


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 538/2022

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
.....	
.....	
DATE: 19 June 2025	SIGNATURE... 

In the matter between:

TSHIPISE SAFARIS (PTY) LTD

APPLICANT

And

**TD NHLAMULO AND HIS MOTHER LOGISTICS AND
BUSINESS ENTERPRISES (PTY) LTD**

FIRST RESPONDENT

MINISTER OF MINERAL RESOURCES AND ENERGY

SECOND RESPONDENT

**REGIONAL MANAGER: DEPARTMENT OF MINERAL
RESOURCES AND ENERGY, LIMPOPO REGIONAL
OFFICE**

THIRD RESPONDENT

MINISTER OF POLICE

FOURTH RESPONDENT

**STATION COMMANDER TSHAMUTUMBU
POLICE STATION**

FIFTH RESPONDENT

VAN DER WALT, EDWARD

SIXTH RESPONDENT

MINISTER OF WATER AND SANITATION

SEVENTH RESPONDENT

**MINISTER: DEPARTMENT FORESTRY,
FISHERIES AND THE ENVIRONMENT**

EIGHT RESPONDENT

MULAUDZI, AZWIHANGWISI

NINTH RESPONDENT

MUNYAI, MUTHI MARIA

TENTH RESPONDENT

JUDGMENT

DU PLESSIS AJ:**Introduction:**

- [1] This Court is tasked with the hearing of an Application involving 5 matters that were consolidated. The matters under case numbers 588/2022, 732/2023, 117/2020 as well as 1391/2020 were consolidated with and under the overarching matter with case number: 538/2022.
- [2] At the inception of the hearing the Court indicated to the parties that the court file for case number 538/2022 is the most complete and was it agreed between the parties that this set of pleadings would be used for the hearing.
- [3] The Applicant seeks relief as set out in Part B of the Notice of Motion under case number 538/2022 and in the following terms:
- 3.1 That the First Respondent is declared to be in contempt of the Court Order granted on 27 October 2020;
- 3.2 That the Tenth Respondent be declared to be in contempt of the Court Order granted on 27 October 2020;
- 3.3 That interdict granted in paragraphs 2 and 3 of "PART A" be made final;
- 3.4 To the extent that the mining permit issued to the First Respondent in respect of any of the Farms remains valid or has been renewed when this matter is heard, it is reviewed and set aside;
- 3.5 The First, Sixth, Ninth and Tenth Respondents and any other Respondent who opposes the application be order to pay the costs on

an attorney and own client scale, jointly and severally, the one to pay the others to be absolved.

- [4] Part A of the application under case number 538/2022 was granted by the Honourable Acting Judge Madavha on 28 April 2023 and the *rule nisi* extended to 5 February 2025.

Background:

- [5] At the centre of the dispute between the parties, is a mining permit that was granted to the First Respondent.
- [6] The mining permit of the First Respondent expired, however the First Respondent and the Tenth Respondent continues their mining activities.
- [7] On the 27th of October 2020 the Honourable Judge Kgomo granted an order under Case number: 1391/2020¹ in terms of which the parties were ordered to, *inter alia*, enter into mediation (for both case numbers 1391/2020 as well as case number 1265/2020).
- [8] The Court Order further provided very specific requirements for the First and Tenth Respondents' mining activities and also Ordered the Minister of Mineral Resources to cause an investigation to be conducted by the Department of Mineral Resources into the complaint in terms of Section 31D(5) of the National

¹ See Order of 27 October 2020, annexure 'CA1.2', Supplementary Affidavit, pp 533 to 538.

Environmental Management Act 107 of 1998 lodged on 6 October 2020 and to compile and deliver a report to the Court as well as to the respective Parties.

- [9] This Court Order has unfortunately been ignored by the First and Tenth Respondents as well as by the Second Respondent, to with the Minister of Mineral Resources and Energy, placing them in contempt thereof.
- [10] On 1 April 2022 the Applicant sought and obtained interim relief by way of a *rule nisi* with return date on 24 January 2023. The order was issued by the Honourable Tshidada J.
- [11] From the terms of the *rule nisi* it is evident that it had immediate and interim effect.
- [12] On the return date, the *rule nisi* was extended by consent between the Applicant, the First and Tenth Respondents as well as the State Respondents (Second to the Eight Respondents) represented by the State Attorney.
- [13] In addition to the first urgent application which was enrolled for hearing on 22 March 2023, a further application was brought seeking a declaratory order confirming that the *rule nisi* issued on 1 April 2022 by this Court in fact had interim effect as well as contempt proceedings against the First and Tenth Respondents.
- [14] The first urgent application arose as a result of the First and Tenth Respondents' repeated formal declarations that they did not regard themselves as bound to the said *rule nisi* since it had no interim operational effect in the absence of a

declaration to that effect being specifically articulated in the *rule nisi* itself. This despite having agreed to the extension of the return date to 8 August 2023.

- [15] During this time the respondents did not comply with the terms and obligations arising from the interim order. The First Respondent as represented by the Tenth Respondent continued to mine outside of the boundary / area demarcated and permitted by its mining permit and the associated Environmental Authorisation issued by the Department of Mineral Resources and Energy. For that purpose it traversed the properties of the Applicant with impunity.
- [16] The First Respondent also unlawfully stockpiled sand outside of the permitted mining area on the Applicant's land.
- [17] The first urgent application was removed from the roll on the return date due to the fact that Tshidada J was concerned that on 1 April 2022, on the date that the *rule nisi* was granted, and unbeknownst to the Applicant and himself the First Respondent's mining permit has apparently been renewed during the preceding week.
- [18] The *rule nisi* was sought and granted on the premise that the permit has lapsed.
- [19] It is apposite to state that the *rule nisi* had been correctly issued in respect of any unlawful sand mining activities executed outside of the permitted mining area and any areas not covered by a lawfully obtained mining permit or Environmental authorisation.

- [20] The renewed or reissued mining permit would only protect the First Respondent from the operation of the *rule nisi* if the First Respondent confined its mining activities within the geographic boundaries of the demarcated, permitted mining area. The Department of Mineral Resources and Energy filed a report on 04 December 2020 in which it stated that 65% of the First Respondent's mining activities occurred outside of the permitted mining area.
- [21] The First Respondent brought an urgent application (the second urgent application) under case number 588/2023 in the Limpopo Local Division, Thohoyandou, against the Applicant, the Applicant's farm manager, the Musina Local Municipality and the Government of South Africa as well as the Minister of Mineral Resources.
- [22] In the second urgent application the First Respondent applied for the interim suspension of the operation of the *rule nisi* of 1 April 2022 together with a *mandamus* directing the Department of Mineral Resources and Energy to consider and / or issue / renew the Applicant's mining permit which in the First Respondent's own admission on oath had by then lapsed at midnight, 17 March 2022.
- [23] The Court proceeded to issue a further *rule nisi* identical to the *rule nisi* of 1 April 2022, with its return date on 8 August 2023, suspending the operational effect of its own interim order, presumably pursuant to the provisions of rule 45A.²

² See Order of 11 April 2023, annexure 'A', FA, pp 23 to 26.

- [24] The Department of Mineral Resources and Energy was directed to consider subject to consultation with the landowner, occupier and any interested and affected party, the application for the Applicant's mining permit on the Applicant's land. The order did not renew the First Respondent's mining permit, which has lapsed in the interim. It rather directed the Department of Mineral Resources and Energy to consider the application for renewal of the mining permit, expressly subject to the rights of the affected parties to be consulted in the process.
- [25] It must be reiterated that the First Respondent admitted under oath, in its application under case number 588/2023 that its mining permit had expired on 17 March 2023.
- [26] Despite the lapsing of the First Respondent's permit and further despite the issuing of the order by the High Court of Limpopo Division, Thohoyandou on 11 April 2023, the First Respondent assisted by the Tenth Respondent continued with their mining activities from the 15th of April 2023.
- [27] The First Respondent and the Tenth Respondent therefore unlawfully entered the properties of the Applicant to continue their mining activities on the banks of the Limpopo River, which is the boundary of the Applicant's land, thus conducting illegal mining activities thereat.
- [28] It is common cause that the First Respondent's mining permit has neither been renewed, although an apparent renewal application has been submitted on 3

March 2023, nor has the Applicant received any notification of any consultative process in relation thereto. At no time was the Applicant notified of any application for renewal as it was entitled to as an affected party.

- [29] On Saturday, 15 April 2023, the deponent to the Applicant's founding papers, Turner, observed heavy earthmoving equipment and trucks travelling towards the boom gate at the access road by which the Applicant's land is accessed.
- [30] Turner observed the First Respondent directed by the Tenth Respondent, in turn being assisted by unknown operators of heavy equipment and machinery, mining and loading sand well outside of the erstwhile permitted mining area as is evidenced by a series of photographs.³ It is evident from the photographs that they depict not only the earthmoving equipment, but also the exact time and location of the photographic evidence. These photographs also depict the Tenth Respondent directing the unlawful mining activities personally.
- [31] The Applicant's attorney corresponded with the First and Tenth Respondents' attorney of record by way of WhatsApp correspondence, copies thereof are annexed to the Founding Affidavit as annexure 'D'.⁴
- [32] From the correspondence it is clear that both the attorney of record and the First and Tenth Respondents hold the view that while awaiting the Department of Mineral Resources and Energy's decision and despite the sand mining permit's

³ Par 17, FA, p 14 read with annexure 'C' at pp 40 to 48.

⁴ Par 19, FA, pp 15 to 16 read with Annexure 'D', FA at pp 49 to 50.

lapsing on 17 March 2023, they are entitled to carry on mining unabated. This on the basis that "... she has to work until the renewal is answered".

- [33] It is apparent that the First and Tenth Respondents as well as their legal counsel holds the view that since the Applicant is not the registered owner of a portion of its land, known as "Vrouwensbrom", it has no *locus standi* to act or complain about any mining activities undertaken by the First Respondent upon Vrouwensbrom.
- [34] The Applicant has been the beneficial owner of the farm Vrouwensbrom having fully paid for the land more than twenty years ago when it was purchased from the State and throughout this period the State has never challenged the Applicant's *bona fide* ownership and possession of Vrouwensbrom and has yet to proffer any explanation for its failure to have duly transferred the property to the Applicant.
- [35] On or about 12 April 2023 the Applicant's attorney addressed a letter to the Department of Mineral Resources and Energy, which letter was also transmitted to the attorney of the First and Tenth Respondents. This letter set out the challenges to the renewal of the First Respondent's mining permit. This letter is attached to the Founding Affidavit as annexure 'B'.⁵
- [36] Since the granting of the order dated 11 April 2023, the First and Tenth Respondent have been trespassing on the Applicant's land, have moved heavy earthmoving equipment to and fro on its land, have unlawfully mined sand on the

⁵ FA, at pp 28 to 39.

banks of the Limpopo River without a mining permit or Environmental Authorisation, stockpiling sand and continuing to do so unabated and illegally.

- [37] The mining activities were conducted far beyond the demarcated boundaries of the permitted mining area.
- [38] This is so despite formal attempts on the part of the Applicant to stop the unlawful and criminal conduct on the part of the First and Tenth Respondents.
- [39] The Applicant employed a land surveyor at its own expense to locate the perimeter points of the permitted mining area. The Applicant then installed concrete bollards to which blue plastic extension were attached. The blue plastic extensions were visible above the Limpopo River water level. The first and Tenth Respondents destroyed these demarcation points.
- [40] During the rainfall season in the summer, the river overflows and the demarcated mining area is under water. However, the Respondent continues to mine on the banks of the river outside of the permitted mining area. This is not denied by the First and Tenth Respondents.
- [41] The Applicant further argued that the First and Tenth Respondents have allowed third parties to mine, extract and remove sand under the First Respondent's mining permit. This is unlawful and conflicting with Section 27(8) of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008.

- [42] The intervention of the Fifth Respondent was sought by the Applicant. Despite the fact that more than 130 criminal complaints have been preferred against the First and the Tenth Respondents at the Tshamutumbu police station and a Police Officer was dispatched to the scene of the First and Tenth Respondents' unlawful activities, no action was taken to stop the mining activities.
- [43] The Applicant submitted that the Tshamutumbu SAPS refused to investigate any of the complaints of the Applicant regarding the First and Tenth Respondents' illegal mining activities. The SAPS merely stated that the illegal mining activities must be referred to the Department of Mineral Resources and Energy.
- [44] However, upon receipt of the complaints the Department of Mineral Resources and Energy advised the Applicant to report the matter to the Tshamutumbu SAPS.
- [45] On 18 December 2022 the Third Respondent served a final Compliance Notice in terms of Section 31L of National Environmental Management Act, 107 of 1998 on the First Respondent. This Final Notice directed the First Respondent to cease mining and to rehabilitate the mining area.
- [46] This Final Notice has neither been challenged nor withdrawn and remains in full force and effect.
- [47] Despite the fact that the Final Notice is still effective, the Department of Mineral Resources and Energy failed to take any enforcement action against the First Respondent. In fact, despite there being a Final Notice, the Department of

Mineral Resources and Energy renewed the First Respondent's mining permit and the associated Environmental Authorisation on or about 23 March 2022.

- [48] The Applicant has lodged appeals to the Eight Respondent (the Department of Forestry, Fisheries and the Environment) in terms of Section 43 of National Environmental Management Act, 107 of 1998 and in respect of the renewal of the mining permit an appeal was lodged at the Director General of the Second Respondent in terms of Section 96 of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008.
- [49] The Department of Mineral Resources and Energy did not respond to the Applicant's appeal under Section 96 as read with Regulation 74 of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008 and did not take the steps as prescribed in Regulation 74.
- [50] Both appeals are currently the subject matter of Rule 53 review proceedings in the Pretoria High Court under case number: 2023/13831.
- [51] It is common cause between the parties that the First Respondent's mining permit lapsed on 17 March 2023 and together with it also the associated environmental authorisation.
- [52] It is further also common cause between the parties that the First and Tenth Respondent have continued with their illegal mining activities.

- [53] The First Respondent's application for the renewal of its mining permit of 3 March 2023 has been abandoned. It must be noted that the prescribed public participation process has not occurred and no final Basic Assessment Report has been submitted which reflect or incorporate the Applicant's comments.
- [54] Due to the Applicant's review application that is pending in the Gauteng Division, Pretoria, in respect of appeals lodged against the renewal alternatively extension of the First Respondent's mining permit and environmental authorisation, the Department of Mineral Resources and Energy is at present prevented from considering or granting the 3 March 2023 renewal application as per Section 96(2)(b) of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008.
- [55] Despite the events as described above and in addition to the objections of the Applicant, the First and Tenth Respondent continues with their mining activities unabatedly, whilst the authorities are sitting with their arms folded.
- [56] It is therefore evident that neither the Department of Mineral Resources and Energy nor the SAPS fulfilled their legislative obligations.

Points in limine :

- [57] The Respondent raised the following points-*in-limine*:

- (a) *Locus standi in judicio*;
- (b) Non-joinder;

- (c) Non-compliance with Rule 41 of the Uniform Rules;
- (d) Non-compliance with section 96 read with regulation 74 of the Mineral and Petroleum Development Regulations of Act 28 of 2002;
- (e) Lis pendens;
- (f) The application is moot and academic.

Locus standi in judicio

[58] The Respondent contends that the Applicant has no *locus standi*. This is based on the argument that the Applicant is not the registered owner of the farm Vrouwensbrom, seeing that the Deeds Office records still reflect the owner thereof to be the South African Government.

[59] In the Applicant's founding affidavit a very detailed explanation is given by the Applicant setting out the actual purchase of the farm Vrouwensbrom.

[60] It is further submitted by the Applicant that it has been in sole and undisturbed possession of the farm since its acquisition and that its position as owner has never been challenged by a third party.

[61] The Applicant argued that it did not approach this court on the basis of ownership but in terms of **Section 32 of the National Environmental Management Act, Act 107 of 1998** which clothes the Applicant with the necessary *locus standi*.

[62] Section 32 of the National Environmental Management Act provides as follows:

“(1) **Any person** or group of persons **may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act**, including a principle contained in Chapter 1, or any other statutory provision concerned with the protection of the environment or the use of natural resources—

- (a) in that person’s or group of persons own interest;
- (b) in the interest of, or on behalf of, a person who is for practical reasons, unable to institute such proceedings;
- (c) in the interest of or on behalf of a group or class of persons whose interests are affected;
- (d) **in the public interest**; and
- (e) in the interest of protecting the environment.”⁶

[63] It is evident from Section 32 of the National Environmental Management Act, 107 of 1998 that the Applicant is vested with the necessary *locus standi* to bring this application in terms of the Act.

[64] The basis for the Applicant’s *locus standi* is further also entrenched in Section 38 of the Constitution⁷, which states the following:

“Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are—

- (a) anyone acting in their own interest;

⁶ My own emphasis.

⁷ The Constitution of the Republic of South Africa, Act 108 of 1996.

- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) **anyone acting in the public interest**; and
- (e) an association acting in the interest of its members.”⁸

[65] The Respondents’ *point-in-limine* of lack of *locus standi in judicio* is therefore dismissed.

Non-joinder

[66] The Respondent contends that the Applicant had to join the Department of Public Works in this Application. This is based on the argument that the Applicant is not the registered owner of the farm Vrouwensbrom, seeing that the Deeds Office records still reflect the owner thereof to be the South African Government.

[67] It is the Respondents’ argument that the Applicant should have joined the Department of Public Works seeing that the Department of Public Works is the custodian and portfolio manager of the national government’s immovable assets.

[68] When a party raises a point of non-joinder it is required to provide an argument that the third party or the parties which in its opinion should have been joined in the proceedings not only have an interest in the case but that their interest is (a)

⁸ My own emphasis

direct, and (b) Substantial in the issues to be adjudicated by Court. In the matter of **Judicial Service Commission v Cape Bar Council 2013(1) SA 170 (SCA)** **para 12** it was held that:

“It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see eg *Bowring NO v Vrededorp Properties CC* 2007 (5) SA 391 (SCA) para 21). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one (see eg *Burger v Rand Water Board* 2007 (1) SA 30 (SCA) para 7; Andries Charl Cilliers, Cheryl Loots and Hendrik Christoffel Nel *Herbstein & Van Winsen The Civil Practice of the High Courts of South Africa* 5 ed vol 1 at 239 and the cases there cited.)”

[69] In the Applicant's founding affidavit a very detailed explanation is given by the Applicant setting out the actual purchase of the farm Vrouwensbrom.

[70] It is further submitted by the Applicant that it has been in sole and undisturbed possession of the farm since its acquisition and that its position as owner has never been challenged by a third party, including the Department of Public Works.

- [71] In **Gauteng Provincial Government Department of Human Settlements and Others v Busha and Others (90742020) 2024 ZAGPJHC 154**, Wilson J stated that: “South Africa operates a negative system of deeds registration. That means that the deeds register is not conclusive evidence of its own correctness. In other words, the register may be corrected where there is legal cause to do so.”
- [72] The Applicant has provided documentary proof of the purchase as set out in Paragraph 44 of the Founding Affidavit in addition to Annexures FA5.1 – FA5.4.⁹
- [73] The fact that the Applicant is in sole and undisturbed possession of the farm since its acquisition and that its position as owner has never been challenged by a third party proves that the Department of Public Works does not have any interest in the property and therefore no interest in this application.
- [74] On the other hand, the Respondents are not before the Court with clean hands in respect of this point. The Department of Mineral Resources and Energy are required to consult with all interested parties when it issues a mining permit and one would expect that it would consult with the Department of Public Works if it had a direct and substantial interest in this matter. It is evident from the papers that the Second Respondent did not do so.
- [75] Therefore the Court is of the view that the Department of Public Works does not have a direct and substantial interest in this application. The *point-in-limine* is therefore dismissed.

⁹ FA, at page 22 and Annexures FA5.1 – FA5.4 at pp 150 - 156

Non-compliance with Rule 41 of the Uniform Rules

- [76] This point in limine has been abandoned by the Respondents during argument before Court.

Non-compliance with section 96 read with regulation 74 of the Mineral and Petroleum Development Regulations of Act 28 of 2002

- [77] The Respondents argued that the decision by the Second, Third and Ninth Respondents of approval and granting a renewal of the First Respondent's mining permit is an administrative decision.
- [78] The Respondents further argue that due to the fact that it is an administrative decision, the Applicant ought to first comply with the internal appeal process as provided for in terms of section 96 read with regulation 74 of the Mineral and Petroleum Development Regulations of Act 28 of 2002.
- [79] The Applicant however, explained to the Court that it has indeed submitted appeals to the National Minister of Forestry, Fisheries and the Environment, being the Eighth Respondent, in terms of Section 43 of the National Environmental Act, 107 of 1998 and in respect of the renewal of the mining permit. An appeal was further also submitted to the Director-General of the Second Respondent in terms of Section 96 of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008.

- [80] The Appeal was filed against the extension of the Environmental Authorisation on the 23rd of June 2022.
- [81] The Eighth Respondent issued a ruling on the appeal, however she incorrectly determined the appeal as being one against the granting of the original Environmental Authorisation during 2020 rather than against the extension of the Environmental Authorisation during March 2022.
- [82] This effectively caused the appeal against the March 2022 extension of the Environmental Authorisation to remain undetermined until the lapse of the Environmental Authorisation through effluxion of time on 17 March 2023.
- [83] The Department of Mineral Resources and Energy never responded to the appeal under Section 96 (as read with Regulation 74) of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008 and did not proceed with any of the steps as prescribed in Regulation 74.
- [84] Both of the appeals are currently the subject matter of Rule 53 review proceedings in the Gauteng Division, Pretoria High Court under case number 2023/13831 and was a copy of the Notice of Motion attached to the Applicant's replying affidavit to the Second, Third and Ninth Respondent's Answering Affidavit.
- [85] It is clear that the Applicant did comply with the internal appeal process as provided for in terms of section 96 read with regulation 74 of the Mineral and Petroleum Development Regulations of Act 28 of 2002.

[86] This *point-in-limine* is therefore dismissed.

Lis Pendens

[87] The First and Tenth Respondents raised the point of *lis pendens*, submitting to this Court that there is a pending application under case number 1265/2020 in the High Court, Limpopo Division, Thohoyandou.

[88] The last time that the above mentioned matter was heard in Court was on 15 September 2020, before the retired Makhafola J. A copy of the order made by the Court was attached to the First and Tenth Respondents' Answering Affidavit as Annexure "N2."

[89] The First and Tenth Respondents further submitted that the matter was postponed pending a mediation process.

[90] The Applicant argued that the First and Tenth Respondents were also the Applicants in a further application under case number 1391/2020 issued from the High Court, Limpopo Division, Thohoyandou in respect of which the Court issued a Court order on 27 October 2020 in terms of which case number 1265/2020 was consolidated with case number 1391/2020. The matter was further referred to mediation in terms of Rule 41A.

[91] The three requirements for a successful reliance on the plea of *lis pendens* are:¹⁰

¹⁰ See *Standard Bank of SA Ltd v Tsheola Dinare Tours and Transport Brokers (Pty)Ltd* (22011/2021) [2022] ZAGPJHC 311 (6 May 2022) at para [14].

- 91.1 The litigation is between the same parties;
- 91.2 That the cause of action is the same; and
- 91.3 That the same relief is sought in both sets of proceedings.

[92] **Wallis J in Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others**¹¹ explained the doctrine of *lis pendens* as follows:

"[2] As its name indicates, a plea of lis alibi pendens is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions. It is a plea that has been recognised by our courts for over 100 years."

[93] It must be noted that the matter under case number 1265/2020 as consolidated with case number 1391/2020 does not fulfil the requirements as set out, as it definitely did not have the same cause of action and the relief sought was completely different.

[94] The Court finds that, seeing that there are various applications between the parties, the *point-in-limine* is very selectively raised seeing that the Court ordered mediation in the matters which the parties specifically referred to under this point, in 2020 - which is 5 years ago.

¹¹ [2013] ZASCA 129; 2013 (6) SA 499 (SCA).

- [95] This Court is of the view that the First and Tenth Respondents are not raising this *point-in-limine* with clean hands, by virtue of the fact that they trying to use a Court Order to their benefit, however they wilfully disregarded the Order of the Court by refusing to enter into mediation with the Applicant herein.
- [96] The Court further finds that this point is merely raised because it benefits the First and Tenth Respondent under the circumstances, but it did not prevent the First and Tenth Respondent to approach the Court in a further application as set out above.
- [97] What the First and Tenth Respondents omit to state is that case number 1391/2020 (as consolidated with case number 1265/2020) has been consolidated further under case number 538/2022, which is the matter being heard by this Court. This fact, in itself, renders the point of *lis pendens* moot.
- [98] There needs to be finality to the dispute between the parties and finality in the various matters before Court, the respective matters cannot be held hostage by a matter that is wilfully left pending and unattended by the Respondent and that does not comply with the requirements for raising the point of *lis pendens*.
- [99] On this basis this *point-in-limine* is dismissed.

The application is moot and academic

- [100] The Respondents argued that the order granted in terms of Part A of the application on 1 April 2022 is moot and academic by virtue of the fact that there was a mining permit, which permit which was renewed on 16 March 2016 and expired on 17 March 2023.
- [101] The Applicant argued that the mining activities of the First and Tenth Respondents are conducted outside of the permitted mining area. It was further submitted that the First and Tenth Respondent are in ongoing breach and contempt of Court Orders and legislative provisions.
- [102] The Applicant further submitted that the Department of Mineral Resources and Energy Respondents, in this matter the Second and Third Respondents, are tolerating this conduct and that they fail to enforce the Final Notice and also fail to act against the First and Tenth Respondents for mining outside of the permitted mining area.
- [103] It is evident that the application is neither moot nor academic, seeing that the First and Tenth Respondents are still continuing their mining activities and that they are still in contempt of previous Court Orders.
- [104] This *point-in-limine* is therefore dismissed.

Legal Framework:

[105] As a starting point it is necessary to consider Section 5A of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008 which reads as follows:

“5A **No person may** prospect for or remove, **mine**, or conduct technical co-operation operations, reconnaissance operations, explore for and **produce any mineral** or petroleum or **commence with any work incidental thereto on any area without** –

- (a) **An environmental authorisation;**
- (b) A reconnaissance permission, prospecting right, permission to remove, mining right, **mining permit**, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and
- (c) Giving the landowner or lawful occupier of the land in question at least 21 days' written notice”.¹²

[106] It is evident from the background facts that the First and Tenth Respondents are mining outside of the boundary of the initial mining permit, especially during the rainy season when the permitted mining area is under water. They admitted to the same.

[107] The First and Tenth Respondents also stockpiled the sand outside of the permitted mining area.

¹² My own emphasis

- [108] It is also common cause that the mining permit of the First Respondent has lapsed on 17 March 2023 and together with it also the Environmental Authorisation.
- [109] In this respect one should consider Section 56(a) of the Mineral and Petroleum Resources Development Act, 28 of 2008 that provides expressly that any right, permit, permission or license granted or issued in terms of the Act shall lapse whenever it expires.
- [110] The First Respondent has submitted an application for the renewal of the mining permit on 3 March 2023, but the Applicant has not received any notification of any consultative processes as is required in terms of Section 10 of the Mineral and Petroleum Resources Development Act, Act 28 of 2002.
- [111] Section 27 of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008 also deals with the application for the issuing and the duration of mining permits and provides in section 27(5) that the Regional Manager, when accepting an application for a mining permit must within 14 days notify the Applicant in writing to submit an environmental management plan and to notify in writing and consult with the landowner and lawful occupier and any other affected parties and submit the result of the said consultation within thirty days from the date of the notice.
- [112] Once again it must be stated that the Applicant has not received the required notification nor was the Applicant consulted in this regard.

- [113] As previously mentioned in the discussion of the factual background, the Court has taken note that on 18 December 2022 the Third Respondent served a final Compliance Notice in terms of Section 31L of the National Environmental Management Act, 107 of 1998 in terms of which the First Respondent was directed to cease mining and to rehabilitate the mining area.
- [114] The Court takes further note that despite the fact that this final Compliance Notice has neither been challenged nor withdrawn and remains in full force and effect, the Department of Mineral Resources and Energy failed to take any enforcement action against the First Respondent and it even renewed the First Respondent's mining permit and the Environmental Authorisation on or about 23 March 2022.
- [115] This is highly irregular and contrary to the requirements as set out in the National Environmental Management Act, 107 of 1998.
- [116] Due to the Applicant's review application that is pending in the Gauteng Division, Pretoria, in respect of appeals lodged against the renewal alternatively extension of the First Respondent's mining permit and environmental authorisation, the Department of Mineral Resources and Energy is at present, in any event, prevented from considering or granting the 3 March 2023 renewal application as per Section 96(2)(b) of the Mineral and Petroleum Resources Development Amendment Act, Act 49 of 2008.

[117] Finally, it must be noted that the Respondents have laid a bare denial before this Court in answer to the claim of the Applicant. The Respondents have not placed their version before Court for the consideration thereof.

[118] In the matter of **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] (3) SA 623 (A)** it is provided that the general rule is still that in proceedings where disputes of fact have arisen on affidavits, a final order, whether an interdict or some other form of relief, may be granted if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.

[119] The weight of evidence is further also discussed in the matter of **Wightman t/a JW construction v Headfour (Pty) Ltd and Another [2008] (3) SA 371**, where Heher JA held that:

“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court

will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents inadequate as they may be and will only in exceptional circumstances be permitted to disavow them. There is this a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes duly and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter."

Conclusion

[120] This Court finds that the Respondents have not adequately answered the case made against them and for the reasons set out above, the application was successful. I, accordingly, grant the order sought by the Applicant.

Order:

In the result the following order is made:

1. The First Respondent is declared to be in contempt of the Court Order granted on 27 October 2020;

2. The Tenth Respondent be declared to be in contempt of the Court Order granted on 27 October 2020;
3. That interdict granted in paragraphs 2 and 3 of "PART A" is made final;
4. To the extent that the mining permit issued to the First Respondent in respect of any of the Farms remains valid or has been renewed when this matter is heard, it is reviewed and set aside;
5. The First, Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth and Tenth Respondents are ordered to pay the costs on an attorney and own client scale, jointly and severally, the one to pay the others to be absolved.



S DU PLESSIS

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES:

DATE OF HEARING : 5 - 6 FEBRUARY 2025

DATE OF JUDGMENT : 19 JUNE 2025

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