



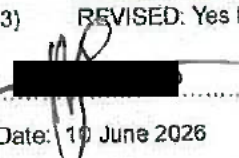
**IN THE LAND COURT OF SOUTH AFRICA  
HELD AT RANDBURG**

**CASE NO: LCC 96/2024**

**Before: The Honourable Ncube J and Maluleke AJ**

**Heard on: 14 April 2026**

**Delivered on: 10 June 2026**

(1)	REPORTABLE: Yes <input type="checkbox"/> / No <input type="checkbox"/>
(2)	OF INTEREST TO OTHER JUDGES: Yes <input type="checkbox"/> / No <input type="checkbox"/>
(3)	REVISED: Yes <input type="checkbox"/> / No <input type="checkbox"/>
	
Date: 10 June 2026	

In the matter between:

**RUSTENBURG PLATINUM MINES LIMITED**

First Applicant

**MOGALAKWENA PLATINUM LIMITED**

Second Applicant

and

**ELISA RAMASELA LANGA**

First Respondent

**ALBERT LESETJA CHABA**

Second Respondent

**GLEN PHAKGADI**

Third Respondent

<b>FRANS RENELANE PHAKGADI</b>	<b>Fourth Respondent</b>
<b>POLVIANCE RANKOTSANA PHAKGADI</b>	<b>Fifth Respondent</b>
<b>JACK MADIMETJA PHAKGADI</b>	<b>Sixth Respondent</b>
<b>PINNY MOKGAETJI PHAKGADI</b>	<b>Seventh Respondent</b>
<b>RENNIE PHAKGADI</b>	<b>Eighth Respondent</b>
<b>SELINAH MOKGAETJI MOTHAPO</b>	<b>Ninth Respondent</b>
<b>LERATO MOTHAPO</b>	<b>Tenth Respondent</b>
<b>MARIA NONG</b>	<b>Eleventh Respondent</b>
<b>THE MINISTER OF MINERAL RESOURCES AND ENERGY</b>	<b>Twelfth Respondent</b>
<b>THE DIRECTOR-GENERAL OF THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY: MINERAL AND PETROLEUM REGULATION</b>	<b>Thirteenth Respondent</b>
<b>THE DEPUTY DIRECTOR-GENERAL DEPARTMENT OF MINERAL RESOURCES AND ENERGY</b>	<b>Fourteenth Respondent</b>
<b>THE REGIONAL MANAGER: LIMPOPO REGION THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY</b>	<b>Fifteenth Respondent</b>
<b>THE MOGALAKWENA LOCAL MUNICIPALITY THE CHIEF DIRECTOR, LIMPOPO: DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT: WATERBERG DISTRICT</b>	<b>Sixteenth Respondent</b>
	<b>Seventeenth Respondent</b>

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**ORDER**

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The following order is made:

1. Leave to appeal to the Supreme Court of Appeal is granted.

2. Leave is granted solely on the basis that compelling reasons exist as contemplated in section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013.
3. No finding is made that the appeal enjoys reasonable prospects of success under section 17(1)(a)(i).
4. Costs shall be costs in the appeal.

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## JUDGMENT

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**MALULEKE AJ (Ncube J concurring)**

### Introduction

[1] This is an application for leave to appeal against the whole judgment and order of this Court delivered on 4 February 2026.

[2] The application is directed to the Supreme Court of Appeal in terms of section 31 of the Land Court Act 6 of 2023 read with section 17 of the Superior Courts Act 10 of 2013.

### Parties

[3] The First Applicant is Rustenburg Platinum Mines Limited (RPM), a holder of a mineral right in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), which includes a part of the mining area within the Zwartfontein. Historically, the mining area was occupied by the communities comprising almost 1000 households that made up Motlholo community. It included the Ga-Sekhaolelo community which resided on the farm Overysel 815 LR and the Ga-Puka community which resided on the farm Zwartfontein, which the First to Eleven Respondents are part of.

[4] The Second Applicant is Mogalakwena Platinum Limited (MPL), a lessee of farm Zwartfontein.

[5] The Applicants are wholly owned subsidiaries of Anglo-American Platinum Limited (AAPL). Mr Tebogo Makhubedu is a Senior Land Rights Manager at AAPL. He is the deponent to the founding affidavit.

[6] The First to Eleventh Respondents are, Elisa Ramasela Langa, Albert Lesetja Chaba, Glen Phakgadi, Frans Renelane Phakgadi, Polviance Rankotsana Phakgadi, Jack Madimetja Phakgadi, Penny Mokgaetji Phakgadi, Rennie Phakgadi, Selina Mokgaetji Mothapo, Lerato Mphapo and Maria Nong, respectively.

[7] The Twelfth to Seventeenth Respondents are: the Minister of Mineral Resources and Energy (Minister) who is cited in his capacity as the Head of the Department of Mineral Resources and Energy (DMRE); the Director General of the DMRE (Director General), the Deputy Director General of the DMRE (DDG); the Regional Manager, DMRE (Regional Manager), the Mogalakwena Local Municipality and the Chief Director, Limpopo Department: Agriculture and Rural Development: Waterberg District respectively.

#### Background

[8] The Applicants applied to this Court for:

1. A declaration that the process in terms of section 54 of the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA) has concluded, save for the right of the First to Eleventh Respondents to, in terms of section 54(4) of the MPRDA, refer any dispute regarding compensation to arbitration in accordance with the Arbitration Act, 42 of 1965 or to a competent court;
2. An order evicting the First to Eleventh Respondents and all persons claiming rights of residence through them, from the farm Zwartfontein in the Mogalakwena Local Municipality, Limpopo within 30 days of the granting of the order;
3. An order confirming that the Applicants are entitled to demolish the dwellings occupied and / or retained by the First to Eleventh Respondents on Zwartfontein upon their vacating of Zwartfontein, and the return of any salvaged material to such Respondents;

4. In respect of the Third to Eleventh Respondents, a final order directing them to make a selection of alternative permanent housing to be constructed for them by the Applicants, in accordance with the Relocation Agreement concluded in August 2012, and the Addendum thereto concluded in February 2018.

[9] The Court dismissed the application with costs and now the Applicants seek Leave to appeal the decision.

**Issues to be determined:**

[10] Issues to be determined are whether:

- a. The Court correctly interpreted and applied IPILRA, particularly the requirement of community consent.
- b. The Court correctly interpreted and applied the relationship between IPILRA, ESTA and the MPRDA.
- c. The applicants exhausted the section 54 MPRDA process before instituting eviction proceedings.
- d. The Court overlooked material evidence relating to community resolutions and consent.

**Applicants' case**

[11] The Applicants contend that this Court erred in its interpretation and application of The Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA), the Extension of Security of Tenure Act 62 of 1997(ESTA) and section 54 of the MPRDA.

[12] On the finding that there was no Community consent, the Applicants contend that the Court failed to consider evidence demonstrating that:

- 12.1. the Ga-Puka community adopted resolutions in 2002 and 2012;
- 12.2. the resolutions authorised relocation;
- 12.3. consent was provided in accordance with section 2(4) of IPILRA.

[13] The Applicants submit that the Court failed to properly consider evidence concerning community resolutions and consent. The Court erred in concluding that the eviction application was premature. Further that the Court conflated consultation and consent and therefore misapplied *Baleni*<sup>1</sup> and *Maledu*<sup>2</sup>.

[14] On whether section 54 process were exhausted or not, the Applicants contend that:

- 14.1. they exhausted all reasonable steps under section 54;
- 14.2. the Regional Manager failed to perform statutory obligations;
- 14.3. the Court incorrectly held that the application was premature.

[15] The Applicants contend that the Court mischaracterised their case. They argue that they never contended that relocation agreements authorised eviction without a court order. Rather, they contend, IPILRA consent existed and that ESTA remained the procedural mechanism for eviction.

[16] The Applicants further argue that the Court's failure to consider the replying evidence, led to its failure to evaluate evidence placed before it in reply regarding community resolutions and subsequent confirmatory affidavits.

#### Respondent's case

[17] The Respondents argue that there is no reasonable prospects of success at the SCA. That the Court correctly found that:

- 17.1. IPILRA consent was not established;
- 17.2. The relocation arrangements did not satisfy IPILRA;
- 17.3. Section 54 was not exhausted.

[18] The Respondents further argue that *Baleni* and *Maledu* were correctly applied by the Court and that:

- 18.1. consent is a substantive prerequisite;

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<sup>1</sup> *Baleni and Others v Minister of Mineral Resources and Others* 2019 (2) SA 453 (GP)

<sup>2</sup> *Maledu and Others v Itereleng Bakgalla Mineral Resources (Pty) Ltd and Another* 2019 (2) SA 1 (CC)

- 18.2. section 54 is a compulsory dispute-resolution mechanism;
- 18.3. eviction proceedings were prematurely launched.

[19] The Respondents argue that there is no compelling reason to grant the leave to appeal and contend that:

- 19.1. the legal principles are settled;
- 19.2. the appeal merely challenges factual findings;
- 19.3. there is no novel question requiring appellate intervention.

### **Legal Principles Applicable**

#### **Test for Leave to Appeal**

[20] Section 17(1)(a) of the Superior Courts Act provides that:

“(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;”

[21] The threshold is a stringent one. In *MEC for Health, Eastern Cape v Mkhitha* (1221/2015) [2016] ZASCA 176 the Supreme Court of Appeal held that there must be a sound and rational basis for concluding that another court would arrive at a different conclusion. Mere disagreement with the judgment is insufficient.

[22] See also *Mont Chevaux Trust v Tina Goosen and 18 Others* 2014 JDR 2325 (LCC) where the court held that the threshold for leave to appeal under section 17 is higher than under the previous legal position. The word “would” indicates a measure of certainty that another court will differ.

[23] In *Ramakatsa v African National Congress* (724/2019) [2021] ZASCA 31, the Supreme Court of Appeal confirmed that compelling reasons remain an independent basis upon which leave may be granted.

## **Discussion**

### **Reasonable prospects of success**

[24] Having considered the notice of application for leave to appeal, the written submissions and oral argument, I am not persuaded that the applicants have demonstrated that another court would reach a different conclusion.

[25] The applicants' criticisms are directed principally at factual findings and evaluative conclusions reached by this Court after considering the evidence as a whole.

[26] I am therefore not satisfied that the applicants have established reasonable prospects of success within the meaning of section 17(1)(a)(i).

### **Compelling reasons**

[27] The matter nevertheless raises an important legal question: What is the legal relationship between prior community consent under IPILRA, relocation agreements, ESTA eviction proceedings, and section 54 MPRDA dispute-resolution process?

[28] The authorities do not appear to have finally resolved whether:

- 28.1. Historical community consent remains operative in subsequent relocation disputes;
- 28.2. Section 54 must be fully exhausted where IPILRA consent is alleged;
- 28.3. IPILRA communities may be evicted under ESTA while compensation issues remain unresolved.

[29] These questions transcend the interests of the present litigants and are of considerable importance to mining-right holders, affected communities, informal rights holders and Courts tasked with balancing competing constitutional and statutory rights.

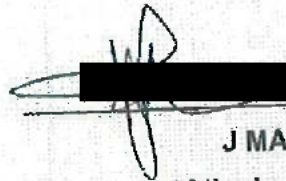
[30] In my view, these considerations constitute compelling reasons within the

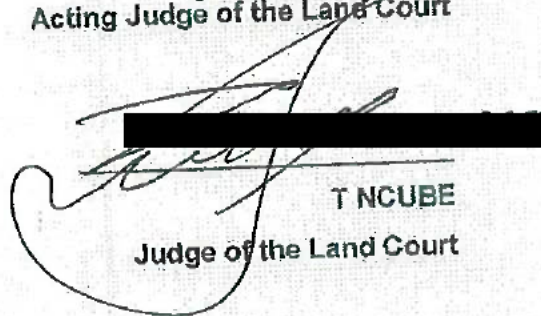
meaning of section 17(1)(a)(ii) of the Superior Courts Act for the appeal to be heard by the Supreme Court of Appeal.

**Order**

[31] The following order is made:

1. Leave to appeal to the Supreme Court of Appeal is granted.
2. Leave is granted solely on the basis that compelling reasons exist as contemplated in section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013.
3. No finding is made that the appeal enjoys reasonable prospects of success under section 17(1)(a)(i).
4. Costs shall be costs in the appeal.

  
[REDACTED]  
J MALULEKE  
Acting Judge of the Land Court

  
[REDACTED]  
T NCUBE  
Judge of the Land Court

**APPEARANCES:**

For the Applicants: Adv Christopher Loxton SC & Adv B Dhiadhla

Instructed by: Knowles Husain Lindsay Inc.

For the Respondents: Adv Vuyani Ngalwana SC, and Adv Tutelo Makola

Instructed by: Nyapotse Inc. Attorneys