IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

DATE: 05/11/2009
CASE NO: 55216/09

REPORTABLE

In the matter between:

MARGUERITE LOUISE JOUBERT N.O. **(In her capacity as trustee of Sandwild Wildlife Trust)**	First Applicant
ANDRIES HENDRIK GROBLER N.O. **(In his capacity as trustee of Sandwild Wildlife Trust)**	Second Applicant
LIZEL LOUISE KACHELHOFFER N.O. **(In her capacity as trustee of Sandwild Wildlife Trust)**	Third Applicant
LIEZEL MORTIMER N.O. **(In her capacity as trustee of sandwild Wildlife Trust)**	Fourth Applicant
ENGELA ELIZABETH CORNELISSEN N.O. **(In her capacity as trustee of Sandwild Wildlife Trust)**	Fifth Applicant
MURRAY FOUNDATION CONSERVATION	Sixth Applicant
and	
MARANDA MINING COMPANY (Pty) Ltd	First Respondent
THE MINISTER OF MINERAL RESOURCES	Second Respondent
THE DIRECTOR-GENERAL: DEPARTMENT OF MINERALS & ENERGY	Third Respondent
THE REGIONAL MANAGER: DEPARTMENT OF MINING, LIMPOPO	Fourth Respondent

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JUDGMENT

MURPHY J

1. The applicants seek a temporary interdict pending the finalisation of a number of alternative claims aimed variously at obtaining judicial redress to either set aside a mining permit granted to the first respondent or to ensure compliance with the requirements for dispute resolution, compensation and environmental management provided for in the Mineral and Petroleum Resources Development Act 28 of 2002 ("the Act").

2. The first five applicants are the trustees of a trust known as Sanwild Wildlife Trust ("the Trust"). The sixth applicant is a private company that owns the land subject to the mining permit and upon which it and the Trust have established a wildlife sanctuary. The first respondent is a mining company. The second respondent is the Minister of Mineral Resources, the third respondent is the Director-General of the Department of Minerals and Energy and the fourth respondent is the Regional-Manager of the Department of Mining in Limpopo. Only the first respondent has actively opposed the application.

3. The dispute between the parties has been the subject of previous litigation which led to the decision in *Joubert and Others v Miranda Mining Company (Pty) Ltd* [2009] 4 All SA 127 (SCA). The Supreme Court of Appeal in its unanimous judgment usefully summarised the factual background in paragraphs [2] and [3] as follows:

"[2] The matter revolves around a gold mine on the land that was originally worked in the 1890's, after which all mining activities ceased. However, mineral sampling reports conducted subsequently indicate that the land remains mineral-rich. The title deed records that, subject to certain conditions, the mineral rights on the land vested in the State. In any event, when the Mineral and Petroleum Resources Development Act, 28 of 2002 (the Act) came into effect on the 1st of May 2004 the State became the custodian of all minerals in the whole of the Republic of South Africa. The portion on which the mineral rights are found cover 0,3 per cent or 1,5 hectares of the land. For convenience I refer to this portion of the land as the mineral rights area.

[3] The respondent acquired the mineral rights in February 2005 from Dynamic Mineral Development (Pty) Limited whose predecessor-in-title had acquired them in 2002 from the Department of Minerals and Energy (DME) representing the State. At the time the respondent acquired the mineral rights, Come Lucky (Pty) Limited (Come Lucky) was the owner of the land. The Deed of Transfer in terms of which the DME alienated the mineral rights defined these as "certain 20 unnumbered base mineral claims.'

4. After acquiring the mineral rights the first respondent applied to the Minister of Minerals and Energy for a mining permit and a prospecting right under the Act. Only the mining permit is at issue in the present matter. Mining permits are typically granted in the case of small scale mining. In terms of section 27 of the Act a mining permit may only be issued if the mineral in question can be mined optimally within a period of two years and the mining area in question does not exceed 1.5 hectares in

extent. Any person who wishes to apply for a mining permit has to lodge the application at the office of the Regional Manager in whose region the land is situated. If the application complies with certain formalities the Regional Manager is obliged to accept the application. Within 14 days after accepting the application the Regional Manager has to make known that an application for a mining permit has been received in respect of the land and must call upon interested and affected persons to submit their comments regarding the application within 30 days of the notice. If a person has objections to the granting of a mining permit, the Regional Manager has to refer the objections to the Regional Mining Development and Environmental Committee to consider them and advise the Minister in this regard. If the Regional Manager accepts the application, within 14 days from the date of acceptance he must notify the applicant in writing to submit an environmental management plan and also to notify in writing and consult with the owner and lawful occupier of the land and any other affected persons and submit the result of the said consultation within 30 days from the date of the notice - section 10 and section 27(5) of the Act. If the requirements for a mining permit are satisfied, and there have been no objections and the applicant has submitted the environmental management plan, the Regional Manager is obliged to issue the mining permit (section 27(6)).

5. In terms of section 27(7) of the Act the holder of a mining permit may enter the land to which it relates for the purpose of constructing infrastructure

which may be required for the purposes of mining and may mine for the mineral to which the permit relates. As the Supreme Court of Appeal intimated in the judgment cited, with the introduction of the Act, mining law in South Africa has altered fundamentally by virtue of section 3(1) of the Act which provides that mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans. The Act accordingly establishes a scheme whereby mining is accomplished through the grant of various rights and permits by the State acting in its capacity as custodian. In *Meepo v Kotze and Others* 2008 (1) SA 104 (NC) the court stated that the Act effects a "prevalence of State power of control over the mineral resources of the Republic and the concomitant ousting of the (mineral) rights of the land owner and/or the holder of mineral rights". The holder of a mining permit is able to encroach significantly upon the rights of the owner of the land where the mineral deposits exist. The provisions of the Act constitute the legal and administrative framework for balancing the conflicting rights and interests involved.

6. The first respondent applied for the mining permit in April 2005 to the relevant Regional Manager of the Department of Minerals and Energy in Limpopo. In terms of section 27(5) of the Act, as I have indicated, once the Regional Manager accepted the application, as he did in this instance, he was obliged within 14 days from the date of acceptance to notify the applicant for a permit to submit an environmental management plan and

notify in writing and consult with the land owner, lawful occupier and any other affected parties and submit the results of that consultation within 30 days. On 17 June 2005, the general manager of the first respondent wrote a letter to the representative of the then owner of the land, Come Lucky (Pty) Ltd ("Come Lucky"), informing it that the Regional Manager had accepted the application and making certain proposals. It also lodged an environmental management plan in July 2005. The legal representatives of Come Lucky lodged an objection against the application in a letter dated 29 June 2005. The relevant part of this letter reads:

> "As you are aware, our client is actively involved in the operation of an eco-tourism business on the farm which has necessitated the commitment of extensive capital. It has also required the employment of skilled and dedicated staff in establishing the infrastructure. Furthermore, the business encompasses *inter alia* game breeding, game capture and safari operations with the attendant game hunting lodge and game camp. You will appreciate that this operation has required the erection of game fencing and the acquisition of appropriate vehicles and machinery, as well as construction and maintenance appropriate to the operation.
>
> We are in receipt of your letter hand-delivered to these offices on Monday, 20 June 2005.
>
> The purpose of this correspondence is to register our client's objection to the proposed mining activities your Company wishes to undertake on the farm.
>
> The proposed mining operations will undoubtedly have a deleterious impact on the eco-tourist and environmentally orientated activities of our client and the nature of its

business. Without in any way limiting the effects of the proposed mining activities, the deleterious impact and ecologically degrading results include, but are not limited to *inter alia*:

1. The disturbance of game and game breeding operations arising from the noise and blasting associated with the mining operation;

2. The cancellation of safaris as a result of the noise and disturbance of drilling and mining operations; and

3. The general degradation and pollution of the environment arising from the open cast mining operations.

You will appreciate the impact that this will have on our client's business, as well as on the area as a whole.

Please confirm receipt of this objection. We have taken the liberty of sending a copy to the Department of Minerals and Energy.

7. On 15 July 2005 the first respondent placed a notice in a local newspaper advising that it had initiated an environmental assessment process in respect of its applications and invited interested and affected parties to a public meeting on 22 July 2005. The advertisement appears not to have attracted much interest and few or no people attended the meeting. The Minister ultimately granted the respondent the mining permit on 21 September 2006 and approved the environmental management plan on 19 December 2006. These decisions were not challenged by the then

owner of the land, Come Lucky, when it was eventually informed of the permit in March 2007.

8. The original mining permit specifically provided that it would be valid from the date of issue until 20 September 2008 and could be renewed for three periods not exceeding one year each. The permit is thus in accordance with the provisions of section 27(8)(a) of the Act which provides that a mining permit is valid for the period specified in the permit which may not exceed a period of two years and may be renewed for three periods, each of which may not exceed one year. Such is consistent with the legislative purpose of issuing mining permits for smaller scale and restricted mining operations.

9. On 25 June 2007, Come Lucky sold the land to Wilduso 103 (Pty) Ltd which later changed its name to Murray Foundation Conservation Holdings (Pty) Ltd, the sixth applicant. The first respondent only became aware of the sale of the land to the sixth applicant during October 2007. A "voetstoots" clause in the sale agreement records that the sixth applicant was aware of the mining claims of the first respondent. Clause 4.3 of the agreement reads:

> "The parties further record that the Purchaser is aware of the mining claims over the Property, including but not limited to *inter alia*, the Application for Mining and Prospecting on a portion of the Property by the Maranda Mining Company and that

the Sellers have lodged an objection to such an Application and that the Application and claims do not constitute a bar to the successful conclusion of this Agreement."

10. Despite the fact that the first respondent had informed Come Lucky in March 2007 of the mining permit and had provided its attorney with a copy in April 2007, the "voetstoots" clause did not record that the permit had in fact been granted and the objection by Come Lucky had been unsuccessful at the time the sale agreement was concluded.

11. During the first half of 2007, the first respondent sought but failed to obtain access to the land in terms of the mining permit in order to commence mining activities. The Act, in section 54, provides for a specific procedure to deal with such an eventuality. It provides that the permit holder must notify the Regional Manager if it is prevented from commencing or conducting mining operations because the owner or lawful occupier of the land refuses to allow the holder to enter the land or places unreasonable demands in return for access to the land. The Regional Manager, in terms of the section, must within 14 days call upon the owner or occupier to make representations regarding the issues raised by the permit holder and inform it of any steps that might be taken if the contravention of the Act is persisted with. After considering the issues raised by the permit holder and any written representations made by the owner or occupier, if the Regional Manager concludes that the owner or lawful occupier is likely to suffer loss or damage, he or she must request the parties concerned to

endeavour to reach an agreement for the payment of compensation. In terms of section 54(4) of the Act, if the parties cannot reach agreement, compensation must be determined by arbitration or by a competent court, a judge of the High Court. Where the Regional Manager determines that the failure to reach agreement is due to the fault of the permit holder, he or she may prohibit the permit holder from commencing or continuing with the mining operations until such time as the dispute has been resolved by arbitration or the competent court (section 54(6)). Section 54(7) allows the compensation process to be initiated in similar vein by the owner or occupier who has suffered or is likely to suffer any loss by the conduct of mining operations.

12. On 11 July 2007, the Regional Manager, Limpopo, acting in terms of section 54(2), addressed a notice to Come Lucky regarding the refusal to grant the first respondent access and called upon it to make representations and show cause why the first respondent should not be allowed access to the land. On 13 September 2007 the attorneys of the Trust addressed a letter to the Department of Minerals and Energy informing it that the Trust had taken occupation of the land pursuant to the sale agreement and that the land had been incorporated into a wild life conservancy which accommodated game, including a herd of elephant. The letter went on to state that mining operations on the land would be disruptive and dangerous.

13. The letter does not state when the Trust or the sixth applicant took occupation of the land. The date has acquired relevance because the applicants contend that their rights to be notified and consulted in terms of section 27(5) of the Act were not honoured with the possible consequence that the permit may be reviewable on the ground that a mandatory and material procedure or condition prescribed by the Act was not complied with. The first respondent contends that the notification and consultation with Come Lucky, the then owner and occupier, was sufficient compliance. The latter notification and consultation occurred during June and July 2005. The mining permit was granted to the first respondent after that, in September 2006.

14. In paragraph 36 of her founding affidavit the first applicant states that from September 2005 the Trust had joint occupation of the land with Come Lucky. In the documentation filed in the internal appeal proceedings pending before the department, the first respondent contended that the claim by the first applicant to have been in occupation since September 2005 was not true. It alleged that the Trust only took occupation in August 2006. To this the first applicant replied that the Trust became the lawful occupier before the grant of the permit and added in contradiction of what is said in her founding affidavit that: “at no stage did Sanwild (“the Trust”) allege that it was the occupier of the relevant land as far back as 2005”. She did not however state precisely when the Trust became the occupier.

In paragraph 136 of the answering affidavit in these proceedings the first respondent drew attention to the discrepancy as follows:

> "The applicants have purposely omitted to provide any facts or present any contractual basis as to when they obtained occupation of the land and knowledge of the first respondent's rights. The objections of Come Lucky was dealt with by the second and third respondents in their decision-making process. In reply to the appeal documents, the first respondent who now wants to contend that she was on the property in 2005, stated that she was not the occupier of the land and never contended that it was the occupier of the land as far back as 2005."

15. The first applicant does not deal with averment satisfactorily in reply. In particular, she fails to state when exactly the Trust took occupation. The best evidence of the date of occupation is found in clause 5.1 of the sale agreement which reads:

> "The parties record that the purchaser's agent is already in occupation of the property and has been so since 1 August 2006."

16. It is common cause that the Trust was the agent in question. Therefore the fact put up by the respondents that occupation occurred on 1 August 2006 is a fact set out by the respondent which the applicant cannot and does not effectively dispute. Accepting this as the relevant date would mean that the Trust took occupation seven weeks before the permit was granted, eleven months before the sale of the land and more than a year

after the first respondent had notified and consulted with Come Lucky, who then lodged an objection. Neither Come Lucky, the Trust, nor the sixth applicant, appear to have taken any steps to join in the objection lodged by Come Lucky on 29 June 2005, despite the fact that all parties were aware of the objection as is recorded in clause 4.3 of the agreement, the “voetstoots” clause.

17. In February 2008 the first respondent launched an application to gain access to the land in terms of the permit. Claassen J, in this division, granted the order. When leave to appeal was granted to the applicants to appeal the order of Claassen J, to the Supreme Court of Appeal, the first respondent suspended its mining operations. The appeal by the applicant to the Supreme Court of Appeal was dismissed in May 2009.

18. The applicants also brought an application in April 2008 seeking a declarator against the first respondent ordering it to comply with the environmental management plan. This application culminated in an order by consent containing an interim arrangement regulating access and including various undertakings with regard to trees and vegetation in and outside the prospecting and mining area.

19. About nineteen months after the mining permit had been granted, on 7 April 2008, the applicants filed an internal appeal against the decision to grant the permit in terms of section 96(1) of the Act, which allows any

person whose rights or legitimate expectations have been materially and adversely affected, or who is aggrieved by any administrative decision, to appeal to the Director-General against a decision by a Regional Manager.

20. On 5 June 2008 the first respondent applied in writing to the Regional Manager, Limpopo, for renewal of the mining permit which was due to expire on 20 September 2008. The application for renewal was filed therefore about 15 weeks before it was due to expire. The permit renewal, Annexure B3 to the founding affidavit, was issued on 21 September 2008, and being a renewal was to be valid only for one year until 20 September 2009. It does not appear *ex facie* the renewed permit when exactly the decision to renew the permit was taken. The date of issue, 21 September 2009, was a Sunday.

21. After the decision of the Supreme Court of Appeal was handed down in May 2009, the parties engaged in negotiations regarding the proposed point of access by the first respondent to the land. A dispute then arose over the proper interpretation of the court order permitting access. In July 2009 the first respondent entered into contracts with the owner of the adjacent property to facilitate access which all parties agreed would be less intrusive to the applicants. Later that month a dispute arose when the first respondent began fencing off the prospecting area. This led to a further deterioration in the relationship, and ultimately the launching of this application for an interdict.

22. On 3 June 2009 the applicants lodged an internal appeal against the first renewal of the mining permit on 21 September 2008. The permit was again renewed on 21 September 2009 for a further year. This latter renewal is not the subject of an internal appeal.

23. There is no clear indication on the record of precisely what steps the Director-General has taken to process the appeals against the initial grant of the permit and the subsequent renewal of it. There is though correspondence to the effect that certain documents are outstanding and that the matter will receive consideration in the near future.

24. The applicants have brought the application for a temporary interdict on an urgent basis. As already stated, they seek the interdict pending the finalisation of a number of alternative claims. The claims are aimed at either setting aside the mining permit or directing the first respondent to comply with the requirements of the Act in relation to dispute resolution, compensation and environmental management.

25. The first respondent has disputed whether the application is urgent. It contends that the urgency is self created by the applicants' delay in taking the necessary steps relating to the administrative decisions which they contest, and not, as the applicants allege, because of the imminent mining and blasting activities which will harm the immediate environment and disturb the wild animals on the land. It is common cause that the

applicants took no steps to request the Director-General to suspend the permit pending the internal appeal. Section 96(2) of the Act provides that an internal appeal in terms of section 96(1) does not suspend the administrative decision appealed against, unless it is suspended by the Director-General or the Minister as the case may be. As I understand the point made by the first respondent in this regard, and it has relevance beyond the question of urgency, the failure by the applicants to seek suspension of the permit has exacerbated the difficulties for both parties; for the applicants by leaving the lawful authority in place; and for the first respondent by causing the limited time period of validity to continue running. That said, I am nonetheless prepared to take a liberal approach to the question of urgency. The first respondent has suffered no prejudice by the abridgement of the prescribed times and an early hearing. I agree with the applicants that it will be in the interests of all parties for clarity to be obtained before actual mining commences. Any prejudice to the first respondent is overshadowed by the extensive encroachment upon the property rights of the applicants which the mining permit will allow; and it is best that such should only happen with some measure of confidence that the activities and operations are not deserving of prohibition. I accordingly am prepared to dispense with the ordinary forms and services and to allow the matter to be heard as one of urgency.

26. The requisites for an interim interdict are well known. The applicants are obliged to show that the right which is the subject matter of the main

application which they seek to protect by means of interim relief is clear, or if not clear, is *prima facie* established, though open to some doubt. If the right is only *prima facie* established then it must be shown that there is a well grounded apprehension of irreparable harm to the applicants if the interim relief is not granted and they ultimately succeed in establishing their right; that the balance of convenience favours the granting of interim relief; and that the applicants have no other satisfactory remedy. In determining whether the applicants' *prima facie* right is established, the court should have regard to the facts put up by the applicants, the facts set out by the respondent which the applicants cannot dispute, and the inherent probabilities, and then should consider whether the applicants could obtain final relief at the trial of the main action or application. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicants, they cannot succeed - *LF Boschoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (C) at 267B-F; *Simon N.O. v Air Operations of Europe AB and Others* 1999 (1) SA 217 (SCA) at 228G-H.

27. The first respondent has commenced preparatory mining activities on the land and on 23 September 2009 gave notice to the applicants that it intended to commence with blasting. The obvious concern of the applicants is that once blasting and the other mining activities commence, it will be difficult to undo the results. The applicants contend they are

entitled to the interim interdict pending the finalisation of the other relief they seek.

28. The notice of motion is divided into eight parts, effectively eight applications seeking various relief. Part A is the urgent application to obtain the temporary interdict restraining the first respondent from conducting the mining activities pending the finalisation of the relief contained in parts B-H of the notice of motion. Part B is an application declaring that the renewal of the mining permit on 21 September 2008, the first renewal, is void. Part C is an application directing that the second and third respondents should finalise the internal appeal against the granting of the mining permit, alternatively that the mining permit be cancelled. Part D is an application to review the grant of the mining permit in the event that the internal appeal is dismissed by the second and third respondents. Part E is an application to compel the second and third respondents to finalise the internal appeal against the renewal of the permit on 21 September 2008. Part F is an application to review the renewal of the mining permit, in the event that the internal appeal by the second and third respondents is dismissed. Part G is an application to direct the first respondent to finalise several outstanding issues pertaining to the mining permit and execution thereof, before it commences with mining. Part H is an application to compel the first respondent to comply with the provisions of the environmental management plan and adhere to its stipulations of the environmental management plan. The applicants

contend that if they make out the *prima facie* case in respect of any of the grounds set out in parts B-H, they will have established a *prima facie* right entitling them to interim relief in the event of the other pre-requisites for an interim interdict also being present. Should any of the applications in part B-H of the notice of motion be granted it would have the effect of putting a stop to mining on the land or at least directing how the mining should be conducted taking into account the applicants' interests. It should also be kept in mind that the applicants have only to succeed on one of the grounds set out in part B-H to give rise to the result.

29. The subject matter of the claim in part B is the procedural right to obtain a declarator to the effect that the renewal of the mining permit on 21 September 2009 was void. Two sections of the Act are relevant. Section 27(8)(a) provides that a mining permit is valid for the period specified in the permit, which may not exceed a period of two years, and may be renewed for three periods each of which may not exceed one year. Section 56(a) of the Act provides that any permit granted or issued in terms of the Act shall lapse whenever it expires. The applicants contend that on a proper reading of these provisions a mining permit can only be renewed before it has lapsed, that is, before the date of expiry of the first two year period. They submit that the renewal in this case was only issued on 21 September 2009, whilst the permit, in terms of section 56(a) of the Act, lapsed on the previous day.

30. The applicants have placed reliance on the other provisions of the Act dealing with the expiry of prospecting rights, mining rights, exploration rights and production rights. In respect of these, the Act provides that a right in respect of which an application for renewal has been lodged shall, despite its stated expiry date, remain in force until such time as such application has been granted or refused - see, for example, section 18(5); section 24(5); section 81(5); and section 85(5). These provisions in respect of those rights provide for the extension of validity beyond the date of expiry. In regard to mining permits, so the argument goes, there is no similar provision extending the validity of the permit beyond the date specified in the permit. It is thus submitted that the legislature consciously and expressly created transitional arrangements in regard to the other rights, but deliberately did not do so in respect of mining permits. Accordingly, it was further submitted that for a mining permit to remain valid after the initial expiry date, its renewal as provided for in section 27(8)(a) has to occur prior to the expiry date. If that is not done, the result will be that in terms of section 56(a) the mining permit would finally lapse.

31. In support of these submissions the applicant argued that the position in regard to the expiry of a mining permit is comparable to that which applies to the expiry of a liquor licence where the courts have held that once expired there was no power to renew it. They rely on *Winkelbaur and Winkelbaur t/a Erics Pizzeria and Another v Minister of Economic Affairs and Technology and Others* 1995 (2) SA 570 (T) at 574D; and *Montagu*

Springs (Pty) Ltd t/a Avalon Springs Hotel v Liquor Board, *Western Cape and Others* 1999 (4) SA 716 (C) at 721. I am of the view that the applicants' reliance on these authorities is misplaced. In *Montagu Springs* the appellant had been the holder of a valid hotel liquor licence issued to it in terms of the Liquor Act 27 of 1989. It had however not paid its annual liquor licence fees and as a result its licence had lapsed on 1 January 1998 in terms of the provisions of sections 107 and 108 of that Act. On appeal the appellant admitted that its liquor licence had in fact lapsed and contended that the relevant provisions conferred rights exclusively on the liquor board and that the sections were enacted for its special benefit. As the public interest was not involved in the application, so the appellant submitted, the Liquor Board's rights could be validly waived in the discretion of the Liquor Board and where that happens the court had the power to restore or revive a lapsed licence and to order and authorise the authorities to accept late payment of the annual fees. The court's conclusion, with reference to the wording and timeframes set out in section 108 of the Act, was that the court lacked power to revive a liquor licence once it has lapsed. Accordingly, these decisions are specific to the empowering provisions of the legislation in question and are not authority for the general proposition that once a licence or a permit has lapsed it cannot be renewed. That rather depends on the language and structure of the provisions regulating the permit or licence in question.

32. In this instance the relevant provision, section 27(8)(a), makes it clear that a mining permit may be renewed for three periods each of which may not exceed one year. The first respondent has submitted, with reference to the Concise Oxford English Dictionary 11th edition page 1217, that the word "renew" bears the following meaning:

> "Resume or re-establish after an interruption; give fresh life or strength to; extend a period of validity of (a licence, subscription, or contract); replace or restore (something broken or worn out)."

In *CUSA v Tau Ying Metal Industries* 2009 (2) SA 204(CC) at 232, the Constitutional Court had an opportunity to pronounce upon the meaning of the words "amend", "extend" and "replace". It stated as follows:

> "The words "amended" or "extended" presuppose the continued operation of the same agreement and the continued application of the exemption granted in respect of the agreement. The exemptions apply to the agreement in respect of which they were granted if the agreement is "amended" or "extended". The meaning of the word "replaced" which fits into this context is "renewal", which is consistent with the continued operation of the same agreement. To my mind the word "replace", as used in the context of the exemption, is used in the first sense, namely to put back again in place or to restore to a previous place or position. In relation to the industrial council main agreement it means to renew or re-enact the main agreement."

33. Applying such to the present case it would mean that the concept of renew as is used in section 27(8)(a) of the Act means that the permit is restored

or re-established on the same terms. It is effectively re-enacted. There is no immediate apparent justification for holding as a general proposition that this can occur only before the original permit has lapsed. There is no reason in principle why such could not occur after an interruption. Thus, the first respondent has submitted that the applicants' argument confuses the concept of renewal with the extension of a period of time set by legislation within which something has to be done.

34. In *Consolidated Textile Mills Ltd v President of the Industrial Court and Others* 1989 (1) SA 302 (A), the court was concerned with a dispute referred to an industrial council in terms of section 43 of the Labour Relations Act 28 of 1956. After the 30 day period for the settlement of the dispute by the industrial council had expired, an official of the Department of Manpower purported to granted an extension (in terms of section 46(9)(a)(i)) of the said 30 day period for the settlement of the dispute. The industrial council then settled the dispute in favour of the employer. The union and its members considered the settlement of the dispute to have been unlawful and contended that the dispute should be referred to the Industrial Court for determination. The provincial division held that the industrial council's authority to settle the dispute had terminated when the 30 day period had expired and that the purported extension of the period was not a valid one. The Appellate Division agreed. Corbett JA had regard to various provisions of the governing legislation and noted that there were a number of sections of the Act in which a period is specified

for the doing of a certain act and provision is made for some person or body to fix a further period or periods within which the act may be done. In a number of those provisions the formula used made it quite clear that the body was empowered to fix the further period or periods either before or after the expiry of the original specified period. In contrast to this, in a number of other sections dealing with the power to fix a further period or periods for the doing of the act, including the subsection under consideration, the formula used followed much the same wording, but with the important difference that it omitted the words "either before or after the expiry of any such period". He then concluded:

> "The difference in the wording of the two formule used for fixing, or determining, a further period or periods for the doing of the act in question must, in my view, be taken to have been deliberate; and this deliberate change of wording must represent a difference of intention. The only possible explanation seems to me to be that where it is not expressly stated that the fixing of the further period or periods may be before or after the expiry of the original period, then the intention was that such fixing has to take place before the expiry of this period; and, of course, where it is so expressly stated, then such fixing may take place before or after such expiry. (308 A-B)"

35. This authority may lend support to the applicants' contention that having regard to the other provisions in the Act regulating the renewal of rights other than mining permits, the renewal ought to have been done before the expiry of the permit in order to be valid. On the other hand and most

importantly, it is uncertain on the facts before me, whether the renewal was granted after or before the expiry of the initial period. The permit was *issued* on 21 September 2008. That in itself does not establish that the permit was renewed after the expiry of the period. It is common cause that the application for renewal was made 15 weeks before the renewal was issued. The issuing stamp bears the date 21 September 2008, a Sunday. It is possible that the decision to renew occurred before then. It is therefore not possible on the papers to determine when the permit was in fact renewed. The fourth respondent has not filed an affidavit specifying the date he or she decided to renew the permit.

36. The first respondent has contended that even if one were to accept the applicants' argument, it would not necessarily follow that the renewed permit would be set aside. A compelling case has been made that the application to review and set aside the permit was not launched timeously and was brought after unreasonable delay. Section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") provides that proceedings for judicial review must be instituted without unreasonable delay and not later than a 180 days after the date on which the person concerned was informed of the administrative action or became aware of the action and the reasons for it, or might reasonably have been expected to have become aware thereof. The applicants stated that they only became aware of the renewal of the permit on 4 May 2009. The respondents submit that by acting prudently they would have become aware of it when

it was issued on 21 September 2008. They knew that the permit was going to expire. Yet, they only brought the application for review on 7 September 2009, that is nearly 12 months after the permit was renewed and some 4 months after they claim they were informed thereof. When the Supreme Court of Appeal confirmed the judgment regarding access on 21 May 2009, the applicants engaged in a negotiation process with the first respondent. As part of that process the first respondent engaged the adjoining neighbour in order to acquire an interest in its land for the purpose of gaining access to the applicants' land in a more convenient fashion. The first respondent purchased the interest in the neighbouring land at a cost of R3.5 million after the renewal of the permit and after the judgment was handed down in the Supreme Court of Appeal. Thereafter lengthy negotiations pursued in respect of a number of issues between the parties. Throughout this the applicants took no steps at all to bring any review in respect of the permit renewal.

37. The first respondent asserts that the applicants unreasonably delayed in bringing the review proceedings and as a result have caused severe prejudice to the first respondent. They stood by while the first respondent purchased an interest in a neighbouring farm for the purpose of gaining access. They submit consequently that it is unlikely that a court will set aside the renewal because the application for judicial review in respect of it was unreasonably delayed. There is merit in that submission, though the merits of the application may yet outweigh those considerations. In

conclusion, therefore, the first respondent submitted that the application to have the renewal declared void established no *prima facie* right. I will return to this critical and ultimately determinative question after first outlining the rights and relief of issue in the other parts of the application.

38. Part C and part D of the notice of motion seek relief in relation to the grant of the mining permit in the first place. As mentioned earlier, part C is an application for an order directing the second and third respondents to finalise the internal appeal against the grant of the mining permit, and part D is an application to review the grant of the mining permit in the event that the internal appeal is dismissed by the second and third respondents. The rights then which are the subject matter of the relief claimed in these instances are the procedural right to obtain a *mandamus*; the procedural right to be successful in the appeal; and the procedural right to the review of the permit.

39. The permit was granted on 21 September 2006. The applicants lodged the appeal on 8 April 2008. Regulation 74(1) of the regulations enacted under the Act requires an appeal to be lodged within 30 days after a person has become aware, or should reasonably have become aware of the administrative decision concerned. Regulation 74(4) provides that the appeal authority may in his discretion and on such terms and conditions as he may decide, condone the late noting of an appeal. The respondents contend that there is no proper application for condonation. In paragraph

2.1 of the appeal document it is simply stated that the appellant did not know that it could appeal against an administrative decision and was only informed by its counsel during 2008 of the internal appeal process. One tends to agree with the first respondent that there is no proper condonation application and not much in the way of good cause has been set out that would justify granting condonation. Accordingly, it seems unlikely that condonation will be granted.

40. However, even were condonation granted, the grounds of appeal are not strong on the merits. The appeal is based upon the alleged failure by the first respondent to consult with the applicants in terms of section 27(5)(b) of the Act and the failure by the Regional Manager to call upon the Trust as an interested and affected party. As set out above, section 27(5)(b) requires the Regional Manager to direct the applicant for a permit within 14 days of the acceptance of the application to notify in writing and consult with the landowner, lawful occupier and affected persons within 30 days of the notice. Similarly, section 10 provides that within fourteen days after accepting the application the Regional Manager must call upon interested and affected parties to submit their comments regarding the application within 30 days from the date of the notice. It is common cause that the first respondent by letter dated 17 June 2005 informed Come Lucky of the acceptance of the application and invited it to object to the granting of the permit and to react to the proposals contained in the letter by no later than 30 June 2005. Come Lucky responded to the letter and registered its

objection on 29 June 2005. For the reasons I have already explained, it must be accepted for the present proceedings that the first applicant and the Trust only occupied the land from 1 August 2006. It was therefore not entitled to be consulted in terms of section 27(5)(b) of the Act. It also did not join in the objection despite being made aware of it in the sale agreement. Moreover, the applicants do not make out a case that the Regional Manager did not comply with the provisions of section 10.

41. It follows that the internal appeal and review against the original grant of the mining permit have extremely limited prospects of success, and it is therefore more than doubtful that either gives rise to a clear right entitling them to the relief sought. Moreover, the review of the appeal decision is problematic by virtue of its hypothetical nature. There is as yet no specific decision taken against which a review can be launched at this stage. The review application is premature as the internal appeal has not been finalised.

42. The relief sought in parts E and F of the notice of motion relate to the renewal of the permit. On the assumption that the renewal is valid, the applicants seek under part E to compel the second and third respondents to finalise the internal appeal against the renewal, and part F deals with the application to review the renewal of the mining permit in the event that the internal appeal by the second and third respondents is dismissed. In this case the appeal was lodged within the 30 days prescribed by the

regulations. However, that only occurred on 3 June 2009, about three months before this application was launched. The Department addressed a letter to the applicants on 7 August 2009 advising that it was in the process of finalising the appeals. Accordingly, it is doubtful whether a proper case for a *mandamus* has been made out at this stage. With regard to the prospects of success with this appeal, the appeal is based upon the failure of the department to call upon the applicants as interested and affected parties to submit comments on the renewal of the permit. There is no procedure for an application for renewal prescribed in the regulations. The first respondent submits that it was not contemplated by the legislature that an application for renewal had to again comply with the provisions of section 27, or that the Regional Manager should once again comply with the provisions of section 10 in respect of the renewal of the mining right. I tend to agree that it seems logical and sensible that a full application procedure is not required with the renewal of the permit. The renewal is only granted for one year at a time and the original grant of the permit already contemplates future renewals for the short periods mentioned in section 27(8). Moreover, in so far as the provisions of section 3 of PAJA apply, it should be kept in mind that section 3(4) and (5) of PAJA permit departure from the ordinary requirements of procedural fairness when it is justifiable to do so, or when the empowering provision contemplates a different procedure which would be fair. The appeal procedure in section 96 of the Act (which includes the right to seek suspension of the renewal) allows for procedural fairness *ex post facto*.

That may be sufficient compliance with the requirements of procedural fairness under the Act, particularly in relation to the renewal of a permit that has been granted after full compliance with the procedural requirements of consultation and an assessment of the environmental impact. Accordingly, I do not see either the internal appeal or review application having prospects of success on this ground. Once more, the review application is premature as the internal appeal has not yet been finalised. Accordingly no *prima fa*cie right for review has been established.

43. The subject matter of the claim contained in part G and which is sought to be protected by means of the interim relief is the alleged right to obtain a final interdict ordering the first respondent to negotiate on various topics related to the commencement of the mining operations. There has been some dispute about the access road, including an access gate, in accordance with the environmental management plan. However, this appears to be largely resolved. The other issues relate to the terms of occupation for mining purposes and the compensation payable to the applicants for the occupying of the access road and the mining permit area. The applicants allege that the first respondent must consult them before it commences with activities on the land. Accordingly, it seeks an order compelling the first respondent to negotiate with the applicants and should agreement not be reached on the measures within thirty days that any party should be allowed to apply to court for an order directing that certain measures be implemented.

44. The applicants fundamentally misconstrue their rights under the Act. I agree with the first respondent that there is no right in law to negotiate and agree the terms of occupation. The first respondent acquires a statutory right, once the permit is granted, in terms of section 27(7), to enter the land to which the permit relates, and to bring on employees, plant, machinery and equipment to construct or lay down any surface or underground infrastructure which may be required for the purposes of mining. The permit holder is also entitled to use water from any excavation previously made, or may sink a borehole required for use relating to prospecting and mining on the land. The manner in which these activities are to be conducted is regulated by the environmental management plan.

45. The consultation processes that are set down by the legislation in section 27 and section 10 relate to the period before the mining permit is granted. The only consultative interaction that the Act anticipates after approval of the mining permit is that prescribed by section 5(4) of the Act. It provides:

> "No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without -
>
> (a) an approved environmental management programme or approved environmental management plan, as the case may be;

(b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and

(c) notifying and consulting with the landowner or lawful occupier of the land in question."

46. The applicants seem to suggest that the duty on the permit holder in section 5(4)(c) imposes upon the first respondent a duty to negotiate with them to agree on the terms of occupation. This is not correct. The duty there contemplated is a duty to notify and consult. The duty to consult requires only that the permit holder engage in a consensus-seeking process involving the exchange of proposals and representations. In the event of a deadlock, after all consultative avenues have been exhausted, the scheme of the legislation anticipates that the permit holder will be permitted to proceed immediately to exercise its rights under the permit. This much is evident from section 54 of the Act. The section deals with the compensation payable under certain circumstances. It provides that where a mining permit holder is prevented from commencing mining operations because the owner or lawful occupier of the land refuses to allow access, or places unreasonable demands in return for access to the land, the holder shall then inform the Regional Manager of that difficulty. The Regional Manager must within 14 days call upon the owner or lawful occupier of the land to make representations regarding the issues raised

by the holder of the permit and inform the owner or occupier of the rights of the holder of the permit and set out the provisions of the Act which the owner or occupier may be contravening by failing to grant access. If the Regional Manager after having considered the issues raised by the holder and any written representations by the owner or lawful occupier of the land concludes that the owner or lawful occupier has suffered or is likely to suffer loss or damage as a result of the mining operations, he or she may request the parties concerned to endeavour to reach an agreement for the payment of compensation for such loss or damage. If the parties fail to reach an agreement, compensation must then be determined by arbitration or a competent court.

47. From these provisions it is clear that the only topic for consultation is the question of compensation for loss or damage suffered or to be suffered as a consequence of the mining operations. Section 54 does not include a general provision that if the parties are unable to reach agreement on compensation that the consequence of that is that the mining operations should be suspended. That will only occur where the Regional Manager determines that the failure of the parties to reach an agreement or to resolve the dispute is due to the fault of the mining permit holder. In such instances, in terms of section 54(6), the Regional Manager may in writing prohibit the permit holder from commencing or continuing with prospecting or mining operations on the land in question until such time as the dispute regarding compensation has been resolved by arbitration or by a

competent court. There is accordingly an internal remedy available to the applicants of which they have not availed themselves for reasons which are not evident.

48. Section 96(3) of the Act provides that no person may apply to the court for the review of an administrative decision until that person has exhausted his or her remedies in terms of the relevant provisions. Section 96(4) provides that sections 6, 7(1) and 8 of PAJA apply to any court proceedings contemplated in the section. Notable by its absence is any reference to section 7(2) of PAJA. This section provides that no court or tribunal shall review an administrative action in terms of the Act unless internal remedies have been exhausted and allows for a court in exceptional circumstances to exempt persons from the obligation to exhaust internal remedies. The absence in section 96(6) of any reference to section 7(2) of PAJA is an indication that the court may not exempt an applicant from exhausting its remedies under this Act on the grounds of exceptional circumstances. Consequently, the only relief available to the applicants regarding the terms of occupation and compensation arising from the mining operations is to pursue the remedies in section 54. In so far as terms of occupation may be particularly onerous, no doubt the arbitrator or court properly seized of the matter will assume the authority to grant greater compensation.

49. Moreover, in the earlier dispute between the parties, the Supreme Court of Appeal (at paragraph 14 of its judgment) held that there is no dispute that the respondent had complied with all the requirements set out in section 27(1) - (5) before the grant of the mining permit and in section 5(4) after the grant of the permit. That is an authoritative pronouncement that the first respondent is required to do no more in terms of a consultation process before operationalising the mining permit. It remains only for the applicants to refer the issue of any loss or damage it may suffer as a result of the mining to arbitration or adjudication for the purpose of determining compensation.

50. In the result, it seems to me that the applicants have no prospects of success at all in seeking an order compelling the first respondent to negotiate terms of occupation for mining purposes.

51. Finally, the subject matter of the claim contained in part H, and the right there sought to be protected by means of the interim relief, is the right to obtain a final interdict ordering the first respondent to conduct its mining activities in accordance with the environmental management plan. The interdict is not sought to protect the status quo until such time as a final interdict for prohibition of mining activities may be obtained. The orders sought relate to adherence to the plan and the limitation of the first respondent's access to the effect that it may use the 7,5 kilometer road only to gain access in order to establish a new access in accordance with

the environmental management plan. The Supreme Court of Appeal dealt with the issue of the access road and in accordance with that judgment the applicants are in principle obliged to provide access and whether such access is in specific circumstance reasonable or not will depend upon the facts that may arise from time to time. It is clear that the intention of the first respondent is to provide for a more convenient access road from the adjoining farm.

52. The only other issue raised under this head is that certain trees and grasses in the mining permit area have been uprooted contrary to the environmental management plan. The respondent takes the view that it is not necessary that it be ordered to comply with the environmental management plan. If the contravention of the environmental management program has already occurred then an interim interdict can serve no purpose. No case is made out regarding any future violations that are anticipated or pending. Moreover, in terms of section 47 of the Act, the Minister may cancel or suspend any mining permit if the holder thereof is contravening the approved environmental management program. This remedy too should be exhausted before seeking relief from this court.

53. From the foregoing analysis, there is significant doubt about whether any of these claims establish *prima facie* rights entitling the applicants to the relief they seek. The only application that strikes me as possibly having some merit is that in part B which alleges that the renewal of the permit is

void by reason of the renewal having occurred after the expiry of the permit. The line of reasoning in the *Consolidated Textile Mills Ltd* case supports the contention by the applicants that the difference in treatment of the expiry of the permit under section 27(8) when compared to the expiry of the rights and permits under other sections means that once expired the permit is incapable of renewal after the expiry date. On the other hand, the peculiar context of labour relations and dispute resolution that was applicable in that case serves to distinguish it from the present case. Provision for the expiry of a process in a dispute resolution system is fundamentally different to the expiry of a licence or a permit. A contextually sensitive interpretation of the renewal of a permit to mine would take account of the fact that the first period of mining under the permit would involve extensive investment of capital and human effort to achieve the objectives of the permit. Under a dispute resolution system, on the other hand, the interests of finality and speed in resolving disputes and the relative strategic bargaining positions of the parties are key relevant factors, which find no place in the context of renewing mining permits. The limited period of renewal of a mining permit has as its purpose the temporal limitation of small scale mining to minimise the harmful effects on the landowner. Provided the decision maker effects the renewal of lapsed permits with that objective in mind, there can be no objection in principle or policy to the renewal or the re-enactment, taking place after the lapse of the permit. Consequently, even here I doubt whether the applicants have established a *prima facie* right. And even

more pertinently, as I have explained, it may also be that the permit was in fact renewed before it expired. The facts are not sufficiently clear on this critical aspect. Such being the case, the maxim *omnia praesumuntur rite esse acta* compels a factual finding of compliance in the face of the doubt occasioned by the insufficiency of the evidence.

54. However, lest I be mistaken, and the applicants have indeed established a *prima facie* right under part B of the notice of motion, that alone would not entitle them to the grant of an interim interdict. They need to show also that they will suffer irreparable harm if the relief is not granted. The irreparable harm the applicants claim they will suffer is that to the environment if the first respondent continues with its activities. They contend that the effect of open cast mining and blasting on the wild animals will be horrific, especially taking account that many of the animals will be traumatised. In this regard, in order to keep proper perspective, it must be emphasised that the portion on which the mineral rights are found covers 0,03% of the land, being 1.5 hectares of a total of 2604 hectares of land. The applicants also submit that there is a scarcity of water on the farm. There are two flooded mine shafts in the mining permit area, that the applicants believe should rather be used to provide water to the animals. They claim that what the first respondent proposes to do is similar to conducting open cast mining and blasting in the Kruger National Park and there is danger that some of their supporting donors will withdraw their financial support.

55. In other words the applicants are seeking to prevent damage to the property itself by means of open cast mining and any harm to the wildlife sanctuary conducted on their land.

56. The respondents submit in contrast that the mining activities will not cause irreparable harm as provision is made for rehabilitation of the damage done to the environment in terms of the environmental management plan which has been approved by the Department. The first respondent has an obligation, in so far as it is reasonably practicable, to rehabilitate the environment affected by the mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development. In terms of section 43 of the Act, the holder of the permit is responsible for any environmental and ecological degradation and this liability extends beyond the lapsing of the permit. Moreover, before the permit is granted financial provision has to be made for rehabilitation. The first respondent has lodged R200 000 with the Department for this purpose. It is possible for the applicants to seek for this amount to be increased. Moreover, the applicants are entitled to compensation.

57. It follows that the harm to the land itself cannot be described as irreparable and also falls within the scope of what a mining permit holder is lawfully entitled to accomplish even at the expense of the landowner. It

is one of the notable features of mining law that the rights of the landowner are often subjugated to those of the person with mining rights.

58. With regard to the wildlife sanctuary, the respondent makes the point that the sanctuary was established after the purchase of the land from Come Lucky, with full knowledge of the application for the mining permit as well as the conditions relating to access for mining purposes contained in the title deed. The applicants took the risk of establishing a wildlife sanctuary on land which has been subjected to mining rights and activities for more than a hundred years.

59. Section 53 of the Act provides that any person who intends to use the surface of any land in any way which may be contrary to any object of the Act or which is likely to impede any such object, must apply to the Minister for approval in the prescribed manner. The applicants were required, in terms of this section, to obtain the approval of the Minister to use the land as a wildlife sanctuary and they have failed to do so. The use of the land as a wildlife sanctuary does not fall within the exceptions provided for in section 53(2) of the Act. The applicants have consistently maintained that the land is not used for farming (one of the exceptions) but that it is rather used for environmental protection, species conservation and environmental education and training.

60. The use of the property by the applicants as a wildlife sanctuary would appear to be unlawful. In terms of regulation 7 of the regulations enacted under the National Environment Management: Biodiversity Act, 10 of 2004, no person may operate a captive breeding operation, sanctuary or rehabilitation facility unless registered in terms of the Act with the issuing authority. The applicants are in possession of permits to continue such activities on another farm, Harmony. It is apparent from the terms of those permits that the authority is limited to the particular farm. Accordingly, there is no permit entitling the applicants to conduct the sanctuary on the land in question. Therefore the respondent is correct in its submission that the harm against which the applicants seek to be protected is of their own making and the consequence of unlawful conduct on their part.

61. In the result, I am not persuaded that the applicants will suffer irreparable harm if the interdict is not granted.

62. Where an applicant for an interim interdict establishes a *prima facie* right open to some doubt, it is also within the court's discretion to refuse to grant the interdict if it is of the view that the balance of convenience favours the respondent. The mining permit was issued to the respondent for a period of two years. In terms of section 27(8) of the Act, as we have seen, it may only be renewed for a further three periods of one year each. The permit was issued on 21 September 2006 and expired on 20 September 2008. It was further renewed for one year to 20 September

2009 which date has also come and gone and a second renewal was then granted to 20 September 2010. Therefore only one further renewal for one year is possible until 20 September 2011. The mining activities contemplated, as set out in the application for the permit, will take some 18 months to complete. If the interim relief is granted, the first respondent's permit to mine will effectively be rendered nugatory. In the process it will lose not only the substantial profit to be made by the mining activities, estimated to be R1.2 million per month, but also the R14 million already invested in preparation for the mining, including the R3.5 million paid for the interest in the adjoining farm.

63. On the other hand, it is common cause that the mining will be restricted to 1.5 hectares of the total of the farm measuring 2604 hectares. The area where the mining activity will occur has already been scarred by mining activities over the past century and contains numerous pits, slopes and trenches. Added to that, the mining period will be for a short period of 18 months, whereafter the mining works will have to be rehabilitated in accordance with the environmental management plan.

64. Furthermore, the delay in bringing the review application must be taken into account in assessing the balance of convenience. The applicants have clearly delayed unreasonably on a number of occasions and it is clear that had the review of the original permit been brought expeditiously

the first respondent could have been spared both expense and considerable inconvenience.

65. Associated with the latter point, is the fact that the applicants have also had available to them a number of alternative remedies that if applied expeditiously would have been more effective than attempting to interdict the mining operations at the eleventh hour. The applicants could have filed their appeal in terms of section 96(1) timeously and engaged the Minister or the Director-General in terms of section 96(2) of the Act to have the permit suspended pending the internal appeal. The applicants took no steps whatsoever to avail themselves of this remedy, which obviously would have been the most appropriate remedy in the circumstances and could have been invoked timeously and at a minimal cost. They have offered no convincing explanation for not doing so. The failure to exhaust this remedy may be fatal to their review applications by virtue of the provisions of section 96(3) and (4) which makes it plain that the exhaustion of internal remedies is mandatory and cannot be condoned in exceptional circumstances under section 7(2) of PAJA. Added to that, the other remedies of referring the dispute to arbitration or adjudication for the determination of compensation have also not been invoked.

66. These factors cumulatively lead me to conclude that the balance of convenience favours the first respondent and for that reason alone an interim interdict should not be granted.

67. This is a case where the employment of two counsel was justified and accordingly costs should be awarded on that basis.

68. In the result, I make the following orders:

1. An order is granted in terms of rule 6(12) dispensing with the forms and services provided for in the rules, and allowing for this matter to be heard as one of urgency.

2. The application for interim relief as sought in part A of the notice of motion is dismissed with costs, such costs to include the costs pertaining to the employment of two counsel.

3. The application in respect of the relief set out in parts B-H of the notice of motion is postponed *sine die*.

JR MURPHY
JUDGE OF THE HIGH COURT

Date Heard:	13 October 2009
For the Applicant:	Adv CA Da Silva SC, Pretoria Adv SA Visser, Pretoria
Instructed By:	Stewart Maritz & Basson Attorneys c/o Klopper & Vorster Attorneys c/o Pennels Beyer & Calits, Pretoria
For the Respondent:	Adv SJ Grobler SC, Johannesburg Adv LGF Putter, Johannesburg
Instructed By:	Vezi & De Beer Inc. c/o Ehlers Inc., Pretoria