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Labour Appeal Court confirms jurisdictional boundaries that standalone processing operations fall outside MHSA

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In a judgment delivered on 17 February 2026, the Labour Appeal Court confirmed that standalone surface processing operations are regulated by the Occupational Health and Safety Act No. 85 of 1993 (OHSA), rather than the Mine Health and Safety Act No. 29 of 1996 (MHSA). This decision finally settles a fundamental question about whether standalone processing operations are governed by the MHSA or the OHSA.

The Labour Appeal Court dismissed the appeal brought by UASA and the National Union of Mineworkers, confirming the declaration made at the Labour Court in May 2024 that the MHSA does not apply to separate processing operations, even where such operations are located on land associated with other parties' mining areas.

Between 2016 and 2018, Rustenburg Platinum Mines (RPM), owned by Anglo American Platinum Mines Limited (AAP), disposed of its Rustenburg Section and Union Section mining operations and associated mineral rights to third parties, while retaining ownership of certain separate surface processing facilities, including smelters and refineries. Following these transactions, a separation occurred between the disposed underground mining operations and the surface-based processing operations retained by RPM.

After reassessing the applicable health and safety regulatory framework considering the revised organisational structure and the impact of the commercial transaction, the respondents concluded that the OHSA was the applicable regime and engaged in consultations with the Department of Mineral Resources and Energy, the Department of Employment and Labour, and recognised trade unions. The Department of Employment and Labour confirmed that it would assume jurisdiction as the competent regulator and enforce the OHSA in relation to the retained operations.

The legal question of what constitutes a "mine"?

The determination of whether the MHSA or OHSA applies depends on the proper interpretation of these two Acts, particularly whether the processing operations fall within the statutory definition of a "mine" or constitute "mining" for purposes of the MHSA.

The Labour Appeal Court conducted an analysis of the statutory definitions. The Court identified two critical issues: firstly, whether the concentrate processed at the retained operations is a "mineral" within the statutory definition, and secondly, whether the retained operations constitute a place where a "mineral deposit" is being exploited or processed.

Concentrate is not a "mineral"

Central to the Court's reasoning was its finding on the nature of metal concentrate. Metal concentrate is the product of an industrial beneficiation process applied to raw ore and does not occur naturally on or in the earth. It exists only as a result of crushing, milling, and flotation processes at concentrator plants located at mine sites.

The MHSA defines a "mineral" as any substance that occurs naturally in or on the earth and that has been formed by or subjected to a geological process. The Court held that the concept of a "mineral" is confined to substances that occur naturally in or on the earth and owe their existence to geological processes, and that once ore has been severed from the earth and subjected to manufacturing processing, it becomes a new object distinct from the mineral-bearing material from which it was derived.

In reaching this conclusion, the Court relied on the Supreme Court of Appeal's decision in Marula Platinum Mines,* which held that the conversion of ore into mineral-bearing concentrate through crushing, milling, and flotation is a process of "manufacture" and not "mining", noting that concentrate is significantly different from raw ore and saleable as a commercial commodity.

The retained processing operations are not a "mining area"

The Court confirmed that the processing operations retained by RMP are not located in any core mining area and that RPM holds no mining right or permit over the specific land concerned. The Court held that the concept of a "mining area", as defined in the Mineral and Petroleum Resources Development Act No. 28 of 2002 (MPRDA), is necessarily and inextricably linked to a mining right, and operations fall within that concept only if they are related or incidental to the extraction authorised under a mining right.

Rustenburg Platinum Mines either entirely separately mines or independently procures concentrate from third parties and, once received at the retained operations, the concentrate is subjected to further industrial processes aimed at producing platinum group metals that meet market requirements, with RPM not being involved in extracting the raw ore. Accordingly, the retained operations constitute standalone industrial activities and do not fall within the extended concept of a "mining area".

Implications for the mining industry

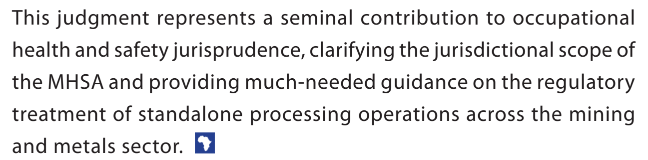
This judgment has far-reaching implications for the smelting and refining industry in South Africa. It establishes clear jurisdictional boundaries based on the nature of operations rather than historical regulatory treatment.

* Commissioner, South African Revenue Service v Marula Platinum Mines Ltd 2017 (2) SA 398 (SCA)

The decision confirms that once mining is complete and the extracted material has been transformed into concentrate, any subsequent smelting and refining carried out by a separate entity or at a separate operation away from the mining area constitute manufacturing activities falling outside the ambit of the MHSA. This applies even where processing operations are in immediate proximity to mining activities conducted by third parties. In this regard, the Court held that where an operation no longer falls within the statutory definitions of a "mine", "mining area", or "works", the MHSA ceases to apply by operation of law, and sections 79 and 80 of the MHSA (dealing with exemptions and ministerial declarations) are not engaged. This clarifies that entities are not required to seek formal exemption from the MHSA where the jurisdictional facts necessary for its application are absent.

For processing operations that have been structurally or operationally separated from mining activities, whether through corporate restructuring, asset sales, or the sourcing of concentrate from multiple third-party suppliers, this decision provides regulatory certainty. The determinative factors are whether mineral rights are held over the relevant area, whether minerals in situ are being exploited, and whether operations are related or incidental to authorised mining activities.

This judgment represents a seminal contribution to occupational health and safety jurisprudence, clarifying the jurisdictional scope of the MHSA and providing much-needed guidance on the regulatory treatment of standalone processing operations across the mining and metals sector.



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