



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
**MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF**  
**APPEAL**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 7 NOVEMBER 2022

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

*Samancor Chrome Limited v Bila Civil Contractors (Pty) Ltd and Others (Case no 159/2021) [2022] ZASCA 154 (7 November 2022)*

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Today, the Supreme Court of Appeal (SCA) upheld, with costs, an appeal against a decision of the Gauteng Division of the High Court, Pretoria (the high court). The appeal concerned a question of whether a contempt order could be granted simultaneously with the joinder of directors as parties to the application and whether contempt of a court order was established beyond a reasonable doubt.

The facts in this case were briefly as follows. Samancor Chrome Limited (Samancor) was the co-owner of the Remaining Extent of Portion 2 of the farm Elandskraal 469 JQ (RE Portion 2) and the owner of Portion 154 of the farm Elandskraal 469 JQ (Portion 154) (the properties) in the North West Province. It had the sole and exclusive right to mine and recover chrome ore in the properties in terms of converted mining rights. The first respondent, Bila Civil Contractors (Pty) Ltd (Bila), held a prospecting right over RE Portion 2.

On 12 June 2019, Samancor lodged an urgent application in the high court, alleging that Bila, its employees and contractors, conducted unlawful mining operations on RE Portion 2 and Portion 154. Bila denied that it was mining, emphasising that although it had invested heavily in its operations, these were only for prospecting purposes. The matter served before Neukircher J who granted an order on 1 July 2019, restraining and interdicting Bila from conducting mining operations and removing chrome ore outside of that allowed by its prospecting right.

Subsequent to this order, on 25 September 2019, Samancor launched an urgent application in the high court against Bila and its directors, ie the second to fifth respondents, who were not parties before Neukircher J. It sought an order: (a) joining the second to fifth respondents as parties in the application; (b) declaring that the respondents were in contempt of the judgment and order granted by Neukircher J on 1 July 2019; (c) directing that each of the respondents

pay a fine of R100 000, alternatively such other sum as the court considered appropriate; and (d) that in the event that any of the respondents failed to comply with the order sought or continued to act in breach of the order, that such respondent be committed to prison for a period of 90 days, alternatively such other period as the court deemed appropriate.

A counter-application was filed together with an answering affidavit for an order interdicting Samancor from conducting any mining operations on RE Portion 2 pending the outcome of an appeal process that Samancor had lodged with the Department of Mineral Resources regarding its decision to grant a prospecting right to Bila. Both applications were argued before Van der Westhuizen J, who granted an order joining Bila's directors as parties to the application but dismissed, with costs, the application for contempt. He further struck the counter-application from the roll for want of urgency. In dismissing the contempt application, he found that a contempt order could not be sought immediately following an order for joinder.

The SCA found that the high court erred, in that Bila's directors received the notice of motion, which clearly set out the relief sought against them. They had time to seek legal counsel and consider the application and their position in regard thereto. Specifically, they were aware that not only their joinder was sought, but were equally aware that the court was also asked to find them in contempt of court and impose a penalty should it find them guilty of contempt. The SCA accordingly held that the high court should have proceeded to deal with the contempt application.

Because the high court had made findings that impacted on the breach aspect of the contempt inquiry, it was proper for the SCA to decide whether the requirements to hold Bila and its directors in contempt were established. The existence and service of the order was admitted and therefore the first two requirements to hold Bila and its directors in contempt were met. As to the issue of non-compliance with Neukircher J's order, the SCA found that uncontroverted evidence presented by Samancor showed that Bila had conducted mining operations and removed chrome ore outside that which was allowed by its prospecting right.

In order to rebut the inference of wilfulness and *mala fides*, the respondents submitted that they relied on legal advice that Neukircher J's order was automatically suspended because Bila had intended to lodge an application for leave to appeal that order. The SCA found the answering affidavit to be bereft of detail as to the nature of this advice. It further held that, even if it were to be assumed on behalf of the respondents, that sufficient detail was given, s 18(5) of the Superior Courts Act 10 of 2013 was clear and categorical that 'a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or notice of appeal is lodged with the registrar in terms of the rules'. The impression that an intention of a party automatically suspended an order was not only untenable but far-fetched. Taken to its logical conclusion, it was no different to a contention that an intention to institute summons without actually doing so interrupts prescription. The SCA, accordingly, found that contempt of Neukircher J's order was established beyond a reasonable doubt. It held that the imposition of a fine in respect of each of the respondents was the most appropriate penalty in the circumstances. In the result, it upheld the appeal with costs.

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