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

CASE NO: 020911/ 2023

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
Date: 2 June 2023

In the matter between:

RICHARDS BAY TITATNIUM (PTY) LTD	FIRST APPLICANT
RICHARDS BAY MINING (PTY) LTD	SECOND APPLICANT
and	
COSCO SHIPPING LOGISTICS AFRICA (PTY) LTD	FIRST RESPONDENT
AEROTEX COMMODITIES CC	SECOND RESPONDENT
SELETHA INDUSTRIAL AND HYDRAULICS (PTY) LTD	THIRD RESPONDENT
OPULENT MINERALS (PTY) LTD	FOURTH RESPONDENT
BHAMJEE, MUZAQKIR ABDUL KHALEX	FIFTH RESPONDENT

MLISA, REGINA

SIXTH RESPONDENT

MLISA, ALEXANDER

SEVENTH RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

[1] The applicants (collectively referred to as 'RBM') obtained an urgent *ex parte* Anton Piller order and interim interdictory relief (collectively referred to as 'the relief') against the respondents on 1 March 2023. The Order granted on 1 March 2023 was subsequently amended a few times. The allocated return date is 14 June 2023. On 30 March 2023, the first respondent (Cosco Logistics or Cosco) filed a notice of anticipation of the return date and for the reconsideration of the Order on an urgent basis.

The factual context provided to the urgent court that granted the relief

[2] The parties to this reconsideration application are RBM and Cosco Logistics, although seven respondents are cited in the *ex parte* application. As a result, the factual context will be limited as far as it applies to these parties alone. It is necessary to have regard to the factual context provided by RBM to the urgent court that led to the relief being granted, before Cosco Logistics's contentions are set out.

[3] When RBM approached the urgent court on an *ex parte* basis seeking an Anton Piller order and interdictory relief, the court was informed that the first and second applicants collectively trade as RBM. RBM has a proprietary interest in minerals (specifically zircon and chloride slag) mined and produced by it. Since approximately June 2022 minerals to the value of approximately R19 723 400, were misappropriated from trucks and trailers transporting it from RBM's mining and production facilities near

Richards Bay in KwaZulu-Natal to warehouse facilities and the Richards Bay Port. RBM alleged that these acts of misappropriation were carried out by members of criminal syndicates. RBM mandated SSG Security, represented by Mr. McMenamin (McMenamin), to investigate the shortages and theft. The investigations revealed evidence of theft of significant amounts of zircon and chloride slag during the period June 2022 and December 2022.

[4] Mineral loads were diverted from their intended paths of travel and cross-loaded onto trucks and trailers allegedly owned or operated by the syndicates and certain of the respondents. These minerals were transported to Gauteng and offloaded at the premises of the respective respondents. RBM became aware of the schemes underpinning this application, when their informant, acquired a second-hand mobile phone and read WhatsApp messages between the phone's former owner and members of the criminal syndicates.

[5] At the hearing of the reconsideration application, a confidential affidavit by a primary informant of RBM was provided to the court. This affidavit confirms what is stated in the founding affidavit relating to Cosco Logistics. The deponent of the affidavit informs that he is a truck driver. On 15 September 2022, he was on duty and transporting RBM chloride. He was phoned by a Mr. Munhangu, who offered him R15 000.00 to assist in the theft of the chloride. He was told to divert the load from the Port route and to go to a location close to the Alton Cemetery, where he would be met by another truck. The informant informed McMenamin of this conversation. He was instructed to proceed with the deal. He was provided with a tracking device and instructed to place the tracking device on the truck receiving the minerals, should an opportunity arise. The informant explains that he went to the designated location. When he arrived at the location at approximately 23h30, there was a white MAN Truck (Munhangu's truck) with registration number BZ[....]P, and two blue trailers with registration numbers FH[....]P and FH8[....], respectively. He was instructed to park next to the MAN truck so that chloride could be offloaded and transferred to the MAN truck. The weighbridge documents were taken from him. He was informed that arrangements were in place for the documents to be stamped. He succeeded in attaching the tracking device to the trailer with the registration number FH8[....] while chloride was being transferred to the MAN truck. When the transfer was

complete, he left and called McMEnamin. He provided McMEnamin with the registration number of the Man truck and trailers.

[6] It is recorded in the founding affidavit that Munhangu's truck was monitored and observed until the load was delivered to Cosco Logistics's premises at Johannesburg City Deep on 17 September 2022 at 04:00. It is stated in the founding affidavit that McMEnamin was intricately involved in the investigation of the theft, the incident relating to the delivery of RBM's misappropriated minerals to Cosco Logistics, and the information obtained from surveillance. Confirmatory affidavits regarding the surveillance of the truck were provided.

[7] RBM submitted that there is compelling *prima facie* evidence that RBM's stolen minerals, or traces thereof, are in the respondents' (including Cosco Logistics) possession, and that documentary evidence sought to be preserved as well as exchanges between the respondents by means of WhatsApp messages, are in the possession of the respondents.

[8] RBM informed the court hearing the application that although it is not the only supplier of the two minerals in question, the sand dunes from which the minerals are mined and the process to which they are subjected render the minerals readily identifiable by the applicant's internal mineral specialists. Such specialists would accompany the Sheriff of the Court when the Order was to be executed with the sole purpose of identifying RBM's own minerals if such were present at the respective locations.

[9] RBM stated that it understood the respondents to be traders in commodities, which commodities include the minerals zircon and chloride slag. RBM conceded that it is inevitable that certain of the misappropriated loads of minerals would already have been sold and delivered to third parties, but submitted that the ongoing nature of the illegal conduct is of such an extent that quantities of the minerals, or spillages that would have left significant residues or traces of the minerals, are believed to be on the premises of the respondents. RBM submitted that it enjoys proprietary and personal rights in any minerals misappropriated in the aforesaid manner, and is entitled to an interim preservation order in respect of any of its minerals found on the respondents' premises.

Evidence, that is, samples of RBM's minerals, would be seized and preserved for purposes of future restitutionary and/or compensatory proceedings. RBM would, in the future, seek both the return of their minerals as well as damages in respect of their losses.

[10] As for electronic and documentary evidence, RBM stated that –

‘Anton Piller applications proper, ... serve to seize and preserve evidence in the possession of respondents that would be vital for the proper conduct of litigation to be initiated by the applicants but which, on the probabilities, would be concealed, destroyed or otherwise spirited away were the respondents to receive notice of the proceedings in the ordinary course of events.’

[11] RBM submitted that –

‘the documents and records in the possession of the respondents in this application, *may fall* in this category of evidence as they are likely to reflect illegal dealings between the respondents and the syndicates. In due course, such documents and records *are likely to prove decisive* both in formulating and quantifying the applicants’ claims against the respondents and any others and in proving such claims in action or further motion proceedings.’ (My emphasis.)

[12] RBM stated that it intends to institute actions for damages on the basis of theft together with restitutionary and interdictory relief against the respondents, and disciplinary actions against its employees who are involved in aiding the syndicates.

The court orders granted

[13] Due to several issues raised by Cosco Logistics in the reconsideration application, it is necessary to have regard to the orders granted subsequent to the *ex parte* application being instituted.

[14] Two court orders were granted, reflecting the signature of the presiding judge, and dated '2023/03/01' by her. One order was stamped by the registrar on 2 March 2023. This order reflects an additional date stamp with the date '2023-03-01' at the bottom of each page (Order one). The other order (Order two) was stamped by the registrar on 3 March 2023, and reflects the date stamp '2023-03-03' at the bottom of each page. The two orders are similar except for the fact that paragraph 34 of Order two is amended to provide that the applicants and their attorneys are entitled to inspect the removed items and minerals within *ten* business days of the execution of the Order, where Order one provided that such inspection could take place within *two* business days of execution of the Order.

[15] I pause to note that Cosco Logistics alleges, and took issue with the fact that it was served with Order one. I am of the view, however, that it is of no consequence. The further amendment that is reflected in Order two did not prejudice Cosco Logistics, and for the remainder thereof, the orders are identical.

[16] The Order was amended prior to it being served to allow for a variation of some of the supervising attorneys and computer specialists. A second amendment of the Order, adding the names of computer experts, was provided to Cosco Logistics by the supervising attorney.

[17] The order was again amended on 17 March 2023 by Van der Westhuizen J, after RBM approached the urgent court on an *ex parte* basis. Cosco Logistics takes issue with this amendment being obtained on an *ex parte* basis, because it has already, by that time, filed its notice of intention to oppose. The order was amended by providing for searches at additional venues not affecting Cosco, and by amending paragraph 34 thereof, by replacing *ten* days with *twenty*. RBM contends that it was not obliged to inform Cosco of the application since the Order was extended to two premises unrelated to Cosco, well after the execution of the Order on Cosco was finalised. It would have defeated the purpose of the Order if it was served on Cosco or uploaded to CaseLines. The variation of the Order did not affect Cosco Logistics because the Order against it has been executed by the time the Order was varied. The variations affected other respondents. The objection is thus neither here nor there.

[18] The most pertinent provisions of the court orders, as far as Cosco Logistics is concerned, are, in general terms, the following:

- i. The application was to be dealt with as a confidential application, and pending the execution of the order, leave had to be obtained from the court to be granted access to the record;
- ii. The confidential information set out in the application and the information that stood to be secured and preserved may exclusively be utilised for purposes of this application and the further legal proceedings referred to in the application;
- iii. A supervising attorney (SA) was appointed who had to be present during, and supervise the execution of the order in conjunction with the powers set out in the order;
- iv. Computer experts (CE) were appointed who had to discharge the duties of computer experts as set out in the order;
- v. A mineral specialist (MS), who is an employer of RMB, and whose identity was only revealed to the judge seized with the *ex parte* application, was empowered to be present during the execution of the order and had to participate in its execution in accordance with the terms of the order;
- vi. Any adult person present at, or apparently in control of, Cosco's premises at its identified address was directed to:
Grant unrestricted access to the premises to the Sheriff, or Deputy Sheriff, SA, CE, and MS for purposes of:

1. accessing, inspecting, and searching the premises, any motor vehicle located at the premises, and any electronic devices for purposes of enabling any such person to identify and point out to the Sheriff, the SA, and the:

- a. CE – originals or copies of and/or extracts from any and all data files, correspondence, notes, and messages, including SMS and WhatsApp messages;
- b. ME- all loads, bags, stocks, samples, and/or remnants of minerals; in the possession or under Cosco's control which fall in the category of or are identified in the Schedule- Annexure B, to the order; and

2. to disclose the whereabouts of any documents, records, or minerals falling in the category of or identified in the Schedule- Annexure B, to the order, to the Sheriff;
 3. to disclose all passwords and procedures required for effective and unrestricted access to any computer device for the purpose of searching same and making copies and/or capturing forensic images and/or taking complete mirror images of each computer device storing items for preservation;
 4. to permit the Sheriff to attach and remove items and/or minerals for preservation.
- vii. The Sheriff was authorised and directed, in the presence of and under the supervision of the SA, to:
- i. Hand a copy of the Notice, annexure A to the order, to the person apparently in control of the premises, to read and explain the Notice, and to inform such person that the execution of the order does not dispose of all the relief sought by RBM. The Sheriff had to serve the Notice of Motion on the person in charge and explain the nature and exigency thereof. The Sheriff had to inform the person that Cosco may, on not less than 24 hours written notice to RBM's attorneys, set the matter down for reconsideration of the order in terms of Rule 6(12), or anticipate the return date. Copies could be made of any item that the Sheriff intended to remove for preservation unless it would be impractical, and the Sheriff either does not remove the item or removes it in a sealed container. Cosco is entitled to inspect the items and/or minerals for preservation in the Sheriff's possession for the purpose of satisfying itself that the inventory is complete and correct.
- viii. The Sheriff and the SA were directed to make a detailed inventory of all items attached and removed in terms of the order, and a separate inventory of any computer devices that were sealed, secured and removed overnight from the premises in the event that the search was not completed by 18:00;
- ix. Unless a different direction be obtained from the Court and within twenty [initially two and later ten] business days of execution of the order, RBM and its attorneys were entitled to inspect all of the removed items and minerals for preservation in order 'to assess whether they provide evidence relevant to the application or to further legal proceedings envisaged in the application';

- x.If the envisaged litigation is not instituted within sixty days of the return date, Cosco Logistics is entitled to apply to the court for an order that the Sheriff is directed to return the removed items and for an order determining liability for legal costs;
- xi.Cosco Logistics is interdicted and restrained, pending the outcome of the return date, from causing or allowing any chloride slag and/or zircon minerals sourced, whether directly or indirectly, from RBM's facilities near Richards Bay, that is in Cosco Logistics's possession or under Cosco Logistics's control from being delivered, and/or otherwise transferred to any buyer, trader or third party;
- xii.Cosco Logistics is interdicted and restrained, pending the outcome of the return date, from causing or allowing any further chloride slag and/or zircon minerals to be sourced, whether directly or indirectly, from RBM's facilities near Richards Bay.

[19] In terms of annexure A to the Order, the Notice, Cosco Logistics was, amongst others, entitled to call its attorney to come to the premises. Cosco Logistics's attorney attended to and was present during the execution of the Order.

[20] Annexure B to the Order, the Schedule, identifies the items for preservation. Since the terms of the Schedule is highly relevant to this application, its terms are reproduced verbatim:

'Items for preservation

Any documents and/or other records (whether in physical or electronic format) **reflecting** or **otherwise relating to either or both of the minerals** listed in paragraph 15 and 16 below ("the minerals"), including:

1. purchase orders or similar instructions to or other communications with suppliers, transporters, warehouses, handlers, customers and/or agents;
2. transport permits;
3. weighbridge stamps and/or vouchers;
4. delivery notes;
5. data sheets including in respect of compositions, qualities, volumes and weights of the minerals;

6. spreadsheets, including in respect of compositions, qualities, volumes and weights of the minerals;
7. invoices;
8. cash payments or receipts;
9. proofs of payment;
10. statements of account;
11. accounting ledgers;
12. banking statements and/or transfers;
13. domestic sale documents, including communications with suppliers, transporters, warehouses, handlers, customers and/or agents; and
14. export sales documents, including communications with suppliers, transporters, warehouses, handlers, customers and shipping, clearing, forwarding and/or other agents.

Minerals for preservation

Any and all loads, bags, stocks, samples and/or remnants of:

15. Chloride slag; and/or
16. Zircon

apparently mined and produced at the applicant's facilities near Richards Bay in KwaZulu-Natal.'

Anticipation of return date

[21] Cosco Logistics's notice of anticipation of the return day and for the reconsideration of the application is dated 30 March 2023. Cosco seeks an order to the effect that the *ex parte* order granted against it as amended or varied 'is reconsidered, set aside and discharged.'

Cosco Logistics's defence

[22] Cosco Logistics raised a plethora of technical objections in its answering affidavit. Although I had regard to all these objections, I will only deal with the objections in this judgment to the extent that it is necessary. For purposes of dealing with Cosco's objections it is classified as procedural objections, substantive objections and execution objections.

[23] The most pertinent of what can be classified as 'procedural objections' relate to the notice of motion and Order served on Cosco Logistics in the face of the existence of a notice of motion and an amended notice of motion, and two orders being signed by the judge with different date stamps the one containing an amendment in paragraph 34 thereof, and the subsequent amendment of the order before and after it has been served on Cosco Logistics. According to Cosco Logistics, the notice of motion it was served with, does not seem to be the notice of motion in terms of which the order of the court was granted. The subsequent, amended notice of motion was not served on it. In addition, Cosco Logistics maintains that it was served with incomplete documents, and was thereafter refused access to the actual documents on the CaseLine's file. Cosco's attorney requested access to the CaseLines file on 3 March 2023 but was only granted access on 15 March 2023, after a notice of appointment as attorney of record was filed.

[24] RBM's attorney's failure to provide Cosco Logistics with access to the electronic court file is questionable. RBM's explanation that the application was to be dealt with as confidential until the Order was executed at the premises of all the respondents does not hold water since the names of all the respondents, the premises where the Order would be executed, and the scope of the Order were made known to third parties once the Order was first being executed against any respondent. The delay in providing access to the court file might have had serious consequences for the continued existence of the Order, if Cosco indicated that it suffered serious harm as a result of the delay and had it not been for the fact that Cosco was provided with a set of the founding papers. Cosco was in the position to approach the court with a request to be granted access to the court file as stipulated in the Order.

[25] In what can be classified as its 'substantive defence', Cosco denies its involvement in any criminal syndicate and wrongdoing. The deponent to the answering affidavit

explains that Cosco Logistics is conducting logistics business- *inter alia* as a freight forwarder and in providing warehousing. Cosco avers that the true nature of its business which is easily ascertainable, and the fact that it does not trade in minerals, a fact of which RBM had to be aware because it previously utilised the services of a sister company of Cosco, are material facts that were not disclosed to the judge considering the *ex parte* application. Cosco submits that the court would not have granted an order against it if the court had knowledge of these facts.

[26] Cosco claims that RBM failed to make out a case against it and influenced the court with 'speculative, misleading, inadmissible, hearsay allegations against Cosco, and subjected Cosco, its directors, and employees 'to a draconian, seriously prejudicial and intrusive order improperly obtained and executed.' Cosco avers that RBM breached the rights of its employees in pursuing a 'fishing expedition' by *inter alia* copying and removing the contents of entire hard drives. As a result of mirror images being made of electronic devices belonging to Cosco, significant amounts of personal, private, and confidential information have been seized and removed.

[27] Cosco avers that RBM failed to establish on the necessary basis that (a) RBM has a cause of action against Cosco and failed to formulate a claim, (b) that Cosco has in its possession specific and specified documents or things that constitute vital evidence in substantiation of the aforesaid cause of action, (c) that there is a real and well-founded apprehension that this evidence may be hidden or destroyed or in some manner be spirited away by the time the case comes to trial or to the stage of discovery. Cosco admits having received chloride from Tobun and Tobun (Pty) Ltd, a client they properly vetted, after 8h00 on 17 September 2023, but avers that it had no reason to believe that the chloride was stolen. It later received instructions from Sambhic Resources to pack the chloride in containers and transport it to the Durban Port for shipment. Not all the chloride was packed, and some remained on Cosco's premises.

[28] Cosco submits that RBM did not present any evidence to establish a *prima facie* case of theft committed by Cosco, that Cosco knew that the chloride was stolen, that Cosco appropriated the chloride, that Cosco acted in concert with any thief or that Cosco on-sold RBM's chloride, chloride slag or zircon. Because the evidence presented refers

only to one instance of chloride being delivered to Cosco's premises, Cosco avers that RBM, 'in any event', failed to make out a case to seize and preserve any documents or data pertaining to zircon. Cosco contends that the order granted is extremely broad and invasive, and sanctioned a search 'for evidence which may or may not exist and which may or may not go to found a cause of action.'

[29] Cosco questions the applicants' *locus standi* and avers that both applicants cannot have the necessary *locus standi* in these proceedings. Despite the applicants' explanation in the founding papers that they trade as RBM, Cosco submits that it is 'incomprehensible how two separate and distinct legal entities trade under the same name.' Since I find no merit in this objection and because I am of the view that the applicants sufficiently explained their respective interests and relationship, I will not deal with it further in this judgment.

[30] Cosco takes issue with RBM's interest in the minerals that are the subject matter of the application and raises questions as to where the ownership of the minerals vests. The applicants sufficiently explained their interest in the zircon and chloride slag,¹ and this aspect is not further dealt with in this judgment.

[31] Cosco's substantive defence is supplemented by what can be classified as 'execution objectives.' These objections relate to the manner in which the order was executed. Cosco claims that RBM failed to 'properly specify' with sufficient particularity the documents and data it intended to seize and broadened the search by using 'keywords' designed for the other respondents that were not sanctioned by the court. After RBM, according to Cosco, failed to secure 'a single document or data to implicate Cosco', it 'started to copy entire hard drives containing private information, company confidential information, and information falling entirely outside the order of court.'

[32] Cosco takes issue with the fact that RBM and/or their legal representatives inspected the items that were removed, and avers if RBM inspected the items within two

¹ RMB claims that ownership of the minerals had not passed from the second applicant to any third party at the time of their theft. It avers that even if there had been such a passing of ownership, they would have retained a direct and substantial interest in the non-delivery to their customers, and in the ongoing risks of further thefts or losses.

days of the order being granted, they would be in contravention of paragraph 34 of the order. I pause to note that the Order granted provided for RBM to inspect the seized items prior to the return date. Paragraph 34 of the Order was not contravened. This objection is thus not dealt with below.

[33] Cosco states that only two of the mineral samples collected by the mineral expert at its premises consisted of chloride slag. It is statement by a deponent who does not hold himself out as an expert in the field of mineralogy. This statement does not give rise to a dispute of facts.

[34] Cosco, in addition, complains that the 'chain of evidence as far as the mineral samples are concerned was broken' because the mineral samples were removed from the sealed boxes. I pause to state that the SA's affidavit filed in reply to Cosco's averments put the objections regarding the execution of the Order, save for objections specifically dealt with herein, and allegations regarding the 'broken chain of evidence,' to rest.

RBM's reply

[35] RBM replied to Cosco's answering affidavit. I will only refer to aspects I regard to be pertinent, although I considered the replying affidavit in totality.

[36] RBM offers from the onset to engage in a process with Cosco to ensure that any confidential or personal information of its business, executives, employees, or customers is released from preservation so that only evidence of unlawfulness, such as the samples of minerals and related documents, detailed herein below, remains in the custody of the Deputy Sheriff. This offer was communicated to Cosco before the anticipation hearing.

[37] RBM reiterates that both applicants intend to institute legal proceedings against respondents and others believed and understood to have engaged in illegal activity at their expense. The court's attention is drawn to the SA's report indicating that eight samples of both minerals – possibly zircon and possibly chloride slag, and numerous

documents relating to preserved mineral samples, were located at Cosco's premises, and preserved.

[38] The issue as to whether RBM established a *prima facie* case against Cosco is pertinent to the outcome of this application. It is thus necessary to have regard to RBM's verbatim reply in this regard. In reply to Cosco's averment that RBM failed to make out a *prima facie* case against it, RBM replied:

'However, unless and until there is a proper analysis of the minerals found to be in the possession of Cosco and a thorough inspection of related documents and data now in the custody of the Deputy Sheriff, *it is premature to say whether or not Cosco will be cited as a defendant in the envisaged litigation.*

The fact –not disputed in the answering affidavit- that Cosco received and handled minerals that had been diverted and appropriated from RBM demonstrates, at least on a *prima facie* basis, Cosco's involvement (unwitting or otherwise) ...' (My emphasis.)

[39] In addition, RBM submits that at the time of initiating the *ex parte* application, the fact that minerals that were diverted and misappropriated from RBM were taken to and stored at Cosco's premises, provided a sound basis for the belief that the warehouse would be a 'likely repository of vital evidence in the context of the envisaged litigation.'

[40] RBM states that the notice of motion that was served on Cosco, was the 'second' notice of motion dated and signed 1 March 2023, and not the initial notice of motion dated and signed 28 February 2023. The second notice of motion was presented to the court when the Order was obtained. RBM notes that the changes reflected in the second notice of motion did not relate to Cosco in any way.

[41] RBM denies that the Order of the court was contravened when keyword searches were done on electronic devices, without the keywords being approved by the court. RBM contends that the Order expressly authorises the searching of devices for documents or records falling within the ambit of Annexure B, the Schedule. The use of keywords was a means to exclude other information like confidential and personal information not related

to chloride slag or zircon ‘apparently mined and produced at the applicant’s facilities near Richards Bay in KwaZulu-Natal.’ This aspect is dealt with in more detail below.

[42] Mirror imaging of electronic devices became necessary once it was determined that searches of devices would be incomplete by close of business. The Order expressly provides for creating and preserving such images.

Additional relevant affidavits

[43] The SA appointed to supervise the execution of the Anton Piller order at Cosco’s premises filed an affidavit in reply to averments made in Cosco’s answering affidavit. The SA denied any contravention of the Order.

[44] A supplementary affidavit was filed on behalf of Cosco. Cosco took issue with the fact that Mr. Van Schalkwyk, the SA, and Mr. Oosthuizen, the CE, were present on 3 March 2023 when the inspection of the seized materials occurred at the Sheriff’s office, an inspection which neither Cosco nor its attorney was invited to attend.

[45] RBM filed an answering affidavit to Cosco’s supplementary affidavit and denied any untoward behaviour.

Striking out application

[46] Cosco filed an application to strike out content from RBM’s founding affidavit on the basis that it constitutes inadmissible hearsay or opinion evidence, is unsupported by any fact, and constitutes scandalous, vexatious, and defamatory allegations seeking to imply criminal conduct on Cosco’s part without any factual basis.

[47] I am of the view that there is no merit in the striking-out application. Cosco is over-sensitive. Cosco does not have regard to the fact that the *ex parte* application is premised on and necessitated by the fact that RBM’s minerals were stolen, and the evidence indicates that some of the stolen minerals were delivered to and received at Cosco’s premises.

Discussion

[48] The Order that forms the subject matter of this application constitutes both an Anton Piller order as far as documents and data in respect of which RBM have no real rights are concerned, and an interim attachment order for the preservation of minerals in respect of which RBM does have a real or personal right. As for the latter, I am of the view that a case is made out for the preservation of the minerals which RBM claims to be theirs and which were *prima facie* identified to be theirs, subject to the launch of appropriate restitutionary proceedings. RBM established a *prima facie* right to the minerals identified by their mineral specialist as originating from their facilities, a well-grounded apprehension of irreparable harm if the preservation order is not granted in that the minerals will likely be spirited away, in circumstances where no other satisfactory remedy exist in terms whereof the mineral can be preserved pending the institution of restitutionary relief. The balance of convenience favours the grant of an interim interdict. Cosco Logistics did not make out a case that it will suffer irreparable harm if the interim preservation order is confirmed.

[49] As for the interdictory relief granted to the effect that Cosco be interdicted from receiving any zircon or chloride slag sourced from RBM's facilities, I am likewise of the view that a proper case has been made out. RBM states that it only sells its product to a limited number of domestic customers. In the context of mineral theft that underpins this application, it is not unreasonable to expect that Cosco takes the necessary steps to verify the source of zircon and chloride slag delivered at its premises.

[50] Despite being an exceptional remedy limited to exceptional circumstances, the use of Anton Piller orders in our law is well established.² Anton Piller orders are frequently issued and form a definitive part of South African procedural law. An Anton Piller order is concerned with securing and preserving evidence. Such evidence must constitute vital evidence in substantiation of an applicant's cause of action.³

² *Non-Detonating Solutions (Pty) Ltd v Durie and Another* 2016 (3) SA 445 (SCA) at par [18].

³ *Non-Detonating Solutions (Pty) Ltd, supra* at par [19]

Objection re alleged non-disclosure of material facts

[51] Cosco avers that RBM failed to disclose material facts to the judge when the *ex parte* application was moved. These facts, they claim, would have caused the judge not to grant the Order sought.

[52] It is trite that the ordinary checks and balances of the adversarial process do not exist in *ex parte* applications.⁴ The situation is rife with the danger that an injustice may be done to the absent party. This risk of potential for injustice, imposes on the applicant in an *ex parte* application an 'exceptional duty' of disclosure.⁵ Although an applicant is not required to argue the respondent's case in its absence, it is incumbent on the applicant to make a balanced presentation of all the material facts and applicable law.⁶

[53] Undisclosed facts need not be determinative of the issue to be regarded as material. They need only be sufficiently relevant to the extent that they would have been weighed and considered by the court when making the decision to grant or deny the order. In my view, the test of relevance is objective, and in order to be relevant, undisclosed facts must bring the outcome of the *ex parte* application into doubt before they will be considered material.⁷

[54] Cosco avers that it was not properly identified as conducting logistics business *inter alia* as a freight forwarder and in providing warehousing that does not trade in commodities. Cosco is correct, RBM stated in general that 'the respondents' are traders in mineral commodities. The fact that Cosco is not a trader in commodities but provides freight forwarding services and warehousing is, however, not, in my view, a fact that brings the outcome of the *ex parte* application into doubt. Any company engaged in

⁴ This duty is not limited to the South African legal system. See Sethu, R.R. 'Ex Parte Orders: Extent of Duty of Disclosure & Consequences of the Breach' (1989) *Jurnal Undang-Undang*, 141-159.

⁵ *Estate Logie v Priest* 1926 (7) PH J10 (AD) 19.

⁶ *Ex Parte Hay Management Consultants (Pty) Ltd* 2000 (3) SA 501 (W).

⁷ See, also, Sethu, *supra*.

freight forwarding and warehousing is as ideally suited to be involved in the underhand activities associated with collusive theft that underpin the *ex parte* application as a trader of mineral commodities.

[55] Even if it was found that the nature of Cosco's business is a material fact, a discretion exists in the interest of justice to confirm the Order despite such non-disclosure,⁸ if a proper case is made out by RBM and Cosco fails to show good cause why an Order in the terms set out in the Order should not be made an order of court. This discretion must, however, be exercised judicially, and in the face of material non-disclosure, the following factors must be considered:

- i. The importance of the omitted fact to the issue;
- ii. Whether the non-disclosure was deliberate or whether the omission was innocent in the sense that the fact was not known to the applicant or that its relevance was not perceived;
- iii. Whether the relief can properly be granted on the basis of a corrected record.

[56] RBM should not have suggested that Cosco is a trader in commodities without having ascertained it as a fact. Cosco's business is, however, integral to the general business of trading in mineral commodities. The fact that stolen or misappropriated minerals were delivered to Cosco's premises is pivotal in considering whether the non-disclosure of the nature of its business, even if this was found to be a material fact, should outright lead to the setting aside of the Order obtained in the *ex parte* proceedings. In my view, as indicated below, receiving stolen goods in itself is sufficient to *prima facie* establish a cause of action, irrespective of the nature of the business of the receiver thereof. In these circumstances the omitted fact is not so important that the interest of justice requires the setting aside of the Order. The relief can properly be granted on a corrected record if the remainder of the requirements are met.

Requirements for Anton Piller relief

⁸ *Power, N.O. v Bieber & Others* 1955 (1) SA 490 (W) 503C.

[57] To ensure that an Anton Piller order, an extraordinarily intrusive judicial instrument, is only used in circumstances that warrant it, courts developed a three-part test for the granting of Anton Piller orders in South Africa.⁹ To obtain Anton Pillar relief, an applicant must establish *prima facie* that:¹⁰

- i. it has a cause of action against the respondent that it intends to pursue;
- ii. the respondent has in its possession specific documents or things which constitute vital evidence in substantiation of its cause of action;
- iii. there is a real and well-founded apprehension that this evidence may be hidden or destroyed or in some manner be spirited away by the time the case comes to trial, or at the stage of discovery.

A prima facie cause of action

[58] An Anton Piller order is not a mechanism for a plaintiff to ascertain whether it may have a cause of action against a defendant.¹¹ RBM stated unequivocally in its founding and replying affidavits it intends to institute actions for damages on the basis of theft together with restitutionary and interdictory relief against the respondents, and disciplinary actions against its employees who are involved in aiding the syndicates. RBM, however, also stated in its replying affidavit that –

‘unless and until there is a proper analysis of the minerals found to be in the possession of Cosco and a thorough inspection of related documents and data now in the custody of the Deputy Sheriff, *it is premature to say whether or not Cosco will be cited as a defendant in the envisaged litigation.*’ (My emphasis.)

⁹ In Canada, a four-part test is applied, with the additional requirement that the potential or actual damage to the plaintiff of the defendant’s alleged misconduct must be very serious. See Valkanas, D. ‘Private Search and Seizure: The Constitutionality of *Anton Piller* orders in Canada’. *Dalhousie Law Journal* 45, no 1 (Spring 2022): 265 – 302, 269.

¹⁰ See, amongst others, *Viziya Corporation v Collaborit Holdings (Pty) Ltd and Others* 2019 (3) SA 173 (SCA) at par [22]; *Memory Institute SA CC t/a SA Memory Institute v Hansen and Others* 2004 (2) SA 630 (SCA); *Non-Detonating Solutions (Pty) Ltd, supra* at par [18]; *Universal City Studios Inc v Network Video (Pty) Ltd* 1986 (2) SA 734 (A) at 747E-F.

¹¹ *Viziya Corporation, supra*, at par [23].

[59] The question is whether it can be found that RBM established *prima facie* that it has a cause of action against Cosco, which it intends to pursue, if, among others, the abovementioned statement is considered. Cosco claims that no such cause of action exists. Cosco's counsel submitted that RBM will, *inter alia*, not be able to establish Cosco's intent or *mala fides* on the facts it placed before the court.

[60] A holistic reading of RBM's papers contextualises the statement in the replying affidavit that it is premature to say whether Cosco will be cited as a defendant in the envisaged litigation. The papers filed of record indicate that RBM undertook to immediately release the attached minerals that have been identified by its mineral specialist as originating from its facilities in Richards Bay if comprehensive scientific tests reveal that the seized minerals do not originate from its facilities in Richards Bay. In the event that RBM is of the view that it cannot sustain a claim against Cosco despite the evidence that misappropriated minerals were delivered to and received at Cosco's premises after having regard to the nature and extent of the preserved evidence, it may decide not to institute an action against Cosco. This, in my view, does not mean that RBM has not, at this point in time, established *prima facie* that it has a cause of action against Cosco that it intends to pursue.

[61] Cosco submits that RBM has not formulated its claim but stated in general that it intends to pursue a damages action against the respondents, including Cosco. It is not a requirement in an Anton Pillar application for the cause of action to be formulated and set out as it would be set out in Particulars of Claim. In *Non-Detonating Solutions (Pty) Ltd*,¹² the Supreme Court of Appeal held that the requirement of a *prima facie* cause of action is simply that an applicant should show no more than that there is evidence which, if accepted, will establish a cause of action.

[62] To institute a claim for damages on the basis of theft, RBM has, amongst others, the *condictio furtiva* at its disposal. The *condictio furtiva* is a delictual claim. The

¹² *Supra*, at par [21].

requirements, as stated with reference to applicable case law in Amler's Precedents of Pleadings,¹³ are that:

- (a) the claimant must at all relevant times have had a sufficient interest in the thing (e.g. as owner or the person who bore the risk); and
- (b) the defendant must have stolen the thing or have received it *mala fide*, knowing that it has been stolen.

Dolus eventualis suffices.

[63] What is expected of an applicant in an Anton Pillar application as far as fault or *mala fides* are concerned? In *Links v MEC Department of Health Northern Cape Province*,¹⁴ in a matter dealing with prescription, the Constitutional Court confirmed that a plaintiff is required to have knowledge of the facts from which a debt arises before prescription starts to run. The court held that these 'would be the facts material to the debt' and opined that it would be setting the bar too high to require knowledge of causative negligence and held that in cases involving professional negligence, the facts from which the debt arises are those facts which would cause a plaintiff on reasonable grounds, to suspect that there was fault on the part of the medical staff. It was recognised in *Links* that negligence and causation, as essential elements of the cause of action to claim delictual damages, have factual and legal elements, and that is sufficient if a claimant has knowledge of the facts on which a court can later base its legal findings.

[64] I am of the view that the approach of the Constitutional Court in *Links*, and the Supreme Court of Appeal in *Non-Detonating Solutions (Pty) Ltd*, provide an answer to the question as to whether RBM made out a case that it established *prima facie* that it has a cause of action against Cosco. In considering whether an applicant in an Anton Pillar application who has the *condictio furtiva* or another delictual remedy to its disposal, succeeds in establishing *prima facie* that it has a cause of action, the court needs to determine whether the facts the applicant places before the court provides reasonable

¹³ Harms, LTC. 'Amler's Precedents of Pleadings'. 8th ed, Lexis Nexis 90.

¹⁴ 2016 (4) SA 414 (CC).

grounds for establishing the elements of delictual liability, inclusive of fault or *mala fides*, if the latter is required.

[65] *In casu*, RBM provided evidence that chloride slag was stolen from it and transferred to Cosco's premises. The chloride slag was received at Cosco's premises at 4h00 in the morning. It is trite that a statutory offence is created in section 37 of the General Law Amendment Act, 62 of 1955. The section provides as follows:

'(1)(a) Any person who in any manner, otherwise than at a public sale acquires or receives into his possession from any other person stolen goods, ... without having reasonable cause, for believing at the time of such acquisition or receipt that such goods are the property of the person from whom he received them or that such person has been duly authorised by the owner thereof to deal with or to dispose of them, shall be guilty of an offence ...

(b) In the absence of evidence to the contrary which raises a reasonable doubt, proof of such possession shall be sufficient evidence of the absence of reasonable cause'.

[66] In prosecuting a criminal offence, the evidence that a party has received stolen property in the context set out in s 37 suffices to *prima facie* establish the commissioning of the statutory crime created in terms of s 37. It is inconceivable that more would be required of a claimant in a civil matter claiming damages on the basis of theft where the evidence proves that such party received stolen goods. The mere fact that evidence is presented that stolen goods were received by Cosco suffices to establish *prima facie* that Cosco received the stolen goods *mala fide*. It is for Cosco to show reasonable cause during the envisaged trial. The fact that stolen chloride slag was delivered to and received at Cosco's premises in the conceded context of criminal syndicate activities is sufficient to *prima facie* establish a cause of action for a delictual damages claim.

[67] Cosco acknowledges in its answering affidavit that it did receive chloride slag on the day in question but that it received the product after 8h00 from a customer it vetted. Cosco also states that it is not unusual for it to receive goods at any time of the day or night. Cosco provides the client information of the customer that delivered chloride slag in

the morning in question, but it does not substantiate the averment that the chloride slag was received after 8h00. More important, there is an absence of evidence from Cosco that it did not receive a load of chloride slag at 04h00. As a result, no dispute of fact arose on the papers as far as RBM's claim that minerals were received at Cosco's premises at 4h00 is concerned. In the context of this Anton Pillar application, the receiving of stolen goods in the early hours of the morning when it is still dark is sufficient to establish *prima facie* that a cause of action exists. In addition, sight should not be lost of the fact that RBM's mineral specialist *prima facie* identified eight samples of RBM's minerals on Cosco's premises when the Order was executed, in circumstances where RBM stated that it sells its minerals to a limited number of domestic customers as the bulk of its product is exported from the Richards Bay Port.

[68] A finding that RBM *prima facie* established a cause of action should not be elevated to something that it is not. All the issues in dispute raised by the parties will, in due course, be fully traversed in the envisaged litigation.

Is a case made out that Cosco has in its possession specific documents or things which constitute vital evidence in substantiation of its cause of action?

[69] Anton Piller applications serve to seize and preserve evidence in possession of the respondent that would be vital for the proper conduct of litigation to be initiated by the applicant.

[70] In light of the fact that evidence exists that stolen goods were delivered to and received at Cosco's premises, a *prima facie* case is made out that Cosco is in possession of documentary and electronic evidence that would be vital for the proper conduct of the envisaged litigation, not only litigation in which it may feature as a party, but in litigation concerning the other respondents, and delinquent employees of RBM. I could not find any case law dealing with the question of whether an Anton Piller order can be obtained for the purpose of obtaining evidence not against the defendant but against third parties. In light of the requirement that an applicant must *prima facie* establish that it has a cause of action against the respondent that it intends to pursue, an Anton Piller order can presumably not be granted where there is no *lis* between the applicant and the

respondent. Where the respondent and third parties are, however, implicated in the same wrongful handling of the same infringing goods, and where an action is based on collusive theft, for the reasons set out below, I am of the view that it is not overly wide to extend the search to documents and data linking the different respondents to each other and the subject-matter of the application. This view is supported by the judgment of Unterhalter J in *Nampak Glass (Pty) Ltd v Vodacom (Pty) Ltd and Others*.¹⁵ In this case, the court held that it is competent to grant an order that third parties provide information to the victim of a wrongdoing to enable it to identify the wrongdoers and to institute action against them. Preconditions for such an order are (i) that a wrong must have been committed; (ii) the order was needed to enable an action to be brought against the wrongdoers; and (iii) the third party against whom the order was sought must be ‘mixed up’ in the wrongdoings so as to have facilitated it; and must be able or likely able to provide the information.

[71] The specificity requirement implicitly requires that the order ultimately granted must not be overly wide or stretch beyond what is reasonable and lawful. An overly wide order is not competent.¹⁶ The reason for specificity is to prevent an applicant to engage in a fishing expedition in an attempt to unearth evidence to prove its case, obtain information not related to the cause of action, or unnecessarily intrude on a respondent’s right to privacy. In certain circumstances, an unscrupulous litigant might endeavour to use this judicial instrument for underhand purposes to obtain confidential information from a competitor in the industry.

[72] In *Non-Detonating Solutions (Pty) Ltd*,¹⁷ the Supreme Court of Appeal approved the test for the identification of documents in Anton Pillar orders described in *Roamer Watch Co SA and Another v African Textile Distributors t/a MK Patel Wholesale Merchants and Direct Importers*.¹⁸

¹⁵ 2019 (1) SA 257 (GJ).

¹⁶ *Non-Detonating Solutions (Pty) Ltd*, *supra*, at par [29].

¹⁷ *Non-Detonating Solutions (Pty) Ltd*, *supra*, at par [36].

¹⁸ 1980 (2) SA 254 (W) 273C-274F.

‘There must be clear evidence that the respondent has such incriminating documents, information, articles and the like in his possession, or that, *at least, there are good grounds for believing that this is the case.*

...

[T]he applicant should satisfy the court that he has – as best the subject-matter in dispute permits him to do – identified the subject-matter in respect of which he seeks attachment and/or removal, and that the terms of the order which he seeks have been delimited appropriately and are not so general and wide as to afford him access to documents, information and articles to which his evidence has not shown that he is entitled.’ (My emphasis)

[73] The specificity requirement, however, does not prohibit search and seizure orders for specific classes of documents.¹⁹ In *Non-Detonating Solutions (Pty) Ltd*,²⁰ the SCA expressly stated that the requirement does not mean that ‘only individual documents identified by, for example, date or origin are properly liable to be attached.’ It would be unreasonable to expect that RBM be able to know precisely which documents would be in Cosco’s possession. They made out a *prima facie* case, however, that documents relating to transactions where their minerals were delivered to and received by Cosco exist, and limited the scope of the Order through Annexure B- the Schedule,²¹ to the documents and data relating to the subject-matter in question. Whether the limits and boundaries of the Order were exceeded in the execution thereof, is an aspect that will be dealt with below. As for the terms of the Order, however, the specificity requirement has been met.

Apprehension or fear that evidence may be spirited away

[74] A reasonable fear must exist that a respondent might, in the normal course, allow evidence to disappear and/or not discharge its duty to make full discovery. It is difficult to prove with tangible evidence that a respondent has a history of destroying evidence. The mere opinion that a reasonable fear exists that evidence might be destroyed or spirited away is, however, not sufficient. The fear must be substantiated by facts. To require

¹⁹ *Non-Detonating Solutions (Pty) Ltd, supra*, par [36].

²⁰ *Non-Detonating Solutions (Pty) Ltd, supra*, par [39].

²¹ See par [[20], *supra*.

express proof of the possibility of destruction would be to turn a blind eye to the realities of criminal syndicate activities and collusive theft. *In casu*, it suffices to say that the substantiating factual basis for the apprehension that evidence may be spirited away, is found therein that subject-matter of the Anton Pillar order is minerals stolen from the applicants. It goes without saying that a reasonable fear exists that participants, or role-players in activities relating to collusive theft would be hesitant to discover documents and evidence that indicate their participation, whether directly or indirectly, in transactions associated with collusive theft.

Execution of the Order

[75] After having considered all the papers filed, and the objections raised by Cosco regarding the execution of the Order, I am of the view that the only objection that merits being dealt with in the judgment is that RBM's legal team exceeded the terms of the Order by utilising keywords that were not stipulated in the Order.

[76] Schedule B to the Order limited the search to documents of an identified nature 'reflecting or otherwise related to either or both the minerals listed therein. The minerals have been identified adequately.

[77] It is, common cause, however, that RBM interpreted the Order to allow the use of keywords beyond 'Richards Bay', 'chloride slag', and 'zircon.' It is evident from the SA's report that the names of the other respondents, and a company identified by Cosco in its answering affidavit as a customer involved in the storing and transporting of chloride, were, amongst others, also used as keywords.

[78] The subject-matter of the *ex parte* application is the misappropriation of chloride slag and zircon apparently mined at the applicant's facilities near Richards Bay in KwaZulu-Natal. Seven respondents were cited in the *ex parte* application. The founding affidavit sets out the basis of the respective respondents' role in the alleged misappropriation. Evidence was placed before the court that misappropriated minerals were delivered to the premises of all the respondents and that the same *modus operandi* was followed in the misappropriation of the minerals. Against this background, I am of the

view that the phrase '[a]ny and all documents and/or records (whether in physical or electronic format) reflecting or otherwise relating to either or both of the minerals listed' should in the factual context of this application be interpreted to include communication and documents indicating a link between Cosco and the other respondents that are clearly related to the minerals in question. Since Cosco indicated that it had dealings with 'Sambhic Resource Shipment for Arauco' (Sambhic) concerning chloride slag, communication between Cosco and Sambhic meets the brief.

[79] It is evident from the SA's report that some documents and data were seized or mirror images made of devices merely because there were responsive results pertaining to email communication containing the words 'Rutile' and/or 'titanium slag' and/or 'Varun Tandon.' The relation between zircon and chloride slag on the one hand, and titanium slag and rutile on the other hand, was not explained to this court, neither was the role of 'Varun Tandon'. RBM explained in its founding affidavit that it sells rutile and zircon and produces titanium slag minerals, chloride slag, and sulphate slag – however, it sought the Anton Pillar order only in relation to zircon and chloride slag. Because an Anton Pillar order provides intrusive relief, it is trite that the Order must be executed in strict accordance with its terms.

[80] The report of the SA referred to the 'proposed word searches for IT specialists' that was handed over to Cosco Logistics's legal representative. At face value, it is difficult to see the relationship between the majority of the proposed keywords and the scope of the Order as provided for in Annexure B - the Schedule:

- i. The first list contains twenty-four names of individuals. Of these, only seven are referred to in the affidavits filed by RBM, to wit, Lasting Muzoremba, Mike Munhango, Muringi Mudiki [Matthew], Peter Makoni; Peter Tendal Makoni, Mudhara and Philemon Terrence Thwala. The court is left in the dark as to the relationship between the remainder of the individuals listed on the first list of the proposed keywords, the subject-matter of the application, and the scope of the search authorised by the court in terms of the Schedule;
- ii. The second list contains under the heading 'Aerotex / Bhamjee' and respective sub-headings 'Sellers' and 'Purchasers' the names of nineteen individuals. Of these

nineteen, only four, to wit 'Regina Mlisa', 'Alexander Mlisa', Tafadzwa Cryro Mhedizo, and [Mohsin] Bamjee, are referred to in the application. The court is left in the dark as to the relationship between the remainder of the individuals listed on the second list of the proposed keywords, the subject-matter of the application, and the scope of the search authorised by the court in terms of the Schedule

- iii. The third list contains two mobile numbers that are not reflected in affidavits filed in the *ex parte* application or the Order, six vehicle registration numbers that are not referred to in the founding affidavit and the names of 11 entities under the heading 'Entity searches.' Of these entities, only Aerotex Commodities is cited as a respondent in the application. Sambhic Resources are mentioned in an affidavit. The relevance of the entities Y3T Transporters, Merisma Trading and Heavy Duty Components and Repairs, becomes evident if the confidential information provided by the informant is considered. The court is, however, left in the dark as to the relationship between the two cited mobile numbers, the vehicle registration numbers and the remainder of the listed entities listed on the third page of the proposed keywords, the subject-matter of the application, and the scope of the search authorised by the court in terms of the Schedule
- iv. This list on the third page also provides for a 'general search' of 'any transport documents pertaining to the transport of containers to Durban Port or waybill slips relating to exports of product from Durban Port to foreign end users.'

[81] I have already indicated that I am of the view that the Order granted is not overly wide. I am, however, of the view that RBM exceeded the scope of the search as provided for in Annexure B- the Schedule, by using keywords that do not seem to have any direct connection with any of the cited respondents, or the subject-matter of the application. If RBM had wanted, for example, to search for documentation or data that is connected to the entity CBS Logistics, it had to make out a case for that. To extend the seizure and preservation of documents to all documents reflecting the transport of containers to Durban Port without any connection to the respondents or the minerals that form the subject-matter of this application, is to drag innocent third parties into the fray. It is impermissible.

[82] I am, however, not inclined to set aside the Order granted on 1 March 2023 with its subsequent amendments. I am of the view that even on reconsideration, the applicant made out a case for the relief sought. Cosco did not show cause that the Order sought by RBM, as set out in paragraph 41 of the Order granted on 1 March 2023, save for the variation thereof as reflected in this Order, should not be granted. Since the Order is being reconsidered, this court is seized with the application and empowered to vary any aspect of the Order granted on 1 March 2023, as subsequently amended.

[83] As for costs, I am of the view that it is appropriate that the costs of the anticipation of the return date and the reconsideration of the Order granted on 1 March 2023 be reserved to be determined in the envisaged litigation.

ORDER

In the result, the following order is granted:

- 1. The late filing of affidavits by both parties is condoned;**
- 2. The striking out application is dismissed with costs, such costs to be paid by the first respondent;**
- 3. The listed minerals for preservation in the possession of the Sheriff of the High Court obtained from the first respondent's premises pursuant to the execution of the Order granted on 1 March 2023, shall be retained by the Sheriff pending the directions of the Court, unless otherwise agreed to between the applicants and the first respondent;**
- 4. The applicants are permitted to access the documents and electronic data seized pursuant to the execution of the Order dated 1 March 2023, and make copies of and preserve any documents or electronic data that fall in the scope of Annexure B to the Order granted on 1 March 2023, with the proviso that documents and electronic data that were identified through keywords that are not reflected in the affidavits filed in this application (e.g. individuals, vehicle registration numbers, mobile phone numbers and entities not specifically referred to or implicated in the affidavits filed of record) and that are unrelated to the minerals identified in paragraphs 15 and 16 of Annexure B to the Order of 1**

March 2023 (e.g. rutile and titanium slag), must be released immediately and returned to the first respondent;

5. The applicants are permitted to take samples of all the listed minerals retained by the Sheriff for preservation for purposes of instituting and conducting litigation;

6. The legal representatives of the first respondent are permitted to be present when the preserved documents and electronic data are scrutinised, and samples are taken of the listed minerals retained by the Sheriff;

7. The first respondent is interdicted and restrained, pending the outcome of litigation to be instituted within 60 days of the date of this Order, from causing or allowing any chloride slag and/or zircon minerals sourced, whether directly or indirectly, from the applicants' facilities near Richards Bay in KwaZulu-Natal in the possession of or under the control of the first respondent from being sold, delivered or otherwise transferred to any buyer, trader or third party unless by agreement between the applicants and the first respondent;

8. In the event that the litigation is not instituted within 60 days of the granting of this order, paragraphs 3 to 7 of this order shall lapse;

9. The first respondent is interdicted and restrained from receiving any further chloride slag and/or zircon minerals sourced, whether directly or indirectly, from the applicants' facilities near Richards Bay in KwaZulu-Natal, unless by agreement between the applicants and the first respondent;

10. The costs of this application are reserved to be determined in the main action / envisaged litigation.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicants:

Adv. R. M. Pearse SC

With: Adv. B.B. Mkize
Instructed by: Bowman Gilfillan Inc.

For the first respondent: Adv. C Woodrow SC
With: Adv. M.D. Silver

Instructed by: Chen & Lin Attorneys Inc.
Date of the hearing: 15 May 2023
Date of judgment: 2 June 2023