IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 057436-2024

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

[redacted]

19 FEBRUARY 2026

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SIGNATURE **DATE**

In the matter between:

ASSMANG (PTY) LTD Applicant

and

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

MINISTER OF FORESTRY FISHERIES AND
THE ENVIRONMENT Second Respondent

MINISTER OF MINERAL RESOURCES AND ENERGY Third Respondent

JUDGMENT

<u>LABUSCHAGNE J:</u>

[1] The applicant filed an application with the Department of Mineral Resources and Energy (DMRE) for the approval of an integrated environmental authorisation (IEA) for six projects at its mine located on the farm Beeshoek in the district of Postmasburg, Northern Cape. Five were approved and one was not.This is a review application pertaining to the exclusion of project 2.

[2] The applicant mine is located approximately 65 km south of Khumani Mine near the town of Postmasburg. It is an Iron Ore Production mine which has been productive since the mid-1960s. Over the years strategic infrastructure initiatives have been implemented to enhance operational efficiency, including the establishment of a comprehensive washing and screening plant in 1975 and the introduction of a jig plant for the beneficiation of off-grade ore in 2001.

[3] In 1999 Assmang inaugurated Beeshoek South, a new opencast mine to meet increased production demands. The operational focus at Beeshoek Mine involves opencast iron ore mining with a depth reaching approximately 140 metres. Assmang holds new order rights for high-grade hematite Iron Ore Deposits at Beeshoek Mine in terms of the MPRDA. The current mining method involves an opencast operation with five active pits. The mine is divided into a Northern mining area and the Southern mining area. The South mine features large opencast pits, waste rock dumps (WRDs), the village opencast pit, its associated WRDs and a crushing and screening area feeding into the Iron Ore Beneficiation Plant at the North mine.

BACKGROUND FACTS

[4] On 12 February 2021 Assmang submitted an IEA application for the Beeshoek Mine to the DMRE. The application was amended when the DMRE requested the applicant to include the proposed Railway Line Project and a subsequent new application was submitted on 06 April 2021 and acknowledged by the DMRE on 04 August 2021.

[5] Through the proposed projects and amendments, the Beeshoek Mine sought to optimise mineral extraction and to enhance environmental management and rehabilitation efforts. It formulated six amendments. It sought to obtain amendments to its Environmental Management Programme (“EMPr”). Six projects were identified.

5.1 Project 1 – Specific demarcation or Run of Mine (ROM) stockpiles: This includes precise demarcation on the South mine to optimise management and environmental compliance.

5.2 Project 2 – Design amendments to WRDs: Proposed changes involve height increases and allowance for final slope, which result an extension of footprints.

5.3 Project 3 – Expansion of Mining Operations: This includes increasing the footprint of opencast pit areas and initiating detrital mining, subject to EIAs and optimisations.

5.4 Project 4 – Beneficiation Plant Optimisation: The development of a jig plant and Wet High-Intensity Magnetic Separation Plant aimed at enhancing the beneficiation of discard, low-grade iron ore and slimes.

5.5 Project 5 – Certain Water Management Infrastructure: A new surface water dam will be constructed to support these projects.

5.6 Project 6 – Infrastructure Development: The establishment of necessary infrastructure such as powerlines, roads, pipelines and stormwater management systems will support the above initiatives ensuring sustainable and optimised mining operations.

[6] The aforesaid application was considered by the first respondent and on 20 July 2023 he notified the applicant of his decision as set out in a document annexed as **Annexure FA1**. On 25 July 2023 a revised IEA was issued and was provided to the applicant.

[7] The design amendments that were proposed in Project 2 to waste rock dumps(WRDs) had been excluded, but no reasons for the exclusion were provided.

[8] The applicant was of the view that the first respondent had, due to an oversight, failed to deal with Project 2 and enquiries to confirm this were made in the period up to 21 September 2023, with no response being received from the first respondent.

[9] On 21 September 2023 the applicant lodged an appeal with the second respondent in terms of section 43 of NEMA. On 25 November 2023 the second respondent dismissed the appeal. In terms of section 47CB(1) the Minister is precluded from entertaining an appeal if it has been lodged later than 30 (thirty) days after the date of the decision appealed against. The Minister, relying on this section, stated that he could not entertain the appeal and it was consequently dismissed.

[10] On 24 May 2024 the applicant launched the review proceedings which serve before this court.

THE NOTICE OF MOTION

[11] The applicant seeks the following relief:

1. Condoning the late filing of the application in terms of section 9 of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA).

2. Directing that the applicant be exempted from the obligation to exhaust any internal remedy, as provided for in section 7(2)(c) of PAJA.

3. That the decision of the first respondent to exclude Project 2 in the applicant's Integrated Environmental Authorisation in terms of the National Environmental Management Act, 1998 (Act 107 of 1998 as amended) ("NEMA") and the National Environmental Management: Waste Act, 2008 (Act 59 of 2008 as amended), for a mining right and related infrastructural activities on Portions 0 and 1 of the farm

Beeshoek No. 448 and Portion 4 of the farm Olyn Fontein No. 475, which properties are situated in the Magisterial District of Postmasburg in the Northern Cape Province, granted to the applicant in terms of Regulation 20(1)(a) and 24(1)(b) of the Environment Impact Assessment Regulations, 2014 (GNR993 in GG3303 of December 2014) ("the decision"), be reviewed and set aside in terms of section 8 of PAJA.

4. Alternatively to paragraph 3, that the decision be declared to be inconsistent with the principle of legality as enshrined in section 1(c) of the Constitution.

5. Remitting the applicant's IEA application to the first respondent for reconsideration of the decision within a period of 30 (thirty) days.

6. Ordering those respondents who oppose the application to pay the costs jointly and severally, such costs to include the costs of two counsel and taxed on Scale C.

[12] On 11 November 2024, pursuant to the institution of the current review proceedings, the first respondent delivered a rule 53 record which contains no reasons for the exclusion of Project 2.

[13] On 25 November 2024 the applicant filed its supplementary founding affidavit as envisaged by rule 53(4).

[14] On 21 January 2025, a few days before the answering affidavit was due, the first respondent delivered an additional record in terms of rule 53, consisting

of a single document namely: “Reasons to exclude Project 2 from the Integrated Environmental Authorisation issued on 20 June 2023”, which document is dated 05 June 2024.

[15] In its answering affidavit, the first respondent merely refers to the failure to disclose the aforesaid reasons as part of the original record as an oversight. On 24 February 2025 the applicant delivered a further supplementary founding affidavit due to the extended record.

[16] On 20 June 2025 the applicant delivered its replying affidavit. The replying affidavit is out of time and condonation was sought. The first respondent opposes the condonation application.

[17] At the commencement of the hearing, the issue of condonation for late filing of the replying affidavit was raised. Although the applicant in its replying affidavit rebutted each of the grounds on which Project 2 was ostensibly refused, as set out in the reasons dated 05 June 2024, the court was advised that the applicant would rely on the founding papers, rather than on the replying affidavit.

EXHAUSTING INTERNAL REMEDIES

[18] In terms of section 7(2) of PAJA, no court shall review an administrative action in terms of PAJA unless any internal remedy provided for in any other law has first been exhausted. This is however subject to the court’s power in terms of section 7(2)(c), to exempt a party from exhausting internal remedies. There are however two requirements, namely that there must be exceptional

circumstances and the court must deem exemption to be in the interests of justice.

[19] In *Koyabe and Others v Minister of Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)* at paragraphs [34] to [49], the Constitutional Court held that an aggrieved party must take reasonable steps to exhaust internal remedies in view of the rationale of internal remedies being a valuable and necessary requirement of our law.

[20] The applicant seeks condonation and exemption in terms of sec 7(2) and sec 9(3) of PAJA

EXCEPTIONAL CIRCUMSTANCES

[21] The applicant's delay in lodging its appeal arose from its *bona fide* attempts to obtain clarity from the DMRE regarding the unexplained exclusion of reasons for Project 2.

[22] The applicant lodged its appeal, but 37 days late. The applicant purported to exercise an internal remedy but was precluded from proceeding with it due to a statutory bar contained in section 47CB(2) of NEMA. This provision contains an inflexible 30 day bar on condonation. It is an unusual provision which precludes the Minister from considering late appeals in mining related matters, regardless of merit. These combined considerations to my mind do constitute exceptional circumstances justifying an exemption. This would particularly be so where there are good prospects of success in the review application and

where exemption would therefore be in the interests of justice(sec 9(3) of PAJA.

[23] The respondents referred to authorities which question whether the interests of justice are linked to the prospects of success in the review application. In principle, the prospects of success are inherent in consideration of the interests of justice, and the exclusion of this consideration cannot, unless there are exceptional circumstances, be stated as a matter of principle.

[24] I am satisfied that the applicant has made out a case for condonation and failing that,for exemption from exercising its internal remedies. Having so decided, this court may engage its review jurisdicition.

GROUNDS OF REVIEW

[25] The primary ground of review is the absence of reasons for the refusal of Project 2.

[26] The IEA that was issued by the first respondent, approving all the projects but not referring expressly to Project 2, is a composite document. The section headed “Reasons” provides reasons why the five projects were approved. The only indication that Project 2 was not approved appears obliquely in paragraphs 3.18 and 3.18.1.

[27] These read:

"3.18 Backfilling must be undertaken at all times, the holder of this IEA must provide a quarterly report on backfilling progress. Care must be taken to ensure that the material and soil required for backfilling are free of contamination from hydrocarbons.

3.18.1 Amendments to the design of existing Waste Rock Dumps in terms of the increase in heights, and allowance for final slope, which will result in extension of footprints are not authorised. The existing pits and excavations must be utilised for backfilling to minimise further environmental degradation."

[28] The sentiments expressed in paragraph 3.18.1 are repeated in paragraph 8 of the reasons for the IEA. They do not provide a reason for the refusal of Project 2. During argument counsel for the first respondent and the third respondent referred to the aforesaid paragraph 8 as a contemporaneous, though cryptic, expression of reasons for refusal. This cannot be accepted. No reasons specific to Project 2 were provided.

[29] In the answering affidavit the first respondent purports to suggest that the reasons dated 05 June 2024 were part of the original record that predated the decision of 20 July 2023. This proposition is rejected. The reasons are dated 05 June 2024 at the top of the document. The date is repeated at the end of the document where the date is written in manuscript and signed by the first respondent. It is therefore a document dated 05 June 2024, while the decision impugned in these proceedings is a decision of 20 July 2023. These reasons

were therefore clearly created *ex post facto* to explain why Project 2 had not been approved.

THE ABSENCE OF CONTEMPORANEOUS REASONS

[30] The review application is a review in terms of PAJA, as the decision in question meets with the requirements of administrative action as defined in section 1 of PAJA. The constitutional right to fair administrative action in section 33(2) of the Constitution includes the right to give reasons for an administrative action. This right is dealt with in section 5(1) of PAJA.

[31] The need for administrative action to be supported by cogent reasons is to avoid arbitrary decisions that adversely affect members of society. A decision without reasons is arbitrary (see **National Lotteries Board v South African Education and Environment Project** [2011] ZASCA 154, at para [27]).

[32] The minimum threshold for the valid exercise of public power is rationality.This is an incident of the rule of law as referred to in sec 1(c) of the Constitution. The grounds of review set out in sections 5 and 6 of PAJA are all instances of irrational conduct, which the law will not countenance (see **Commissioner, South African Police Service v Maimela** 2003 (5) SA 480 (T) at 486 F – H; **Mobile Telephone Networks (Pty) Ltd v Independent Communications Authority of South Africa, in re Vodacom (Pty) Ltd v Chairperson of the Independent Communications Authority of South Africa** [2014] 3 All SA 171 (GJ) (31 March 2014).

[33] Cleaver J, in **Jicama 17 (Pty) Ltd v West Coast District Municipality** 2006 (1) SA 116 (C) at paragraph [11], cited with approval a dictum in ***R v Westminster City Counci***l, reading:

"The cases emphasise that the purpose of reasons is to inform the parties why they have won or lost and enable them to assess whether they have any ground for challenging an adverse decision. To permit wholesale amendment or reversal of the stated reasons is inimical to this purpose. Moreover, not only does it encourage a sloppy approach by the decision-maker, but it gives rise to potential practical difficulties. In the present case it was not, but in many cases it might be, suggested that the alleged true reasons were in fact second thoughts designed to remedy an otherwise fatal error exposed by the judicial review proceedings. That would lead to applications to cross-examine and possibly for further discovery, both of which are, while permissible in judicial review proceedings, generally regarded as inappropriate. Hearings would be made longer and more expensive."

[34] In **National Energy Regulator of South African and Another v PG Group (Pty) Limited and Others 2019 ZACC 28** the Constitutional Court, citing the aforesaid National Lotteries case, stated the following at paragraph [39]:

"It is true that reasons formulated after a decision has been made cannot be relied upon to render a decision rational, reasonable and lawful."

[35] The reasons provided by the first respondent dated 05 June 2024 were created *ex post facto* and cannot support the decision of 20 July 2023. In light

thereof, it is not necessary to delve into the cogency of the reasons so provided.

[36] The applicant has in its replying affidavit dealt with each of the grounds of refusal and, although this affidavit was not referred to during argument, it meets each ground of refusal head-on.

[37] It follows from the aforesaid that the first respondent's decision not to approve Project 2 was without reason, or without cogent reasons. It falls to be reviewed and set aside in terms of sec 5(3) and 6(2)(e)(vi) of PAJA.

REMEDY

[38] During argument it was common cause that, if the decision of the first respondent pertaining to Project 2 were to be reviewed and set aside, that the matter should be remitted to the administrative authority and that the matter should be dealt with *de novo*. Counsel for the first respondent suggested a 60 day period to cater for requests for further particulars and expert reports.This would be just and equitable

CONCLUSION

[39] The review therefore succeeds and, in the premises, the following order is made:

1. Condonation is granted for the late filing of the application for review in terms of section 9 of the Promotion of Administrative Justice Act, 3 of 2000 (“PAJA”).

2. The applicant is exempted from the obligation to exhaust internal remedies in terms of section 7(2)(c) of PAJA.

3. The decision of the first respondent to exclude Project 2 in the applicant’s integrated environmental authorisation, in terms of the National Environmental Management Act, 1998 (Act 107 of 1998 as amended) (NEMA) and the National Environmental Management: Waste Act, 2008 (Act 59 of 2008 as amended), for a mining right and related infrastructural activities on Portions 0 and 1 of the farm Beeshoek No. 448 and Portion 4 of the farm Olyn Fontein No. 475, which properties are situated in the Magisterial District of Postmasburg in the Northern Cape Province granted to the applicant in terms of Regulations 20(1)(a) and 24(1)(b) of the Environment Impact Assessment Regulations, is reviewed and set aside in terms of section 8 of PAJA.

4. An order is granted remitting the applicant’s IEA application to the first respondent for reconsideration of its decision pertaining to Project 2, for reconsideration within a period of 60 (sixty) days.

5. The first and third respondents are ordered to pay the costs of this application jointly and severally, such costs to include the costs of two counsel, on Scale C.

[redacted]

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES:

COUNSEL FOR APPLICANT : ADV LOXTON SC

ADV DANIEL

INSTRUCTED BY : SNONNENBERGS INC

COUNSEL FOR RESPONDENT : JANSE VAN RENSBURG

INSTRUCTED BY : KHOSA, STATE ATTORNEY PRETORIA