THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 342/2019

In the matter between:

MINISTER OF ENVIRONMENTAL AFFAIRS **FIRST APPELLANT**

DEPUTY DIRECTOR-GENERAL: LEGAL, AUTHORISATIONS, COMPLIANCE AND ENFORCEMENT **SECOND APPELLANT**

and

ARCELORMITTAL SOUTH AFRICA LIMITED **RESPONDENT**

Neutral citation: *Minister of Environmental Affairs and Another v ArcelorMittal South Africa Limited* (Case no 342/2019) [2020] ZASCA 40 (17 April 2020)

Coram: PETSE DP, SWAIN, MOKGOHLOA and MBATHA JJA and KOEN AJA

Heard: 21 February 2020

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 09h45 on 17 April 2020

Summary: Environmental law – protection of environment – prohibition against undertaking identified activities without authorisation – nature and scope of the powers of environmental authorities – pre-existing activities prior to enactment of Environmental Conservation Act 73 of 1989 as well as National Environment Management Act 107 of 1998 (NEMA) that have not been declared as identified activities not subject to the strictures of NEMA and National Environment Management Waste Act 59 of 2008 (NEM:WA) – Basic Oxygen Furnace slag that is not unwanted or rejected or abandoned not constituting waste as defined in NEM:WA – waste management licence in terms of s 49(1)*(a)* of NEM:WA not required in order to deal with such slag.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Molefe J, sitting as court of first instance): judgment reported *sub nom Arcelormittal South Africa Limited v Minister of Environmental Affairs and Another* [2018] ZAGPPHC 577; 2018 JDR 0957 (GP).

1 The appeal is dismissed with costs, including the costs of two counsel.

2 The order of the High Court is supplemented to the extent reflected below:

'The directive and compliance notice issued by the Deputy Director-General: Legal, Authorisation, Compliance and Enforcement on 7 December 2015 are reviewed and set aside.'

JUDGMENT

Petse DP (Swain, Mokgohloa and Mbatha JJA and Koen AJA concurring)

Introduction

[1] This appeal is against an order[1] of the Gauteng Division of the High Court, Pretoria (the High Court) in terms of which the decisions of the first

[1] The High Court granted an order in the following terms:
'1. The first respondent's ("Minister") decision dated 5 July 2016, dismissing the applicant's appeal lodged on 6 January 2016 in terms of section 43(8) of the National Environmental Management Act 107 of 1998 ("NEMA") against the directive issued by the second respondent against the applicant in terms of section 28(4) of the NEMA dated 7 December 2015, is reviewed and set aside;
2. The Minister's decision dated 5 July 2016, dismissing AMSA's objection lodged on 6 January 2016 in terms of section 31M of the NEMA against the compliance notice issued by the DDG against the applicant in terms of section 31L of the NEMA dated 7 December 2015 ("compliance notice") is reviewed and set aside;

appellant, the Minister of Environmental Affairs (the Minister), were reviewed and set aside and a declarator issued. The Minister had, on 5 July 2016, dismissed the internal appeal lodged by the respondent, ArcelorMittal South Africa Limited (AMSA), under s 43(8) of the National Environmental Management Act 107 of 1998 (NEMA) against the directive and AMSA's objection to the compliance notice issued by the second appellant, the Deputy Director-General: Legal, Authorisations, Compliance and Enforcement (the DDG) in terms of s 31L of NEMA on 7 December 2015.

[2] The appeal, in essence, raises four interrelated questions. The first is whether AMSA was precluded from disposing its Basic Oxygen Furnace slag (BOF slag) at its disposal site which it had operated since the 1970s, and from selling recycled BOF slag to its customers in the road construction and agricultural sectors without a waste management licence (WML) or exemption under ss 49 and 74, respectively, of the National Environmental Management: Waste Act 59 of 2008 (NEM:WA). The second is whether customers to whom AMSA sold its BOF slag required a WML in order to purchase AMSA's BOF slag. The third is whether the issuance to AMSA by the Department of Environmental Affairs (the Department) of decommissioning and construction licences in 2011 meant that AMSA could no longer exercise its pre-existing rights that it had enjoyed long before the coming into operation of the Environmental Conservation Act 73 of 1989 (ECA), and later the NEM:WA. The fourth is whether the High Court was correct, in the context of the facts of this case, to: (a) review and set aside the Minister's decision to dismiss AMSA's internal appeal; and (b) grant

3. A declaratory order that the existing Basic Oxygen Furnace ("BOF") slag disposal site which the applicant operated since the late 1970s, did not require a disposal waste management licence in terms of the National Environmental Management Waste Act 59 of 2008 ("NEM:WA") for its lawful operation;
4. The respondents to pay the costs of this application, including the costs of two counsel, jointly and severally, the one paying the other to be absolved.'

declaratory relief. The appeal comes before this Court with the leave of the High Court.

[3] This appeal is about the protection of the environment against degradation and its attendant ill effects on humans and the ecosystem as well as the interpretation of the relevant regulatory statutory framework. It is also concerned with the powers and obligations of the environmental authorities which fall under the auspices of the Department to regulate activities that may have a substantial detrimental impact on the environment.

[4] Section 24 of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution) provides that:

'Everyone has the right—

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.'

The NEMA and the NEM:WA are two legislative measures contemplated in s 24 of the Constitution.

[5] The preamble to NEMA, after acknowledging that 'many inhabitants of South Africa live in an environment that is harmful to their health and well-being', recognises the right of everyone 'to an environment that is not harmful to his or her health and well-being'. It imposes an obligation on the State to 'respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities'.

[6] On the other hand, the long title of the NEM:WA describes its overarching purpose as being to reform the law regulating waste management. This, it continues, is 'in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development'. To this end, the NEM:WA makes provision for, *inter alia*, 'the licensing and control of waste management activities'; 'the remediation of contaminated land'; and for 'compliance and enforcement' measures.[2]

The parties

[7] The first appellant is the Minister of Environmental Affairs. The second appellant is the Deputy Director-General: Legal, Authorisations, Compliance and Enforcement in the employ of the Department. He is the functionary who issued the directive and compliance notice that were central to the review application in the High Court. For convenience, I shall hereinafter refer to the Minister and DDG collectively as the appellants, unless the context dictates otherwise.

[8] The respondent is ArcelorMittal South Africa Limited which is a public company incorporated in terms of the company laws of the Republic. It has its registered address at Delfos Boulevard, Vanderbijlpark in Gauteng. AMSA is one of the country's oldest and leading steel manufacturers. It manufactures various steel products that include, amongst others, rods, billets and reinforcing bars. This appeal relates to its Newcastle operations.

The facts

[2] Some of these objectives are either echoed or elaborated on in s 2.

[9] As already indicated, AMSA manufactures, as its core business, various steel products. It has been doing so for decades now and at least from the 1970s. One of the by-products of its steel manufacturing process is what AMSA describes as the Basic Oxygen Furnace slag (BOF slag). The BOF slag is formed in the course of the conversion of liquid iron, from the blast furnace, into steel in a basic oxygen furnace. Upon completion of the process, molten crude steel gathers at the base of the furnace whilst the liquid slag floats on top. The crude steel and the slag are tapped into separate pots in a process generating temperatures above 1500° centigrade.

[10] At its Newcastle operations, AMSA's BOF slag is derived from two sources. These are described by AMSA as 'current arisings', which is BOF slag that has been temporarily stockpiled, crushed and screened for delivery to third parties for use either as lime in the agricultural sector for soil conditioning or as an aggregate in road construction and rehabilitation. The other source is what is called 'reclaimed slag'. Reclaimed slag represents BOF slag that is temporarily deposited into AMSA's disposal site for storage because it cannot be immediately sold as a secondary product to third parties. Nevertheless, it remains, despite its temporary deposit into a waste disposal site, of commercial value to AMSA. When it is required for sale to third parties it is retrieved from the disposal site, crushed and screened on-site by another entity acting as AMSA's agent in order to convert it to the specifications required by AMSA's customers. The sale of BOF slag, be it in the form of current arisings or reclaimed slag, generates revenue for AMSA which equates to an average of some R1,1 million per month.

[11] During February 2013, Environmental Management Inspectors from the Department of Water Affairs conducted what the DDG described as a 'second follow-up inspection' of AMSA's Newcastle operations with a view

to determining whether AMSA complied with the 'newly issued and applicable permits/licences/authorisations' at its sites. This was followed by a notice issued by the Department to AMSA under s 31H of the NEMA.[3]

[3] Section 31H reads:

'**General powers.**

(1) An environmental management inspector, within his or her mandate in terms of section 31D, may—

(a) question a person about any act or omission in respect of which there is a reasonable suspicion that it might constitute—

(i) an offence in terms of a law for which that inspector has been designated in terms of that section;

(ii) a breach of such law; or

(iii) a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law;

(b) issue a written notice to a person who refuses to answer questions in terms of paragraph *(a)*, requiring that person to answer questions put to him or her in terms of that paragraph;

(c) inspect, or question a person about, any document, book or record or any written or electronic information—

(i) which may be relevant for the purpose of paragraph *(a)*; or

(ii) to which this Act or a specific environmental management Act relates;

(d) copy, or make extracts from, any document, book or record or any written or electronic information referred to in paragraph *(c)*, or remove such document, book, record or written or electronic information in order to make copies or extracts;

(e) require a person to produce or deliver to a place specified by the inspector, any document, book or record or any written or electronic information referred to in paragraph *(c)* for inspection;

(f) inspect, question a person about, and if necessary remove any specimen, article, substance or other item which, on reasonable suspicion, may have been used in—

(i) committing an offence in terms of the law for which that inspector has been designated in terms of section 31D;

(ii) breaching such law; or

(iii) breaching a term or condition of a permit, authorisation or other instrument issued in terms of such law;

(g) take photographs or make audio-visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection;

(h) dig or bore into the soil;

(i) take samples;

(j) remove any waste or other matter deposited or discharged in contravention of the law for which that inspector has been designated in terms of section 31D or a term or condition of a permit, authorisation or other instrument issued in terms of such law; or

(k) carry out any other prescribed duty not inconsistent with this Act and any other duty that may be prescribed in terms of a specific environmental management Act.

(2) A written notice issued in terms of subsection (1)*(b)* must be in the prescribed format and must require a person to answer specified questions either orally or in writing, and either alone or in the presence of a witness, and may require that questions are answered under oath or affirmation.

(3) A person who receives a written notice in terms of subsection (1)*(b)*, must answer all questions put to him or her truthfully and to the best of his or her ability, notwithstanding that an answer might incriminate him or her, but any answer that incriminates such person may not be used against him or her in any subsequent criminal proceedings for an offence in terms of this Act or a specific environmental management Act.

(4) An environmental management inspector must—

(a) provide a receipt for—

(i) any document, book, record or written or electronic information removed in terms of subsection (1)*(d)*; or

(ii) any specimen, article, substance or other item removed in terms of subsection (1)*(f)*; and

(b) return anything removed within a reasonable period or, subject to section 34D, at the conclusion of any relevant criminal proceedings.

[12] Several exchanges followed between the Department and AMSA, the latter making representations which culminated in the DDG issuing a pre-compliance notice and pre-directive on 23 July 2014. These were followed by further representations from AMSA on 22 September 2014 and 5 December 2014, a meeting between the representatives of AMSA and the Department, concluding with further representations by AMSA on 21 September 2015. AMSA's representations had a single objective, which was to dissuade the Department from issuing a compliance notice and directive as foreshadowed in the pre-compliance notice and pre-directive of 23 July 2014. However, all of these exchanges came to naught for, on 7 December 2015, the DDG issued combined compliance notice and directive under ss 31L[4] and 28(4)[5] of the NEMA, respectively.

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(5) In addition to the powers set out in this Part, an environmental management inspector must be regarded as being a peace officer and may exercise all the powers assigned to a peace officer, or to a police official who is not a commissioned officer, in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act No 51 of 1977)–
(a) to comply with his or her mandate in terms of section 31D; and
(b) within the area of jurisdiction for which he or she has been designated.'

[4] Section 31L reads:
'**Power to issue compliance notices.**
(1) An environmental management inspector, within his or her mandate in terms of section 31D, may issue a compliance notice in the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied—
(a) with a provision of the law for which that inspector has been designated in terms of section 31D; or
(b) with a term or condition of a permit, authorisation or other instrument issued in terms of such law.
(2) A compliance notice must set out—
(a) details of the conduct constituting non-compliance;
(b) any steps the person must take and the period within which those steps must be taken;
(c) anything which the person may not do, and the period during which the person may not do it; and
(d) the procedure to be followed in lodging an objection to the compliance notice with the Minister or MEC, as the case may be.
(3) An environmental management inspector may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.
(4) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister or MEC has agreed to suspend the operation of the compliance notice in terms of subsection (5).
(5) A person who receives a compliance notice and who wishes to lodge an objection in terms of section 31M may make representations to the Minister or MEC, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.'

[5] Section 28(4) reads:
'(4) The Director-General, the Director-General of the department responsible for mineral resources or a provincial head of department may, after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who is causing, has caused or may cause significant pollution or degradation of the environment to—
(a) cease any activity, operation or undertaking;

[13] So far as is relevant for present purposes, the compliance notice advised AMSA that its disposal of BOF slag into the existing BOF slag disposal site (BOFSDS) was unlawful as AMSA was not a holder of a WML issued in terms of s 49(1)*(a)* of the NEM:WA. In addition, the DDG took the view that the sale of BOF slag, either in the form of current arisings or reclaimed slag, required the third parties to whom the slag was sold to hold WMLs in terms of NEM:WA. Paragraph 11.1 of the compliance notice called upon AMSA to '[i]mmediately (within 24 hours) cease with the disposal of waste into the BOF slag disposal site until such time that the Department agrees in writing that activities may recommence'. The notice further required AMSA to forthwith desist from selling slag to third parties unless those parties could demonstrate that they held the requisite licences.[6]

[14] The DDG justified his invocation of s 31L of NEMA on the grounds that AMSA was operating a BOFSDS without a WML. The DDG tellingly noted that this BOFSDS had 'commenced operation prior to 1997'. As to the directive, the DDG raised several concerns about AMSA's activities which he considered caused or had the potential to cause significant pollution or degradation of the environment. He listed, amongst other things, the following activities to underscore his assertions: (a) dumping of waste on unlined area; (b) absence of adequate and effective stormwater management; (c) use of an unlined slag and tar mixing area without reasonable preventive or mitigating

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(b) investigate, evaluate and assess the impact of specific activities and report thereon;
(c) commence taking specific measures before a given date;
(d) diligently continue with those measures; and
(e) complete those measures before a specified reasonable date:
Provided that the Director-General or a provincial head of department may, if urgent action is necessary for the protection of the environment, issue such directive, and consult and give such opportunity to inform as soon thereafter as is reasonable.'

[6] Paragraph 11.3 of the notice in its amended form read:
'Immediately cease with the selling of the slag emanating from the BOF to outside companies, unless proof that said companies are in possession of a WML and/or until such time as the Department agrees to whom and in what manner of the selling of BOF slag will be condoned. Provide the Department with a list of companies that your BOF slag has been sold to this far, within seven (7) working days'.

measures in place; (d) use of an unlined scrap storage area that was likely to contaminate soil and groundwater with heavy metals in the event of leakage; (e) leaking sulphuric acid tank outside the pulverised coal injector; (f) unlined temporary slag storage area inside and outside the blast furnace; (g) unlined scrap yard outside the steel plant; (h) unlined slag storage area outside the steel plant; (i) disposal of slag at the unlined BOF slag disposal site; (j) unlined waste water emergency dam which was likely to cause groundwater contamination through seepage; (k) use of silted evaporation tanks; and (l) sale of slag to companies that were not in possession of the requisite WMLs.

[15] As a result of these perceived infractions, the DDG directed AMSA to: (a) '[i]mmediately cease with the disposal of waste into the BOF slag disposal site until such time that the Department agrees in writing that activities may recommence'; and (b) '[i]mmediately cease the selling of slag to outside companies, unless proof that [the] said companies are in possession of a WML, has been obtained. Provide the Department with a list of companies that your slag has been sold to thus far, within seven (7) working days and proof that [the] said companies are in possession of the required waste management licences'.

[16] The directive went on to draw AMSA's attention to the provisions of ss 20*(b)* and 67(1)*(a)* of the NEM:WA. Section 67(1)(a) makes it an offence for anyone to commence, undertake or conduct a waste management activity, except in accordance with a WML issued in respect of that activity. And s 68(1) provides that any person who contravenes or fails to comply with s 20 will, upon conviction, be liable to a fine not exceeding R10 million or to imprisonment not exceeding ten years or to both such fine or imprisonment.

[17] All attempts by AMSA to convince the DDG that it was not subject to the strictures of the ECA, the NEMA and the NEM:WA, because those Acts were enacted long after AMSA had been conducting its operations, and seeking the withdrawal of the directive and compliance notice were unsuccessful. Undaunted by the DDG's obdurate stance, AMSA, on 6 January 2016, lodged an objection in respect of the compliance notice and an appeal against the directive to the Minister. These legal avenues were available to AMSA under ss 31M and 43 of the NEMA, respectively.

[18] Although AMSA was in the process of decommissioning its existing BOFSDS it was constrained to impugn the compliance notice because it feared that leaving it unchallenged would expose it to criminal prosecution. In the event, on 5 July 2016, the Minister dismissed the appeal against the directive and the objection to the compliance notice.

[19] In the course of her written reasons for dismissing the appeal to the DDG's directive and objection to the compliance notice, the Minister noted that the directive and compliance notice sought to be reversed by AMSA came about as a result of AMSA's failure to comply with the dictates of NEMA and the impact of the environmental degradation caused by the activities conducted by AMSA at its Newcastle operations. After setting out the factual context and observing that AMSA had failed to effectively address the concerns raised by the DDG, she concluded that the appeal against the DDG's directive had to fail. With respect to the compliance notice, the Minister considered AMSA's contentions that 'current arisings' and 'reclaimed BOF slag' were not waste because at no stage were these by-products rejected, abandoned or unwanted, and therefore did not constitute waste as defined in NEM:WA, as against the case advanced by the DDG. The case of the DDG was that because AMSA no longer required the BOF slag, this meant that it

was unwanted, rejected and abandoned as it was 'no longer wanted, used or needed', hence its disposal to third parties. And, in addition, the fact that AMSA currently held a WML in respect of its new slag facilities, following the issuing of a decommissioning licence in respect of its pre-existing disposal site, was tantamount to an acknowledgment that slag constituted 'waste' as defined in NEM:WA. Consequently, AMSA required WMLs for its activities as did the third parties to whom it sold its slag. In the event, the objection relating to the compliance notice was similarly dismissed.

[20] Dissatisfied with the Minister's decision, AMSA instituted legal proceedings in the High Court for various orders against the appellants: (a) reviewing and setting aside her decision to dismiss the appeal in terms of s 43(8) of NEMA against the directive of the DDG; (b) reviewing and setting aside her decision to dismiss the objection lodged in terms of s 31M of NEMA against the compliance notice issued by the DDG under s 31L of NEMA; (c) reviewing and setting aside the directive and compliance notice; and (d) seeking declaratory orders in relation to the BOF slag,[7] more particularly that its disposal, reclamation and sale of BOF slag to third parties did not fall foul of NEMA and NEM:WA. The Minister and the DDG both deposed to affidavits opposing the relief claimed by AMSA. Their versions are substantially to the same effect. In essence, they asserted that AMSA, having been issued with both a decommissioning licence and a WML, was

[7] The relevant declaration orders sought are encapsulated in paragraphs 5, 6, 7 and 8 of AMSA's notice of motion and read:

'5 Declaring that the existing Basic Oxygen Furnace ("BOF") Slag disposal site, which the Applicant has operated since the late 1970's, did not require a disposal waste management licence in terms of the National Environmental Management: Waste Act 59 of 2008 ("NEM:WA") for its lawful operation;

6 Declaring that the reclamation, crushing and screening of the BOF Slag at the Newcastle Operations of the Applicant for purposes of sale to downstream users, constitutes *"recycling"* in terms of the NEM:WA and the BOF slag, once crushed and screened, no longer constitutes *"waste"* as defined in the NEM:WA;

7 Declaring that the reclamation, crushing and screening activities at the Newcastle Operations of the Applicant do not currently require a waste management licence in terms of the NEM:WA.'

consequently obliged to comply with the conditions attaching to those licences and relevant statutory prescripts.

The High Court

[21] In its judgment, the High Court concluded that the decisions of both the Minister and the DDG were 'materially flawed or influenced by an error of law or fact' and that on this ground the review should therefore succeed.[8] With respect to the WMLs, the High Court agreed with the submission advanced by counsel for AMSA that AMSA did not require a WML in respect of its old BOFSDS, which had been in existence prior to the commencement of the ECA and, later, the NEM:WA. It found that if the Department sought to bring AMSA within the purview of the NEM:WA, the Minister ought to have invoked her statutory powers in terms of s 80(4)[9] of NEM:WA – which repealed parts of the ECA – and regulation 7(1)[10] which is to the same effect. And this, she failed to do.

[22] In the result, the High Court upheld AMSA's review application and granted orders[11] substantially in the terms sought in AMSA's notice of

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[8] *Arcelormittal South Africa Limited v Minister of Environmental Affairs and Another* [2018] ZAGPPHC 577; 2018 JDR 0957 (GP) para 53.

[9] Section 80, which is headed 'Repeal and amendment of laws, and savings', provides in subsection (4) that: 'A person operating a waste disposal facility that was established before the coming into effect of the Environment Conservation Act and that is operational on the date of the coming into effect of this Act may continue to operate the facility until such time as the Minister, by notice in the Gazette, calls upon that person to apply for a waste management licence.'

[10] Regulation 7(1), which is to the same effect, reads:
'A person who lawfully conducts a waste management activity listed in this Schedule on the date of the coming into effect of this Notice may continue with the waste management activity until such time that the Minister by notice in a Gazette calls upon such a person to apply for a waste management licence.'
For the regulations, see GN R 921 in *GG* 37083 of 29-11-2013.

[11] The order granted by the High Court reads:
'1. The first respondent's ("Minister") decision dated 5 July 2016, dismissing the applicant's ("AMSA") appeal lodged on 6 January 2016 in terms of section 43(8) of the National Environmental Management Act 107 of 1998 ("NEMA") against the directive issued by the second respondent against the applicant in terms of section 28(4) of the NEMA dated 7 December 2015, is reviewed and set aside;
2. The Minister's decision dated 5 July 2016, dismissing AMSA's objection lodged on 6 January 2016 in terms of section 31M of the NEMA against the compliance notice issued by the DDG against the applicant in terms of section 31L of the NEMA dated 7 December 2015 ("compliance notice") is reviewed and set aside;

motion. However, the High Court, through what appears to be inadvertence, omitted to grant an order reviewing and setting aside the DDG's directive and compliance notice to which the appeal and objection to the Minister related. This was notwithstanding the fact that AMSA had explicitly sought such relief in its notice of motion. In the ordinary course, this would have meant that the directive and compliance notice as issued by the DDG would remain of force and effect.[12] However, during the hearing before us, counsel for the parties were agreed that the High Court's omission was the type of patent omission contemplated in rule 42(1)*(b)*[13] of the Uniform Rules of Court. Indeed, it is manifest from the tenor of its judgment that the High Court was minded to review and set aside the compliance notice and directive. Accordingly, to the extent necessary, this palpable omission falls to be rectified. Thus, the proposed correction will be reflected in the order to be issued by this Court.

The statutory framework

[23] It is apposite at this juncture to set out the statutory provisions germane to the dispute between the antagonists. The ECA, whose main objective was to provide for the effective protection and controlled utilization of the environment, came into operation on 9 June 1989. Section 21(1) of the ECA authorised the Minister, by notice in the Government Gazette, to identify

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3. A declaratory order that the existing Basic Oxygen Furnace ("BOF") slag disposal site which the applicant operated since the late 1970s, did not require a disposal waste management licence in terms of the National Environmental Management Waste Act 59 of 2008 ("NEM:WA") for it lawful operation;
4. The respondents to pay the costs of this application, including the costs of two counsel, jointly and severally, the one paying the other to be absolved.'

[12] *MEC for Health, Eastern Cape and Another v Kirkland Investments (Pty) Ltd t/a Eye & Lazer Institute* [2014] ZACC 6; 2014 (3) SA 481 (CC) paras 105-106. See also *Wings Park Port Elizabeth (Pty) Ltd v MEC, Environmental Affairs, Eastern Cape and Others* 2019 (2) SA 606 (ECG) para 34. And compare *Sewpersadh v The Minister of Finance and Another* [2019] ZASCA 117; [2019] 4 All SA 668 (SCA) para 20.

[13] Rule 42(1)*(b)* in material parts reads:

'(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

…

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

…'

activities which in his or her opinion may have a substantial detrimental effect on the environment. Subsection (2), in turn, lists the possible categories of activities contemplated under subsection (1). These include industrial processes and chemical treatment.[14]

[24] Section 22(1) of the ECA prohibits any person (which includes juristic persons) from undertaking an activity identified in terms of s 21(1) except by virtue of a written authorisation issued by the Minister or a competent authority or local authority or officer, as designated by the Minister's notice in the Gazette. AMSA accepts that had it not been for the fact that its Newcastle plant had been operational since the 1970s, its activities there would have required authorisation under section 22(1).

[25] Section 28A empowers the Minister to exempt any person, local authority or government institution from the provisions of any regulation, notice or directive which was promulgated or issued in terms of the ECA. And, on the other hand, s 29(4) provides that any person who contravened a provision of, amongst others, s 22(1) or failed to comply with a condition of a permit, permission, authorisation or directive issued or granted under this section 'shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of second or subsequent conviction, to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years or in both instances to both such fine and such imprisonment, and in addition to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed.'

[14] Section 21(2)*(f)* and *(j)*, respectively.

[26] In deciding whether to grant or refuse authorisation in terms of s 22(1) of the ECA, the Minister or competent authority, or local authority or officer was required to have regard to the NEMA, which came into operation on 29 January 1999. One of the stated purposes of the NEMA, in the context of environmental governance, is to establish principles for decision-making on matters affecting the environment and the enforcement of environmental management laws. Consonant with the dictates and spirit of s 24 of the Constitution, two of those principles impose a duty on environmental authorities to ensure that 'pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied';[15] and that 'waste is avoided, or where it cannot be altogether avoided, minimised and "re-used" or "recycled" where possible and otherwise disposed of in a responsible manner'.[16] I have put the words 're-used' and 'recycled' in inverted commas for reasons that will become more apparent later.

The issues

[27] The issues raised in this appeal are:

(i) Did the Deputy Director-General: Legal, Authorisations, Compliance and Enforcement act within the confines of his statutory powers in issuing his directive and compliance notice?

(ii) Was the Minister correct in dismissing AMSA's appeal against the DDG's directive and objection to the DDG's compliance notice?

(iii) Was AMSA subject to the prescripts of the ECA, the NEMA and the NEM:WA, having regard to the fact that AMSA commenced with its Newcastle operations long before the enactment of these Acts?

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[15] Section 2(4)(ii).
[16] Section 2(4)(iv).

(iv) Was AMSA required to obtain WMLs under the NEM:WA for its activities in respect of its old BOF slag disposal site undertaken since the 1970s before the ECA, the NEMA and the NEM:WA were enacted?

[28] Before delving into the issues encapsulated in the preceding paragraph it is necessary to make a preliminary observation. It is this. In the High Court there was debate as to whether s 20[17] of the ECA applied with retrospective effect. Section 80(1) of the NEM:WA repealed, amongst others, s 20 of the ECA. Section 80(4) of the NEM:WA, in turn, provides:

'A person operating a waste disposal facility that was established before the coming into effect of the Environment Conservation Act and that is operational on the date of the coming into effect of this Act may continue to operate the facility until such time as the Minister, by notice in the Gazette, calls upon that person to apply for a waste management licence.'

[29] AMSA contended that s 20 of the ECA did not apply with retrospective effect. For their part, the appellants contended for the opposite. However, before us, counsel for the appellants changed tack and accepted that s 20 did not apply retrospectively. There is, of course, a legal presumption that new legislation is not intended to be retroactive.[18] Therefore, the general rule is that a statute is, as far as possible, to be interpreted as regulating occurrences that take place after its enactment. However, in view of the fact that this issue is no longer in contention between the parties, nothing more need be said on this score.

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[17] Section 20(1) of the ECA read:
'No person shall establish, provide or operate any disposal site without a permit issued by the Minister of Water Affairs and except subject to the conditions contained in such permit.'

[18] *S v Mhlungu and Others* 1995 (3) SA 867 (CC) para 65.

[30] With the aspect relating to retrospectivity of s 20 of the ECA out of the way, it is now time to turn immediate focus to the crux of the dispute that precipitated this litigation. It will be recalled that in invoking s 31L(1) of NEMA on 7 December 2015, the DDG believed that AMSA had not complied with the laws relating to the protection of the environment. Section 31L(1) provides:

'An environmental management inspector, within his or her mandate in terms of section 31D, may issue a compliance notice in the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied—

(a) with a provision of the law for which that inspector has been designated in terms of section 31D; or

(b) with a term or condition of a permit, authorisation or other instrument issued in terms of such law.'

As already mentioned, the compliance notice issued by the DDG required AMSA, within 24 hours of the issuance of the notice, to cease with the disposal of waste into its BOFSDS until such time that the Department agreed in writing that AMSA could recommence with its activities. On the other hand, the directive (as amended subsequently) directed AMSA to immediately desist from selling BOF slag to third parties unless those third parties were in possession of WMLs or save where the Department agreed in writing to allow AMSA to supply or sell BOF slag to third parties subject to whatever conditions that the Department may see fit to impose for such sale or supply.

[31] The invocation by the DDG of ss 28(4) and 31L(1) of the NEMA necessitates a close look at what is meant by 'waste' as defined in the NEM:WA. This entails an interpretative exercise. Section 1 of the NEM:WA defines 'waste' as:

'*(a)* any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material

or object can be re-used, recycled or recovered and includes all wastes as defined in Schedule 3 to this Act; or

(b) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the Gazette,

but any waste or portion of waste, referred to in paragraphs *(a)* and *(b)*, ceases to be a waste—

(i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered;

(ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered;

(iii) where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or

(iv) where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste.'

Section 1 further defines 'recycle' to mean:

'[A] process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that separated material as a product or raw material'.

[32] The principles of statutory interpretation are by now well-settled. In *Natal Joint Municipal Pension Fund v Endumeni Municipality*,[19] this Court authoritatively restated the proper approach to statutory interpretation. This Court explained that statutory interpretation is the objective process of attributing meaning to words used in legislation. This process, it emphasised, entails a simultaneous consideration of 'the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; [and] the apparent purpose to which it is directed'.[20]

[19] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA).
[20] Para 18.

[33] What the Constitutional Court said in *Cool Ideas 1186 CC v Hubbard and Another*[21] in the context of statutory interpretation is particularly apposite. The Constitutional Court said (para 28):

'A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:

(a) that statutory provisions should always be interpreted purposively;

(b) the relevant statutory provision must be properly contextualised; and

(c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in *(a)*.'[22]

Against this backdrop, I proceed to a consideration of the contentions of the antagonists.

[34] Before I deal with what I see as the essential dispute between the parties, there is a preliminary issue that bears mentioning. This issue has to do with two critical events that occurred during 2011 which appear to have led the Department astray. First, on 28 July 2011, the Department issued a WML to AMSA under the NEM:WA at the latter's instance for the construction and operation of a new BOFSDS at the Newcastle operations. The WML was granted to enable AMSA to: (a) dispose of any quantities of hazardous waste to land; and (b) for the construction of facilities listed in category B of the schedule to the licence. Second, on 29 September 2011 a decommissioning WML for AMSA's existing BOFSDS was issued. On 12 September 2016 this licence was revised to authorise AMSA to reclaim BOF slag from its existing BOFSDS with a view to decommissioning and rehabilitating the existing BOFSDS.

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[21] *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC).

[22] (Citations omitted.)

[35] The appellants therefore contend that, pursuant to the issuance of WMLs (decommissioning and construction) to AMSA during 2011, the latter was obliged, after 7 January 2016,[23] to dispose of its BOF slag into the new BOFSDS. This necessarily entailed, so the argument proceeded, that AMSA was thenceforth impelled to comply with the conditions of the two licences issued to it and ultimately the prescripts of the NEMA and the NEM:WA.

[36] As already indicated, the appellants accept that AMSA's BOFSDS at its Newcastle operations – that has been in existence since the 1970s – did not require a permit under s 20 of the ECA. They also accept that the only statutory avenue that was open to the Minister, if she wished to bring AMSA within the parameters of the NEM:WA (which repealed s 20 of the ECA), was to invoke her powers under s 80(4) of that Act and call upon AMSA, by notice in the Gazette, to apply for a WML. Nevertheless, the appellants assert that the fact that the Minister did not invoke this statutory power is not the end of the matter. Their primary submission was that because AMSA applied for and was issued with a decommissioning licence in respect of its existing BOFSDS, and a construction licence to build a new BOFSDS, it thereby subjected itself to the dictates of the NEMA and the NEM:WA. They also argue that, inasmuch as AMSA had acknowledged that it sold BOF slag to third parties, it was consequently dealing with waste and therefore required a WML to lawfully do so as required by s 20 of the NEM:WA.[24]

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[23] 7 January 2016 is the date on which the Department granted AMSA permission to use the newly constructed BOFSDS.

[24] Section 20, which is headed 'Consequences of listing waste management activities', replicates the repealed s 20 of the ECA and reads:

'No person may commence, undertake or conduct a waste management activity, except in accordance with—
(a) the requirements or standards determined in s 19(3) for that activity; or
(b) a waste management license issued in respect of that activity, if a licence is required.'

[37] In elaboration, it was contended that 'waste' as defined in the NEM:WA draws no distinction between 'current arisings' and 'reclaimed slag'. According to AMSA, 'current arisings' is the slag that is immediately sold to third parties without first having been temporarily deposited into a BOFSDS. As to 'reclaimed slag' it was argued that before its reclamation BOF slag is disposed of into a BOFSDS to be reclaimed at a later date. Therefore, so went the argument, BOF slag remains waste regardless of whether it is immediately sold to third parties or temporarily deposited into a BOFSDS before its reclamation for sale to third parties.

[38] For its part, AMSA argued that current arisings is not waste for at least two reasons. First, it is not 'a substance, material or object that is unwanted, rejected, abandoned or discarded' within the meaning of 'waste' in s 1 of the NEM:WA because it is never deposited nor stored in a BOFSDS. And second, because it has commercial value, hence it is sold to third parties in the agricultural and road construction sectors. As to reclaimed slag, AMSA submitted that once BOF slag is recovered from the BOFSDS – where it is temporarily deposited because it could not be sold immediately – and recycled, it ceases to be waste if it meets any one of the requirements of s 1*(b)*(i) to (iv) of NEM:WA. Consequently, AMSA contended that it did not require a WML in order to dispose of recycled BOF slag. Nor were the third parties to whom the BOF slag was sold required to have waste disposal licences, since what they acquired from AMSA was not waste within the purview of s 1 of the NEM:WA.

[39] At this juncture it would be of assistance, I think, to explain the meaning of two terms employed by AMSA insofar as its BOF slag is concerned. These are: 'current arisings' and 'reclaimed BOF slag'. Whilst the NEM:WA speaks only of waste and says nothing about current arisings and reclaimed BOF slag,

as correctly submitted by counsel for the appellants, it would appear that AMSA has for its operational reasons coined the terms 'current arisings', on the one hand, and 'reclaimed BOF slag' on the other. According to AMSA, 'current arisings' represents a slag stream that is temporarily stockpiled before it is crushed and screened to a client's specification and dispatched to customers for further downstream use. On the other hand, 'reclaimed BOF slag' is slag that was temporarily deposited into a BOFSDS and later reclaimed by separating the BOF slag from the dump. Thereafter it is similarly crushed and screened to clients' specification and dispatched to customers for further downstream use.

[40] It will be observed that the essential difference between the two is that the former is dispatched to customers without the need first to deposit it in the BOFSDS. On the other hand, the reclaimed BOF slag is first deposited into the BOFSDS and, once reclaimed therefrom, it is recycled, processed and thereafter dispatched to customers for use. Accordingly, these terms are employed by AMSA to distinguish between BOF slag that is sold immediately to third parties once it has been prepared and packaged in accordance with the specifications of the third parties to whom it is sold and that BOF slag that is not immediately sold but retained in the BOFSDS for reclamation and recycling at a later stage as and when demand therefor from third parties arises. Thus, there is nothing magical about these terms.

[41] Reverting to the crux of the appeal, in my view, the contentions advanced on behalf of AMSA have considerable force. The relevant definition of 'waste' has already been quoted above.[25] Far from being obscure, the definition is clear and unequivocal. On a fair reading thereof, it becomes

[25] See para 31 above.

readily apparent that any substance, material or object that is not 'unwanted, rejected, abandoned, discarded or disposed of' does not fall within the ambit of the definition. Similarly, any substance, material or object that has been recycled or recovered, in this instance from the BOFSDS, ceases to be waste once recycled or re-used. Consequently, AMSA's current arisings and reclaimed BOF slag self-evidently fall outside the terms of the definition of waste.

[42] Section 1 of the NEM:WA defines 'recycle' as:

'[A] process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that separated material as a product or raw material'.

The NEMA, it will be recalled, seeks to protect the right of everyone to an environment that is not harmful and protects the environment from degradation. To this end it provides in s 2(4)(iv) that sustainable development must be balanced against the need to avoid waste or where waste cannot be altogether avoided or minimised, it must be recycled. Thus, in recycling its waste, ie BOF slag in the form of what AMSA describes as reclaimed BOF slag, AMSA was in fact promoting one of the principal objects of the NEMA, that is, to protect the environment from degradation.

[43] Accordingly, the argument advanced on behalf of the appellants is unsound for the following reasons. In the first place, as the appellants have been constrained to accept, AMSA's Newcastle operations from the 1970s were not subject to s 20 of the ECA. Second, the decommissioning licence granted to AMSA explicitly provided that AMSA was authorised to decommission its existing BOFSDS and rehabilitate it. In order to give effect to this requirement, it was necessary for AMSA to reclaim part of the material deposited in the BOFSDS, ie separate BOF slag from the dump in its

BOFSDS, and recycle it for sale to third parties in order to seal and rehabilitate the existing BOFSDS. It was with this in mind that AMSA was, on 12 September 2016, through the amendment of its decommissioning licence explicitly authorised to reclaim BOF slag from its existing BOFSDS in order to give effect to the terms of the licence.

[44] Counsel for the appellants, whilst acknowledging that the clear purpose of s 80(4) of the NEM:WA was to 'legitimise a waste disposal site that [was] in operation' before the coming into effect of s 20 of the ECA (which s 80(1) repealed), nevertheless submitted that s 80(4) was not open to a construction that makes it possible for someone 'to operate a facility, whilst the [same] person simultaneously holds a WML for a different waste management activity'. It is not in dispute that AMSA continued to operate its existing BOFSDS whilst at the same time holding a WML for a new site still to be constructed.

[45] I consider this submission to be an over-simplification of the true state of affairs. It is completely answered by the countervailing argument advanced by counsel for AMSA. In essence, AMSA's argument boils down to the following. First, the decommissioning and construction licences had no bearing on AMSA's existing rights and entitlements as explicitly recognised by s 80(4) of the NEM:WA. Second, for as long as the new site was still under construction and AMSA had not been granted permission to use the new disposal site – which was granted only in January 2016 – it was entitled to continue using its existing BOFSDS as before. To contend otherwise, as the appellants sought to do, would have the effect of not only defeating the purpose of s 80(4) but also abruptly halting AMSA's operations for the duration of the construction of the new BOFSDS. This cannot be. To read s 80(4) in this way would undermine the effectiveness of the NEM:WA.

Moreover, to uphold the interpretation for which counsel for the appellants contends would run counter to what this Court said was the proper approach to statutory interpretation in *Natal Joint Municipal Pension Fund v Endumeni Municipality*,[26] namely that: '[a] sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document'.

[46] For the sake of completeness, it bears mentioning that since AMSA's existing BOFSDS predates the coming into operation of s 20 of the ECA, the provisions of s 74[27] of the NEM:WA find no application. Section 74 could have had direct application only if the Minister had invoked her powers under s 80*(4)* of the NEM:WA. As already mentioned, it is common cause between the parties that at no stage did the Minister exercise her powers in terms of this section. Therefore, the need for AMSA to apply for exemption under s 74 did not arise.

[47] For all the aforegoing reasons therefore I am driven to the conclusion that all four of the questions posed in paragraph 27 above must be answered in the negative. This conclusion ineluctably means that the appeal in relation to this aspect must fail.

[48] It remains to consider the appellants' final argument in relation to the declaratory order granted by the High Court. In essence, their argument on

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[26] *Natal Joint Municipal Pension Fund* op cit fn 16 para 18.

[27] Section 74,headed 'Applications for exemption', reads as follows:
'(1) Any person may apply in writing for exemption from the application of a provision of this Act to the Minister or, where the MEC is responsible for administering the provision of the Act from which the person or organ of state requires exemption, to the MEC.
(2) An application in terms of subsection (1) must be accompanied by—
(a) an explanation of the reasons for the application; and
(b) any applicable supporting documents.'

this score went like this. The High Court was criticised for granting declaratory relief – albeit far more limited than what AMSA had sought in its notice of motion – to AMSA. It was argued that that part of the order was unwarranted, having regard to the fact that AMSA had since been granted decommissioning and construction licences. It was contended that with the old site having been rehabilitated and sealed as required by the decommissioning licence and the new waste disposal site having been commissioned, the declaratory order sought and granted by the High Court had become moot by the time that the review was heard. Consequently, argued counsel, it should have been refused.

[49] In elaboration, counsel submitted in their heads of argument as follows: 'From 7 January 2016, AMSA on its own version had to dispose BOF slag (waste) into the newly constructed BOFSDS. In this regard, the compliance notice clearly relates to historical facts, which will have no legal effect or consequence if reviewed and set aside. Moreover, relief must be effective'. In support of these submissions counsel relied on *Geldenhuys and Neethling v Beuthin*[28] and *Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) and Others*.[29]

[50] The short answer to this submission lies in the counter argument advanced on behalf of AMSA. Briefly stated, it is that the grant of declaratory relief by the High Court was fully justified and, in any event, is not susceptible to interference on appeal for at least two reasons. First, the alleged transgressions identified by the DDG in his compliance notice exposed AMSA to criminal prosecution under the relevant provisions of the

[28] *Geldenhuys and Neethling v Beuthin* 1918 AD 426 at 441.
[29] *Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) and Others* 2005 (3) SA 280 (CC); 2004 (5) BCLR 445 (CC) para 74.

NEM:WA. If established, AMSA would be liable to heavy criminal sanctions with far-reaching consequences. Second, the grant of declaratory relief entails the exercise of a narrow discretion. Thus, the grounds upon which the exercise of such a discretion can be interfered with on appeal are circumscribed. In *Gaffoor and Another NNO v Vangates Investments (Pty) Ltd and Others*,[30] the distinction between a narrow discretion and a broad one was, with reference to previous decisions, explained in these terms (para 39):

'[T]he essence of "a discretion in the narrow or strict sense" involves a choice between two or more different, but equally permissible, alternatives, while "a discretion in the broad sense" means no more than a power to have regard to a number of disparate and incommensurable features in arriving at a conclusion. It is only when the court exercises a discretion in the narrow or strict sense that an appeal court's powers of interference are said to be limited. With regard to the exercise of a discretion in the broad sense, there is no reason why the powers of an appeal court should be so restricted. Since these matters can be determined equally appropriately by an appeal court, it may substitute its own discretion for that of the trial court if it differs from such court on the merits, and may make the order which it deems just'.[31]

[51] In *Giddey NO v JC Barnard and Partners*,[32] the Constitutional Court aptly explained this principle in the following terms (para 19):

'the ordinary approach on appeal to the exercise of the discretion in the strict sense is that the appellate court will not consider whether the decision reached by the court at first instance was correct, but will only interfere in limited circumstances; for example, if it is shown that the decision has not been exercised judicially or has been exercised based on a wrong appreciation of the facts or wrong principle of law.'

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[30] *Gaffoor and Another NNO v Vangates Investments (Pty) Ltd and Others* [2012] ZASCA 52; 2012 (4) SA 281 (SCA).

[31] (Citations omitted.) See further, in this regard, *Competition Commission v Hosken Consolidated Investments Ltd and Another* [2019] ZACC 2; 2019 (3) SA 1 (CC) paras 74-88; *Cordiant Trading CC v Daimler Chrysler Financial Sevices (Pty) Ltd* [2005] ZASCA 50; 2005 (6) SA 205 (SCA) paras 17-18; and *Rumdel Construction (Cape) (Pty) Ltd v South African National Roads Agency SOC Ltd* [2016] ZASCA 23; 2016 JDR 0512 (SCA) paras 15-16

[32] In *Giddey NO v JC Barnard and Partners* [2006] ZACC 13; 2007 (2) BCLR 125 (CC); 2007 (5) SA 525 (CC).

And the judgment continued (para 22):

'It would not be appropriate for an appellate court to interfere with that decision as long as it is judicially made, on the basis of the correct facts and legal principles. If the court takes into account irrelevant considerations or bases the exercise of its discretion on wrong legal principles, its judgment may be overturned on appeal. Beyond that, however, the decision of the court of first instance will be unassailable.'[33]

[52] For all the aforegoing reasons therefore the conclusion reached by the High Court cannot be faulted.

[53] In the result the following order is made:

1 The appeal is dismissed with costs, including the costs of two counsel.

2 The order of the High Court is supplemented to the extent reflected below:

'The directive and compliance notice issued by the Deputy Director-General: Legal, Authorisation, Compliance and Enforcement on 7 December 2015 are reviewed and set aside.'

X M PETSE

DEPUTY PRESIDENT

[33] (See further, in this regard, *Competition Commission v Hosken Consolidated Investments Ltd and Another* 2019 (3)SA 1 (CC) paras 74-88; *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6)SA 205 (SCA) paras 17-18;and *Rumdel Construction (Cape) (Pty) Ltd v South African National Roads Agency SOC Ltd* 2016 JDR 0512 (SCA) paras 15-16.)

Appearances

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