

A registration of the transfer in the register without the sanction of the liquidator (cf *In re Onward Building Society* [1891] LR 2 QB 463 (CA) at 475; *Commercial Grain Producers Association v Tobacco Sales Ltd* 1983 (1) SA 826 (ZS) at 831.)

B There was nothing to preclude the plaintiffs from ceding to the first defendant their rights to the shares and their claims. While the shares were pledged to the creditors under the second moratorium agreement, the *dominium* thereof remained in the sellers. The second moratorium creditors were entitled to have the shares registered in their names, obviously not to thereby acquire ownership (which would not follow) but to protect their rights as pledgees. As regards the claims, there was nothing to preclude the plaintiffs from ceding them to the first defendant. It is true that these claims had been ceded to GDM, Nedbank. GDM and Nedbank were paid so that Tedelex, the active asserter of the rights of the pledgees under the second moratorium agreement, is again the obstructing party.

D The absence of the liquidator's consent to the transfer of the shares, which the defendants undertook to procure with full knowledge, actual and recorded, of the pledge under the second moratorium agreement, is, therefore, no bar to the relief claimed. As regards the claims, the agreement does not specify the claims or the *quantum* thereof; the plaintiffs sold whatever claims they had on the signature date ie 2 March 1995. The acquisition of the share capital of Miltons stands on a different footing. It was crucial to the first defendant; there was no purpose in using Miltons as the continuing vehicle for the business without owning all the shares in its capital.

E Whether the plaintiffs implemented the sale of the shares by delivery or a tender of delivery is the next inquiry. The defendants argued that, by reason of all the other cessions of the claims, the plaintiff had nothing to cede to them. The defendants' acquisition of the sellers' claims was important to ensure that the sellers, as creditors of Miltons, would not have any further claims against it, payment of which would have required an injection of money by the first defendant or a diversion of Miltons' funds when it became profitable. An added advantage would be the ability to withdraw money from Miltons without payment of the secondary tax on companies once it had become solvent. The claims to be acquired from the creditors pursuant to the proposed scheme of arrangement would be another medium for this. The defendants' objection that the plaintiffs had nothing to cede to them fails because they stipulated for no warranties with regard to the claims and did not specify the amounts or the minimum amounts thereof, whatever their expectations may have been. The plaintiffs sold whatever claims, actual and contingent, present and future, they had. This would have included their reversionary rights to or *dominium* of claims ceded as security and the rights of recourse which would be acquired on payment in respect of a debt guaranteed as surety.

THE SOUTH AFRICAN LAW REPORTS DIE SUID-AFRIKAANSE HOFVERSLAE

JUNE 1999 (2)

DIRECTOR: MINERAL DEVELOPMENT, GAUTENG
REGION, AND ANOTHER v SAVE THE VAAL
ENVIRONMENT AND OTHERS

SUPREME COURT OF APPEAL

MAHOMED CJ, HOWIE JA, MARAIS JA, OLIVIER JA and MADLANGA JA

1999 February 18; March 12

Case No 133/98

Environmental law—Protection of the environment—Right to protection of the environment in terms of s 24 of Constitution of the Republic of South Africa Act 108 of 1996—Audi alteram partem rule applicable to application for mining licence in terms of s 9 of Minerals Act 50 of 1991—Interested parties, including environmental association of property owners in affected area, entitled to be heard in such application—Hearing not necessarily formal, but interested parties to be notified of application and given opportunity to raise their objections in writing.

Environmental law—Protection of the environment—Change to legal and administrative approach to environmental concerns to come with change in ideological climate of country.

Mines and minerals—Mining licence—Application for in terms of s 9 of Minerals Act 50 of 1991—Audi alteram partem rule applicable to such application—Nothing in s 9 or rest of Act excluding application of rule either expressly or by necessary implication—No considerations of public policy militating against its application—Interested parties, including environmental association of property owners in affected area, entitled to be heard in such application—Application of audi rule indicated by enormous damage mining can do to environment and ecological systems—Constitution of the Republic of South Africa Act 108 of 1996, by including environmental rights in s 24 as fundamental, justiciable human rights, requiring environmental considerations to be accorded appropriate recognition and respect in administrative processes in South Africa.

A *Voluntary association—Prohibited association—Environmental association with more than 20 members not registered as company—Object of association to assist members to protect and maintain environmental integrity of area where they owned property—Association objecting to grant of mining licence in area, inter alia on ground that mining would have negative effect on property market and values—Prohibition in s 30(1) of Companies Act 61 of 1973 against formation of associations of more than 20 persons for purpose of ‘carrying on any business that has for its object the acquisition of gain’—Association could not be said to be trading or carrying on business with object of acquisition of gain—Association not illegal.*

C A voluntary association of more than 20 persons and which is not registered as a company in terms of the Companies Act 61 of 1973 and which has as its object, according to its written constitution, to assist its members to protect and maintain the environmental integrity of an area in which its members own property is not a prohibited association as contemplated by s 30(1) of the Companies Act because it has objected to the grant of a mining licence for open-cast mining in the area on the ground, *inter alia* that the operation of the proposed open-cast mine would have a permanent negative effect on the property market in the vicinity, with a serious diminution of property values. It cannot be said that the association, in so doing, was trading or ‘carrying on any business that has for its object the acquisition of gain’ within the meaning of those words in s 30(1) of the Companies Act. Such an association is not illegal. (Paragraphs [4], [6], [7] and [8] at 714B–C/D, 715E/F–F/G and 715I/J–716B/C, paraphrased.)

D The *audi alteram partem* rule applies when an application for a mining licence is made to the Director of Mineral Development in terms of s 9 of the Minerals Act 50 of 1991. Such a hearing need not necessarily be a formal one, but interested parties, including interested environmental associations, should at least be notified of the application and be given an opportunity to raise their objections in writing. If necessary, a more formal procedure can then be initiated. Nothing in s 9 or in the rest of the Act either expressly or by necessary implication excludes the application of the rule, and there are no considerations of public policy militating against its application. On the contrary, the application of the rule is indicated by virtue of the enormous damage mining can do to the environment and ecological systems. What has to be ensured when application is made for the issuing of a mining licence is that development which meets present needs will take place without compromising the ability of future generations to meet their own needs. The Constitution of the Republic of South Africa Act 108 of 1996 in s 24, by including environmental rights as fundamental, justiciable human rights, by necessary implication requires that environmental considerations be accorded appropriate recognition and respect in the administrative processes in our country. Together with the change in the ideological climate must also come a change in our legal and administrative approach to environmental concerns. (Paragraph [20] at 718I/J–719D/E.)

E The decision in the Witwatersrand Local Division in *Save the Vaal Environment and Others v Director: Mineral Development, Gauteng Region, and Another* confirmed.

Annotations:
Reported cases

J *Du Preez and Another v Truth and Reconciliation Commission* 1997 (3) SA 204 (A): referred to

Mitchell’s Plain Town Centre Merchants Association v McLeod and Another A
1996 (4) SA 159 (A):
Smith v Anderson (1880) 15 ChD 247 (CA): dictum at 273 applied
Van Wyk NO v Van der Merwe 1957 (1) SA 181 (A): dictum at 188B–189A applied.

Statutes

The Companies Act 61 of 1973, s 30(1): see *Juta’s Statutes of South Africa* B
1998 vol 2 at 1-132
The Constitution of the Republic of South Africa Act 108 of 1996, s 24: see
Juta’s Statutes of South Africa 1998 vol 5 at 1-146
The Minerals Act 50 of 1991, s 9: see *Juta’s Statutes of South Africa* 1997 vol
4 at 1-145. C

Appeal from a decision in the Witwatersrand Local Division (Cassim AJ). The facts appear from the judgment of Olivier JA.

S J Grobler (with him L G F Putter) for the first appellant.

G L Grobler SC (with him G J Marcus SC and L J Bekker) for the second appellant. D

J R Gautschi SC (with him P A Meyer) for the respondents.

In addition to the authorities cited in the judgment of the Court, counsel for various parties referred to the following:

Administrator, Cape, and Another v Ikapa Town Council 1990 (2) SA
882 (A) E

Administrator, Natal, and Another v Sibiyana and Another 1992 (4) SA 532
(A)

Administrator, Transvaal, and Others v Traub and Others 1989 (4) SA
731 (A) at 748G, 756G–I, 758D–759D, 761, 762F–763J

Administrator, Transvaal, and Others v Zenzile and Others 1991 (1) SA F
21 (A) at 34J–35B, 39B–J

Apex Mines Ltd v Administrator, Transvaal 1986 (4) SA 581 (T) at 590
Assagay Quarries (Pty) Ltd v Hobbs and Another 1960 (4) SA 237 (N)
at 243

Attorney-General, Eastern Cape v Blom and Others 1988 (4) SA 645 (A) G

Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 All ER 346 (PC)

Barrett NO v Macquet 1947 (2) SA 1001 (A) at 1016
Bingham v City Council of Johannesburg 1934 WLD 180 at 184

Bohlokong Black Taxi Association v Interstate Bus Lines (Edms) Bpk
1997 (4) SA 635 (O)

Bowman NO v De Souza Roldao 1988 (4) SA 326 (T) at 327C *et seq* H
*Corium (Pty) Ltd and Others v Myburgh Park Langebaan (Pty) Ltd and
Others* 1995 (3) SA 51 (C)

Council of Civil Service Unions and Others v Minister for the Civil Service
[1984] 3 All ER 935 (HL) at 943j–944a

Douglas Colliery Ltd v Bothma and Another 1947 (3) SA 602 (T) at
610–12

Elektrisiteitsvoorsieningskommissie v Fourie 1988 (2) SA 627 (T) at
641C–642I

Erasmus v Afrikander (Proprietary) Mines Ltd 1976 (1) SA 950 (W) at 960
Esterhuysen v Jan Jooste Family Trust and Another 1998 (4) SA 241 (C)
at 253H–254D J

- A *Finbro Furnishers (Pty) Ltd v Registrar of Deeds, Bloemfontein, and Others* 1985 (4) SA 773 (A) at 807H-808B
Foulds v Minister of Home Affairs and Others 1996 (4) SA 137 (W)
Government of the Republic of South Africa v Oceana Development Investment Trust plc 1989 (1) SA 35 (T) at 36H-I
- B *Gluckman v Solomon* 1921 TPD 335 at 338
Hudson v Mann and Another 1950 (4) SA 485 (T) at 488C-G
Jaga v Dönges NO and Another; Bhana v Dönges NO and Another 1950 (4) SA 653 (A) at 662
Kakamas Bestuursraad v Louw 1960 (2) SA 202 (A) at 216F-H, 217-18, 226, 233-4
- C *Laurence v Verhoef and Others NNO* 1993 (2) SA 328 (W) at 335, 336
Le Roux and Others v Loewenthal 1905 TS 742 at 745
Levin v Vogelstruis Estates and Gold Mining Co Ltd 1921 WLD 66 at 69
London and SA Exploration Co v Rouliot (1891) 8 SC 75 at 97-8
Malherbe v Ceres Municipality 1951 (4) SA 510 (A) at 517D-E, 518A-B
- D *Medforum Hospitaal (Edms) Bpk v Departementshoof, Departement Gesondheid en Welsyn: Administrasie Volksraad en Andere* 1994 (4) SA 852 (T) at 864, 865
Morrison v Standard Building Society 1932 AD 229
Municipal Council of Bulawayo v Bulawayo Waterworks Co Ltd 1915 AD 611 at 625, 631-32
- E *Natal Navigation Collieries and Estate Co Ltd v Minister of Mines and Another* 1952 (2) SA 698 (A) at 705
Neebe v Registrar of Deeds 1911 TPD 311 at 315
Nolte v Johannesburg Consolidated Investment Co Ltd 1943 AD 295 at 315, 316
- F *Patel v Witbank Town Council* 1931 TPD 284 at 290
Patz v Greene & Co 1907 TS 427 at 433
Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E-635C
- G *Ridge v Baldwin and Others* [1963] 2 All ER 66 (HL)
Sachs v Minister of Justice; Diamond v Minister of Justice 1934 AD 11 at 22
Schmidt and Another v Secretary of State for Home Affairs [1969] 1 All ER 904 (CA) at 909C-F
- H *Schulte v Van den Berg and Others* 1991 (3) SA 717 (C) at 720D
S A Warehouse Service (Pty) Ltd v National Transport Commission 1980 (4) SA 183 (T) at 186
Sentrale Kunsmis Korporasie (Edms) Bpk v NKP Kunsmisverspreiders (Edms) Bpk 1970 (3) SA 367 (A) at 395F-396A
- I *South African Defence and Aid Fund v Minister of Justice* 1967 (1) SA 263 (A) at 270G-271A
South African Railways & Harbours v Transvaal Consolidated Land and Exploration Co Ltd 1961 (2) SA 467 (A) at 481-2, 491, 497
South African Roads Board v Johannesburg City Council 1991 (4) SA 1 (A) at 10F-11C, 12E-13E
- J *Transkei Public Servants Association v Government of the Republic of South Africa and Others* 1995 (9) BCLR 1235 (Tk) at 1243I-1244C

- Transvaal Agricultural Union v Minister of Land Affairs* 1997 (2) SA 621 A (CC) at 631A-B
Transvaal Consolidated Land and Exploration Co Ltd v Johannesburg City Council 1972 (1) SA 88 (W) at 94
Trojan Exploration Co (Pty) Ltd and Another v Rustenburg Platinum Mines Ltd and Others 1996 (4) SA 499 (A) at 509G-510A
Van Vuren v Registrar of Deeds 1907 TS 289 at 294, 295
West Witwatersrand Areas Ltd v Roos 1936 AD 62 at 72
Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd 1986 (2) SA 555 (A) at 562C-563A
- Badenhorst 'The Revesting of State-held Entitlements to Exploit Minerals in South Africa: Privatisation or Deregulation' (1991) TSAR 113 at 119, 120, 124-31
- Bamford *The Law of Partnerships and Voluntary Associations in South Africa* 3rd ed at 126 *et seq*
- De Smith, Woolf and Jowell *Judicial Review of Administrative Action* 5th ed at 417 *et seq*
- Franklin and Kaplan *The Mining and Mineral Laws of South Africa* at 1, 2, 8-15, 33, 36, 138-41, 169-72
- Hahlo and Kahn *The Union of South Africa: The Development of its Laws and Constitution* at 760, 762
- Henderson *Environmental Laws of South Africa* vol 1 at 1-7-1-8, chap 2.5
- Kaplan and Dale *A Guide to the Minerals Act, 1991* at 5, 6, 11, 49
- Kleyn and Boraine *Silberberg & Schoeman's The Law of Property* 3rd ed at 405, 406 fn 10, 411-12, 413
- Van der Merwe *Sakereg* 2nd ed at 559-62, 566 (and fn 124), 567.

Cur adv vult.

Postea (March 12).

Olivier JA:

[1] This is an appeal against a judgment of Cassim AJ in an opposed application in the High Court of South Africa, Witwatersrand Local Division, leave to appeal having been granted by the Court *a quo*. The appeal raises the question whether interested parties, wishing to oppose an application by the holder of mineral rights for a mining licence in terms of s 9 of the Minerals Act 50 of 1991 ('the Act'), are entitled to raise environmental objections and be heard by the first appellant, who is the official designated to grant or refuse such licence ('the Director'). In the present case, the Director, taking the view that consideration of such objections would be premature at that stage, refused the respondents a hearing. He was successfully taken on review. The appeal is aimed at reversing the outcome of that review.

[2] The second appellant ('Sasol Mining') is the holder of extensive mineral rights, including those in respect of an area comprising three farms in the Sasolburg district. The farms front on the Vaal River.