

# Dispute Resolution

24 March 2026

## SOUTH AFRICA

- Invalid but untouchable? The zombie mining right that refuses to die



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## Invalid but untouchable? The zombie mining right that refuses to die

**Tendele has operated the Somkhele mine since 2006. In 2022, its expansion plans were challenged in court by community groups that sought an interim interdict to halt Tendele's preparatory mining activities at the mine.**

In *Mfolozi Community Environmental Justice Organisation and Others v Tendele Coal Mining (Pty) Ltd and Others (3518/2023P) [2023] ZAKZPHC 72; [2023] 3 All SA 768 (KZP) (13 July 2023)*, Bam J found severe deficiencies in scoping, environmental assessment and public participation, describing Tendele's approach as "egregious" and akin to an "unbridled horse". However, exercising her powers under section 172(1)(b) of the Constitution, she declared the mining right invalid but did not set it aside, instead remitting the appeal to the Minister of Mineral and Petroleum Resources (Minister).

In February 2023, Tendele issued notices to commence preparatory activities. The applicants sought an urgent interdict, arguing that Tendele could not proceed until all defects were remedied. Tendele countered that under the Oudekraal principle, its mining right remained operative because it was never set aside.



**Band 2**  
Dispute Resolution

## The court's reasoning

The interdict failed on multiple grounds. First, the applicants could not establish a *prima facie* right. Since the mining right was declared invalid but not set aside, it continued to exist in fact and could authorise preparatory operations. Second, the applicants had an adequate alternative remedy under section 96(2)(a) of the Mineral and Petroleum Resources Development Act 28 of 2002 as they could have applied to the Minister to suspend the mining right, but did not. Finally, the balance of convenience was neutral given the socio-economic consequences of halting mining.

## Key takeaways

Invalid does not mean inoperative. Under the Oudekraal principle, an unlawful administrative act remains effective until formally set aside. Because Bam J declared Tendele's mining right invalid but declined to set it aside, the right remained alive, giving Tendele legal footing for limited preparatory work while the Minister reconsiders the appeal. For affected communities, the contest shifts to the administrative arena. For mining companies, the case confirms that the Oudekraal principle offers powerful protection even when compliance failures are found.

Corné Lewis and Ledile Maloka



## Beyond consistency

1<sup>st</sup> by Listed M&A Deal Flow for 16 of the last 17 years

### 2025

- 1<sup>st</sup> by Listed M&A Deal Flow
- 3<sup>rd</sup> by Listed M&A Deal Value
- 2<sup>nd</sup> by Unlisted M&A Deal Flow
- 2<sup>nd</sup> by Unlisted M&A Deal Value
- 3<sup>rd</sup> by General Corporate Finance Value

Catalyst Private Equity Deal of the Year as legal advisers on the Norfund and Mahtako investment deal in Anthem.

### 2024

- 1<sup>st</sup> by Listed M&A Deal Flow
- 2<sup>nd</sup> by Unlisted M&A Deal Flow
- 2<sup>nd</sup> by BEE Deal Value
- 2<sup>nd</sup> by BEE Deal Flow
- 3<sup>rd</sup> by General Corporate Finance Deal Flow

Legal advisers on Coronation Fund Managers' award-winning 'BEE Deal of the Year'.

### 2023

- 1<sup>st</sup> by M&A Listed Deal Flow.
- 2<sup>nd</sup> by M&A Unlisted Deal Flow.
- by M&A Unlisted Deal Value.
- by M&A Listed & Unlisted BEE Deal Flow.
- by General Corporate Finance Deal Value.
- 4<sup>th</sup> by General Corporate Finance Deal Flow.

## DealMakers

### 2022

- 1<sup>st</sup> by M&A Listed Deal Flow.
- 3<sup>rd</sup> by M&A Listed Deal Value, M&A Unlisted Deal Value, M&A Unlisted Deal Flow and General Corporate Finance Deal Value.



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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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