IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED

DATE: **17 June 2026**

SIGNATURE:. [redacted]

Case No. 2026-089786

In the matter between:

LUNGILE MLOTSHWA	Applicant
And	
THE MINISTER OF MINERAL AND PETROLEUM RESOURCES	First Respondent
THE DIRECTOR-GENERAL: DEPARTMENT OF PETROLEUM AND MINERAL RESOURCES	Second Respondent
THE REGIONAL MANAGER: MINERAL REGULATION (NORTHERN CAPE), DEPARTMENT OF MINERAL AND PETROLEUM RESOURCES	Third Respondent
OCHRE SHIMMER TRADE AND INVEST 78 (PTY) LTD	Fourth Respondent

AFRIMAT IRON ORE (PROPRIETARY) LTD	Fifth Respondent

In re:

AFRIMAT IRON ORE (PROPRIETARY) LTD	**APPLICANT**

And

MINISTER OF MINERAL AND PETROLEUM RESOURCES	**FIRST RESPONDENT**
DIRECTOR-GENERAL: DEPARTMENT OF PETROLEUM AND MINERAL RESOURCES	**SECOND RESPONDENT**
REGIONAL MANAGER: MINERAL REGULATION (NORTHERN CAPE), DEPARTMENT OF MINERAL AND PETROLEUM RESOURCES	**THIRD RESPONDENT**
OCHRE SHIMMER TRADE AND INVEST 78 (PTY) LTD	**FOURTH RESPONDENT**
LUNGILE MLOTSHWA	**FIFTH RESPONDENT**

Coram:	Millar J
Heard on:	12 June 2026
Delivered:	17 June 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 17 June 2026.

JUDGMENT – LEAVE TO APPEAL

MILLAR J

[1] On 12 June 2026, I heard the application for leave to appeal against a judgment and order handed down on 18 May 2026. The judgment and order handed down, besides granting the present applicant, Ms Mlotshwa, leave to intervene in the proceedings, also reviewed and set aside a failure to decide on the transfer of a mining right. Consequential relief was granted which included ordering a consent and subsequent cession of the mining right in favour of the applicant in the main application (Afrimat) who are the fifth respondent in this application. The background to the matter is set out in the main judgment and is not repeated here.

[2] The application for leave to appeal is predicated upon two broad grounds. The first is that, properly construed a reference to "an interest" in a mining right referred to in section 11(1) of the Minerals and Petroleum Resources Development Act[1] (MPRD) ought to be interpreted in the widest possible sense as opposed to the interpretation afforded by this Court. The second is that this court created new law. I intend to deal with each in turn.

[3] Firstly, it was argued that whether or not the applicant was a shareholder or not of a company that held a mining right, the legislation in section 11(1) contemplated an interest as being direct, if the mining right had been registered in her name, in whole or in part or for example, if she was a member of a community which was the holder of a mining right.

[4] It was further argued that the reference in the second part of section 11(1) to a "controlling interest" in a company (which was the holder of a mining right) was

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[1] 28 of 2002.

neither here nor there and was separate and distinct from the interest referred to in the first part of section 11(1). The section read clearly means that whoever holds an interest in a mining right and wishes to cede or transfer it, must obtain the consent of the Minister. This is not contentious. However, the way the section is framed, makes it clear that whoever holds the mining right is the person who must obtain the consent so for example, if more than one person has a share in a mining right in their own name, each of them would have to obtain consent from the Minister. The position is materially different with companies because the company as a legal person is the holder of the interest (and the right in the present case). This is why the section refers to a "controlling interest".

[5] It was argued for Afrimat that since the decision of this court was consonant with the law as set out in the cases of *Mogale Alloys*[2] and *Vantage*[3], that there was simply no prospect that another court would come to a different conclusion.

[6] Secondly, it was also argued for Ms Mlotshwa that this court had made new law by negating the requirements of the Promotion of Administrative Justice Act[4] (PAJA) by exercising a discretion to substitute its own decision for that of the Minister without referring the matter back. In this regard, Ms Mlotshwa referred to paragraph [47] in the judgment of *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa (Ltd) and Another.*[5]

[7] The argument advanced on behalf of Afrimat regarding the exercise of this court's discretion and rebutting the argument for Ms Mlotshwa, is compelling. It was framed as follows:

> *"19. That leaves the ground attacking the exercise of the court's discretion. The exercise of this Court's discretion to order the D-G, alternatively the Minister, to give consent was an exercise of a true discretion, by an urgent*

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2 *Mogale Alloys (Pty) Ltd v Nuco Chrome Bophuthatswana (Pty) Ltd and Others* 2011 (6) SA 96 (GSJ).
3 *Vantage Goldfields SA (Pty) Ltd and Another v Arqomanzi (Pty) Ltd and Others* 2023 JDR 2275 (SCA).
4 3 of 2000.
5 2015 (5) SA 245 (CC).

court, which had to respond as best it could to the peculiar circumstances of the case.

20. *That was a true discretion, and it is not easily disturbed. It lies within the range of permissible decisions that was observed by the Constitutional Court in Public Protector v South African Reserve Bank 2019 6 SA 253 (CC) at 144:*

> *"A true discretion exists where the lower court has a number of equally permissible options available to it. An appeal court will not lightly interfere with the exercise of a true discretion. Ordinarily, it would be inappropriate for an appeal court to interfere in the exercise of a true discretion, unless it is satisfied that the discretion was not exercised judicially, the discretion was influenced by wrong principles, or a misdirection on the facts, or the decision reached could not reasonably have been made by a court properly directing itself to all the relevant facts and principles". (Emphasis added)".*

[8] The test for the granting of leave to appeal pertinent to the present matter is set out in section 17(1)[6] of the Act as follows:

> *"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that*
>
> *(a) (i) the appeal would have a reasonable prospect of success or*
>
> *(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration"*

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[6] 10 of 2013. See also *Fusion Properties 233 CC v Stellenbosch Municipality* 2021 JDR 0094 (SCA) at para [18].

[9] I have considered the grounds upon which the application has been brought and the reasons given by me in the judgment for the order granted. I have also considered the submissions made by counsel for the granting of leave to appeal on the part of Ms Mlotshwa and those opposing the granting of leave to appeal on behalf of Afrimat together with the submissions made in each of the respective heads of argument.

[10] I am not persuaded that another court would come to a different conclusion or that there is any other compelling reason for the granting of leave to appeal. The application is to be refused. The costs will follow the result.

[11] In the circumstances, I make the following order:

[11.1] The application for leave to appeal is refused.

[11.2] The applicant, Ms Mlotshwa, is ordered to pay the costs of the fifth respondent (Afrimat) on the scale as between party and party which costs are to include the costs consequent upon the engagement of 2 counsel where so employed, one of whom is a senior counsel, both on scale C.

A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 12 JUNE 2026

JUDGMENT DELIVERED ON: 17 JUNE 2026

COUNSEL FOR MS MLOTSHWA:	ADV. D MPOFU SC ADV. T MODISE
INSTRUCTED BY: REFERENCE:	MABUZA ATTORNEYS MR. E MABUZA/ MS. I MNDEBELE
COUNSEL FOR AFRIMAT:	ADV. L SISILANA SC ADV. L CROW
INSTRUCTED BY: REFERENCE:	DENEYS MR. A VOS/MR. F LE ROUX