

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case No.: HC-MD-CIV-MOT-REV-2021/00285

In the matter between:

**HAIB MINERALS (PTY) LTD**

**APPLICANT**

and

**MINISTER OF MINES AND ENERGY**

**FIRST RESPONDENT**

**MINING COMMISSIONER**

**SECOND RESPONDENT**

**ORANGE RIVER EXPLORATION AND MINING CC**

**THIRD RESPONDENT**

**Neutral Citation:** *Haib Minerals (PTY) LTD v Minister of Mines and Energy* (HC-MD-CIV-MOT-REV-2021/00285) (2021] NAHCMD 381 (27 August 2021)

**CORAM:** MILLER AJ

**Heard:** 11 August 2021

**Delivered:** 27 August 2021

**Reasons:** 02 September 2021

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**ORDER**

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1. Paragraph 2.1 and 2.3 of Part B of the Notice of Motion are granted.
  2. There will be no order as to costs
  3. The matter is postponed to 16 September 2021 at 15h30 for a status hearing concerning further consideration of the relief being sought Part A.
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**JUDGMENT**

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**MILLER AJ:**Introduction

[1] The applicant seeks to review and set aside a decision taken by the first respondent not to renew an Exclusive Prospecting Licence previously held by the applicant for a number of years. The relief from the basis on Part A of the Notice of Motion filed on 20 July 2021.

[2] I am presently concerned only with Part B of the Notice of Motion which reads as follows:

‘2.1 Dispensing with full and proper compliance with Rules relating to service and time limits as set out in Rule 73(3) of the Rules of this Honourable Court, by reason of the urgency of the matter.

2.2 Ordering the relief sought in paragraph 1.1 of Part A above to operate as an interim order, pending the final determination of the review application.

2.3 Pending the final determination of the review application brought in terms of Part A hereof.

2.3.1 Interdicting and restraining the first and second respondents from giving effect to and/or implementing the Minister's decision referred to in Par A hereof, including but not limited to –

2.3.1.1 interdicting and restraining the first and second respondents from granting any mineral licence, inclusive of an Exclusive Prospecting Licence, in terms of the provisions of the Minerals Ac, to any other person in respect of the area to which EPL 3140 related; and

2.3.1.2 alternatively, should the first respondent have already granted the third respondent a mineral licence, inclusive of an Exclusive Prospecting Licence, in terms of the provisions of the Minerals Act in respect of an area to which EPL 3140 related, interdicting and restraining the third respondent from proceeding to conduct any prospecting activities, or further activities of any kind, within the area covered by EPL 3140.

2.4 In the event of opposition to this Part B, ordering the first and second respondents, and any other respondent who may oppose this application, to pay the applicants costs jointly and severally, the one paying the others to be absolved.

2.5 granting further and/or alternative relief to the applicant.'

[3] The matter in so far as it concerns the relief being sought in Part B, is opposed by the first and second respondents. Two points of law are raised. These are the issues of urgency and a further issue that the relief being sought in Part B is not competent in law. This latter issue was principally directed at the relief being sought by the applicant in prayer in 2.2 of Part B.

[4] Mr Corbett SC who appeared for the applicant correctly conceded during the course of argument that such relief was not competent. That concession dispensed with the point raised by the first and second respondents that the relief being sought in that prayer was not competent in in law

[5] That leaves for consideration the issue of urgency. I did not understand counsel for the first and second respondent to argue with the issue that the interim relief is not one of urgency, but for the submission that the applicant was wrong to approach this court for interim relief. The submission was that the first and second respondent are

responsible officials who will not grant an Exclusive Prospecting Licence over the same area for the same minerals while the current review proceedings are pending. It is evident from the founding affidavit in the present proceedings that the applicant sought precisely such an undertaking from the first and second respondents. No such undertaking was given. Counsel for the respondents was of the view that the relevant legislation prohibits the giving of the requested undertaking. In all these circumstances in my view it is just and equitable to grant interim relief. .

[6] Both parties achieved a measure of success relating to the relief being sought in Part B.

[7] I make the following orders:

1. Paragraph 2.1 and 2.3 of Part B of the Notice of Motion are granted.
2. There will be no order as to costs
3. The matter is postponed to 16 September 2021 at 15h30 for a status hearing concerning further consideration of the relief being sought Part A.

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K Miller  
Judge

## APPEARANCE

For Plaintiff: Mr Hanno Bossau

For Defendant: Freddy Kadhila