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: **1452/2023**
Heard: **25/08/2023**
Delivered: **15/09/2023**

In the matter between:

VAST MINERAL SANDS (PTY) LTD Applicant

and

ALEXKOR SOC LTD First Respondent
RICHTERSVELD MINING COMPANY (PTY) LTD Second Respondent
RICHTERSVELD SIDA! HUB COMMUNAL PROPERTY ASSCOCIATION Third Respondent
MINISTER OF MINERALS AND ENERGY Fourth Respondent

JUDGMENT

Mamosebo J

[1] The applicant brought this urgent application relying on s 5(3)(c) of the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA)[1], for a final interdict maintaining that, despite being the

[1] Section 5 Legal nature of prospecting right, mining right, exploration right or production right, and rights of holders thereof
(3) Subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may-

holder of a prospecting right affording it entry to the prospecting area, it is being prevented or refused to do so by the first respondent, Alexkor SOC Ltd (Alexkor). The second, third and fourth respondents abstained but Alexkor opposes the relief sought.

The parties

[2] The applicant is Vast Mineral Sands (Pty)Ltd (Vast Minerals). The first respondent is Alexkor SOC Ltd (Alexkor), a State-owned company. The second respondent is Richtersveld Mining Company (Pty) Ltd (RMC). The third respondent is Richtersveld Sida !Hub Communal Property Association (the CPA). The fourth respondent is the Minister of Minerals and Energy.

Urgency

[3] Vast Minerals, invoking *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others* [2014] 4 All SA 67 (GP), contends that the matter is urgent as it will not be able to obtain substantial redress in due course. In amplification of its argument Vast Minerals further relied on s 17(6)[2] read with s 18(4)[3] of the MPRDA that the prospecting right is of a limited duration and

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(a) enter the land to which such right relates together with his or her employees, and bring onto the land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purpose of prospecting, mining, exploration or production, as the case may be;
(b) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;
(c) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be.
(cA)…..
(d)….; and
(e) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act."

[2] 17 **Granting and duration of prospecting right**
(6) A prospecting right is subject to this Act, any other relevant law and terms and conditions stipulated in the right and is valid for the period specified in the right, which period may not exceed five years.

[3] 18 **Application for renewal of prospecting right**
(4) A prospecting right may be renewed once for a period not exceeding three years.

had to complete its prospecting which is required for purposes of obtaining results to support or justify the pending application for a mining right; hence the urgency.

[4] Vast Minerals maintain that to pursue litigation in the ordinary course under the sketched circumstances would take away a substantial period meant for prospecting and once it lapses it would forfeit the right to prospect. This application was brought only after the s 54 remedy which commenced on 15 June 2022 was exhausted. Vast Minerals denies that the urgency was self-created and contends that Alexkor contributed in delaying the completion of the s 54 process until 23 June 2023. Correspondence was exchanged between Vast Minerals and Alexkor over a period in an effort to gain access to the area in question. Mr Oosthuizen, counsel for the applicant, submitted that such refusal is a continuous wrong perpetuated by Alexkor, a State-owned company with 100% shareholding, thereby adding a constitutional dimension to the litigation.

[5] Alexkor took the point that the application is not urgent for lack of compliance with Rule 6(12)(b) of the Uniform Rules of Court and constitutes an abuse of court process. It contends that in the five years allocated for prospecting three years thereof were lost due to Vast Minerals' own inactivity; that the dispute between them dates back to October 2019 and that all Vast Minerals has done was to threaten litigation on no less than three occasions before coming to court now. Invoking *Public Servants Association of SA and Another v Minister of Home Affairs and Others* (J1673/16)[2016] ZALCJHB 439 (22 November 2016) at para 18 Alexkor pleaded in the alternative that should the court find that there was urgency then the urgency was self-created and the matter should be struck from the roll with costs. Alexkor further alternatively urges the court to stay the proceedings to allow the parties to exhaust arbitration

proceedings. It further took issue with Vast Minerals approbating and reprobating because of its uncertainty whether it is enforcing a statutory right or the contractual right vis-à-vis the Pooling and Sharing Joint Venture (PSJV), Alexkor and the RMC to enter the land for purposes of conducting prospecting operations. The application falls to be dismissed, so the submission went.

[6] Rule 6(12)(b) stipulates:

> *"In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."*

[7] The question that begs answering is whether Vast Minerals will be afforded substantial redress at a hearing in due course. If it cannot establish prejudice then its application is not urgent. It is only once this hurdle has been crossed that other factors can come into play. Those factors include but are not limited to the following: whether Alexkor can adequately present its case in the time available between notice of the application and the actual hearing; prejudice to Alexkor and the administration of justice; the strength of Vast Minerals' case and any delay by Vast Minerals in asserting its rights. Alexkor has filed its answering affidavit and has not raised any prejudice.

[8] Alexkor challenged the inaction by Vast Minerals for the period that Vast Minerals' attorneys, Werkmans Attorneys, wrote the letter to Alexkor marked "HP14" dated 12 February 2020 and the email from Marius Pienaar of Vast Minerals to Deon Bowers of Alexkor, "HP15" dated 23 February 2022, a lapse of two years. Vast Minerals concedes that it did not approach court immediately but claim to have attempted to engage other parties for an amicable resolution of the dispute. Of significance in para 6 of "HP14" is the following:

> *"6. Alexkor SOC and Alexkor Pooling and Sharing Joint Venture ("PSJV"), an unincorporated joint venture between Alexkor and the Richtersveld Mining Community, were key stakeholders in the applications for the prospecting right and WML and these applications were made with both entities' express, written consent which was granted pursuant to extensive engagements which culminated in an agreement, signed by Alexkor and the PSJV on 30 June 2017. In terms of the agreement, our client is permitted to extract heavy minerals from certain dumps and slime dams within the mining area which is being operated under the terms of the PSJV."*

[9] It is only after no resolution was reached in the s 54 process that this application was launched. Vast Minerals further concedes that before June 2022 the delay was caused by its own ignorance. Section 5A(c) of the MPRDA requires Vast Minerals to give the landowner or lawful occupier of the land at least 21 days written notice before entering the land for purposes of exercising its right to prospect for heavy minerals as authorised by its prospecting right. Alexkor has, however, prevented Vast Minerals entry into the prospecting area contending that the applicant has not established a clear right and has failed to comply with the dispute resolution clause requiring the matter to be referred to arbitration.

[10] Much was made of the deviation from the Form 2(a) and the truncated periods for filing the notice of opposition and the answering affidavit; that Alexkor was given only two court days to file its notice of intention to oppose and eight court days to file its answering papers whereas in Alexkor's view, Vast Minerals applied double standards because it afforded itself reasonable time, about a month, to consult counsel and prepare the application while not affording Alexkor the same indulgence.

[11] Wilson J in *Volvo Financial Services of Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* 2023 JDR 2806 (GJ) at para 8 asserts that a matter would be urgent because of the imminence and

depth of harm that the applicant will suffer if relief is not granted and not because of the category of a right that the applicant asserts. Such an approach supports Vast Mineral's case that the period will lapse and they will not be able to prospect again. It is not the right *per se* but the extent of the harm that informs urgency. *In casu* it is sensible to accept that Vast Minerals may not be afforded substantial redress at a hearing in due course. I have carefully considered the truncated periods and weighed them against the aspect of prejudice should the matter not be heard urgently. Vast Minerals would suffer prejudice if the hearing were to be in the ordinary course. Regard being had to the facts and submissions made on behalf of either party pertaining to urgency I find that hearing this matter on an urgent basis is warranted. The contention by Alexkor that Vast Minerals was dilatory in bringing this application resulting in self-created urgency is devoid of any merit.

Background

[12] Vast Minerals was awarded a prospecting right in terms of s 17(1) of the MPRDA for a period of five years commencing on 01 February 2018 and ending on 31 January 2023 to prospect for Heavy Minerals (general), leucoxene (heavy mineral), monaxite (heavy mineral), rutile (heavy mineral) and zirconium ore in or under the Remainder, Portion 8 and Portion 9 of Farm 1 District Namaqualand as well as Farm 155 District Namaqualand, measuring 82 413,0023 hectares in extent as appearing on "HP2" annexed to the papers. The provision relating to s 2(d) of the Act translates into Vast Minerals is bound by the agreement or arrangement dated 27 June 2017 between itself and Sesfikile Mining Investments (Pty) Ltd (26%) which agreement was considered when the prospecting right was granted for compliance with the Broad-Based Economic Empowerment Charter.

[13] Should a prospecting right be renewed, that can only be done once and for a period not exceeding three years in terms of s 18(4) of the MPRDA. The application for renewal must be launched before the expiry of the prospecting right. Vast Minerals has, on 10 August 2022, applied for the renewal of the Prospecting Right which was accepted by the Regional Manager on 04 April 2023. Should the extension be granted the period will run from 01 February 2023 to 31 January 2026. Alexkor conceded that.

[14] The relief sought by Vast Minerals is a final interdict. The requirements for a final interdict are settled. They are: (i) a clear right, (ii) a well-grounded apprehension of irreparable harm, and (iii) the absence of an alternative remedy. Of these requirements, Alexkor impugns the claim by Vast Minerals of a clear right and that forms the subject of the discussion hereunder.

[15] A land restitution claim by the Richtersveld Community resulted in an agreement in terms of which all the Converted Old Order Mining Rights of Alexkor were to be ceded and were ceded to RMC by Notarial Deed of Cession executed and registered in the Mineral & Petroleum Titles Registration Office: Pretoria on 06 April 2011 as appearing on “HP3” annexed to the papers. From this Notarial Deed of Cession, and also common cause between the parties, is that RMC held the sole and exclusive right to mine for diamonds in, on or under an area which included the whole of Farm 1 as well as Farm 155 in the District of Namaqualand. This essentially translates into Alexkor no longer being the holder of any mineral resource development rights under the MPRDA from 06 April 2011 in respect of the area which now forms the subject of the dispute. The diamond mining operations are administered by the PSJV. It is common cause that the aforementioned prospecting area is collectively owned by Alexkor, Richtersveld Mining Company (Pty)

Ltd (RMC) and Richtersveld Sida !Hub Communal Property Association (CPA).

[16] Vast Minerals launched an application for prospecting rights in terms of s 16(2) of the MPRDA early in 2017, exact date not specified. Its application was accepted by the Regional Manager. Within 14 days of accepting a prospecting right application the Regional Manager must make known that an application has been received and must call upon interested and affected persons to submit their comments within 30 days of the date of the notice[4]. Should there be any objections to the granting of the prospecting right, those are to be directed to the Regional Mining Development and Environmental Committee for consideration of same and to advise the Minister accordingly. Section 16(4)(b) of the MPRDA requires the Regional Manager to, within 14 days of acceptance of the application, notify the applicant in writing that the landowner or lawful occupier must be notified and consulted.

[17] Vast Minerals commenced with the consultation process early in 2017. It, *inter alia,* addressed a similar letter ("HP4") dated 20 March 2017 to Alexkor and other affected or interested parties which were sent by registered post. They were invited to comment on the proposed prospecting operations. Alexkor and the RMC were at that stage engaged in a joint venture known as the PSJV for mining diamonds. This, notwithstanding, neither Alexkor nor any of the other parties, as interested and affected parties, filed objections. Rather, on 30 June 2017 Alexkor, the RMC and the PSJV entered into a written agreement with Vast Minerals annexed to the papers as "HP5". On 06 September 2018 Vast Minerals was issued with an Environmental Authorisation in terms of the National Environmental Management Act, 107 of 1998 (NEMA), as well as a Waste Management Licence in terms of the National Environmental Management Waste Act, 59 of 2008 (NEMWA). Vast Minerals

[4] Section 10(1) of the MPRDA

contends that Alexkor was aware at all material times of its intentions to prospect for heavy minerals and the possible need to drill holes over parts of the entire area and to analyse the material from those holes. Evidently, annexure "HP7", a letter addressed to Vast Minerals dated 10 August 2018, under the letterhead of Alexkor, Alexkor RMC JV and RMC, signed by the Company Secretary, Raygen Phillips, reads:

"Dear Sir

RE: AGREEMENT

We herewith confirm that the agreement between Vast Mineral Sands and Alexkor/RMC JV is in good standing."

[18] Vast Minerals approached Alexkor on several occasions for access to the prospecting area, but was prevented from entering the premises. On 15 June 2022, Vast Minerals notified the Regional Manager as contemplated in s 54(1) of the MPRDA that it was prevented from conducting any prospecting operations because the owner or lawful occupier refuses to allow it to enter the land. A year later, on 23 June 2023, the Regional Manager wrote a letter sent by registered mail to Vast Minerals notifying it that the dispute remained unresolved and that it could either initiate the arbitration process or approach a competent court. That prompted Vast Minerals to bring this application for the following relevant relief:

"1. That in terms of rule 6(12)(a) of the Uniform Rules of Court ('The Rules'), the forms and service provided for in the Rules with and this matter be disposed of as an urgent application at such time and place and in such manner and in accordance with such procedure as to the Court seems meet;

2. declaring that [Vast Minerals] as the holder of registered Prospecting Right NC 11923 PR in respect of heavy minerals (general), leucoxene (heavy mineral), monaxite (heavy mineral), rutile (heavy mineral) and zirconium ore on, in or under the Remainder, Portion 8 and Portion 9 of Farm 1

District Namaqualand as well as Farm 155 District Namaqualand, has the right to enter the said land to which the said Prospecting Right relates together with its employees, agents or contractors and bring onto the land any plant, machinery or equipment and build, construct or lay down any surface or underground infrastructure which may be required for the purpose of prospecting;

3. *that [Alexkor] (including its employees, agents and contractors) be directed and ordered not to obstruct and/or interfere and/or prevent in any manner, directly or indirectly, the applicant from exercising its statutory right of entry to the Remainder, Portion 8 and Portion 9 of Farm 1 District Namaqualand as well as Farm 155 District Namaqualand for prospecting purposes under or in terms of its registered Prospecting Right NC 11923 PR;*

4. *that [Alexkor], [Richtersveld Mining Company (Pty) Ltd] and [Richtersveld Sida !Hub Communal Property Association] be directed and ordered to provide [Vast Minerals] free and unrestricted access to the Remainder, Portion 8 and Portion 9 of Farm 1 District Namaqualand as well as Farm 155 District Namaqualand for prospecting purposes under or in terms of its registered Prospecting Right NC 11923 PR;*

5. *that [Alexkor] be ordered to pay the costs of this application on a punitive scale as between attorney and client, such costs to include in any event the cost incumbent upon the employment of three counsel (one which is a senior counsel).*

6. *that [Richtersveld Mining Company (Pty) Ltd] and [Richtersveld Sida !Hub Communal Property Association] only be ordered to pay the costs of this application, including the cost incumbent upon employment of three counsel (one which is a senior counsel) in the event of opposition thereto on such terms and conditions as the Court deems appropriate;*
7. *Such further and/or alternative relief granted as to the Court seems meet and/or just and equitable."*

[19] For purposes of the final interdict, Vast Minerals must make out its case on the existence of a right. It maintains that its right is predicated on s 5(3)(c) of the MPRDA. In *Minister of Mineral Resources and Others v Mawetse (SA) Mining Corporation (Pty) Ltd* 2016 (1) SA 306 (SCA) at para 24, Majiedt JA, writing for a unanimous court, pronounced:

"[24] ....[T]he granting of a prospecting right, as is the case with all other rights under the MPRDA, is not contractual in nature but a unilateral administrative act by the Minister or her delegate in terms of their statutory powers under the MPRDA. It occurs outside the ambit of and regardless of the existence of a contract between the Minister and a successful applicant...."

[20] Mr Mabuda, counsel for Alexkor, argued that because Vast Minerals initially relied on both the statutory right and the contractual right, it is approbating and reprobating. Vast Minerals must first exhaust the arbitration process before approaching the High Court as contemplated in Clause 10.12 which reads:

"This clause shall not mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining an interdict or urgent relief from a court of competent jurisdiction, save where the particular point in question has already been referred to arbitration in terms of this clause."

[21] Notwithstanding that the case of Vast Minerals in its founding papers and in oral argument by its counsel is premised on a statutory right and not an agreement to enforce its prospecting right, clause 10.12 neither precludes Vast Minerals from approaching this Court on an urgent basis nor to seek an interdict. The submissions by Mr Mabuda in this regard are untenable on the law and on the facts.

[22] Vast Mineral's right is linked to an Environmental Management Plan. Annexure "HP8" deals with the environmental authorisation granted to Vast Minerals in terms of the National Environment Management Act, 107 of 1998 (NEMA). There is a condition that an Integrated Water Use Licence (IWUL) must be obtained from the Department of Water and Sanitation (DWS) prior to commencement of activity. This, as correctly argued by Mr

Oosthuizen, for Vast Minerals, does not qualify Vast Mineral's right of entry but of commencing with the prospecting.

[23] In *Minister of Mineral Resources and Others v Sishen Iron Ore Co (PTY) LTD and Another* 2014 (2) SA 603 (CC) at paras 40 – 42 Jafta J provided the following interpretive approach to the MPRDA:

> *"[40] It is a fundamental principle of our law that every statute must be interpreted in a manner that is consistent with the Constitution, insofar as the language of the construed provision reasonably permits. In addition, s 39(2) of the Constitution enjoins every court when interpreting legislation to promote the spirit, purport and objects of the Bill of Rights. This court has described the principle as a 'mandatory constitutional canon of statutory interpretation'. In Phumelela Gaming and Leisure Ltd Langa CJ said:*
>
> > *'A court is required to promote the spirit, purport and objects of the Bill of Rights when interpreting any legislation, and when developing the common-law or customary law. In this no court has a discretion. The duty applies to the interpretation of all legislation and whenever a court embarks on the exercise of developing the common-law or customary law. The initial question is not whether interpreting legislation through the prism of the Bill of Rights will bring about a different result. A court is simply obliged to deal with the legislation it has to interpret in a manner that promotes the spirit, purport and objects of the Bill of Rights.'*
>
> *[41] It cannot be gainsaid that the MPRDA, apart from creating new rights, regulates rights which constituted property of the affected parties. Therefore, s 39(2) obliges us to adopt an interpretation of the MPRDA that promotes those rights.*
>
> *[42] Another important principle relevant to the interpretation of the MPRDA flows from its provisions. Section 4 proclaims two rules, both of which are relevant to the interpretation of the statute. First, it declares that, in the case of a conflict between the MPRDA and the common law, the MPRDA must prevail. Second, it directs that a reasonable interpretation that is consistent with the objects of the MPRDA must be preferred over any construction inconsistent with those objects."*

[24] It is so that the prospecting rights of Vast Minerals are subject to the MPRDA. In that regard Mr Mabuda submitted that s 17 of the MPRDA properly interpreted and read with para 17 of the *Mawetse* case *the* cooperation agreement was prepared as a condition to comply with the prospecting right. Counsel also relied on Clause 12.1 of the prospecting right which deals with the circumstances under which the Minister may cancel or suspend the right. Under Condition 3 of the EA Site Specific Conditions it was further argued on behalf of Alexkor that without the Integrated Water Use Licence (IWUL) Vast Minerals cannot operate. Alexkor maintains that Vast Minerals is merely explaining away the mandatory provision in its founding affidavit.

[25] In para 25.2 of its founding affidavit, Vast Minerals wrote:

> "This *Condition 3 was premised upon the assumption that Vast Minerals would [be] making use of water as contemplated and circumscribed in section 21 of the National Water Act 36 of 1998 (the NWA),*[5] *and for that reason would require an integrated Water Use Licence."*

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[5] **Water Use**

For the purposes of this Act, water use includes-

(a) taking water from a water source;

(b) storing water;

(c) impeding or diverting the flow of water in a watercourse;

(d) engaging in a streamflow reduction activity contemplated in section 36;

(e) engaging in a controlled activity identified as such in section 37 (1) or declared under section 38(1);

(f) discharging waste or water containing waste into a water source through a pipe, canal, sewer, sea outfall, or other conduit;

(g) disposing of waste in a manner which may detrimentally impact on a water source;

(h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;

(i) altering the bed; banks, course or characteristics of a watercourse;

[26] The explanation continues at para 25.4 of the founding affidavit in this manner:

> *"Upon closer investigation, it became clear that Vast Minerals would not be embarking upon any of the water uses circumscribed in Section 21 of the NWA and therefore did not require any Water Use Licence. No prospecting activities would take place inside a watercourse or the riparian zone thereof, and the drilling would not affect the groundwater as such. Process water will be sourced from the sea (in line with historical practice of Alexkor) and no new boreholes (for the supply of water) would be required. In the result, the supposition and/or rationale for Condition 3 fell away and therefore did not present any obstacle to the lawful commencement of the prospecting activities of Vast Minerals."*

The submission by Alexkor is that one cannot separate access and prospecting because without the water licence, which is peremptory, what would Vast Minerals be doing inside the prospecting area? Alexkor further relies on *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA). But *Oudekraal* does not assist Alexkor because the appeal court in *Oudekraal* was asked to answer the question whether, or in what circumstances, an unlawful administrative act might simply be ignored and on what basis such acts might be given recognition by the law. *In casu* there is no question of an unlawful administrative act.

[27] Alexkor, relying on Clause 15[6] of the Prospecting Right, further contended that the absence of a developed Health and Safety Policy by Vast Minerals places Alexkor, its officials and contractors

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(j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity of for the safety of people; and

(k) using water for recreational purposes.

(l)

[6] 15. Compliance with the laws of the Republic of South Africa
The granting of this right does not exempt the Holder and its successors in title and/or assigns from complying with the relevant provisions of the Mine Health and Safety Act, 1996, (Act no.29 of 1996) and any other relevant law in force in the Republic of South Africa.

in danger. Whereas Vast Minerals had furnished an undertaking at para 36 of its founding affidavit that it would abide by the health and safety protocols of the PSJV. Alexkor responded in this fashion at paras 131 and 132 of its answering affidavit:

> *"131. It is noted that the applicant is aware that in order to access the Prospecting Area, which is also an active mine, safety protocols need to be in place.*
>
> *132. However, the PSJV's safety protocols would need to be revised to provide for additional personnel that will be conducting prospecting activities on behalf of the applicant [Vast Minerals] as well as equipment. Hence the clause in the Co-operation Agreement that the parties will need to negotiate and conclude an operational agreement addressing the issues of safety and security."*

A proper assessment of this response demonstrates that the issue is not really about Vast Minerals not having a Health and Safety Policy in place but the fact that the PSJV and Vast minerals have not drawn up an operational agreement to address these aspects and for the PSJV to include Vast Minerals in the revised but expanded Health and safety Policy. The operational agreement has been on the cards between the parties and I cannot find any reason why it cannot be attended to in due course.

[28] Regard being had to all the above, I have no doubt that Alexkor acquiesced in the entire arrangement and only reneged at a later stage for unfathomable reasons. It is Alexkor that is approbating and reprobating in this transaction and not the other way around. The opposition advanced is technical and dilatory. This is typically Alexkor clutching at straws by amplifying that Vast Minerals has not complied with all of the provisions to which the Prospecting Right is "subject to". This, so its unpersuasive argument went, shows Vast Minerals' failure to demonstrate a clear right. I am satisfied that Vast Minerals has made out a proper case for the relief it is seeking.

Costs

[29] Mr Oosthuizen, did not persist with seeking a declarator, but pursued costs for three counsel on a punitive scale, the third counsel being a local counsel, Ms Sieberhagen, whom they had asked to be on standby in the matter. A draft order was handed up in the event that this Court is with Vast Minerals. To substantiate the request for a punitive costs order, Mr Oosthuizen urged that the Court consider Alexkor's motive and its ongoing wrong committed on Vast Minerals thereby failing to promote its constitutional obligation as a state-owned entity.

[30] Alexkor on the other hand submitted that the application should be dismissed with an award of punitive costs in its favour on this account. First, relying on *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) at para 223 that the court should mark its disapproval of the conduct of Vast Minerals. Secondly, its refusal to grant Vast Minerals access to the prospecting area was informed by a need to comply with the law and if it has made an error in law it should not be met with a punitive cost order. Thirdly, the urgency in which this matter was brought was contrived and self-created which is symptomatic of abuse of the court's process. Invoking *Daheng Group Botswana (Pty) Ltd and Another v A & J Investments (Pty) Ltd* (CVHLB-001364-10) [2011] BWHC 72 (3 November 2011) paras 24 to 26.

[31] The Court has an unfettered discretion in the awarding of costs. The general rule is that costs follow the result. It is also within the court's discretion to award punitive costs. I am neither persuaded that in the circumstances a punitive cost order is warranted nor that the appointment of a third counsel was necessary. Costs on the ordinary scale as between party and party, because each has contributed to the situation, will suffice. Costs will follow the result.

[32] In the result the following order is made:

1. The first respondent (including its employees, agents and contractors) is directed and ordered not to obstruct and/or interfere and/or prevent in any manner, directly or indirectly, the applicant from exercising its statutory right of entry to the Remainder, Portion 8 and Portion 9 of Farm 1 District Namaqualand as well as Farm 155 District Namaqualand for prospecting purposes under or in terms of its registered Prospecting Right NC 11923 PR.

2. The first, second and third respondents are directed and ordered to provide the applicant free and unrestricted access to the Remainder, Portion 8 and Portion 9 of Farm 1 District Namaqualand as well as Farm 155 District Namaqualand for prospecting purposes under or in terms of its registered Prospecting Right NC 11923 PR.

3. The first respondent, Alexkor SOC Ltd, is ordered to pay the costs of this application on a party and party scale, such costs to include the cost incumbent upon the employment of two counsel.

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M.C. MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

For the Applicant:	Adv. MM Oosthuizen SC (with him Adv. N Erasmus)
Instructed by:	Fasken Attorneys c/o Haarhoffs Attorneys
For the 1st Respondent:	Adv TV Mabuda
Instructed by:	Messina Incorporated
For 2nd, 3rd, 4th:	No opposition/ No appearance