



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

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER
JUDGES: NO
(3) REVISED. ✓

DATE: 13/03/2026

SIGNATURE

Case No: 52455/2018

In the matter between:

YORK TIMBERS (PTY) LTD

Applicant

and

BLACK REEF MINING (PTY) LTD
MINISTER OF MINERAL RESOURCES
DEPUTY DIRECTOR GENERAL
MINERAL REGULATION
DIRECTOR GENERAL:
DEPARTMENT OF MINERAL RESOURCES

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

REGIONAL MANAGER:

Fifth Respondent

In re:

BLACK REEF MINING (PTY) LTD

Applicant

and

MINISTER OF MINERAL RESOURCES

First Respondent

DIRECTOR GENERAL:

Second Respondent

DEPARTMENT OF MINERAL RESOURCES

REGIONAL MANAGER: MPUMALANGA

Third Respondent

DEPARTMENT OF MINERAL RESOURCES

JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

INTRODUCTION:

- [1] Applicant is a company with limited liability, and a subsidiary of a listed company which is involved in the forestry and paper industry with its head office in Sabie, Mpumalanga. For purposes of this judgment Applicant will be referred to as “York Timbers”.
- [2] First Respondent is Black Reef Mining, a company with limited liability with registered office in Pretoria, who is the holder of an impugned prospecting right granted in terms of

section 17(1) of the Mineral and Petroleum Resources Development Act 2002 (Act No. 28 of 2002) ("MPRDA") over a prospecting area being Portion 1 of the Farm London 496 KT, situated in Mpumalanga, district Pilgrims Rest, of 1020,0000 hectares in extent ("*the prospecting area*"). It is common cause that the Applicant is the registered owner of the property on which the prospecting area is situated. First Respondent will be referred to herein as "*the mining company*".

[3] Second Respondent is the Minister of Mineral Resources ("the Minister"); Third Respondent is the Deputy Director General, Mineral Regulation; Fourth Respondent is the Director General, Department of Mineral Resources; and Fifth Respondent is the Regional Manager, Mpumalanga Department of Mineral Resources. These Respondents are all functionaries bestowed with powers and functions in terms of MPRDA and were joined in this application insofar as they may have an interest in the litigation, and no relief was sought against them. These Respondents filed a notice to abide.

[4] On 19 February 2026 York Timbers caused this application to be instituted in this Court and in the notice of motion an order in the following terms is sought:

TAKE NOTICE that the applicant ('York') intends applying urgently to this Court on Tuesday, 24 February 2026 at 10:00 am or as soon thereafter as the urgent court is able to hear the matter, for an order in the following terms:

1. *The matter is urgent and any non-compliance with the uniform rules by York in relation to the manner of service, or any non-compliance with the uniform rules by York in relation to the form of the application, is hereby condoned.*

2. *A rule nisi is hereby issued calling upon the respondents to appear in the week of Tuesday, or on some other date determined by this Court, to show cause why the following interim interdict should not be granted pending the determination of the main application (the notice of motion in the main application, issued on 19 November 2026, is attached hereto as annexure 'NoM1'):*

2.1 *The first respondent ('the Mining Company') is interdicted from implementing and/or enforcing any of the provisions of the prospecting right granted to it by either the second, third, fourth or fifth respondents ('the DMR') to prospect for gold and silver on York's property described as Portion 1 of the Farm London 496 KT situated within the Magisterial District of Pilgrims Rest in Mpumalanga ('York's property') pending the final determination of the main application; and*

2.2 *The Mining Company is prohibited from accessing or entering upon York's property pending the final determination of the main application.*

3. *The costs of the rule nisi shall be costs in the cause.*

4. *Further and/or alternative relief."*

[5] The mining company filed an affidavit ostensibly deposed to by a director of the mining company, opposing the relief sought by the Applicant, and further instituted by way of urgency a counter application seeking an order that the mining company be entitled to immediate commence with prospecting on the prospecting area, and further an order

prohibiting York Timbers from preventing the mining company to exercise such prospecting rights.

[6] Before this court there are therefore the following matters to be determined namely:

[6.1] Whether the application and/or counterapplication should be heard as urgent application(s);

[6.2] Whether the application for a temporary interdict instituted by York Timbers against the mining company, claiming the relief as set out in the notice of motion as quoted *supra*, should be granted;

[6.3] Whether the counter application by the mining company, for a declarator that it is entitled to immediately exercise its prospecting rights on the prospecting area, should be granted;

[7] The reason why the "*counter application*" was instituted at all is not clear. If, as alleged by the mining company, there is no merit in the application for an interim interdict instituted by the Applicant and the prospecting right is not subject to any challenge, the relief as sought in the counter application is moot. It also follows that, if the relief claimed by York Timbers for an interim interdict be granted, the counterapplication stands to be dismissed.

RELEVANT BACKGROUND TO THE URGENT APPLICATION

[8] On 29 April 2019, York Timbers received a letter from the mining company in terms whereof York Timbers was informed that the Department of Mineral Resources (as it was known then) ("DMR") granted a prospecting right over the property referred to *supra* of York Timbers. York Timbers then filed an internal appeal in terms of section 96 of MPRDA against that decision to grant the prospecting right and this appeal was submitted to the Appeal Authority on 11 June 2019. The appeal was premised *inter alia* on the following grounds:

[8.2] York Timbers has not been properly consulted as the owner of the property.

[8.3] The prospecting rights for gold and silver is incompatible with commercial forestry and threatens the business and licence activities of York Timbers.

[8.4] The prospecting area is situated in an environmentally sensitive area which is home to threatened and endangered species and the granted right will threaten the environment, eco systems and biodiversity.

[8.5] There was inadequate participation of interested parties.

[9] Only during September 2025 (some 6 years later) the Minister informed York Timbers that the section 96 appeal was dismissed. As reason for this dismissal the Minister replied that the prospecting right was granted in terms of an order issued from this court on 12 September 2018 by Makose AJ, and that the Minister was thus enjoined, in terms of that

order of court, to issue the prospecting right. It is common cause that York Timbers was never joined in that application.

- [10] Pursuant thereto and during November 2025, York Timbers instituted an application which serves to rescind the order of Makose AJ, as well as an application in terms of rule 53 to review the grant of the prospecting right by DMR to the mining company ("the rescission/review application") and in the notice of motion of that application the following relief is sought:

"TAKE NOTICE that the applicant ('York') intends making application to this Court on a date to be allocated by the Registrar for an order in the following terms:

1. *The order granted by this Court under this case number, per Makose AJ, dated 12 September 2018, is hereby rescinded and set aside.*
2. *The decision taken by the second and/or third and/or fourth and/or fifth respondents (individually and collective referred to as 'the DMR') to grant a prospecting right to the first respondent ('the Mining Company') is reviewed and set aside.*
3. *The prospecting right granted by the DMR to the Mining Company to prospect for gold and silver on Portion 1 of the Farm London 496 KT situated within the Magisterial District of Pilgrims Rest in Mpumalanga is hereby reviewed and set aside.*
4. *The Mining Company is liable to pay York's costs on the attorney and client scale, such to include the costs of Senior Counsel, in relation to:*

- 4.1. *The rescission application granted in paragraph 1 of this order.*
- 4.2. *The review application granted in paragraphs 2 and 3 of this order.*
- 4.3. *The internal appeal lodged by York on 11 June 2019 in terms of section 96 the Mineral and Petroleum Resources Development Act of 200.*
- 5. *Alternatively to paragraph 4, all of the respondents are jointly and severally liable to pay York's costs on scale C.*
- 6. *Further and/or alternative relief".*

[11] On 2 February 2026, notwithstanding the fact that the aforesaid rescission/review application is pending, the mining company addressed correspondence to York Timbers by email, informing York Timbers that it insists on entry to the property in respect of which the prospecting rights are situated in order to exercise its rights. In this letter it was stated as follows (including accentuation):

"It bears emphasising that the provisions of section 5(3) of the MPRDA entitles us as the holder of the prospecting right to access the land to which the prospecting right relates and that York Timbers as the surface right owner of the land to which the prospecting right relates is obliged to allow the holder access to its land to do whatever is reasonably necessary for the effective exercise of the prospecting holder's rights".

[12] After the exchange of further correspondence between the parties, resulting in an impasse and a persistent demand by the mining company to commence exercising its prospecting rights, this application was launched as an urgent application and set down

for 24 February 2026. By agreement between the parties an interim order was made an order of court by Tolmay AJ on 24 February 2026, the result of which was that this application and the counter application was enrolled as an urgent application before this court. From that order it further follows that any interim relief granted to York timbers will be a temporary order, pending finalisation of the rescission/review application.

THE ISSUES IN DISPUTE:

- [13] On behalf of York Timbers it was submitted that the nature of relief sought by York Timbers is that of an interim interdict, and that the requirements for an interim interdict (which are trite law and will not be repeated herein) are met. If the requirements for an interim interdict are met, the counter application cannot succeed. The mining company on the other hand made substantial reference to the merits in the pending rescission/review application and submits that the requirements for an interim interdict are not met. During argument of the matter, the legal representative acting on behalf of the mining company submitted that the present application seeks to rescind the order of Makose AJ and to review the grant of the prospecting right, and it became clear that the nature of this application was completely misunderstood.
- [14] In the counter application it is averred that the mining company is the lawful holder of a prospecting right and therefore by law entitled to access the prospecting area and exercise its rights as a result of which the mining company is entitled to the relief as sought in the counter application.

URGENCY:

[15] As usual in these matters, the issue of urgency was opposed by the mining company, notwithstanding the fact that the mining company called the counter application before this court by way of "*extreme urgency*".

[16] In my view the matter is urgent. The effect of the dispute between the parties being adjudicated in the normal manner, will result in an untenable situation where the mining company, armed with an impugned prospecting right, will insist to access land of York Timbers and commence with operations which may cause irreparable harm to that land. In this regard I refer to the environmental considerations in respect of this land as set out *infra*.

[17] For these reasons, I informed the parties, after some debate, that I exercised my discretion to condone non-compliance with the provisions of Rule 6(12) and dealt with this matter as an urgent application.

MERITS OF THE APPLICATION FOR AN INTERIM INTERDICT

[18] In heads of argument filed on behalf of the mining company, it was submitted that the requirement of an interim interdict were not met and submissions essentially directed at the merits of the rescission/review application were made. After some debate with the legal representative of the mining company on the issue whether the merits of the rescission/review application should appropriately be dealt with in this application, or whether this court should determine if York Timbers disclosed a *prima facie* right (even if open to some doubt), it was (correctly) conceded that the second approach is correct.

[19] In the founding affidavit reference is made to the rescission/review application and it was submitted on behalf of York Timbers in heads of argument and in the application that the application for rescission/review has a reasonable prospect for success based *inter alia* on the following averments:

[19.2] The order of Makose AJ referred to *supra* was granted without joining York Timbers as a party. This is common cause.

[19.3] The Minister failed to consult parties involved (which includes York Timbers) and failed to consider the environmental impact at all or properly.

[20] It must be stressed that there were further reasons advanced why the rescission/review application is meritorious but for purposes of this judgment the aforesaid issues as identified will be dealt with.

[21] Based on the aforesaid contentions, on behalf of York Timbers it was submitted that it had established a *prima facie* right. Clearly, should the issues raised in the rescission/review application be disposed of in favour of York Timber, an order rescinding the judgment and/or declaring the grant of the impugned prospecting right to be unlawful will follow.

[22] In my view the order granted by Makose AJ was erroneously granted for an additional reason. The order of Makose AJ was made on an application by the mining company wherein it was alleged that the Minister refused to grant a prospecting right because the Minister incorrectly held that the mining company failed to submit an Environmental Management Plan ("EMP"). This allegation carries the clear implication that the Minister therefore did not consider the EMP. By granting the order, Makose AJ assumed the

powers of the Minister and granted a prospecting right to the mining company, which offends the principle of the separation of powers and is unconstitutional. The learned acting Judge should have remitted the matter to the Minister to consider the EMP. This erroneous order was made in the absence of York Timbers.

- [23] On behalf of York Timbers it was further submitted that irreversible prejudice will follow, should the interdictory relief not be granted. The prejudice lies therein that the Applicant's business activities (forestry) will be disrupted and further includes the fact that the land over which the prospecting right was granted was declared, in part, a Critical Biodiversity Area ("CBA") under the National Environment Management; Biodiversity Act 10 of 2004 and is particularly environmentally sensitive. It is further averred in the application that the property of York Timbers is an important part of the buffer zone that has been proclaimed as a protected area under the relevant environmental legislation (the National Environmental Management, Protected Areas Act of 2004) ("*NEMPAA*"), namely the Blyde River Canyon Nature Reserve. This allegation triggers the provisions of section 40 of Mineral and Petroleum Resources Development Act 28 of 2002, which clearly was not complied with by virtue of the fact that Makose AJ failed to remit the matter as set out in paragraph [22] *supra*. The essence of the allegations on which the Applicant rely is namely that prospecting and mining activities in that area will cause irreparable harm to the environment. The right to a protected environment is a constitutional right granted to all.¹

¹ Constitution of the Republic of South Africa, 1996, section 24

- [24] In my view the issue of potential prejudice, should the relief claimed by the York Timbers not be granted, is so clear that it needs no further elaboration.
- [25] It was further submitted on behalf of York Timbers that there is no suitable alternative remedy. I agree. The damage that will follow should prospecting and/or mining rights be exercised contrary to the environmental consideration principles in a biodiverse sensitive area is irreparable and unconstitutional.
- [26] Finally, York Timbers submitted that the balance of convenience favours York Timbers. Once again, I am of the view that logic and common sense dictate that, in circumstances where the rescission/review application may be heard during 2026, the inconvenience suffered by the mining company is insignificant compared to the irreparable harm which may follow, not only to York Timbers, but also the environment, should the order not be granted. In this regard it must be noted that York Timbers annexed to the founding affidavit in this application a report from an environmental expert, which elaborates on the negative environmental impact that the grant of this impugned prospecting right will have.

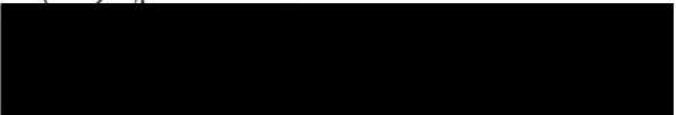
CONCLUSION:

- [27] In the light of the aforesaid, I am of the view that York Timbers satisfied the requirements for an interim interdict which has the result that the counter application of the mining company should be dismissed. The draft order prepared on behalf of York Timbers is in my view an order which correctly reflects the relief which should be granted and simultaneously an order will be made that the counter application be dismissed.

[28] What remains is the issue of costs. Both parties sought punitive orders for costs against each other and at the instance of York Timbers, an order was sought for costs of two counsel. I am of the view that the principle "*..costs should follow the event..*" applies but I am of the view that punitive costs are not appropriate in the present circumstances.

In the result, I make an order in the following terms:

1. The First Respondent's counterapplication is dismissed with costs.
2. The draft order which I have marked with a "X", dated and initialled by me, is made an order of court.



P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA

APPEARANCES

FOR THE APPLICANT: Adv. K Hopkins SC

INSTRUCTED BY: KEBD INC.

FOR THE FIRST RESPONDENT: Mr. K. Mahlase

INSTRUCTED BY: WADP attorneys (PTA)

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

13/03/2026

This draft Order has been prepared by
the applicant's counsel, Adv. Kevin Hopkins SC

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DEPARTMENT OF MINERAL RESOURCES

Fourth Respondent

REGIONAL MANAGER: MPUMULANGA

DEPARTMENT OF MINERAL RESOURCES

Fifth Respondent

DRAFT ORDER

(For the Urgent Court on 10 March 2026)

Having read the papers in this matter and after hearing counsel, the following order is made:

1. The matter is urgent and any non-compliance with the uniform rules by York in relation to the manner of service, or any non-compliance with the uniform rules by York in relation to the form of the application, is hereby condoned.
2. Pending the final determination of the main application which seeks the rescission of Makose AJ's order dated 12 September 2018 and the review and setting aside of the second respondent's ("the Minister's") decision to grant a prospecting right to the first respondent ("the Mining Company") on Portion 1 of the Farm London 496 KT situated within the Magisterial District of Pilgrims Rest in Mpumalanga ("York's property"):
 - 2.1. The Mining Company is interdicted from implementing or enforcing any of the provisions of the prospecting right; and
 - 2.2. The Mining Company is prohibited from accessing, entering upon or prospecting on York's property.
3. The Mining Company must pay York's costs ~~on the attorney and client scale~~, such to include the costs of Senior Counsel, *taxed on Scale C.*

By Order of the Court