

Reportable:	YES/NO
Circulate to Judges:	YES/NO
Circulate to Magistrates:	YES/NO
Circulate to Regional Magistrates:	YES/NO



IN THE HIGH COURT OF SOUTH AFRICA  
(NORTHERN CAPE DIVISION, KIMBERLEY)

Case No: 1334/2022

MOKALA MANGANESE (PTY) LTD

Applicant

and

JOSIAH SEBAUSENGWE

1<sup>st</sup> Respondent

PHILLIPINE KEDIRILENG KEABAKILE

2<sup>nd</sup> Respondent

NNUKU MATILO

3<sup>rd</sup> Respondent

KEABOBOKA ISAAH SESINYI

4<sup>th</sup> Respondent

MATHEWS GAOBUSIWE

5<sup>th</sup> Respondent

OTSHEPENG THANKANE

6<sup>th</sup> Respondent

THUBISI KEEHANG	7 <sup>th</sup> Respondent
MINISTER OF POLICE	8 <sup>th</sup> Respondent
NATIONAL COMMISSIONER OF POLICE	9 <sup>th</sup> Respondent
PROVINCIAL COMMISSIONER OF POLICE	10 <sup>th</sup> Respondent
STATION COMMANDER SOUTH AFRICAN POLICE SERVICE, KURUMAN STATION	11 <sup>th</sup> Respondent

Coram: Lever J

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## JUDGMENT

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Lever J

1. This is the extended return date of a Rule Nisi issued out of this court on the 29 June 2022. Although there are 11 (eleven) respondents, they have essentially been dealt with in two groups. The first group, being respondents 1 to 7 are those alleged to have been involved in the incidents being the subject of this application. The second group being respondents 8 to 11, described in these proceedings as the police respondents.
2. The first group of respondents, being the first to the seventh respondents, all entered an appearance to defend the matter.

Although, the third and fourth respondents did not file an answering affidavit to set out their defence. These respondents, being the first to the seventh respondents, will be referred to as the opposing respondents.

3. The second group of respondents, being the eighth to the eleventh respondents (the police respondents) indicated they would not oppose the application if the relief against them was amended. In the circumstances, they did not oppose this application and the order issued will reflect their concerns.
4. The applicant sought an interdict on an urgent basis to stop the first to the seventh respondents from blockading the entrance to the applicant's mine. This blockade happened at various times over the period starting from 20 June 2022 up to and including the 22 June 2022. Further blockades were threatened for the 30 June 2022.
5. The relief sought by the applicant against the first to the seventh respondents included, *inter alia*, that: the matter be treated as an urgent matter; the said respondents be interdicted from barricading and blocking access to the applicants mine; the said respondents be interdicted from interfering or preventing vehicles from entering or exiting the relevant mine premises; the said respondents be interdicted from assaulting, intimidating and harassing any employee or contractor entering onto the mine premises; the said respondents be interdicted

from trespassing on, or entering the applicant's mine premises, the said respondents be interdicted from gathering within 500 metres from the mine entrance; and that the said respondents be interdicted from damaging any property belonging to or utilised by the applicant's mine.

6. The relief sought by the applicant is thus final relief.
7. As indicated above all of the first to the seventh respondents filed a Notice of Intention to oppose the application. However, only the first, second, fifth, sixth and seventh filed an answering affidavit.
8. In respect of the third and fourth respondents they have not put up a defence in that they failed to file an answering affidavit. In my view the applicant has established the requirements for a final interdict, being: a clear right; an act of interference or a reasonable apprehension of such interference and no other suitable remedy. In these circumstances the rule *nisi* will be confirmed against the third and fourth respondents without any further consideration.
9. The remaining opposing respondents again fall into two groups, the first, second and sixth respondents deny being part of, or playing any part in the blockade, without anything further. The second group, being the fifth and seventh respondents try to show that they could not have been part of the blockade. In the case of the fifth respondent, he claims to have been at work on the applicant's mine at the relevant times. The

implication being that fifth respondent was employed by the applicant. In the case of the seventh respondent, he claims that his vehicle had been involved in a motor accident at the material time and that he was dealing with that accident.

10. Where disputes of fact are alleged or set up in motion proceedings where final relief is sought. The test to be applied in these circumstances was restated by Corbett JA (as he then was) in the matter of *PLASCON-EVANS PAINTS v VAN RIEBEECK PAINTS*<sup>1</sup>, as follows:

“It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant’s affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact. If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court and the court is satisfied as to the inherent credibility of the applicant’s factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks. Moreover, there may be exceptions to this general rule, as for example, where the allegations or denials of the respondent are so far fetched or clearly untenable that the court is justified in rejecting them merely on the papers.” (References omitted)

11. The opposing respondents also complain in a general way that the applicant does not identify the role which any particular respondent

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<sup>1</sup> *Plascon-Evans Paints v Van Riebeeck Paints* 1984 (3) 623 (AD) at 634H to 635C.

played in the disturbances which the applicant set out in its founding affidavit in this matter.

12. This complaint is appropriately answered by reference to the fact, as applicant alleges that the opposing respondents had a meeting with the applicant's representatives and some of the police respondents on the 8 June 2022. At this meeting all of the opposing respondents were present. On the applicant's version certain demands were made on behalf of a community association, the BA MMU UNGWELANG LOTHLE ASSOCIATION. The respondents tried to tone this down by referring to "wants" as opposed to "demands". In the circumstances, the differences in the terms used makes no material difference to these proceedings. These "wants" or "demands" were not acceded to.

13. The material fact is that on the 20 June 2022 the said community association through its members blockaded the applicant's mine entrance and the very same "wants" or "demands" were repeated. It is clear from an overall reading of the papers that the opposing respondents were the executive of this community organisation and were acting in concert with those blockading the entrance to the applicant's mine. It is clear from such a reading of the papers that the blockade and associated behaviour constituted the coercion applied in order to achieve the "wants" or "demands" of the said community association.

14. The first and second respondents deny ever being present at the blockade of the applicant's gate. However, in the very same paragraph where the said denial is made, only two or three sentences further down they give a description of the blockade that could only be given in an affidavit if indeed the first and second respondents were indeed present. In these circumstances, their initial denial of being present is simply not credible. Such denial can carry no weight and must simply be disregarded.
  
15. No factual version at all is set up for the sixth respondent. In the circumstances, a factual response was called for and in the absence of a factual response the bald denial also carries no evidential weight.
  
16. The fifth respondent claims to have been on the applicant's premises at his place of employment. The fifth respondent attaches his clock in card (timesheet). There are three problems with this alleged piece of evidence. The first problem being that this time sheet shows that the fifth respondent was not on the applicant's premises. The second problem being that the said time sheet shows that fifth respondent was away from his alleged place of employment for about one hour on the morning of 20 June 2022. The mistake of alleging and implying that he was an employee on duty at the applicant's premises on 20 June 2022 was never explained. The absence of about one hour from his alleged place of employment was also not explained. The circumstances called for an explanation. None was given. The third

problem is there is no affidavit to support the veracity of the fifth respondent's alleged time sheet.

17. The fifth respondent does not deny being a member of the said community association. He further does not deny being present in the meeting of the 8 June 2022 and acting in the interests of the said community association. In these circumstances I am justified in disregarding the fifth respondent's version as simply untenable.

18. The seventh respondent in the most cryptic manner claims to have been involved in "...a matter regarding an accident of his vehicle." No details are actually provided as to what he was actually doing. The seventh respondent also attended the meeting on the 8 June 2022. He associated himself with the goals of the said community association. In these circumstances, seventh respondent is obliged to go beyond a simple bare denial. The facts relating to the motor vehicle accident and what he was in fact doing at the material times are peculiarly within his knowledge. The seventh respondent was informed when the blockade occurred in the applicant's papers. The seventh respondent was obliged to give an explanation with sufficient detail so that the applicant could investigate it. In these circumstances, this bare denial does not amount to a *bona fide* dispute of fact.

19. Applicant abandoned seeking a punitive costs order against the respondents and is entitled to its costs against the first to seventh

respondents, jointly and severally, the one paying the others to be absolved.

20. The question of urgency has become moot. It cannot be denied that the matter was urgent at the time that this application was launched.

21. In all of these circumstances, the applicant is entitled to confirmation of the rule nisi.

**ORDER**

Accordingly, the rule nisi issued out of this court on the 29 June 2022 is hereby made final in the following terms:

- 1) The first to seventh respondents are interdicted from interfering with the applicants mining operations in any manner whatsoever and compliance with the Mine and Safety Act 29 of 1969 or inciting any other person to do so in any manner whatsoever, including without limitation:
  - a. Barricading, restricting and/or interfering or obstructing in any manner any of the access roads and access points to the applicant's mining premises at any time;
  - b. Stopping, interfering with and/or preventing any trucks and/or any other vehicle or persons from using the road leading up to the access gate or any other road *en route* to

and from the applicant's mining premises in any way whatsoever;

- c. Assaulting, intimidating or harassing in any way any person employed by or contracted by or working at or visiting the applicant's mining premises;
- d. Trespassing, entering or accessing the applicant's mining premises at the main access gate or at any other point at the applicant's mining area and interfering with and/or shutting down the applicant's mine;
- e. Trespassing, entering or accessing the applicant's mining premises at the main access gate or at any other point at the applicant's mining area;
- f. Gathering within 500 (five hundred) metres of any entrance to the applicant's mining premises; and
- g. Damaging or threatening to damage any of the property, equipment, machinery or vehicles owned by or used by or on behalf of the applicants as part of their mining operations.

2) The eighth to the eleventh respondents are ordered to maintain public order at the applicant's mine, to protect and secure the applicant, its contractor and the employees of both, to prevent, combat and investigate any criminal offence(s) committed by the

first to the seventh respondents or any other person(s), and without limitation, to take all reasonable steps to ensure that the first to the seventh respondents or any such other person(s) are brought before a court as may be provided for in law, criminal offence(s) to include without limitation, hindering, opposing or obstructing the applicant's mining operations in terms of section 88 (read with sections 91(1) and 92(5), together with Schedule 8) of the Mine Health and Safety Act 29 of 1996.

- 3) The first to seventh respondents, jointly and severally, the one paying the others to be absolved are to pay the applicant's costs on the ordinary party and party scale.

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Lawrence Lever  
Judge  
Northern Cape Division, Kimberley

**REPRESENTATION:**

Applicant: Adv Harmse oio VAN DE WAAL INC.

Respondents 1, 2, 5, 6&7: Adv Mtubu oio MTUBU ATTORNEYS INC.

Date of Hearing: 10 March 2023

Date of Judgment: 17 March 2023

