IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT MAUN

Case No: MAHMN -000075 -22

In the Interlocutory Application between

GCWIHABA RESOURCES (PTY) LTD	Applicant
And	
MINISTER OF MINERALS AND ENERGY	First Respondent
ATTORNEY GENERAL	Second Respondent

In re:

GCWIHABA RESOURCES (PTY) LTD	Applicant
And	
MINISTER OF MINERALS AND ENERGY	First Respondent
ATTORNEY GENERAL	Second Respondent

FILING NOTICE

MAUN HIGH COURT
PRIVATE BAG 30, MAUN
CIVIL REGISTRY
23 JAN 2024
DOCUMENTS RECEIVED
TIME: 07h03 SIGN:

FILED HEREWITH:

1. Notice of Motion;
2. Founding Affidavit and Annexures;
3. Confirmatory Affidavit; and
4. Draft order.

DATED AT GABORONE ON THIS 22ND DAY OF JANUARY 2024.

COLLINS CHILISA CONSULTANTS
Applicant's Attorneys
Gaborone Chambers
Plot 4858, Lecha Close
Off Marakanelo Way
P O Box 45136
GABORONE

TO: **THE REGISTRAR**
High Court
MAUN

AND TO: **MINISTER OF MINERALS AND ENERGY**
First Respondent
Fairgrounds Office Park
GABORONE

AND TO: **ATTORNEY GENERAL**
Second Respondent
Government Enclave
GABORONE

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
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Case No: MAHMN -000075 -22

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GCWIHABA RESOURCES (PTY) LTD — Applicant

And

MINISTER OF MINERALS AND ENERGY — First Respondent

ATTORNEY GENERAL — Second Respondent

In re:

GCWIHABA RESOURCES (PTY) LTD — Applicant

And

MINISTER OF MINERALS AND ENERGY — First Respondent

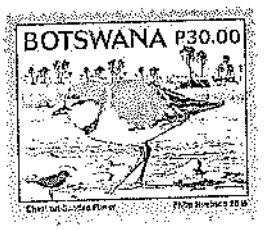
ATTORNEY GENERAL — Second Respondent

NOTICE OF MOTION

BE PLEASE TO TAKE NOTICE THAT the above-named Applicant will make an interlocutory application to the above Honourable Court on _____ _____2024 for an order in the following terms:

1. Calling upon the First Respondent to show cause why he ought not to be held in contempt of court by reason of his failure to comply with the judgment of this court dated 15 December 2023, in particular that he failed:

1.1. to renew, within 14 days of the judgment, the Applicant's license (020/2018); and



1.2. to align the effective dates of contiguous licenses PL 021-026/2018 with that of the renewed license.

2. Declaring that the First Respondent is found to be in contempt of the judgment of this court as handed down on 15 December 2023;

3. Imposing a fine on the First Respondent, such as this Court may deem appropriate for every day that the judgment remains unsatisfied;

4. Imposing a period of imprisonment, such as this Court may deem appropriate, on the First Respondent, suspended on conditions deemed appropriate by this Court;

5. For avoidance of doubt, it is hereby clarified that the licenses to be issued by the First Respondent shall be the first two-year renewal across all licenses effective from 01 April 2024;

6. Directing the Respondents to bear the costs of this application on the attorney and own client scale; and

7. Grating the Applicant further and/or alternative relief.

TAKE NOTICE THAT the affidavit of **MOAGI NTUKUNUNU** and annexures thereto, shall be used in support of this application and that the Applicant has appointed its undersigned attorneys and the said attorneys' address set out herein under as the address at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER THAT if you intend opposing this application you are required:

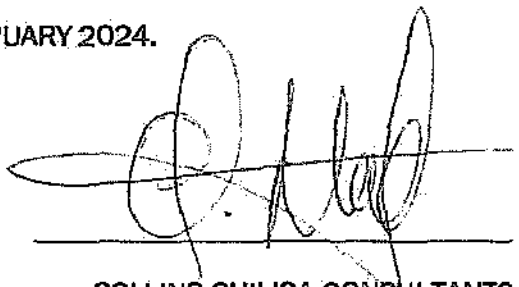
a) to notify the Applicant's attorneys in writing on or before **29 January 2024**; and

b) within **14 days** of the service of this notice upon you, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address within

Botswana at which you will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT if no such notice of intention to oppose is given, the application will be made on a day convenient to this Honourable Court upon notice to the Respondents.

DATED AT GABORONE ON THIS 22ND DAY OF JANUARY 2024.



COLLINS CHILISA CONSULTANTS
Applicant's Attorneys
Gaborone Chambers
Plot 4858, Lecha Close
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GABORONE

TO: **THE REGISTRAR**
High Court
MAUN

AND TO: **MINISTER OF MINERALS AND ENERGY**
First Respondent
Fairgrounds Office Park
GABORONE

AND TO: **ATTORNEY GENERAL**
Second Respondent
Government Enclave
GABORONE

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
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And

MINISTER OF MINERALS AND ENERGY — First Respondent

ATTORNEY GENERAL — Second Respondent

In re:

GCWIHABA RESOURCES (PTY) LTD — Applicant

And

MINISTER OF MINERALS AND ENERGY — First Respondent

ATTORNEY GENERAL — Second Respondent

FOUNDING AFFIDAVIT

MAUN HIGH COURT
PRIVATE BAG 30, MAUN
CIVIL REGISTRY
23 JAN 2024
DOCUMENTS RECEIVED
TIME 09:03 SIGN

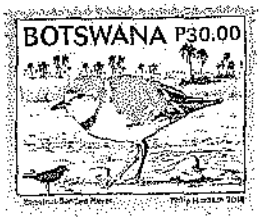
I, the undersigned,

MOAGI NTUKUNUNU

do hereby make oath and say that:-

1. I am an adult male of full legal capacity, employed as an Office Administrator of the Applicant, GCWIHABA RESOURCES (PTY) LTD, duly authorised to depose to this affidavit on behalf of the Applicant by virtue of the Board Resolution filed of record.

2. The facts contained in this affidavit therefore fall within my personal knowledge due to my position in the Applicant and are, to the best of my knowledge and belief, both true and correct.



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3 Where I make legal submissions, I do so on the advice of the Applicant's legal representatives. I verily believe that such advice is well-founded.

PARTIES TO THE APPLICATION

4 The Applicant is Gcwihaba Resources (Pty) Ltd, a company with limited liability, duly registered and incorporated in terms of the company laws of the Republic of Botswana, whose address for the purposes of the present proceedings is that of its attorneys of record Collins Chilisa Consultants.

5 The First Respondent is the Minister of Minerals and Energy who is duly appointed in terms of section 42 of the Constitution of Botswana, with capacity to sue and be sued, and whose address is Plot 50676, Block C, Fairgrounds Office Park, Gaborone.

6 The Second Respondent is the Attorney General of the Republic of Botswana, cited in his representative capacity on behalf of the Minister of Minerals and Energy in terms of Section 4 of the State Proceedings (Civil Action by or against Government or Public Officers) Act [CAP 10:01].

PURPOSE OF THE INTERLOCUTORY APPLICATION

7 The purpose of this application is to compel compliance with the judgment granted by this Honourable Court on 15 December 2023. This application arises out of the First Respondent's wilful and deliberate refusal to comply with the aforementioned judgment.

8 I am advised by the Applicant's attorneys that in order to succeed in an application for contempt the Applicant must demonstrate and satisfy the following:

8.1 That there is an order or judgement;

8.2 That the Respondents had knowledge of or are aware of the order or judgment; and

8.3 That the Respondents deliberately or wilfully failed to comply with the order or judgment.

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9 As a starting point, it must be highlighted that there is a judgement dated 15 December 2023, which judgment has not been complied with. For completeness, I attach hereto and mark the Judgment as "FA1".

10 As will more fully appear from annexure FA1 above, the High Court ordered that:

"a. *The decision of the 1st respondent rejecting the application for renewal of the Applicant's prospecting license (020/2018) is illegal, unreasonable and or irrational;*

b. *The decision of the 1st respondent rejecting the application for the renewal of the Applicant's prospecting license (020/2018) is hereby set aside;*

c. *The 1st respondent is ordered and directed to renew within 14 days of this order, the applicant's license (020/2018) subject only to justifiable safeguards necessary for the protection of the heritage area. Such safeguards are not to include any further demand for reduction or shifting of the license area or its coordinates;*

d. *Following renewal, the 1st respondent is ordered to align the effective dates of contiguous licenses PL 021-026/2018 with that of the renewed license;*

e. *The respondents shall pay the costs of these proceedings.* "

11 Notwithstanding the above orders and directions, which the Respondents are aware of, as will fully be demonstrated hereunder, the First Respondent has wilfully and deliberately refused and or neglected to comply with any of the said orders and directions of this court.

FACTUAL BACKGROUND OF THE INTERLOCUTORY APPLICATION

12 Following delivery of FA1, the Applicant's attorneys of record reached out to the Respondents' attorneys, in particular Mr. G.I Begane ("*Begane*") to establish what the Respondents intended to do with the judgment i.e. comply with same or note an appeal.

13 The Applicant's attorneys have advised that Begane intimated that the Respondents intended to appeal the judgment and in fact, attorney Sefelani Thapelo ("*Thapelo*") of S Thapelo Attorneys had been briefed to seek a stay of the judgment pending the appeal. The Applicant's attorneys were informed to anticipate receiving court papers which would seek relief on urgency.

14 After having anticipated the court papers to no avail, the Applicant's attorney's again made a phone call enquiry with Begane, who then indicated that they had received an legal opinion from Thapelo, advising against the appeal. This advice had been accepted by the Respondents and as such they would be complying with the judgment.

15 On 29 December 2023, the said Begane wrote an email to the Applicant's attorney and reiterated that the Respondents had abandoned the intention to appeal. He further stated that the 14 day period within which they were to comply with the judgment was lapsing on the date of his email and as such he held instructions to seek an indulgence up to and not exceeding 08 January 2024. A copy of this email is attached hereto an marked "FA2".

16 The Applicant's attorney sought and got instructions from the Applicant to allow for the requested indulgence. A copy of the Applicant's attorney's response to the request is attached herein and marked "FA3".

17 08 January 2024 came and went and there was still no compliance with the judgment by the Respondents. Begane did however send a WhatsApp message to the Applicant's attorney of record on 09 January 2024 stating as follows:

> *"Morning and compliments counsel. The Ministry has advised me to inform you that it's still in the process of renewing so they need a little bit of time to complete the process. Regards"*

18 The Applicant's attorney the enquired how much more time would be required and further asked Begane to send an email so that same can be shared with the Applicant. Begane responded to say they would require a week and he undertook to send an email.

19 Notwithstanding the above undertaking, Begane did not send an email or any official communication requesting a further extension. This prompted the

Applicant's attorney to write an email to Begane on 11 January 2024. A copy of this email is attached hereto and marked "FA4". For avoidance of prolixity, the Applicant requests that the contents of FA4 be incorporated, in their entirety, herein by reference as if specifically.

20 Begane responded to FA4 by noting that he would seek instructions and revert. A copy of his response is annexed hereto and marked "FA 5".

21 To date, no response has been received from Begane and the further extension of a week which he had requested through WhatsApp has since lapsed. There is still no compliance with FA1.

22 The Applicant is now confronted with deafening silence from the Respondents as any request for an update on what the Respondents' positions is, is met with no response. The Applicant is now constrained to approach this court per its notice of motion filed of record.

CONTEMPT

23 I aver that the First Respondent's conduct is contemptuous and undermines the authority of this Honourable Court. Despite FA1 the First Respondent obstinately refuses to implement the Court's orders and directions. The First Respondent's conduct as aforesaid is *mala fide*, it represents a challenge to the authority of the court and it is an affront to the dignity of the court. It is therefore imperative for the court to immediately vindicate its authority by asserting itself.

Knowledge of the Judgment

24 As is evidenced by the correspondence between Begane and the Applicant's attorneys of record, it is abundantly clear that the Respondents are aware of the judgment, its contents and the date on which they were to comply with same. By the annexures herein, I have demonstrated that the is a judgment and the Respondents know of it.

Wilful and deliberate non-compliance

25 From the annexures herein, it is clear that at the point we are at, the non-compliance with the judgment is a wilful one. The Applicant has in good faith extended indulgences upon request to the Respondents under the guise that they

licenses (being effectively the a last extension). Should this be the case, it would effectively take 4 years away from the Applicant's licenses. For convenience and avoiding any further issue on the licenses, the Applicant prays that this court clarifies to the Respondents that the renewal to be issued to the Applicant is the first two –year renewal across all licenses.

CONCLUSION

32 By the above, it has been demonstrated that the Respondents actions are in complete disregard and defiance of FA1, I therefore pray for an order in terms of the draft order filed of record.

MOAGI NTUKUNUNU

THUS SWORN TO AND SIGNED BEFORE ME AT MAUN ON THIS 22 DAY OF JANUARY 2024, AT 1022 HOURS, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH WHICH HE CONSIDERS BINDING ON HIS CONSCIENCE

Botswana Police Service
Community Policing
Maun Airport
22 JAN 2024
P. O. Box 7
Maun
Tel: 660 Fax:

COMMISSIONER OF OATHS

Rank Sergeant

Station Maun Airport

Full Names Baneelo Motsetsi

"FA 1"

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA HELD AT MAUN

Case No: **MAHMN-000075-22**

In the matter between:

GCWIHABA RESOURCES (PTY) LTD **APPLICANT**

and

MINISTER OF MINERALS AND ENERGY **1st RESPONDENT**
ATTORNEY GENERAL OF BOTSWANA **2nd RESPONDENT**

Mr Q. Maduwane for the Applicant
Mr. G.I. Begane for the Respondent

Judgment

Maripe J

Preliminaries

1. By Notice of Motion filed with court on the 31st October 2022, the Applicant herein sought the following orders:

1.1. Calling upon the Respondents to show cause why the decision of the first respondent dated 29 June 2022 rejecting the renewal of the applicant's prospecting license (020/2018), should not be declared to be illegal, unreasonable, irrational and arbitrary;

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1.2. Calling upon the Respondents to show cause why the decision of the first respondent dated 29 June 2022 rejecting the renewal of the applicant's prospecting license (020/2018), should not be reviewed and set aside;

1.3. Calling upon the Respondents to show cause why the first respondent should not be directed to renew the applicant's license subject only to environmental safeguards and /or conditions as deemed necessary for the protection of the heritage area; and

1.4. Calling upon the Respondents to show cause why the first respondent should not be directed to, following renewal, align the effective dates of contiguous licenses PL 021-026/2018 with that of the renewed license.

Alternatively

1.5. Calling upon the Respondents to show cause why the first respondent should not pay damages to the applicant in the sum of US$65 million or any other amount as assessed by the Registrar of the High Court;

1.6. Granting the applicant costs of suit;

2. The Notice is supported by a long Founding affidavit deposed to by one Moagi Ntukununu, an Office Administrator of the applicant. The founding affidavit is laden with voluminous documents all of which run into some 283 pages. The respondents filed a Notice of opposition on the 17th November 2022 and on the 18th November 2022, filed the Respondents Record of Proceedings which contains documentation of various kinds and runs into some 79 pages. On the 30th November 2022, the applicant filed a supplementary affidavit which by usual standards is not brief and contains further annexures.

3. It was not until the 24th February 2023 that the respondents filed their answering affidavit. At that stage the time permitted within which to file had expired. For that reason, they simultaneously filed an application for condonation of the late filing of the answering affidavit. The affidavit filed in support of the application is rather mixed up. While on its title it is appropriately described as an affidavit in support of the application for condonation for

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late filing, at Paragraph 6, the deponent says 'This is an application for leave that the applicants (respondents in the main application) be given an opportunity to file their application for condonation of late filing of Leave to Appeal out of time.'

4. It may well be that due to the significance of the matter and the anxiety arising from the knowledge of the possibility of being barred, the papers were prepared in haste and such mix ups may well be understandable. The condonation application was granted by consent on the 28th February 2023 and a schedule agreed on leading to the eventual hearing of the matter. It is worth mentioning that the respondents' answering affidavit is sworn to by the Minister himself, Mr Lefoko M Moagi.

5. The applicant's replying affidavit, filed on the 10th March 2023 is some document. It is far longer that the founding affidavit with annexures of all kinds and runs into some 393 pages! This is unusual as the expectation, and the legal position is that an applicant must found its case on

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the founding affidavit. However, no issue was taken of this development.

6. As if that was not enough, accompanying the replying affidavit was the applicant's Notice to produce in which various copies of various communications are sought namely, WhatsApp texts, emails, letters, memos, *etc.* by the 1st respondent with the applicant or a company called Tsodilo Resources Limited, which is said to be the mother company to the applicant, its shareholders and members of the public. It was said the information required was foreshadowed or flagged at Annexure RA 16 of the replying affidavit. On the 18th April 2023, the date of argument, Mr *Maduwane,* learned counsel for the applicant, advised court that they had received only two memos from the respondents in response to the notice to produce.

7. I am stating the above to lay a basis for an explanation for not delivering this judgment on the originally scheduled. The voluminous nature and complexity of the bulk of the annexures have necessitated a longer and a closer

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consideration of the matter which was not anticipated at the time the expected date of delivery of judgment was decided upon. The late delivery of this judgment is however regretted. I thank the parties for their understanding and patience.

8. The parties duly filed their heads of argument, which I must say are appreciably brief and to the point, and the matter was argued on the 18th April 2023. As is apparent from the pleadings, this matter is in essence a challenge on review against the decision of the 1st respondent, to whom I shall refer as such or as 'Minister' in refusing to renew the applicant's prospecting licence (No 020/2018) in the Ngamiland area.

9. The dispute between the parties began in 2018 with exchange of correspondence with sharp differences in the positions of the parties. Copies of various correspondences since then are annexed. Save where it is necessary for purposes of clarity and to bring in context the various standpoints of the parties, I do not have to address the

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contents of all the correspondences save those that are necessary to illuminate the real dispute between the parties.

10. The reason for the divergent positions is whether or not the applicant's licensed area should fall within the buffer zone. The dispute was fuelled further by the establishment by the Government of Botswana of a 'buffer zone' around the core zone. The buffer zone seemingly encroaches on a portion of the applicant's licensed area.

11. The founding affidavit spells out several developments which precede the decision to refuse the renewal of the license. Those developments are in the main engagements between the parties which signal that differences in outlook had begun to emerge between them prior to the application and eventual refusal to renew the license. I shall discuss some of those as shall become necessary for purposes of addressing the issues arising between the parties. For now, it is necessary to lay down the background.

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The background

12. There is little dispute between the parties as to the developments surrounding the classification of the Okavango delta as a core zone and the establishment of a buffer zone around it. The differences lie in the implications for the licenses arising from the establishment of the buffer zone.

13. The applicant was first granted Prospecting License No 386/2008 by the Minister in 2008. The license area was 570 square kilometres and was for a period of 3 years, which was to expire on the 30 September 2011. In addition, 6 other licenses, 387-392 were granted in the same area, for the same period and under the same conditions. These six licenses are called 'contiguous licenses.' The licenses lapsed in 2011, and they had been renewed by the Minister overtime on application, at successive expiry periods, until 2021. They were renewed in 2014, 2016 and 2018.

14. The applicant says in order to obtain those licences, it had to demonstrate that it had secured, or had secured access to, adequate financial resources, technical competence and experience to conduct effective prospecting operations. The applicant says it spent a fortune to secure the licenses.

15. In July 2014 the Okavango Delta was declared a World Heritage Property by the United Nations Educational Scientific and Cultural Organisation (hereinafter 'UNESCO'). In that status it is called the 'core zone' and became subject to protection measures from activities which would compromise its status as the 'nominated property.' These activities include exploration and mining activities.

16. Following that declaration, the government of Botswana established a 'buffer zone' around the core area. This was in 2014. In terms of Clause 104 of the World Heritage Operational Guidelines for the Implementation of the World Heritage Convention of July 2013, a buffer zone is:

'an area surrounding the nominated property (core zone) which has complimentary legal and/or customary restrictions placed on its use and development in order to give an added layer of protection to the property.'

17. The buffer zone was established over a portion of an area in respect of which the applicant held the prospecting licenses afore-stated. This development has set the parties on a collision course. The dispute in this matter is essentially about the implications of the establishment of the buffer zone on the licenses. It would seem the difference in the parties' positions lies in that in the understanding of the Minister, that status requires cessation of all exploration and mining activities in the buffer zone while the applicant on the other hand holds a contrary view. I shall in due course address the implications surrounding the establishment of the buffer zone. Indeed it is the quintessential issue in this *lis*.

18. It appears from the papers that the dispute started in 2015. This was soon after the establishment of the buffer zone. The establishment of the World Heritage Property

brings with it several obligations on the part of the state party. Those are contained in the Operational Guidelines for the implementation of the World Heritage Convention annexed to the Replying affidavit.

19. The declaration of the core zone or protected area brings about significant obligations for the State in which it lies. The State party is obligated to submit a report every two years to the World Heritage Committee ('WTC') on measures taken to preserve and protect it. In her State of Conservation Report on the Okavango Delta Natural World Heritage Site, submitted to the World Heritage Committee in November 2015, Botswana did indicate the number, types, location and expiry dates of prospecting licenses then in existence, that is as at November 2015. Six of the seven were held by the applicant. All of them were in the buffer zone.

20. The report noted, at Paragraph 7.4 that the State was engaging the license holders with a view not to renew the licences in the buffer zone. By 2015, the applicant had

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begun complaining about delays in the renewal of the licenses, which affected its exploration program and caused it financial ruin. This was communicated to the Ministry through the Department of Mines. A letter to that effect, dated the 25th October 2015 addressed by the applicant's parent company, Tsodilo Resources Limited, to the Department of Mines is annexed to the founding affidavit.

21. The applicant avers that the licenses were renewed in 2016. In 2018 however, the parties were again in some verbal confrontation. There was quite some significant back and forth which I need not address at this juncture but later on when it becomes necessary. I must highlight that the license in dispute, was renewed in October 2018. It had a 3 year validity period from the 1st October 2018 to the 30th September 2021. However, it could be renewed for 2 year periods to a maximum of 7 years. This license, 020/2018, is the original 386/2008.

22. The applicant applied for renewal of license No. 020/2018 (previously PL 386/2008) on the 30th June 2021, that is 3 months before it expired. This application triggered a chain of exchanges that led to the decision being impugned. At Paragraph 8.18 of its founding affidavit, the applicant says it became aware in October 2021, after submitting the application for renewal of the license of the following:

(a) The 2015 report referred to above, which indicated that prospecting and mining licenses would not be renewed, and that the Government of Botswana was engaged in negotiations with the applicant with a view to terminating existing licenses in the buffer zone;

(b) A 2017 report by the Government of Botswana to the WTC which indicated that the applicant had agreed to relinquish all its licenses in the buffer zone. The write up of the report is to the following effect:

> 'We have had discussions with Qcwihaba with regards to the licenses that sit within the buffer zone, and Qcwihaba has agreed in principle to relinquish all the licenses in the buffer zone and others that are outside the buffer zone'

The write up has a notation at the end of the page to the effect that in January 2018, there would be no prospecting licenses in the buffer zone;

(c) The Government issued another report to the WTC in 2020 in which it was that said negotiations with the applicant had been concluded and that there were no existing prospecting licenses in the buffer zone. The write up from that report is to the following effect:

> 'Negotiations with companies holding prospecting licenses within the buffer zone have been concluded and the company Qcwihaba Resources (Pty) Ltd had agreed in principle to relinquish all the prospecting licenses in the buffer zone and others outside the buffer zone. Currently there are no prospecting licenses in the buffer zone';

(d) That in its 2022 report to the WTC the Government of Botswana reported that the applicant had relinquished all its licenses in the buffer area. The writeup in the report is to the following effect:

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'Currently there are no prospecting licenses in the core zone and negotiations with companies holding prospecting licenses within the buffer zone have been concluded. In this regard, it has been agreed that the company, Qcwihaba Resources (Pty) Ltd will relinquish all prospecting licenses within the buffer zone.'

23. The applicant disputes the information contained in the reports in so far as it relates to its licenses. At Paragraph 8.19 of the founding affidavit, the applicant says:

> All the reports referred to above, as generated by the Government of Botswana were a lie. Not only were there no negotiations between the parties, but the first respondent continued to grant the Applicant prospecting licenses for areas in the buffer zone, save for the renewal of 30 June 2021.'

24. The applicant does not say what steps it took upon discovering the information contained in the report, and what overtures it made with the respondents. Be that as it may, the Minister responded to the 30 June 2021 application through a letter dated 26 April 2022. I shall at the appropriate moment later on in this judgment

reproduce the letter in full. But the essence of it was to reject the application.

25. I have found it necessary to reproduce the contents of the Minister's position regarding the application for renewal as it is the source of the dispute herein. I shall revert to address the contents in so far as they are relevant later on.

26. The Minister's letter triggered an immediate response from the applicant, who, the very following day, the 27th April 2022, sent a letter to the Minister. The letter is too long to reproduce here. However, the position taken by the applicant in that letter can be summarised thus:

(a) The buffer zone is an area established and controlled by the State Party, in this case the Republic of Botswana. It is not part of the Okavango World Heritage Property (OKWHP) (which I understand to be the 'core zone.';

(b) The applicant accepts that activities in the buffer zone should be conducted in an environmentally friendly

manner, and in such a way that they do not adversely impact on the OKWHP;

(c) The license in question existed in the area in 2008, before the establishment of buffer zone and the core zone. The buffer zone encroached on the applicant's license area;

(d) Only the core zone is part of the OKWHP, known as the 'the Property' in UNESCO documentation;

(e) The applicant accepts that if mining were to take place in the buffer zone, an Environmental Impact Assessment (EIA) must first be conducted and made part of any mining application, and that an Environmental Management Plan (EMP) must be filed before any exploration activities are conducted. The applicant accepts that these conditions are consistent with the Mines and Minerals Act, the Environmental Assessment Act of 2010 and Environmental Regulations of 2012. The applicant says these conditions are not only applicable to it but to all resource activities in the country;

(f) The applicant takes the position, which it highlights, that under the current law, an applicant for a prospecting

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license must first have the license before either an EIA or an EMP can be conducted or approved;

(g) The applicant notes that the sentiments expressed by the Minister are consistent with the position of the Government of Botswana in its Nomination dossier (2013) to UNESCO for inscription into the World Heritage List and the World Heritage Nomination-IUCN Technical Evaluation Okavango Delta (Botswana) (2014);

(h) In the applicant's reading of the documents aforesaid, the Government of Botswana's submissions to UNSECO, since 2013, demonstrate that both mining and prospecting licences can exist within the buffer zone. To this extent the applicant agrees to comply with all relevant laws and to conduct its project in an environmentally friendly manner;

(i) The applicant again requests a renewal as it is in full compliance with the laws, and indicates that as at the time, it was almost 11 months since it applied for renewal. The applicant says that if there is to be any further delay it should be reimbursed in exploration

costs and the present in situ value of the portion of the resource in the buffer zone;

(j) Finally, the applicant assures the Minister of its commitment to developing its project in full compliance with all relevant existing laws. To demonstrate its commitment to sound environmental standards, the applicant states that it has adopted the Occupational Health and Safety Assessment Series (OHSAS 18000) and the International Financial Corporation(IFC) Performance Standards and Environmental, Health and Safety Guidelines when IFC, a member of the World Bank, became a shareholder of the applicant's parent company, Tsodilo Resources Ltd, in 2010.

27. It would seem the applicant wrote another letter, dated the 19th May 2022 to the Minister. That letter is not annexed to the pleadings. However, one discerns from the Minister's letter of the 7th June 2022, addressed to the applicant that he was responding to the applications proposal for resolution of the matter *vide* letter of the 19th May 2022. The essence of the Minister's letter of the 7th June 2022 is

that he was sticking to his guns and would only relent if the area applied for fell outside the buffer zone. At Paragraph 5 of his letter, the Minister says:

> Furthermore, the request to renew Prospecting License No. 020/2018 held by the Gcwihaba for a period of three (3) years is not supported by any law and is therefore rejected. It may be worth pointing out that the Ministry is not responsible for any delays in the carrying out of the programme of prospecting for any licence held by Gcwihaba Resources as claimed in your letter. Rather, Gcwihaba Resources has been responsible for delays in the renewal of its Prospecting Licenses due to the insistence of licences being granted over a World Heritage Site' (underlining for emphasis).

28. The Minister then indicated his willingness to consider renewal of the licence if the boundary coordinates fell entirely outside the Okavango Delta core and buffer zones. On the 28th June 2022 the applicant re-submitted the renewal application. In response it received a checklist on the 29th June 2022 indicating that the coordinates still fell within the buffer zone. On the 30th June 2022 the applicant re-submitted and says it reduced the area to 'a bare

minimum.' There has not been a response to that letter. A stalemate had been reached and the stage was set for a legal showdown.

The impugned decision

29. What is interesting is the significant dispute as to the nature of the Minister's response to the applicant's application for renewal of the license afore-stated. The applicant treats the Minister's response as a rejection of the application while the Minister says he has not rejected the application but advised the applicant to realign the boundaries of the license area so that they would fall outside the buffer zone. The Minister's position is captured at Paragraph 13.9 of his answering Affidavit.

30. The Minister says:

> It may be worth pointing out that at this point, the Minister of Minerals and Energy has not yet rejected the application for renewal of Prospecting License No. 020/2018 as per Mines and Minerals Act. Rather, the Minister's position is that he is prepared to grant the renewal as long as Gcwihaba Resources can submit

coordinates of application area, falling outside the delta's buffer zone. Gcwihaba Resources still has opportunity to get the renewal granted if they could meet the condition of realignment of the boundary of the area.

31. In his oral address, learned counsel for the respondents, Mr *Begane*, submitted that the Minister has not rejected the application for renewal. He submitted that what has happened is not a rejection but a delayed renewal subject to the applicant meeting the conditions. He relied on the Minister's letter of the 7th June 2022.

32. What is discernible from the Minister's letter of the 7th June 2022 is that the applicant's proposal for resolution embodied in its letter of the 19th May 2022 was to drop off a portion of the area applied for. That portion falls within the buffer zone. This proposal was however subject to conditions. Counsel submitted that these conditions are meant to satisfy the requirements of the UNESCO criteria for the World Heritage Site.

33. Those conditions are discernible from a Savingram dated the 1st June 2022 addressed to the Permanent Secretary, Ministry of Minerals and Energy (hereinafter 'PS') by the Director of Mines. The Savingram has been supplied as part of the record of proceedings. The conditions proposed by the applicant were:

(a) Condition 1: that the applicant would abandon all claims for expenditure in the buffer zone that were made in exchange of approval by Minerals Development Company of Botswana ('MDCB') for investment in the Gcwihaba Project;

(b) Condition 2: that the applicant's prospecting licenses be granted with new license numbers and with a three years validity period;

(c) Condition 3: that the applicant be granted a right of first refusal in the event the government decides to allow exploration or mining in the buffer or core zone of the Okavango Delta, including the portion in question anytime in the future.

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34. For ease of reference and as shall become necessary later on, I reproduce hereunder the salient feature of the Minister's response to the applicant's proposals. This is contained in the letter of the 7th June 2022, the final portion of which reads :

> In light of the above, I will be willing to consider the renewal application for Prospecting License No. 020/2018 provided:
>
> - Gcwihaba drops off conditions 1 and 2 in their letter dated 19th May 2022.
> - Gcwihaba submit within 21 days from the date of this letter, a revised application for renewal of the Prospecting License in question, with boundary coordinates falling entirely outside the Okavango Delta and the buffer zone
>
> Yours Sincerely
>
> Signed
>
> Lefoko M. Moagi
>
> Minister of Minerals and Energy

35. Thus the Minister would only consider the application if the applicant presented a proposal with 'boundary coordinates falling entirely outside the Okavango Delta and the buffer zone.' The applicant then addressed a letter

dated the 28th June 2022 to the Director of Mines, making reference to the Minister's letter of the 7th June 2022, which had been copied to him/her. The purpose was to resubmit the renewal application, with modified license boundary coordinates. A diagram of the revised coordinates was also enclosed.

36. Just the day following, on the 29th June 2022, the Minister sent the applicant a checklist indicating that the coordinates proposed still fell within the buffer zone. The checklist, annexed to the founding affidavit as 'CC19' and dated the 28th June 2022 carries the following notation:

> Area applied for overlaps with the restricted Okavango Heritage Area. Also renewal shape is bigger than the license. PL cannot be enlarged. Hence application cannot be plotted as is. Hence the application cannot be accepted. (Underlining for emphasis).

37. That seems to have been the last engagement between the parties. The Minister held on to his position that prospecting activities would not be allowed in the buffer zone, and that he would only consider the application if the

applicant adjusted the coordinates in order not to impact on the buffer zone altogether. There was not the slightest indication that he would climb down from his position.

38. With all these developments, the applicant considered that all avenues of engagement had been exhausted, hence on the 26th August 2022, it issued a statutory notice to institute proceedings the purpose of which would be to challenge the Minister's decision on review, although in that notice it still entertained the hope for an amicable resolution. Evidently, that hope has not eventuated. The statutory notice warns of proceedings for the review of the decision of the Department of Mines of the 29th June 2022 and generally the refusal to renew the license.

The nature of the decision impugned

39. I stated above that the parties hold disparate positions as to the nature of the Minister's decision. The applicant says the Minister refused to renew the application while the Minister says he has not. In order to make a determination on this issue, one has to have regard to the situation before

the establishment of the buffer zone and the parties' positions throughout the period of engagement after the establishment of the zone. Naturally, the positions derivable from the averments in the pleadings will be a significant factor in that endeavour.

40. The parties are on common ground that the buffer zone was established over an area in respect of which the applicant already held prospecting licenses and in particular, PL No. 386/2008 then and now 020/2018. See Paragraph 8.7 of the founding affidavit and Paragraph 11 of the answering affidavit. In the language of the applicant, the buffer zone 'encroached' into its license area. The applicant applied to renew the license in respect of the same area or a part of it as it had shifted the coordinates in a bid to meet the demands of the Minister. That area extends into a portion of the buffer zone.

41. The Minister's position is that no part of the buffer zone must be subject of the license. He says he is prepared to

consider renewal only if the buffer zone is removed completely from the area of coverage of the license.

42. To the extent that there are these disparate positions, the Minister says he would not grant the application for renewal. That position is a decline of the application in the form in which it is, even with the modified coordinates. In my view the position of the Minister is both expressly and in essence a rejection of the application for renewal.

43. I am fortified in my position by the clear language employed by the Minister in his final letter to the applicant, that of the 7th June 2022, a portion of which I highlighted above. That portion of the letter bears repeating here. It reads:

> Furthermore, the request to renew Prospecting License No. 020/2018 held by the Qcwihaba for a period of three (3) years is not supported by any law and is therefore *rejected.*

44. I have again highlighted the clear language employed by the Minister to indicate his stance. It cannot be clearer

than that. He was truly rejecting the application. It should be recalled from the narrative above, that the applicant's last ditch effort, *vide* its letter of the 28th June 2022, to nudge the Minister to adopt a favourable position was met with a checklist of the following day in which it was said:

> Area applied for overlaps with the restricted Okavango Heritage Area. Also renewal shape is bigger than the license. PL cannot be enlarged. *Hence application cannot be plotted as is. Hence the application cannot be accepted*. (highlighting for emphasis)

45. Quite clearly the application submitted for the Minister's consideration was not accepted. In fact in the Minister's own words as per the letter of the 7th June 200 it was rejected. Even on any other basis of interpretation the applicant did not get what it wanted, with the Minister insisting on conditions that the applicant was not prepared to fulfil. I hold therefore that the Minister's decision is a reject the application that was submitted to him for consideration. This conclusion is no pronouncement on the validity or propriety of his reasons. That shall be

determined when I address the grounds upon which the application for review is anchored.

Grounds for review

46. The applicant alleges that the Minister's conduct falls into one or more of just about all the grounds of review known to law. At Paragraphs 14 to 35 the applicant alleges that the decision is in violation of the principles of natural justice, breach of duty, failure of duty, bad faith, unreasonableness and illegality. These fall into one or more or all of the grounds for review as recognised by Kirby JP where in *Attorney-General and Others v Tapela and Others* [2018] 2 BLR 118 (CA) at page 130 he said:

> The headline grounds upon which administrative and quasi-judicial decisions may be reviewed and set aside in Botswana are illegality, irrationality, and procedural impropriety.

47. The import of these grounds was brought out by Nganunu CJ in *Raphethela v Attorney-General* [2003] 1 BLR 591 (HC), at page 596 as follows:

It is now recognized that the courts will review and interfere with such action in three circumstances, ie first where the decision-maker acts illegally, contrary to the statute empowering him to act. There are many types of illegality that may be committed. The second ground for interference by the court is where the decision made is grossly unreasonable to the extent that a review court can only say that no person acting reasonably could ever have come to that decision. In other words, when the review court comes to the conclusion that the decision-maker was irrational.

Lastly, interference will occur where it is shown that the decision-maker acted unprocedurally and the decision-making process is unfair. One example, amongst others, of this last ground is where the decision-maker fails to let the person to be adversely affected by that decision know of the making of that decision; or having made him know of the making of the impending decision, the decision-maker fails to give the person an opportunity to make representations to influence the outcome, or to defend himself.

48. It bears pointing out that these are not a comprehensive or exhaustive statement of the parameters applicable in

judicial review. They are just broad formulae which do not encapsulate every conceivable wrong that may properly be the subject of a review and possible setting aside of a decision. This was recognised by Nganunu CJ himself in *Raphethela* when he proceeded to say:

> The circumstances in which a court may be called upon to review a decision of an official are many and varied and each case will be decided on its facts. All that I can say in general is that the process of review and the principles guiding it are flexible enough to accommodate the multitudinous varying circumstances under which a review may be undertaken. The principles are therefore applied with sensitivity and flexibility to meet the circumstances and facts of each case

49. So these are the parameters around which the rival positions of the parties fall to be determined. The pleadings will demonstrate whether or not a case for review has been made. I shall in due course highlight the factual averments as spelt out on the affidavits and as pointed out by counsel in the heads of argument and in oral submissions. I observe that in many cases the submissions presented in support of the grounds alleged overlap and in others shade

into each other. In the greater scheme of things the grounds are not mutually exclusive and often run into each other. As observed by Lesetedi JA in *Landmark Projects (Pty) Ltd and Others v Cul de Sac (Pty) Ltd* (Case No CACGB-029-21, unreported, judgment delivered on the 7th May 2021) at Paragraph 44:

> The grounds don't exist in isolation or silos. A given conduct may fall within one or more of the review grounds.'

Violation of the principles of natural justice

50. The principles of natural justice are basic and fundamental standards of fair decision making. They consist in the right to be heard and the rule against bias. The applicant alleges that the Minister is in violation of both. I shall address them in turn.

The right to be heard

51. In its basic form, this rule, also known as the *audi alteram partem* principle, requires that before a decision that affects a person adversely is made, the person so affected must first be notified or informed of the intended decision

and be allowed an opportunity to make representations against or even in favour of the decision so to be made. The reason for allowing representations is that such input may influence the decision making process and possibly change the course of the decision and result in a more appropriate decision. The converse is that a decision made without input from those affected is usually not the best as it would have omitted vital information necessary for a good decision to be made.

52. The applicant's complaint is that the decision not to renew the license was taken as long back as 2015, and at that stage the applicant was not afforded the opportunity to make representations. The applicant further says that the decision not to renew the license is the government's way of enforcing the decision communicated to UNESCO by the Department of National Museum and Monuments and the Ministry of Environment, Natural Resources Conversation and Tourism. This the applicant says is discernible from the reports of 2020 and 2022.

53. 2015 is the year in which the Government of Botswana submitted its first report to the World Heritage Committee following the declaration of the Okavango Delta as a core zone in 2014. The report was compiled by the Department of National Museum and Monuments and the Ministry of Environment, Natural Resources Conversation and Tourism. In the report, the government declared at Paragraph 7.3 that:

> 'At the time of inscription, it was realized that there were prospecting licenses issued in both the core area and the buffer zone. The State Party, in its submission of supplementary information committed that it will not allow mining in the core area and that it will expunge all prospecting licenses in the core and buffer zone once they expire and will not issue any new licenses in the core and buffer zone.'

54. From the report, it is clear that the intentions of the government had long been clear even before 2014 when the core zone was established. The information in the report indicates that this is what the State of Botswana communicated to UNESCO at the time she applied to have the Okavango delta declared a World heritage site. The

intentions were not to issue any new licenses and to expunge all existing licenses both in the core and buffer zones.

55. The applicant says this decision (to expunge all existing licences) was taken then or in 2015. On the facts, this seems correct. However, the difficulty with this position is that although it was a decision on what to do in the future, or an intention to take certain measures in the future, the presumption would be that whatever was going to be done would be within the strictures of the prevailing legal framework at any point in time. It would then mean that any intended adverse decision would have to be communicated to the applicant and be taken through all the appropriate legal channels. That had not yet happened in 2015.

56. The other difficulty with the position taken by the applicant is that notwithstanding the intentions of government as aforestated in 2015, the licence in issue was renewed in 2016 and 2018. It is difficult to allocate a particular time or year in which the decision or the intention would be executed. That is not indicated in the report. And the applicant is not

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complaining about any unfavourable conditions in either the 2016 or 2018 renewals. On this basis it is difficult to find a violation of the *audi* principle on an intended decision and on a matter on which a favourable decision, in the form of renewals in 2016 and 2018, was made subsequent to the communication of the intention.

57. The record of proceedings availed pursuant to Order 61 Rule 1(b)(i) contains a number of internal communications, in the form of savingrams and several correspondences between the parties. A letter from the Director of Mines under the signature of one T. Segwabe, dated the 15th December 2015, addressed to the applicant and for the attention of Dr Mike de Wit is instructive. The letter indicates that it is a record of a meeting held between the Department of Mines (DOM) and the applicant represented by Dr Mike de Wit. It is necessary to reproduce the contents of that letter to the extent relevant. It reads:

> The meeting was held to discuss the issues of the pending renewals of prospecting licenses held by Gcwihaba (sic) Resources. This (sic) licenses fall within the buffer zone of the Okavango World Heritage Site

(OWHS) where prospecting activities/operations are prohibited and/or will be subjected to stringent EIA measures.

Gcwihaba has agreed to release those licenses that fall within the buffer zone in lieu of areas outside the buffer zone and also with the basis that the licenses will be issued as new ones rather than as renewals. This request came about as Gcwihaba has spent and carried out works on the areas that they are now requested to surrender to give way to the OWHS.'

58. The writer ended by indicating that DOM was waiting on the applicant to provide the licenses that they wished to release and those they wanted to be given as a substitute. It is not clear if Dr de Wit received this letter, and if so, when. However, just the following day, the 16th December 2015 Dr de Wit addressed a letter to DOM for the attention of Gabotshwarege Tshekiso.

59. The subject was the applicant's prospecting licenses near the Okavango delta. In it the writer indicated that the applicant was exploring the possibility of giving up all

rights to its metal licenses in certain areas in exchange for having licenses in a different area renewed for their initial three year term. One of those desired to be renewed on a three year term is License No. 386-2008. This is the license the subject of these proceedings, now under the Number 020-2018.

60. There is reference to a lot more communications in the applicant's notice to produce. The applicant complains that the respondent has not produced those. Mr *Begane*, learned counsel for the respondent, advised court that only 2 of the requested communications were given to him for purposes of production in terms of Order 61 Rule 1(b) (i) of the Rules of court. The applicant did not press on with this issue and let the matter proceed.

61. What is clear though is that in 2016 and in 2018, the license was renewed. I shall assume that it was renewal on the same terms and conditions. In June 2021, the applicant applied for a further renewal. That is the application that led to this dispute. On the 6th December

2021, the applicant addressed a letter to the Minister referring to a meeting held by the parties the same day with respect to the license in question. Certain significant highlights emerge from that communication. They are:

(a) The proposal that the Minister renew the license as submitted and as presented during the meeting;

(b) The undertaking by the applicant that it 'will then agree to relinquish that portion of PL 020/2018 which is located within the Okavango Delta World Heritage buffer zone upon execution of and funding of the Gcwihaba/MDCB investment agreement ('the agreement') that is currently pending.' The applicant insisted on making this an express condition in documentation. In the applicant's view the said relinquishment 'achieves the government's goal of having no licenses in the Okavango World Heritage buffer zone;

(c) Coincident with the relinquishment afore-stated of the part of the license falling in the buffer zone, DOM would then issue a revised license, modified to exclude

the area of the license within the buffer zone only, leaving all other terms the same;

(d) In consideration for the buffer zone area relinquishment, DOM will issue a letter to Gcwihaba, inclusive of MDCB's ownership, stating that Gcwihaba shall have the right of first refusal to acquire the area relinquished in the buffer zone if the Government of Botswana (a) decides to take such action to officially modify the buffer zone to exclude the area relinquished (by Gcwihaba); or, (b) otherwise permits any prospecting or mining license in the Okavango World Heritage Site.

62. Following receipt of the applicant's communication, there were several internal ministerial communications all of which addressed the applicant's letter and recommending to the Minister on how to respond to the applicant. The respondents have produced 3 savingrams (10 December 2021, 31 December 2021 and 14 April 2022) addressed by DOM to the Permanent Secretary in the Ministry responsible for minerals. The recommendation was

consistent, that as long as the licence area or a portion thereof fell within the buffer zone, the Minister was to be advised not to grant the renewal. And indeed by his letter of the 26th April 2022, the Minister decided in line with the recommendation. This letter has been addressed above.

63. I am referring to this chain of communication only to show that even after 2015, there were engagements between the parties around the renewal of the license and possible compromises or give and takes meant to achieve common goals. It could not have been expected that the Minister would be the first to inform the applicant of his position regarding renewal before the applicant expressed a desire in that direction. Save as I shall pronounce a contrary position later on, I do not agree that in the circumstances, the *audi* principle was violated, and accordingly dismiss this line of attack.

Bias

64. The rule against bias is the other principle of fair decision making. It is embodied in the maxim *nemo judex in causa*

sua, which literally translated means that 'no man may be a judge in his own cause.' Ordinarily, it applies to disqualify a person from sitting in judgment, or as an adjudicator, or as a decision maker, in a matter in which he has an interest especially if that matter affects the rights and interests of others. So the word 'judge' should not be understood in the narrow literal sense of a judicial officer but broadly to mean a decision maker.

65. This interest could be personal, official, commercial, proprietary or pecuniary, relational, and for that matter any association with and basically any connection to the matter which from the perspective of an independent observer is capable of playing in the mind of the decision maker in deciding one way or another. See Z. Kebonang, Towards a tipping point: The Botswana Competition Act and the *Nemo judex* rule, *Journal of African Law*, 59, 1 (2015) pp 178-191.

66. The rule demands impartiality in decision making. The presence of any such any interest on the part of the decision maker is the very definition of bias. It need not be

actual bias. It suffices if there is a reasonable appearance or suspicion of bias. This is because bias depends largely on the appearance to third parties of the likelihood that an interested person will act in a manner that advances their own interests.

67. The circumstances around which this line of attack are found at Paragraphs 8.10 and16 of the founding affidavit, whereat it is alleged that before 2019, not only had the Minister been dilatory in granting renewals but that:

> The reports sent to the WTC by the Government of Botswana were, as early as 2015, to the effect that prospecting and mining licenses, such as that of the applicant, falling within the buffer zone would not be renewed.

68. The applicant submits that the reports show that the respondents had long taken a position not to renew the licenses and that they would not have been the same people to consider the application, having adopted a pre-conceived notion on the application as long back as 2015. The applicant says that the Minister was 'captured by the

undertakings of the Government of Botswana per their aforesaid reports and as such could not have been impartial in his assessment of the applicant's application for renewal.' (Paragraph 21).

69. This ground of attack brings to the fore a conceptual difficulty. There are situations in which it is not easy to draw a distinction between predetermination and appearance of bias. A predetermination that gives rise to an appearance of bias may be illustrated by the case of *R v Kent Police Authority ex p Godden* [1971] 2 QB 662. The Kent police authority had determined to retire an officer on the ground of mental health. This required that there be a recommendation by a doctor. The authority then sent the officer to a doctor who had previously examined him and produced a report unfavourable to the officer. The officer challenged the selection of the same doctor this time around. The court held that the doctor could not act impartially if he had already committed himself to an opinion in advance of the inquiry. The rule of impartiality was in those circumstances violated.

70. In our jurisdiction, a case that comes close to a situation of predetermination which results in a contravention of the rule against bias is that of *Nthite v Kahiya and Another* [2014] 1 BLR 97 (CA). The 1st respondent suspended the appellant from employment pending a disciplinary enquiry into her conduct, it being alleged that she had absented herself from her duty station. The 1st respondent then appointed an investigator into the conduct of the appellant and to submit a report.

71. The report contained several recommendations, amongst which was that disciplinary action be taken against the appellant for misconduct, in terms of the Public Service Act. After that report, the first respondent wrote the appellant a letter, inviting her to show cause on a given date, why disciplinary action could not be taken against her for misconduct.

72. Notwithstanding that he was requested to recuse himself from the disciplinary proceedings, the 1st respondent

persisted in chairing the enquiry and the hearing was subsequently conducted with the result that the appellant was found guilty and dismissed from the Public Service. The dismissal was taken on review on grounds *inter alia* of bias. The Court of Appeal found that the rule against bias had been violated as the 1st respondent had not only sat as prosecutor or complainant in the case, but he was also the judge of the wrong allegedly committed by the appellant.

73. But the critical submission made on behalf of the appellant, which the court implicitly accepted, is outlined at page 101 and it is to the following effect:

> That the appellant did not have a fair hearing because even the charges she was facing originated from the first respondent himself. He was already of the view that she had misconducted herself. That view could be gathered from the correspondence that happened between the first respondent and the appellant.'

74. So this is the kind of premeditation that may give rise to an appearance of bias, it being the position that the question of impartiality is considered from the standpoint of an

innocent, unassuming, disinterested, fair-minded bystander observing the situation. So predetermination is not necessarily an instance of bias, although one may quite conceivably imagine situations of overlap and the circumstances may not readily lend themselves to simple distinction.

75. In their leading and authoritative text on *Administrative Law*, (10th edition, 2009), at pages 389-390, the authors *Wade* and *Forsyth* put the matter thus:

> The appearance of bias and predetermination are distinct concepts. Predetermination consists in the surrender by a decision-making body of its judgment', for instance, by failing to apply his mind properly to the task at hand or by adopting an over-rigid policy. The decision is unlawful but not because it may appear biased (although in many cases it will). On the other hand, a decision-maker may apply his mind properly to the matter for decision and make a decision that is exemplary save that, because of some prior involvement or connection with the matter, the fair minded observer would apprehend bias. The decision is once more unlawful but for a completely different reason. Only in rare

cases will the distinction between these two concepts be significant.

76. The authors proceed to assert, at pages 390-391, that:

> The significance of the conceptual distinction between predetermination and the apprehension of bias lies in the fact that administrative decision-makers, unlike judicial decision-makers, will often, quite rightly, be influenced, formally or informally, in their decision by policy considerations. They will naturally approach their task with a legitimate predisposition to decide in accordance with their previously articulated views or policies. The fair minded observer knows this, appreciates that there is no question of personal interest, and does not apprehend bias where there is simply a predisposition to decide one way rather than the other in accordance with previous policies.

77. It is therefore not entirely objectionable, nor does it present a case of disqualifying bias, for an administrative decision maker to act in line with a predisposition towards a particular policy. Whether that amounts to not simply to predisposition but objectionable predetermination will usually depend on the facts of each case. But questions of

predetermination and predisposition would usually be decided on whether the decision maker unduly bound himself to a policy and closed off his eyes and ears to other relevant considerations. That would seem to be the basis upon to assess the decision of the Minister and not on notions of breach of natural justice. That shall be addressed when I come to consider the attack based on irrationality.

78. At Paragraphs 20 to 23 of its founding affidavit, the applicant lays down the factual bases for the challenge on bias. It is interesting that having laid the factual basis, the applicant concludes by saying for the reason stated, *'the decision by the First Respondent not to renew the Applicant's license was tainted by bad faith.'*

79. While, as observed by Lesetedi JA in the *Landmark Projects* case that grounds for review do not exist in isolation or in silos and a given conduct may fall within one or more of the review grounds, allegations of bad faith are usually treated separately from an appearance of bias.

381/2010) [2013] NAHCMD 144 (30 May 2013) which emphasises that a functionary must carry out duties imposed by law and that such functionary should act only within the limits established by law. Just to show the consistency in case law, in *A V Communications (Pty) Ltd v The Attorney-General and Others* [1995] BLR 739 (HC), Nganunu J (as he then was) said at page 744:

> '...when a statutory tribunal-whether judicial or quasi-judicial, and in some cases-even an administrative tribunal exercises a statutory power, it should exercise that power according to the specific terms and conditions of the enabling statute and in accordance with its procedures.'

82. Under this head, the applicant contends that by refusing to renew its license, the Minister acted in contravention of the very legislation that empowers him to make decisions. That legal framework is the Mines and Minerals Act, Cap 66:01. Section 17 of the Act provides:

> 17. Duration and renewal of prospecting licence
>
> (1) Subject to this Act, a prospecting licence shall be valid for such period as the applicant has applied for, which period shall not exceed three years.

(2) The holder of a prospecting licence may, at any time not later than three months before the expiry of such licence, apply to the Minister by completing Form I set out in the First Schedule for renewal thereof stating the period for which the renewal is sought and submitting together with the application-

(a) a report on prospecting operations so far carried out and the direct costs incurred thereby; and

(b) a proposed programme of prospecting operations to be carried out during the period of renewal and the estimated cost thereof.

(3) Subject to this Act, the applicant shall be entitled to the grant of no more than two renewals thereof, each for the period applied for, which periods shall not in either case exceed two years, provided that-

(a) the applicant is not in default; and

(b) the proposed programme of prospecting operations is adequate.

(4) Before rejecting an application for renewal under subsection 3(a), the Minister shall give notice of the default to the applicant and shall call upon the applicant to remedy such default within a reasonable time.

(5) Before rejecting an application for renewal under (3)(b), the Minister shall give the applicant opportunity to make

satisfactory amendments to the proposed programme of prospecting operations.

(6) Notwithstanding the provisions of subsection (3), the Minister may renew a prospecting licence for a period or periods in excess of the periods specified in that subsection where a discovery has been made and evaluation work has not, despite proper efforts, been completed.

83. The applicant relies on Subsections (2) and (3) to demonstrate that while it complied with the requirements of the Act, the Minister did not but instead acted in contravention of the Act. The applicant submits that Subsection (3) confers upon it a right of renewal, which is peremptory and is not subject to the discretion of the Minister. The applicant construes the use of the word 'shall' in that section to be imperative and commanding necessary action by the Minister.

84. The applicant submits that the only hindrance to renewal are the two circumstances spelt out at Subsection (3)(a) and (b), which are default by the applicant or the proposed prospecting programme is inadequate respectively. Since

the applicant is not guilty of any of these, or the Minister has not pointed to either of them as his basis for rejection, so the submission runs, the Minister has acted illegally. I observe that the Minister does not, in his answering affidavit, respond at all to the averments on the founding affidavit on which the issue of illegality is raised.

85. As a general rule, in motion proceedings the parties' positions are to be located on their affidavits. Any such averments in the founding affidavit which are not controverted or dealt with in the answering affidavit are taken to have been admitted. And affidavits as is well known, affidavits constitute both pleadings and the evidence. See in this regard *Chairman, Gambling Authority and Another v Moonlite casino* [2018] 1 BLR 40 (CA), at page 47. So failure to respond to an opponent's previous pleading or to aspects of it is deemed to be an admission of the averments made therein. This is in line with Order 20 Rule 4(3) of the High Court Rules.

86. In this case however, the averments to which the respondents have not responded are not entirely factual averments but an expression of the applicant's understanding of the legal position. So any admission by implication is not necessarily binding as the court must still interpret the law and make a determination. This invites an interpretation of the powers and obligations of the Minister in relation to an application for renewal of a license.

The powers and obligations of the Minister under Section 17(3) of the Mines and Minerals Act

87. A perusal of the Act reveals that, save in isolated instances, the main repository of power is the Minister. He has, among others, the power to consider, grant and refuse an application for a license (Sections 13 and 14), to renew (Section 17) and to suspend and cancel a mineral concession (which includes a prospecting license (Section 76). However, these powers are regulated and controlled by law, and they make not be exercised according whim but for good cause and in the public interest.

88. The first point to make is that in interpreting the provisions of a statute, those are not looked at in solation but together with all the other provisions of the Act in question. The provision falls to be construed alongside all the other provisions as a whole. In *Botswana Public Officers' Pension Fund v Manyathelo* [2019] 2 BLR 449(CA), at page 454, Lesetedi JA said:

> In construing a piece of legislation or statutory provision the court seeks to establish the intention of the legislature. In doing so, the court not only looks at the particular provision in question but also looks at the scheme of the Act under which the provision falls.

89. This accords with the rules laid down in leading cases on interpretation of legislation and other documents such as *Molefe v The Attorney-General and Another* [1994] BLR 301 (CA), *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), *Mascom Wireless Botswana (Pty) Ltd v Linda's Holdings (Pty) Ltd t/a Fones 4U* [2004] 2 BLR 65 (CA), *Botswana Diamond Workers' Union v Diamond Trading Company Botswana (Pty) Ltd*

[2014] 2 BLR 83 (HC) and *Botswana Power Corporation v Botswana Power Corporation Workers' Union and Another* [2019] 2 BLR 183 (CA) to refer to a few.

90. Of significance in this matter is that the critical provisions that fall for construction, Section 17(1) and (3), are made 'subject to this Act'. Such a provision has been interpreted by the courts in Botswana and other jurisdictions from which we frequently derive guidance, notably South Africa and England.

91. In *S v Marwane* 1982 (3) SA 717 (A) at pp 747–748, Miller JA laid down the position thus:

> The purpose of the phrase "subject to" in such a context is to establish what is dominant and what subordinate or subservient; that to which a provision is "subject" is dominant—in case of conflict it prevails over that which is subject to it. Certainly, in the field of legislation, the phrase has this clear and accepted connotation. When the legislator wishes to convey that that which is now being enacted is not to prevail in circumstances where it conflicts, or is inconsistent or incompatible, with a specified other enactment, it very frequently, if not almost invariably,

qualifies such enactment by the method of declaring it to be "subject to" the other specified one.

92. In England, Megarry J held in C and *J Clark v Inland Revenue Commissioners* [1973] All ER 513 at 520:

> "In my judgment, the phrase 'subject to' is a simple provision which merely subjects the provisions of the subject subsections to the provisions of the master subsections. When there is no clash, the phrase does nothing: if there is collision, the phrase shows what is to prevail".'

93. These principles were adopted and applied in Botswana in *Mosetlhanyane and Another v The Attorney-General* [2011] 1 BLR 152 (CA). This then are the parameters around which Section 17 falls to be interpreted in determining the legality or otherwise of the Minister's decision. That provision is not subordinated to a single or other more specified provisions, but to the Act as a whole. It therefore requires one to have regard to all the provisions of the Act (87 of them) to establish if there is any dominant provision to which Section 17 is subordinate, and which must prevail. The task is by no means an easy one.

94. In determining the legality of the Minister's decision in the instant case, it appears to me that the starting point is Section 14 in terms of which the Minister considers applications for licenses. Since the applicant holds and has held the license over time, it must mean that the Minister was satisfied that the conditions outlined at Section 14 were satisfied. Otherwise the license would not have been granted.

95. The grant of the licence in the first instance means that the Minister was satisfied, in terms of Section 14(1)(b), that the proposed programme was adequate and made proper provision for environmental protection. By extension, it must mean that in the exercise of its rights under the license, the applicant continued in good stead and compliance with its obligations under the Act so as to ward off the exercise of the Minister's powers under Section 76(1)(b) in either suspending or cancelling the license.

96. So at the time the application for renewal was made, there was no question that the applicant was in breach of the license conditions, in particular those relating to environmental protection. What has happened now is that there is a development, the establishment of the buffer zone, which the Minister wants to keep free from all prospecting activities. Has the Minister acted illegally in declining renewal?

97. Section 17 is the provenance of the Minister's powers in an application for renewal of a license. There are two conditions upon which an application for renewal of a license may be declined. The applicant is entitled to renewal if he is not in default and his proposed programme of prospecting operations is adequate. He has to satisfy both. It would seem that, subject to any other countervailing considerations, which fall to be ascertained, these are the only two conditions upon which an application for renewal may be declined. I now turn to a consideration of the reasons given by the Minister in

declining the application. These are contained in his letter of the 26th April 2022.

98. The Minister's letter is in the following terms:

> Reference is made to your application submitted on 2 July 2021 as well as your letter of 15th March 2022.
>
> Kindly note that the coordinates submitted in the application for renewal of Prospecting License No. 020/2018 are encroaching into the buffer zone, of the Okavango Delta, which is listed as a World Heritage Site. Prospecting activities are prohibited within the buffer zone of the Delta, or if permitted, they are to be subjected to stringent Environmental Impact Assessment measures, in accordance with the provisions of the Environmental Assessment Act of 2010 and Environmental Regulations of 2012 from the Departmental of Environmental Affairs (DEA).
>
> In the light of the above, I am not in a position to renew the Prospecting License for as long as the submitted coordinates fall within the buffer zone of a World Heritage Site.
>
> Yours faithfully
>
> Signed
>
> Lefoko M. Moagi

99. Several reasons are proffered by the Minister for declining the application for renewal. Those are:

(a) The coordinates encroach into the buffer zone of the Okavango delta;

(b) That prospecting activities are prohibited within the buffer zone or if permitted, under strict statutory measures for environmental control.

100. The applicant was not in default, and so the first basis for rejection falls away. The issue of the coordinates encroaching into the buffer zone must be assessed to determine whether it falls within the broad scheme of the proposed programme of operations being inadequate. The definition of the concept of 'programme of prospecting operations' at Section 2 of the Act is not very helpful. In the case at hand, what is in dispute is the extent of the area in which the applicant desires to have its prospecting operations.

101. It does not seem to me that programme of prospecting operations includes the extent of the area. I say so because if one has regard to Section 2, 'programme of prospecting operations' and 'prospecting area' are separately defined, with the implication that they are meant to entail different concepts. One is not subsumed under the other. Prospecting area is not subsumed under programme of prospecting operations.

102. The conclusion above means that the reasons given by the Minister are not in sync with those provided for under the Act. The Minister rejected the application for a different reason. That reason is not one of the permissible basis for rejecting an application for renewal. He therefore acted outside the parameters provided by the legislature as described in the *JCI* and the *Kamuhanga* cases and therefore acted illegally. This would ordinarily suffice to have the Minister's decision set aside. Giving due recognition and courtesy to counsel's industry in addressing the other grounds presented, and in case I am

wrong on the determination above, I proceed to address the other grounds.

Irrationality /unreasonableness

103. The concept of irrationality or unreasonableness is one that has eluded precise definition from time immemorial. The requirement for a body to act reasonably has usually been tied to the question whether a repository of power acts properly, to advance the purposes for which the power was conferred, whether he took into account relevant considerations, excluded irrelevant ones, acted honestly (in good faith) and for a proper purpose. It is thus determinable on a range of factors which are not limited.

104. In describing the word 'unreasonable' in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 ALL ER 680(CA), at pages 682-683 Lord Greene MR said:

> It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call

his own attention to the matters he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority...This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.'

105. With some variations, this expresses the concept that has now acquired the tag *Wednesbury* unreasonableness as derived from the title of the case. The principle laid down in that case has been applied by courts in the common law jurisdictions, such as South Africa before the adoption of their current constitution and certainly in Botswana. See in this regard *Public Procurement and Asset Disposal Board v Zac Construction (Pty) Ltd and Another* [2014] 3 BLR 381 (CA).

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106. In *Attorney-General and Another v Kgalagadi Resources Development Company (Pty) Ltd* [1995] BLR 234 (CA), while accepting the principle in *Wednesbury*, Schreiner JA, adopted the formulation by Corbett JA (as he then was) in *Johannesburg Stock Exchange v. Witwatersrand Nigel Ltd* 1988 (3) S.A. 132 at page 152 to the following effect:

> "Broadly, in order to establish review grounds it must be shown that the president failed to apply his mind to the relevant issues in accordance with the 'behests of the statute and the tenets of natural justice.' Such failure may be shown by proof, *inter alia*, that the decision was arrived at arbitrarily or capriciously or mala fide or as a result of unwarranted adherence to a fixed principle or in order to further an ulterior or improper purpose; or that the president misconceived the nature of the discretion conferred upon him and took into account irrelevant considerations or ignored relevant ones; or that the decision of the president was so grossly unreasonable as to warrant the inference that he failed to apply his mind to the matter in the manner aforestated."

107. In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC) O' Regan J said at page 513:

> Factors relevant to determining whether a decision is reasonable or not will include the nature of the decision, the identity and expertise of the decision-maker, the range of factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved and the impact of the decision on the lives and well-being of those affected.

108. It appears therefore from the authorities above that a challenge on the exercise of discretion is not limited in terms of the range of decisions that lend themselves to attack. The bases for such are not confined in any pigeonhole but is in essence a hotchpotch of circumstances that in many cases shade into one other. The question at the end of the inquiry is whether it can be shown that the discretion or power exercised does not fit the circumstances and so must be liable to be set aside on review.

109. I now turn to an assessment of the decision, and basis therefor to establish whether it was properly made or that on the whole the Minister may be said to have acted improperly in one or other respect. The applicant attacks the Minister's decision on several facets by which it is alleged that the Minister's decision is unreasonable. I shall address them individually, although there is a danger associated with this approach as the factors relevant to the inquiry do not reside in hermetically sealed compartments but in many instances overlap and run into each other. This case is an example of that situation.

Misdirection

110. The applicant submits that the Minister misdirected himself in declining the application for renewal of the license on the basis that prospecting or mining activities are prohibited in the buffer zone. Mr *Maduwane* submitted that there is no such prohibition by UNESCO and as such the Minister is not at large to impose conditions which are not created in the law.

111. In response, learned counsel for the respondents, did not make oral submissions in this regard, but indicated they were standing by their heads of argument at Paragraph 17. There the respondents rely on Paragraph 29 of their answering affidavit to show that there is no misdirection by the Minister as regards prospecting in the buffer zone. I think at this juncture it is well to depict the relevant portions of the pleadings in order to place the entire position of the parties in proper perspective.

112. Paragraph 29 of the answering affidavit responds to Paragraph 16 of the founding affidavit. It therefore stands to be assessed against the applicant's averments in order to bring out the proper context. I shall for ease of reference refer to and where necessary reproduce the relevant portions of the pleadings. I should say that Paragraph 16 of the founding affidavit is an expansion of the applicant's Paragraph 8.10. So that is where I start.

113. At Paragraph 8.10 of its founding affidavit, the applicant alludes to delays in granting renewals of its licenses since

2017. This, the applicant says, had caused great uncertainty on its part resulting in a disjointed operation project. This state of affairs caused the applicant's parent company, Tsodilo Resources Ltd to write a letter of protest, dated the 25th October 2017 to the 1st respondent. The letter has been referred to above.

114. At Paragraph 16 of its founding affidavit the applicant notes that the reports sent by the Government of Botswana to the WTC were, as early as 2015, to the effect that prospecting and mining licenses falling within the buffer zone would not be renewed.

115. Paragraph 29 of the answering affidavit in its entirety reads:

> Gcwihaba Resources have agreed to voluntarily relinquish mineral concessions falling within the buffer zone of the Okavango World Heritage Property as evidenced by the recent application for renewal in 2021 in which they revised in their application, coordinates of boundaries of Prospecting Licenses Nos. 021/2018 to 024/2018 to fall outside the buffer zone and consequently renewal of the

licenses was granted by the Minister on 30th November 2021. While Gcwihaba Resources insist that they will not relinquish its prospecting rights in the buffer zone, unfortunately they are not willing to abide by the guidelines intended for protection of a heritage site against adverse impact or potential danger on the Outstanding Universal Value of the property. Gcwihaba Resources has not undertaken any Environmental Impact Assessment measures as required in a World Heritage Site despite holding licenses in the site for several years.

116. In response, the applicant, at Paragraph 70 of the replying affidavit, averred:

> The contents herein are denied by reason of sentiments already noted above. It is however worth restating that the Applicant has not refused to vacate the buffer zone. Its main gripe, as will be seen from all discussions with the Respondents is that the Applicant be compensated in one way or the other. The Respondents do not want to compensate the Applicant for giving up on the discovered resource as valued per the Frazer report (RA11) and further they do not want the Applicant to continue its work with the discovered resource.

117. These paragraphs are not free standing. They must be read in the context of the entire affidavits in which they are made. But to the extent that the respondents have sought to rely specifically on Paragraph 29, it was necessary to bring it out in order to address their response and to determine whether it presents an answer to the applicant's claim that the Minister misdirected himself as such.

118. I have also reproduced the entire Paragraph 29 because the in their heads of argument, the respondent relied on only part of that paragraph and left out the other which in my view is crucial for a determination of this head of attack. The said Paragraph (29) contains three (3) sentences. The respondent has picked on only one. The sentence selected by the respondent to deal with the applicant's averments seems to be intended to bring out the notion that applicant has acquiesced or otherwise agreed to move out of the buffer zone by revising the coordinates of the licenses mentioned therein, and that is why the Minister agreed to renew and did renew those

licenses. This position does not assist the respondents for a number of reasons.

119. First, the respondents refer to adjusted coordinates of boundaries of Prospecting Licenses Nos. 021/2018 to 024/2018. They do not refer to License No. 020/2018, which is the license in dispute and subject to these proceedings. To the extent that their response touches on other licenses and not the one in question, their response is irrelevant and does not advance their position.

120. In any event, the applicant had long indicated its willingness to give up its other licenses in the east and north of the Okavango river in return for new initial licenses in the west. See Paragraph 8.11 of the founding affidavit and correspondences CCC5 and CCC9 among others. At Paragraph 9 of the answering affidavit, the respondents do not specifically respond to the applicant's averments but instead state their overall position which has triggered this *lis*. I shall revert to discuss the respondents' position later on. For now the point is that

reference to the agreement by the applicant to give up certain licenses which are not in dispute does not answer the point of substance raised by the applicant.

121. Second, the second sentence brings out the true position of the applicant in so far as it states that the applicant is not willing to relinquish its prospecting rights in the buzzer zone. This is true in relation to License No. 020/2018. To this extent, the respondents' statements are mutually destructive. The respondents go further to say that the applicant is 'not willing to abide by the guidelines intended for protection of a heritage site against adverse impact or potential danger on the Outstanding Universal Value of the property.'

122. It is not stated how the applicant is resisting compliance with guidelines intended for the protection of the heritage site. It should be recalled that the heritage site or the 'Property' is the core zone. The buffer zone is not part of the core zone. Even then, it was never the Minister's basis for rejecting the application that there were activities carried

out by the applicant that were not in compliance with any guidelines for the protection of either or both the core and buffer zones. This therefore comes across as a statement without basis and is accordingly a misconstruction of the position and a failure by the Minister to properly apply his mind to the matter. See the cases of *Padfield v Minister of Agriculture, Fisheries and Food* 1968 AC 997 and *Congreve v Home Office* [1976] QB 629 (CA). These shall be discussed in more detail later on.

123. Third, in the third sentence the Minister avers that the applicant has not undertaken any Environmental Impact Assessment measures as required in a World Heritage Site despite holding licenses in the site for several years.' Again I have to state that it was never the Minister's position or complaint that the applicant was in default of any environmental protection measures.

124. The Minister's position was always that the coordinates of the area applied for be adjusted so as to remove the license area from the buffer zone. To this extent the Minister's

position is a misdirection, and introduces fresh basis for rejecting the license. This would not avail the Minister as this would violate the *audi* principle to the extent that it attributes untoward or illegal conduct or practices on the part of the applicant and it was never allowed an opportunity to deal with it. I shall revert to address this in another context.

125. Before I conclude on this line of attack, I must refer again to the Minister's letter of the 7th June 2022 the salient portion of which reads:

> Furthermore, the request to renew Prospecting License No. 020/2018 held by the Qcwihaba for a period of three (3) years is not supported by any law and is therefore *rejected.*

126. This is at Paragraph 5 of the Minister's letter. I understand the above statement to mean that there is no legal basis for the request that the license be renewed for a period of three (3) years. This statement can be addressed at two levels. In the first instance, that there is no legal basis for an application for renewal at all. In second instance, that

although such an application is permissible, there is no legal basis for the stated period of three (3) years.

127. I am satisfied that the Minister could not have disavowed the existence for the framework for the renewal of licenses. Even in earlier correspondences he had indicated his willingness to renew the license provided certain conditions were met. So in the circumstances, the Minister could only have been referring to the second instance, that is that there is no legal basis to have a license renewed for three (3) years. This behoves me to consider the applicable statutory provisions.

128. Section 17(3) of the Mines and Minerals Act provides that an applicant shall only be entitled to a maximum of two renewals, and in either case for a maximum renewal period of two (2) years. However, as explained before, this provision is subject to the other provisions of the Act. Section 17(6) provides that notwithstanding subsection (3), the Minister may renew a license for a period or periods exceeding those specified in subsection 3 where certain

circumstances exist, for example, where a discovery has been made.

129. The applicant avers at Paragraph 9 of the founding affidavit that it discovered a tonnage of 441 Mt of inferred iron resource within its prospecting area which is of great value and located within the buffer zone. It says it shared such information with the Minister in 2014. The respondents have not responded to these averments and so are taken to admit them.

130. That being the case, the discovery would be a trigger to the operation of section 17(6) which permits the Minister to grant a renewal for a period in excess of two years. So the Minister has those powers. So contrary to the Minister's position, the application for a renewal period of three (3) years is supported by law. Like the Foreign Compensation Commission in *Anisminic v Foreign Compensation Commission* [1969] 2 A.C.147 (HL). The Minister misconstrued the statutory provisions that gave him

powers to act and in the process divested himself of powers that are otherwise conferred upon him by law.

131. In brief, *Anisminic* concerned claims for compensation for appropriated property from the British Government in terms of an Act of Parliament, the Foreign Compensation Act of 1950. The claim was to be determined by the commission. On an application by *Anisminic*, the commission declined the claim of the basis that the claimant was not a British national. It was held that the commission had misconstrued its powers as this was not a requirement specified in the Act.

132. In the present case, the Minister not only misconstrued the provisions of the Mines and Minerals Act, he misdirected himself as to the viability of the application in holding that it was not supported by law. So on the basis of the above it is my view that the applicant has established the case of misdirection on the part of the Minister and or misconstruing the provisions of empowering legislation and I so hold.

Improper purpose

133. The applicant also impugns the Minister's decision on the basis that in rejecting the application, the Minister exercised power or discretion for an improper purpose. Mr *Maduwane* submitted that this comes from the answering affidavit, in which the Minister says he is not refusing a renewal, but that the applicant must do as he commands.

134. Counsel submitted that to the extent that the Minister insists on an adjustment of the coordinates, he is in essence, by use of public power, coercing the applicant to apply for a completely different area. It is submitted that the Minister is actively strong arming the applicant to vacate its rights and interests within the buffer zone by withholding renewal until the applicant complies with his commands. This, it is submitted, is an abuse of public power.

135. In response, and at Paragraph 19 of their heads of argument, the respondents merely repeat their stance that

the Minister has not rejected the application but that it could be considered if certain conditions are satisfied. Mr *Begane* did not make any oral submissions in this regard but was content with relying on his heads of argument.

136. In arguing the respondent's position that the Minister's stance was not a rejection but a delayed renewal, Mr *Begane* submitted that the conditions proposed by the Minister for considering the application were meant to satisfy the UNESCO criteria for the World Heritage Site. I shall assume that the Minister was aware that prospecting, even mining, is not prohibited in the buffer zone, but that it should be done in compliance with established measures of environmental protection.

137. The condition laid down by the Minister was to disallow altogether any prospecting activities in the buffer zone, and for that reason he was bent on withholding the grant of a renewal until the applicant complied with his condition. He was in effect cajoling the applicant to fall into his scheme before he could exercise his powers under Section 17. To

the extent that prospecting activities are not prohibited by law in the buffer zone, the Minister's position was an abuse of power.

138. In *Congreve v Home Office* [1976] QB 629 (CA), the Home Secretary (a Minister) announced an increase in television licenses to take effect on some future date. A number of licence holders then renewed their licenses before their current ones expired so as to beat the increase by renewing at the then going price. The Home Office was unhappy with this as it would not raise the anticipated funds, and initially threatened to revoke the licenses so renewed until the 'overlappers' paid the difference. Subsequently the office announced that it would revoke the overlapping licenses if the extra sum was not paid 8 months from date of issue. In essence, what the Home Office was doing was to impose a condition that license holders would only have their licenses valid if they paid the extra fee demanded. Mr Congreve, who had made an advance payment sought a declaration that the threatened revocation was unlawful.

139. The Court of Appeal agreed with him and issued the declaration. In a nutshell, the 3 members of the court reasoned as follows: Lord Denning MR held that the demand was unlawful as it amounted to misuse of power. Roskill L.J. (as he then was) took the view that the Minister's demand could only be enforced if he obtained the necessary legislative sanction, and to the extent that it did not have the requisite legislative support, the office had misused the power of revocation. Geoffrey Lane L.J. (as he then was) held that the proposed revocation was illegal for two reasons, (a) it was coupled with an illegal demand which tainted the revocation and made it illegal too, and (b), it was an improper exercise of discretionary power to use a threat to exercise that power as a means of extracting money which Parliament had not given the executive the mandate to demand.

140. Back home, in *Students' Representative Council v University of Botswana and Others* 1989 BLR 396 (CA), purportedly acting in terms of the University of Botswana Act, the Council of the University of Botswana closed the university

indefinitely. The background to that was that on the 7th May 1987, the University decided that all students should, with effect from the 1987/88 academic year and upon registration on each year, sign a Student Declaration as a condition of registration as students at the University. The declaration, dubbed 'Nkomati' carried conditions *inter alia*, undertakings not to engage in any boycott of lectures or other activities of the University or to engage in demonstrations unless the necessary official permission has been obtained from those authorised to give it."

141. The students were unhappy about this and publicly demonstrated their discontent. After a few exchanges which did not result in any headway, and on the 23rd January 1989, Council closed the University indefinitely, and that except for a few, all students would cease to be students to be students of the university from the date of closure. Council also reiterated that the students would be re-admitted only if they agreed to the conditions stipulated in the declaration aforesaid.

144. The condition for the alignment of coordinates to leave the area applied for from the buffer zone is being dangled as a condition for consideration of the application and is held in *terrorem* over the applicant's head with a clear message that unless it complies, it must kiss the renewal good bye. This is use of power for an improper purpose. I hold therefore that the applicant has established a case of use of power for improper purposes.

Disregard of relevant considerations

145. Although this basis of attack was made under this heading on the applicant's heads of argument, in oral submissions it was raised alongside the argument that the Minister also took into account irrelevant considerations. I shall therefore address it in that fashion. Indeed this is the attack based on the *Wednesbury* principles proper.

146. The pleadings reveal a tug of war between the parties with accusations and counter accusations reverberating throughout the pleadings. Those range from accusations about reneging from agreements or undertakings to bad

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faith and in some cases to unpalatables. I need not bring those out and burden this judgment. Viewed holistically, it is to some extent understandable that the parties may over time have adopted hardlines in their positions as they were each failing to extract from the other a concession to their favoured position. That notwithstanding, it is clear to me that at no point was there a common understanding between the parties.

147. The applicant submits in its heads of argument that it is no secret that the Government coffers are dry and government is struggling to create jobs, improve health care, maintain roads, schools and infrastructure, and the government is actively seeking ways to generate revenue. It is then the applicant's argument that the Minister did not consider these matters in rejecting the application for renewal.

148. I should dispose of this very quickly. First, it is not pleaded. And it is settled law that it is impermissible for a party to make new factual averments in submissions. In

the *Moonlight Casino* case, *supra*, Lesetedi JA said at page 54, that 'A party cannot in its submissions make out a new case which is not borne out by the pleadings and evidence.'

149. Second, it is an invitation to me to pronounce on the allocation of resources by the executive branch, which is a matter ordinarily not the business of the courts. The applicant says is no secret that government coffers are dry. I have no platform on which to pronounce on this if the suggestion is that it is such a notorious fact as should be taken judicial notice of. This basis is therefore without merit and is dismissed.

150. It is also submitted that the Minister disregarded the fact that a high value discovery was made during the applicant's prospecting activities which could transform the economy. This one is pleaded at Paragraphs 9 to 13 of the applicant's founding affidavit. The applicant goes further to say that the discovery generated some excitement on the part of government who even publicised in a newspaper article that this has potential to galvanize

the possible equity injection into the project by government through the MDCB. There is otherwise an acknowledgement of the discovery. The applicant also has not limited its efforts at getting partners to government, and it's a factor to consider that the presence of the discovery may be some event that has the potential to turn around the economy. The Minister does not seem to have taken this into account. However, to the extent that there is some limited response, I am prepared to give him the benefit of the doubt.

Irrelevant considerations

153. As spelt out above and in case law, a decision that is taken on the basis of factors that are not germane to the issue is susceptible to be set aside as unreasonable. As with the disregard of relevant factors, this is determinable on the pleadings.

154. In a number of Paragraphs in his answering affidavit, in justification of his position, the Minister avers that the applicant has not conducted an environmental impact

satisfied, that adequate provision therefore, had been made.

156. The issue of the EIA comes across as a veiled attempt to demonstrate that the applicant is in some respect delinquent as regards its responsibilities in terms of the license conditions. A picture is painted of the applicant having been intransigent or otherwise recalcitrant in persisting on the renewal in terms of either the previous or adjusted coordinates that still fall into the buffer zone. The Minister does not say in his answering affidavit that at any point the applicant was required to do an EIA.

157. In his own words, at Paragraph 42 of the answering affidavit, the Minister says, *inter alia*, that the applicant 'has held prospecting licenses around the Okavango Delta before it was declared a world heritage site and a buffer zone designated around it.' It is not in dispute that the world heritage site, the core zone, was established around July/August 2014. It is also not in dispute that the applicant's licenses were first granted in 2008. It is further

not in dispute that the licenses have been renewed overtime by the Minister, at least up to 2018.

158. So according to the Minister, the applicant has not done an EIA in a period spanning over 10 years, yet in the same period he has continued to renew the licenses. To now say the applicant has never, since 2008, and even after the establishment of both the core and buffer zones, done an EIA is opportunistic and brought up only to bolster his position of refusing to renew the license. In fact at Paragraph 13.6 of the answering affidavit he expressly says in his opening statement that the absence of the EIA bolsters the Ministry's position.

159. Given the Minister's powers under Section 76 to suspend or cancel a mineral concession (which includes a prospecting license) for contravention of the Mines and Minerals Act or other law, notably the Environmental Assessment Act of 2011. One would have expected the Minister to take steps in terms of the empowering provisions of the Act if it was determined that the applicant

was in breach of any statutory or license conditions. It cannot be used now to deny a renewal when the Minister was at all material times at large to take the necessary action. This point is in all the circumstances an afterthought. It cannot avail the Minister.

160. In my view, the issue of the applicant not having done an EIA gives vent to the applicant's claim that an EIA is not required at the stage of a prospecting license, and that the Minister has never required of it to do one. The Minister's conduct in making successive renewals is consistent with this position. I observe that in the Minister's reasons for rejection of the application for renewal, the Minister did not say the applicant is guilty of default as required by Section 17. So the issue of the EIA is therefore in my view an irrelevant consideration which taints the decision and I so hold.

161. Having spoken of the absence of an EIA, and at Paragraph 13.6 of his answering affidavit, the Minister avers:

Bm

'This causes further concern that the company wants to retain a Prospecting License that it is not doing any prospecting work on, but rather the license is possibly only kept for speculative purposes or raising funds from investors who are not aware of the location of the license and the implications thereof.'

162. This is an accusation against the applicant of possible fraudulent conduct. I note that in the various communications between the parties, it has not been raised. In any event it is denied by the applicant. What emerges though, and which is not denied, is that MDCB bought into the idea. I can only surmise that MDCB would have conducted its own due diligence assessment when the proposal was presented to them and are or were waiting only for ministerial approval.

163. On the allegation of possible inappropriate fund raising, the applicant denies the allegation, and says it has always kept its stakeholders and potential investors abreast of developments through its parent company website. That the government takes a negative position has actually kept

potential investors at bay. On the issue of speculation, the applicant reiterates the averment on the discovery of the identified resource as a result of prospecting activities from the use of the license.

164. I said above that that a discovery was made is not denied by the respondents. The allegation of speculation therefore has no basis and is contradicted by the pleadings. To the extent that this is presented as a justification for rejecting the license, it is an irrelevant consideration and demonstrates that the decision was made on the basis of improper information. The decision is on this account tainted.

165. The other issue to consider is the Minister's position that prospecting activities are prohibited in the buffer zone. I observe that the Minister's position in this regard is not consistent. The position as appears from documentation provided, and accepted by the applicant, is that prospecting and mining activities are not permitted in the

core zone. However, those are not totally prohibited in the buffer zone.

166. At Paragraph 17 of its supplementary affidavit, the applicant avers that there is nothing in domestic or international law prohibiting prospecting or mining in the buffer zone, and that even the Government has acknowledged this position in their reports to UNESCO. The respondents do not deny these averments. I have not found anything in the Operational Guidelines that prohibits prospecting and mining activities in the buffer zone.

167. I said above that the Minister's position is inconsistent and in some cases self-destructing. For example, at Paragraph 9 of the answering affidavit, the Minister avers:

> The Department and Ministry's position is that in line with Operational Guidelines for the Implementation of the World Heritage Convention, prospecting and mining activities are prohibited within the buffer zone of the Okavango Delta World Heritage Site, and if permitted, they are to be subjected to the stringent Environmental Impact

Assessment Measures in accordance with the Environmental Assessment Act and Environmental Regulations.

168. There are two positions stated here. First, that prospecting and mining activities are prohibited within the buffer zone. Second, that if those activities are to be permitted, they should be subject to stringent environmental protection measures. These two positions are mutually exclusive of one another and cannot go together. It is either one or the other. To the extent that the Minister takes the position, and refused the renewal application on the basis that prospecting and mining activities are prohibited in the buffer zone, his decision is bad, and cannot stand since it is based on a wrong application of the law and on a flawed factual premise. It is for that reason unreasonable and stands to be set aside.

169. I now proceed to consider the other limb of the Minister's reason, that prospecting and mining activities are permitted only if stringent environmental impact measures are undertaken. The applicant reiterates its position that

nowhere in the Operational Guidelines is it stated that prospecting and mining activities are prohibited in the buffer zone. The applicant proceeds to state that contrary to the position of the respondents, the Government of Botswana has, since the establishment of the World Heritage Site, actually allowed certain activities in both the core and buffer zones. They point the construction of the Mohembo Bridge (2016 to 2022) in the core zone and Shakawe hospital (2017 to 2019), Shakawe Centre (2017 to 2019) and Shakawe Airport (2014 to 2016) all of which are in the buffer zone.

170. Further, the applicant reiterates its position that no EIA is required for prospecting activities. That is required to be conducted, and be made part of an application for a mining license. I must say on the terms of the Mines and Minerals Act, there is no express provision for an EIA. Section 39 which lays down the requirements for the grant of a mining license makes no reference to an EIA. However, in terms of the Environmental Assessment Regulations of 2012, at Paragraph 3 of Schedule 1, an EIA is required for

prospecting and exploration for oil, coal bed methane, and natural gas, heavy metals and radioactive minerals, and for all mining activities.

171. The applicant also points to the information supplied by the Government of Botswana to UNESCO in the Nomination dossier of 2013 for inscription of the delta as a World Heritage Site, and in particular the paragraph below:

> The Ministry of Energy, Mineral and Water Resources has issued several mineral prospecting licenses to exploration companies for concession areas within the buffer zone of the site. No licenses have been issued within the core zones of the property (core zone). Should an application to mine within the buffer zone arise, an Environmental Impact Study (EIA) will be required as part of Botswana's EIA Act, which would address concerns relating to the World Heritage property (core zone). Also, the matter would be referred to the World Heritage Centre (WHC) for advice.

172. This passage is relied upon by the applicant to buttress its position that in fact this is the legal requirement as understood by both the applicant and the respondent, to

say mining activities are not prohibited in the buffer zone, subject to the requirements of domestic environmental laws. That, coupled with the fact that the applicant did not submit an EIA when it applied for the licenses, and that the Minister has never required it to do one, point to position as contended for by the applicant. The issue of the EIA at this stage is therefore an irrelevant consideration meant to point to a possible default which has never been expressed as such.

173. Regarding the periodic reports made by the Government to UNESCO, the applicant has pointed to the fact that the Government has overtime misrepresented the position regarding prospecting licenses in the buffer zone. For example, in the 2017 report, information is presented that 'Currently there are no prospecting licenses in the buffer zone.' Given that the licence in dispute was renewed or re-granted in 2018, that information was incorrect. There are other licenses that were still extant at the time.

174. The same was said of the March 2020 report wherein it is said that:

> 'As indicated in the State of Conservation report of November 2017, that effective January 2018, there will be no prospecting licenses in the buffer zone, the State Party has managed to cancel all the prospecting licenses in the buffer zone and are closely monitoring exploration activities of the alternative licensing zones close to the buffer zone.'

175. The license in dispute expired in 2021, having been renewed in 2018. There are other licences that were valid as at that date. So as it is, the representations to UNESCO were at variance with the position that obtained on the ground. The applicant submits that the refusal to renew the license is a way of validating and legitimising the position which was presented to UNESCO with full knowledge that it was incorrect. Counsel for the respondents, Mr *Begane*, frankly conceded in oral argument that the Government furnished incorrect information to UNESCO. This is not proper exercise of power.

176. Allied with the above, I note the Minister's position at Paragraph 13.5 of his answering affidavit, to wit:

> The Ministry's position currently is that continuation of encroachment of Gcwihaba Resources' Prospecting License has gone on for too long and it exposes Botswana to risks of adverse publicity from International Environmental Pressure Groups, possible sanctions or boycotts as a result of possible perception that Botswana Government is flouting guidelines for protection of World Heritage Sites by continuing to license prospecting activities within the buffer zone without an approved Environmental Assessment Statement.

177. There is a number of difficulties with this position. First, it appears to be a complaint that the applicant has held the licenses for too long, yet those were issued and renewed over time by the Minister himself. He cannot be heard to complain of a situation that he has himself brought about. Second, the refusal to renew the license is influenced by the possible embarrassment and other negative reactions from the international community that the Minister envisages might befall the country. Since prospecting

activities are not prohibited in the buffer zone, the Minister's decision is based on irrelevant considerations. The international community cannot be expected to complain and revolt over that which is legal.

178. The Minister's position in this matter is comparable to that which obtained in *Padfield,* where the House of Lords had to consider a dispute under the milk marketing scheme established under the Agricultural Marketing Act of 1958, which provided for a committee of investigation which was to consider and report on certain kinds of complaint 'if the Minister in any case so directs.' Some milk producers complained of low fixed prices for their milk by the Milk Marketing Board. The Minister had power, if the committee of investigation so recommended, to override the Board. He refused to direct the committee to act, and the milk producers applied for an order compelling to do so (a *mandamus*).

179. The court held in favour of the farmers, holding that there was a relevant and substantial complaint and the Minister

was under a duty and power to act and that he could not use his discretion to frustrate the policy of the Act. By refusing to act, he was rendering nugatory a safeguard provided by the Act and depriving the producers of a remedy which Parliament intended them to have. Critically, the court, in strong terms, deprecated the Minister's reasons that the complaint raised wide issues and that he would be embarrassed in Parliament as an indication that he had misconstrued his powers and taken an irrelevant consideration into account.

180. Similarly, the concerns about international pressure and ostracism, in circumstances where no law prohibits activities in the buffer zone, are matters irrelevant. They have unduly clouded the Minister's mind to his powers and the purposes of the Act, and so deprived the applicant of an opportunity to conduct its activities which might benefit the State in the long run. The discovery made is a particularly relevant factor which ought to have been taken into account for its potential to impact government coffers

in terms of Part X of the Act. His decision is for this reason bad and stands to be set aside.

181. Finally, and as held above, an EIA is not required for prospecting activities. In any event, there is nothing stopping the Minister from demanding one from the applicant at any stage as and when it is deemed necessary. The applicant seems to say it is amenable to supply one should that be required. The Minister has closed his eyes to matters that are within his own statutory powers to resolve and to ensure that the negative position he envisages is prevented. He has the matters under his control. This is disregard of a relevant consideration.

182. In closing, it is clear that on the basis of conclusions above, the applicant ought to succeed. In my view this position is not prejudicial to the respondents. The Environmental Assessment Act permits for the demand of protection measures from any entity undertaking an activity. It also provides for enforcement measures should the entity fall short of required standards and also a range

of sanctions t be imposed on the entity. These are complemented by the Minister's powers under Section 76 of the Mines and Minerals Act in terms of which the Minister may suspend or cancel a license if the conditions therefor are breached, or there is contravention of the provisions of the Act or any other law for that matter. So the Minister still has the matter in his control.

Damages

183. These were sought as an alternative. Having succeeded on the substantive prayers, I do not have to consider this claim. In any event it was withdrawn as it would have been impermissible for this claim to be determined in motion proceedings. See *Room Hire (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) and *Zimbank Botswana Limited v Makura* [2002] 2 BLR 497 (CA).

Conclusion

184. For all the reasons above, I make the following orders:

(a) The decision of the 1st respondent rejecting the application for the renewal of the Applicant's

prospecting license (020/2018) is illegal, unreasonable and or irrational;

(b) The decision of the 1st respondent rejecting the application for the renewal of the Applicant's prospecting license (020/2018) is hereby set aside;

(c) The 1st respondent is ordered and directed to renew, within 14 days of this order, the applicant's license (020/2018) subject only to justifiable safeguards necessary for the protection of the heritage area. Such safeguards are not to include any further demand for reduction or shifting of the license area or its coordinates;

(d) Following renewal, the 1st respondent is ordered to align the effective dates of contiguous licenses PL 021-026/2018 with that of the renewed license;

(e) The respondents shall pay the costs of these proceedings.

DELIVERED IN OPEN COURT AT MAUN THIS 15th DAY OF DECEMBER 2023.

B. MARIPE

(Judge)

"FA2"

Quintan Maduwane

From: Grenorrah Begane <gbegsiss@gmail.com>
Sent: Friday, 29 December 2023 12:03
To: quintan@collinschilisa.co.bw
Cc: Rankeke Lemolemo; Milikani Ndaba
Subject: Qcwihaba Resources v AG- request for extension for renewal of licences

Good day Counsel

This email follows our telecom a short while ago when i informed you that the Ministry has abandoned the intention to note an appeal against Maripe J's judgment.

As you may know, the 14 days the court ordered for the licences to be renewed lapses today.

I have therefore been instructed to request that you give us until 8 January 2024 as the deadline for renewing the licenses.

Looking forward to a favourable response.

Regards

G.I Begane

"FA3"

Quintan Maduwane

From: Quintan Maduwane <quintan@collinschilisa.co.bw>
Sent: Wednesday, 03 January 2024 10:56
To: 'Grenorrah Begane'
Cc: 'Rankeke Lemolemo'; 'Milikani Ndaba'
Subject: RE: Qcwihaba Resources v AG- request for extension for renewal of licences

Dear Begane,

Thank you for your below email. We have sought instructions and our client hereby accedes to your request for an extension up to 08 January 2024.

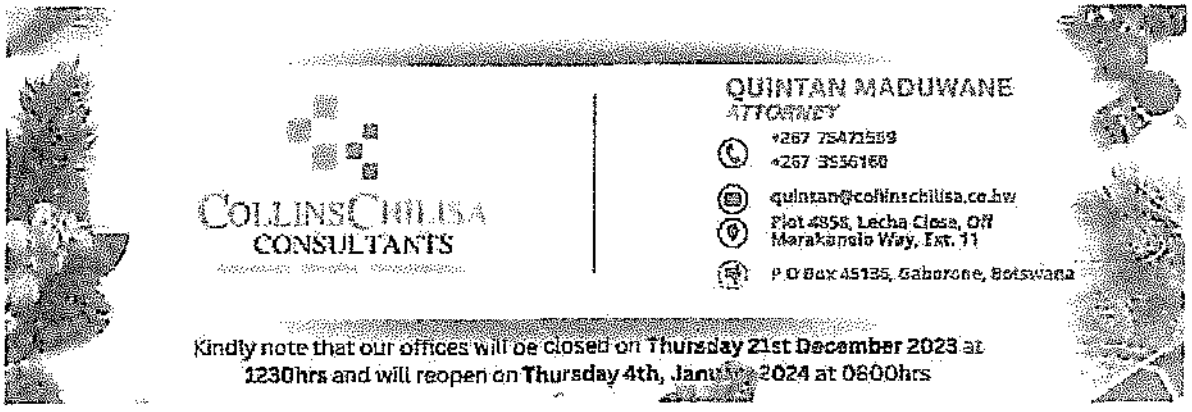
Our Client has further advised that it is concerned by DOM's stance on the license terms. For clarity, our Client's position is as follows:

1. The license renewal which ought to have been granted in 2021 would have been the first renewal of PL020/2018 and to the extent that this renewal was never granted, it means that the renewal we currently await will be the first renewal.
2. Following the above first renewal, our client will be entitled to a further renewal upon expiry in terms of the Mines and Minerals Act.

In view of the above, kindly engage with your client and those at DOM to ensure that the renewal will be the first renewal and same is applicable to all other license (realignment per the judgment).

We trust that the above is in order and we will not hesitate to protect our Client's rights in order to ensure that they get the renewal they deserve in terms of the law.

Quintan Maduwane



From: Grenorrah Begane [mailto:gbegsiss@gmail.com]
Sent: Friday, 29 December 2023 12:03
To: quintan@collinschilisa.co.bw

MN BM

"FA4"

Quintan Maduwane

From: Quintan Maduwane <quintan@collinschilisa.co.bw>
Sent: Thursday, 11 January 2024 13:22
To: 'Grenorrah Begane'
Cc: 'Rankeke Lemolemo'; 'Milikani Ndaba'; 'James Bruchs'
Subject: RE: Qcwihaba Resources v AG- request for extension for renewal of licences

Dear Begane,

Further to your email of 29 December 2023, we note that to date you have still not issued our client with the renewed licenses. I do note our WhatsApp conversion which was to be followed by official communication from yourself which communication has still not come. For completeness, the said WhatsApp communication read as follows:

> *"Morning and compliments counsel, The Ministry has advised me to inform you that it's still in the process of renewing so they need a little bit of time to complete the process. Regards"*

As far as my Client is aware, the licenses are said to be ready, but await the Minister's signature. This notwithstanding, your WhatsApp messages was not even a request but we appeared to be told what would be happening and this was without any measure of certainty. I need not highlight to you that your client is in contempt of the Judgment and we have every right to pursue contempt proceedings and see to it that the Minister faces the wrath of the law.

We have been more than patient in the face of the you and your Client's silence and unfortunately we are not in a position to wait any longer as our Client continues to suffer financial harm and prejudice with every passing day. In order to dissuade our Client from taking any further step in a court of law, we demand the following:

1. Pending the Minister's signature, Our Client be provided with an electronic copy of the licenses as would be issued in order for our Client to comment on same, and further get assurance as to what the licenses would look like. This is to be done by Close of Business today **[11 January 2024 at or before 16:30]**;

2. Alternatively, the Minister must comply with the Judgment and forthwith sign the license renewals physical copies of which shall be delivered to our Client tomorrow by Close of Business **[12 January 2024 at or before 16:30]**.

Should your Client fail to purge itself of the contempt in line with the forgoing demand, we hold instructions to not hesitate to take the next step, immediately.

We trust that the above is in order and we await your prompt response.

Quintan Maduwane
Associate

COLLINS CHILISA CONSULTANTS

T: (+267) 395 6160
F: (+267) 395 6161
C: (+267) 75471589
E: quintan@collinschilisa.co.bw
W: http://www.collinschilisa.co.bw

Collins Chilisa Consultants
Plot 4858, Lecha Close
Off Marakanelo Way
Extension 11
Gaborone, Botswana

"FA5"

Quintan Maduwane

From: Grenorrah Begane <gbegsiss@gmail.com>
Sent: Thursday, 11 January 2024 15:00
To: Quintan Maduwane
Subject: Re: Qcwihaba Resources v AG- request for extension for renewal of licences

Good day Mr. Maduwane

The contents of the above email have been noted and shared with the client and we await instructions so as to enable us to revert.

Thank you

G. I Begane

On Thu, 11 Jan 2024 at 13:22, Quintan Maduwane <quintan@collinschilisa.co.bw> wrote:

Dear Begane,

Further to your email of 29 December 2023, we note that to date you have still not issued our client with the renewed licenses. I do note our WhatsApp conversion which was to be followed by official communication from yourself which communication has still not come. For completeness, the said WhatsApp communication read as follows:

> *"Morning and compliments counsel. The Ministry has advised me to inform you that it's still in the process of renewing so they need a little bit of time to complete the process. Regards"*

As far as my Client is aware, the licenses are said to be ready, but await the Minister's signature. This notwithstanding, your WhatsApp messages was not even a request but we appeared to be told what would be happening and this was without any measure of certainty. I need not highlight to you that your client is in contempt of the Judgment and we have every right to pursue contempt proceedings and see to it that the Minister faces the wrath of the law.

We have been more than patient in the face of the you and your Client's silence and unfortunately we are not in a position to wait any longer as our Client continues to suffer financial harm and prejudice with every passing day. In order to dissuade our Client from taking any further step in a court of law, we demand the following:

1. Pending the Minister's signature, Our Client be provided with an electronic copy of the licenses as would be issued in order for our Client to comment on same, and further get assurance as to what the licenses would look like. This is to be done by Close of Business today [**11 January 2024 at or before 16:30**];

"FA6"

REPUBLIC OF BOTSWANA

PROSPECTING LICENCE

in favour of

Gcwihaba Resources Pty Ltd

PROSPECTING LICENCE NO. 021/2018

REPUBLIC OF BOTSWANA

Form II - First Renewal

Prospecting Licence No. 021/2018

Issued in terms of section 16 of the Mines and Minerals Act.

WHEREAS Gowithaba Resources Pty Ltd a company incorporated under the laws of Republic of Botswana (hereinafter referred to as the Holder) has made application for the right to prospect for Metals on land to which the Republic of Botswana holds mineral rights:

AND WHEREAS provision is made under section 14 of the Act for the conferring of such rights by means of a prospecting licence:

NOW THEREFORE the Minister hereby grants to the holder the exclusive right to prospect for Metals in the licence area for a period of 2 years commencing on 01 January 2022 and ending on 31 December 2023.

1. The Licence area shall be the area shown on the map annexed hereto in extent Five Hundred and Seventy Two Point Five Square Kilometers (572.5 km²), located in North West district(s) and more fully described in Annexure I hereto; and as reduced from time to time in accordance with the provisions of the Act.

2. In accordance with the provision of section 70 of the Act, the holder shall, simultaneously with issuance of this licence, and thereafter on each anniversary thereof, pay to the Government at the Office of the Director of Mines, an annual charge equal to Five Pula (P5.00) multiplied by the number of square kilometers in the Licence area subject to a minimum annual charge of One Thousand Pula (P1000.00).

3. The holder shall incur the minimum annual expenditures and shall expeditiously carry out the programme of prospecting operations set out in Annexure II.

GIVEN under my hand at GABORONE this 30th day of NOVEMBER in the year 2021.

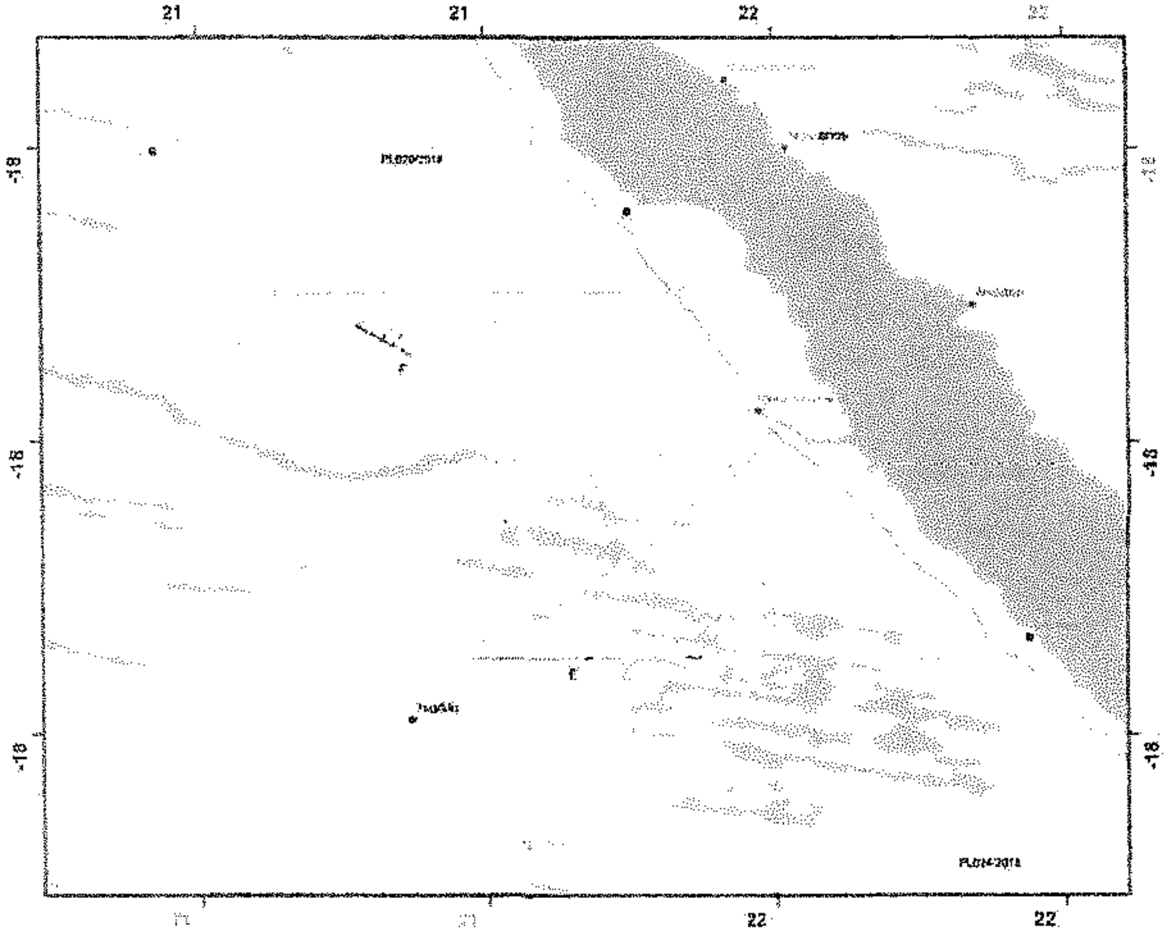
DEPT OF MINES PROSPECTION LICENSING 06 DEC 2021 GABORONE BOTSWANA

Minister
Ministry of Mineral Resources, Green Technology and Energy Security

Annexure [illegible]

GCWIHABA RESOURCES (PTY) LIMITED

Prospecting Licence No [illegible]



Legend

- Settlements
- Road
- Licence Area
- Other Licences
- Water Body

0 10 20 40 Kilometers

The licence area is two hundred and seventy two point five square kilometers (572.5 Km2) defined by boundary lines in the North West District which shall be straight unless otherwise stated, joining successive points at the following coordinates.

Coordinate System: GCS WGS 1984
Datum: WGS 1984
Units: Degree

Point	Long	Lat
A	21,666770	-18,498636
B	21,930167	-18,477764
point 'B' runs along the reserved area to point 'C'		
C	21,996520	-18,588178
D	21,993880	-18,747070
E	21,866026	-18,748857
F	21,251066	-18,542195

Total Area =572.5Km2

Drawn on the 20/10/2021
By Micah Mantha
Checked By K. Ogaketse
Department of Mines

MN
Bm

REPUBLIC OF BOTSWANA

ANNEXURE II

Prospecting Licence No. 021/2021

Programme of Prospecting Operations	Proposed Minimum Expenditure
Year 1	
i. Analysis of flown airborne magnetic, electromagnetic, radiometric and gravity surveys.	
ii. Continued upgrading of ground magnetic surveys and building of geophysical and geological models for the exact extend and stratigraphy of the Zambian Copper Belt rocks over the licence.	
iii. Geological interpretation in 2D and 3D using Gocad and Geosoft software.	
iv. Petrographic analyses of the existing drill cores.	
v. Further assaying of existing drill cores using a variety of techniques (AAS, ICP, XRF and ME).	
vi. Detailed ground magnetic survey over selected targets.	
vii. Extension and completion of the tie lines of the airborne gravity survey.	One Million Pula (BWP 1,000, 000.00)
viii. ICP multi-element geochemical analysis of 220 drill holes targeting metal anomalism in the Kalahari cover and litho-geochemistry of bedrock.	
ix. Analysis of sulphide-rich mineral intersections from drilled boreholes by ICP-MS and ICP-AES.	
x. Sampling of water from FQM and Tsodilo Resources boreholes for hydro geochemical analysis, by multi-element ICP-MS and Cu-isotope analysis. ~300 samples.	
xi. Complete a preliminary economic assessment (PEA) of the Xaudum Iron Formation in collaboration with a reputable resource assessment company.	
xii. A second NI-43-101 Mineral Resource Estimation and definition for Block 2a within the Xaudum Iron Formation (XIF) to expand the resource model beyond the initial block 1 resource report.	

REPUBLIC OF BOTSWANA

Year 2

i. Assaying of drill core samples using atleast XRF analysis.
ii. Detailed metallurgical test work conducted including DTR anaylsis and magnetic susceptibility measurements taken for percent magnetite information.
iii. Pre-feasibility studies into iron ore mining start-up options and beneficiation within Botswana.
iv. Hydrological investsigations and geotechnical investigations and lab tests.
v. Continuation of 1st year Cu, Co, Au, Ni and REE exploration work.
vi. Diamond core drilling of priority targets.
vii. Petrographic analyses of drill cores.
viii. Assaying of drill cores using a variety of techniques (AAS, ICP, XRF and ME).
ix. Drilling of 31 holes targeting high grade magnetite material.
x. Assaying of drill cores using XRF analysis.
xi. Geological modelling of the deposit.
xii. A third NI 43-101 MRE report and resource statement for Block 2b.
xiii. Detailed metallurgical test work conducted including DTR analysis, magnetic susceptibility measurements, milling and liberation test work, low intensity magnetic separation test work, high intensity magnetic separation test work, particle size determinations, ad chemical analysis of separation concentrates.
xiv. Outline diamond core drilling of targets that heve been identified as having the potential for an inferred resource.
xv. Petrographic analyses of drill cores.
xvi. Assaying of drill cores using a variety of techniques (AAS, ICP, XRF and ME).
xvii. Based on analytical results prioritize the targets for further detailed geophysical and drilling program to prepare for a NI 43-101 Mineral Resources Report.

One Million Pula
(BWP 1, 000, 000.00)

REPUBLIC OF BOTSWANA

PROSPECTING LICENCE

in favour of

Gcwihaba Resources Pty Ltd

PROSPECTING LICENCE NO. 022/2018

REPUBLIC OF BOTSWANA

Form II – First Renewal

Prospecting Licence No. 022/2018

Issued in terms of section 16 of the Mines and Minerals Act.

WHEREAS Gcwihaba Resources Pty Ltd a company incorporated under the laws of Republic of Botswana (hereinafter referred to as the Holder) has made application for the right to prospect for Metals on land to which the Republic of Botswana holds mineral rights:

AND WHEREAS provision is made under section 14 of the Act for the conferring of such rights by means of a prospecting licence:

NOW THEREFORE the Minister hereby grants to the holder the exclusive right to prospect for Metals in the licence area for a period of 2 years commencing on 01 January 2022 and ending on 31 December 2023.

1. The Licence area shall be the area shown on the map annexed hereto in extent One Hundred and Sixty Point Four Square Kilometers (160.4 km²), located in North West district(s) and more fully described in Annexure I hereto; and as reduced from time to time in accordance with the provisions of the Act.

2. In accordance with the provision of section 70 of the Act, the holder shall, simultaneously with issuance of this licence, and thereafter on each anniversary thereof, pay to the Government at the Office of the Director of Mines, an annual charge equal to Five Pula (P5.00) multiplied by the number of square kilometers in the Licence area subject to a minimum annual charge of One Thousand Pula (P1000.00).

3. The holder shall incur the minimum annual expenditures and shall expeditiously carry out the programme of prospecting operations set out in Annexure II.

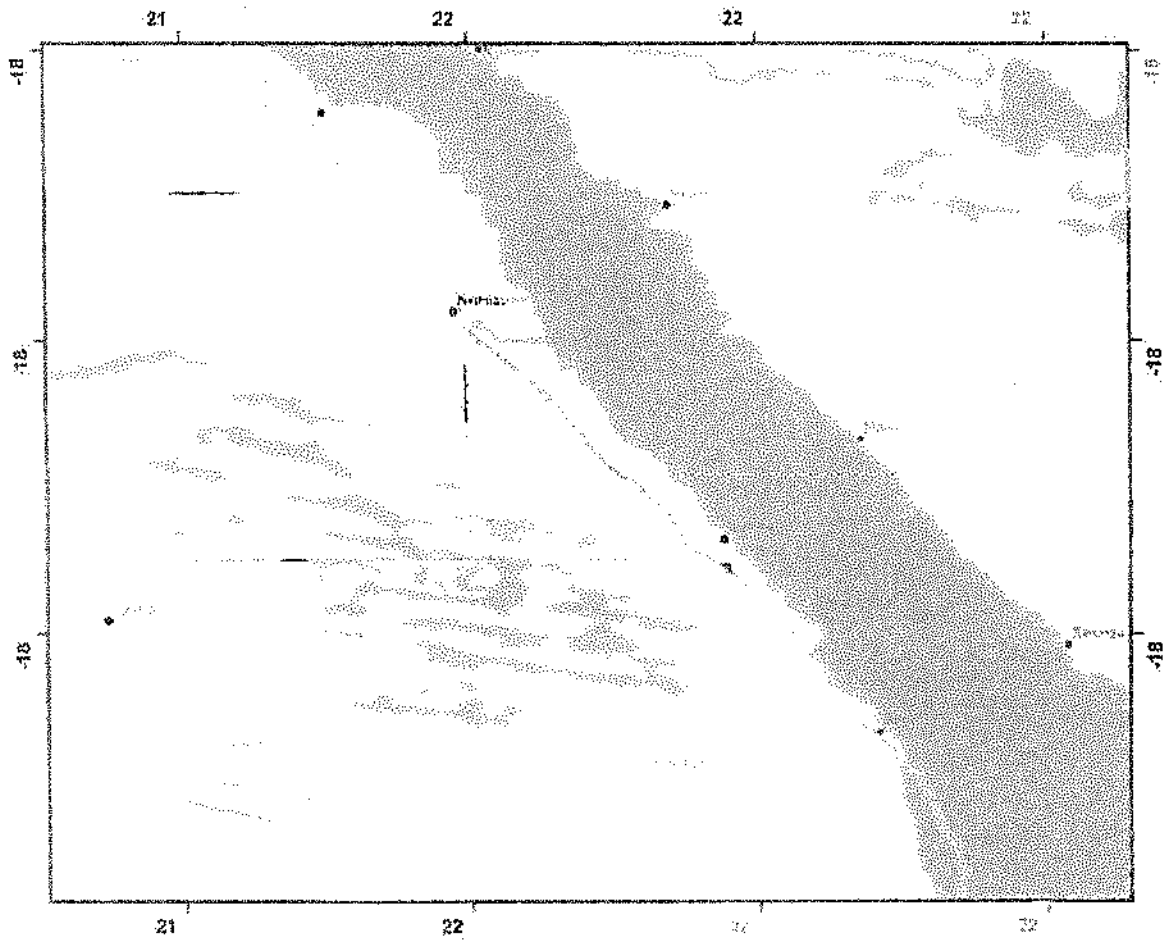
GIVEN under my hand at GABORONE this 30th day of November in the year 2021.

06 DEC 2021

Minister
Ministry of Mineral Resources, Green Technology and Energy Security

Annexure 1

Prospecting Licence No.022/2018



The licence area is one hundred and sixty point four square kilometers (160.4 Km2) defined by boundary lines in the North West District which shall be straight unless otherwise stated, joining successive points at the following coordinates

Coordinate System: GCS WGS 1984
Datum: WGS 1984
Units: Degree

Point	Long	Lat
A	21.996122	-18.598029
Start 'A' then along the reserved area to point 'B'		
B	22.176795	-18.753824
C	21.999780	-18.754670

Total Area =160.4 Km2

Drawn on the 20/10/2021

By Micah Mandiwa

Checked By K. Ogetetse

Department of Mines

REPUBLIC OF BOTSWANA

ANNEXURE II

Prospecting Licence No. 022/2021

Programme of Prospecting Operations	Proposed Minimum Expenditure
Year 1	
i. Analysis of flown airborne magnetic, electromagnetic, radiometric and gravity surveys.	
ii. Continued upgrading of ground magnetic surveys and building of geophysical and geological models for the exact extend and stratigraphy of the Zambian Copper Belt rocks over the licence.	
iii. Geological interpretation in 2D and 3D using Gocad and Geosoft software.	
iv. Petrographic analyses of the existing drill cores.	
v. Further assaying of existing drill cores using a variety of techniques (AAS, ICP, XRF and ME).	
vi. Detailed ground magnetic survey over selected targets.	One Million Pula (BWP 1,000, 000.00)
vii. Extension and completion of the tie lines of the airborne gravity survey.	
viii. Drilling of eight holes targeting high grade magnetite material.	
ix. ICP multi-element geochemical analysis of 220 drill holes targeting metal anomalism in the Kalahari cover and litho-geochemistry of bedrock.	
x. Analysis of sulphide-rich mineral intersections from drilled boreholes by ICP-MS and ICP-AES.	
xi. Sampling of water from FQM and Tsodilo Resources boreholes for hydro geochemical analysis, by multi-element ICP-MS and Cu-isotope analysis, ~300 samples.	
xii. Complete a preliminary economic assessment (PEA) of the Xaudum Iron Formation in collaboration with a reputable resource assessment company.	

MINISTRY OF MINES
PROSPECTING LICENCES
05 DEC 2021
P. BAG 0018
GABORONE
REPUBLIC OF BOTSWANA

REPUBLIC OF BOTSWANA

Year 2

i. Assaying of drill core samples using atleast XRF analysis.
ii. Detailed metallurgical test work conducted including DTR anaylsis and magnetic susceptibility measurements taken for percent magnetite information.
iii. Pre-feasibility studies into iron ore mining start-up options and beneficiation within Botswana.
iv. Hydrological investsigations and geotechnical investigations and lab tests.
v. Continuation of 1st year Cu, Co, Au, Ni and REE exploration work.
vi. Diamond core drilling of priority targets.
vii. Petrographic analyses of drill cores.
viii. Assaying of drill cores using a variety of techniques (AAS, ICP, XRF and ME).
ix. Assaying of drill cores using XRF analysis.
x. Geological modelling of the deposit.
xi. A third NI 43-101 MRE report and resource statement for Block 2b.
xii. Detailed metallurgical test work conducted including DTR analysis, magnetic susceptibility measurements, milling and liberation test work, low intensity magnetic separation test work, high intensity magnetic separation test work, particle size determinations, ad chemical analysis of separation concentrates.
xiii. Outline diamond core drilling of targets that have been identified as having the potential for an inferred resource.
xiv. Petrographic analyses of drill cores.
xv. Assaying of drill cores using a variety of techniques (AAS, ICP, XRF and ME).
xvi. Based on analytical results prioritize the targets for further detailed geophysical and drilling program to prepare for a NI 43-101 Mineral Resources Report.

One Million Pula
(BWP 1, 000, 000.00)

REPUBLIC OF BOTSWANA

PROSPECTING LICENCE

in favour of

Gcwihaba Resources Pty Ltd

PROSPECTING LICENCE NO. 023/2018

REPUBLIC OF BOTSWANA

Form II - First Renewal

Prospecting Licence No. 023/2018

Issued in terms of section 16 of the Mines and Minerals Act.

WHEREAS Gcwihaba Resources Pty Ltd a company incorporated under the laws of Republic of Botswana (hereinafter referred to as the Holder) has made application for the right to prospect for Metals on land to which the Republic of Botswana holds mineral rights:

AND WHEREAS provision is made under section 14 of the Act for the conferring of such rights by means of a prospecting licence:

NOW THEREFORE the Minister hereby grants to the holder the exclusive right to prospect for Metals in the licence area for a period of 2 years commencing on 01 January 2022 and ending on 31 December 2023.

1. The Licence area shall be the area shown on the map annexed hereto in extent Four Hundred and Ninety One Point Two Square Kilometers (491.2 km²), located in North West district(s) and more fully described in Annexure I hereto; and as reduced from time to time in accordance with the provisions of the Act.

2. In accordance with the provision of section 70 of the Act, the holder shall, simultaneously with issuance of this licence, and thereafter on each anniversary thereof, pay to the Government at the Office of the Director of Mines, an annual charge equal to Five Pula (P5.00) multiplied by the number of square Kilometers in the Licence area subject to a minimum annual charge of One Thousand Pula (P1000.00).

3. The holder shall incur the minimum annual expenditures and shall expeditiously carry out the programme of prospecting operations set out in Annexure II.

GIVEN under my hand at GABORONE this 30th day of NOVEMBER in the year 2021.

DEPARTMENT OF MINES PROSPECTING LICENCE 08 DEC 2021 GABORONE

Minister
Ministry of Mineral Resources, Green Technology and Energy Security

REPUBLIC OF BOTSWANA

ANNEXURE II

Prospecting Licence No. 023/2021

Programme of Prospecting Operations	Proposed Minimum Expenditure
Year 1 i. Analysis of flown airborne magnetic, electromagnetic, radiometric and gravity surveys. ii. Continued upgrading of ground magnetic surveys and building of geophysical and geological models for the exact extend and stratigraphy of the Zambian Copper Belt rocks over the licence. iii. Geological interpretation in 2D and 3D using Gocad and Geosoft software. iv. Petrographic analyses of the existing drill cores. v. Further assaying of existing drill cores using a variety of techniques (AAS, ICP, XRF and ME). vi. Detailed ground magnetic survey over selected targets. vii. Extension and completion of the tie-lines of the airborne gravity survey. viii. ICP multi-element geochemical analysis of 220 drill holes targeting metal anomalism in the Kalahari cover and litho-geochemistry of bedrock. ix. Analysis of sulphide-rich mineral intersections from drilled boreholes by ICP-MS and ICP-AES. x. Sampling of water from FQM and Tsodilo Resources boreholes for hydro geochemical analysis, by multi-element ICP-MS and Cu-isotope analysis, ~300 samples. xi. Complete a preliminary economic assessment (PEA) of the Xaudum Iron Formation in collaboration with a reputable resource assessment company.	One Million Pula (BWP 1,000, 000.00)

REPUBLIC OF BOTSWANA

Year 2

i. Assaying of drill core samples using atleast XRF analysis.
ii. Detailed metallurgical test work conducted including DTR anaylsis and magnetic susceptibility measurements taken for percent magnetite information.
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xiv. Petrographic analyses of drill cores.
xv. Assaying of drill cores using a variety of techniques (AAS, ICP, XRF and ME).
xvi. Based on analytical results prioritize the targets for further detailed geophysical and drilling program to prepare for a NI 43-101 Mineral Resources Report.

One Million Pula
(BWP 1, 000, 000.00)

REPUBLIC OF BOTSWANA

PROSPECTING LICENCE

in favour of

Gcwihaba Resources Pty Ltd

PROSPECTING LICENCE NO. 024/2018

REPUBLIC OF BOTSWANA

Form II - First Renewal

Prospecting Licence No. 024/2018

Issued in terms of section 16 of the Mines and Minerals Act.

WHEREAS Gcwihaba Resources Pty Ltd a company incorporated under the laws of Republic of Botswana (hereinafter referred to as the Holder) has made application for the right to prospect for Metals on land to which the Republic of Botswana holds mineral rights:

AND WHEREAS provision is made under section 14 of the Act for the conferring of such rights by means of a prospecting licence:

NOW THEREFORE the Minister hereby grants to the holder the exclusive right to prospect for Metals in the licence area for a period of 2 years commencing on 01 January 2022 and ending on 31 December 2023.

1. The Licence area shall be the area shown on the map annexed hereto in extent Seven Hundred and Eighty One Point Seven Square Kilometers (781.7 km^2), located in North West district(s) and more fully described in Annexure I hereto; and as reduced from time to time in accordance with the provisions of the Act.

2. In accordance with the provision of section 70 of the Act, the holder shall, simultaneously with issuance of this licence, and thereafter on each anniversary thereof, pay to the Government at the Office of the Director of Mines, an annual charge equal to Five Pula (P5.00) multiplied by the number of square kilometers in the Licence area subject to a minimum annual charge of One Thousand Pula (P1000.00).

3. The holder shall incur the minimum annual expenditures and shall expeditiously carry out the programme of prospecting operations set out in Annexure II.

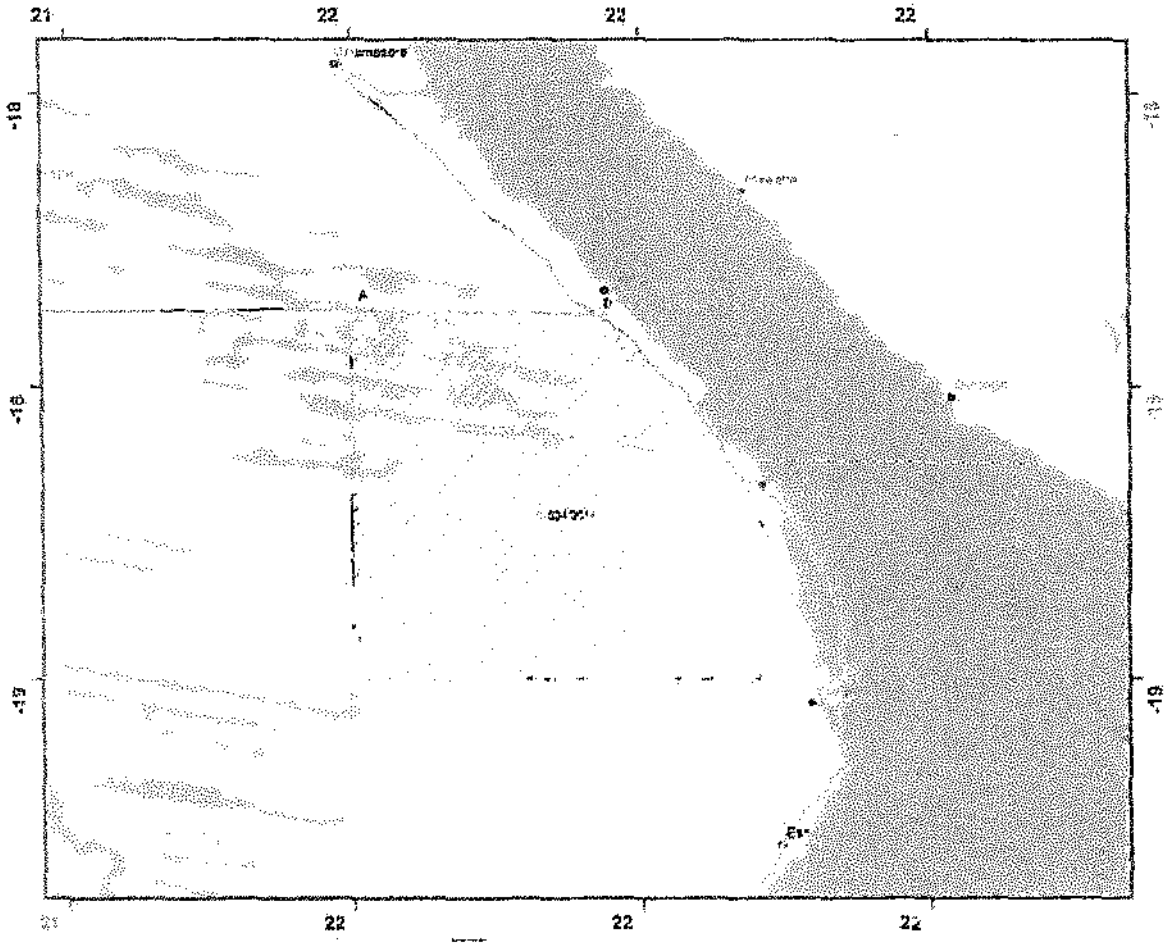
GIVEN under my hand at GABORONE this 30th day of November in the year 2021.

Minister
Ministry of Mineral Resources, Green Technology and Energy Security

Annexure 1

[redacted]

Prospecting Licence No.024/2018



The licence area is seven hundred and eighty one point seven square kilometers (781.7 Km2) defined by boundary lines in the North West District which shall be straight unless otherwise stated, joining successive points at the following coordinates

Coordinate System: GCS WGS 1984
Datum: WGS 1984
Units: Degree

Point	Long	Lat
A	21.939985	-18.747078
B	22.170295	-18.770974
C	22.370695	-19.000543
D	22.989738	-19.001650

Total Area =781.7 Km2

Drawn on the 20/10/2021
By Micah Monthe [redacted]
Checked By K. Ogakutse
Department of Mines

REPUBLIC OF BOTSWANA

Year 2

i.	Assaying of drill core samples using atleast XRF analysis.	
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viii.	Assaying of drill cores using a variety of techniques (AAS, ICP, XRF and ME).	
ix.	Assaying of drill cores using XRF analysis.	
x.	Geological modelling of the deposit.	One Million Pula (BWP 1, 000, 000.00)
xi.	A third NI 43-101 MRE report and resource statement for Block 2b.	
xii.	Detailed metallurgical test work conducted including DTR analysis, magnetic susceptibility measurements, milling and liberation test work, low intensity magnetic separation test work, high intensity magnetic separation test work, particle size determinations, ad chemical analysis of separation concentrates.	
xiii.	Outline diamond core drilling of targets that have been identified as having the potential for an inferred resource.	
xiv.	Petrographic analyses of drill cores.	
xv.	Assaying of drill cores using a variety of techniques (AAS, ICP, XRF and ME).	
xvi.	Based on analytical results prioritize the targets for further detailed geophysical and drilling program to prepare for a NI 43-101 Mineral Resources Report.	

08 DEC 2021

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT MAUN

Case No: MAHMN -000075 -22

In the Interlocutory Application between:

GCWIHABA RESOURCES (PTY) LTD	Applicant
And	
MINISTER OF MINERALS AND ENERGY	First Respondent
ATTORNEY GENERAL	Second Respondent

In re:

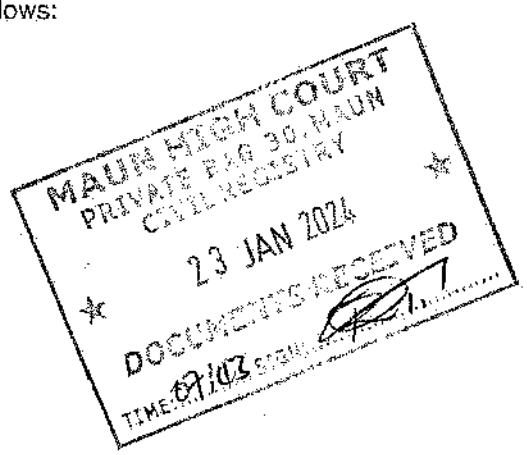
GCWIHABA RESOURCES (PTY) LTD	Applicant
And	
MINISTER OF MINERALS AND ENERGY	First Respondent
ATTORNEY GENERAL	Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

QUINTAN MADUWANE

Do hereby take oath and state as follows:



JC QM

1. I am an adult male of full legal capacity residing in Gaborone. I am an admitted attorney of the Courts of Botswana and I practice out of the firm of Messrs Collins Chilisa Consultants.

2. I depose to this affidavit on behalf of Messrs Collins Chilisa Consultants, the Applicant's attorneys of record and I am duly authorised to do so by virtue of my position as Associate. The facts contained in this affidavit fall within my own personal knowledge and belief by virtue of my control of documents relating to the issues herein and my involvement in the matter, in particular being the attorney that engaged with Mr. Begane of the Attorney General's Chambers. Save where the contrary appears from the context, the contents herein are to the best of my knowledge and belief, both true and correct.

3. I have read the Founding Affidavit of **MOAGI NTUKUNUNU** and I confirm the contents therein in as far as they relate to the firm of Messrs Collins Chilisa Consultants, being the Applicant's attorneys of record, in particular what has been shared with the Applicant in relation to the Respondents position.

4. In particular, I wish to confirm all correspondences alluded to in the Founding Affidavit by **MOAGI NTUKUNUNU**, as between Mr. Begane and I.

QUINTAN MADUWANE

THUS SWORN TO AND SIGNED BEFORE ME AT GABORONE ON THIS 22nd DAY OF JANUARY 2024, AT 10:30 HOURS, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH WHICH HE CONSIDERS BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATHS

VICTOR CHILEMBWE
ATTORNEY - AT - LAW
COMMISSIONER OF OATHS

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT MAUN

Case No: MAHMN -000075 -22

In the Interlocutory Application between:

GCWIHABA RESOURCES (PTY) LTD	Applicant
And	
MINISTER OF MINERALS AND ENERGY	First Respondent
ATTORNEY GENERAL	Second Respondent

In re:

GCWIHABA RESOURCES (PTY) LTD	Applicant
And	
MINISTER OF MINERALS AND ENERGY	First Respondent
ATTORNEY GENERAL	Second Respondent

DRAFT ORDER

BEFORE THE HONOURABLE JUSTICE MARIPE at MAUN on this _____ day of _____2024.

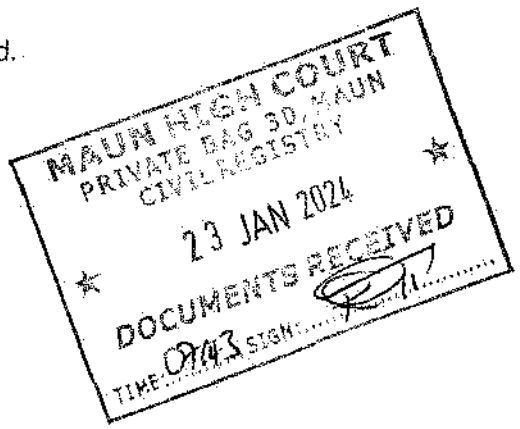
UPON HEARING:

Mr. Maduwane Q for the Applicant;

Mr/ Ms _____ for the Respondents

and having read the documents filed of record.

IT IS HEREBY ORDERED THAT:



1. the First Respondent is found to be in contempt of court by reason of his failure to comply with the judgment of this court dated 15 December 2023, in particular that he failed:

1.1. to renew, within 14 days of the judgment, the Applicant's license (020/2018); and

1.2. to align the effective dates of contiguous licenses PL 021-026/2018 with that of the renewed license.

2. A fine is hereby imposed on the First Respondent, at a rate of BWP _____ every day that the judgment remains unsatisfied;

3. A period of imprisonment of _____ days is hereby imposed on the First Respondent, suspended on the condition that the judgment is complied with, within 48 hours of this court order.

4. For avoidance of doubt, it is hereby clarified that the licenses to be issued by the First Respondent shall be the first two-year renewal across all licenses, effective from 01 April 2024; and

5. The Respondents shall bear the costs of this application on the attorney and own client scale.

BY ORDER OF COURT