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

Case Number: 49701/2013

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO. ☒ YES ☐ NO

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

(3) REVISED. ☒

9/12/16

DATE SIGNATURE

In the matter between:

MAGNIFICENT MILE TRADING 30 (PTY) LTD

APPLICANT

And

MINISTER OF MINERAL RESOURCES  
DIRECTOR-GENERAL,  
DEPARTMENT OF MINERAL RESOURCES  
DEPUTY DIRECTOR-GENERAL: MINERAL REGULATION,  
DEPARTMENT OF MINERAL RESOURCES  
ANNEKE DENISE LE ROUX NO  
JOSEPHINE TERBLANCHE GOUWS

1<sup>ST</sup> RESPONDENT2<sup>ND</sup> RESPONDENT3<sup>RD</sup> RESPONDENT4<sup>TH</sup> RESPONDENT5<sup>TH</sup> RESPONDENT

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REASONS FOR JUDGMENT

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Fabricius J,

1.

On 29 August 2016, I heard this application in the Opposed Motion Court. Applicants brought a review application on 13 August 2013, and amended the relevant Notice of Motion on 25 August 2015. The Answering Affidavit is dated 22 October 2015, and it also contains a counter-application. In terms of the Amended Notice of Motion, Applicants seek certain relief in terms of the *Promotion of Administrative Justice Act 3 of 2000 ("PAJA")* and seeks review of a number of decisions taken by mainly the First to Third Respondents in terms of the *Mineral and Petroleum Resources Development Act 28 of 2002 ("The Mineral Act")*. Before I return to the facts as set out by Respondent's Counsel in Heads of Argument on behalf of the Fifth Respondent (who is the only active Respondent in

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this application), I deem it appropriate to refer to a comment made by Fifth Respondent in the Answering Affidavit where she described the actions of the First to Third Respondents as a "veritable comedy of errors". Whatever could go wrong with the applications that I will refer to that were made in terms of the *Mineral Act* did go wrong.

2.

The Applicants and the Fifth Respondent are in dispute about various decisions taken by the First to Third Respondents concerning applications for prospecting rights in terms of the *Act*. No Opposing affidavits were filed by the Respondents of the Department of Mineral Resources. It is convenient to refer to Fifth Respondent's Counsel, Mr P. Louw SC's setting out of "distinguishable phases" prior to referring to the different applications that were made, and that served before the Department. Phase 1 was a period prior to the advent of the *Mineral Act* during which the common law together with the relevant instruments of legislation, regulated mineral rights. Phase 1 came to an end on 1 May 2004. Phase 2 commenced on 1 May



2004 and lasted one year until 30 April 2005. This was the "window period" within which holders of old mineral rights could apply for rights in terms of the *Mineral Act*.

On the day before phase 2 came to an end, i. e. 29 April 2005, Mr Gouws who was an unused old-order right-holder, made application for a prospecting right.

Phase 3 ran from 1 May 2005 onwards. This was the era of the *Mineral Act*. This application process was triggered by his application for a prospecting right on 29 April 2005, and it continued (and will continue), so it was argued, until that application has been decided one way or the other. This is the consequence of *Item 8 (3) of Schedule II to the Mineral Act*.

3.

The different applications:

Both Gouws and Applicants made applications in terms of the *Mineral Act* relating to the Middelburg property. The "Gouws prospecting right application" means an application made by Gouws on 29 April 2005 as the holder of unused old-order rights for a prospecting rights in respect of the Middelburg property. The "Magnificent



Mile Prospecting Rights Application", means the application Applicants brought in terms of *Section 17 of the Mineral Act* for prospecting rights over the Middelburg property on 3 May 2005. The "Magnificent Mile Prospecting Rights Grant" means the grant by the official Respondents on 16 January 2006 of prospecting rights to Magnificent Mile over the Middelburg property. The "Magnificent Mile Mining Rights Application" means an application the Applicants made on 22 January 2010 to convert its purported prospecting right relating to the Middelburg property into a mineral right. The "refusal" means the refusal of Applicants' mining right application. The "Gouws Prospecting Rights Grant" means the decision of the Respondents on 9 June 2010, to grant prospecting rights in respect of the Middelburg property, one half of which had been registered in the name of Mrs Gouws in terms of the Mineral and Petroleum Titles Registration Office.

The relevant dates of importance are the following:

- 3.1 The Gouws Prospecting Rights Application on 29 April 2005;
- 3.2 The end of the one year transitional period, 20 April 2005;
- 3.3 The Magnificent Mile Prospecting Rights Application, 3 May 2005;



3.4 Mr Gouws' death, 7 November 2005.

4.

Relevant facts:

It is not disputed that Mr Gouws was the owner of the mineral rights underlying the Middelburg property during Phase 1, and that they were not exploited during that phase. They thus became unused old-order rights when the new regime commenced. The categories of old order rights that were not used prior to the advent of the *Mineral Act* are set out in *Table 3 Schedule II*. Category 1 thereof pertains to the mineral rights under the common law for which no prospecting permit or mining authorisation was issued in terms of the *Minerals Act*, which is exactly the case with Mr Gouws' rights.

It is also not disputed that Mr Gouws made an application on 29 April 2005, for a prospecting right relating to the Middelburg property. Certain events occurred during

Phase 3:

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4.1 Mr Gouws timeously submitted his application and the Respondents' duly accepted it. However, for reasons that remain "opaque" (as put by Fifth Respondent's Senior Counsel), the Respondents' processed this application, not in respect of the Middelburg property, but in respect of a piece of land that Mr Gouws had nothing to do with i. e. a Wakkerstroom property. In due course the Respondents then approved Gouws' Prospecting Right Application, once again not in respect of the piece of land for which he had applied (the Middelburg property), but in respect of this Wakkerstroom property. The Respondents later rectified this decision and granted prospecting rights pursuant to the Gouws Prospecting Right Application in respect of the Middelburg property. What was registered in terms of the MPRTTO was not the whole of the right that Mr Gouws applied for and was granted, but only one half thereof.

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5.

The second set of events, as Fifth Respondent's Counsel classified them, concerned Applicants' application for prospecting rights and later mining rights with the Middelburg property. Applicants knew that there was coal below the surface of the Middelburg property. In the Answering Affidavit it was explained that Gouws had requested his son-in-law, Mr Barkhuizen, to find a mining company to "partner his application for a prospecting right". Barkhuizen approached Pretorius who represented Applicant and provided him with geological information concerning this property. Mr Gouws however decided not to enter into an agreement with Applicants, but entered into an agreement with Benicon, for the purposes of his application. It was then said that Applicants were thus precognized of Mr Gouws' intentions to bring an application for the conversion of his old-order right into a prospecting right. This notwithstanding, Applicants submitted the Magnificent Mile Prospecting Right Application on 3 May 2005, a bare two days after Phase 3 commenced.





There are two subsidiary issues concerning the Magnificent Mile Prospecting Rights

Application, namely:

5.1 Did Applicants have the right at all to lodge the application, given its knowledge of the Gouws-application?

5.2 Did the express terms of *Schedule II* allow Magnificent Mile to lodge an application?

6.

On 31 May 2005, the Regional Manager of the Mpumalanga Region of the Department accepted the Magnificent Mile Prospecting Rights Application, and on 16 January 2006, a prospecting right was granted to Magnificent Mile in respect of the Middelburg property. Magnificent Mile thereafter applied for the conversion of the prospecting right to as mining right. During that period, the Respondents recognized the competing interest between Gouws and Applicants and refused to grant the right to mine the Middelburg property to Applicants.

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7.

The third set of events concerned the fact that Mr Gouws died on 7 November 2005. At that point he had made his Prospecting Right Application in respect of the Middelburg property, the Respondents had accepted this but, in respect of the Wakkerstroom property, on 20 May 2005. On 31 May 2005, the Respondents also purported to accept Applicants' Prospecting Rights Application of 3 May 2005. Ms le Roux was appointed as Mr Gouws' executrix. Mrs Gouws was Mr Gouws' sole heir. Mr Gouws' estate was solvent and Mrs Gouws inherited the totality thereof. At the time of his death, he was married out of community of property to his wife.

8.

The relief sought:

Applicants essentially seek orders which can be divided into three groups:

- 8.1 The first is an order in terms of the provisions of *Section 7 (2) (c) of PAJA* to exempt Applicants from the obligation to exhaust internal remedies. Fifth Respondent does not oppose this relief and was also of the view that it



would be in the interests of justice for the disputes between herself, Applicants and the Respondents to be brought to a close as soon as possible.


- 8.2 Secondly, Applicants seek the judicial review of the acts of the Respondents relating to the Gouws Prospecting Right Application. Although Applicants recognize that Mr Gouws had the exclusive right to submit his application, it is Applicants' case that all his rights terminated when he died and none of them devolved onto his universal heir, Mrs Gouws, and no prospecting or other right could have been granted in respect of the Gouws Prospecting Right Application after his death. Mrs Gouws maintains the opposite view, namely that upon his death, Mr Gouws' rights devolved through his executrix onto Mrs Gouws. According to Mr P. Louw SC, this was a pivotal issue herein.
- 8.3 Applicants' third prong of attack is that they seek an order reviewing and setting aside, the decision of the Respondents not to grant a mining right to Applicant. The Magnificent Mile Mining Rights Application flows from the



Magnificent Mile Prospecting Rights Application. Fifth Respondent's response to this claim is that Applicant does not yet have the right to make any application including its prospecting rights application, under the *Mineral Act* during Phase 3, because the Gouws Prospecting Right Application has not yet been finally determined.

9.

Fifth Respondent however also claims specific declaratory relief in her counter-application in order to ensure that her rights under the Gouws Prospecting Right Application are properly secured and protected. In this context, the following was said in the Fifth Respondent's Answering Affidavit: "Mr Gouws made the said application and the errors of the Department meant that up to today his application has not been adjudicated upon with the consequences that up to now Applicant made no application in respect of the Middelburg property and the Department is now obliged to make a decision in respect of Mr Gouws' original application". That was essentially the relief sought in the counter application which was framed in the



fashion of a declaratory order. The prayers sought in this counter-application read as follows:

9.1 "Magnificent Mile Trading 30 (Pty) Ltd never had the right or competency to apply for any right under the Mineral and Petroleum Resources development Act, 28 of 2002 in respect of the property described as Portion 9 of the Farm Driefontein 338, Registration Division J. S. Mpumalanga, District Middelburg;

9.2 The application for a prospecting right by the said Magnificent Mile Trading 30 (Pty) Ltd in respect of the said property is void ab initio, and so are all steps taken in consequence thereof;

9.3 The application for a prospecting right by Nicholaas Petrus Gouws in respect of the said property was valid, and:

9.3.1 Has been duly granted, alternatively;

9.3.2 Is still pending, awaiting consideration by the director-General of the Department of Mineral Resources or the correct official in the said Department".



## 10.

In Applicants' Replying Affidavit, to the counter-application the following was put:

- 10.1 Although the relief sought purports to be in the form of a declarator, rather than a review application, it was clear from the Answering Affidavit that Mrs Gouws considered the counter application "as a review of the Department's illegal act of accepting the Magnificent Mile application and purporting to grant it";
- 10.2 It was not competent for an Applicant to avoid the provisions of *PAJA* when the relief sought can be brought under this *Act*, by referring to it as a "constitutional legality review", which was presumed to be a reference to the provisions of *Section 172 of the Constitution of the Republic of South Africa, 1996*;
- 10.3 Had the counter-application been brought in terms of *PAJA*, as it should have been, the 180 day period provision in *Section 7 (1) of PAJA*, and the provisions of *Section 7 (2)*, which provide that a Court may not review the



administrative action, unless the Applicant in the review application exhausted its internal remedies, would have been applicable;

10.4 Even if the counter-application could have been brought in terms of Section 172 of the Constitution or the common law, it was also relevant to consider whether Mrs Gouws had exhausted her internal remedies and whether the review application was brought within a reasonable time.

11.

It was therefore stated that since Fifth Respondent:


- 11.1 Did not bring the counter application within a reasonable time or 180 days, as contemplated in *Section 7 (1) of PAJA*;
- 11.2 Did not exhaust her internal remedies before bringing the counter application;
- 11.3 Did not apply to this Court to extend the 180 day period in terms of *Section 9 of PAJA*;



11.4 Did not apply to be exempted from the requirement to exhaust her internal remedies in terms of *Section 7 (2) (c) of PAJA*, the counter-application should for those reasons alone be dismissed with costs.

12.

In the Heads of Argument of Fifth Respondent, it was said that Mrs Gouws was compelled to bring the counter-application which was best styled a collateral application or judicial review i. e. an application that does not resort under *PAJA*, but under the constitutional principle of legality. The conduct of the Respondents was irrational and thus constitutionally invalid, having regard to their actions or inactions. It was submitted that it was now settled law that a collateral challenge to the validity of administrative action could be brought where a public authority seeks to coerce a subject into compliance with an unlawful administrative act. In this context reference was made to *V & A Waterfront Properties (Pty) Ltd v Helicopter and Marine Services (Pty) Ltd 2006 (1) SA 252 SCA par. 10*, as well as *Oudekraal Estates (Pty) Ltd v City of Cape Town 2004 (6) SA 222 (SCA) at par.*





26. It was said that the question was whether an Applicant in collateral proceedings seeks the correct remedy in the correct proceedings. A collateral review was not possible where two subjects are in a private dispute and one subject relies upon an administrative act that was performed by an administrator who is not party to the litigation. In those circumstances Courts have held that the wrong remedy is sought in the wrong proceedings. Fifth Respondent's Counsel however submitted that if the administrative order seeks to enforce an administrative act, it was open to the Respondent or Defendant to raise as a defence that the act was legal. The Respondents in the present instance are parties to the litigation and by the inaction they effectively make common cause with Applicant, and thus in this manner seek to enforce the invalid administrative act by not properly dealing with the Gouws Prospecting Right Application by either granting it or rejecting it. Accordingly it was submitted that the counter application was the appropriate relief.



Events after the hearing:

On 19 September 2016, I caused an email to be sent to the parties' Attorneys which read as follows:

- 13.1 "I have re-studied the relevant parts of the record and Counsel's submissions during the hearing on 29 August 2016. Even if Fifth Respondent's amended Draft Order is granted, there remains the problem summarized in par. 51 and 52 of Applicant's Supplementary Affidavit. (p. 253 of the application)
- 13.2 Par. 2.2 and 2.3 of Applicant's Draft Order remain too vague in the light of the history of this matter and would not address the problems referred to in the Supplementary Affidavit. How would an order referring to "all steps taken in consequence thereof" be enforced vis-à-vis the (absent) First to Third Respondents, and others?
- 13.3 It seems to me that despite the lapse of time "the comedy of errors" should be solved by an internal appeal.

One appropriate method would be to issue a rule nisi, compelling the Department to take all necessary steps within a number of days to deal with this error-ridden situation.

- 13.4 It would not seem to be correct, assuming that I could in law grant Fifth Respondent's Draft Order, then simply also dismiss the claim in convention, as many errors of fact and law would remain.
- 13.5 I am of the view that both Counsel did not sufficiently consider this point.
- 13.6 An appropriate internal appeal, with enforceable dates, would be one way to a solution. There may be other practical ones.
- 13.7 At the moment the Fifth Respondent's Draft Order does not sufficiently address the history of the matter. It must be common cause that Applicant would be entitled to certain of the prayers.
- 13.8 Counsel are requested therefore to consider the above and let me have an appropriate Draft Order by agreement, leaving only par. 2.1 and 2.3 of Fifth Respondent's Draft for my consideration, and the question of costs.



13.9 Counsel are at liberty to suggest any other practical approach, but it must of such a nature that the wrong or unlawful decisions referred to in Applicant's Amended Notice of Motion are not left hanging in the air".

14.

In response thereto I received a joint explanatory note from Counsel as well as copies of Applicants' suggested Draft Orders and a copy of First respondent's proposed Draft Order. The explanatory note from Counsel read as follows:

14.1 "Having regard to the essential dispute between the parties (see paragraph 4 below), they have been unable to agree to a Draft Order. Accordingly, the parties jointly approach the Honourable Judge by way of this note.

14.2 It appears that the First to Third Respondents made a number of errors in regard to the decisions made, which decisions are set out in the Applicants' Amended Notice of Motion. As such the parties are in agreement that those decisions stand to be set aside.

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14.3 The essential dispute between the parties however is that the Fifth

Respondent contends that the Applicant never had the right to apply for the prospecting right over the subject property and as such the state officials could never have granted the prospecting right over the subject property under circumstances where the late Mr Gouws' application had not been dealt with in terms of the Act, read with the transitional provisions.

Furthermore, the Fifth Respondent contends that the late Mr Gouws' application for a prospecting right does not simply lapse upon his death. The Fifth Respondent contends that the exclusivity principle applies and as such the state officials were obliged to deal with Mr Gouws' application, and upon the granting thereof the prospecting right could be ceded from the estate into the name of the Fifth Respondent, provided that she qualified in accordance with the provisions of the MPRDA.

14.4 The Applicant contends that, even if the honourable Judge should find that the deceased's prospecting right application did not lapse upon his death (a finding with which the Applicant does not agree) the Fifth Respondent's

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proposed Draft Order in respect of the counter application attached to this letter as Annexure B does not provide a legally tenable solution for the problem faced by the Fifth Respondent, because-

14.4.1 It is not possible to grant a prospecting right to a person who does not exist and that, for that reason, the relief proposed in paragraphs 6 and 7 of the Draft Order is not competent;

14.4.2 After the application for a prospecting right was lodged by the deceased the only right he retained was a right to lawful administrative action and, because of the very nature of such a right, such a right is not an asset of tan deceased estate, and the Fifth Respondent did not, therefore, inherit that right;

14.4.3 The proposed Draft Order of the Fifth Respondent envisages, in paragraph 7.6 thereof, that the prospecting right be granted to the deceased and then ceded to the Fifth Respondent. The Applicant contends that it is impossible for a deceased person to cede a prospecting right (or any other right) to another person.

14.5 Having regard to the essential dispute, and having regard to the issues which stand to be determined by the Honourable Court (as set out in the



Honourable Judge's e-mail communication dated 19 September 2016), the parties have drafted their respective Draft Orders.

14.6 Firstly, copies of the Applicant's Draft Orders are attached hereto as Annexures A1 and A2. The contents of the Draft Orders are self-evident.

14.7 Secondly, a copy of the Fifth Respondent's Draft Order is attached hereto as Annexure B. As it appears from the Draft Order, it provides for *inter-alia* for the setting aside of the decisions made by the state officials (it is common cause that those decisions are error-ridden and should be set aside), and on the assumption that the Honourable Judge determines in favour of the Fifth Respondent, that the remaining issues be dealt with by way of a *rule nisi*."

To put the memorandum into the proper context, I annex the Draft Orders referred to therein, to this judgment, failing which the reader of the explanatory note would obviously not know what was being suggested.



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15.

On 4 November 2016, I made an order which I annex hereto, as Annexure D. As is evident, paragraphs 1, 2, 3, 4, 5, 6, 7 and 8.1 of the Applicants' Amended Notice of Motion were granted. The Fifth Respondent's claim in reconvention was dismissed.

16.

It is my view that the particular prayers of the Applicant's Amended Notice of Motion that were granted, really follow, almost as a matter of course from the history of this matter and the facts that were common cause. There is no reason why the "comedy of errors" should remain and the actions that were taken by the relevant Respondents in the present context were made wholly irrationally, and incompetently. The parties hereto were in fact in agreement, after reconsideration that I requested, that the "errors in regard to the decisions made", stood to be set aside.

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Fifth Respondent's claim in reconvention:

I dismissed this claim. At the time I did so I was of the view that the counter application in these proceedings was not competent, for the reasons set out in the Applicants' Replying Affidavit. I have referred to these in par. 10 above. The relevant dispute herein is between two private parties. It is clear that the decisions made by the relevant Respondents were "administrative action" as defined in *PAJA*, and as such reviewable. In that case, the provisions of *Section 9 of PAJA* applied. It was not for the Fifth Respondent to idly stand by, wait for the passage of years and then launch a counter-application under the mantle of "constitutional legality challenge". It is true that the prayers of the counter-application are couched in the form of a declarator, but having regard to the nature of the beast, it is clear that what is essentially sought was a review of the decisions referred to in that Notice of Motion. In argument it was put to me that a collateral challenge to the validity of administrative action could be brought where a public authority seeks to coerce a subject into compliance with an unlawful administrative act. In the present instance,



It is not correct to say that the administrative organ seeks to enforce an administrative act, and that it was therefore open to the Respondents to raise as a defence that the act is illegal. Fifth Respondent's Counsel sought to turn the matter around by submitting that the Respondents herein, by their inaction, effectively make common cause with Applicant and in that manner seek to enforce the invalid administrative act.



## 18.

It has been held in a number of cases that it is jurisprudentially incorrect to regard *PAJA* and the legality principle as parallel bases for review, both equally available to Courts in cases where public conduct could qualify as administrative action, and thus to treat the two bodies of law as free alternatives that one may pick-and-choose at will. This so-called "free-alternative trend", conflicts with clear precedent giving expression to an established principle of constitutional adjudication. This means that *PAJA* should apply where it is applicable, and general norms such as

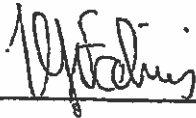
legality may only be resorted to once it has been determined that *PAJA* does not apply.

See: *Comair v Minister of Public Enterprises 2016 (1) SA 16 GP at par. 21*, where the relevant authorities are referred to.

In the present instance there is nothing before me to show that the Fifth Respondent was in any manner prevented to challenge the relevant administrative act, and could only do so when it was "coerced" by Applicants' application to review the irrational acts of the particular Defendant. It is therefore my opinion that Fifth Respondent has misconstrued the relevant principles relating to collateral challenges and when they can appropriately be brought. There is no application before me in accordance with the provisions of Section 9 of *PAJA*. I cannot think of any justifiable reason why Fifth Respondent could not have taken the appropriate action in terms of the relevant provisions of *PAJA*. For that reason the "constitutional collateral-challenge" by way of the counter-application was dismissed.



Another delay in these unfortunate proceedings was caused by the fact that the Court file disappeared and I note from a document from the Registrar's Office that it was uplifted by a person whose particulars given turned out to be either false or non-existing.



JUDGE H.J. FABRICIUS

JUDGE OF THE GAUTENG HIGH COURT, PRETORIA



## IN THE HIGH COURT OF SOUTH AFRICA

## GAUTENG DIVISION, PRETORIA

Case No: 49701/13

In the matter between:

MAGNIFICENT MILE TRADING 30 (PTY) LTD

Applicant

and

MINISTER OF MINERAL RESOURCES

First Respondent

DIRECTOR-GENERAL: DEPARTMENT OF

MINERAL RESOURCES

Second Respondent

DEPUTY DIRECTOR-GENERAL

DEPARTMENT OF MINERAL RESOURCES

Third Respondent

ANNEKE DENISE LE ROUX N.O.

Fourth Respondent

JOSEPHINE TERBLANCHE GOUWS

Fifth Respondent

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**DRAFT ORDER**

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BEFORE HIS LORDSHIP MR JUSTICE FABRICIUS

On this the ..... day of September 2016, having heard counsel and having read the documents filed of record, the following order is made:



1. That the relief sought in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8.1 of the applicant's amended notice of motion be granted
2. That the Minister (or the person to whom the Minister's power under section 24F(1A) of the National Environmental Management Act, 107 of 1998 is delegated) is ordered, after an application for the approval of an environmental authorisation is submitted by Magnificent Mile as contemplated in section 22(1) of the MPRDA (as amended), to consider and make a decision with regard to the issue of an environmental authorisation in respect of the mining operations to be conducted by Magnificent Mile in accordance with its mining work programme which forms part of the mining right granted to it in terms of this court order;<sup>1</sup>
3. That the fifth respondent's claim in reconvention be dismissed:
4. (Cost order left for the judge's consideration)

BY ORDER OF COURT

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REGISTRAR

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<sup>1</sup> For the reason why this order should be made instead of paragraph 8.2 of the applicant's amended notice of motion, see paragraph 75 of the applicant's heads of argument.



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 49701/13

In the matter between:

MAGNIFICENT MILE TRADING 30 (PTY) LTD

Applicant

and

MINISTER OF MINERAL RESOURCES

First Respondent

DIRECTOR-GENERAL: DEPARTMENT OF

MINERAL RESOURCES

Second Respondent

DEPUTY DIRECTOR-GENERAL

DEPARTMENT OF MINERAL RESOURCES

Third Respondent

ANNEKE DENISE LE ROUX N.O.

Fourth Respondent

JOSEPHINE TERBLANCHE GOUWS

Fifth Respondent

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DRAFT ORDER

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BEFORE HIS LORDSHIP MR JUSTICE FABRICIUS

On this the ..... day of September 2016, having heard counsel and having read the documents filed of record, the following order is made:

1. That the relief sought in paragraphs 1, 2, 3, 5 and 6, of the applicant's amended notice of motion be granted;
2. That the relief sought in paragraphs 4, 7, 8 and 9 of the applicant's amended notice of motion be dismissed
3. That it is declared that the applicant did not at any stage have the right or competency to apply for any right under the Mineral and Petroleum Resources Development Act, 28 of 2002 in respect of the property described as Portion 9 of the farm Driefontein, Registration Division JS Mpumalanga, District Middelburg ("the Property");<sup>1</sup>
4. \*\*\*2
5. (Cost order left for the judge's consideration)

BY ORDER OF COURT

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REGISTRAR

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<sup>1</sup> This is the order in paragraph 2.1 of the First Draft Order proposed by the fifth respondent and which Judge Fabricius suggested should remain for his consideration.

<sup>2</sup> The applicant does not have any proposals with regard to the relief that may be granted after all the decisions made by the State Respondents have been set aside (as is proposed in paragraph 1 hereof) because it contends that it is not legally possible to grant a prospecting right to a deceased person or for a deceased person to cede a right to anyone as is proposed by the fifth respondent in its proposed draft order.





IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 49701/13

In the matter between:

**MAGNIFICENT MILE TRADING 30 (PTY) LTD**

Applicant

and

**MINISTER OF MINERAL RESOURCES**

First Respondent

**DIRECTOR-GENERAL: DEPARTMENT OF**

**MINERAL RESOURCES**

Second Respondent

**DEPUTY DIRECTOR-GENERAL**

**DEPARTMENT OF MINERAL RESOURCES**

Third Respondent

**ANNEKE DENISE LE ROUX N.O.**

Fourth Respondent

**JOSEPHINE TERBLANCHE GOUWS**

Fifth Respondent

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**DRAFT ORDER**

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BEFORE HIS LORDSHIP MR JUSTICE FABRICIUS

On this the ..... day of September 2016, having heard counsel and having read the documents filed of record, the following orders are made:

**IN RESPECT OF THE MAIN APPLICATION**

*Handwritten signature*

1. It is declared that the Applicant had no right or competency to apply for any right under the Mineral and Petroleum Resources Development Act, 28 of 2002 ("the MPRDA") in respect of the property described as Portion 9 of the Farm Driefontein 338, Registration Division J.S. Mpumalanga, district Middelburg ("the Property") after the application for a prospecting right over the Property was lodged by the late Nicholaas Petrus Gouws ("Mr Gouws") on 29 April 2005.
2. It is declared that the Applicant's applications for a prospecting right and for a mining right were void ab initio.
3. The following decisions are reviewed and set aside:
  - 3.1. The decision of the Third Respondent dated 13 December 2005 to grant a prospecting right in favour of the late Nicolaas Petrus Gouws (the deceased") in respect of coal on Portion 9 of Driefontein 338 JS situated in Wakkerstroom;
  - 3.2. the decision of the Third Respondent dated 9 November 2010 to grant a prospecting right in favour of the deceased in respect of one half share of minerals on Portion 9 of Driefontein 338 JS situated in Witbank;
  - 3.3. the decision of the Third Respondent dated 19 September 2011 to amend the power of attorney dated 9 November 2010 to rectify the magisterial district referred to herein to read "Middelburg";
  - 3.4. the execution and registration in the Mineral and Petroleum Titles Registration Office of the prospecting right executed on 14 December 2010 in favour of the Fourth Respondent for one half share of the



- minerals on Portion 9 of the farm Driefontein 338 JS situated in Middelburg;
- 3.5. the execution and registration in the Mineral and Petroleum Titles Registration Office of the prospecting right executed on 5 October 2011 in favour of the Fourth Respondent for coal in respect of one half share of the minerals on Portion 9 of the farm Driefontein 338 JS situated in Middelburg;
- 3.6. the decision of the First Respondent to grant a prospecting right for coal in respect of Portion 9 of the farm Driefontein 338 JS situated in Witbank to Mr Gouws on a date prior to 9 July 2013
- 3.7. the decision of the Third Respondent dated 17 July 2013 to grant consent in terms of section 11 of the MPRDA for the cession of a prospecting right in respect of Portion 9 of the farm Driefontein 338 JS from Mr Gouws to the Fifth Respondent.
4. The Applicant is ordered to pay the costs of the main application.
5. A rule *nisi* returnable on \_\_\_\_\_ 2016 is issued calling upon the First to Third Respondents to show cause why the First to Third Respondents should not be ordered to pay, jointly and severally, together with the Applicant, the Fifth Respondent's costs incurred in the main application, including the costs of two counsel.

**IN RESPECT OF THE COUNTER-APPLICATION**


6. It is declared that the application for a prospecting right dated 29 April 2005 lodged by the late Nicolaas Petrus Gouws was and remains valid;
7. A *rule nisi* returnable on \_\_\_\_\_ 2016 is issued calling upon the First Respondent (or a duly delegated official) to show cause why the following order should not be granted:
  - 7.1. the First Respondent (or a duly delegated official) is ordered, compelled and directed to consider, in compliance with the provisions of the MPRDA and the regulations thereto, the application lodged on 29 April 2005 by the late Nicolaas Petrus Gouws in terms of which the deceased applied for prospective right for coal in respect of Portion 9 of the farm Driefontein 388 JS, situated in the Magisterial District of Middelburg;
  - 7.2. the First Respondent shall consider the application as set out in paragraph 7.1 above within 14 days after the granting of this order;
  - 7.3. in the event that the First Respondent is of the view that the aforesaid application is not in compliance with the aforesaid provisions, then the First Respondent must notify the Fifth Respondent of such non-compliance, if any, which notice must be given within 10 days after the date referred to in paragraph 7.2 above;
  - 7.4. the First Respondent will give the Fifth Respondent an opportunity to furnish information and/or appropriate documents to rectify the non-compliance, if any, which information and/or documents, if any, will be delivered by the Fifth Respondent to the First Respondent within 30 days thereafter, or within such period as agreed between the First Respondent and the Fifth Respondent;



- 7.5. the First Respondent will make a final decision in regard to the aforesaid application within 10 days after receiving the information and/or documents referred to in paragraph 7.4 above;
- 7.6. if the First Respondent grants the application for the prospecting right as aforesaid, the First Respondent is ordered, directed and compelled to consider the Fifth Respondents MPRDA section 11 application and if the First Respondent is satisfied that the application is in accordance with the provisions of the in MPRDA, the First Respondent is ordered to execute and register the prospecting right in the name of the Fifth Respondent in the Mineral and Petroleum Titles Registration Office;
- 7.7. the First to Third Respondents should is ordered to pay, jointly and severally, together with the Applicant, the Fifth Respondent's costs in the counter-application, including the costs of two counsel.
8. The Applicant is ordered to pay the Fifth Respondent's costs in the counter-application, which costs include the costs of two counsel.

BY ORDER OF COURT

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REGISTRAR



Annexure A1

"D"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 49701/13

In the matter between:

MAGNIFICENT MILE TRADING 30 (PTY) LTD

Applicant

and

MINISTER OF MINERAL RESOURCES

1<sup>ST</sup> Respondent

DIRECTOR-GENERAL: DEPARTMENT OF

MINERAL RESOURCES

2<sup>ND</sup> Respondent

DEPUTY DIRECTOR-GENERAL

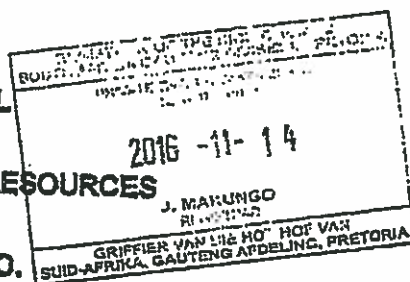
DEPARTMENT OF MINERAL RESOURCES

3<sup>RD</sup> Respondent

ANNEKE DENISE LE ROUX N.O.

4<sup>TH</sup> Respondent

JOSEPHINE TERBLANCHE GOUWS

5<sup>TH</sup> Respondent

DRAFT ORDER

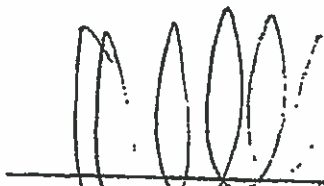
BEFORE HIS LORDSHIP MR JUSTICE FABRICIUS

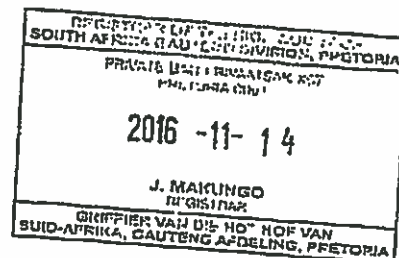
On this the 4<sup>th</sup> of November 2016, having heard Counsel and having read the documents filed of record, the following order is made:

4/11/16

1. That the relief sought in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8.1 of the Applicant's Amended Notice of Motion be granted
2. That the Minister (or the person to whom the Minister's power under Section 24F(1A) of the National Environmental Management Act, 107 of 1998 is delegated) is ordered, after an application for the approval of an environmental authorisation is submitted by Magnificent Mile as contemplated in Section 22(1) of the MPRDA (as amended), to consider and make a decision with regard to the issue of an environmental authorisation in respect of the mining operations to be conducted by Magnificent Mile in accordance with its mining work programme which forms part of the mining right granted to it in terms of this Court order,
3. That the Fifth Respondent's claim in reconvention be dismissed:
4. Costs are reserved.

BY ORDER OF COURT

  
REGISTRAR







CASE NO: 49701/13

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

PRETORIA 28 JUNE 2017

BEFORE THE HONOURABLE MR JUSTICE FABRICIUS

In the matter between:

MAGNIFICENT MILE TRADING 30 (PTY)

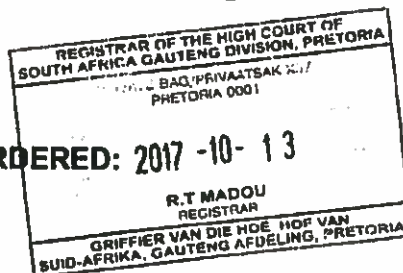
APPLICANT

And

MINISTER OF MINERAL RESOURCES  
THE DIRECTOR-GENERAL DEPARTMENT  
OF MINERAL RESOURCES  
DEPUTY DIRECTOR-GENERAL: MINERAL REGULATION,  
DEPARTMENT OF MINERAL RESOURCES  
ANNEKE DENISE LE ROUX N.O.  
JOSEPHINE TERBLANCHE GOUW

1<sup>ST</sup> RESPONDENT2<sup>ND</sup> RESPONDENT3<sup>RD</sup> RESPONDENT4<sup>TH</sup> RESPONDENT5<sup>TH</sup> RESPONDENT**COSTS ORDER:**

HAVING HEARD Counsel(s) for the party(ies) and having read the documents filed of record

**IT IS ORDERED: 2017 -10- 13**

1. The First, Second and Third Respondents are ordered to pay the costs of the application, jointly and severally, the one paying, the others to be absolved.
2. The Fifth Respondent is ordered to pay the costs of the counter-application.

*[Handwritten signature]*



BY THE COURT



REGISTRAR

REGISTRAR OF THE HIGH COURT OF  
SOUTH AFRICA GAUTENG DIVISION, PRETORIAKASE UAG/PRIVAATSAK K.2/  
PRETORIA 0001

2017 -10- 13

R.T. MADOU  
REGISTRARGRIFPIER VAN DIE HOË HOF VAN  
SUID-AFRIKA, GAUTENG AFDELING, PRETORIA