JOUBERT & OTHERS v MARANDA MINING CO (PTY) LTD 2010 (1) SA 198 (SCA)

Importance	This case provides guidance on *when* a mining rights holder acquires a right of access to the land upon which the relevant minerals are located. It is clear that this right only 'solidifies' once there has been compliance with all the provisions relating to public participation (which includes consultation with I&APs in the lead-up to the granting of the right and after a mining authorization is granted but before operations commence).
Parties	**First to fourth appellants:** Trustees of the Sanwild Wildlife Trust **Fifth appellant:** Sanwild Wildlife Trust (?) **Respondent:** Maranda Mining Co (Pty) Ltd
Facts	The issue revolved around a gold mine that was originally worked in the 1890s, but then abandoned. The respondent had acquired the mineral rights to this mine in February 2005 from another company and subsequently applied to the Minister of Minerals and Energy for a prospecting right and mining permit (as the area where the gold was to be found was less than 1,5 hectares in extent). At the time the respondent acquired the mineral rights, an entity entitled 'Come Lucky' was the owner of the land on which the mine was located. By February 2008, however, the land had been sold and transferred to the Sanwild Wildlife Trust (it appears that the Trust had been leasing the land until then). Sanwild maintained a wildlife sanctuary and ecotourism operations on the land in question. When the public participation process relating to the grant of the mining permit was held during 2005, Come Lucky submitted an objection alleging that the proposed mining operations would undoubtedly have a deleterious impact on the eco-tourism and environmentally-oriented activities of Sanwild. The mining permit was granted notwithstanding this objection on 21 September 2006 whilst the environmental management plan was approved on 19 December 2006. In March 2007 the respondent informed Come Lucky of these developments and requested access to the property for purposes of exercising its mining rights in terms of the permit. There was no favourable response. Over the course of the next year the respondent tried a variety of strategies to gain access to the land – including invoking the assistance of the Regional Manager, attempting to gain access by itself and negotiating with the trustees of the Sanwild Wildlife Trust. Nothing came of these initiatives and the respondent accordingly launched urgent proceedings aimed at interdicting and restraining the appellants from refusing them access to the relevant piece of land. The North Gauteng High Court granted such final relief on 11 April 2008. The appellants appealed against the order and judgment of this court.

Relief sought	Appeal aimed at overturning decision granted in the North Gauteng Court interdicting the appellants from preventing the respondent access to their land for purposes of exercising its mining rights.
Legal Issues & Judgment	***Issue 1:*** Had the respondent established a clear right to access? ***Judgment:*** The appellants maintained that the respondent's right to access was qualified by the terms of the EMP which specified that the respondent's access to the mineral rights area was to be of a route no longer than 1.5km. However the respondent sought access to the area from a gate that entailed a 7km route. In responding to this issue, the court focused its attention on the provisions relating to consultation in the Mineral and Petroleum Resources Development Act 28 of 2002, particularly ss 27(5) and 5(4). The court remarked that consultation is 'the means whereby a landowner is apprised of the impact that prospecting … activities may have on his land' (para 12). The right to enter the land in respect of which the mining rights have been granted 'solidifies' when there has been compliance with all these provisions regarding consultation (para 13). There was no dispute between the parties that the respondent had in fact complied with all these provisions (para 14). Furthermore, scrutiny of the respondent's papers revealed that it did not seek access to the entire land, or to a 7km route, but simply sought access in principle (para 15). The court dismissed the appellants' contention as regards the respondent's failure to indicate that a new road would be constructed, holding that the respondent's failure to tick a particular box on the environmental management plan mounted to a mistake (paras 19 – 20).
	Issue 2: Did the appellant's blanket refusal to allow access mean that the Regional Manager had to initiate the process aimed at the expropriation of the land (as set out in s 54(5) of the MPRDA)? ***Judgment:*** The court found no merit in this submission as there was no provision in the MPRDA that supported this line of reasoning (para 16).
Outcome	The appeal was dismissed.
Obiter	None.