IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)
DATE: 3/8/2005
CASE NO: 6104/2004

UNREPORTABLE

In the matter between

ANGLO PLATINUM MANAGEMENT SERVICES (PTY) L TD	**FIRST APPLICANT**
RUSTENBURG PLATINUM MINES LIMITED	**SECOND APPLICANT**
LEBOWA PLATINUM MINES LIMITED	**THIRD APPLICANT**
POTGIETERSRUST PLATINUM MINES L TD	**FOURTH APPLICANT**

and

THE MINISTER OF SAFETY AND SECURITY	**FIRST RESPONDENT**
THE DEPUTY MINISTER OF SAFETY AND SECURITY	**SECOND RESPONDENT**
THE PRIVATE SECURITY INDUSTRY REGULATORY AUTHORITY	**THIRD RESPONDENT**

JUDGMENT

(LEAVE TO APPEAL)

VAN OOSTEN J

The third respondent now seeks leave to appeal against the whole of my judgment and order made in terms of which in effect Regulation 10(3) of the Regulations which are the subject matter of the main application, were set aside. For the sake of convenience I will retain the nomenclature of the parties in the main application.

The grounds relied upon in support of this application can for present purposes be categorised into two groups: firstly, those concerning the points *in limine* and secondly, those concerning the merits of the application.

Regarding the points *in limine* it is at the outset necessary to mention that nothing new was added to the arguments presented at the hearing of the main application. The notice of application for leave to appeal merely contains a restatement of those arguments. I have fully dealt with all the aspects raised in my judgment and I think counsel for the applicants was correct in submitting that no flaws in the judgment regarding them have been identified. I therefore do not consider it necessary to deal with the arguments again save to add the following: none of the points *in limine* represent a complete defence to the relief sought in the application. All are as correctly pointed out by counsel for the applicants, partial defences to which must be added that even if one thereof were to succeed on its own, it would not affect the main thrust of the relief sought. This must further be considered against the background of the attitude adopted in cases such as **Amalgamated Engineering Union v Minister of Labour** 1949 (3) SA 637 (A) where in relation to the question of joinder allowance was made for the canvassing of the attitude of the non-joined party at a late stage after hearing the appeal and before handing down of judgment. *(Cf* **Pretorius v Siabbert** 2000 (4) SA 935 (SCA) at 939 F-G). Considerations of this kind in regard to the points *in limine* in my view strongly militate against the prospects of a successful appeal.

This brings me to the merits of the main application. It is true that I was required to interpret the Act and Regulations in the determination of the issues and that in

matters of this kind opinions often diverge. This however is not sufficient for purposes of the present matter to constitute reasonable prospects of success on appeal. It must again be emphasised that except for a repetition of the arguments raised at the hearing of the main application, I have not been informed in what respects my reasoning would be open to valid criticism by another court. Be that as it may, the prospects of a successful appeal on the merits in my view are decisively determined in the findings I have made in respect of the applicants' constitutional rights to procedural fairness.[1]

In attacking these findings counsel for the third respondent submitted that the applicants were in any event not entitled to a hearing as they have failed to establish an actual or prospective right. [2] The argument in my view is untenable. Even if the third respondent were to be correct, the argument clearly loses sight of the legitimate expectation that the applicants enjoyed. They moreover at the very least had a sufficient interest in the matter to entitle them to procedural fairness. As mentioned in the judgment it is not in dispute that the applicants were not given the opportunity to make representations before the Regulations were promulgated. I can find no reason for holding that they were not entitled thereto. I am accordingly left unpersuaded that a curtailment of their constitutional rights to procedural fairness can be justified on any basis. That being so, I agree with counsel for the applicants that this aspect alone constitutes the death knell for the respondents' case.

For these reasons I am not satisfied that reasonable prospects of success on appeal exist and it accordingly follows that leave to appeal ought to be refused.

IN THE RESULT LEAVE TO APPEAL IS REFUSED WITH COSTS SUCH COSTS TO INCLUDE THE COSTS CONSEQUENT UPON THE EMPLOYMENT OF TWO COUNSEL.

1 See par 25 and 26 of the judgment.
2 See further par 10 of the Third Respondent's Notice of Application for Leave to Appeal.

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA

COUNSEL FOR THE APPLICANTS	***ADV A DODSON with him*** ***ADV M SIKHAKHANE***
APPLICANTS' ATTORNEYS	***LEPPAN BEECH INC c/o ADAMS & ADAMS ATTORNEYS***
COUNSEL FOR THE RESPONDENTS	***ADV JH DREYER SC***
RESPONDENTS' ATTORNEYS	***THE STATE ATTORNEY***
DATE OF HEARING	***21 July 2005***
DATE OF JUDGMENT	***3 August 2005***