

CA VISSER DELWERYE (EDMS) BPK v DU PLOOY AND OTHERS; IN RE DU PLOOY AND ANOTHER v MINISTER OF MINERALS & ENERGY & OTHERS [2006] 2 All SA 614 (NC)

<p>Importance</p>	<p>This case is significant for clarifying the obligation of the Department of Mineral Resources (then the Department of Minerals and Energy) to provide information to parties that would prevent them from needing to resort to court proceedings. The court held that the Department is not entitled to 'sit on the fence' and that where it had information relevant to resolving a dispute between two third parties, it was under an obligation to provide that information to prevent the matter from going to court. Because the Department had in this particular case failed to make the information available timeously, it was burdened with 75% of the costs of the losing party and the full costs of the party that succeeded. The court also remarked <i>obiter</i> that the conduct of the Department fell short of the standards required by s 195(1) of the Constitution. The dispute in this case was between two mining rights holders. It is an interesting question whether the ratio in this case could also apply where the dispute is between a non-rights holder, such as a community or environmental interest group, and a mining rights holder, such as a dispute regarding access to an environmental management programme.</p>
<p>Parties</p>	<p>Applicant: CA Visser Delwerye (Edms) Bpk First respondent: Christiaan Christoffel du Plooy Second respondent: Channal Mining (Edms) Bpk Further respondents: Minister of Minerals and Energy; D-G of the Department of Minerals and Energy (DME); Regional Manager, Northern Cape</p>
<p>Facts</p>	<p>In late 2003, Mr Christiaan du Plooy (a subsistence miner) had been granted a mining authorization to mine for diamonds in respect of land identified on his application as 'Longlands' - an unsurveyed tract of land owned by the State in the Northern Cape. The permit was granted in terms of the Minerals Act 50 of 1991, a day before the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) came into effect. By mid-2005, however, it transpired that he was mining illegally as the land in question fell within claims held by the applicant, Visser Delwerye.</p> <p>On 6 May 2005 Visser Delwerye initiated legal proceedings against Du Plooy claiming spoliatory relief and requesting that a temporary interdict be granted pending the finalization of a separate application for declaring the mining permit held by Du Plooy as void. In the meantime the Regional Manager issued an order in terms of s 93 of the MPRDA, ordering Du Plooy to cease mining on any part of Longlands other than a piece of land known as Lot 92 (595m² in extent). Du Plooy lodged a counter-application against the proceedings initiated by Visser Delwerye, as well as an application for the temporary suspension of the s 93 order pending its review.</p> <p>When the matter was heard on 13 and 14 June 2005, and certain officials of the Department of Minerals and Energy (DME) had testified, counsel for Du Plooy and Channal Mining indicated that in view of the evidence submitted, it was clear that Visser Delwerye had</p>

	<p>valid claims in the area and it therefore made no sense to proceed with the merits of the application. However, counsel also indicated that the DME should be liable for the costs in both applications.</p> <p>On request of the DME, this matter was postponed till 1 February 2006, with the DME being ordered to pay the wasted costs occasioned by the application for postponement. Central to the determination of the DME's liability for costs were the circumstances in which the original mining permit had been granted to Du Plooy. What emerged from the testimony of departmental officials was that there were certain inaccuracies and errors in Du Plooy's initial application regarding the area of land to which the permit would relate. Specifically, although he appeared to only be applying for rights to Lot 92, other data on the application form (particularly the sketch plan) identified the application with the whole of Longlands, a much larger extent of land. However, Du Plooy had also submitted his title deed to the land, which applied only to Lot 92. Notwithstanding this the permit issued by the Department to Du Plooy perpetuated the error in the application by indicating that the permit was for mining on Longlands, to the extent indicated by the sketch plan. The Department had conceded that it had been negligent and had misled Du Plooy into believing that he was entitled to mine on the full extent of Longlands. Moreover, <i>after</i>, the mining permit had been granted Du Plooy applied for an amendment to his Environmental Management Plan (EMP) to enable him to conduct mining operations by machinery and not by pick and shovel methods. Du Plooy pointed out the area where he wanted to mine (which was clearly outside of Lot 92). The DME accepted payment of a further R100 000 in respect of rehabilitation and gave Du Plooy permission to mine with machinery. The site where Du Plooy was mining (outside Lot 92) was inspected by officials of the DME yet they never informed him that he was not entitled to mine there.</p>
Relief Sought	An order as to costs.
Legal Issues & Judgment	<p>Issue: Should the DME be liable for the legal costs Visser Delwerye and Du Plooy incurred in their dispute over the proper extent of Du Plooy's mining authorization?</p> <p>Judgment: The court found that the DME should be burdened with by far the greater proportion of the blame for the fact that a dispute arose between Visser Delwerye and Du Plooy that could not be resolved without the need for court applications (para 80). The court not only found that the officials in the Department should have picked up the error in the application regarding the area to be mined (paras 78 & 79), but also that the information necessary to resolve the dispute was in the possession of the Department and they simply failed to make this information available to the parties to prevent the dispute going to court (paras 66 – 76). In response to the argument that the DME had been under no obligation to assist either party in the litigation, the court held that the DME, as a public body, 'was not entitled to sit on the fence and adopt such an attitude. It must have been fully aware of the fact that it was in the position to not only facilitate in the dispute between Du Plooy and Channal Mining, on the one side, and Visser Delwerye, on the other, but that it in fact was in</p>

	<p>possession of information which could prevent litigation or, at the very least, which could bring about an early end to the litigation already under way' (para 74). The court also found no merit in the argument that Du Plooy should have taken further steps to compel the DME to provide him with the information he required (para 75). As such, this was a suitable case for deviation from the normal rule that costs should follow the event. There was ample authority for a rule to the effect that a party whose misrepresentation or withholding of information causes litigation may be burdened with the costs of the unsuccessful party (see <i>Nieuwoudt v Joubert</i> 1988 (3) SA 84 (SE) at 90, <i>Palley v Knight NO</i> 1961 (4) SA 633 (SR), <i>Nxumalo and another v Mavundla and another</i> 2000 (4) SA 349 (D) at 354C–E and <i>Treatment Action Campaign v Minister of Health</i> 2005 (6) SA 363 (T)).</p>
Outcome	<p>The court ordered that the DME be fully liable for Visser Delwerye's costs, and that it be liable for 75% of the costs of Du Plooy and Channal Mining. A further punitive costs order was not deemed to be necessary.</p>
Obiter	<p>On the fact that the reference number of the sketch plan on the permit did not coincide with the officer reference the court stated: 'The inclusion of the wrong reference number in the permit apparently played no significant role in these events, but it certainly is a further example of the bungling, and indeed the careless and negligent way in which the offices of the local Regional Manager had gone about processing Du Plooy's application and his permit.' (para 43)</p> <p>The court also put forward the view that the DME's behaviour constituted an infringement of the principles enshrined in section 195(1) of the Constitution. Its behaviour certainly did not reflect "a high standard of professional ethics" and at least Du Plooy and Channal Mining were not provided with "timely, accessible and accurate information" (para 87).</p>