REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-072038

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: NO

30-06-2025 _____

DATE SIGNATURE

In the matter between:

NORTHBOUND PROCESSING (PTY) LTD	Applicant
and	
THE SOUTH AFRICAN DIAMOND AND PRECIOUS METALS REGULATOR	First Respondent
RAPPA RESOURCES (PTY) LTD	Second Respondent
RAPPA HOLDINGS (PTY) LTD	Third Respondent
TRUSTEES FOR THE TIME BEING OF THE RAPPA EMPOWERMENT TRUST	Fourth Respondent
THREE PALMS TRADING (PTY) LTD	Fifth Respondent

JUDGMENT

DJ Smit, AJ

Introduction

[1] As it has evolved, this is an application for urgent interim relief, met by a counter-application aimed at undoing a sale of business.

[2] The applicant, Northbound Processing, seeks interim relief in the form of a *mandamus* compelling the first respondent, the South African Diamond and Precious Metals Regulator ("the Regulator") to release a refining licence to Northbound.

[3] The Regulator issued the refining licence to Northbound on 10 January 2025, but it made the release of the refining licence to Northbound conditional on *inter alia* the return of a refining licence held by the second respondent, Rappa Resources. The Regulator does not oppose the relief sought, but requires a court order to release the licence given the dispute that has arisen about (*inter alia*) the return of the licence of Rappa Resources.

[4] Prior to 1 October 2024, Rappa Resources carried on business as a processor of precious metals. For this purpose, it was required to hold – and actually held – a refining licence issued by the Regulator in terms of the Precious Metals Act, 37 of 2005 ("the Precious Metals Act"). A refining licence (among other matters) permits the holder thereof to acquire, possess or dispose of any unwrought precious metal (as defined in the Precious Metals Act).

[5] For reasons that are unexplained on the papers, Rappa Resources, its majority shareholder – the third respondent ("Rappa Holdings") – and the holding company of Rappa Holdings which is the fifth respondent ("Three Palms") ran into trouble that caused them, among other things, to become "*unbanked*".[1] Three Palms was placed under a preservation order at the instance of the South African Revenue Service ("SARS") and is thus managed by a curator.

[1] It is a matter of public record that South African (and foreign) banks from time to time withdraw their services from entities that develop reputational and/or legal trouble which leads them to become "*unbanked*". This often has the effect that they are, in essence, forced to stop trading.

[6] Apparently in an attempt to ensure that the processing business could continue,[2] Rappa Resources concluded a Sale of Business Agreement with Northbound in September 2024. In terms of the sale, Northbound acquired the plant and equipment used for the processing business and the lease of the premises on which the processing business was carried on.[3] The approximately 100 employees involved in the processing business were transferred to Northbound's employ.

[7] After the signing of the sale agreement and until about mid-May 2025, the processing business apparently continued under a "*transitional arrangement*" with the Regulator until the conditions for the release of Northbound's licence were fulfilled (about which, more below).[4]

[8] According to Northbound, these conditions have now been fulfilled, which means that it needs its own refining licence: without its own licence it can no longer carry on the processing business and cannot obtain a vendor number from Harmony Gold Mining Company Ltd ("Harmony"), which is its only customer. Thus, the refusal of the Regulator to release Northbound's new licence (under circumstances discussed below) gave rise to this urgent application. Without the licence, the processing business has to be idle with what Northbound describes as devastating commercial consequences.

[9] Northbound says that the processing business was worth approximately R18 million at the time of the sale, and that sum was the purchase price it paid to Rappa Resources. It says that this was less than 1% of the value of the assets of Rappa Resources, which also includes – or included at the time – a value-added tax ("VAT") refund claim of R1.974 billion against SARS.[5]

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[2] This is, at least, Northbound's version. There is contestation on the papers as to the motives for the sale but it is unnecessary to decide this.

[3] In terms of the Sale of Business Agreement, the "*Business*" acquired was "*the processing business comprising the acquisition of low-grade gold-bearing by-products from the major gold mines to produce gold-bearing concentrates for export.*"

[4] The legality of this arrangement was challenged in correspondence, but there is little on the papers on exactly what the "*transitional arrangement*" entailed.

[5] The VAT claim has apparently since been compromised.

[10] For this reason, Northbound says that the sale was not required to be approved by a special resolution of the shareholders of Rappa Holdings pursuant to section 115(2)(b) of the Companies Act, 71 of 2008 ("the Companies Act").

[11] Rappa Holdings and Three Palms – to which I will refer as the opposing respondents – contend, however, that the sale was required to be approved pursuant to a special resolution by Three Palms which, it is common cause, did not occur. For this reason, they brought a counter-application in which they seek to have the sale declared to be unlawful and set aside and to have its consequences reversed (among other and ancillary relief).

[12] Given the opposing respondents' answering affidavit and counter-application, Northbound abandoned its bid for final relief before me and only persisted with interim relief (in the form of the *mandamus*), pending the institution of proceedings by Northbound to confirm the validity of the sale of business.

[13] I deal first with the facts around the issuance of the refining licence to Northbound, the statutory framework and the legal underpinnings for the *mandamus* (including whether the requirements for the grant of an interim interdict have been met and whether it is urgent). I then deal with the counter-application and its urgency. Finally, I deal with an unfortunate feature of the proceedings before me: the use in Northbound's heads of argument of non-existing case citations "*hallucinated*" by generative artificial intelligence.

The issuance of the refining licence

[14] The papers do not show when Northbound applied for the refining licence. This presumably occurred shortly after the signing of the sale agreement. On 13 February 2025, the Regulator directed correspondence to Northbound, copying Mr Gary Bickerton who is one of two directors of Rappa Resources. The letter stated as follows:

> *"The [Regulator] is satisfied that Northbound complies in all respects with the requirements for the issuance of a Refining Licence, which licence has been issued on 10 January 2025 under licence number AP21847. However, the Refining Licence in question has been*

> *retained by the [Regulator] pending the completion of the transfer of the Processing Business from Rappa to Northbound. …. Northbound is not permitted to undertake refining activities until its Refining Licence is released, which will only happen upon the following conditions being satisfied:*
>
> *a. the transfer of the Processing Business from Rappa to Northbound is completed and written confirmation and proof by Rappa to that effect is submitted to the [Regulator]; and*
>
> *b. Rappa's Refining Licence is returned to the [Regulator].*[6] (Emphasis added.)

[15] Northbound contends that the first condition has been satisfied as of mid-May 2025. On 9 May 2025, Mr Bickerton wrote to the Regulator on behalf of Rappa Resources confirming that the business transfer has been concluded (thus satisfying the first condition). I do not understand this to be meaningfully contested.

[16] The completion of the transfer of the business meant that the transitional arrangement with the Regulator ended and that Northbound needed (as of 9 May 2025) its own refining licence in order to carry on the processing of precious metals.

[17] Northbound also contends that it is in a position to satisfy the second condition. Mr Bickerton's letter of 9 May 2025 recorded that Rappa Resources authorises a representative of Northbound to return the Rappa Resources licence to the Regulator, in exchange for the collection of the Northbound licence.

[18] The Regulator, however, refused to accept the return of the Rappa Resources licence and consequently to release the new licence to Northbound. The refusal during or about the first half of May 2025 triggered this urgent application by Northbound, launched on 20 May 2025.

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[6] The Regulator issued a refining licence to Rappa Resources in 2013 for 30 years under licence number AP09136.

[19] The Regulator's refusal flowed from correspondence addressed by Mr Bickerton's co-director of Rappa Resources (Mr Pieter Conradie) to the Regulator on or about 30 April 2025.

[20] Mr Conradie flagged to the Regulator that the majority shareholder of Rappa Resources – the third respondent (Rappa Holdings) – contends that a sale of business from Rappa Resources to Northbound was effected "*without obtaining the necessary shareholder approval*". Mr Conradie stated to the Regulator that the matter "*is presently under internal review and may be subject to formal legal proceedings*". Accordingly, Mr Conradie advised the Regulator that Rappa Resources "*does not intend to release, surrender or transfer its refining licence"*.

[21] Mr Conradie's letter followed a letter dated 30 April 2025 directed by a director of the third respondent, Rappa Holdings, to him in which Rappa Holdings objected to the sale of business by Rappa Resources to Northbound. Rappa Holdings claimed that the transaction was concluded "*without obtaining the necessary shareholder approach as contemplated in section 112 read with section 115*" of the Companies Act.

[22] The correspondence from Mr Conradie and Rappa Holdings led to a flurry of activity.

[23] On 12 May 2025, Northbound recorded in a letter to the Regulator that, on 9 May 2025, the representative of Northbound attended at the office of the Regulator to tender the Rappa Resources licence and to take delivery of the new Northbound licence. The Regulator informed the representative, however, that a dispute had been filed by a shareholder of Rappa Resources and that the Regulator would therefore not accept the return of the Rappa Resources licence. As a consequence, Northbound demanded immediate rescission of the Rappa Resources licence (based upon the fact that Rappa Resources was no longer able to utilise it) and delivery of the new Northbound licence.

[24] On 14 May 2025, the Regulator directed a letter to Messrs Conradie and Bickerton as well as to Northbound. The letter recorded that it was common cause that the Regulator has approved a refining licence for Northbound. The licence was retained by the Regulator "*on the basis that it would render the*

[Regulator] unable to perform its regulatory functions and hold two different licenses accountable for two separate licences operating in the same premise, utilizing the same refining infrastructure". The Regulator indicated that it was "*ready to make its decision and therefore requires a discussion with all parties*". For that reason, it convened a meeting on 16 May 2025.

[25] Northbound immediately responded that the meeting served no purpose, because the Regulator's conditions had been met and that all that remained was for the one licence to be returned and the other handed over.

[26] On 16 May 2025, the Regulator responded to Northbound as follows:

> *"After carefully considering allegations and counter allegations from all parties involved in the ongoing saga regarding the legal validity or otherwise, of the sale of Rappa Resources … business to Northbound Processing … the [Regulator] has decided to adopt a cautionary approach by not acting in a manner that may potentially render it partisan or complicit. ….*
>
> *"[At] the time when we wrote our letter dated 13 February 2025, the [Regulator] was blissfully unaware that the sale of Rappa [Resources] to Northbound was mired in allegations of illegality. It is our contention that the [Regulator] will gladly, at the request of any party involved in the saga, oblige to any court order directing it to act in particular manner."*

[27] Thus, the Regulator informed Northbound that it would cancel a meeting with Northbound set up on 19 May 2025 for the exchange of the old (Rappa Resources) licence for the new (Northbound) licence.

[28] As a result of this sequence of events, Northbound instituted the urgent application on 20 May 2025, contending that the Regulator's failure to release its new licence is irrational, arbitrary and *ultra vires.* The Regulator, as noted above, filed a notice to abide.

Discussion of Northbound's prima facie right to the licence

[29] When a mandatory interdict is sought against a public authority, as in this case, it is known as a *mandamus*.[7] A *mandamus* can operate finally or pending other proceedings, typically but not necessarily review proceedings. Depending on whether it is framed as a final or interim interdict, an applicant is required to satisfy the normal requirements for an interdict, save that the "*clear right*" or "*prima facie right open to some doubt*" consists of a right sourced in public law, typically a statute. The right is not –

> *"merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue."*[8]

[30] Prior to the promulgation of the interim and final Constitutions, the Court's power to afford interim relief while a party followed processes (whether judicial or extra-judicial) to establish or confirm its statutory rights was sourced in the inherent or common-law powers of the Supreme Court.[9] It is now sourced in the Constitution, 1996, its principle of legality and the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA").[10]

[31] In this case, the right in question is <u>not</u> Northbound's right to be issued with a refining licence if it complied with the statutory prerequisites for such issuance. On the word of the Regulator, in its letter of 13 February 2025, the licence has been issued because Northbound complied with the statutory requirements.

[32] The right in question is rather Northbound's right to physical possession of the licence which, it is common cause, is required for it to engage with suppliers and carry on the processing business.

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[7] Hoexter & Penfold *Administrative Law in South Africa* 3rd Ed. (Juta, 2021) ("*Hoexter*") p 801.
[8] *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) para 50.
[9] *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban* 1986 (2) SA 663 (A) at 673A, 673E-H, 674B-676D (per Kotzé JA, Joubert JA concurring), 677F-678G (per Grosskopf JA); Van Heerden JA and Miller JA dissented.
[10] Compare *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd* 2023 (4) SA 325 (CC) paras 197, 204-206 (per Madlanga J for the majority).

[33] It is this right which the Regulator made conditional on confirmation of the completion of the transfer of business (which is common cause) and the return of the licence (which, it is common cause, is within Northbound's power to effect).

[34] In my view, once the Regulator has decided to issue the licence, which it did on 10 January 2025, Northbound has a right to receive the licence. I embark on a brief excursion through the statutory framework of the Precious Metals Act and its Regulations to show that, once the Regulator has exercised its power to issue the licence, it has no discretion nevertheless not to hand it over to Northbound.

[35] Section 4(1) of the Precious Metals Act provides *inter alia* that, "*no person may acquire, possess or dispose of … any unwrought precious metal, unless … he or she is the holder of a refining licence and acts in accordance with the terms and conditions of his or her licence*". (The Act also permits certain other classes of persons to deal in unwrought precious metal, but this is irrelevant for purposes of this judgment.)

[36] Section 6(2) of the Precious Metals provides that "*[a]ny administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), unless otherwise provided for in this Act*".

[37] Section 7 of the Precious Metals provides for the issuance and renewal of refining licences. The section does not describe any criteria according to which the Regulator must decide whether to issue such a licence or not; simply that the Regulator must first consult with the National Treasury (in the case of gold) and in all cases with the National Commissioner of the South African Police Service.

[38] It is the Regulations made under the Precious Metals Act ("Regulations")[11] that specify the manner of lodging an application for a refining licence (in Regulation 2) and the details to be contained in such an application (in Regulation 3). These suggest that an applicant must be able to indicate at least a legitimate source for the precious metal to be processed; technical ability and expertise; sufficient financial resources and a viable business plan; a market to dispose of the refined

[11] Published under GN R570 in GG 30061 of 9 July 2007 and amended by GN R387 in GG 30942 of 4 April 2008 and by GN R737 in *GG* 38014 of 22 September 2014.

metal; a (lack of) a criminal record; empowerment credentials; and an environmental authorisation under the applicable legislation.

[39] Regulation 5 elaborates on these criteria in that it specifies that the Regulator "*may … issue*" a refining licence, within 60 days of the lodgement of an application, if certain conditions are met. These include that the applicant must not be in contravention of the Precious Metals Act; must have access to financial resources and appropriate technical expertise to conduct the proposed refining operation; and that its business plan must be compatible with the intended refining operations and the duration thereof. Further, the issuance of the licence must not result in an "*exclusionary act*" or "*prevent fair competition*".

[40] I quote these provisions at some length, because the opposing respondents contend that the Regulator is not obliged to hand over the refining licence to Northbound and Northbound is not entitled to be furnished with the licence. Hence, they contend that the Regulator is acting lawfully in withholding the licence.

[41] I deal below with what the opposing respondents contend are the reasons why the Regulator is entitled to refused to release the licence. First, however, I turn to the issue whether the licence can be said to have been "*issued*" to Northbound in the absence of physical delivery thereof.

[42] The Precious Metals Act and its Regulations do not distinguish between the "*grant*" of a refining licence and the "*issuance*" or "*handing over*" of the licence as some statutes do.[12] Section 7(1) and Regulation 5 simply refer to the "*issue*" of a refining licence which, in this case, the Regulator said it did on 10 January 2025.

[43] Counsel for the opposing respondents in comprehensive supplementary heads of arguments argued that "*issue*" must mean physical issuance, given that the Precious Metals Act refers in many instances to the "*holder*" of a licence. In

[12] A prime example is the various rights (e.g. prospecting or mining rights) conferred under the Mineral and Petroleum Resources Development Act, 28 of 2002 which are "*granted*" through a unilateral administrative act, but which may not be exercised before they are notarially executed: see *Minister of Mineral Resources v Mawetse (SA) Mining Corporation (Pty) Ltd* 2016 (1) SA 306 (SCA) paras 19-28.

support of this contention, he referred to several cases which held, in the context of different statutory schemes, that "*holding*" a licence implies physical possession thereof and "*issuance*" implies physical delivery.[13]

[44] What these submissions show, however, is that statutes sometimes distinguish between a grant decision in relation to a licence and a handing over of the licence and, in such cases, a person becomes "*holder*" of a licence only upon handing over of a licence. The Precious Metals Act does not contain this distinction.

[45] I will, however, assume in favour of the opposing respondents that "*issuance*" of the refining licence to Northbound would only be complete upon physical delivery of the licence to Northbound.

[46] In my view, once the Regulator has found that Northbound has met all the requirements to be issued a refining licence – as it did – Northbound has a right to be issued such licence, which right includes the physical delivery of the licence. This right does not depend on whether issuance was complete as at 10 January 2025 or has yet to be completed. Neither the Precious Metals Act nor its Regulations contain any residual power for the Regulator to withhold physical delivery of a licence pending satisfaction of prerequisites other those stipulated in section 7 as read with Regulations 2, 3 and 5 – which the Regulator has stated was satisfied.

[47] Put differently, the administrative action that is reviewable at the instance of the opposing respondents to issue the refining licence to Northbound was complete upon the communication of such issuance to Northbound on 13 February 2025.[14] The Regulator was *functus officio*, having communicated its decision. The subsequent physical handing over of the licence was a purely mechanical act that was not regulated by statute and thus cannot constitute administrative action, as defined in section 1 of PAJA.

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[13] Compare *R v Theron* 1959 (3) SA 102 (T) at 103H-105D; *Orlando Fine Foods (Pty) Ltd v Sun International (Bophuthatswana) Ltd* 1994 (2) SA 249 (BG) at 256G-257F; *Desert Palace Hotel Resort (Pty) Ltd v Northern Cape Gambling Board* 2007 (3) SA 187 (SCA) paras 10-15.
[14] Compare *Mawetse (supra)* para 28.

[48] It follows that, in my view, Northbound has at least a *prima facie* right – for purposes of the law of interdicts – to the immediate release of the licence. This does not mean that the issuance of its refining licence cannot be set aside in appropriate proceedings; or that circumstances cannot arise in which the Regulator may cancel the licence. It merely means that, on the papers before me, the opposing respondents have not raised sufficient doubt that, given the prior decision of the Regulator to issue the licence, it should not release that licence to Northbound.

[49] I discuss below two counter-arguments by the opposing respondents, but I note at this stage that Northbound abandoned any final relief and only claimed an interim interdict pending proceedings to confirm the validity of the sale of business. In my view, its case passes the threshold of a *prima facie* right even though open to some doubt.

The counter-arguments by the opposing respondents in relation to the prima facie right

[50] The opposing respondents relied on two lines of attack against Northbound's right to release of the licence:

a. First, they say that Northbound did not meet various statutory criteria for the issuance of the right.

b. Second, they say that the sale of business was unlawful and invalid for non-compliance with section 115(2)(b) of the Companies Act as read with section 112 in that Three Palms did not adopt a resolution authorising the sale of the business of Rappa Resources.

[51] As will be seen, these submissions are interrelated.

[52] As I record above, the opposing respondents contended that the Regulator was acting lawfully by not releasing Northbound's new licence. They say this on the following basis:

a. During the interim period, Northbound has acquired and possessed unwrought precious metal despite not being in possession of a refining licence, which is a contravention of section 4 of the Precious Metals Act.

Thus, the Regulator is precluded from issuing a refining licence to Northbound in terms of regulation 5(1)(b) of the Regulations, which requires an applicant not to be in contravention of any provisions of the Precious Metals Act. This seems to be, in essence, a challenge to the legality of the "*transitional arrangement*" the Regulator made with Northbound.

b. Given that the sale of business was unlawful, Northbound does not have a viable business or business plan as required by Regulations 3(2)(d) and (e) as read with Regulations 5(1)(c) and (d).

c. The issuance of a refining licence to Northbound results in an "***exclusionary act***" [15], because then Rappa Resources would be unfairly prevented from being able to remain in the precious metals sector, or at the very least, severely impeded from being able to re-enter the precious metals sector at a later stage. Thus, Regulation 5(2)(a)(i) applies.

[53] I do not make any pronouncement on the merits of these contentions. They suffer from a fundamental and common flaw that is independent from their merits. They are all directed at whether or not Northbound met the requirements for the issuance of a refining licence.

[54] But the Regulator has already decided that Northbound did meet the requirements and consequently it issued the licence. Even if the two conditions the Regulator imposed on 13 February 2025 for the release of the licence can be construed as demonstrative of meeting the statutory requirements, it is common cause that they were met or could be met by Northbound.

[55] Accordingly, to the extent that the first argument is aimed at providing reasons why the issuance of a licence to Northbound would be unlawful, it is precluded by the so-called *Oudekraal* doctrine.[16] For purposes of the interim relief sought by Northbound, it is irrelevant whether the Regulator was correct or not in

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[15] Defined in the Regulations as: "*an act or practice which unfairly impedes or prevents any person from entering or remaining in the precious metals industry, or from entering or remaining in a market connected to that industry*".

[16] See e.g. *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA); *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute* 2016 (1) SA 481 (CC).

deciding that Northbound met the criteria for the issuance of the refining licence. It did so, as a matter of fact, and thus its decision stands until it is reviewed by the right litigant in the rights proceedings. (In this case, the right proceedings would of necessity have to be review proceedings to set aside the decision of the Regulator.)

[56] The second argument, that the sale of business was invalid and unlawful, is intertwined with the first and fails on much the same basis.

[57] Although Northbound's application to the Regulator and the accompanying business plan was not before the Court, it may well be that the sale of business forms the substratum of its application and thus the issuance of the refining licence. But once the Regulator decided that Northbound met the requirements for the issuance of a refining licence – whether based upon the sale or not – the validity of the sale logically cannot determine whether Northbound has a right to the release of the licence.

[58] There was a sale of business (valid or not) at the time the licence was issued, which had the practical effect that Northbound took over the business and the employees. The Regulator could not be expected to inquire into whether the requirements of an entirely different statutory framework had been met, before issuing the licence. And even if it could, it did not, and it issued the licence as a matter of fact – which again activates the *Oudekraal* doctrine.

[59] Accordingly, it is unnecessary to decide for purposes of the *mandamus* whether the sale of business was valid or not. It makes no difference to the statutory consequences of the Regulator's decision to issue the licence to Northbound.

Urgency and a well-grounded apprehension of irreparable harm if interim relief is not granted and final relief is ultimately granted

[60] It seems clear that Northbound would suffer irreparable harm if the refining licence is not released to it. The opposing responded did not contest that, without physical possession of its issued licence, Northbound is precluded from conducting its operations, rendering it commercially inoperative.

[61] The consequence of that is that Northbound cannot receive material from Harmony Gold (its sole supplier), generate revenue and pay staff. Over 100 employees face immediate retrenchment.

[62] It would be cold comfort to Northbound if interim relief is not granted and, in due course, its right to the licence is confirmed in review proceedings. By that time, the processing plant would have been idle for years and Harmony and its employees would have moved on.

[63] For the same reasons, I find that Northbound's application is urgent. The opposing respondents did not contest the urgency of Northbound's application, although they asserted that their counter-application to set aside the sale was equally urgent. (I deal with the counter-application below.)

The balance of convenience

[64] Consideration of the balance of convenience entails a weighing up of the prejudice to the opposing respondents of granting the *mandamus* against the prejudice to Northbound if it is not granted.

[65] I explain above the very considerable commercial difficulties which Northbound would face if the licence is not released to it. These were not contested. Against this needs to be weighed the consequences to the opposing respondents if the licence is released to Northbound.

[66] The parties argued the matter on the common assumption that, if the licence is released, Northbound would be able to carry on the processing business unless and until proceedings to determine the validity of the sale of business is complete – and that the opposing respondents' subsidiary Rappa Resources would be divested of the business for at least that period. To that I would add a rider: there is also the possibility of successful review proceedings against the Regulator in relation to the issuance of the licence.

[67] It seems clear that the balance of convenience favours Northbound. It is common cause that Rappa Resources has not operated the refining business since 1 October 2024. All employees, operational responsibilities, commercial

contracts, and physical infrastructure were transferred to and have been managed by Northbound for the past nine months.

[68] On the other hand, Rappa Resources appears to be currently unbanked and "*commercially dormant*". Even if the opposing respondents succeed in a claim for restitution of the business to Rappa Resources, it may experience difficulties in carrying on the business – leaving alone any potential difficulties with its own refining licence.

[69] If the *mandamus* is not granted, there are considerable legal and practical difficulties with a potential damages claim against the Regulator or the opposing respondents.[17] If it is granted, but the opposing respondents are successful in subsequent proceedings for restitution of the business, they are likely to receive an operational business and have a potential damages claim that could potentially be quantified on the basis of Northbound's profit.

[70] There is also no consideration of separation of powers in this particular case that stands in the way of an interdict, because the Regulator has not only already decided to issue the licence but it has also abided the relief sought.[18]

No other satisfactory remedy

[71] For reasons already articulated under the rubrics of irreparable harm and balance of convenience, there does not seem to be another satisfactory remedy for Northbound than a *mandamus*; and its was not contended otherwise.

[72] I therefore conclude that Northbound is entitled to an interim interdict essentially in the terms prayed for, although I have excised some of its provisions which appear unnecessary to me to achieve its purpose.

The counter-application and its urgency

[73] As I record above, Northbound instituted its urgent application on Tuesday 20 May 2025 and set it down for Tuesday 3 June. In turn, the opposing

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[17] See e.g. *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2007 (3) SA 121 (CC).
[18] Compare *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) paras 44-47.

respondents filed their answering affidavit on Thursday 29 May. The answering affidavit stood as the founding affidavit in the counter-application.

[74] The essence of the counter-application is to set aside the sale of business and to effect restitution of the business; to interdict Rappa Resources and Mr Bickerton from surrendering the old refining licence; to remove Mr Bickerton as director of Rappa Resources; and to declare the lease of the promises on which Northbound operates, to be terminated. The relief is based upon the court's wide powers arising from section 163 of the Companies Act.

[75] The answering papers and the counter-application were also accompanied by applications for:

a. The intervention of 8 Mile Investments 337 (Pty) Ltd, which is the lessor of the premises from which Northbound operates and which made common cause with the opposing respondents in the counter-application.

b. The joinder of Rappa Resources and the fourth respondent as respondents to the counter-application.

c. The joinder of Mr Bickerton as a respondent in the main application and the counter-application. (As a result, Mr Bickerton's attorney appeared at the hearing of this matter.)

[76] I refer to the intervention application and the various joinder applications as the "*opposing respondents' interlocutory applications*".[19]

[77] Northbound contended that the counter-application and the opposing respondents' interlocutory applications were not urgent, primarily because the opposing respondents had known, for many months, of the implementation of the sale of business and had raise a dispute on its validity since March 2025. Northbound also contended that these applications were not ripe to be heard,

[19] I appreciate that 8 Mile Investments 337 (Pty) Ltd is not, absent a successful intervention, an "*opposing respondent*" but it is clear on the papers that its interests are co-extensive with those of the opposing respondents and it was represented by the same attorneys and counsel.

given the short time-frame between their launch and the hearing of the urgent application, which led to the curtailment of the customary exchange of affidavits.

[78] I agree that the counter-application and the opposing respondents' interlocutory applications are not urgent.

[79] Leaving aside whether the opposing respondents had been aware of the sale of business since 1 October 2024, it is clear from paragraph 64 of the answering affidavit that they started harbouring and raising concerns about its implementation at least as early as 5 March 2025, on the very basis on which they now instituted the counter-application. Three Palms approached its current attorneys shortly after that, on 13 March 2025.

[80] Yet, it took the opposing respondents almost three months to launch the counter-application, and then only in response to Northbound's application. The urgency is manifestly self-created.

[81] Counsel for the opposing respondents argued that this was not so, because the position and conduct of Mr Bickerton as a director of Rappa Resources and Rappa Holdings stood in the way of effective action.

[82] The reality is, however, that Mr Bickerton remains a director of Rappa Resources – which is why the counter-application sought his removal. He was already removed as a director of Rappa Holdings on 3 April 2025, yet no legal action followed until 29 May 2025.

[83] I therefore strike the counter-application and the opposing respondents' interlocutory applications from the roll for lack of urgency.

Costs

[84] Northbound has been substantially successful in this application. It asked, in the event of success, that the costs of its application should be reserved for determination in the proceedings to be instituted to confirm the validity of the sale. I will so order.

[85] In relation to the counter-application, and the opposing respondents' interlocutory applications, I agree with Northbound that the normal order attendant upon a striking-off should be made and the opposing respondents should pay Northbound's costs in relation thereto.

The citation of incorrect authority in Northbound's heads of argument

[86] While drafting this judgment, it came to my attention that two cases cited in Northbound's heads of argument for key propositions on the *mandamus,* that could have been dispositive of this matter if they applied, do not exist.[20]

[87] I invited the parties to clarify the position in relation to these non-existent authorities. In his first response, junior counsel for Northbound Mr Giles Barclay-Beuthin stated that an incorrect version of the heads was filed; that "*confusion arose from short-form citations used during drafting*" and that different citations were "*initially intended for inclusion in support of the relevant legal propositions*".[21] He sent a version of the heads that substituted the two offending paragraphs I identified.

[88] The attorney acting for the opposing respondents drew my attention to the fact that Northbound's heads, even the "*correct*" version, still contained two other incorrect citations.[22] He also raised concerns about whether certain other authority, which does exist, bore out the propositions for which they were cited.

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[20] The propositions were framed as follows in Northbound's heads of argument:

"24. The facts in ***De Beer NO v The North Gauteng High Court [2011] ZASCA 117*** are apposite, where the SCA confirmed that even contested rights, if established with sufficient factual foundation, warrant interim protection when regulatory action is being obstructed.

"25. Similarly, in ***SABC Ltd v Mninwa Johannes Mahlangu [2014] ZAGPPHC 861***, the Court held that where statutory processes have been completed and rights conferred, a third party's dispute over the underlying process does not disentitle the beneficiary to interim protection. The Court does not have to be satisfied that the right exists in the absence of doubt, only that the applicant has shown a right 'open to some doubt' which must be protected *pendente lite*."

[21] Being *De Beer and Another v Director-General of Home Affairs and Another* [2023] ZAGPJHC 711 at para 11; and *SABC (SOC) Ltd v SABC Pension Fund, Motsoeneng and Others* Case No. 17/29163 (Gauteng Division, Johannesburg) at paras 77 and 96.

[22] Being *Khumalo v Director-General of Co-Operative Governance and Traditional Affairs* 2021 (2) SA 72 (CC) and *N & Z Instrumentation & Control (Pty) Ltd v Groenewald and Another* 1976 (3) SA 565 (T).

[89] I gave counsel for Northbound further opportunity to respond to these issues. In response to a direct question from the court whether the incorrect citations constituted so-called artificial intelligence "*hallucinations*", Mr Barclay-Beuthin confirmed that they appeared to be so. He explained that, aside from the time-pressure caused by various factors – including the urgency of this application, severe time-pressure to complete the heads and the indisposition of Mr Nowitz (who initially acted as Northbound's junior counsel but fell out of the matter after doing an initial draft of the heads without the incorrect citations) – he used an online subscription tool called "Legal Genius" which claimed that it was "*exclusively trained on South African legal judgments and legislation.*"

[90] I then invited counsel to clarify whether the matter was on all fours with the recently reported judgment of the KwaZulu-Natal Division, Pietermaritzburg in *Mavundla* in which counsel in oral argument quoted several non-existent cases based upon research performed by a candidate attorney.[23] Mr Barclay-Beuthin submitted that it was not, because *inter alia* Mr Subel SC did not rely on the non-existent cases in oral argument, and he submitted no one was prejudiced due to the errors in Northbound's heads of argument. He also accepted full responsibility for the mistakes but emphasised that there was no intent to mislead the court.

[91] Mr Subel SC also apologised unreservedly for the oversight on behalf of Northbound's legal team. He stated that it was inconceivable to him that the authorities had been identified in the manner that Mr Barclay-Beuthin explained. He also explained that he relied upon an experienced legal team (which included two competent junior counsel) upon whom he believed he could (and indeed did) rely. He only did a "*sense-check*" on Northbound's heads before they were filed and did not have sufficient opportunity to check the accuracy of the citations but considered that the propositions to which they related were trite and did not even require case law references. Finally, he emphasised that he independently prepared his oral argument, which made no reference to the heads as filed.

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[23] *Mavundla v Member of the Executive Council, Department of Co-operative Government and Traditional Affairs, KwaZulu-Natal* 2025 (3) SA 534 (KZP).

[92] In *Mavundla,* the court emphasised the trite duty of legal practitioners not to mislead the court, whether through negligence or intent. This includes the duty to present an honest account of the law, which means (*inter alia*) not presenting fictitious or non-existent cases.[24] In my view, it matters not that such cases were not presented orally, but were contained in written heads of argument. Written heads are as important a memorial of counsel's argument as oral argument and, for purely practical reasons, are often more heavily relied upon by judges.

[93] I endorse the reasoning in *Mavundla*, which is consistent with a judgment of the English High Court handed down less than a month ago. In the case of *Ayinde*, the President of the King's Bench Division made the following important observations that are apposite to this case:[25]

a. In the context of legal research, the risks of using artificial intelligence are now well known. Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect. The responses may make confident assertions that are simply untrue. They may cite sources that do not exist. They may purport to quote passages from a genuine source that do not appear in that source.[26]

b. Those who use artificial intelligence to conduct legal research notwithstanding these risks have a professional duty to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work (to advise clients or before a court, for example).[27]

c. There are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused. In those circumstances, practical and effective measures must be taken by those within the legal profession with individual leadership responsibilities and by

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[24] Id, paras 37-41 and paras 45-47.
[25] *Ayinde v The London Borough of Haringey; Al-Haroun v Qatar National Bank* QPSC [2025] EWHC 1383 (Admin).
[26] *Id* para 6.
[27] *Id* para 7.

those with the responsibility for regulating the provision of legal services. Those measures must ensure that every individual currently providing legal services understands and complies with their professional and ethical obligations and their duties to the court if using artificial intelligence.[28]

d. The court has a range of powers to ensure that lawyers comply with their duties to the court. Where those duties are not complied with, the court's powers include public admonition of the lawyer, the imposition of a costs order, the imposition of a wasted costs order, striking out a case, referral to a regulator, the initiation of contempt proceedings, and referral to the police. The course of action followed will depend on the circumstances of the case.[29]

e. Where a lawyer places false citations before the court (whether because of the use of artificial intelligence without proper checks being made, or otherwise) that is likely to involve a breach of ethical and regulatory requirements, and it is likely to be appropriate for the court to make a reference to the appropriate regulator.[30]

f. The risks posed to the administration of justice if fake material is placed before a court are such that, save in exceptional circumstances, admonishment alone is unlikely to be a sufficient response.[31]

[94] These principles apply in my view with equal force in South Africa. In South Africa, courts must also bear in mind the provisions of Article 16(1) of the Code of Judicial Conduct.[32] This provision obliges a judge with clear and reliable evidence of serious professional misconduct or gross incompetence on the part of a legal practitioner to inform the relevant professional body of such misconduct.[33]

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[28] *Id* para 8.
[29] *Id* paras 23-24.
[30] *Id* para 29.
[31] *Id* para 31.
[32] Code of Judicial Conduct adopted in terms of Section 12 of the Judicial Service Commission Act, 9 of 1994 (GNR865 published in Government Gazette 35802 of 18 October 2012).
[33] Compare *Do It All Renovators CC v Kapp* [2023] ZAGPJHC 548 (23 May 2023) para 40.

[95] In this case, counsel's explanations bear out their submission that there was no deliberate attempt to mislead the court in relation to the use of incorrect case citations in the heads of argument. Their apologies are acknowledged. As is clear from *Mavundla*, however, even negligence in this context may have grave repercussions particularly to the administration of justice and, in appropriate circumstances, could constitute serious professional misconduct.

[96] As a consequence, it is appropriate to make the same order as in *Mavundla*, namely that the conduct of theapplicant's legal practitioners is referred to the Legal Practice Council for investigation.

Order

[97] I make the following order:

1. The applicant's application is heard as one of urgency.

2. The first respondent is directed immediately to release refining licence number AP21847 to the applicant.

3. The applicant shall return refining licence number AP21847 to the first respondent in the event that it fails to institute proceedings within thirty (30) days from the date of this order, or is substantially unsuccessful with such proceedings (including any appeals), which proceedings shall ask for relief including a declarator that the Sale of Business Agreement entered into between the applicant and the second respondent on or about 30 September 2024 is valid, together with any ancillary relief that may be necessary to give effect thereto.

4. The costs of the applicant's application are reserved for determination in the proceedings mentioned in paragraph 3 above. Should the applicant fail to institute such proceedings, the parties shall each pay their own costs in relation to the applicant's application.

5. The counter-application and interlocutory applications launched by the third and fifth respondents are struck from the roll for lack of urgency, with costs which include the costs of two counsel.

6. The issues described in paragraphs 86 to 96 above are referred to the Legal Practice Council for investigation and the registrar of this court is directed to bring this judgment to the attention of the Gauteng Provincial Office of the LPC for that purpose.

DJ SMIT

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

Date of hearing: 6 June 2025

Date of judgment: 30 June 2025

For the applicant:	A Subel SC with G Barclay-Beuthin instructed by Nochumsohn Pretorius (A Subel SC and M Nowitz having signed the heads of argument)
For the third and fifth respondents and for 8 Mile Investments 337 (Pty) Ltd:	L Hollander instructed by APA Attorneys
For Mr G Bickerton:	S Zindel (attorney)