (RPM)

Second Respondent

THE MINISTER OF MINERAL RESOURCES & ENERGY

Third Respondent

THE CHIEF INSPECTOR OF MINES

Fourth Respondent

(NORTH-WEST RUSTENBURG) REGION

DEPARTMENT OF EMPLOYMENT AND LABOUR

Fifth Respondent

DEPARTMENT OF MINEWORKERS

Eighth Respondent

(Now Second Appellant)

CONSTRUCTION UNION

Ninth Respondent

Heard: 2 September 2025

Delivered: 17 February 2026

Coram: MOLAHEHI, JP, BASSON, AJA and MAHALELO, AJA

JUDGMENT

BASSON, AJA

Introduction

- [1] This appeal concerns the statutory regime governing occupational health and safety at certain surface-processing operations (the retained operations), conducted by the second respondent, Rustenburg Platinum Mines Limited (RPM), within the first respondent's group, Anglo American Platinum Limited (AAP).
- [2] The central question in this appeal is whether the retained operations are regulated by the Mine Health and Safety Act¹ (MHSA) or by the Occupational Health and Safety Act² (OHSA). On this issue, the battle lines are sharply drawn. The appellants contend that the MHSA continues to govern the retained operations, while the respondents maintain, based on statutory interpretation and the present factual position, that the OHSA applies.
- [3] The determination of that question depends on two issues. The first concerns the proper interpretation of these two Acts, and in particular whether the retained operations fall within the statutory definition of a “*mine*” or constitute “*mining*” for purposes of the MHSA. The second concerns the application of that interpretation to the facts relating to the retained operations.
- [4] The respondents do not dispute that the MHSA continues to apply to their mining operations and to their mining areas, where operations related to or incidental to their mining activities are performed. This includes operations such as concentrator plants and tailing dams that are related to or incidental to their mining operations. The dispute centres on whether the MHSA continues to apply to those process operations (retainer operations) that

¹ Act 29 of 1996.

² Act 85 of 1993.

operate separately from their mining operations. The respondents submit that the application of the OHSA at workplaces that are not related or incidental to their mining activities is not an attempt to avoid the application of the MHSA.

- [5] For purposes of this judgment, it is accepted that health and safety in the workplace, and especially in mines given their inherently hazardous nature, is of the utmost importance.

Labour Court

- [6] UASA (a recognised and registered trade union), approached the Labour Court for a declarator that the MHSA and its Regulations apply to RPM's Waterval Smelter, Anglo Converter Plant (ACP), Precious Metals Refinery (PMR), Base Metals Refinery (RBMR) and Mortimer Smelter (collectively "the retained operations"), and that the OHSA and its Regulations do not. The National Union of Mineworkers (NUM) supported this application (collectively referred to as "the appellants").
- [7] On 10 May 2024, the Labour Court dismissed the application with costs. It declared that the MHSA and its Regulations do not apply to the retained operations and that the OHSA governs those operations. With the leave of the Labour Court, both appellants appeal against that order.

Factual background

- [8] The historical facts leading up to this dispute are relevant but only to the extent that they provide context for the present legal and factual position.
- [9] AAP is a major participant in South Africa's platinum mining industry and, through its subsidiary RPM, historically operated a vertically integrated business comprising underground mining operations and downstream surface processing facilities, including smelters and refineries. Under this mining-right-based structure, both the mines and the associated processing facilities historically fell within the regulatory framework of the MHSA, as the processing facilities were located within RPM's mining areas over which it held mining rights.

- [10] Between 2016 and 2018, RPM disposed of its Rustenburg Section mining operations and associated rights to Sibanye-Stillwater, and its Union Section mining operations and rights in Northam to an investment company. Ownership and control of the underground mining operations and the relevant mining rights were transferred to the purchasers. RPM retained ownership of certain surface rights on which surface-based processing facilities were situated, while the surface rights associated with the disposed mining operations were transferred to third parties.
- [11] Following these transactions, RPM's remaining mining operations comprise the Amandelbult Complex (North-West Province), the Mogalakwena Mine (Limpopo), and the Mototolo Operations (Limpopo). It is common cause that the MHSA continues to apply to those mining operations (over which it holds a mining right) and to activities performed in mining areas that are related or incidental to mining, including concentrator plants and tailings dams.
- [12] The sales resulted in a separation between the disposed underground mining operations and the surface-based processing operations retained by RPM. They include the retained operations RPM's Polokwane Smelter, the Mortimer Smelter, the Waterval Smelter, Anglo Converter Plant ("ACP"), the Precious Metals Refinery ("PMR"), and the Rustenburg Base Metal Refinery ("RBMR"). Prior to the transactions, these facilities serviced the disposed mines. After the sale, they remained under RPM's ownership and control and constitute the retaining operations giving rise to the present dispute.
- [13] This application only concerns Mortimer, Waterval (including ACP), PMR and RBMR (collectively referred to as the retained operations).
- [14] RPM retained ownership of the surface rights in respect of the Rustenburg-based processing operations and holds a lease over the land on which the Mortimer Smelter is situated. No mining rights or permits under the Mineral and Petroleum Resources Development Act³ (MPRDA) attach to these properties, nor are any required for the conduct of the retained operations.

³ Act 28 of 2002.

- [15] According to the respondents, after the sale, the retained processing operations were physically, operationally, and managerially de-linked from the disposed underground mining operations. They do not adjoin or integrate with the mining areas of Sibanye-Stillwater or any other third-party mines. RPM operates them as stand-alone industrial plants within a ring-fenced business segment.
- [16] It is common cause that the OHSA has, for more than two decades, applied to the Polokwane Smelter, which has continuously operated separately from RPM's mining operations. Curiously, the appellants do not dispute the application of OHSA to the Polokwane Smelter, notwithstanding their contention that it is in no material respect different from the other smelters.
- [17] During this restructuring process, RPM applied to the Department of Mineral Resources and Energy (DMRE) to amend the environmental authorisations associated with the retained operations. In 2017, the DMRE approved the relevant amendments and expressly recorded that it would no longer be the competent authority for monitoring and compliance, on the basis that the Environmental Management Programme Reports were no longer related to mining operations. Regulatory oversight was accordingly transferred to the Department of Rural, Environment and Agriculture Development.
- [18] Against this factual background, the respondents reassessed the applicable health and safety regulatory framework. Having regard to the revised organisational structure and the DMRE's environmental position, they concluded that the OHSA was the applicable regime for the retained operations. They contend that the changed factual position necessitated and legally obligated them to migrate from the MHSA to the OHSA.
- [19] The respondents thereafter engaged in consultations with the DMRE, the Department of Employment and Labour (DEL), and the recognised trade unions (UASA, NUM, and AMCU). Following these engagements, the respondents implemented what they describe as a "migration" from the MHSA to the OHSA for the retained operations.

- [20] That process culminated in a letter from the DEL dated 14 November 2022, confirming that it would assume jurisdiction as the competent regulator and, effective 1 November 2022, enforce the OHSA in relation to the retained operations. The letter recorded the DMRE's position that the retained operations no longer constituted a "*mine*" for purposes of the MHSA. Since that date, the DEL has exercised its inspection and enforcement functions at the retained operations.
- [21] In proceedings before the Labour Court, the DMRE initially filed a notice to abide. The Chief Inspector of Mines (CIOM) subsequently filed an explanatory affidavit aligning himself with the appellants' position that the MHSA remained applicable. The respondents were thus confronted with two regulatory authorities advancing inconsistent jurisdictional positions.
- [22] Throughout this period, the trade unions opposed migration. They contended, *inter alia*, that their members enjoy stronger protection under the MHSA than under the OHSA; that DEL inspectors lack the mining-specific expertise of the DMRE inspectors; that the MHSA contains more stringent health and safety provisions; and that any migration not effected in accordance with the MHSA is unlawful. They also contended that RPM could have invoked section 79 of the MHSA and apply for exemption.

The retaining operations

- [23] The pyrometallurgical operations conducted by the respondents include smelting and converting. The respondents operate three smelters: Waterval, Mortimer, and Polokwane Smelters. RPM refines "concentrate" at the retained operations.
- [24] To place the retained operations in proper context, it is necessary to briefly explain the nature of the metal concentrate and the processes to which it is subjected.
- [25] The retained operations receive metal concentrate from various sources, including RPM's own geographically distant mining operations, some located up to approximately 450 km away, and third-party-owned mines, including

those operated by Sibanye. At the retained operations, the concentrate undergoes downstream industrial processes, namely smelting and refining, to produce final platinum group metals (PGMs).

- [26] Metal concentrate is the product of an initial industrial beneficiation process applied to raw ore. Metal concentrate does not occur naturally on or in the earth. Once raw ore is extracted, it is crushed, milled, and subjected to flotation and related processes at concentrator plants located at the mine site. Through this multi-stage process, waste material is removed and the valuable metal content is concentrated. The output is metal concentrate, produced either as a dry concentrate or, in some instances, as a slurry received from third parties. Concentrate exists only as a result of this industrial process and is not a form in which a mineral occurs naturally in the earth.
- [27] RPM estimates that in 2022, approximately 24,4 million tonnes of raw ore were mined at its mining operations (at which MHSA was applied), and about 785,000 tonnes of metal concentrate were produced. The concentrate is a densified, partially processed product that has already undergone significant beneficiation (at the mine) before reaching the retained operations.
- [28] The concentrate is transported from the concentrator plants to the respondents' retained operations, where it undergoes further sequential industrial processing. At Waterval and Mortimer, the concentrate is smelted to produce furnace matte, which is then upgraded at the Anglo Converter Process ("ACP") to form converter matte. The converter matte is crushed and transported to the Rustenburg Base Metal Refinery ("RBMR") for further processing, including the separation of precious metals from base metals through milling and magnetic separation. The resulting PGM-rich concentrate is then transferred to the Precious Metals Refinery ("PMR"), where it is refined into high-purity platinum group metals (PGMs) and semi-refined gold. RPM estimates that (in 2022), approximately 68 tonnes of PGM resulted from the various industrial processes. Compared to the 24.4 million tonnes of raw ore, the resultant 68 tonnes of PGM represents a fracture of the initial mined iron ore.

Waterval (including ACP), Mortimer, RBMR and PMR

- [29] RPM controls Waterval (including the ACP) and Mortimer. Mining activities do occur in the vicinity of Waterval. Those activities, however, are conducted by third parties under their mineral rights and are distinct from the operations undertaken at Waterval. The activities performed at Waterval are accordingly not incidental to, nor associated with, the mining operations of those third parties. At Waterval, more than half of the concentrate received is sourced from external third parties. The balance is sourced from RPM's mining operations and transported from geographically separate mines, including the Amandelbult Section (approximately 110 km away), Mogalakwena (approximately 350 km away), and Mototolo (approximately 450 km away).
- [30] At Mortimer, a similar mix applies, comprising concentrate purchased from external parties and concentrate sourced from RPM's geographically separate mining operations. The Polokwane Smelter likewise receives concentrate from third parties and from RPM's geographically separate mines.
- [31] Although mining activities also take place in the vicinity of PBMR and PMR, those activities are also operated by third parties in accordance with the mineral rights they hold. PBMR performs bulk separation of precious metals from base metals using milling and magnetic separation at the magnetic concentrator plants.
- [32] PMR is the final stage in the processing chain for PGMs based in Rustenburg. PMR receives the final concentrate from the magnetic concentrator plant at PBMR. The final concentrate is dissolved using hydrochloric acid and chlorine gas. PGMs are then separated to yield platinum, palladium, iridium, rhodium, ruthenium, and gold.
- [33] The factual position, as set out here, is inconsistent with the appellants' pleaded case. The appellants asserted that RPM purchases raw ore from Sibanye and other mines and processes and smelts it at the retained operations. That assertion is incorrect. RPM does not purchase or process raw ore at the retained operations. It receives metal concentrate, a manufactured product that has already undergone a multi-stage concentrator

process at mine level. The retained operations perform only the downstream industrial smelting and refining stages. Whether this concentrate is a “*mineral*” as defined in the MHSA will be addressed below.

- [34] Moreover, all the mining rights for the areas beneath and adjacent to the retaining operations have been sold to third parties with the consent of the third respondent (the Minister of Mineral Resources and Energy).

Polokwane smelter

- [35] Curiously, as already noted, the appellants do not take issue with the respondents’ application of the OHSA to the Polokwane Smelter despite the respondents’ explanation that, although mining activities occur in the vicinity, they are likewise performed by third parties and are entirely separate from the operations conducted at those facilities.

The legal framework

- [36] Whether the OHSA or the MHSA applies depends on whether the retaining operations fall within the MHSA’s statutory definition of a mine.

The OHSA exclusion

- [37] Although the OHSA is the principal statute governing workplace health and safety, section 103 of the OHSA provides for a limited exclusion from its application. This section provides that –

“This Act shall not apply in respect of –

- (a) a mine, a mining area or any works as defined in the Minerals Act, 1991 (Act 50 of 1991), except insofar as that Act provides otherwise.”

- [38] Since the Minerals Act⁴ has been repealed and, for health and safety purposes, replaced by the MHSA, any reference to the Minerals Act must now be construed as a reference to the MHSA. Section 103 of the MHSA underscores this by providing that the OHSA does not apply to any matter to which a provision of the MHSA applies.

⁴ Act 50 of 1991.

- [39] The central issue in this matter is therefore whether the retained operations fall within the statutory definitions of “*a mine*,” “*a mining area*,” or “*any works*.” Determining this requires reference to the definitions of those terms in other statutes, but only to the extent that the MHSA expressly cross-references them. If, on the proper interpretation of those provisions, the retained operations constitute a mine, a mining area, or works as contemplated, the MHSA applies, and the OHSA has no application.

Definition of a “*mine*”

- [40] Although the MHSA contains no express scope clause, its application is informed by its objects in section 1 and its preamble, which indicate that the Act applies to mines. This appeal turns on the question whether the retaining operations fall within the definition of a “*mine*” or “*mining*” or “*works*” as defined in terms of the MHSA and is decisive of whether the OHSA or the MHSA governs the retained operations.

- [41] Section 102 of MHSA provides the following definition of a “*mine*”:

“‘mine’ means, when-

(a) used as a noun-

- (i) any borehole, or excavation, in any tailings or in the earth, including the portion of the earth that is under the sea or other water, made for the purpose of searching for or winning a *mineral*, whether it is being worked or not; or
- (ii) any other place where a *mineral* deposit is being exploited, including the *mining area* and all buildings, structures, *machinery*, mine dumps, access roads or objects situated on or in that area that are used or intended to be used in connection with searching, winning, exploiting or *processing* of a *mineral*, or for *health* and *safety* purposes. But, if two or more excavations, boreholes or places are being worked in conjunction with one another, they are deemed to comprise one mine, unless the *Chief Inspector* of

Mines notifies their *employer* in writing that those excavations, boreholes or places comprise two or more mines; or

(iii) a *works*; and

(b) used as a verb, the making of any excavation or borehole referred to in paragraph (a) (i), or the exploitation of any *mineral* deposit in any other manner, for the purpose of winning a *mineral*, including *prospecting* in connection with the winning of a *mineral*;

[42] Paragraphs 102(a)(i) and 102(a)(ii) contemplate different factual scenarios. Paragraph 102(a)(i) concerns a physical excavation or “*hole in the ground*”, whereas paragraph 102(a)(ii), by contrast, adopts a broader definition of what constitutes a “*mine*,” extending beyond the excavation itself to encompass any other place where a mineral deposit is exploited or processed.

[43] Paragraph 102(a)(i) is clearly inapplicable, and the appellants do not suggest otherwise, because it is confined to physical excavations, such as boreholes or other “*holes in the ground*,” which do not describe the retained operations in the present matter.

[44] The inquiry, therefore, turns to paragraph 102(a)(ii), which is framed more broadly. Two issues arise in the context of this paragraph: (i) the first issue is whether the product (concentrate) processed at the retaining operations is a “*mineral*” within the definition of a “*mineral*”? As will be shown hereunder, a mineral is defined as a substance that “*occurs naturally in or on the earth*.” (ii) Secondly, as pointed out, this section is framed more broadly to include not only the mining area itself but also “*any other place where a mineral deposit is being exploited*” or “*processed*”. The issue is whether the retaining operations constitute a place where a “*mineral deposit*” is being exploited or processed and whether the retaining operations are conducted “*on or in that area*” or on an area used in connection with the exploitation or processing of a mineral.

The definition of a “*mineral*”

[45] The issue to be determined under this heading is whether the concentrate received and processed at the retained operations constitutes a “*mineral*” as

defined in section 102 of the MHSA. That enquiry turns on a proper interpretation of the statutory definition, informed by established authority on the distinction between minerals occurring naturally in or on the earth and substances produced through extraction and subsequent processing. This section defines a mineral as:

“mineral' means any substance, excluding water, but including sand, stone, rock, gravel and clay, as well as soil, other than top soil-

- (a) whether that substance is in solid, liquid or gaseous form;
- (b) that occurs naturally in or on the earth, in or under water or in tailings; and
- (c) that has been formed by or subjected to a geological process;”

[46] The parties are divided on whether the concentrate constitutes a “*mineral*”. The respondents contend that it does not, submitting that it is the end product of beneficiation processes and significantly different or distinct from the raw ore extracted from the ground in its natural state.

[47] The appellants disagree and submit that it remains within the continuum of a mineral and represents no more than a stage in processing. They submit that treating concentrate as something wholly distinct from a “*mineral*” is artificial and undermines the protective purpose of the MHSA. The appellants further argue that concentrate is merely an “*interim stage*” in the processing of a mineral.

[48] The courts have had occasion to consider the meaning of a “*mineral*” and the scope of the statutory definition. In *De Beers Consolidated Mines Ltd v Ataqua Mining (Pty) Ltd and Others*⁵ the court considered the interpretation of the definition of “*mineral*” as it appears in the Mineral and Petroleum Resources Development⁶ (MPRDA), and in particular, whether diamonds contained in tailings dumps fall within that definition. The court held that, on a proper construction of the statutory language, a mineral must occur naturally

⁵ (3215/06) [2007] ZAFSHC 74 (*De Beers Consolidated*).

⁶ Act 28 of 2002.

in or on the earth and must owe its existence to geological processes. Material that has been severed from the earth and subjected to human processing no longer satisfies that requirement and constitutes a new object. The court further held that tailings dumps do not occur naturally but are created by the artificial placement of processed material for subsequent reworking. For those reasons, the diamonds contained in the tailings dumps were not regarded as “minerals” for the purposes of the MPRDA.⁷

- [49] In three matters decided in the context of the Income Tax Act (ITA),⁸ the courts accepted that where raw mineral-bearing material, such as iron ore, is subjected to processes of manufacturing or treatment which transform the ore into an end product, such as phosphates or mineral-bearing concentrate, the resulting processed or manufactured product falls within the ambit of “*trading stock*” for purposes of the ITA, rather than under “*mining*” or “*mining operations*” as defined in the ITA. In arriving at this conclusion, the courts held that the beneficiation or manufacturing processes to which the mineral-bearing ore was subjected produced an end product that is materially and significantly different from the raw ore from which it was derived.
- [50] The conclusions reached in these cases, albeit in a different legal context, support the proposition that once ore has been extracted from the earth and processed at a concentrator plant to produce concentrate, the resulting substance no longer “occurs naturally in or on the earth” nor constitutes a “*mineral deposit*” being exploited. It therefore falls outside the definition of a “mineral” in the MHSA.
- [51] In the first matter, *Commissioner for South African Revenue Services v Foskor*,⁹ the question before the Supreme Court of Appeal was whether extracted, mineral-bearing ore belonging to Foskor (a mining company) constituted “*trading stock*” for purposes of the ITA. Foskor would extract

⁷ *De Beers Consolidated* at para 68. In paragraph 68(xi) the court held: “*The question in this case is not whether the diamonds occurred in the ore. In order for diamonds in the tailings dumps to be considered “minerals” for purposes of the MPRDA (and therefore vesting under custodianship of the state) they must be found to be occurring naturally in the earth. The fact that they still occur naturally in the ore is irrelevant for purposes of the definition of “mineral” in the MPRDA. The diamonds in the ore were severed from the mother rock. Then the ore became a new object.*”

⁹ [2010] 3 All SA 594 (SCA).

phosphates and other minerals from ore dumped by Phalaborwa Mining Company Limited using various processes. These processes involve crushing and milling the mineral-bearing ore to extract the mineral particles from the ore, whereafter the pulp containing the minerals was pumped to a floatation plant where the minerals of economic importance were separated by means of three metallurgical processes. The products from these processes are various concentrates, including phosphate concentrate which is dried and stockpiled. The phosphate minerals are thereafter sold to fertilizer produces worldwide. The Court rejected Foskor's argument that, because phosphate minerals occur naturally in the earth and is contained in what was sold to fertiliser produces worldwide, it is not a manufactured product. The Court said the following about this argument:

"[45] It ignores not only the complexity of the processes to which the ore was subjected but the fact that in the result several minerals are separated and sold independently. It also ignores the fact that before the processes referred to the ore is not saleable but that what is produced thereafter has a worldwide market. Put simply, the end products that emerge after the processes referred to above are significantly different from the raw ore."

- [52] In the second matter, *ABC Trading (Pty) Ltd v Commissioner for the South African Revenue Service*,¹⁰ Sutherland J likewise held that the converting of a mineral into a substance that does not exist in a natural state cannot be 'mining operations' as defined:

"Accordingly, in the chain of activity which constitutes 'mining operations' it seems plain that the mere activity of extraction is a necessary *but not sufficient* attribute for the taxpayer to fall into the class of persons involved in 'mining operations' and at the other end of the process spectrum, once the mineral is 'isolated' any further activity to convert the mineral into a substance that does not exist in a natural state, cannot be 'mining operations' as defined."

¹⁰ (13686) [2017] ZATC 16 (30 March 2017).

[53] In the third matter, *Commissioner, South African Revenue Service v Marula Platinum Mines Ltd*,¹¹ a case in point, the Supreme Court of Appeal considered whether a similar type of concentration to that in the present matter, constituted “*trading stock*” as defined in the ITA or whether these processes fell under “*mining operations*” and “*mining*”. The Court held that the conversion of ore into mineral-bearing concentrate through crushing, milling, and flotation is a process of “*manufacture*” and not “*mining*”. The Court noted that the concentrate so produced is significantly different from the raw ore and saleable as a commercial commodity. The following remarks by the Court are instructive for present purposes:

“[20] As recorded earlier, the tax court held that the concentrate qualified to be characterised as trading stock. This finding is no doubt correct, as the evidence shows that the concentrate was derived by a process of manufacturing, as envisaged in the definition of ‘trading stock’ in s 1 of the ITA. This involved the conversion of the ore into mineral-bearing concentrate by crushing and milling it to expose the minerals and then subjecting it to a froth floatation process...

[21] In *Richards Bay* at 312I – 313A, the process employed was described as follows:

‘The process, in broad, consists of creating in the dunes self-contained ponds of water into which dune sand is made to slump by undermining the face of the dunes; of removing the resultant slurry by suction with the aid of a floating dredger; of separating the heavy mineral concentrate from the dune sand in a floating concentrator plant by means of a gravity separation process; of separating that heavy mineral concentrate in a mineral separation plant’

[54] The Court further noted that “*one cannot ignore the processes to which the mineral-bearing ore was subjected, with the result that an end product that was significantly different from the raw ore was derived*”. The Court referred

¹¹ 2017 (2) SA 398 (SCA) at para 20. (*Marula Mines*).

with approval to the following quotation in *Secretary for Inland Revenue v Safranmark (Pty) Ltd*:¹²

'Invariably, in cases in which plant or machinery has been found to have been used in a process of manufacture, the result of such process has been the creation of a substance or an article which, although it might have contained all the various components from which it evolved in the process of manufacture, became upon completion an essentially different entity in its own right.'

What the evidence shows is that the concentrate was not only significantly different from the raw ore, but upon completion constituted an essentially different entity in its own right."¹³

- [55] The following points may be distilled from an analysis of the statutory definition of a "*mineral*" and the authorities. Firstly, the concept of a "*mineral*" is confined to substances that occur naturally in or on the earth and that owe their existence to geological processes. Secondly, once ore has been severed from the earth and subjected to manufacturing processing, it no longer occurs naturally, but becomes a new object, distinct from the mineral-bearing material from which it was derived. Thirdly, materials produced through crushing, milling, flotation, smelting, or refining constitute products of *manufacture* rather than mining, notwithstanding that they still retain certain attributes of the mineral-bearing material from which they were derived. It therefore follows that: (i) high-purity PGMs produced from concentrate through smelting and refining are manufactured products rather than mined minerals; and (ii) RPM's refining and processing activities constitute a separate manufacturing business distinct from mining. Fourthly, artificially created deposits, including concentrates, stockpiles, and tailings dumps, do not themselves occur naturally and therefore fall outside the statutory meaning of a mineral. Finally, the fact that such products may represent an

¹² 1982 (1) SA 113 (A) at 122H.

¹³ My emphasis.

intermediate stage in a broader metallurgical process (as contended by the appellants) does not alter their substantive character as manufactured substances rather than minerals.

- [56] On this interpretation, taking into account the factual context, the concentrate received from various sources does not constitute a “*mineral*” within the meaning of the MHSA. The Labor Court was therefore correct. It follows that the appellants’ attempt to bring the retaining operations within the statutory definition of a “*mine*” cannot succeed.

Description of a mining area

- [57] A “*mining area*” is defined in section 102 of the MHSA with reference to the MPRDA.

“‘mining area’ means a prospecting area, mining area, retention area, exploration area and production area as defined in section 1 read with section 65 (2) (b) of the Petroleum and Mineral Resources Development Act, 2002 (Act 28 of 2002).”

- [58] Section 1 of the MPRDA defines a provides that “*mining area*”:

- “(a) in relation to a mining right or a mining permit, means the area on which the extraction of any mineral has been authorised and for which that right or permit is granted; and
- (b) in relation to any environmental, health, social and labour matter and any residual, latent or other impact thereto, includes –
 - (i) any land or surface adjacent or non-adjacent to the area as contemplated in paragraph (a) but upon which related or incidental operations are being undertaken;
 - (ii) any surface of land on which such road, railway line, power line, pipe line, cableway or conveyor belt is located, under the control of the holder of such a mining right or a mining permit and which such holder is entitled to use in connection with the operations performed or to be performed under such right or permit; and
 - (iii) all buildings, structures, machinery, residue stockpiles, or objects

situated on or in the area as contemplated in subparagraphs (i) and (ii)."

- [59] Paragraph (a) of the MPRDA defines what may be referred to as the core mining area and the area in respect of which the mining right or permit has been granted and within which extraction is authorized. It is common cause that the retained operations are not located in any core mining area and that RPM holds no mining right or permit over the land concerned.
- [60] Paragraph (b) extends the concept of "*mining area*" for certain specified purposes to adjacent and non-adjacent land where "*related or incidental operations*" are conducted, along with linked infrastructure and associated structures. A mining area, therefore, encompasses areas that are not necessarily physically connected to the mining area, provided that the operations conducted there are "*related or incidental operations*" to the mining right area.
- [61] The appellants contend that, notwithstanding the absence of a mining right or permit in respect of the retained operations, these operations fall within the extended concept of "*mining area*" in paragraph (b)(i) because they engage in the "*processing of a mineral*" and are thus closely connected, historically and practically, with the mines in the vicinity. They emphasise that the retained operations were historically regulated under the MHSA; that the nature of the activities conducted there has not materially changed, and that the statutory definitions of "*processing*" in both the MHSA and the MPRDA include smelting, refining, and concentrating.
- [62] On their approach, the enquiry turns on what is being done at the site, rather than on who holds the mining rights. The appellants further submit that the requirement, advanced in *Dale*¹⁴ on which the respondents largely rely, namely that the extended mining area must be operated by the holder of the mining rights, has no express support in the statutory text and amounts to impermissible legislation.

¹⁴ Dale South African Mineral and Petroleum Law at para 4.4.3.

- [63] The respondents dispute this contention. Relying in part on the commentary in *Dale*, they submit that the extended concept of a mine presupposes that related or incidental operations are undertaken pursuant to, or in connection with, a mining right. Following the sale of RPM's mining rights, the retained operations are said to be functionally and operationally separate from mining activities, constituting ring-fenced industrial operations that operate independently of third-party mines. On this approach, the mere proximity of the retained operations to mining activities is not determinative. The respondents accordingly contend that the industrial processing undertaken after mining is complete is not "*related or incidental*" to the extraction of minerals in a mining area.
- [64] In further support of their argument, the respondents point out that Sibanye and other third-party mines are responsible for the extraction of raw ore and for its initial concentration. Those activities are regulated under mining rights or permits issued to them in terms of the MPRDA. The resulting concentrate is thereafter sold to RPM. RPM also independently procures concentrate from third parties, often located in remote geographic areas. Once received at the retained operations, the concentrate is subjected to the further industrial process referred to above, for which no mining right or permit has been issued. That whole process is aimed at producing PGMs that meet market requirements. RPM has no involvement in extracting the raw ore, and its processing activities occur only after mining and initial beneficiation are complete.
- [65] In this factual context, the respondents therefore contend that the retained operations are neither related to nor incidental to the extraction of minerals authorised under any mining right. The mining operations and the retained operations are separate and distinct and cannot be characterised as part of a single integrated mining activity.
- [66] In the present matter, as already pointed out, the extraction function and the associated mining rights have been transferred entirely to third parties. The retained operations are not conducted in connection with those rights but constitute standalone industrial activities. They therefore do not fall within the

extended concept of a “*mining area*” as contemplated by the MPRDA and, by reference, the MHSA. This distinction between the extraction activities and the independent downstream manufacturing processes has also been recognised in *Bert’s Bricks (Pty Ltd v another v Inspector of Mines, North West Region and others*¹⁵, where the court was confronted with a similar argument that brick-making operations fell within an extended “*mining area*”. The court rejected that contention, stating:

“[7] The second applicant’s brick making operation is clearly not a borehole or excavation made for the purpose of searching for or winning clay; a place where a mineral deposit is being exploited or a ‘works’ (as defined in the MHSA). Even if the extended meaning of ‘mining area’ in the MPSDA is applied, the brick yard is not an area in respect of which a mining right or permit has been granted or a surface of land on which operations related or incidental to the extraction of clay are being undertaken. I therefore cannot disagree with the reasoning and conclusion of the court in the Terra Bricks judgment.

[8] The area where the second applicant conducts its brick making operations is therefore not a mine in terms of the MHSA and the applicants are entitled to the declarator which they seek.”

[67] Having regard to the authorities interpreting the extended concept of a “*mining area*”, and to the plain wording of the statutory definition, I am satisfied that the concept of a “*mining area*” as defined in the MPRDA is necessarily and inextricably linked to a mining right. Operations fall within that concept only if they are related or incidental to the extraction authorised under a mining right. In the present matter, the extraction function and the associated mining rights have been transferred entirely to third parties. The retained operations are not conducted in connection with those rights but constitute standalone industrial activities. They therefore do not fall within the extended concept of a “*mining area*” as contemplated by the MPRDA and, by reference, the MHSA.

A place where a mineral is being exploited

¹⁵ (15347/2011) [2012] ZAGPPHC 11 at para 7 and 8.

- [68] A further requirement of the extended definition of a “mine” in section 102(1)(a)(ii) of the MHSA is that the relevant place is one where a mineral deposit is being exploited. The proper meaning of that phrase has been considered in the case law that is directly relevant to whether the retained operations fall within the statutory scheme.
- [69] In *Terra Bricks and another v Regional Manager, Limpopo Region, Department of Minerals and Energy and others*¹⁶ the Court held that the phrase “*exploitation of a mineral deposit*” refers, in that context, to the exploitation of minerals *in situ*, that is, where they occur naturally in the earth.¹⁷ That interpretation accords with the ordinary meaning of “*deposit*” and with the structure of the statutory definition, which links the extended notion of a “mine” to the mining area and its associated structures.
- [70] Applying that interpretation, the phrase “*place where a mineral deposit is being exploited*” denotes *in situ* mineral exploitation where minerals occur naturally, as contemplated in *Terra Bricks*. The retained operations do not involve such exploitation. They are therefore not places where a mineral deposit is being exploited within the meaning of the extended definition.

“Processing” within the MHSA definition of mine

- [71] In their argument, the appellants also emphasise the inclusion of “*processing of a mineral*” in s 102(a)(ii) of the MHSA (as it appears in the extended definition of a “mine”). “Processing” is defined in the MHSA as follows:

“‘processing’ means the recovering, extracting, concentrating, refining, calcining, classifying, crushing, milling, screening, washing, reduction, smelting or gasification of any *mineral*, and ‘process’ has a similar meaning;”

¹⁶ [2013] JOL 30635 (GNP) at page 12.

¹⁷ In *Terra Bricks* (ibid) the court held: “Secondly, a mine is also any other place where a mineral deposit is being exploited. Exploit is here used in the sense of “ontgin” as used in the Afrikaans version of the Act. Also important is the reference to exploitation of a “mineral deposit”. This qualification of the word “mineral” indicates that the exploitation or “ontginning” of minerals *in situ*, ie where they occur naturally, was intended. Significantly the reference to exploitation of a mineral deposit is repeated in the definition of a mine as a verb. Thirdly, the concept of “any other place where a mineral deposit is being exploited” is stated to include the mining area and/or buildings, structures, machinery, mine dumps, access roads or objects situated on such area and which are used or intended to be used in connection with such searching, winning or exploiting or for the processing of such mineral.”

- [72] The immediate difficulty confronting the appellants is that both section 102(a)(ii) and the definition of “*processing*” proceed on the premise that the material being processed is a “*mineral*” as defined.
- [73] The question whether the retained operations are engaged in “processing” thus arises only if certain threshold requirements are met: first, that the concentrate constitutes a “*mineral*”; second, that the retained operations are situated in a place where a mineral deposit is being exploited *in situ*; and third, that the operations conducted there are related or incidental to those performed on a mining right area. As has already been held in this judgment, none of these requirements is satisfied. The appellants’ failure to establish any one of them is dispositive. In the absence of all three, the reference to the “*processing of a mineral*” in section 102(a)(ii) cannot advance their case.
- [74] This approach is consistent with the authorities. In *Terra Bricks*,¹⁸ which concerned a materially similar definition of “*processing*”, the court held, in substance, that the manufacture of bricks after clay had been won and processed fell outside the scope of “*processing*” as contemplated in the mining legislation, and therefore outside the definition of mining. The court noted, by way of comparison, the decision in *Albertonse Stadsraad v Briti BK*.¹⁹ In the latter matter, the Supreme Court of Appeal considered the meaning of the word “*mine*”, used as a verb in the definition contained in the Minerals Act, again in the context of clay. The clay had already been excavated from a pit, and the issue was whether bringing it to the surface or preparing it for maturation constituted “*mining*”. The Court held that, once the mineral had already been won, further processing undertaken to render it ready for use fell outside the statutory concept of mining.
- [75] The same considerations arise in the present matter. Here, the raw ore is extracted by the mines and processed by them to produce concentrate. The retained operations are concerned only with the subsequent processing of that concentrate to render it suitable for use. That activity takes place after extraction and initial beneficiation have been completed.

¹⁸ *Terra Bricks* (id fn 15) at paras 14 – 15.

¹⁹ 2003 (5) SA 157 (SCA).

- [76] Once mining is complete and the extracted material has been transformed into concentrate, any subsequent smelting and refining carried out by a separate entity constitute manufacturing activities falling outside the ambit of the MHSA. The reference to the “*processing of a mineral*” in section 102(a)(ii) therefore affords no assistance to the appellants.

“Any other place where a mineral deposit is being exploited”

- [77] To qualify as a “*mine*” under section 102(a)(ii) of the MHSA, the relevant place must be one where a mineral deposit is being exploited. Both the ordinary meaning of the phrase and the applicable case law indicate that this refers to the exploitation of minerals *in situ*, that is, where they occur naturally. It does not extend to locations where minerals that have already been extracted and transformed are merely subjected to further treatment.
- [78] As already indicated, the retained operations do not involve excavation, drilling, blasting, or any other activity directed at the extraction or exploitation of minerals from the earth or from tailings where they naturally occur. Those activities are performed exclusively by the holders of mining rights at their respective mining areas. By contrast, the retained operations receive concentrate only after extraction and initial beneficiation have been completed.
- [79] Properly construed, the retained operations therefore cannot be described as a place where a mineral deposit is being exploited. They accordingly do not fall within the extended definition of a “*mine*” in section 102(a)(ii) of the MHSA.

“Works”

- [80] The final consideration, having dealt with the definitions of a “*mine*” and a “*mining area*”, is the definition of “*works*” in section 102(1)(a)(iii) of the MHSA:

“‘works’ means any place, excluding a *mine*, where any person carries out-

- (a) the transmitting and distributing to another consumer of any form of power from a *mine*, by the *employer* thereof, to the terminal point of

bulk supply or where the supply is not in bulk, to the power supply meter on any such other consumer's premises; or

- (b) training at any central rescue station; or
- (c) the making, repairing, re-opening or closing of any subterranean tunnel; or
- (d) any operations necessary or in connection with any of the operations listed in this paragraph."

[81] The retained operations fall outside that definition, a point not seriously disputed by the appellants.

Sections 79 and 80 of MHSA

[82] Sections 79²⁰ and 80²¹ of the MHSA provides, respectively, for an employer's application to the Minister for an exemption from provisions of the MHSA, and for ministerial declarations applying provisions of the OHSA or its regulations to a mine.

[83] Section 79 provides that an exemption may be granted to "*the employer of a mine*" from the provisions of the MHSA. It goes without saying that, where the undertaking in question is not a mine, that section is not engaged.

²⁰ "79 Exemption from all or part of this Act

(1) The employer of a mine may request an exemption from the Minister, and if satisfied that the employer has consulted appropriately with the affected employees or their representatives, the Minister may exempt the employer from any or all the provisions of this Act or from a notice or instruction issued under this Act. An exemption may be-

(a) general or particular;

(b) for any period; and

(c) on any conditions that provide the same overall protection which would result from the full application of this Act.

(2) When an exemption is granted under subsection (1), the Minister must issue a certificate of exemption to the employer, specifying the scope, period and conditions of the exemption.

(3) The Minister may amend or withdraw a certificate of exemption at any time.

(4) The employer must prominently and conspicuously display any exemption granted, or deemed to have been granted, under this section to the employees to read."

²¹ "80 Minister may apply other laws to mine

(1) After consulting the Council, the Minister, by notice in the Gazette, may declare that any provision of the Occupational Health and Safety Act, 1993 (Act 181 of 1993), or any regulation made under that Act, or the provisions of any other Act or regulations, must apply to a mine.

(2) A declaration in terms of subsection (1) may differentiate between mines, types of mines, parts of a mine, occupations and types of work."

- [84] The appellants argue that, even if there is some uncertainty as to the proper characterisation of the activities in question, the MHSA had been applied to the retained operations at all material times. They further submit that the only lawful means by which the applicable legislative regime could be altered was through the mechanisms provided for in sections 79 and/or 80 of the MHSA. Those provisions, they contend, reflect a legislative recognition of potential overlap between the MHSA and the OHSA and constitute the exclusive route for transition between the two health and safety regimes. On this basis, the appellants argue that the respondents' reliance on the OHSA, without invoking sections 79 or 80, was unlawful, amounted to impermissible self-help, and resulted in uncertainty and inconsistency in the application of health and safety legislation within the mining industry.
- [85] The respondents argued that the proper point of departure is not the historical application of the MHSA, but the current statutory definitions as applied to the facts as they presently exist. A statute, they contended, applies only where its jurisdictional facts are present. Where an operation no longer falls within the statutory definitions of a "*mine*", a "*mining area*", or "*works*", the MHSA ceases to apply by operation of law. In such circumstances, sections 79 and 80 of the MHSA are not engaged. Those provisions, so it was argued, presuppose the applicability of the MHSA and provide mechanisms either for exempting it from operation or for extending the OHSA into mining contexts. Where, as here, the jurisdictional facts necessary for the application of the MHSA are absent, there is nothing from which to exempt, and sections 79 and 80 find no application.
- [86] This submission is correct. Once it is concluded that the retained operations no longer fall within the statutory definitions of a "*mine*", a "*mining area*", or "*works*", the jurisdictional facts necessary for the application of the MHSA are absent. The MHSA therefore ceases to apply by operation of law. There is, in those circumstances, nothing from which to exempt, and sections 79 and 80 find no application.

- [87] The decision in *TC Smelters Limited and Another v Minister: Department of Mineral Resources and Energy and Others*,²² relied upon by the appellants, also does not advance their case. That matter concerned circumstances in which it was common cause, or at least assumed, that the operations in question constituted mines or formed part of mining operations. It is not authority for the proposition that sections 79 or 80 must be invoked where, on a proper interpretation of the statutory scheme and the facts, the MHSA does not apply in the first place.
- [88] The Labour Court therefore did not err in holding that the appellants' reliance on sections 79 and 80 "*stems from an incorrect premise*" and cannot be sustained unless the MHSA provisions are first found to be applicable. On this Court's analysis, they are not.

Costs

Costs in the Labour Court

- [89] The Labour Court awarded costs against the appellants in the exercise of its discretion. It is trite that an appellate court will interfere with such an order only where the discretion was not exercised judicially, was influenced by a wrong principle, or resulted in a decision so unreasonable that no properly directed court could have reached it.
- [90] No basis for interference has been established in this matter. There is accordingly no basis to disturb the costs order made by that court.

Costs in the appeal

- [91] Turning now to the question of whether costs should be awarded against the appellants in the appeal, the following considerations have been taken into account. This matter raises important questions for the mining industry and its stakeholders, particularly regarding the proper interpretation of the definition of a "*mine*" in section 102 of the MHSA. There is also an ongoing relationship

²² 2024 JDR 2401 (GP).

between the appellants and the respondents. In these circumstances, and in the interests of fairness, no order as to costs is made on appeal.

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

Order

1. The appeal is dismissed.
2. The order of the Labour Court is confirmed.
3. There is no order as to costs in the appeal.

Basson AJA

Molahehi JP and Mahalelo AJA concur

APPEARANCES:

For the first appellant:	Adv Paul Carstens SC
	Adv Modise Shakung
For the second appellant:	Adv JG Rautenbach SC
Instructed by :	Bester and Rautenbach Attorneys
For the first and second	Adv Anton Myburg, SC
respondents:	Adv Riaz Itzkin
Instructed by:	Webber Wentzel