THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 30/2020

In the matter between:

SAMANCOR CHROME LIMITED	**APPLICANT**
and	
NORTH WEST CHROME MINING PROPRIETARY LIMITED	**FIRST RESPONDENT**
MONAGENG FAMILY MINING SERVICES PROPRIETARY LIMITED	**SECOND RESPONDENT**
REGIONAL MANAGER, NORTH WEST REGION, DEPARTMENT OF MINERAL RESOURCES	**THIRD RESPONDENT**
MINISTER OF POLICE	**FOURTH RESPONDENT**
SHERIFF OF THE HIGH COURT OF SOUTH AFRICA, NORTH WEST DIVISION, MANKWE	**FIFTH RESPONDENT**

Neutral citation: *Samancor Chrome Ltd v North West Chrome Mining (Pty) Ltd and Others* (Case no 30/20) [2021] ZASCA 183 (23 December 2021)

Coram: PETSE AP and DAMBUZA, VAN DER MERWE, MAKGOKA and MABINDLA-BOQWANA JJA

Heard: 4 November 2021

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 23 December 2021.

Summary: Interdict – Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) – mining activities conducted in an area not covered by mining permits but within area of applicant's prospecting right – court erroneously dismissing application on the basis of issue not before it – joinder of Minister of Mineral Resources not necessary – s 47 of the MPRDA not precluding relief – application to adduce further evidence on appeal – requirements therefor not established.

ORDER

On appeal from: North West Division of the High Court, Mahikeng (Leeuw JP, sitting as a court of first instance):

1 The application for leave to appeal is granted.

2 The application for leave to introduce further evidence is refused with costs.

3 The appeal is upheld with costs, including the costs of the application for leave to appeal both in the high court and in this Court.

4 The order of the high court is set aside and replaced with the following order:

> '1 The first and second respondents and their contractors and/or employees and/or personnel are interdicted and restrained from -
>
> 1.1 conducting, facilitating or being involved in any manner whatsoever in mining activities on, or the removal of any material from the applicant's prospecting area situated on the remaining extent of portion 1, portion 5 and a portion of Portion 3 of the farm Tweelaagte 175 JP, situated in the North West province, in the Magisterial District of Mankwe, as depicted by the co-ordinates and boundaries in the attached plan marked as A (Samancor's prospecting area);
>
> 1.2 entering Samancor's prospecting area without the applicant's consent;
>
> 1.3 preventing the applicant from accessing Samancor's prospecting area.
>
> 2. The first and second respondents are to vacate Samancor's prospecting area together with their employees, contractors, equipment and machinery within 15 days of the date on which the order is served upon them.

3 The fifth respondent is directed, with the assistance of the fourth respondent, should it be necessary, to give effect to the orders in paragraphs 1 and 2 above by –

3.1 preventing the first and second respondents and their contractors and/or employees and/or personnel from entering Samancor's prospecting area without the applicant's consent;

3.2 preventing all trucks and other vehicles reasonably suspected of being used or intended to be used for conducting, facilitating or being involved in any manner whatsoever in the unlawful removal of material from Samancor's prospecting area from entering or exiting Samancor's prospecting area; and

3.3 removing from Samancor's prospecting area any trucks, vehicles, excavators, mining equipment, drilling equipment or any other equipment reasonably suspected of being used or intended to be used for conducting, facilitating or being involved in any manner whatsoever in the unlawful mining activities on or the unlawful removal of any material from Samancor's prospecting area;

4. The first and the second respondents are to pay the costs of this application.'

JUDGMENT

Mabindla-Boqwana JA (Petse AP and Dambuza, Van der Merwe and Makgoka JJA concurring)

Introduction

[1] This is an application by the applicant, Samancor Chrome Limited (Samancor), for leave to appeal against the judgment of Leeuw JP in the North West Division of the High Court, Mahikeng, (high court) and, if successful, the

determination of the appeal itself. The application was referred for oral argument in terms of s 17(2)*(d)* of the Superior Courts Act 10 of 2013 (Superior Courts Act). In addition, Samancor sought leave to introduce new evidence on appeal in terms of s 19*(b)* of the Superior Courts Act.

[2] On 10 December 2018, Samancor had launched an urgent application in terms of rule 6(12) of the Uniform Rules in the high court for an order, inter alia, interdicting and restraining the first respondent, North West Chrome Mining Proprietary Limited (Chrome Mining) and the second respondent, Monageng Family Mining Services Proprietary Limited (Monageng) from:

'2.1 conducting, facilitating or being involved in any manner whatsoever in mining activities on, or the removal of any material from [Samancor]'s prospecting area situated on the remaining extent of portion 1, portion 5 and a portion of Portion 3 of farm Tweelaagte 175 JP, situated in North West Province, in the Magisterial District of Mankwe, as depicted by the co-ordinates and boundaries in the attached plan marked as "A" ("Samancor's Prospecting Area");
2.2 entering Samancor's Prospecting Area without [Samancor]'s written consent;
2.3 preventing [Samancor] from accessing [its] prospecting area.'

[3] The high court dismissed the application and the subsequent application for leave to appeal. It also refused to grant Samancor's application for leave to adduce further evidence for purposes of the envisaged appeal. Only Chrome Mining and Monageng resisted the proceedings from the beginning, as they still did before us. For convenience, I refer to them collectively as the respondents for the purposes of this judgment. The following, briefly, are the facts that precipitated the dispute between the parties.

Facts

[4] On 11 December 2017, Samancor was granted a prospecting right in respect of the chrome mineral by the Deputy Director-General (DDG): Mineral Regulation of the Department of Mineral Resources (Department), in terms of

s 17(1)[1] of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), and by virtue of the powers delegated to him by the Minister of Mineral Resources (Minister).[2] The prospecting right was notarially executed on 16 May 2018 and registered in the Mineral and Petroleum Titles Registration Office on 29 August 2018. It was to endure for a period of five years ending on 10 December 2022.

[5] Clause 1 of the prospecting right described the prospecting area in the following terms:

'The Prospecting Area shall comprise of the following:

Certain: remaining extent of *portion 1, portion 5, 7, 8 and 9* of the farm Tweelaagte 175 JP

Situated: North West Magisterial/administrative district Mankwe

Measuring: 1089.4138 hectares in extent.

…

Which Prospecting Area is described in detail on the attached diagram/plan marked Annexure B.' (My emphasis.)

[6] Annexure B is a plan prepared in terms of regulation 2(2) of the Regulations promulgated in terms of the MPRDA. It depicts a Figure A to P that represents the area as described in the prospecting right, with the coordinates of each point provided in the table which forms part of the plan. The plan was certified by a professional land surveyor, Mr Christopher Kirchhoff, and

---

[1] Section 17(1) provides that '. . . subject to subsection (4), the Minister must grant a prospecting right if–
(a) the applicant has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally in accordance with the prospecting work programme;
(b) the estimated expenditure is compatible with the proposed prospecting operation and duration of the prospecting work programme;
(c) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment;
(d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); and
(e) the applicant is not in contravention of any relevant provision of this Act.'

[2] Section 103(1) provides:
'The Minister may, subject to such conditions as he or she may impose, in writing delegate any power conferred on him or her by or under this Act, except a power to make regulations or deal with any appeal in terms of section 96, and may assign any duty so imposed upon him or her to the Director-General, the Regional Manager or any officer.'

approved by the third respondent, the Regional Manager North West Province, Department of Mineral Resources (Regional Manager) on 11 June 2018.

[7] On 6 November 2018, Samancor discovered that the description of the prospecting area was incorrect because portion 3 of the farm Tweelaagte was never sub-divided to form portions 7, 8 and 9. Mr Kirchhoff deposed to an affidavit in support of the urgent application, stating that he had prepared Annexure B based on a letter dated 11 December 2017, from the Acting Deputy-General: Mineral Regulation of the Department to Samancor, which described the property over which Samancor had been granted its prospecting right, inter alia, as 'portions 7, 8 and 9 of the Tweelaagte 175 JP Farm'. He further alleged that he relied on information obtained from the website of the Surveyor-General's office, which included a diagram of portion 3 depicting the aforesaid sub-divisions and approval numbers allocated to portions 7, 8 and 9 of the Tweelaagte Farm 175 JP, being A2920/1954, A2921/1954 and A2922/1954 respectively. He also relied on compilation plans, which likewise depicted the diagram numbers allocated by the Surveyor-General's office to the same portions. He stated that in his experience, the Surveyor-General would not allocate a diagram number without having been provided with a formal consent for the sub-division.

[8] Mr Eric Thabo, the Group Manager at Samancor, who deposed to the founding affidavit in support of the urgent application, alleged that he had been informed by the Regional Manager that the Deputy Surveyor-General from the Department of Rural Development and Land Reform (Land Reform Department), Mr Dludla, had advised him that although an application for the sub-division of portion 3 of Tweelaagte into portions 7, 8 and 9 was submitted to the Land Reform Department for consideration during or about 1957, the sub-division was never approved by the relevant Minister at the time. Accordingly, portion 3 had not been sub-divided to portions 7, 8 and 9 as it was thought. Samancor contended

that despite the erroneous reference to these sub-divisions, there could be no real dispute as to the area forming the subject of its prospecting right, as the relevant area is evident from the plan attached to its prospecting right as Annexure B.

[9] According to Mr Thabo, in June 2018, and prior to Samancor commencing with its prospecting activities, he discovered that the respondents conducted mining activities on Samancor's prospecting area. Samancor subsequently commissioned Mr Kirchhoff to carry out an aerial mapping of the prospecting area to assess whether illegal mining was indeed taking place inside the area. Mr Kirchhoff confirmed as much. His aerial orthophoto map (aerial map) showed opencast mining activities, namely a processing plant, supporting conveyors and structures, a drill pattern of holes in preparation of explosive blasting for rock breaking and earthmoving equipment consisting of two excavators and six haul trucks on the area of the prospecting right.

[10] Samancor sought the assistance of the Department of Mineral Resources (Department) and the South African Police Service to stop the respondents from mining in the area. The respondents produced a mining permit with number 31/2010 which had been issued to Monageng on 8 June 2010. The mining permit was limited to an area of 1.5 hectares on portion 3 of the farm Tweelaagte 175 JP, which would extend until 7 June 2012, and could be renewed for three periods each not exceeding one year. According to Mr Kirchhoff, it was evident from the aerial map that the area of this mining permit did not in any way overlap with Samancor's prospecting area. Monageng's mining permit area was situated on a separate portion of portion 3 of the farm Tweelaagte 175 JP.

[11] The unsuccessful attempts to resolve the matter amicably with the respondents led to Samancor bringing the urgent application mentioned earlier in the high court. The respondents opposed this application on the basis that: (a) it

was not urgent; (b) the Minister of Mineral Resources (the Minister) ought to have been joined as an interested party; (c) Samancor's prospecting right was *void ab initio* owing to the fact that portions 7, 8 and 9 were not registered with the Registrar of Deeds and were therefore non-existent; and (d) the application was premature because a process in terms of s 47 of the MPDRA[3] which provided the Minister with the power to cancel rights, permits or permissions granted to a holder, was still pending. In this regard the respondents relied on a letter they had received from the Department, dated 24 January 2019, which recorded that:

'The Department investigated the matter and the grounds raised by yourself on Portion 3 of the Farm Tweelaagte 175 JP were found to be legitimate. As [a] result of the investigation, the Department has issued Samancor Chrome Limited with [a notice in terms of] section 47 of the Mineral and Petroleum Resources Development Act, 2002.'

[12] The respondents alleged in their answering affidavit that Monageng held three mining permits. In addition to permit number 31/2010 already mentioned above, they referred to two further mining permits with permit numbers 29/2010, 30/2010 respectively, issued on 8 June 2010 in respect of portion 3 of the Farm

[3] Section 47 provides:
'(1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit or retention permit if the holder thereof—
(a) is conducting any reconnaissance, prospecting or mining operation in contravention of this Act;
(b) breaches any material term or condition of such right, permit or permission;
(c) is contravening the approved environmental management programme; or
(d) has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act.
(2) Before acting under subsection (1), the Minister must—
(a) give written notice to the holder indicating the intention to suspend or cancel the right;
(b) set out the reasons why he or she is considering suspending or cancelling the right;
(c) afford the holder a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and
(d) notify the mortgagor, if any, of the prospecting right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit.
(3) The Minister must direct the holder to take specified measures to remedy any contravention, breach or failure.
(4) If the holder does not comply with the direction given under subsection (3), the Minister may act under subsection (1) against the holder after having—
(a) given the holder a reasonable opportunity to make representations; and
(b) considered any such representations.
(5) The Minister may by written notice to the holder lift a suspension if the holder—
(a) complies with a directive contemplated in subsection (3); or
(b) furnishes compelling reasons for the lifting of the suspension.'

Tweelaagte 175 JP with similar terms as permit 31/2010. The areas of each of the two further mining permits were also limited to 1,5 hectares and did not overlap with that of Samancor's prospecting right. They further alleged that the shareholders of Monageng were the lawful owners of portion 3 of the Farm Tweelaagte 175 JP because they inherited it from their forefathers.

[13] The high court found in favour of the respondents and dismissed the application with costs. It held that the matter was not urgent. Nevertheless, it elected not to strike it from the roll on the basis that the respondents were given an opportunity to respond to the application. The high court also found that the Minister ought to have been joined in the proceedings because the power to issue prospecting and mining rights vested in him; and that the Minister had already started a process of cancelling the prospecting right permit issued to Samancor. He, accordingly, had locus standi to claim relief in that regard. It also found that the Minister may in all likelihood approach the high court concerning the same issue and it was therefore imperative to have him joined as a party to these proceedings.

[14] The court then went on to consider whether the prospecting right was valid. In this regard it made the following key findings:

'[35] Applicant is the holder of a prospecting right permit, which permit was issued on the basis of incorrect or insufficient information. Chrome Mining and Monageng Family are also holders of 3 mining permits, which allow them to conduct mining operations at the mining area of portion 3 of the farm Tweelaagte. The mining permits were lawfully acquired and there is no dispute in that regard.

[36] The power to issue, suspend and cancel a prospecting permit vests in the Minister after due process prescribed by the MPRDA has been followed. Before this Court can grant a restraining order against the respondents, it must first be satisfied that the applicant or Samancor has a clear right to conduct prospecting activities at the prospecting area. In the

circumstances of this case, the facts presented to this Court indicate that there is doubt in respect of Samancor's prospecting right.

. . .

[41] The mining right issued to the respondents is valid and will remain valid until it is set aside through a procedure prescribed by the MPRDA and due process of the law. The mining right permit should not be interfered with solely because the applicant wishes to assert its unclear right over the mining area of the respondents.

. . .

[44] …And besides, there is ample evidence on record that indicates that the prospecting permit was inadvertently granted. The applicant has failed to show on the balance of probabilities that it has a prima facie clear right to prospect at a prospecting area of a portion of portion 3 of the farm Tweelaagte.' (Footnotes omitted.)

[15] As already stated, Samancor brought an application for leave to appeal the judgment of the high court as well as the application for leave to introduce further evidence, which were dismissed. The new evidence that Samancor sought to introduce concerned the description of the prospecting area. In his affidavit, in support of this application, Mr Thabo alleged that, although the error in the description ought not to have resulted in any uncertainty, out of caution, Samancor took steps to rectify it. It did so by way of an application in terms of regulation 6(1)*(b)* of the Mining Titles Registration Act 16 of 1967. Pursuant thereto and on 1 May 2019 its prospecting right was endorsed by deleting the reference to portion 7, 8 and 9 and describing the prospecting area as the 'Remaining Extent of Portion 1 of the farm Tweelaagte 175 JP, a portion of Portion 3 of the farm Tweelaagte 175 JP and Portion 5 of the farm Tweelaagte 175 JP'. According to Samancor, this endorsement has been registered in the Mineral and Petroleum Titles Registration Office under amendment number 15/2019. In dismissing the application for leave to introduce further evidence, the high court reasoned that the evidence sought to be introduced was available when

the urgent application was heard and Samancor did not explain why it was not presented then.

[16] Meanwhile, subsequent to the dismissal of the urgent application by the high court, on 16 May 2019, Monageng launched an ex parte urgent application on 3 June 2019, in the same court. In it, it sought to interdict various respondents including Samancor from interfering with the mining business being conducted by Monageng on portion 3 of the farm Tweelaagte 175 JP, in terms of the mining permits lawfully issued in its favour. A Rule Nisi was issued by Gura J in the terms sought by Monageng. On the return date, the matter served before Hendricks DJP who discharged the Rule on 27 February 2020.

[17] It is apparent from paragraph 15 of Hendricks DJP's judgment that in the application that served before Gura J, Samancor had brought a counter-application seeking an order restraining Monageng from conducting mining operations in the prospecting right area (similar to the present matter). It is evident from the judgment of Hendricks DJP that a number of issues forming the subject of the application before Leeuw JP were considered by Hendricks DJP and firm findings were made thereon.

[18] Of importance were the following findings: Firstly, that two of the three mining permits that Monageng relied on to justify its operations in portion 3 had lapsed (ie permits 30/2010 and 31/2010). These, together with permit 29/2010, were invalid and had to be set aside. Secondly that, Samancor's prospecting right was valid. Thirdly that, Monageng's mining permits were confined to a specific area, which did not overlap with the portion over which Samancor held a prospecting right. The relief sought by Samancor in its counter-application was therefore granted.

Is the appeal moot?

[19] In the course of the hearing before us, a debate arose as to whether the matter was not moot owing to the fact that the relief which Samancor sought in the appeal had been granted in the order by Hendricks DJP. The issue can briefly be disposed of as follows. First, there are live issues in the appeal in that the Hendrick DJP's order was not directed at Chrome Mining and that its scope did not encompass all the elements of the interdict sought in these proceedings. Secondly, there are two mutually inconsistent judgments emanating from the same Division of the High Court, dealing with the same facts and involving the same parties, which may lead to confusion.

Should leave to appeal be granted?

[20] The issue to be determined is whether leave to appeal should be granted and if so, whether there is merit in the appeal and, additionally, whether this Court should receive the further evidence sought to be introduced by Samancor.

[21] It is convenient at this point to commence with the findings of the high court (per Leeuw JP) relating to the validity of Samancor's prospecting right, because its pronouncements on the other issues flow from this premise. The high court raised doubts about the validity of the Samancor's prospecting right as quoted in para 14 above. It viewed the determination on the validity of the prospecting right as being decisive of the application. In this regard it erred. The validity of Samancor's prospecting right was not before the court. The notice of motion clearly specified that the substance of the relief sought was an interdict. The court approached the issues from the premise that Samancor had sought a 'declaratory order that portion 3 was subdivided into portions 7, 8 and 9 of Tweelaagte'. This was not so, Samancor accepted that the sub-division was never approved by the relevant Minister at the time and that there was an error in the description of the prospecting area. Nevertheless, Samancor asserted that there

was no doubt as to the location of the portion to which its prospecting right related, which did not overlap with the area covered by Monageng's mining permits.

[22] While the description of the area in the text of the prospecting right had been incorrect, the prospecting right was lawfully issued and remained in place until cancelled or set aside. The high court erred on this issue. It was not sitting as a court reviewing the decision to award the prospecting right nor was it asked to make a declaratory order as to the sub-division of portion 3. Notwithstanding the error in the description of the prospecting area, the area was determinable from Annexure B which was the plan attached to the prospecting right. There was no real dispute as to which area was the subject of the application. The evidence as to how the error in the description arose was uncontroverted. The coordinates of the boundary were identifiable. Thus, the high court erred in finding that the prospecting area was unclear.

[23] The high court further found that it was not clear whether s 10 of the MPRDA had been complied with before the submission of Samancor's application for approval to the Minister and that the prospecting right had been granted on the basis of incorrect or insufficient information. As I have said, these questions were not in issue before it. Findings in that regard could only have been made in proceedings properly challenging the decision to grant Samancor the prospecting right. It was not suggested by the respondents in the papers that the DDG had erred in granting Samancor the prospecting right. Be that as it may, the decision to award the prospecting right, and the right itself, remained valid until set aside by a court.

[24] With Samancor having established its prospecting right, the main issue the high court ought to have focused on was whether or not unlawful activities were

taking place within Samancor's prospecting area. The respondents did not really dispute that their mining activities were taking place in the area identified by Mr Kirchhoff in the aerial map, which is the area described as Samancor's prospecting right area in Annexure B. They merely disputed the validity of Samancor's prospecting right on account of portions 7, 8 and 9 not being registered and contended that their activities were not unlawful. In the circumstances the mere (partial) misdescription of the prospecting area was of no consequence.

[25] The evidence was that the area in respect of which Monageng held mining permits was situated on a separate portion of Portion 3 of the Tweelaagte farm. It did not overlap in any way with the prospecting right area. Moreover, the mining permits on which the respondents heavily relied in their answering affidavit had lapsed and there was no clear evidence of their renewal. That is, however, beside the point, because, even if they were still valid, the mining activities were taking place outside the area authorised by the permits. The mining activities were therefore unlawful, irrespective of the fact that Samancor's prospecting right might be open to challenge as to its validity. The high court did not engage with this issue in its judgment and, in failing to do so, it erred.

[26] This expediently takes me to the issues of whether the Minister ought to have been joined in the proceedings and whether the application was premature owing to the s 47 notice issued to Samancor. As to the first issue, it is trite that a party must be joined in the proceedings if that party has a 'direct and substantial interest', ie legal interest in the subject matter of the litigation, which may be prejudicially affected by the judgment of the court. The Minister had delegated his powers to grant prospecting rights in terms of s 103 of the MPRDA to the DDG. The Regional Manager was cited because he was party to the notarial execution of Samancor's prospecting right and was authorised to act on behalf of

the DDG 'under and by virtue of a power of attorney' granted by the Minister's delegate, the DDG. This information appears from the prospecting right. However, neither the Minister nor his delegates had a legal interest in the subject matter of Samancor's application, namely whether interdictory relief should be granted against the respondents on the basis of their unlawful mining activities.

[27] The high court also erred in finding that Samancor's application was 'premature and unnecessary' because of the s 47 notice issued by the Minister to Samancor. The procedure in terms of s 47 is available to the Minister to cancel or suspend a prospecting right in certain circumstances. It is not, as the high court concluded, an 'internal remedy' available to private parties seeking to enforce their rights. Samancor did not have to wait for the s 47 process to be finalised before approaching the court for an interdict. Those were two different processes.

Should further evidence be received?

[28] The high court erred in refusing the application to adduce further evidence on the ground that the new evidence had been available to Samancor at the time of the institution of the application. The endorsement that rectified the prospecting right was only effected during the middle of 2019. However, for the reasons that follow the application was correctly dismissed. The applicant has not shown exceptional circumstances warranting reception of the further evidence sought to be tendered on appeal. It is undesirable for a court to readily allow new evidence on appeal, in circumstances when the applicant had deliberately chosen a course of how to conduct its case.[4]

[29] Samancor chose the path in its urgent application. It stated in its founding affidavit that 'the relief sought in this application is not dependent on [the]

[4] See: *Colman v Dunbar* 1933 AD 141 at 161.

amendment being sought. A potentially incorrect description of the prospecting area in Samancor's Prospecting Right does not detract from Samancor's rights as the holder of Samancor's Prospecting Right…'. It was aware that an error in the description of the prospecting right existed, but intentionally adopted a course on how it was to conduct its case, despite the error. The fact that alternative relief was sought to allow for rectification of the error does not make for special circumstances. This Court has stated on many occasions that it will receive further evidence on appeal only in exceptional circumstances.[5] There are none in this case. The application for leave to introduce further evidence therefore had to fail.

Conclusion

[30] In conclusion, the requirements for the granting of an interdict in favour of Samancor were clearly satisfied on the papers. Samancor was able to show that it was a holder of a prospecting right, validly granted in its favour; the respondents conducted unlawful mining activities in its prospecting area, which would cause harm to the area and to Samancor; no other remedy was available to it other than approaching the high court for an interdict,[6] and s 47 of the MPRDA did not stand in its way.

[31] For the reasons set out above, I am persuaded that leave to appeal should be granted and the appeal be upheld. Resultantly, Samancor is entitled to the main relief sought in the notice of motion except for prayer 4, which its counsel abandoned. There is no reason why costs should not follow the result. As to the costs of the application to lead further evidence on appeal, it is necessary to point out – for the guidance of the taxing master – that argument on both sides relative thereto took less than 15 minutes.

---

[5] See: *S v Romer* [2011] ZASCA 46; 2011 (2) SACR 153 (SCA) paras 8-9.
[6] See: *Holtz and Others v University of Cape Town* [2017] ZACC 10; 2017 (7) BCLR 815 (CC); 2018 (1) SA 369 (CC).

[32] Accordingly, the following order is made:

1 The application for leave to appeal is granted.

2 The application for leave to introduce further evidence is refused with costs.

3 The appeal is upheld with costs, including the costs of the application for leave to appeal both in the high court and in this Court.

4 The order of the high court is set aside and replaced with the following order:

> '1 The first and second respondents and their contractors and/or employees and/or personnel are interdicted and restrained from -
>
> 1.1 conducting, facilitating or being involved in any manner whatsoever in mining activities on, or the removal of any material from the applicant's prospecting area situated on the remaining extent of portion 1, portion 5 and a portion of Portion 3 of the farm Tweelaagte 175 JP, situated in the North West province, in the Magisterial District of Mankwe, as depicted by the co-ordinates and boundaries in the attached plan marked as A (Samancor's prospecting area);
>
> 1.2 entering Samancor's prospecting area without the applicant's consent;
>
> 1.3 preventing the applicant from accessing Samancor's prospecting area.
>
> 2. The first and second respondents are to vacate Samancor's prospecting area together with their employees, contractors, equipment and machinery within 15 days of the date on which the order is served upon them.
>
> 3 The fifth respondent is directed, with the assistance of the fourth respondent, should it be necessary, to give effect to the orders in paragraphs 1 and 2 above by –

3.1 preventing the first and second respondents and their contractors and/or employees and/or personnel from entering Samancor's prospecting area without the applicant's consent;

3.2 preventing all trucks and other vehicles reasonably suspected of being used or intended to be used for conducting, facilitating or being involved in any manner whatsoever in the unlawful removal of material from Samancor's prospecting area from entering or exiting Samancor's prospecting area; and

3.3 removing from Samancor's prospecting area any trucks, vehicles, excavators, mining equipment, drilling equipment or any other equipment reasonably suspected of being used or intended to be used for conducting, facilitating or being involved in any manner whatsoever in the unlawful mining activities on or the unlawful removal of any material from Samancor's prospecting area;

4. The first and the second respondents are to pay the costs of this application.'

_____

N P MABINDLA-BOQWANA

JUDGE OF APPEAL

APPEARANCES

For applicant:	P Lazarus SC
Instructed by:	Malan Scholes Incorporated, Johannesburg
	Claude Reid Inc., Bloemfontein
For first and second respondents:	B F Gededger
Instructed by:	Kgosi Sekele Attorneys, Pretoria
	Mhlokonya Attorneys, Bloemfontein.