

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2025-178337

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>09/03/2026</u> 	
DATE	SIGNATURE

In the application for leave to appeal of:

MNTK ENTERPRISE (PTY) LTD

First Applicant

SYMPHONY OF LIGHT (PTY) LTD

Second Applicant

INSPIRED TRADE AND INVEST (PTY) LTD

Third Applicant

BEHIND THE GOLD DOOR (PTY) LTD

Fourth Applicant

MR MOSHOESHOE

Fifth Applicant

and

**BAHURUTSHE BOO MANYANA
TRADITIONAL COMMUNITY**

First Respondent

BOO MANYANA CHROME (PTY) LTD

Second Respondent

In re the urgent application of:

**BAHURUTSHE BOO MANYANA
TRADITIONAL COMMUNITY**

First Applicant

BOO MANYANA CHROME (PTY) LTD

Second Applicant

and

MNTK ENTERPRISE (PTY) LTD

First Respondent

SYMPHONY OF LIGHT (PTY) LTD

Second Respondent

INSPIRED TRADE AND INVEST (PTY) LTD

Third Respondent

BEHIND THE GOLD DOOR (PTY) LTD

Fourth Respondent

MR MOSHOESHOE

Fifth Respondent

**MINISTER: THE DEPARTMENT OF MINERAL
RESOURCES AND ENERGY N.O.**

Sixth Respondent

MINISTER OF POLICE

Seventh Respondent

NATIONAL POLICE COMMISSIONER

Eighth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The judgment is deemed to have been handed down on 9 March 2026.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MENTZ AJ

Introduction

- [1] This is an application for leave to appeal against an order granted on 19 November 2025 in the urgent court in terms whereof the respondents were interdicted from unlawfully conducting commercial mining activities from what is

referred to as "*the MNTK site*", an open pit mine situated on the Farm Strydfontein 12 JP, Zeerust, North West Province, consisting of Portion 1 and the Remaining Extent (collectively referred to as '*the Farm*').

- [2] I refer to the parties herein as referred to in the main application, and to the first to fifth respondents (who are the applicants in this application for leave to appeal) collectively as '*the respondents*'.

Respondents' grounds for leave to appeal

- [3] The grounds upon which the application for leave to appeal is based can be summarised as follows:

- (i) that the court erred in finding that the matter was urgent;
- (ii) that the court erred in dismissing the respondents' application to strike out material alleged to be new and raised for the first time in the replying affidavit filed in support of the application to re-open the case;
- (iii) that there was an incorrect recordal of facts regarding two earlier applications in the Mahikeng High Court. This, according to the respondents, has bearing on the issue of the first applicant's standing;
- (iv) that the court erred in finding that the first applicant had *locus standi*;
- (v) that the court erred in making a finding with regards to ownership of the Remaining Extent with reference to previous court orders;
- (vi) that the court erred in finding that respondents did not challenge the allegations in respect of illegal mining as set out in paragraphs 43 – 48 of the founding affidavit, thereby suggesting a degree of culpability on the part of the MNTK applicants;
- (vii) that the court erred by finding that the respondents were relying on semantics when they placed the first applicant's ownership in dispute;

- (viii) that the court erred in not finding that the applicants ought to have amended their notice of motion.
- [4] Counsel for the respondents primarily argued the issue of the first applicant's standing, specifically with reference to the disputes raised about ownership.
- [5] The application for leave to appeal in essence raises the same issues that were argued before me. They have all been dealt with in my judgment save for an issue that was raised by the court, namely the practical effect of an appeal.

General principles applicable

- [6] It is well established that section 17(1) of the Superior Courts Act has raised the threshold for leave to appeal as the use of the word "*would*" indicates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against.¹
- [7] Leave to appeal should not be granted unless there is truly a reasonable prospect of success. A mere possibility of success is not enough, and the conclusion that there is a reasonable prospect of success on appeal must be rooted in a sound, rational basis.²
- [8] It is further trite that it is the order that is appealed against and not the reasons for a judgment.³ Therefore, even if an applicant's criticisms of a judgment are well-founded, it would not justify the granting of leave to appeal in the absence of a realistic prospect of the order being altered on appeal.

No practical effect

- [9] Section 16(2)(a) of the Superior Court Act states:

¹ *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC) at para 6
² *MEC for Health, Eastern Cape v Mkhitha* 2016 JDR 2214 (SCA) at paras 16 and 17
³ *Tavakoli and Another v Bantry Hills (Pty) Ltd* 2019 (3) SA 163 (SCA) at para 3; *Lebea v Menye and Another* 2023 (3) BCLR 257 (CC) at para 29

"(2)(a)(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs."

- [10] The reason why leave to appeal is first required before a matter goes on appeal, is to relieve appeal courts of their workload. Appeals should therefore only be heard where there would be a real, practical effect or result flowing from a judgment of a court of appeal.⁴
- [11] Upon inquiring from counsel for the respondents what the practical effect of an appeal would be, he submitted that it would be the removal of adverse findings against the respondents and the reversal of the costs order. In my view, the removal of adverse factual findings and the reconsideration of costs, without more, do not constitute the kind of concrete or substantive relief contemplated by section 16(2)(a) as meeting the requirement that the decision sought on appeal must have a practical effect.
- [12] The respondents' underlying legal position would remain unchanged irrespective of the outcome of an appeal. Even if successful, an appeal would neither entitle them to commence mining, nor confer any substantive relief. In the absence of any practical effect, the mere reconsideration of costs cannot justify the granting of leave to appeal unless exceptional circumstances exist,⁵ which they do not in this matter.
- [13] Considering the above, I am of the view that the application for leave to appeal should fail on the basis of section 16(2)(a) alone. I nevertheless briefly address the primary ground for leave to appeal relied on by the respondents' counsel in argument.

⁴ *Premier, Provinsie Mpumalanga v Groblersdalse Stadsraad* 1998 (2) SA 1136 (SCA) at 1141

⁵ *Mukanda v South African Legal Practice Council* 2021 (4) SA 292 (GP) at para 9

The first applicant's ownership and standing

- [14] The principal complaint advanced by the respondents was that the first applicant lacked standing on the basis that its ownership of the Farm was disputed. It was contended that, absent proof of ownership, the first applicant could not establish the requisite *locus standi* to have launched the proceedings.
- [15] Counsel for the respondents advanced the same technical arguments concerning the first applicant's ownership as those raised in the main application, including alleged discrepancies between the spelling of the first applicant's name on the title deed and its citation in these proceedings. He also again referred to the issue regarding the Upgrading of Land Tenure Act 112 of 1991 and the assertion that there was never a proper conversion into ownership, and that this could lead to a potential conflict between the first applicant and a different community.
- [16] Registered ownership should not be conflated with legal standing, particularly in environmental matters where the legislature has widened standing beyond ownership of land.⁶
- [17] I have dealt extensively in the judgment with the issue of standing, the applicable authorities, and the basis upon which the first applicant established such an interest. Even if ownership was genuinely disputed, that fact would not be dispositive of the first applicant's standing, nor would it affect the order ultimately granted.
- [18] The respondents' counsel further contended that the Rule 35(12) notice remained unresolved due to the applicants' failure to provide the information sought. The applicants' counsel submitted that the attached title deeds were the only documents available. As standing was determined by reference to the first applicant's interest and not ownership alone, the documents sought under Rule

⁶

Section 32 of the National Environmental Management Act 107 of 1998

35(12) and (14) were not relied upon, and any different view on appeal would not affect the order made.

[19] In these circumstances, there is no reasonable prospect that another court would differ on the issue of the first applicant's standing.

Other grounds of appeal

[20] Having considered my judgment and the heads of argument, I am satisfied that the remaining grounds of appeal raise no novel or important points of law, nor any issue of public interest or conflicting authority requiring consideration by a court of appeal.

Conclusion

[21] In light of the higher threshold in section 17(1), I am not persuaded that another court would reach a different conclusion. In my view, there is no reasonable prospect of success, nor any compelling reason to hear an appeal. The application for leave to appeal must therefore fail.

ORDER

Accordingly, I make the following order:

1. The application for leave to appeal is dismissed with costs, such costs to include the cost of two counsel on Scale C.

S MENTZ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the Applicants:
(Respondents in the application
for leave to appeal)

G Rome SC
R Makoanyana

Instructed by:
Thomson Wilks Incorporated Attorneys

For the First to Fifth Respondents:
(Applicants in the application for
leave to appeal)

G I Hulley SC
B Ford

Instructed by:
Vhonani Nematikanga Incorporated Attorneys

Date of hearing: 16 February 2026