

1

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

Case no: 20341/19

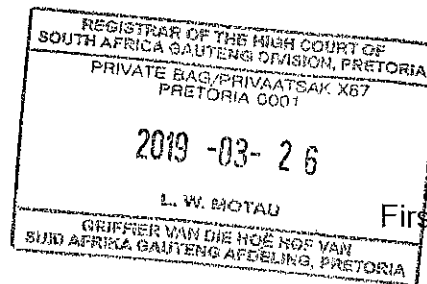
In the matter between:

Minerals Council South Africa

Applicant

and

Minister of Mineral Resources



First Respondent

South African Diamond and Precious Metals Regulator

Second Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to apply to the above honourable court for an order in the following terms:

1. Reviewing and setting aside the following clauses of the *Broad-based Socio-economic Empowerment Charter for the Mining and Minerals Industry, 2018* (Mining Charter, 2018) published in Government Notice 1002, Government Gazette No. 41934, dated 27 September 2018 (as amended by the Amendment in Government Notice 1421, Government Gazette No. 42130, dated 20 December 2018) (“the 2018 Charter”) in terms of sections 6(2)(a)(i), 6(2)(d), 6(2)(e)(i), 6(2)(e)(iii), 6(2)(f)(i), 6(2)(f)(ii) and/or 6(2)(i) of the Promotion of Administrative Justice Act 3 of 2000:

- 1.1. the introductory sentence of clause 2.1 insofar as it provides that “a mining right holder must comply with the following”;
- 1.2. clause 2.1.1.2, 2.1.1.5, 2.1.1.6 and 2.1.6.2, insofar as they apply to the renewal of a mining right;
- 1.3. clause 2.1.1.4;
- 1.4. clauses 2.1.3.2 and 2.1.4;
- 1.5. clauses 2.1.5.2 and 7.2;
- 1.6. the proviso to clause 2.1.6.1, in clauses 2.1.6.1.1 to 2.1.6.1.4;
- 1.7. the heading of clause 2.1.6 insofar as it refers to “existing rights”;
- 1.8. the definition of “beneficiation” and clauses 2.1.7.1 (including clauses 2.1.7.1.1 to 2.1.7.1.5) in the following respects:
 - 1.8.1. setting aside the definition of beneficiation and substituting it with the definition of beneficiation in section 1 of the Mineral and Petroleum Resources Development Act, 2002;
 - 1.8.2. setting aside the words “against a BEE Entrepreneur” where they appear in clause 2.1.7.1;
 - 1.8.3. setting aside the words “a maximum of 5 percentage points of a BEE Entrepreneur” where they appear in clause 2.1.7.1.1;
 - 1.8.4. setting aside the whole of clauses 2.1.7.1.2 to 2.1.7.1.5;
- 1.9. clause 2.2;

- 1.10. Insofar as the following clauses relate to existing or new licences and permits issued in terms of the Diamonds Act, 1986 and the Precious Metals Act, 2005, clauses 4, 6.2, 7.1, 7.3, 8.7, 8.8, 8.9 and 9.2; and
 - 1.11. clause 9.1.
2. In the alternative to prayer 1, declaring that the clauses mentioned in prayers 1.1 to 1.11 above are inconsistent with the principle of legality enshrined in section 1(c) of the Constitution, 1996 and setting them aside.
 3. Directing the first respondent to pay the costs of this application, such costs to include the costs of three counsel.
 4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **TEBELLO LAPHATSOANA CHABANA** and supporting affidavits and documents will be used in support of the application.

TAKE NOTICE ALSO that the first respondent is hereby called upon to show cause why the decisions referred to in prayer 1 above should not be reviewed and set aside.

TAKE NOTICE FURTHER that the first respondent is also hereby called upon to dispatch within fifteen days of receipt of the notice of motion, to the Registrar, the record of proceedings before him resulting in the decisions referred to in prayer 1 above together with such reasons as he is by law required or may desire to give and to notify the applicant's attorney that he has done so.

TAKE NOTICE FURTHER that if the first respondent intends opposing this application, he is required:

- (a) within fifteen days after receipt by them of the notice of motion or any amendment thereof, to deliver notice to the applicant's attorney that he intends so to oppose and in such notice to appoint an address within eight kilometres of the office of the registrar of this honourable court at which he will accept notice and service of all process in these proceedings; and
- (b) within thirty days after the expiry of the time referred to in rule 53(4) of the Uniform Rules of the High Court, to deliver any affidavits he may desire in answer to the allegations made by the applicant.

TAKE NOTICE FURTHER that if no such notice of intention to oppose the order in terms of this notice of motion be given, the application will be made on 4 September 2019 at 10:00 or as soon thereafter as the matter may be heard.

TAKE NOTICE, FURTHER, THAT the applicant has appointed Norton Rose Fulbright South Africa Inc care of Mothle Jooma Sabdia Inc, at the address set out hereunder at which it will accept notice and service of all process in these proceedings.

Dated at Sandton on this the 26th day of March 2019.

Norton Rose Fulbright South Africa Inc

Attorneys for Applicant

15 Alice Lane, Sandton

Tel: 011 685 8500

Fax: 011 301 3200

Ref: CMI264/Mr AP Vos/Ms K Kalyan

Email: andre.vos@nortonrosefulbright.com

kirthi.kalyan@nortonrosefulbright.com

c/o Mothle Jooma Sabdia Inc

Ground Floor, Duncan Manor

Cnr Jan Shoba (Duncan) and Brooks Street

Brooklyn, Pretoria

Tel: 012 363 3137

Fax: 012 362 4139

Email: ebrahimj@mjs-inc.co.za

Ref: Mr Jooma/sm

To:
The Registrar of the High Court
Pretoria

And to:
Minister of Mineral Resources
c/o Office of the State Attorney, Pretoria
Attorney for Respondent
SALU Building
255 Francis Baard Street
Pretoria
Tel: 012 309 1575
Email: simathebula@justice.gov.za
Ref: Mr Siphon Mathebula

Received on ____ March 2019

For: First Respondent

And to:
South African Diamond and Precious Metals Regulator
SA Diamond Centre
251 Fox Street
Johannesburg

Received on ____ March 2019

For: Second Respondent