



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case no:2026-167870

In the matter between:

**MALAMANI MINING AND EXPLORATION
(PTY) LTD**

APPLICANT

and

**BATSHWENENG COMMUNAL PROPERTY
ASSOCIATION**

FIRST RESPONDENT

**BATSHWENENG DUE RISE VENTURES
(PTY) LTD**

SECOND RESPONDENT

**ANY AND ALL PERSONS ASSOCIATING
THEMSELVES WITH THE FIRST
AND/OR SECOND RESPONDENTS
AND/OR ACTING ON THEIR
INSTRUCTIONS IN THE UNLAWFUL**

**ACTIONS DETAILED IN THE
FOUNDING AFFIDAVIT**

THIRD RESPONDENT

**PROVINCIAL COMMISSIONER,
SOUTH AFRICAN POLICE SERVICE,
NORTH WEST PROVINCE**

FOURTH RESPONDENT

**THE STATION COMMANDER:
OTTOSHOOP SAPS**

FIFTH RESPONDENT

Coram: Wessels AJ

Heard: 7 August 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 14h00 on 31 August 2026.

Summary: Urgent interdict restraining removal of historical rock dumps pending a mineral rights dispute – prima facie right, apprehension of harm and balance of convenience favour the applicant – rule nisi granted with interim effect – costs of an earlier postponement recalled under Uniform Rule 42(1)(a) and awarded against the applicant.

JUDGMENT

Wessels AJ

Introduction

[1] This is a semi-urgent application in which the applicant ('Malamani'), seeks a rule nisi with interim interdictory relief pending a return date. The relief sought restrains the first to third respondents from removing, disposing of or otherwise dealing with certain historical rock dumps and tailings on the Remaining Extent of the Farm Windheuwel 86 JO ('the property'), restores Malamani's undisturbed access to the property and interdicts interference with its prospecting and bulk sampling operations there. The fourth and fifth respondents are cited only for enforcement purposes and take no substantive position.

[2] The first respondent is the Batshweneng Communal Property Association ('the CPA'), the registered owner of the property. The second respondent, Batshweneng Due Rise Ventures (Pty) Ltd ('Due Rise'), is the CPA's commercial arm. I refer to the first and second respondents collectively as 'the respondents', and individually where I need to differentiate. The papers before me do not identify any role for the third respondent distinct from that of the CPA and Due Rise, and nothing turns on the third respondent for present purposes.

[3] Malamani holds a prospecting right over the property, granted in respect of aggregate, copper ore, gold ore and silver ore, together with permission for bulk sampling. The prospecting right's initial term expired on 27 November 2023, but a renewal application was lodged before expiry and remains outstanding, so that the prospecting right remains in force by reason of s18(5) of the Mineral and

Petroleum Resources Development Act¹ ('the MPRDA'), pending determination of that application.

[4] The dispute between the parties concerns historical rock dumps and tailings on the property, which Malamani alleges contain gold-bearing material worth more than R225 million. Malamani claims the exclusive right to deal with this material on the strength of the prospecting right and a written agreement termed a Binding Heads of Agreement concluded with the CPA on 1 March 2017, as amended on 8 November 2017 ('the 2017 agreement'). The respondents state that the dumps are historical assets that fall outside the scope of the prospecting right and belong to the CPA as landowner.

[5] What triggered the application, on Malamani's version, was a sequence of events that unfolded over a period of about five weeks. On 22 June 2026 Malamani discovered that Due Rise had obtained a hazardous waste transporter certificate from the North West Department of Economic Development, Environment, Conservation and Tourism. That certificate permits the holder to remove material classified as hazardous waste. Once Malamani became aware of this certificate, it requested the CPA to give an undertaking that the dumps would not be removed while the parties' dispute remained unresolved. The CPA refused to give such an undertaking. Shortly after that refusal, a tractor loader backhoe ('TLB') appeared at the dumps. Malamani states that a TLB is used to load and remove bulk material and is not what one would expect to see if the dumps were simply being cleared for grazing. Then, on 28 July 2026, on Malamani's version, its representative was physically denied access to the property. Malamani placed this ultimate event before this Court by way of a supplementary affidavit, which it filed on 29 July 2026, after the founding, answering and replying affidavits had

¹ Mineral and Petroleum Resources Development Act 28 of 2002.

already been exchanged. On Malamani's version, taken together, these four events indicate that what had been a longstanding dispute had, within a few weeks, turned into a situation where removal of the material was no longer a possibility but an immediate threat. Malamani relies on this to establish the urgency of the application.

[6] The matter first came before me on 31 July 2026 and was postponed to 7 August 2026, when it was argued. I deal at the end of this judgment, under a separate heading, with the reason and costs of that postponement.

Urgency

[7] Rule 6(12)(a) requires an applicant in an application for urgent relief to set out explicitly the circumstances rendering the matter urgent and why substantial redress cannot be afforded in the ordinary course. The respondents state that the ownership dispute is longstanding and that parties attended unsuccessful mediation facilitated by the Department of Mineral Resources and Energy as far back as 28 April 2026. Additionally, Malamani admits that removing the rock dumps and tailings cannot be achieved overnight.

[8] A long-standing ownership dispute exists between the parties. However, Malamani's specific allegations regarding the hazardous waste transporter certificate, the refusal of an undertaking, and machinery appearing at the dumps are recent events. These events relate more to the urgency of removal rather than the dispute's merits. I am convinced that the urgency of the application warranted a deviation from standard timeframes and procedural rules. I will now consider the merits.

Requirements for an interim interdict

[9] The following requirements for an interim interdict are trite: a *prima facie* right, though open to some doubt; a well-grounded apprehension of irreparable harm if interim relief is not granted and the applicant ultimately succeeds; that the balance of convenience favours the grant of interim relief; and the absence of any other satisfactory remedy. Where the right is *prima facie* established on that basis, the court is not required, at the interim stage, to resolve any underlying disputes.

Prima facie right

[10] The test for a *prima facie* right in an application for an interim interdict was authoritatively stated in *Webster v Mitchell*² as follows:

‘The use of the phrase ‘*prima facie* established though open to some doubt’ indicates I think that more is required than merely to look at the allegations of the applicant, but something short of a weighing up of the probabilities of conflicting versions is required. The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to ‘some doubt’. But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief.’

²*Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

[11] Malamani contends that the prospecting right extends to minerals in, on and under the property and that the dumps are on the property. Malamani furthermore contends that the MPRDA's definitions of 'mine' and 'residue deposit' bring historical dumps within its prospecting right regardless of when they arose.

[12] The respondents' answer focuses on the wording of the prospecting right itself. It grants permission, under s 20(1) of the MPRDA, to remove minerals found during prospecting operations, but only in such quantities as are required for testing, identification or analysis. Sections 5(1)(c) and 19(1)(c) correspondingly confine a prospecting right holder to material found in the course of prospecting, and not to bulk removal, save where the Minister has given written permission for bulk sampling under s 20(2). The respondents point out that Malamani's founding papers concede that the dumps are historical and pre-date its prospecting activity and that no ministerial permission covers the bulk removal. To this, Malamani answers that its screening and re-stockpiling activity since 2018 converted the dumps into the product of its own prospecting operations. I am not enjoined to resolve that dispute now. It is sufficient that the proper construction of the prospecting right is an arguable point.

[13] Malamani also relies on the 2017 agreement, which it says grants undisturbed access for prospecting purposes and evidences the CPA's knowledge of, and consent to, its work on the dumps. The CPA states that the 2017 agreement was validly cancelled on 5 August 2024 for breach and is in any event invalid for want of authorisation under s12(1) of the Communal Property Associations Act³, which calls for the encumbrance of communal land only with the consent of the majority of the members of the CPA present at a general meeting of members. Malamani disputes the cancellation as an unaccepted repudiation. This dispute is

³ Communal Property Associations Act 28 of 1996.

not before me at this stage, but it illustrates the contested character of the underlying rights dispute.

[14] I am satisfied that Malamani has established a prima facie right, open to some doubt, sufficient to meet the first requirement for interim relief.

Apprehension of harm

[15] The apprehension of harm is well made out in the application. It is common cause on the papers before me that the material is finite and valuable. On Malamani's version, the respondents have already contracted with a third party, Pulamadibogo, for its removal on a profit-sharing basis.

[16] The respondents rely, in part, on the hazardous waste transporter certificate obtained by Due Rise as justification for removing the dumps. I must mention that the respondents place too great an emphasis on the purpose of this certificate. It is a permit to move a substance, once lawfully entitled to do so. This certificate is silent on who is entitled to instruct that the material be moved, sold or otherwise dealt with, which is what is in dispute between the parties. Nor does labelling the dumps as hazardous waste for the purposes of that certificate resolve the dispute. Whether this residue material falls within Malamani's prospecting right is itself part of the dispute I have already found to be arguable and the hazardous waste certificate does not resolve that question. If anything, the timing of the certificate, obtained shortly before the machinery appeared on site and the Pulamadibogo arrangement came to light, supports Malamani's apprehension that the true purpose of the hazardous waste removal is commercial.

[17] What further bolsters the commercial flavour of the removal of the hazardous waste is that the respondents allege the dumps were being moved to

create grazing land. However, clearing land for grazing does not ordinarily require obtaining a hazardous waste transporter certificate and concluding a profit-share agreement with a third party to take the material away. No evidence was put before this Court quantifying the grazing need that is said to be achieved. I highlight this to show that the grazing explanation does very little, if anything, to reduce the apprehension of harm on which Malamani relies. There is no evidence that any genuine grazing need could not be met without removing the disputed material.

[18] I am satisfied that Malamani has shown a well-grounded apprehension of harm that is irreparable in the sense relevant to this enquiry, being, once removed and sold, the material cannot be restored.

Balance of convenience and alternative remedy

[19] The balance of convenience favours preserving the status quo. An interdict preventing removal pending the return date causes the respondents no real prejudice beyond delay, since the material is left in place. Malamani, on the other hand, faces the permanent loss of the subject matter of the dispute if the material is removed and sold before the rights question is determined.

[20] An award of damages is not a satisfactory alternative remedy either. To this end, I take into consideration the one set of financial statements before me, relating to an entity through which the CPA is said to administer its financial affairs. It discloses total assets of R4 170 261 as at 28 February 2017, of which R3 733 500 is game and livestock and only R281 333 is property, plant and equipment. Even taking the full balance sheet into account, I am not persuaded that the respondents are presently in a position to satisfy a judgment approaching

the value of the rock dumps and tailings, most of the entity's assets being illiquid and unrelated to the dispute.

[21] On the conspectus of evidence presented to this Court, Malamani is entitled to the rule nisi it seeks, operating with immediate interim effect pending the return date.

Conclusion

[22] For these reasons, the interim relief set out in paragraphs 1 to 3 of the notice of motion stands to be granted. I turn now to the costs of the postponement of 31 July 2026.

Costs

[23] When the matter first served before me on 31 July 2026, I had been given access to the file on Caselines only late the afternoon of 30 July 2026 and had not been able to read the papers due to an already congested roll for 31 July 2026. The matter was postponed to 7 August 2026 to allow me the opportunity to do so, and no order as to costs was made on that occasion. Although Adv Scholtz appeared for Malamani on 7 August 2026, Adv B Riley was on brief and appeared for Malamani on 31 July 2026. Importantly, only Adv B Riley appeared before me on 31 July 2026 and did not protest when I confronted him with the late access granted to the Court.

[24] To avoid confusion, it should be recorded that Adv B Riley is a different person from Adv N Riley, who appeared throughout for the respondents. Counsel for the respondents applied for the order of 31 July 2026 to be recalled and replaced with an order that Malamani pay the wasted costs of the postponement.

His submission was that the respondents were ready to proceed on 31 July 2026 and were not the cause of the postponement, which resulted from Malamani's attorneys uploading the court bundle to CaseLines at a very late stage. He informed this Court that he had been present at Court in person on 31 July 2026, not on the virtual platform. He had not appreciated that the hearing was to proceed on a virtual platform and was not present on the virtual platform to address me on the issue of costs on 31 July 2026.

[25] Counsel for Malamani resisted this submission by respondents' counsel, submitting that the difficulty in giving timeous access to the Court to the Caselines court bundle lay with the Registrar rather than with Malamani's attorneys and that I should not disturb an order made on 31 July 2026. Being an officer of the Court, I have no difficulty accepting this submission of counsel for the respondents. Because counsel for the respondents was not before this Court when the order of 31 July 2026 was made and was not heard on the question of costs, that order was granted in the absence of a party affected by it within the meaning of Uniform Rule 42(1)(a), and I am accordingly entitled to revisit it.

[26] This division's roll is heavily burdened, and it is released to practitioners in early course so that a matter enrolled before a particular judge can be prepared and brought to that judge's attention soon after the roll closes in the previous week. This was not a matter of such urgency that it could be brought to this Court overnight. The application had to be ready and prepared by the time the roll closed on 24 July 2026 and brought to my attention as soon as possible thereafter. On 28 July 2026 at 14:52 the Registrar released the roll to all practitioners concerned, indicating that the matter was to be served before me. There could, consequently, be no excuse for access to the papers to be granted only in the afternoon of 30 July 2026. Access to the court file on Caselines was squarely within the applicant's control. I am not persuaded that a mishap in the office of

the Registrar accounts for what was, in substance, a failure to bring the matter to my attention timeously once the roll had closed.

[27] An order that a party pay the costs occasioned by its own want of diligence, where that want of diligence caused a properly prepared respondent to attend court unnecessarily, should in these circumstances not attract a punitive order. It simply follows the ordinary rule that costs follow the cause of the wasted appearance. I accordingly recall the order of 31 July 2026 and replace it with an order that Malamani pay the wasted costs of the postponement of 31 July 2026, on a party-and-party scale, Scale B.

[28] The costs of the application argued on 7 August 2026 stand on a different footing as the underlying dispute remains to be determined on the return date and it is appropriate that those costs be reserved for determination then, together with the costs of the return day itself.

Order

[29] For these reasons, the following order is made:

- 1 A rule nisi is issued, returnable on 11 February 2027, calling upon the first to fifth respondents to show cause, if any, why an order should not be made in the following terms:
 - (a) the first, second and third respondents are interdicted and restrained from removing, disposing of or otherwise dealing with the rock dumps, tailings and stockpiles situated on the Remaining Extent of the Farm Windheuwel 86 JO ('the property');

- (b) the applicant's undisturbed access to the property is restored;
 - (c) the first, second and third respondents are interdicted from interfering with the applicant's prospecting and bulk sampling operations on the property.
- 2 Pending the return date, paragraph 1 operates as an interim order with immediate effect.
 - 3 Should the first, second and third respondents fail to comply with paragraph 1 of this order, the sheriff is authorised, assisted if necessary by the fourth and fifth respondents, to enforce compliance.
 - 4 The order made on 31 July 2026 that there be no order as to costs is recalled and set aside and is replaced with an order that the applicant pay the wasted costs occasioned by the postponement of the matter on that date, such costs to be taxed on Scale B.
 - 5 The costs of the application argued on 7 August 2026 are reserved for determination on the return date.



M WESSELS

ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

For the applicant:	Adv H Scholtz
Instructed by:	CJP Oelofse Attorneys Mahikeng
For the first and second respondent:	Adv N Riley
Instructed by:	Morweng Attorneys Mahikeng