



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

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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

De Beers Consolidated Mines (Pty) Ltd v Regional Manager, Limpopo: The Department of Mineral Resources and Energy and Others (458/2024) [2025] ZASCA 128 (10 September 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, in an appeal brought by De Beers Consolidated Mines (Pty) Ltd (DBCM).

DBCM operated an open-cast diamond mine, the Oaks Mine, under a mining licence from 1998 to 2008. In November 2009, DBCM submitted a closure application as required by the Act. Over the subsequent decade, the Department of Mineral Resources and Energy (the Department) and DBCM exchanged correspondence regarding the closure plan. The Department insisted that the closure plan must include backfilling requirements, while DBCM resisted this condition, and noted that it formed no part of the approved Environmental Management Programme. On 6 June 2020, the Department adopted the position that DBCM's closure application would remain pending until the revised Closure Plan is submitted. In July 2020, DBCM lodged an internal appeal in terms of s 96 of the Act against the Regional Manager's decision refusing to grant the closure certificate.

Before the internal appeal was decided, DBCM brought a review in the high court seeking exemption from exhausting internal remedies in terms of s 7(2)(c) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA); a declarator that it had no legal obligation to backfill the pit; setting aside the Regional Manager's decision; and directing the Minister to grant the closure application. The high court declined the exemption application and ordered DBCM to exhaust internal remedies. The high court also determined that DBCM's closure application was regulated by the amended s 43 provision of the Act and the high court issued an order requiring the Minister's decision to be taken in line with the legislative framework as it presently exists (the directory order). DBCM sought leave to appeal, which was dismissed by the high court. Leave was granted by this Court on the narrow point of the directory order.

The issue on appeal was whether the high court was competent to decline an exemption from the obligation to exhaust internal remedies in s 7(2)(c) of PAJA while simultaneously engaging its review jurisdiction to decide substantive grounds of review.

This Court held that the high court had failed to observe what s 7(2) of PAJA requires. The high court decided the error of law ground of review and made the directory order. By so doing, the high court engaged its review jurisdiction. It was not competent to do so because, once the high court declined the exemption, the bar upon its review jurisdiction in s 7(2)(a) of PAJA remained.

Section 7(2) of PAJA is thus binary in its application. Either the obligation to exhaust an internal remedy is excused by the court, or it is not. If it is not, then a litigant must exhaust its internal remedy, and until it does so, the court may not exercise its review jurisdiction. What a court may not do is to direct a party first to exhaust an internal remedy, but nevertheless venture upon the merits of the review. The Court held that the high court's directory order improperly tied the Minister's hands and, by deciding the error of law ground of review, it would render this issue *res judicata* in any subsequent review proceedings.

As a result, the SCA upheld the appeal, excised the directory order, directed the appellant to exhaust its internal remedies and referred the matter back to the third respondent, the Minister. The respondents were ordered to pay the costs, including the costs of two counsel.

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