



**IN THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION (MIDDELBURG LOCAL SEAT)**

**CASE NO: 2178/2022**

**In the matter between:**

**RM BUSINESS SOLUTIONS (PTY) LTD**

**APPLICANT**

**AND**

**THUNGELA OPERATIONS (PTY) LTD**

**FIRST RESPONDENT**

**THE MINISTER OF POLICE**

**SECOND RESPONDENT**

**THE NATIONAL COMMISSIONER OF POLICE**

**THIRD RESPONDENT**

**THE PROVINCIAL COMMISSIONER OF POLICE**

**MPUMALANGA PROVINCE**

**FOURTH RESPONDENT**

**THE STATION COMMANDER, VOSMAN**

**POLICE STATION**

**FIFTH RESPONDENT**

**THE MINISTER; DEPARTMENT OF MINERAL**

**SIXTH RESPONDENT**

**RESOURCES AND ENERGY**

**THE DIRECTOR-GENERAL OF MINERAL**

**SEVENTH RESPONDENT**

**RESOURCES AND ENERGY**

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**JUDGMENT:17 October 2022**

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**LANGA J:*****Introduction***

[1] On 27 September 2022 the applicant RM Business Solutions (Pty) Ltd brought this application in which it seeks final and interlocutory interdicts against the respondents. First, it seeks a declarator that the administrative decision granting and issuing the applicant's mining permit by the Department of Mineral Resources and Energy ("DMRE"), under reference number MP30/5/1/3/2/12789 MP dated 20 July 2022, is binding and that the applicant is permitted to continue with its mining activities in terms thereof in respect of the property known as a Portion of Portion 2 of Kleinwater 301 JS in the Magisterial District of Emalahleni in Mpumalanga Province;

[2] Secondly, the applicant seeks relief that the first, second, third, fourth or fifth respondents or any person acting on their behalf be interdicted from ejecting the applicant, its contractors, employees or equipment from Kleinwater;

[3] Thirdly, and in the alternative to the relief in paragraph 2 above, the applicant seeks relief that first, second, third, fourth or fifth respondents or any person acting on their behalf be interdicted from ejecting the applicant, its contractors, employees or equipment at Kleinwater pending the finalization of investigations and criminal prosecutions arising out of the complaints lodged by the first respondent under CAS 384/08/2022 at Vosman Police Station in Mpumalanga Province;

[4] Lastly the applicant seeks an order that the respondents opposing this urgent application be ordered to pay the costs thereof.

[5] In the counter application the first respondent seeks an interdict to stop the applicant

from conducting any mining activity within its area of mining area, alternatively a rule nisi, to operate with immediate effect, interdicting the applicant from so mining pending a final decision.

### ***Urgency***

[6] Concerning urgency the parties were *ad idem* that the matter is urgent. After considering the submissions made by the parties in this regard, the court ruled that the matter is urgent and proceeded therewith on that basis.

### ***Facts***

[7] Most of the following facts in this matter are common cause. The applicant's application for a mining permit was accepted on 11 June 2021 in respect of the farm Kleinwater 301 JS in the district of Witbank and after paying R1 469 210.00 to the DMRE, a mining permit ("the permit") was issued to applicant on 20 July 2022 in terms of the Mineral and Petroleum Resources Development Act, 28 of 2002, ("the MPRDA"). It is therefore common cause that the applicant holds a mining permit to undertake mining on the farm Kleinwater which activity it undertook from August 2002.

[8] It is further common cause that on 31 August 2022 the First respondent, together with the members of the SAPS, visited Kleinwater and informed the applicant that it was mining illegally and the first respondent also lodged a criminal case with the SAPS. The same day the applicant's attorneys addressed a letter to the first respondent and the SAPS requesting an undertaking that they shall not continue to unlawfully evict the applicant from Kleinwater. However, on 01 September 2022 the first respondent's attorneys informed the applicant that they intend enlisting the help of the police to seize the applicant's mining equipment and to eject the applicant from the farm. In the same letter

the first respondent informed the applicant that the latter was mining within its mining area.

***Issues for determination***

[9] It is clear from the the parties' respective versions that the applicant's mining permit on the farm Kleinwater is not in dispute at all. The crux of the dispute is that while the applicant alleges that it was mining within the area designated by its permit, the first respondent alleges that the applicant is mining within the first respondent's mining area and outside the area the applicant is permitted to mine in terms of the mining permit issued. The applicant and the first respondent are not in agreement as regards the question whether or not the applicant is mining in the correct, designated area in line with the permit. The issue in dispute is therefore whether the applicant is mining within its correct mining area as designated in the mining permit.

[10] The first respondent contended that the onus is on the applicant to demonstrate that it is mining in the correct area. According to the applicant's permit, the applicant is entitled to mine for coal on a portion of portion 2 of the farm Kleinwater 301 JS Magisterial District Emalahleni as indicated on the plan number 12789 MP which was signed by the Regional Manager on 22/07/2007.

[11] The first respondent, however, contended that although the applicant is mining Kleinwater farm, where the first respondent also holds a mining right, the applicant is mining in a wrong portion of the farm. The first respondent contended that the disputed area belongs to it and produced evidence by an expert, a land/mine surveyor, Mohamed Shoaeb Karrim, stating that the after attending to the area in dispute on 31 August 2022, he determined that the applicant was mining outside of the area designated by its mining

permit. He stated further that the applicant in his opinion was mining within the area the first respondent is permitted to mine.

[12] Although the applicant does not dispute the witnesses' expertise, it however, contended that this witness was biased in favour of the first respondent who is its employer and therefore rejected his evidence. The applicant further challenged this expert's evidence on the basis that his maps were not official and issued in terms of section 2 (2) of the MPRDA.

[13] However, in support of its case, the applicant relies on an opinion of one Peter Nordin, apparently also an expert in this field, who penned a letter in which he states that after perusing the applicant's mining permit, he is of the view that the applicant is carrying out its mining operations within its correct mining area. Mr Nordin apparently also challenges the report by the first respondent's land surveyor as inconsistent with the plan attached to the Mining Permit.

[14] The first respondent objected to the letter by Mr Nordin as hearsay as no affidavit was filed by him in support of the letter and his opinion. The first respondent also took issue with the fact that the letter was undated and argued therefore that it could not be determined with certainty where the applicant was mining at the time when Nordin prepared the letter in question. The first respondent therefore contended that this is relevant as the applicant could have been mining in the correct area at the time of Mr Nordin's report.

[15] The first respondent further contended that Mr Nordin, as the purported expert for the applicant, does not state in what respect the first respondent's expert opinion is inconsistent with the plan and does not even produce his own plans to support his

opinion. The first respondent contended therefore that the only admissible evidence before court is that of its land surveyor and that Mr Nordin's opinion should be ignored. The first applicant submitted that the court must accept the evidence of its land surveyor and make a finding that the applicant is mining within the mining area of the first respondent and therefore outside its area permitted in terms of the Mining Right.

### ***Evaluation and legal principles***

[16] As stated above, it is evident that the dispute is whether the applicant is mining in its correct or designated area in terms of its Mining Permit. Although the first respondent challenges that admissibility of the letter by Mr Nordin, it however cannot be disputed that there is an irreconcilable dispute of fact in so far as this question is concerned. Based on the applicant's own evidence the applicant is mining in the correct space or area. Although the first respondent contended that its witnesses' evidence should be accepted as the only evidence, the evidence of the first respondent's expert witness is challenged on the basis that it is subjective and further that the maps he relied on were not approved by the DMRE and therefore not official. The applicant further challenged that first applicant's counter claim on the basis that it has not lodged or exhausted the internal remedies (appeal) as provided for in the MPRDA.

[17] On the crisp issue of whether or not the applicant is mining in the correct portion of Kleinwater farm I have considered the facts as set out by the applicant together with the facts set out by the respondent which the applicant could not dispute, and concluded that there is a genuine dispute of fact in this matter which cannot be determined on the papers. I am in the circumstances not persuaded that the applicant has established, on the papers, that judgment should be granted in its favour in respect of this application. Likewise, I find that the first respondent has not successfully made out a case for the granting of the counter-application.

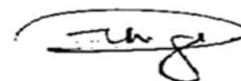
**Conclusion**

[18] Consequently, the question whether or not the applicant has established that it is mining in the correct area designated by its Mining Permit cannot be decided on these papers as there is clear and genuine dispute of fact concerning this fact. This narrow issue therefore has to be referred to oral evidence. It is therefore not even necessary for the court to deal with the contention that the first respondent has not exhausted all the internal remedies.

**Order**

[19] In the result I make the following order:

1. The matter is referred to trial for the hearing of oral evidence on the question whether or not the applicant is mining within the correct area as designated by its Mining Permit.
2. Each party shall, within 21 days of this order, make a discovery in accordance with Uniform Rule 35 of the Rules of this Court, and the provision of that Rule shall apply.
3. Each party may subpoena any person to give evidence at the hearing, whether or not such a person has consented to furnish a statement.
4. The costs of this application are reserved for determination by the Court hearing the oral evidence.



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MBG LANGA  
JUDGE OF THE HIGH COURT  
MIDDELBRG LOCAL SEAT

Appearances:

For the Applicant:

Advocate HF Brauckman

Instructed by:

Maonya K Associates Inc. Pretoria.

For the Respondent:

Advocate M Smit

Instructed by:

Cliff Dekker Hofmeyer Inc. Sandown