**IN THE HIGH COURT OF SOUTH AFRICA**

**(TRANSVAAL PROVINCIAL DIVISION)**

**CASE NO.: 31499/2000**

30/8/2005

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

DATE 30/8/05 SIGNATURE

**In the matter between:**

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| **MAMPUDI MINING (PTY) L TO** | **APPLICANT** |
| **And** | |
| **THE PRESIDENT OF THE RSA NO** | **FIRST RESPONDENT** |
| **THE MINISTER OF MINERALS AND ENERGY** | **SECOND RESPONDENT** |
| **LEBOWA MINERAL TRUST** | **THIRD RESPONDENT** |
| **TROJAN PLATINUM (PTY) L TO** | **FOURTH RESPONDENT** |
| **IMPALA PLATINUM HOLDINGS LIMITED** | **FIFTH RESPONDENT** |
| **RUSTENBURG PLATINUM LIMITED** | **SIXTH RESPONDENT** |

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# JUDGMENT

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**BOTHA. J:**

In this application the applicant asks the following relief:

"1. That the second respondent is hereby called upon to show cause why the decision of the second respondent failing to follow the recommendation of the Board of the third respondent

not to grant the sixth respondent the right to prospect and mine on the farm Driekop 253 KT ("Driekop") should not be reviewed and set aside.

2. That the second respondent is hereby called upon to show cause why the decision of the second respondent in her capacity as "Minister" as defined in the Lebowa Mineral Trust Act, 9 of 1987 ("the LMT Act") to grant written permission, in terms of section 15(1) of the LMT Act, to the fourth and sixth respondents to prospect for and mine minerals on the northern part of the farm Driekop should not be reviewed and set aside.

3. That the first and/or second respondents are hereby called upon to show cause why the decision of the first and/or second respondents purportedly to act or acting as Trustee of the third respondent, to enter into a Mineral Lease with the sixth respondent, should not be reviewed and set aside.

4. That the first and/or second respondents are hereby called upon to show cause why the decision of the first and/or second respondents purportedly to act or acting as trustee of the third respondent, to grant the right to the sixth respondent to enter into a sub-lease with the fourth respondent, with permission that the shareholding of the fourth respondent effectively be sold to the fifth respondent, should not be reviewed and set aside.

5. That it consequently be declared that the Mineral Lease in respect of Driekop, if any, that was entered into between the third respondent and the sixth respondent in null and void and unenforceable.
6. That it consequently be declared that any Mineral Sub-Lease that was entered into, if any, between fourth respondent and the sixth respondent in respect of Driekop is null void and unenforceable.

The first respondent is the President of the Republic of South Africa.

The second respondent is the Minister of Minerals and Energy (the Minister).

The third respondent is the Lebowa Mineral Trust (the LMT) a body corporate established in terms of section 2(1) of the Lebowa Mineral Trust Act, 1987 (Act 9 of 1982).

The fourth respondent is Trojan Platinum (pty) Ltd (Trojan). Trojan was a wholly owned subsidiary of a Canadian company Platexco Inc (Platexco).

Since this application was launched in 2000 Trojan has changed its name to Marula Platinum (Pty) Ltd.

The fifth respondent is Impala Platinum Holdings Ltd (Implats).

The sixth respondent is Rustenburg Platinum Ltd (RPM), a wholly owned subsidiary of Anglo American Platinum Corporation Ltd (Amplats).

The applicant also brought an application under case number 14218/2004 against four of the present respondents as well as Amplats. In that application the applicant asked that an agreement between the LMT and Amplats, concluded in 2000, be set aside. That application was withdrawn on 18 August 2005. During argument Mr Grabler SC, who, with Ms Pretorius, appeared for RPM, attempted to refer the court to the papers in that application on the basis that it contained information as to what has happened since the present application was launched. Mr Roos, who appeared for the applicant, objected to the attempt to refer the court to the contents of that application. I upheld the objection on the basis that the papers in that application had not been incorporated by reference and that the respondents had not sought to amplify their papers by referring to that application.

I do not intend to summarize the various affidavits filed and the review record. To a large extent there are no disputes of fact. To the extent that there are disputes of fact, the principle set out in **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984(3) SA 620 A at 634 E - 635 C** must prevail.

I also do not intent to summarize all the arguments presented to me. That does not take away that I am greatly indebted to counsel who pampered me with comprehensive heads of argument, bundles of authorities and most

helpful arguments. I shall concentrate on the issues as they emerged during the oral argument that took up more than two days.

The application concerns mineral rights in the eastern limb of the Bushveld complex. The mineral rights concerned primarily vested in the LMT.

Central to this case are the mineral rights, more particularly the right to prospect for and mine platinum group metals on the farm Driekop 253 KT (Driekop). A platinum reef, called the UG2 reef, runs through Driekop in a direction from north to south (and *vice versa).* It runs about 300 meter below another reef, the Merensky reef. In the middle of the farm so to say, there is an interruption in the UG2 reef. On the northern side of the discontinuity the reef also runs through the farms Forrest Hill 118 KT (Forrest Hill) and Clapham 118 KT (Clapham). There is also an outcrop of the Merensky reef on the farm Winnaarshoek 250 KT (Winnaarshoek), which lies to the west of Driekop and Forrest Hill. To the south of the discontinuity the reef runs through the farms Maandagshoek 254 KT (Maandagshoek), Hendriksplaats 281 KT (Hendriksplaats), Onverwacht 292 KT (Onverwacht) and Winterveld 293 KT (Winterveld). To the south of Driekop, and to the west of Maandagshoek, lies the farm Garatouw 282 KT (Garatouw). All this can be seen on the maps at pp 404 and 405.

It appears that the discontinuity of the UG2 reef dictates two mining projects, one to the south of the discontinuity and one to the north. The northern project

has become known as the Winnaarshoek project and the southern project as the Maandagshoek project.

In spite of the fact that the mineral rights on all these farms vested in the LMT, the situation is complicated by vested rights. There were vested rights embodied in so-called joint venture agreements (JVA's) which predate the enactment of the Lebowa Mineral Trust Act. Vested rights were entrenched by section 17 of the Lebowa Mineral Trust Act. The checkered holding of mineral rights has had the effect of locking up the minerals and inhibiting viable exploitation. Since 1999 negotiations, referred to as JV A negotiations, have been conducted in an attempt to rationalize the tenure of mining rights in respect of the said farms so as to make exploitation possible.

In 1995 the applicant applied for the right to prospect on the farm Driekop. In October 1995 the application was turned down.

On 26 May 2000 the board of the LMT decided to advise the Minister that an application by RPM for a mineral lease in respect of the northern portion of Driekop and to enter into a sub lease with Trojan be approved.

On 23 August 2000 the applicant wrote a letter to the LMT in which it renewed its application which was stated to be for the mineral rights of the farms Maandagshoek, Driekop and Garatouw. In reaction to the renewal of the applicant's application, the LMT, by way of a letter dated 31 August 2000,

asked the Director-General of the Department of Minerals and Energy to hold back the approval of the mineral lease to RPM and the sub lease to Trojan.

On 1 November 2000 the board of the LMT recommended that the applicant and Trojan enter into negotiations.

On 20 November 2000 the applicant's attorney sent a letter to the LMT in which he reported that no settlement could be reached, the applicant having found an option to purchase 10% of the equity in the project unacceptable. It was also stated that the applicant's application was only for the northern portion of Driekop. In an accompanying memorandum it was stated that the present application was for a mineral lease.

In a letter dated 27 November 2000 by the applicant's attorney the LMT was informed that the applicant would prefer the mineral rights to be granted to Mampudi Holdings (Pty) Ltd (Mampudi Holdings) in order to avoid any future legal disputes about the shareholding of the applicant.

On 28 November 2000 the board of the LMT decided to rescind the recommendation of 26 May 2000 and to recommend that the applications of the applicant and RPM be held in abeyance pending the finalisation of the JVA negotiations.

On 30 November 2000, in spite of the recommendation of the board of the LMT dated 28 November 2000, the Minister approved the conclusion of the

mineral lease of the northern portion of Driekop to RPM and a sub lease to Trojan.

This application was launched on 8 December 2000.

On 18 December 2000 the natural mineral lease was concluded.

The LMT was abolished on 30 September 2001 by virtue of the Abolition of Lebowa Mineral Trust Act, 2000 (Act 17 of 2000). In terms of that Act all the assets liabilities, rights and obligations of the LMT now vest in the State.

Mineral rights are now governed by the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) which came into force on 1 May 2002.

The application by RPM for a lease and approval of a sublease to Trojan was part of a larger transaction in which mining rights were exchanged so as to made two mining projects possible, the Winnaarshoek project and the Maandagshoek project. RPM had the rights to Forrest Hill and Clapham, but needed the rights to Hendriksplaats to be able to put together the Maandagshoek project.

An agreement was concluded in terms of which RPM would acquire the rights to Hendriksplaats from Implats and Implats would in fact acquire all the rights necessary to make the Winnaarshoek project viable. Implats obtained the

rights to Forrest Hill and Clapham directly from RPM. The rights to Winnaarshoek, which were held by Trojan, were obtained by the acquisition of the shares in Platexco, the holding company of Trojan. These shares were acquired through a Canadian subsidiary of Implats. The shares in Platexco had been acquired in terms of a scheme or arrangement that required the sanction of a court in Ontario. That sanction was obtained on 2 August 2000. The scheme was, however conditional on the lease in respect of the rights to the northern portion of Driekop being granted to RPM with a sublease to Trojan.

It is the contention of RPM that it held the rights to Driekop in terms of the joint venture agreements. When the applicant's application was refused in 1995, the reason given was that the rights to the farms, which included Driekop, vested in JCI, which then was the holding company of RPM.

There was some debate as to whether the second respondent, in awarding the mineral lease to the sixth respondent was acting as the delegatee of the President who remained the trustee, and whether she had by assignation become the trustee of the Lebowa Mineral Trust. See **Lebowa Granite (Pty) Ltd v Lebowa Mineral Trust and another 1994(4) SA 375 T at 381 B - D** and **Lebowa Mineral Trust v Lebowa Granite (pty) Ltd [2001] 2 All SA 388 T at 392 f.** Interesting as the conundrum might be I do not intend to resolve it in view of the fact that the parties were agreed that nothing turned on whether the Minister was acting in the one or the other capacity.

On behalf of Trojan and Implats, who were represented by mr Plewman and Mr Ameer, and on behalf RPM, it was argued that the applicant had failed to prove that it had *locus standi iudicio.* They pointed out that the applicant had no pre-existing rights in respect of Driekop. In the context of this argument it was also submitted that the application had changed from one by the applicant to one by Mampudi Holdings. Mr Roos, submitted out that in the letter dated 27 November 2000 the applicant merely pointed out that it would prefer the lease to be granted to Mampudi Holdings. He also referred to **De Ville Judicial Review of Administration Action in South Africa, p 404** and submitted that nowadays the scope for a defence of lack of *locus standi* is limited.

There seem to be two schools of thought about the role of *locus standi* in the present dispensation. The opposing views are summarized in **De Ville *supra* pp 400 - 406**. Cases like **Ferreira v Lewis NO and Others; Vryenhoek and Others v Powell NO and Others 1996(1) SA 984 CC at paragraph 162 to 165** and **Gerber v Voorsitter Komitee oor Amnestie van die Kommissie vir Waarheid en Versoening 1998(2) SA 559 T at 569 D - F** suggest that *locus standi* has been extended and that it may be almost limitless.

Without finally deciding the issue, I shall accept that the applicant who is a co-applicant whose applicant has effectively been refused, has *locus standi* to bring a review application. The issues raised under this head will, however, not disappear. They will raise their head against in a different guise.

I shall also accept that the application remained an application of the applicant.

The way in which the application of the applicant grew from an application for prospecting rights on Maandagshoek, Driekop and Garatouw to an application for mineral rights or a mineral lease was the subject of some debate.

In view of the way in which the Minister treated the applicant's application, I must accept that it was not formally defective.

On behalf of Trojan, Implats and RPM it was argued that the conduct of the Minister in dealing with RPM's application was not administrative conduct as defined in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000). In this regard reliance was placed on the fact that the rights to Driekop had been locked up in the joint venture agreements and that in terms of section 14 of the Lebowa Mineral Trust Act the LMT held the mineral rights on the same basis as a private owner.

The fact that the the LMT, as the owner of mineral rights, is equated with a private owner, is, in my view, of no consequence. The LMT was a statutory creation and it was obliged in terms of its founding Act to act within prescribed parameters. It was an organ of State. See **Lebowa Mineral Trust v Lebowa Granite (Pty) Ltd [2000] 2 ALL SA 388 T at 392 d - 393** b. It was required to grant or refuse mineral rights and in so doing it was unquestionably exercizing public power. The authorizations that it had the power to grant

were indispensable for the exploitation of minerals. The fact that in a particular case the LMT may, owing to pre-existing rights, have very little or no choice in whether or not to grant authorizations does not detract from the nature of the power exercised by it. See **Greys Marine Hout Bay (pty) Ltd and Others v Minister of Public Works and Others case 347/04, a judgment of the Supreme Court of Appeal delivered on 13 May 2005 at paragraph 24**.

One can test it by asking whether a decision to dismiss RPM's application would have been reviewable. There can be no question that the answer must be in the affirmative.

The conclusion is inescapable that the conduct of the Minister in dealing with the rival applications of the applicant and RPM was administrative action.

That brings me to the reasons of the Minister. They are contained in a typewritten document of some six pages. The document is couched in the third person. It is not signed. It was argued that it should have been signed and that the fact that they had been drafted by someone else is an indication that the Minister acted as a rubber stamp.

The argument cannot be accepted. Section 5 (2) of Act 3 of 2000 only requires the reasons of an administrative decision maker to be in writing and to be adequate. There is no requirement that they should be signed. There is

no reason why they should have been composed by the Minister herself. The reasons have been confirmed under oath as her reasons.

Mr Roos seemed to argue that the Minister's decision could only be justified with reference to her reasons and the documents referred to in the reasons. I cannot agree. It is clear that many more documents were produced during the process of the consideration of the applications of RPM and the applicant. It also appears that there were briefings of the Minister by officials like Mr Taljard and her advisor Mr MoioL One must assume that the contents of such documents and discussions also form part of what the Minister knew when she made her decision on 30 November 2000.

One of the main grounds of criticism was that the Minister should have adopted the recommendation of the board of the LMT dated 28 November 2000 to hold over the consideration of the application of RPM. It was conceded that she was not bound to follow the recommendation of the board, but it was contended that she could only disregard it for good reasons.

The irony is that when the Minister made her decision on 30 November 2000, she precisely implemented the recommendation of the board made on 26 May 2000. The board on 28 November 2000 recommended a further postponement of the consideration of RPM's application. The matter had by then been dragging for months. There had been a decision taken on 1 November 2000 to require the parties to negotiate.

On 20 November 2000 the applicant's attorney reported that those negotiations had failed.

In the mean time there were indications later that the matter could not be deferred indefinitely and that it was indeed urgent.

The fact that the court order granted in Toronto was made conditional on the granting of a lease by the Minister must have made the matter urgent. Mr Roos argued that the copy of the order in the record does not indicate when the lease had to be granted. It is probable that there would have been a date. Even if there was no date a delay of several months could not be considered as reasonable. There are some indications in the papers that the Minister's approval had to be obtained before the end of December 2000. I shall return to this issue shortly. The Minister, in her reasons, did not, however, refer to that date. She merely referred to a time frame. If it meant that the matter was urgent, she was entirely correct.

In the circumstances I am of the view that the Minister's decision not be postpone consideration of RPM's application any further was entirely justified. It must be remembered that the board merely recommended a postponement of the decision. It did not recommend that the application be dismissed. The reason for the postponement was to give more time for negotiation. There had been negotiations and there was no reason to assume that a settlement between the applicant and Impala was likely.

Then it was specifically argued that the Minister had erred in assuming that there was a time frame for her approval. It was suggested that she referred to the date 31 December 2000. I agree with Mr Plewman's submission that it is not open to the applicant to argue this point in view of the fact that it was never raised in the founding affidavit or the supplementary affidavit. If it had been raised it would have been possible for the respondents to place more material before the court as to the time when this condition had to be fulfilled. As it is there is the following evidence to the effect that there was a time frame to the granting of the lease to RPM:

(a) In the answering affidavit of Trojan and Impala, in paragraph 47, it was explicitly stated that the entire transaction was conditional on the Minister's approval being obtained by 31 December 2000. Mr Roos submitted that this allegation was so farfetched that it cannot be accepted. I cannot agree.

(b) In a letter that must have been written between 17 November 2000 and 30 November 2000, addressed to one Van Doorn, the Minister indicated that she was aware of the urgency of the matter.

(c) In a letter received by the Ministry on 27 November 2000, the Minister was informed by one Karlson on behalf of Implats that her approval had to be given before 31 December in order to fulfil this remaining condition precedent. Mr Roos submitted that there is no proof that the Minister was aware of this letter. He scrutinised the initials appearing on it and concluded that it must have been noted by Mr Taljard, a Chief Director on the Department of Minerals and Energy, who was the deponent of the first three respondents. In my view there is no reason

> to assume that the Minister was not aware of the contents of this letter. The evidence was that the Minister was briefed on an ongoing basis. If that was done she must have been aware of the contents of this letter.

For all these reasons I am of the view that it was not proved that the Minister had erred in respect of the time frame.

The other main point of criticism of the Minister's reasons was that she had failed to comply with the criteria laid down in the Lebowa Mineral Trust Act. Section 2(2) provides that the Trust shall be administered "for the material benefit, and moral welfare of Lebowa and its inhabitants". The objects of the Trust, set down in section 3, include "to hold all mineral rights ... for the benefit of Lebowa" (subsection (c)) and to "ensure the optimal exploitation of the mineral resources of Lebowa" (subsection (d)). It was argued in particular that the Minister had failed to have regard to Black Economic Empowerment

(BEE).

The Minister dealt as follows with this issue in her reasons:

> "Although the granting of prospecting rights in respect of Driekop to the Applicant would advance the cause of black economic empowerment the Minster was satisfied that the undertaking by the Fifth Respondent to make 10% of the interest in the mining project which would result from the conclusion of the Notarial Mineral Lease Agreement available to black economic empowerment groups would also so advance the cause of black empowerment in the platinum

mining industry. In any event, although the achievement of black economic empowerment is a consideration which the Minster and the South African Government take into account when making decisions such as the decisions taken by the Minister in this matter, it remains but one of the considerations to be taken into account. The economic benefits which may result from a proposed transaction and the achievement of optimal exploitation of mineral rights are, amongst others, also extremely important considerations."

The argument was that there was no such undertaking by Implats and in any event there was no enforceable undertaking.

The evidence in my view shows that there was an undertaking by Impala to make a 10% share in the project available to a BEE partner. In fact that was offered to the applicant who rejected the offer because it did not want to pay for such a share.

In the letter advising Implats of the acceptance of the RPM's application, it was stated that the Minister had imposed a condition that a BEE company "be taken on board".

In paragraph 89.2 of the second and third respondents answering affidavit the valid point is made that it was not for the Minister to dictate to mining companies who they should take in as their partners.

In **Bato Star Fishing (pty) Ltd v Minister of Environmental Affairs and Others 2004(4) SA 490 CC at 509 G** - H it was said that the goals of transformation can be achieved in a myriad of ways. The same can be said of the objections of the LMT Act. In this case the evidence shows that the benefits of the Winnaarshoek project would have been manifold: a general upliftment of the infrastructure in the area in respect of roads, electricity and water supply as well as job opportunities. These were weighty consideration and they were taken into account by the Minister.

She did take into account the co-option of a BEE partner. The only valid criticism that can be levelled at her is that her condition in this respect was not imposed in a contractually enforceable form. That may have been a dereliction but it was not a misdirection.

It is interesting to have regard to the evolvement of this complaint in the application.

It does not feature in the founding affidavit. In the supplementary affidavit it emerges in the following form: it is stated in paragraph 27 that the applicant or the local community had at that stage not been approached to participate in the project. That is in spite of the fact that it was stated in the letter of the applicant's attorney dated 20 November 2000 that Implats was prepared to give the applicant an option to buy 10% of the equity in the project. Then it is stated, revealingly, in paragraph 41 of the supplementary affidavit, that the

Minister could have made it a condition that a 10% share be granted to the applicant, obviously without any payment.

That was the case made out in the application in respect of BEE. It was a bad case. No wonder it was not argued.

In my view the Minister has given proper consideration to the criteria of the LMT Act, and also to black economic empowerment. She came to a conclusion that is rational and which cannot be faulted.

It is necessary to refer briefly to an issue which runs like a refrain through the papers but was not pursued in argument. It is the complaint that Trojan had made a massive profit by on-selling its rights. In conjunction with this complaint it was said that if the plaintiff had been given the rights to Driekop without paying, just like Trojan, it and not Trojan could have made the handsome profit. That complaint has no validity because what happened was that Trojan brought its rights to Winnaarshoek into the swap transaction and it was in effect taken over by Implats, no doubt to the benefit of its shareholders. The fact is that this complaint, in the papers, went in tandem with the BEE complaint when it was raised. It is obvious that the applicant's concern was not the empowerment of a broad section of the black community but the enrichment of its own shareholders without, giving anything in return.

Another complaint, not energetically pursued, concerned the reference by the Minister in her reasons of the bad impression it would make internationally if

mining rights were not granted to a company like RPM who had invested in prospecting. It was indeed RPM's case that it had vested rights in Driekop and that it had spent some R21 million in prospecting and trial mining on the farm. It was a valid consideration.

That brings me to the fact that it must be accepted on the papers that RPM had a vested right in terms of the joint venture agreements in respect of Driekop. I have already referred to that being the reason for the dismissal of the applicant's application in 1995. It is true that it appears that the LMT had been of a mind at a stage to challenge the validity of the joint venture agreements. It is clear however that the LMT decided not to take that route and that it decided to re-negotiate the joint venture agreements. That was obviously done on the basis of the recognition of RPM's claim to Driekop.

The applicant's whole claim is predicated in the assumption that Driekop had been excluded or released from the joint venture agreements. See paragraph 104.1 of the replying affidavit to the second and third respondent's answering affidavit. There is no evidence that Driekop had always been excluded from the joint venture agreements. In the memorandum annexed to the letter dated 23 August 2000 in which the applicant's application was renewed, it was stated that in view of the fact that it was agreed between Amplats (the holding company of RPM) and the LMT that Driekop should be released from the joint venture agreements, there should be no reason why the rights to Driekop could not be awarded to the applicant. It is obvious that this is based on a misconception of the composite transaction. RPM was not unconditionally

waiving its rights to Driekop. It was still applying for a lease in its name, but subletting its rights to Trojan, all of it in exchange, amongst others, for the rights to Hendriksplaats, It was simply not a situation where Driekop had become available to all and sundry.

The situation was that RPM had a vested right. It had the right to obtain a lease. It would have been able, as Mr Roos conceded, to interdict the grant of a lease to other parties. It would also have been able to compel the LMT to grant it authority to mine

In the circumstances there simply was no merit in the applicant's application. That being the case I am of the view that where the Minister's decision on 30 November 2000 of necessity entailed a rejection of the applicant's application she was unquestionably correct. Seen in that light, no misdirection of the Minister in respect of RPM's application could have prejudiced the applicant. See **Cora Hoexter: The New Constitutional & Administrative Law, Vol 3, p 302, South African Post Office Ltd v Chairperson, Western Cape Provincial Tender Board 2001 (2) SA 675 C at 694 G - H and De Ville *op cit* at 445 - 4498**.

The requirement of prejudice comes from the common law which has now been subsumed in the constitutionally dictated statutory regulation of administrative law in the form of Act 3 of 2000. See **Pharmaceutical Manufacturers Association of South Africa and Another in re President of the Republic of South Africa & others 2000(2) SA 674 CC paragraphs**

**33, 44 and 50.** The requirement is to be found in Act 3 of 2000 in the form of the requirement that administrative action, to be subject to review, must adversely affect a person. That is clear from the definition of **administrative action** in section 1 and in section 3(1) which states that administrative action **which materially and adversely affects the rights and legitimate expectations of any person, must be procedurally fair.**

The same requirement appears again in sections 4 and 5.

Where RPM had a pre-existing right to Driekop and the applicant had not even an expectation to be awarded a mineral lease, it could not be adversely affected by the consideration of RPM's application.

Lastly, without detracting from what I have found above, I am of the view that the case for granting the RPM's application was so strong in view of its vested right and the manifest benefits that would flow from it, that no misdirection, if there was any, could have affected the outcome.

There was no reason to postpone the consideration of RPM's application. The applicant had already had an opportunity to buy itself into the project.

The granting of RPM's application was inevitable and the alleged irregularities could not vitiate it. See **South African Veterinary Council** and **Another v Veterinary Defence Association 2003(4) SA 546 SCA at 555 H - I and 556 I**.

**4.**

This requirement, also harking back to the common law, is enshrined Act 3 of 2000, in the form in the words "**materially ... affects the rights or legitimate explanations of any person**" in sections 3(1), 4(1) and (5(1)) of Act 3 of 2000.

For all these reasons I am of the view that the application should be dismissed.

Obviously costs must follow the event. In my view the employment by the second and third, the fourth and the fifth respondents and by the sixth respondent of two counsel, was justified.

In the result the following order is made:

1. **The application is dismissed.**
2. **The applicant is to pay the costs of the application which shall include the employment of two counsel by the respondents.**

**C BOTHA**
**JUDGE OF THE HIGH COURT**