



**THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)**

**Case Number: A2026-045613**

- (1) Reportable: No  
(2) Of interest to other Judges: No  
(3) Revised:

05 March 2026

**SIGNATURE**

**DATE**

**BOSMANSPRUIT BELEGGINS (PTY)LTD**

Applicant

**And**

**LIBERTY COAL (PTY)LTD**

Respondent

*In re.*

**BOSMANSPRUIT BELEGGINS (PTY)LTD**

First Respondent

**THE REGIONAL MANAGER:**

Second Respondent

**MPUMALANGA REGION**

**DEPARTMENT OF MINERAL RESOURCES AND ENERGY**

**JUDGMENT**

## INTRODUCTION

1. This is an urgent application brought in terms of Rule 6(12) of the Uniform Rules of Court. The applicant seeks, in essence:
  - 1.1 A declaratory order that the execution order granted on 4 December 2025 in terms of section 18(3) of the Superior Courts Act 10 of 2013 is suspended pending the determination of the appeal lodged in terms of section 18(4) Instituted on 5 December 2025 and amended on 26<sup>th</sup> February 2026; and
  - 1.2 An order interdicting the respondent from carrying out any mining or ancillary mining activities unless and until the applicant grants written consent.
2. The respondent opposes the application on urgency and on the merits.
3. The respondent also raised the preliminary point that the founding affidavit filed by the respondent was defective. The court first dealt with the respondent's cause of objection and made a ruling as follows:

### ORDER

1. The preliminary objection raised by the respondents is dismissed.
  2. The applicant's founding affidavit is admitted.
  3. The matter shall proceed for determination of urgency.
  4. Costs of the preliminary objection shall stand over for determination with the merits.
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4. The reason for the order is in the judgment.

## BACKGROUND

5. On 4 December 2025 this Court granted an order in favour of the respondent restraining the applicant from interfering with the respondent's mining operations and granting the respondent access to the property to conduct mining activities.

## HISTORY OF THE MATTER

6. On 20 February 2026 the applicant addressed correspondence to the respondent demanding an undertaking that the respondent cease its mining operations pending the determination of a section 18(4) appeal. The respondent declined the request and indicated that it had already taken access to the property on 4 December 2025 and had since maintained an open and visible presence on the site. The respondent further asserted that its mining activities were authorised in terms of section 5 of the Mineral and Petroleum Resources Development Act and that its statutory entitlement remained operative.

7. On 26 February 2026 the Office of the Judge President advised the applicant that any appeal in terms of section 18(4) of the Superior Courts Act had to be enrolled at the seat of the court that granted the order, namely the Middelburg Local Seat.

8. Despite this guidance, the applicant launched an urgent interlocutory application set down to be heard on 4 March 2026 in Mbombela pending the section 18(4) appeal. On 27 February 2026 the applicant withdrew that interlocutory application.

9. The applicant thereafter launched an urgent section 18(4) appeal which was initially set down to be heard in Mbombela on 4 March 2026. The respondent objected to the enrolment of the appeal at that seat, relying on the communication from the Acting Judge President confirming that the appeal ought to be heard at the seat where the original order was granted.

10. Following the objection, the applicant withdrew the Mbombela proceedings and subsequently secured a hearing date for the section 18(4) appeal at the Middelburg Local Seat on 6 March 2026.

In the interim, the applicant launched the present urgent application, styled as an interlocutory application, which was set down for hearing on 4 March 2026 — two days before the scheduled hearing of the section 18(4) appeal.

## ISSUES FOR DETERMINATION

The court must determine the issues as follows:

1. Whether the applicant has made out a case for urgency in terms of Rule 6(12);
2. Whether the declaratory relief sought in prayer 2.1 is competent in light of the automatic statutory suspension provided by section 18(4);
3. Whether the applicant has established the requirements for an urgent interdict in prayer 2.2.

## URGENCY

### **Applicant's submissions**

7. The applicant contends that the matter is urgent and that the urgency arose on 19 February 2026. On this basis, the applicant approached the court on an urgent basis seeking the relief set out in the notice of motion. The applicant maintains that the matter requires immediate judicial intervention given the pending developments relating to the section 18(4) proceedings.

### **Respondent's submissions**

8. The respondent disputes that the application is urgent and argues that the urgency is self-created.

9. Firstly, the respondent points to correspondence addressed to the applicant on 20 February 2026, in which it recorded that the section 18(4) appeal process had been improperly instituted in Mbombela. According to the respondent, the applicant failed to respond to this correspondence and took no steps to advance the matter for nearly a week before eventually launching the present application.
10. Secondly, the respondent submits that the applicant failed to act with the necessary expedition in prosecuting the section 18(4) appeal. The respondent protests that the applicant filed a notice of appeal on 5 December 2025, but only approached the Acting Judge President's office on 25 February 2026 to obtain a hearing date and a date of 6 March 2026 (two days after this urgent application) was allocated. The respondent contends that had the applicant sought a hearing date when the notice of appeal was filed, the appeal could have been heard as early as December 2025.
11. The respondent further argues that the applicant's reliance on the reasons for judgment as the cause for the delay is mischievous, since the appeal lies against the order itself and not the reasons for the judgment.
12. Lastly, the respondent submits that the present application amounts to an abuse of process, particularly because a section 18(4) urgent appeal has already been enrolled for hearing on 6 March 2026, two days after the present hearing. The respondent also criticises the applicant for failing to disclose in the founding affidavit that such urgent appeal had already been enrolled for hearing.

## SUMMARY OF SUBMISSIONS ON MERITS OF THE APPLICATION

### **The declaratory relief (prayer 2.1)**

13. The respondent challenges the relief sought in prayer 2.1 on the basis that it is unnecessary. While the respondent does not dispute the statutory consequences of section 18(4) once an appeal has been noted, it contends that the applicant

nevertheless seeks a declaratory order confirming that the order of 4 December 2025 was and remains suspended.

14. The respondent submits that such relief is misplaced as the applicant relies on the notice of appeal dated 5 December 2025 which was filed in the wrong seat of the court and has since been withdrawn and replaced by a fresh notice of appeal filed on 26 February 2026. The respondent further points out that, notwithstanding this, the applicant's notice of motion still refers to both the 5 December 2025 notice and the fresh notice filed on 26 February 2026.

15. It is accordingly contended that prayer 2.1 is moot and misdirected as it merely seeks a declaration that mirrors the wording of section 18(4)(i) of the *Superior Courts Act*, namely that the operation and execution of the section 18(3) order granted on 4 December 2025 was and remains suspended by virtue of the notice of appeal filed on 5 December 2025, as amended on 26 February 2026.

### **Interdict (Prayer 2.2)**

16. The respondent also opposes the relief sought in prayer 2.2, which seeks an interdict restraining the respondent from continuing its mining operations.

17. The respondent submits that it does not require the applicant's permission to continue mining activities. Reliance is placed on section 5 of the Mineral and Petroleum Resources Development Act..., which confers a statutory right on the holder of a mining right to access the land and conduct mining operations. Counsel for the respondent among other authorities relied on the Constitutional decisions in *Maledu and others v Itereleng Bakgathla Minerals Resources (Pty) Ltd and another* 2019 (2) SA 1 (CC), *Zincede Ngokwakho Housing (Pty) Ltd and Another v Matatiele Local Municipality* 2026 ZASCA 17 at paragraph 14 and the judgment of Bam AJ dated 15 May 2025 which was granted in favour of the respondent. The respondent argued that t, which, it is contended, affirm the respondent's entitlement to exercise its mining rights and the corresponding obligation on the applicant to grant access to the land.

18. The respondent further contends that the applicant has failed to establish the jurisdictional requirements for an interdict and that the founding papers do not set out a proper basis upon which the respondent should be restrained from accessing the mine and continuing its mining operations.

19. Lastly, the respondent argues that prayer 2.2 is fundamentally incompetent, as it effectively seeks to impose a blanket standstill on the respondent's mining operations unless the respondent provides written consent, which would amount to granting the applicant a private veto over the respondent's statutory mining rights.

## ANALYSIS AND THE APPLICATION FO THE LAW

### ON URGENCY

20. Rule 6(12) requires an applicant to explicitly set out the circumstances rendering the matter urgent and the reasons why substantial redress cannot be obtained in due course.

21. The applicant contends that urgency arose during February 2026 when the respondent indicated that it would continue mining operations however section 18(4) appeal was noted as early as 5 December 2025.

22. The applicant failed to prosecute the appeal with expedition.

23. The appeal is already enrolled for hearing on 6 March 2026. The applicant did not disclose in its founding papers that the urgent appeal was imminent.

24. The alleged urgency is self-created. The statutory position has been in existence since the noting of the appeal. The applicant seeks relief two days before the appeal is to be heard.

25. Furthermore, from the formulation of prayer 2.2, it is apparent that the dispute between the parties is fundamentally commercial in nature. The applicant seeks to regulate or restrain ongoing mining operations pending issues relating to consent and commercial arrangements.

26. Commercial disputes, without more, do not ordinarily justify truncation of the Rules. No exceptional circumstances have been demonstrated. The application therefore does not meet the threshold of urgency required under Rule 6(12).

### **On Merits**

#### **THE DECLARATORY RELIEF (PRAYER 2.1)**

27. Section 18(4) of the Superior Courts Act provides that the noting of an appeal against a section 18(3) execution order suspends the operation and execution of that order pending the outcome of the appeal.

28. The suspension operates by law. It does not depend on a further court order. The applicant nevertheless seeks a declaratory order that the section 18(3) execution order “was and remains suspended”.

29. Courts do not grant declaratory relief where no live controversy exists and where the statute already provides the legal consequence sought to be declared.

30. The relief sought merely mirrors the wording and effect of section 18(4). It serves no practical purpose and adds nothing to the legal position already created by statute.

31. To approach the Court urgently for confirmation of what the statute automatically provides is unnecessary and amounts to a misuse of the urgent roll.

32. The declaratory relief sought in prayer 2.1 is accordingly incompetent.

#### **THE INTERDICT (PRAYER 2.2)**

33. The applicant seeks to interdict the respondent from conducting mining activities unless written consent is obtained from the applicant.

34. The requirements for an interim interdict are trite:

- 34.1 A prima facie right;
- 34.2 A reasonable apprehension of irreparable harm;
- 34.3 The absence of an alternative remedy;
- 34.4 A balance of convenience favouring the grant of relief.

35. The respondent holds mining rights in terms of section 5 of the MPRDA, which confers a limited real right entitling it to enter the land and conduct mining activities. Section 5(3) of the Mineral and Petroleum Resources Development Act (MPRDA) 28 of 2002 defines the core entitlements of a holder of a prospecting right, mining right, or mining permit. It grants the holder the legal capacity to enter land, bring machinery, and conduct mining or related activities, acting as a "limited real right" over the land. It states as follows:

5. (1) *"A prospecting right, mining right, exploration right or production right granted in terms of this Act is a limited real right in respect of the mineral or petroleum and the land to which such right relates.*

*(2) The holder of a prospecting right, mining right, exploration right or production right is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law.*

*(3) Subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may*

*(a) enter the land to which such right relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purposes of prospecting, mining, exploration or production, as the case may be; (*

*(b) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;*

*(c) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;*

*(d) subject to the National Water Act, 1998 (Act No. 36 of J 998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting, mining, exploration or production purposes, or sink a well or borehole required for use relating to prospecting, mining, exploration or production on such land; and*

*(e) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act."*

36. The order of 4 December 2025 did not create those rights. It did not pronounce upon or grant the mining right. It merely restrained the applicant from interfering with the respondent's exercise of its statutory entitlements and reinforced the respondent's access.

37. The suspension of the execution order under section 18(4) does not extinguish the respondent's statutory mining rights. It merely suspends the enforceability of the specific execution order.

38. The status quo prior to and at the time of the granting of the order was that the respondent was already conducting mining operations pursuant to its statutory entitlement.

39. Prayer 2.2 seeks to impose a new condition, namely written consent of the applicant before the respondent may continue exercising its statutory rights.

40. The applicant cannot, through an interdict, create a private veto over rights conferred by statute. The conditions regulating the exercise of mining rights are prescribed by the MPRDA and related legislation, not by the unilateral consent of a landowner.

41. The relief sought is therefore fundamentally incompetent. Moreover, the applicant has failed to establish the jurisdictional requirements for an interim interdict. No prima facie right to restrain lawful mining has been demonstrated, nor irreparable harm that cannot be addressed in due course.

WHEREFORE AN ORDER AS FOLLOWS IS MADE:

## **ORDER**

1. Application is dismissed.
2. The applicant to pay the costs of the respondent on attorney and client scale.

  
JT LESO  
Acting Judge of the High Court

Heard : 04 March 2026

Delivered: 05 March 2026

**( The judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the CaseLines system of the Mpumalanga Division, Middleburg Local Seat)**

### **APPEARANCES**

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