IN THE NORTH GAUTENG HIGH COURT, PRETORIA

REPUBLIC OF SOUTH AFRICA

CASE NO: 47561/2010

In the matter between:

(1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

....
E SIGNATURE

SEPHA KU TIN (PTY) LIMITED Applicant

and

KRANSKOPPIE BOERDERY Respondent

JUDGMENT

Tuchten J:

Introduction

1. The respondent is the owner of two farms, Welgelegen and Welgevonden in the province of Limpopo near Mokopane, formerly

Potgietersrus. The farms together are 4798,7733 ha in extent and are, together with some contiguous land, operated by the respondent as a private nature reserve and game farm, comprising in all some 6 300 ha. The applicant was granted a right to prospect on the farms for platinum group metals, copper and gold. This case has arisen in the first place because of the collision between the rights of the respondent as landowner and the applicant as holder of a prospecting right over the farms and in the second place because the relevant authorities have not as yet performed certain administrative duties imposed upon them by legislation.

2. The applicant wants to exploit its prospecting right by, in the first instance, coming onto the land, cleaning out certain old mining workings in a part of the farms, sinking twenty boreholes and performing certain work ancillary to these activities. The respondent maintains that the applicant is not entitled to enter the farms because the applicant's prospecting right has lapsed or otherwise become unenforceable by operation of law. The respondent claims that the prospecting right has lapsed because the applicant, according to the respondent, did not commence prospecting activities within the period of 120 days prescribed by law.

3. In the alternative, the respondent asks that the application by the applicant for an order declaring the applicant entitled to come onto the

farms be stayed pending the determination of certain administrative processes initiated by the respondent. These administrative processes involve an attack on the foundation of the applicant's prospecting right and an attempt to have the farms declared a nature reserve under certain legislation which I shall discuss later. In relation to the attempt to have the farms declared a nature reserve, it is enough at this stage to say that it is common cause between counsel that if the farms are indeed declared a nature reserve, the applicant would, upon such declaration, even if its prospecting right were valid, no longer be entitled to enter upon the farms and carry out prospecting operations.

4. There apparently are, or at least were, tin, copper and fluorspar deposits on the farms. These were the subject of mining operations over the years. Prospecting for tin was carried out in the early 1900s. In 1926-1927 2000 m of underground workings were developed. A total of 59 exploratory boreholes were drilled between 1963 and 1976. In 1983, the respondent bought the farms subject to the rights of the seller to exploit the minerals on the farms.

5. At a stage not disclosed on the papers, Mrs Angela Ricci acquired control of the respondent and accordingly, through the respondent, of the farms and contiguous area. My impression from the papers is that Mrs Ricci is an enthusiastic conservationist. In 2002 the Director-General of the Department of Environmental Affairs and Tourism

certified, in a letter dated 25 May 2002, that the farms included highly significant natural features which are essential to the preservation of South Africa's natural diversity and recorded that for the purpose of recognition and protection, the farms were officially included in a register of natural heritage sites kept by that department.

6. Before the commencement of the Mineral and Petroleum Resources Development Act, 28 of 2002 ("the MPRDA") on 1 May 2004, the respondent could not have been compelled to submit to the exploitation of such mineral reserves as may be on the farms, except by the previous owner of the farms to which it had contractually given certain rights. But the MPRDA changed all that. Acknowledging that the mineral resources of South Africa belong to the nation and that the State is the custodian of those resources, affirming the obligation of the State to protect the environment, ensure ecologically sustainable development and economic and social development and recognising the need to promote development and the social upliftment of communities, amongst other things,[1] the MPRDA made it possible for prospecting and mining to take place on land against the will of the landowner. This has brought about the collision of rights to which I earlier referred because the applicant wants to enforce its limited real

[1] Preamble to the MPRDA

right[2] to determine whether the minerals concerned are on the farms in exploitable quantities and conditions while the respondent wants to go on running its private nature reserve and game farm without the intrusion and disruption which mining operations which will inevitably cause (if the prospecting is, seen from the perspective of the applicant, successful and a mining right is in due course awarded) and which, probably to a lesser extent, will result from prospecting operations.

Brief overview of relevant legislation

7. In this section of the judgment, I try to give an overview of the legislation mentioned in argument which impacts upon the issues raised in this specific case. What follows is by no means a comprehensive discussion of all the legislation relevant to the intersection of what I shall describe broadly as prospecting and mining rights on the one hand and of environmental rights on the other.

8. Section 24 of the Constitution gives everyone the right to have the environment protected through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting economic and social

[2] Section 5(1) of the MPRDA

development. Section 25 of the Constitution protects the rights of property owners and restricts the power to expropriate property. Both the applicant and the respondent are owners of property in relation to the farms and thus both have constitutional rights in the farms which are, at the constitutional level, worthy of protection. In addition, because the environment affects us all, there is a substantial public interest component in the award of rights under the MPRDA and the various legislative measures enacted to give effect to s 24 of the Constitution.

9. The MPRDA is administered by the Department of Mineral Resources through various functionaries, including the Minister of Mineral Resources. The identity of each of those functionaries is largely irrelevant to the issues with which I am presently concerned so I shall refer collectively to the various decision makers under the MPRDA as the Department, except where closer identification is necessary. The MPRDA itself has as one of its objects to give effect to s 24 of the Constitution.[3] An applicant for a prospecting right under the MPRDA must satisfy the Department that environmental considerations justify the grant of the right and thus the invasion, potential and actual, of the environmental and property rights conferred by s 24 of the

[3] Section 2(h) of the MPRDA

Constitution.[4] So, the Department can only grant an application for a prospecting right if, amongst other things, the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment.

10. To ensure that environmental considerations are adequately addressed in relation to the grant of rights, the MPRDA provides for consultation at various levels both before and after the grant of rights[5] and imposes on an applicant for a prospecting right the obligation to submit to the Department an environmental management plan,[6] defined to mean a plan to manage and rehabilitate the environmental impact of, in this case, prospecting. This requirement is a legislative acknowledgement that prospecting and, to a far greater extent, mining - which generally follows a successful prospecting operation - by its very nature harms the environment.

11. The harm to the environment caused by prospecting and mining is, in principle, justified by the need to promote development and to contribute towards the redress of the poverty and lack of access to the resources and riches of our country of the majority of the inhabitants of

---

[4] Section 17(1)(c) of the MPRDA

[5] Sections 16(4(b) and 5(4)(c) of the MPRDA

[6] Section16(4)(a) read with the definition of environmental management plan in s 1 and s 39(2) of the MPRDA

our country that accompanied the former, pre-constitutional, dispensation.[7] The decision maker who determines whether or not to grant a right under the MPRDA must balance environmental considerations against the other objects of the measure to determine whether the harm I have described is "unacceptable". The views and the interests of the landowner, who may be unwilling to allow her property to be exploited in this way, and those of the broader community must be taken into account in the decision making process.[8]

12. Even after the grant of a prospecting right, the prospector does not have an unrestricted and unregulated right to enter upon the property and exercise his rights. He must do so in accordance with the MPRDA, the conditions of his prospecting right and, importantly for this case, any other relevant law.[9] He must comply with the requirements of the environmental management plan which he had to submit and have approved before he could be awarded his prospecting right.[10] He must commence the prospecting activities within 120 days or such extended period as may be authorised from the date on which the prospecting

---

[7] Sections 2(d) and (e) of the MPRDA

[8] Section 10(1) of the MPRDA

[9] Sections 17(6) and 19(2)(d) of the MPRDA

[10] Section 19(2)(e) of the MPRDA; *sic* environmental management *programme*.

right becomes effective[11] and continuously and actively conduct prospecting operations in accordance with a prospecting work programme which he had to submit.[12] And before he actually comes onto the land, he must notify the landowner or lawful occupant of his intention to do so and consult with the landowner or lawful occupant.[13]

13. The Department is given wide powers to control the manner in which the prospector does his work on the land. In certain cases it may require the prospector to take urgent remedial measures to protect the health and well_being of any affected person or to remedy ecological degradation and to stop pollution of the environment or take such steps itself.[14] It may under certain circumstances cancel or suspend the prospecting right.[15]

14. The legislature has enacted a wide range of measures to implement its constitutional obligations under s 24 of the Constitution in relation to the environment. I shall mention only those measures to which I was referred in argument. The National Environmental Management Act, 107 of 1998 ("NEMA") sets out the principles which apply to all actions

---

[11] Section 19(2)(b) of the MPRDA

[12] Section 19(2)(c) of the MPRDA

[13] Section 5(4)(c) of the MPRDA

[14] Section 45 of the MPRDA

[15] Section 47 of the MPRDA

which may significantly affect the environment alongside all other appropriate and relevant considerations and guide the interpretation, administration and implementation of all laws concerned with the protection or management of the environment.[16]

15. NEMA requires that people and their needs be placed at the forefront of the concerns of environmental management; that the disturbance of ecosystems and the loss of biological diversity, pollution and degradation of the environment and the disturbance of landscapes and sites that constitute the nation's cultural heritage be avoided or, where that cannot be altogether avoided, are minimised and remedied. It further requires that the use and exploitation of non-renewable natural resources be done in a responsible way. It also requires that a risk-averse and cautious approach be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions.[17]

16. The requirement that a risk-averse and cautious approach to environmental matters be taken is legislative recognition of a truth that nearly everybody knows: sometimes actions which harm the environment cannot be reversed.

---

[16] Section 2 of NEMA

[17] Section 2(4)(vii) of NEMA

17. The National Environmental Management: Protected Areas Act, 57 of 2003 ("NEMPA") has, as its long title makes clear, the object of protecting and conserving ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes. It provides for the creation by administrative decision makers of protected areas, one of such being nature reserves.[18]

18. Under NEMPA, no commercial prospecting or mining activities may be conducted within protected areas.[19] Counsel were agreed that this is so even if mining or prospecting rights had been granted in respect of any such area.

19. The nature of the rights created under mining and environmental legislation is such that a number of different and potentially competing rights and interests must be considered and, if possible, accommodated. That is why many steps of the process towards the creation of the right are accompanied by wide consultative requirements. There is provision for consultation in relation to a prospecting right on several levels: between aspirant prospector and landowner or lawful occupier; between the aspirant prospector and the broader public; between the Department and the landowner; between the Department and the public. There is also provision for consultation

[18] Section 23 of NEMPA

[19] Section 48(1)(a) of NEMPA

between different State departments and other organs of State because all organs of State which administer environmental matters must participate in a process which leads, as NEMA prescribes, to a regime of co-ordinated and integrated environmental governance and management.[20]

20. Thus the Department must consult with their colleagues responsible for the administration of NEMA and NEMPA whenever the adequacy of the environmental management plan, the approval of which is a prerequisite for the effectiveness of a prospecting right, is being considered.

21. So too, when a request is made for the establishment of a nature reserve under NEMPA. Elaborate provision is made for appropriate consultative processes, which must include consultation between relevant organs of State, between the authority considering creating the nature reserve and the landowner and between such authority and the public, pursuant to a public participation process.[21]

22. NEMA and NEMPA are thus "relevant laws" for the purposes of the MPRDA. These laws serve different, but complementary, purposes. An

---

[20] Sections 31 and 32 of NEMPA and s 40 of the MPRDA

[21] Sections 31-34 of NEMPA

overlap between the functions of the mining and the conservation spheres within government takes place because both, for present purposes, administer the use of land.[22]

The facts

23. The applicant is a member of the Sephaku group of companies. In 2005, a sister company, Sephaku Exploration Limited, ("Exploration") became party to a joint venture with Samancor Chrome Limited, ("Samancor") which held an unused old order right over the farms. This old order right gave Samancor certain prospecting rights in respect of fluorspar and tungsten. Exploration was given access to the farms where it conducted certain non-invasive activities related to prospecting. While doing so, Exploration became aware that copper and associated minerals occurred on the farms together with tungsten, tin and fluorspar. Exploration and Samancor agreed that one of the companies within the Sephaku group would apply for a prospecting right over the farms in respect of copper and associated minerals.

24. By letter dated 18 February 2008, Exploration, as contractor on behalf of Samancor, wrote to the respondent to ask for access to the farms. After explaining its connection with Samancor, Exploration said that it

[22] Compare *Maccsand (Pty) Ltd v City of Cape Town and Others* [2012] ZACC 7 paras 43 and 45

had completed the field mapping and historical data investigation phase of the prospecting programme and that the

> ... next phase will entail the drilling of approximately 20 holes amounting to 2 000 metres of drilling and to open up and make accessible the old mine workings with accompanying survey, sampling and underground and field mapping.
> The drilling will involve one rig operated for a single day-time shift by a team of about 8 people. They will be accommodated in a temporary camp with caravans, tents and chemical toilets. We have identified a site at the old airstrip next to the old stone walled building as possibly suitable. The drilling will require water which could be pumped from the old mine workings and transported to the drill sites in bowsers. We will require a place to log, sample and store the core and propose that we repair at our cost the old stone buildings next to the old airstrip.
> Making safe the old workings for access, geological mapping and sampling will require a team of about three people including supervision by a qualified miner. There will not be any blasting.
> Once the workings have been made safe, survey, mapping and sampling will require a team of about six semi-skilled labour supervised by a surveyor and geologist. The labour could be accommodated in the same camp as the drillers.
> We will further require accommodation for professional staff (one full time geologist and one part time miner) and would like to know whether you would be prepared to rent us some of the lodge accommodation on Welgevonden close to the farm manager's house for this purpose.
> We lastly, for your convenience, enclose copy of section 5 of the [MPRDA] explaining the rights of a holder of a prospecting right.

> I trust you will find the above proposals acceptable and look forward to hearing from you in that regard. Please however do not hesitate to contact writer should you wish to discuss the proposed further prospecting activities or should you require additional information.

25. The applicant itself applied for a prospecting right over the farm in respect of gold, copper and platinum group metals. By letter dated 29 February 2008, the applicant was informed by the Department that its application had been accepted, ie that the application was procedurally in order and would further be processed. The next step for the applicant was to notify and consult with the respondent as landowner. To this end, the applicant wrote the applicant a letter dated 13 March 2008, referring to Exploration's letter dated 18 February 2008, conveying certain information and offering to consult with the respondent as landowner as required by the MPRDA.

26. On 29 February 2008, the Department prepared a notice to the public to be published, amongst other methods, by displaying it on the notice

board of the magistrate's office for the district of Mokerong, the district in which the farms are situated.[23]

27. Exploration wrote a further letter to the respondent. This letter dated 6 March 2008 is not before me but it is likely from the response to it that it contained further information. The response was contained in a letter by the respondent's attorney to Exploration dated 10 March 2008.[24] The letter was couched in a tone of indignation and contained demands for further information. It pointed out that the farms had been classified as a South African natural heritage site. The respondent objected to the timing of the prospecting and rejected the proposals by Exploration in regard to rental for its personnel. The letter concluded with a flat assertion that Exploration's proposal was completely unacceptable, that Exploration had "ambushed" the respondent and that no persons would be permitted to come onto the farms without a prior written agreement.

28. It seems that the matter was not taken further by Exploration, no doubt because its request for access had been overtaken by the applicant's

---

[23] In 2010, the respondent's attorneys tried to get confirmation that the notice was indeed displayed as it should have been but could not find anyone who could confirm or deny that the notice had been displayed.

[24] At some stage, the respondent consulted another attorney, although the original attorney continued to act for the respondent. Both attorneys at various times conveyed instructions from the respondent. It is not necessary for present purposes to distinguish between the attorneys.

application in its own name for a prospecting right. The applicant's letter dated 13 March 2008 led to a meeting in the offices of the respondent's attorney. The meeting was attended by representatives of the applicant, the respondent's attorney, the respondent's legal representative from Europe and Mrs Ricci. The applicant's representatives made it known that they intended, if the application were successful, to proceed as foreshadowed in the letter by Exploration to which I have referred. The respondent's representatives asked for further time to consider the applicant's proposals and it seems that Mrs Ricci herself voiced her objection to the grant of a prospecting right. The respondent did not react further to the applicant's proposals and did not lodge any objection as contemplated by the MPRDA to the applicant's application.

29. By letter dated 8 September 2008, the Department informed the applicant that its application to prospect on the farms for gold, copper and platinum group metals had been granted. The letter went on to say, amongst other things, that the relevant environmental management plan *would be* approved [my emphasis] and the right would be signed by a functionary (*not the functionary who had granted the prospecting right*) on 24 September 2008, on which date the prospecting right would become effective. The applicant was reminded that it had to commence prospecting activities within 120 days of that later date.

30. The applicant's environmental management plan disclosed that the proposed prospecting area had lush bushveld vegetation with combretum and bushveld grass, with various species of trees. The plan also disclosed that the property was used for game farming and that the species occurring on the farm included kudu, eland, zebra, jackal, impala and other game. There is apparently also a breeding population of leopard present but no mention was made of this in the plan.[25]

31. As anticipated, the applicant's environmental management plan was approved and its right was signed on 24 September 2008. The applicant complied with the formal requirements for registration of its right and provided financial provision for rehabilitation of the ground disturbed by its contemplated prospecting activities.

32. The applicant's consultants and personnel then proceeded to do certain preparatory work necessary for the actual work on the ground described in Exploration's letter dated18 February 2008. It is common cause that this preparatory work was done during the period of 120

---

[25]The respondent claims that the animals on the farms include eland, serval, blue and red wildebeest, hyena, rhinoceros, giraffe, kudu, nyala, waterbuck, impala, zebra, jackal, leopard, klipspringer, warthog and a variety of bird life.

days mentioned by the Department in its letter to the applicant dated 8 September 2008.

33. On 9 February 2009, the applicant asked the respondent, through its attorney, for access to the farms. The applicant supplied the respondent with certain information, including email correspondence from the applicant's consulting geologist, which showed that the applicant wished to follow up the preparatory work by drilling 20 new boreholes and make safe and sample the old underground workings in a valley on the farm Welgevonden, after which the boreholes would be capped. During March 2009, the applicant offered to meet the attorney and discuss any concerns the applicant might have.

34. The respondent did not take up the applicant's suggestion of a meeting. On 25 May 2009, after the applicant had written to say that the matter was becoming urgent, the respondent's attorney wrote to tell the applicant that Mrs Ricci would not be in South Africa for the next few months and that the applicant was not under any circumstances to come onto the farms.

35. By letter dated 28 October 2009, the applicant wrote to the respondent's attorney, formally asking for access and inviting comments and proposals under s 5(4)(c) of the MPRDA. On 13 November 2009, the respondent's attorney wrote to ask for a considerable amount of information, most, if not all, of which had

previously been provided to the respondent, and asking also, somewhat rhetorically, how the applicant intended prospecting and mining on the farms without destroying the area. In response, under cover of a letter dated 20 November 2009, the applicant supplied certain information, offered to provide more information when it became available and suggested that the prospecting right had been granted by the Department in the full knowledge that the farms "lie within a UN biosphere reserve and is a national heritage site".[26] In addition, the applicant once again offered to meet with representatives of the respondent.

36. By letter dated 22 December 2008, the respondent, through its attorney, refused flatly to allow the applicant access to the farms on the ground that the prospecting right was invalid for want of duly delegated authority on the part of the functionary who granted the right.[27] The applicant's attorney then formally demanded in a letter dated 17 February 2010 that the applicant be afforded access. The applicant's attorney pointed out that the farms had not been declared a protected area or environment under NEMPA. The respondent, through its attorney, persisted in its refusal to allow access in a letter dated 12 March 2010.

---

[26] The parties were wrong in thinking that the farms lie within a UN biosphere reserve. They do not. Nor do they lie within the buffer zone adjacent to the UN biosphere reserve.

[27] This ground was not advanced in the papers or in argument before me.

37. Probably alerted to the chink in her armour exposed by the applicant's attorney's reference to NEMPA, Mrs Ricci on 4 March 2010 applied on a form emanating from the Limpopo Provincial Government Department of Economic Development, Environment and Tourism to the MEC concerned for its land, which included the farms, to be declared a nature reserve under s 23 of NEMPA. No notice of this application was given to the applicant and the "motivation for declaration" submitted by the respondent in support of its application was singularly lacking in any reference to the dispute between the parties, the issues in respect of which had by that stage to a large extent crystallised.

38. It seems that Mr JW Kruger, the manager: protected area regulation in the provincial authority lost no time in evaluating the application to declare the farms a nature reserve. His report is dated 28 April 2010. Mr Kruger found that the area, in all 6 300 ha, was suitable from a conservation perspective to be declared a nature reserve because of the area's significant natural features and biodiversity, its interest from a scientific perspective and the need for long-term protection for the

maintenance of its biodiversity and provision of environmental goods and services.

39. On 9 July 2010, pursuant to an application under the Promotion of Access to Information Act, 2 of 2000 ("PAIA") made on 11 March 2010, certain records pertaining to the applicant's application for a prospecting right were made available to the respondent.

40. On 23 August 2010, the applicant launched the present application for access. On 15 October 2010, the respondent asked the Department to cancel or suspend the applicant's prospecting right on a number of grounds under s 47 of the MPRDA.

41. On 26 October 2010, the respondent lodged an administrative appeal on various grounds with the Department against the grant of the applicant's prospecting right under s 96 of the MPRDA. This appeal was lodged out of time and the respondent gave notice that it would seek condonation in this regard. One of the grounds on which condonation was sought was that until the judgment of the Constitutional Court in *Bengwenyama Minerals (Pty) Ltd and Others v*

Genorah Resources (Pty) ltd and Others,[28] many members of the legal community and the Department itself took the view, erroneously as it turned out, that in matters such as the present, no internal appeal lay, with the result that the Department would, before *Bengwenyama*, have declined to hear the respondent's appeal.

42. The respondent's reply to the applicant's answer to its internal appeal was served on the applicant on 14 April 2011. So the appeal has been ripe for hearing for over a year. But there is no indication on the papers before me when the appeal will be heard. This too is a matter to which I shall return.

43. On the same day as the internal appeal was lodged, 26 October 2010, the respondent delivered its answering affidavits in the application for access and simultaneously launched a counter-application for a declaratory order that the applicant's prospecting right had lapsed and, in the alternative, an order staying the application for access, pending the determination of the three administrative processes initiated by the respondent. In its counter-application, the respondent cited as

[28] 2011 4 SA 113 CC

respondents and served papers on six specified organs of State ("the State parties").

44. The status of the State parties in this application is controversial. The applicant contends that a respondent may not simply cite parties who were not parties to the main application but ought to have sought an order joining them. Rule 24(2), made applicable to applications by rule 6(7)(a), provides that in such circumstances an applicant in reconvention may so proceed in such manner and on such terms as the court may direct. I shall return to this question.

45. In its affidavits delivered in this court, the respondent disclosed to the applicant the fact of the application under NEMPA for the area including the farms to be declared a nature reserve. On 15 December 2010, the applicant submitted an objection to the nature reserve application to the Limpopo provincial authorities. But there the matter seems to have rested and the application to declare the area a nature reserve is still pending. There is nothing in the papers that tells me why this is or how far the application has progressed. I shall return to this question.

<u>The application for access: evaluation</u>

46. In its answering affidavit, the respondent raises one defence to the claim for access: that the applicant did not commence with prospecting activities within 120 days of the date on which the prospecting right became effective and the prospecting right has thus, so the argument goes, lapsed by operation of law.

47. In counsels' heads of argument and in oral argument before me, two further defences were raised: that the court should not in the circumstances of this case grant declaratory relief and that the applicant had not made out a *prima facie* case for relief.

48. At the level of discretion, the respondent's first objection to declaratory relief, this case is preeminently a proper subject for declaratory relief. Both parties ask for declarators. If the applicant has at this stage no valid prospecting right, that would be the end of the matter and there would be no need to consider the effect of the administrative processes initiated by the respondent. The respondent's second submission in relation to declaratory relief is that it would not be appropriate to grant such relief until its administrative processes had been disposed of. This is something which can and should be dealt with in any declaratory order which, after an evaluation of the issues raised on the papers and in argument, may issue but I do not think that the fact of the pending administrative processes can serve as a bar to any relief in this regard.

49. This clears the way for a consideration of the respondent's main attack - in the application before me - on the validity of the applicant's prospecting right. This entails a consideration of s 19(2) of the MPRDA, which reads as follows:

> (2) The holder of a prospecting right must_
> (a) lodge such right for registration at the Mining Titles Office within 30 days of the date on which the right_
> (i) becomes effective in terms of section 17 (5); or
> (ii) is renewed in terms of section 18 (3);
> (b) commence with prospecting activities within 120 days from the date on which the prospecting right becomes effective in terms of section 17 (5) or such an extended period as the Minister may authorise;
> (c) continuously and actively conduct prospecting operations in accordance with the prospecting work programme;
> (d) comply with the terms and conditions of the prospecting right, relevant provisions of this Act and any other relevant law;
> (e) comply with the requirements of the approved environmental management programme;
> (f) pay the prescribed prospecting fees to the State; and
> (g) subject to section 20, pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations.

50. The respondent submits that *prospecting activities* in s 19(2)(b) refers to actual physical activities which entail a deliberate search for minerals and which, at a minimum, disturb the surface of the earth.

51. The expression *prospecting activities* is not defined in the MPRDA but both *prospecting* and *prospecting operations* are defined. Unless the context otherwise indicates, *prospecting* means,

> ... intentionally searching for any mineral by means of any method_
> (a) which disturbs the surface or subsurface of the earth, including any portion of the earth that is under the sea or under other water; or
> (b) in or on any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value thereof; or
> (c) in the sea or other water on land;

while *prospecting operations* means

> ... any activity carried on in connection with prospecting.

52. .Reduced to their essentials, the arguments of counsel on both sides were that *prospecting activities* was a synonym for one of the defined terms just quoted. On behalf of the respondent it was argued that I should take linguistic considerations into account in considering this issue. Counsel referred me to dictionary definitions of the word "activity"

and pointed out, with reference to *R v Sisilane*[29] that the general rule in the construction of statutes is that a deliberate change of expression is *prima facie* taken to import a change of intention.

53. The difficulty I have with ascribing such a rational intention to the legislature is the evidence within s 19 of the MPRDA and the MPRDA generally that the Act was not framed with the care which has traditionally attends the drafting of national legislation in our country. It is difficult to accept, even before referring further within the MPRDA, that the reference to *prospecting activities* was anything but a slip of the legislative pen. If the intention was that *prospecting activities* was equivalent neither to *prospecting* nor *prospecting operations*, the legislature would surely have defined *prospecting activities*. If the intention was that *prospecting activities* should indeed be equivalent to one or the other of *prospecting* or *prospecting operations*, the legislature would surely have used one of these two already defined terms.

54. .To take a further example of legislative imprecision within s 19(2)(b) itself: s 19(2)(e) refers to the environmental management *programme*. As the definitions section of the MPRDA makes clear, an environmental management *programme* is something different from an environmental management *plan*. The former is applicable within the context of

[29] 1959 2 SA 448 AD 453F

applications for mining rights while the latter is applicable to applications for prospecting rights. The leading commentator has concluded that the reference to a *programme* in s 19(2)(e) is simply a mistake.[30] I agree.

55. To make the point that the linguistic imprecision within the MPRDA is not confined to s 19, I quote, without comment, the provisions of s 105:

> **Landowner or lawful occupier of land cannot be traced**
> (1) If the applicant for a right, permit or permission, who must notify and consult with the landowner of lawful occupier of the land to which the application relates in terms of the relevant provisions of this Act, notify the Regional Manager that, the landowner or lawful occupier of the land concerned_
> (a) cannot be readily traced; or
> (b) is deceased and no successor entitled can be readily traced.
> (2) Notwithstanding any other law, the Regional Manager, on application in writing from such applicant and on payment of the prescribed application fee, may_
> (a) grant consent to such a person to install a notice on a visible place on the land and enter the land to which the application relates to; and
> (b) subject such a person to such other terms and conditions as the Regional Manager may determine.

56. Prospecting, in the broader sense, is an activity that takes place both in the office and in the field. As is evident from the facts in this case, the

---

[30] Dale and others, *South African Mineral and Petroleum Law* (looseleaf ed) para 171.11

applicant was not in a practical position when it was awarded its right simply to enter the prospecting area and begin drilling its boreholes and cleaning out the old workings. It first caused a visual inspection on the farms, field mapping and data investigation to be conducted. For this purpose, the applicant retained the services of consulting geologist Mr Kyle, who charged the applicant a total of R150 000 for his work conducted during the period October 2008 to January 2009.

57. The period of 120 days provided for in s 19(2)(b) is entirely arbitrary and takes no account of the complexities (or the absence of complexities) inherent in any specific prospecting situation. Counsel for the respondent argued that any difficulty that might arise in this regard would be met if the prospector approached the Department before the expiry of the 120 day period for an extension. Absent such an approach, it was submitted, no extended period could be lawfully authorised. The contrary, counsel submitted, would subvert the principle inherent in the MPRDA that the mineral resources of the country should be exploited with due expedition and that the holders of rights to prospect and mine should not, as in the past be permitted to allow the resources simply to lie unexploited.

58. I do not agree. The construction urged upon me would lead to administrative rigidity and potential wasting of money and resources. In this case, for example, the applicant can only conduct invasive prospecting activities in the winter months. Much of the mineral wealth of our country lies in the summer rainfall area. The objects of the measure would far better be served if the Department were afforded a discretion to take action pursuant to a failure to commence prospecting activities rather than by an irrevocable lapsing of the prospecting right once the 120 day period had expired without any extension having been granted.[31]

59. To take again the facts of this case as an example: the applicant is because of the weather unable for some five or six months of the year to conduct invasive prospecting activities on the farms. On the interpretation urged upon me by the applicant, a prospector in such a position who notified and sought to consult with a landowner after his right became effective could have his right rendered nugatory by a landowner who prolonged the process into the rainy season unless the Department came to the prospector's relief. In such a case, the

---

[31] I have not overlooked the respondent's reliance on *Waenhuiskrans Amiston Ratepayers Association and Another v Verreweide Eiendomsontwikkeling (Edms) Bpk and Others* 2011 3 SA 434 WCC paras 160-161. There the court concluded that an interpretation that permitted a rezoning which had lapsed to be extended after such lapsing would not advance the objects of the measure under consideration. I have gone the other way, at this level, because I think that the objects of the MPRDA would not be served by such an interpretation.

exploitation of the minerals could effectively be stopped by an attack on the Department's decision in favour of the prospector to extend the period of 120 days.

60. Section 19(2)(b) does not expressly provide that the failure to commence prospecting within the prescribed period results in the lapsing of the right. Nor does it expressly provide that an extension of time can only be authorised when the request for an extension is made within the prescribed period. The question is then whether such an intention should be implied into the section.

61. Section 47 of the MPRDA confers upon the Department the right to suspend or cancel, *inter alia*, mining and prospecting rights in three specific situations, which include carrying on the prospecting operation in contravention of the MPRDA and breaching the terms and conditions of the prospecting right itself. The section prescribes an elaborate procedure to give effect to the *audi alteram partem* principle and affords to the Department a wide range of measures to deal with the situations contemplated in the section. There seems to me to be no good reason why the legislature should have provided for such flexibility in the situations where cancellation or suspension is expressly contemplated and should have failed to do so in the s 19(2)(b) situation where so many good reasons could exist for a failure to begin prospecting operations within 120 days.

62. Section 56 of the MPRDA deals with situations where, *inter alia*, mining and prospecting rights lapse. One of these situations is where the right is cancelled under s 47. Another is where the right expires. The remaining situations covered by the section are when the holder of the right dies without successors in title or is, in the case of corporate holders of rights, deregistered or, in certain circumstances, liquidated and where the right is abandoned. Here again, there seems to me no good reason why the legislature would have identified in s 56 some of the situations in which rights lapse and provided by implication that other situations in addition to those provided for in s 56 would result in the lapsing of the right.

63. Finally, if a failure to commence under s 19(2)(b) were to result in lapsing, there seems to me no good reason why the breach of the other six obligations of a holder of a right identified in s 19(2) should also not result in lapsing. These latter situations include failure to comply with the terms and conditions of the prospecting right and with the requirements of the approved environmental management programme (*sic*). But s 47(1)(b) confers the power to suspend or cancel the right only after compliance with the *audi* procedure and then only in respect of breaches of *material* terms and conditions of the right. And s 47(1)(c) confers the same powers with the same restrictions where the environmental management plan is contravened.

64. Other failures to comply with obligations mentioned in s 19(2) include failure to lodge a right for registration at the Mining Titles Office within a prescribed period and failure to pay fees or royalties to the State (presumably on due date). It is to my mind not conceivable that the legislature intended to visit failures in these regards with lapsing as an inevitable matter of law.

65. These considerations lead me to conclude firstly that the legislature did not intend to equate *prospecting activities* with *prospecting*. In my view *prospecting activities* in s 19(2)(b) of the MPRDA must be read as synonymous with *prospecting operations* as defined. I conclude, secondly, that a failure to commence *prospecting activities* within the prescribed period does not of itself and absent a decision validly taken under s 47 of the MPRDA result in the lapsing of the right.

66. Thus: although the applicant's prospecting right may be set aside pursuant to the administrative processes initiated by the respondent under the MPRDA or rendered ineffectual by the declaration of the farms as part of a nature reserve under NEMPA, the applicant is entitled, in principle and unless and until the right is set aside or rendered ineffectual, to the benefits of the right awarded to it. One of the benefits of this right is to come onto the farms and begin invasive prospecting activities. This is because the prerequisite for the exercise

of the right, in my view, is not dependant on the *validity* of the right but on the factual existence of the initial act by which the right was awarded to the applicant.[32]

67. It follows, I conclude, that the applicant is entitled to an appropriate declarator which takes into account the possibility that its prospecting right might so be set aside or rendered ineffectual. In consequence, the respondent's counter-application for declaratory relief must fail. In the next sections, I consider the question whether the main application should be stayed or, to put it another way, whether the applicant should be allowed immediately to exercise its right to come onto the farms and begin invasive prospecting activities.

Application for a stay of the main application: general evaluation

68. Both sides accepted that even if I find that the prospecting right has not lapsed, I have jurisdiction (in the sense of *regsbevoegdheid*) to postpone the effect that would otherwise accompany such a declaration, ie that the applicant might come onto the farms and begin invasive prospecting activities. Counsel were also agreed that the matter may be approached as if the respondent had sought an interim interdict to postpone the coming into effect of the declarator. The test for an interim

[32] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 6 SA 222 SCA para 31

interdict is too well known to justify the recitation of authority. Two of the requirements for an interim interdict are contentious in this case. I must consider, firstly, whether the respondent has shown a *prima facie* right, which translates to whether it has demonstrated prospects of success in the various administrative processes initiated by it. Secondly, if I find for the respondent on prospects of success, I must consider where the balance of convenience lies.

69. The proper approach to the evidential material in this context is to take the evidence adduced by the respondent (as applicant for the interim interdict) together with those facts put up by the applicant which the respondent cannot deny.

70. I think that it is important for me to bear in mind that this court is not the decision maker in relation to the administrative processes. I should not and I do not come to any conclusion about whether the processes should be decided one way or the other.[33] But that they should be decided with due expedition is fundamental to my approach. For the same reason, I do not think it is necessary or even appropriate for me to decide which of the grounds advanced by the respondent in support of the counter-application for a stay should *not* succeed. I therefore

---

[33] *Koyabe and Others v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae)* 2010 4 SA 327 CC para 36

discuss only those grounds on which, in my view, the respondent does indeed have prospects of success.

Prospects of success: the nature reserve application

71. The respondent has put up the report of the functionary within the Limpopo provincial government whose job it is to formulate a recommendation as to whether a particular area should be declared a nature reserve. His recommendation is that from a conservation perspective, the area which includes the farms should be declared a nature reserve. The cogency of the opinion which gave rise to this recommendation is strengthened by the view of the Director-General of the Department of Environmental affairs and Tourism demonstrated in the letter dated 25 May 2002 which I have mentioned, that the farms included highly significant natural features which are essential to the preservation of South Africa's natural diversity and by the inclusion of the farms in a register of natural heritage sites kept by that Department.

72. The respondent, through Mrs Ricci, appears to me, as I have said, to be a keen conservationist. There is no reason to believe that the request that the area be declared a nature reserve was not made in good faith. No doubt the request was defensive, in the sense that it was prompted by the threat that the farms would be exploited for their potential mineral wealth; no doubt the respondent sought to achieve a procedural

advantage by keeping the request secret from the applicant. These are factors which the decision maker will doubtless take into account. Given the context in which the request was made, I do not think that they are likely to weigh heavily against the respondent. The ultimate test is whether, when the undoubted conservation value of the area is weighed together with the potential of such mineral resources as are there present and the interests of the broader national community and the narrower local community, the area should be declared a nature reserve.

73. The applicant's objection to the request was made only at the level of the effect that declaring the area a nature reserve would have on the rights of the applicant and Samancor, that in the past mining took place on the farms and that mining was currently taking place at three locations between five and ten km from Welgevonden. There is at this stage no evidence before me to suggest that the area is not worthy of conservation. There is also no evidence as to the value of the ore which the applicant believes might be present on the farms or whether the community, in both its broader and narrower senses, would benefit more from prospecting and, ultimately, mining or from the creation of a nature reserve.

74. I therefore find on the material before me that the respondent has good prospects of success in regard to its request that the area including the farms be declared a nature reserve.

Prospects of success: the internal appeal and the request that action be taken under s 47 of the MPRDA

75. The grounds relied upon by the respondent in these administrative processes overlap to a certain extent. I intend to confine my remarks to one ground which the respondent raised in the papers and in argument before me. The respondent contends that the Department failed to comply with or failed to have adequate regard to environmental protections contained in the MPRDA and related legislation.

76. The respondent's argument is, at the first level at which it was advanced, this: the applicant's application for a prospecting right was accepted for consideration on 29 February 2008. On 21 April 2008, the applicant submitted its environmental management plan. In a letter dated 8 September 2008, the Deputy Director-General: Mineral Regulation ("the DDG") wrote to the applicant to say that the applicant's application for a prospecting right had been approved, ie granted. It is common cause between the parties that the DDG was the functionary within the Department who made the decision to grant the prospecting right to the applicant.

77. In his letter, the DDG says:

> Take note that the Regional Manager will approve the relevant Environmental Management Plan and sign the right on **24 September 2008** at **09h30**. [emphasis as in original]

78. The reason why the environmental management plan was only considered after the right itself was granted seems to be this: an applicant for a prospecting right is not required to submit an environmental management plan with his application. He need only do so after he has been notified in writing to do so by the Department.[34] The environmental management plan must, if it complies with certain requirements, be approved within 120 days from its lodgement.[35] The MPRDA contemplates the grant of a prospecting right *before* the environmental management plan as such is approved because s 17(5) provides that

> The granting of a prospecting right in terms of subsection (1) becomes effective on the date on which the environmental management programme is approved in terms of section 39.

79. It is a fair *prima facie* inference from the facts that I have set out that the practice within the Department at the time the right was granted was to

---

[34] Section 16(4)(a) of the MPRDA

[35] Section 39(4)(a) of the MPRDA. I assume for present purposes that "submission" under s 16(4)(a) is equivalent to "lodgement" under s 39(4)(a).

defer a consideration of environmental factors until after the right was granted. If this is so (and I express no final view on the question) then the prospecting right would fall, all other things under the Promotion of Administrative Justice Act, 2000 ("PAJA") being equal, to be set aside on the ground that the DDG as decision maker did not consider, as the MPRDA says he must, whether the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment.[36]

80. The applicant did not place any evidence of the DDG himself before me. I was told from the bar that the DDG had left the employ of the Department. But the applicant did file an affidavit which formed part of the record in *Bengwenyama, supra* by Mr LG Rapoo, now deceased. The affidavit of Mr Rapoo was sworn during July 2008. The day on which it was sworn was omitted from the certificate of the commissioner of oaths who attested the affidavit.

[36] Section 17(1)(c) of the MPRDA

81. Mr Rapoo said in his affidavit that as a regional manager within the Department, he was conversant with the procedure which was followed by the Department in the evaluation of applications for a prospecting right. He explained that subordinate officials within the Department routinely prepare a submission for consideration by the decision maker which includes consideration of "all material aspects of the Applicant" [*sic*], including "environmental management (ability to manage the environment and rehabilitate)" and that a "standard annexure to the submission" includes a "report from Sub Directorate: Mine Environmental Management (ability to manage and rehabilitate the environment)".

82. The decision maker is required to establish that the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment. There is no evidence before me that this was done. The report to which Mr Rapoo referred is not before me.

83. There is further no indication in Mr Rapoo's affidavit that consultation took place with all State departments which administer any laws relating

to matters affecting the environment.[37] The applicant could have used its rights under PAIA to obtain the relevant information, if it exists in the present case. There is also no explanation why an affidavit from the actual decision maker could not be obtained. Why the material placed before the decision maker (in this case the DDG) did not include a report which enabled the decision maker *himself* to decide whether or not to approve the environmental plan is not explained.

(1) And finally, on this issue, the material in the affidavit of Mr Rapoo, which was part of the record in *Bengwenyama, supra*, did not persuade the Constitutional Court that there had been compliance with s 17(1)(c) of the MPRDA.[38]

(2) I therefore conclude that the respondent has prospects of success in its internal appeal on the ground discussed in this section of the judgment. It is therefore unnecessary for me to consider the other grounds raised in support of the internal appeal and the request to the Department to act under s 47 of the MPRDA for the reason given earlier.

---

[37] Section 40 of the MPRDA reads:

(1) When considering an environmental management plan or environmental management programme in terms of section 39, the Minister must consult with any State department which administers any law relating to matters affecting the environment.

(2) The Minister must request the head of a department being consulted, in writing, to submit the comments of that department within 60 days from the date of the request.

[38] *Bengwenyama, supra*, paras 77 and 78

Balance of convenience

(3) Having concluded that the respondent has prospects of success in its administrative processes, I turn to the balance of convenience.

(4) On the one hand, the applicant has a prospecting right. The attack before me against its validity has failed. The applicant's right will inevitably lapse by effluxion of time. Indeed it would have lapsed already, because the right was given for three years reckoned from 24 September 2008, but for the provisions of ss 18(4) and (5) of the MPRDA which provide that a prospecting right may be renewed once for a period not exceeding three years and that a prospecting right in respect of which an application for renewal has been lodged remains, despite its stated expiry date, in force until such time as the application for its renewal has been granted or refused. I was told that an application for a renewal of the applicant's prospecting right has been made and is pending.

(5) On the other hand, the invasive aspects of the intended prospecting may seriously diminish the value of the farms and contiguous area from

an environmental perspective.[39] This is something which the decision maker in relation to the request for the area to be declared a nature reserve must take into account, amongst other considerations.

(6) In my view, the balance of convenience is tilted decisively in favour of the respondent by the legislative scheme to which I have referred. The effect of that legislation is that the declaration of a nature reserve trumps rights awarded under the MPRDA, not the other way around. Such rights are, as I have explained, no longer enforceable if the farms are declared to be part of a nature reserve. The legislative scheme requires me to take a cautious, risk-averse approach. The area is of proven worth as an area worthy of conservation. But the value of the farms to the nation as a repository of potential mineral wealth is presently wholly speculative. The last time minerals on the farms were exploited was 1976. It is a fair inference that no further exploitation took place after that date because it was considered unlikely that the cost involved in mining would justify the anticipated return. This conclusion is strengthened by the fact that the applicant applied for a prospecting right rather than a mining right: the applicant wants to establish if there is a likelihood that minerals in commercially exploitable quantities are present before the Sephaku group commits itself to the expense of obtaining a mining right and conducting mining operations.

---

[39] The applicant disputes this, asserting that the proposed invasive prospecting operations will have no material impact on the environment. But, as I have said, at this stage the respondent's version must prevail.

Remedy

(7) The respondent seeks to enforce rights in terms of legislation enacted to protect the environment, pursuant to s 24 of the Constitution. The present is thus *prima facie* a constitutional matter and this court may under s 172(1)(b) of the Constitution make any order that is just and equitable.

(8) It would be a simple matter to order that the effect of the declaratory relief granted to the applicant be stayed pending the final outcome of the administrative processes initiated by the applicant. But my concern is that it appears *prima facie* that the State parties whose constitutional duty it is to decide the questions raised by the administrative processes have not complied with their duties to do so diligently and without delay.[40] I pointed out earlier that the nature reserve application was made on 4 March 2010. The report recommending that the area be proclaimed a nature reserve was dated 28 April 2010. Nothing appears to have been done by the relevant administrative authorities in the two years that have elapsed since the recommendation was made. The

[40] It is their duty under s 237 of the Constitution to do so. Procedurally fair administrative action under s 33 of the Constitution also requires that administrative decision makers do their work without undue delay. The failure of such an administrator to make a decision within a reasonable time is a specific ground of review under s 6(3) of PAJA.

internal appeal has been pending for a year since that matter was ripe for hearing. The s 47 request was made some 18 months ago.

(9) I do not know why these processes have not been completed but the circumstances I have described call in my view for explanations from the officials concerned. *Prima facie*, more than adequate time for the completion of these processes has elapsed.

(10) I am acutely aware that the administrative processes are not before the court and that it is the duty of the court to show appropriate deference towards administrative decision makers.[41] I also bear in mind the primary duty of the court to decide issues placed by the parties before it and not to be proactive in raising issues which the parties have not seen fit to raise themselves.

(11) But I think that this is an exceptional case. It seems to me *prima facie* that the present application would never have reached this court if the relevant State parties had done their constitutional duty and that the constitutional discretion conferred on the court to grant an order that is just and equitable[42] requires that the State parties be called upon to do their respective duties within a specified time. If I leave it to the parties to bring proceedings to achieve this, much time will be lost to the prejudice at least of the applicant and a judge will in due course have to

[41] *Koyabe, supra*, para 36

[42] Section 172(1)(b) of the Constitution

travel over much of the territory which is already familiar to me. The procedure I am contemplating therefore appears to me to advance the interests of justice. As the State parties have not been heard, I propose to issue a rule *nisi* in appropriate terms. If I am wrong, the matter can be put right on the return day.[43]

(12) I mentioned earlier that the status of the State parties in the present proceedings was controversial. This is because the State parties were not joined as respondents in the counter-application strictly in accordance with the Rules. I shall make provision in the rule *nisi* for the State parties to be heard on this issue.

(13) My suggestion during argument that this procedure be followed was adopted by the respondent, which provided me with a draft order in line with what I have said above. The applicant similarly provided me with a draft order providing essentially for the further conduct of the case if I found for the applicant on its main submission in the counter-application, ie that the invasive prospecting activities should go ahead despite the pending administrative processes. In its draft, the applicant laudably sought to restrict the invasive nature of its activities on the farm

[43] *Bell v Bell* 1908 TS 887 893

to a minimum. In formulating my order below I have taken both drafts into account.

Order of court

LXXXIV. It is declared that subject to the determination of the administrative processes initiated by the respondent as described below ("the administrative processes") and the other provisions of this order, the applicant is entitled to be afforded access to the farms Welgelegen 246KR and Welgevonden 232KR ("the farms") for the purpose of prospecting by virtue of prospecting right 368/2008 ("the prospecting right") as contemplated in s 5(3) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("the MPRDA").

I. The administrative processes are:

A. the application made by the respondent to the Department of Economic Development, Environment and Tourism of the Limpopo Provincial Government on 4 March 2010 to have an area including the farms declared a nature reserve;

B. the request made by the respondent to the Minister of Mineral Resources on 15 October 2010 to set aside the prospecting right under s 47 of the MPRDA;

C. the internal appeal under s 96 of the MPRDA noted by the respondent on 26 October 2010 against the granting of the prospecting right to the applicant.

II. The respondent's counter-application for declaratory relief is dismissed.

III. The right of the applicant to have access to the farms is hereby stayed pending the final determination of this application by the court.

IV. A rule *nisi* will issue, calling upon the State parties as described below and all other interested parties to show cause on Monday 16 July 2012 at 10h00 or

so soon thereafter as counsel may be heard why an order in the following terms should not be granted:

A. Joining the State parties as second to seventh respondents respectively in the respondent's counter-application in these proceedings;

B. Directing the MEC for Economic Development, Environment and Tourism in the Provincial Government of Limpopo to determine the outcome of the respondent's application to have an area including the farms declared a nature reserve by no later than 31 December 2012 or such other date as may be determined by the court;

C. Directing the Minister of Mineral Resources and the Director-General Resources, the Deputy Director-General Resources and the Regional Manager, Limpopo, all within the national Department of Mineral Resources, to determine both the respondent's request to have the prospecting right cancelled or suspended under s 47 of the MPRDA and the respondent's internal appeal under s 96 of the MPRDA against the grant of the prospecting right by no later than 31 December 2012 or such other date as may be determined by the court;

D. Directing that the right of the applicant to have access to the farms is hereby stayed pending the final determination of all the administrative processes;

E. Determining the liability for the costs of this application.

V. The State parties are the MEC for Economic Development, Environment and Tourism in the Provincial Government of Limpopo, the Minister of Environmental Affairs, the Minister of Mineral Resources and the Director-

General Resources, the Deputy Director-General Resources and the Regional Manager, Limpopo, all within the national Department of Mineral Resources.

VI. The respondent is directed forthwith to serve all the papers in the present application and counter-application and this judgment on all the State parties.

VII. The respondent must forthwith cause a copy of this order to be affixed to the notice board at the office of the magistrate for the magisterial district in which the farms are situated and to be published once in a newspaper circulating in such magisterial district. Compliance with the directions in this paragraph must be proved by affidavit.

VIII. The State parties wishing to show cause must deliver their affidavits, if any, by 11 June 2012. The applicant must deliver its further affidavits, if any by 25 June 2012. The respondent must deliver its further affidavits, if any, by 9 July 2012. The respondent is responsible for paginating and indexing the court file.

IX. The counter-application is postponed to 16 July 2012.

X. The question of liability for the costs incurred to date is reserved.

NB Tuchten
Judge of the High Court 7 May 2012

SephakuKranskoppie.47561 10

For the applicant:
Adv GL Grobler SC and Adv JL Gildenhuys
Instructed by Hannes Gouws & Partners, Inc
Pretoria

For the respondent:
Adv GJ Marcus SC and I Goodman
Instructed by Eversheds

Johannesburg