

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) Date: 24 August 2023
Signature:

CASE NO: 047429/2023

In the matter between:

PALM CHROME (PTY) LTD

Applicant

(Registration No. 2015/016957/07)

And

2 GLOWING SUNSET TRADING 56 CC

First Respondent

(Registration No. 2006/188246/23)

MAGDELINE MALATJI CHENGETA

Second

Respondent

(Identity No. [...])

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] The applicant is before court on an urgent basis seeking an interdict against the respondent on the following terms:

- 1.1 That the matter be adjudicated as one of urgency in accordance with rule 6(12) of the Uniform Rules of Court (“the rules”).
- 1.2 That the first and second respondents (and any other party acting on their instructions) be interdicted from performing and or being involved in any mining or prospecting activities on the properties known as Portions 2, 3, 4, 5 and a portion of Portion 6 of the Farm Palmietfontein 208 JP, North-West Province.
- 1.3 That the first and second respondents be interdicted from interfering with the mining activities based on the mining permit and prospecting right on the mining property.

B. Applicant’s case

- [2] The applicant’s founding affidavit was deposed to by Donovan Michael Clifford, a director of the applicant.
- [3] A salient fact from the founding affidavit is that the applicant is a holder of a mining right and a prospecting right over Portions 2, 3, 4, 5 and a portion of Portion 6 of Farm Palmietfontein 208 JP, North-West Province. Documents are attached issued by the Department of Mineral Resources. The second

document attests to a cession of a prospecting right by Batlalerwa Resources to Palm Chrome, the applicant.

- [4] The first and second respondents have no legal right to perform any mining or prospecting activities on the mining property or to appoint any third party or sub-contractor to act on their behalf.
- [5] Notwithstanding the aforesaid, the first and second respondents have in the past mined illegally and on a persistent basis, continue to attempt to mine illegally on the mining property.
- [6] The purpose of this application is to interdict the respondents from proceeding with their aforesaid unlawful activities and to interfere with the mining activities of the mining properties.
- [7] SAPS and the Hawks previously conducted a raid on the mining property based on the unlawful mining activities of the first and second respondents.
- [8] After the aforesaid raid, the first respondent (as applicant) launched a spoliation application primarily on the basis that the SAPS and the Hawks acted without the required warrant and, consequently, their actions amounted to spoliation.
- [9] The respondents place reliance on a “Mining Exploration Agreement” allegedly concluded between the Batlalerwa Traditional Council and the first respondent

for their mining activities. This agreement was referred to in the answering affidavit of Magdalene Chengeta (second respondent) as the “legal” basis for the mining activities of the respondents.

[10] The applicant takes issue with the aforesaid “mining exploration agreement” in which the Batlhalerwa Traditional Council (“BTC”) was described on the first page thereof as: “BATLHALERWA TRADITIONAL COUNCIL t/a Palm Chrome Pty (Ltd)”. This, according to the applicant is deceptive and incorrect because the applicant was not even aware of the conclusion of the said agreement. The Batlhalerwa Traditional Council is not vested with nor the holder of mining and prospecting rights.

[11] At the time of the raids on the mining property, the respondents were actively carrying out illegal mining at the site. The spoliation application resulted in the respondents receiving their machinery back. After this a series of events happened. For example, the applicant brought in a security outfit called “Nhthathi Security Services” to safeguard the site. Following a violent confrontation with a gang of people who arrived on the property, the Security Services had to obtain an urgent court order for interdictory relief against the respondents.

C. Respondents’ case

[12] Ms. M Chengeta denies on behalf of the respondents the assertion that applicant was not aware of the “mining exploitation agreement”.

[13] She alleges that the applicant has known of the mining activities since early February 2023. Further, that because of the respondents’ spoliation application, the applicant knows of equipment used in the mining activities including no fewer than four excavators and dump trucks.

[14] She accuses the applicant of having colluded unlawfully and surreptitiously with SAPS and the Hawks.

[15] Ms. Chengeta asserts that the legal question centers on the validity of the agreement. She suggests that “one might have expected the applicant to issue a summons seeking a declaratory order that the agreement is void and/or to launch an application for interim relief. It did not do any of these things but sat back and did nothing for approximately seven months.

D. The legal question

[16] Is the “mining exploration agreement” valid? Does it entitle the respondents to carry on their mining activities? The agreement is signed on behalf of the BTC by Bennitto Motitswe. Motitswe’s authority to bind the BTC, let alone the applicant, is itself a matter of contention between the parties.

[17] The legal framework for the grant or transfer of mining and prospecting rights resides in the Minerals and Petroleum Resources Development Act 28 of 2002 (hereafter “MPRDA”).

[18] In terms of section 11 of the MPRDA a prospecting right or mining right or an interest in any such right, or a controlling interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister, except in the case of change of controlling interest in listed companies.

E. Discussion

[19] The resignation of the erstwhile director of the applicant one Mr Yang and the allegation that he authorized Motitswe to act on behalf of BTC to the ascension of Clifford to the board are presented as fact without any basis. This serves only to create confusion because the applicant denies knowledge of the “mining exploration agreement” in *toto*.

[20] Motitswe does not have the requisite authority to bind the applicant. He is not and never has been a director of the applicant.

[21] Applicant denies being a party to the agreement. From a privity of contract aspect, the applicant has no locus *standi* to launch action proceedings to have

the said agreement declared void. Similarly, applicant would not have any legal basis to sue for damages.

[22] Respondents' reliance on the agreement as a legal basis to mine is flawed and misplaced. The Applicant has annexed its authorization to mine and to prospect issued by the Department of Mineral Resources. Nowhere in the MPRDA is there provision to mine by authority of an agreement between a traditional authority, even if it may be a beneficiary of a land restitution claim.

F. Requirements for a final interdict

[23] The three requisites for the granting of a final interdict are trite by now. Namely,

23.1 a clear right;

23.2 an injury actually committed or reasonably apprehended; and

23.3 no other satisfactory remedy available to the applicant.

[24] **The applicant has a clear right**, having obtained the legal right to mine and annexed same to its founding affidavit. The right is statutorily founded and capable of being protected. Since the BTC is not the lawful owner of the property, nor the holder of the prospecting right or mining permit, the doctrine

of *nemo plus iuris* stipulates that no person may transfer more rights than they hold.

[25] There is actual harm and will be future harm if an interdict is not granted:

The respondents (and those acting through them) is at present, and as of 20 June 2023 actively conducting their illegal mining activities on the mining property.

[26] The applicant has annexed to its founding affidavit, a survey report which reveals the extent of the illegal mining. To date of issuing of this application, at least 1,139,445 tons of chrome has been mined illegally, amounting to approximately \$263,211,795.

[27] **No other satisfactory remedy:** A damages claim will not assist the applicant and it will take years before it sees the light of day in a court of law. The appropriate remedy available to the applicant is an interdict.

[28] On a consideration of the evidence and submissions, I am satisfied that the applicant has made a compelling case for the grant of the interdict as prayed for in the notice of motion.

[29] Therefore, I made the following order:

1. The first and second respondents (and any other party acting on their instructions) are interdicted and restrained from performing and or being

involved in any mining or prospecting activities on the properties known as Portions 2, 3, 4, 5 and a Portion of Portion 6 of the Farm Palmietfontein 208 JP, North-West Province (“the mining property”).

2. The first and second respondents (and any other party acting on their instructions) are interdicted and restrained from interfering with the mining activities of the applicant based on the mining permit and prospecting right on the mining property.
3. The first and the second respondents, jointly and severally, ordered to pay the applicant’s costs on an attorney and client scale.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 06 July 2023

Date of Judgment: 24 August 2023

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 24 August 2023.