REPORTABLE (40)

SEREPTA RESOURCES (PRIVATE) LIMITED
v
(1) ARISTON HOLDINGS (PRIVATE) LIMITED (2) THE MINING COMMISSIONER MASHONALAND WEST PROVINCE N.O (3) THE SECRETARY FOR MINES AND MINING DEVELOPMENT N.O (4) THE MINISTER OF MINES AND MINING DEVELOPMENT N.O (5) THE ENVIRONMENTAL MANAGEMENT AGENCY

SUPREME COURT OF ZIMBABWE
GUVAVA JA, MAKONI JA & MATHONSI JA
HARARE: 6 MARCH 2025

F. Murisi, for the appellant

G. R. J. Sithole with Ms *N. Zhou* and *C. Mawunga*, for the first respondent

C. Chitekuteku, for the second, third and fourth respondents

No appearance for the fifth respondent

MATHONSI JA: This is an appeal against the whole judgment of the High Court sitting at Chinhoyi (the court *a quo*) handed down on 29 November 2024 which granted a declaratory order and consequential relief in favour of the first respondent. It declared a raft of certificates of registration of mining claims in the name of the appellant null and void and ordered their immediate cancellation and removal from the register of the Mining Commissioner for Mashonaland West Province, the second respondent herein. It also ordered the appellant and the second respondent to pay the costs of suit.

After hearing submissions from the parties, the Court dismissed the appeal with no order as to costs. It indicated that the reasons for the order would be availed in due course. What follows are those reasons.

THE FACTS

The appellant and the first respondent are incorporations in Zimbabwe with divergent business interests which have come on a collision course at a farm known as Kent Estate located in Norton, Mashonaland West Province. The appellant is into mining and set its sights on conducting mining operations at Kent Estate having registered 12 Gold Reef Claims at the location which it is determined to exploit at all costs.

The first respondent on the other hand is an agricultural enterprise operating in diverse markets including export market. It prides itself with growing tea, macadamia nuts, horticultural crops and deciduous fruits. Listed on the Zimbabwe Stock Exchange, the first respondent also diversifies into fish farming, cattle ranching and poultry, all of which is also conducted at Kent Estate thereby setting the stage for a bruising miner versus farmer duel of intriguing proportions.

The rest of the respondents are State functionaries who, by virtue of their regulatory duties, have been caught in the web of what the court *a quo* described as the "perennial farmer-miner dispute." The first respondent was the first to arrive at the disputed piece of land having pitched up camp upon being issued with a letter dated 31 May 2013 written by the Minister of Lands and Rural Settlement, which handed over Kent Estate Farm to it "for institutional agricultural use."

Subsequently, the appellant registered with the mining authorities, the mining claims alluded to above. In due course, it set about putting up mining infrastructure for mining operations, triggering the legal wrangle which has now played out.

PROCEEDINGS BEFORE THE COURT *A QUO*

Riled by what it regarded as the intrusive tendencies of the appellant, the first respondent filed an application in the court *a quo* for a declaratory order in terms of s 14 of the High Court Act [*Chapter 7:06*] and consequential relief. The first respondent sought a declaration that the registration of the 12 mining claims located at Kent Estate Farm in the name of the appellant was null and void and of no force or effect by reason that it was done without first obtaining an environmental impact assessment certificate from the fifth respondent as required by law.

The first respondent also sought the consequential relief flowing from the declaration of nullity namely, the cancellation and removal from the register of mining claims of all the 12 claims on the pain of punitive costs. It made the point that it lawfully occupies the farm by virtue of a letter of handover issued to it by the responsible Minister and that it employs over two hundred employees at the farm for purposes of its agricultural endeavour.

The first respondent boasted that it has over 1 500 cattle, over 200 000 broiler chickens per cycle and has put 300 hectares of land under a maize crop. It has also had the farm reserved against prospecting and pegging in terms of s 35 of the Mines and Minerals Act [*Chapter 21:05*]. According to the first respondent the appellant forcibly took occupation of a portion of the farm and commenced mining operations by opening up a road network thereby destroying indigenous trees and the first respondent's pastures.

Having brought heavy machinery and equipment, so the first respondent claimed, the appellant constructed a number of buildings for use in its mining operations. It bemoaned the hazard to both the environment and its business posed by the appellant's activities especially as a result of the exploration works of the appellant. The first respondent asserted

that both the fifth respondent and the Forestry Commission have had to fine the appellant for its unsanctioned destruction of trees.

The first respondent made the case that the appellant embarked on mining activities without first obtaining an environmental impact certificate which is a pre-requisite in terms of s 97 of the Environmental Management Act [*Chapter 20:27*]. It craved the grant of the relief aforesaid.

In opposing the application, the appellant brushed aside the claim that the farm was the subject of a provisional reservation against prospecting for the reason that the mining claims were registered on 14 February 2019 long before the provisional reservation was made on 13 July 2022. According to the appellant, at the time of pegging and the subsequent registration of the claims, the area was not protected at all. I mention in passing that the first respondent made it very clear that the basis of its application was the absence of an environmental impact certificate and not the reservation against prospecting and pegging. Nothing more needs to be said about that especially as the court *a quo* found that reliance on the reservation against prospecting and pegging had been abandoned by the first respondent in its answering affidavit.

Regarding the first respondent's claim of having a right over the farm, the appellant contested such right on the ground that the first respondent's hand over letter issued by the Minister of Lands and Rural Settlement did not confer any rights because it is not an offer letter. In the appellant's view, the letter in question could not be sued on, meaning that the first respondent lacked the *locus standi* to sue.

On the absence of a prior environmental impact certificate issued by the fifth respondent, the appellant's case was that the law sets out the procedure for registration being

used by the mining authorities. It advanced the argument that in terms of that procedure, a certificate of registration of a mining claim is always obtained before the issuance of an environmental impact certificate, a clear egg and chicken situation.

The appellant refuted that ss 97 and 100 of the Environmental Management Act make it a requirement that an environmental impact certificate should be obtained before the issuance of a certificate of registration of a mining claim. It insisted that it was entitled to register its claims, build infrastructure and housing for camping while awaiting the issuance of an impact certificate.

I might as well add here that subsequent to the filing of the application for a declaratory order by the first respondent, the fifth respondent issued an environmental impact certificate to the appellant. The court *a quo* found that the belated filing of the environmental impact certificate was irregular and that its presence did not affect the case before it given that the appellant had applied for and was issued with certificates of registration prior to applying for and being issued with an environmental impact certificate.

Regarding the authorities coming out of the court *a quo* to the effect that an environmental impact certificate is a pre-requisite for the conduct of any mining activity, the appellant's case was that those cases were wrongly decided. It took the view that the court *a quo* should not follow them as doing so "will create chaos", a bait which the court *a quo* refused to take.

The court *a quo* found that the letter authorising the first respondent to occupy the farm was issued by the acquiring authority, the Minister of Lands and Rural Settlement, as provided for in s 2 of the Gazetted Land (Consequential Provisions) Act. It found that the letter

met the requirements of an offer letter and as such the first respondent had *locus standi* to sue on it. It also found that the first respondent had a right and interest in the subject matter which it was entitled to protect.

On the question whether the environmental impact certificate was a condition precedent to the issuance of a certificate of registration, the court *a quo* found that the Environmental Management Act and the Mines and Minerals Act should be read together. It reasoned that the acquisition of a certificate of registration is not an event but a process and that the certificate of registration confers title over the mining block.

After interrogating the procedure for registration set out in the Mines and Minerals Act, the court *a quo* found that the Environmental Management Act was promulgated to provide for the sustainable management of natural resources and *inter alia* the protection of the environment. In the court *a quo's* view, the objective of the latter Act is clearly to regulate activities that impact on the environment and related activities.

The court *a quo* reasoned at pp 6-7 of its judgment:

> "An absurdity truly arises to grant title then seek to regulate the holder. It must be EIA first then certificate of registration is granted. So many questions arise, what if a certificate of registration is granted and the EIA certificate is not issued? What happens to the title? Will the issuing authority withdraw it? …
>
> It is not correct that issuance of certificate of registration is administrative. It is an administrative act culminating from activities that impact on the environment. Therefore, an EIA certificate is a condition precedent to the issuing of a certificate of registration. The fifth respondent missed the point in simply interpreting s 97 (1) and the terms 'implement' and 'project' in isolation. They must be interpreted in their context and in consideration of the objectives of the Act. The Act's main objective (is) to provide sustainable management of the environment and natural resources. The context admits of no other interpretation except that the project implementation and all acts incidental to it must be conducted after an assessment has been made and an EIA issued. This includes acquisition of title….
>
> I therefore come to the same decision as pronounced in earlier judgments. An EIA certificate is a condition precedent to the issuing of a certificate of registration."

Having come to that conclusion, the court *a quo* granted the declaratory relief sought by the first respondent and ordered the cancellation of the offending registration certificates.

PROCEEDINGS BEFORE THIS COURT

The appellant's dissatisfaction with the judgment of the court *a quo* yielded the present appeal anchored on four grounds of appeal, to wit:

"1.The court *a quo* erred in law in making a finding that an environmental impact assessment certificate (EIA) is a pre-condition to the issuance of a certificate of registration of a mining block, which pre-condition is not supported by proper interpretation of s 3 (2) as read with s 97 of the Environmental Management Act [*Chapter 20:07*].

2. The court *a quo* erred in law and in fact in declaring as null and void the appellant's certificate (*sic*) of registration numbers 18579 and 18520 – 18529 when in actual (*sic*) cancellation of the certificates is not a remedy provided in the Environmental Management Act [*Chapter 20:07*].

3. The court *a quo* erred in law and in fact in making a finding that the first respondent had a clear right to protect when in actual fact the letter relied upon by the first respondent as an offer letter and the genesis of its clear right was not an offer letter as contemplated by the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*].

4. Alternatively, the court *a quo* erred in fact and in law in ignoring the fact that an EIA certificate had already been issued to the appellant by the time the matter was heard which had the effect of removing the illegality complained of by the first respondent."

It is on the strength of the foregoing grounds of appeal that the appellant seeks the following relief:

"1. The appeal be allowed with costs; and

2. The order of the court *a quo* be set aside and the following be substituted:-
   i. That the applicant's application for a declaratory order and consequential relief be and is hereby dismissed with costs."

The four grounds of appeal raise essentially 3 issues for determination in this appeal. They are:

1. Whether or not the first respondent had a right to the area in respect of which the appellant registered mining claims.
2. Whether or not an environmental impact assessment certificate is a pre-requisite for the registration of mining claims; and
3. Whether the belated issuance of an environmental impact certificate to the appellant had an effect on the dispute between the parties.

I must point out that the second, third and fourth respondents did not participate in the proceedings *a quo* even though they had filed heads of argument. Notwithstanding that non – participation in the court *a quo*, they filed detailed heads of argument in this Court. At the hearing of the appeal, the Court desired to know from Mr *Chitekuteku*, who appeared for the second, third and fourth respondents, what the nature of that participation was given that they filed heads of argument supporting the appellant's appeal.

The second, third and fourth respondents could not support the appellant's appeal given that they did not file an appeal themselves. That is trite. Mr *Chitekuteku* was quick to capitulate pointing out that he would not motivate the heads of argument filed. As a result, the heads of argument, having been improperly before the Court, were expunged from the record.

Mr *Murisi* for the appellant commenced his address to the court by abandoning ground number 3 relating to the alleged lack of a right on the part of the first respondent to seek declaratory relief on the basis of the letter issued to it by the acquiring authority. With ground number 3 abandoned, the first issue adverted to above fell away.

Counsel then motivated the appeal on the remaining 3 grounds of appeal but did not advance oral arguments on the alternative ground of appeal relating to the issuance of the environmental impact certificate after the making of the application for declaratory relief. However, in his heads of argument he made submissions on that aspect as well. Mr *Murisi* submitted that the environmental impact assessment certificate is not a pre – requisite for the registration of a mining claim. In his view, s 45 of the Mines and Minerals Act [*Chapter 21:05*] sets out all the requirements for the registration of a mining block and once those requirements have been satisfied, a mining claim ought to be registered. Developing the argument further counsel submitted that, to the extent that s 45 does not provide for the production of an environmental impact assessment certificate as one of the requirements for registration, it must follow that its issuance is not a prerequisite for registration.

On the provisions of s 97 of the Environmental Management Act, Mr *Murisi* sought to argue that its reference to "projects" for which an environmental impact assessment certificate is required must be read to mean that a person should first obtain a certificate of registration of the mining claim, then the holder of such mining claim can then approach the Environmental Management Authority (EMA) for a certificate before implementing the mining project. The same reasoning was adopted by counsel for the appellant in respect of s 100 of the Environmental Management Act which requires the Director – General to have regard to the environmental assessment report before approving a project.

It was strongly submitted on behalf of the appellant that interpreting the provisions to mean that the issuance of an environmental impact assessment certificate was a pre – requisite would lead to an absurdity not contemplated by the legislature. This was so, according to counsel, because a miner should first prospect for minerals and then register a claim before an environmental assessment can be undertaken. As to what would happen to a registered mining claim and the attendant rights of the holder in the event of EMA refusing to approve the activity or to issue a certificate, counsel did not say.

On the judgments of the court *a quo* which have made the pronouncement that an environmental impact assessment certificate should be obtained prior to registration of a mining claim, Mr *Murisi* submitted that those judgments were wrongly decided and ought to be vacated because they "upset the normal order of things" and present an "unpractical situation."

Mr *Murisi* submitted further that the court *a quo* erred in granting the consequential relief of cancellation of the registration certificates because such a remedy is not provided for in the law. In his view, the implementation of a mining project without the EMA certificate attracts prescribed penalties but not cancellation of a certificate.

Regarding the environmental impact assessment certificate which was belatedly filed in the court *a quo,* Mr *Murisi* submitted that considering that the remedy for being issued with certificates of registration without an EIA certificate is not cancellation of the certificates but "regularization," once the appellant was belatedly issued with it, the registration had been regularized. In his view that is the end of the matter.

Per contra, Mr *Sithole*, who appeared for the first respondent, approached the matter from the premise that the Mines and Minerals Act and the Environmental Management Act are both statutes regulating mining activities in this country which ought to be read together. He submitted that, once it is accepted that the latter statute is an additional statute to the former, it must follow that s 97 has added more requirements for registration of mining claims to those already contained in s 45 of the Mines and Minerals Act. To that extent, so counsel argued, the issuance of an EIA certificate is a pre – requisite to the registration of a mining claim.

Mr *Sithole* asserted that interpreting the two statutes as requiring that an EIA certificate be secured prior to registration harmonizes the two Acts of Parliament. Accordingly, he submitted that the judgment of the court *a quo* cannot be impugned.

Counsel took the view that, once it is found that the appellant registered its mining block without complying with the requirements of the law, it follows that the registration certificates which are the product of a nullity cannot stand because a nullity begets a nullity. They stood to be cancelled as the court *a quo* did. Mr *Sithole* concluded by making the point that the irregularly registered mining claims could not be regularized retrospectively by the subsequent issuance of the certificate.

THE LAW

The starting point is to observe that both the Mines and Minerals Act and the Environmental Management Act are laws regulating mining activities in this jurisdiction. Historically, although it is a fact that authorities have been making efforts to repeal the Mines and Mineral Act, it also remains fact that this primary legislation regulating mining activities in the country came into effect on 1 January 1961 and was last amended in January 2014. It

governs the exploration, mining and processing of minerals while setting out the rights and obligations of both mining players and the government.

On the other hand, the Environmental Management Act was passed in 2002 but only operationalized on 17 March 2003 through S1 103/2003. It is this piece of legislation which ensures that mining operations comply with environmental protection standards thereby promoting sustainable mining practices. This is so in order to minimize the impact of mining operations on land, water and biodiversity.

Although the provisions of the two statutes governing mining activities appear to be fairly straight forward, let the point be made at this early stage that it is settled that the language of every enactment must be construed with every other statute which it does not expressly modify or repeal. The law does not allow the revocation or alteration of a statute by construction when the words may have their proper operation without it. However, if, for some reason, the provisions of a later statute are so inconsistent with or repugnant to those of an earlier one, then the two cannot exist together. The earlier statute will stand impliedly repealed by the later statute. See the remarks of WATERMEYER CJ in *Kent N.O v South African Railways and Anor* 1946 AD 396 which were quoted with approval by this Court in *Tamanikwa &Ors* v *Zimdef* 2013 (2) ZLR 46 (S).

In fact, in that case the Court meticulously discussed the legal position where provisions in two Acts of Parliament appear to be in conflict with one another stating that, in interpreting such statutes, the Court is required, first and foremost, to interpret them in order to give effect to both. If, however, that is not possible, then the later Act prevails over the previous one because, in enacting it, the legislature is presumed to have been aware of the previous provision.

The Court stated at 54 F-G of the *Tamanikwa* judgement:

"There is a general rule of statutory interpretation that where two statutes are in conflict with each other, the later statute, by virtue of the principle of *lex posterior derogate priori,* is deemed to be the superior one on the basis of implied repeal. This is because it is presumed that when the legislature passes the latter Act it is presumed to have knowledge of the earlier Act.

In *Heavy Transport and Plant Hire (Pty) Ltd & Ors* v *Minister of Transport Affairs & Ors* 1985 (2) SA 597 (W) at 604 B-D**,** NESTADT J stated:

> 'The principle is that statutes must be read together and the later one must not be so construed as to repeal the provisions of an earlier one or to take away rights conferred by an earlier one unless the later statute expressly alters the provisions of the earlier one in that respect, or such alteration is a necessary inference from the terms of the later statute. The inference must be a necessary one and not merely a possible one …'"

In the present case, the earlier statute is the Mines and Minerals Act, having come into effect almost 4 decades prior to the Environment Management Act, which only became law in 2003. The earlier Act provides in s 45:

"1. The holder of any mining location upon which a registration notice has been posted may, on application to the mining commissioner within a period of thirty – one days after the date of posting such registration notice, and on payment of the prescribed fee, obtain a certificate of registration.

2. On every such application the applicant shall lodge the following with the mining commissioner –
   (a) the prospecting licence and the power of attorney or other documents, if any, under and by virtue of which the block was located,
   (b) a copy of the prospecting notice;
   (c) in the case of a base mineral block, a copy of the discovery notice;
   (d) a copy of the registration notice;
   (e) a plan in duplicate based on a map issued under the authority of the State and of a scale of not less than 1:25 000, sufficiently identifying the position of the block to be registered, the position and lettering of the pegs, including the pegs marked 'DP', and the position of the prospecting notice;
   (f) a certificate under his hand stating that the said copies of such notices are true copies and that all facts stated there in are true and correctly;
   (g) if the block is pegged of ground for which the consent of the owner is required, the written consent of the owner or some person duly authorized there to by the owner."

From the foregoing requirements for registration, there is no mention of an EIA certificate. But the matter does not end there because the Environmental Management Act, among a litany of other statutes, also regulate mining activities. It is a statute that was enacted to ensure, as already said, that mining operations adhere to environmental protection standards and promote sustainable mining practices. It provides in s 3:

> "(1) Except where it is expressly provided to the contrary, this Act shall be construed **as being in addition to** and not in substitution for any other law which is not in conflict or inconsistent with this Act.
>
> (2) **If any other law is in conflict with this Act, this Act shall prevail."**
>
> (My emphasis).

This provision is fairly simple and straight forward and by virtue of the basic cannons of statutory interpretation, it must be given its grammatical and ordinary meaning as such meaning does not lead to an absurdity or repugnancy or inconsistency with the rest of the provisions. See *Chegutu Municipality* v *Manyara* 1996 (1) ZLR 262(S) at 264 D-E*; Madoda* v *Tanganda Tea Company Ltd* 1999 (1) ZLR 374 (S), *S* v *Nottingham Estates* (*Pvt) Ltd* 1995 (1) ZLR 253 (S).

The grammatical and ordinary meaning of s 3 is that the provisions of the Environmental Management Act are in addition to other existing laws regulating registration of mining claims including s 45 of the Mines and Minerals Act. It must follow therefore that the provisions of s 97 and indeed s 100 of the former Act have added more requirements for registration to those listed in s 45 of the latter Act.

In terms of s 97 of the Environmental Management Act:

> "(1) The projects listed in the First Schedule **are projects which must not be implemented unless in each case**, subject to this part-

(a) the Director General has issued a certificate in respect of the project in term of s 100, following the submission of an environmental impact assessment report in terms of s 99; and
(b) the certificate remains valid; and
(c) any conditions imposed by the Director-General in regard to the issue of the certificate are complied with.

(2) …

(3) …

(4) …

(5) **A licensing authority shall not issue a licence under any enactment with respect to a project referred to in subsection (1) unless the Director-General has issued a certificate in respect of the project in terms of section one hundred or the project has been deemed to have been approved in terms of subsection (1) of section one hundred**." (My emphasis).

What should be contained in an environmental impact assessment report is listed in s 99. Generally it is concerned with the question whether the environment is likely to be affected by the project. Considerations of the report and an issuance of the certificate itself are provided for in s 100. Projects requiring an environmental impact assessment certificate are listed in the First Schedule and include item 7 which reads:

"Mining and quarrying-

(a) Mineral prospecting;
(b) Mineral Mining;
(c) Ore processing and concentrating;
(d) Quarrying."

These provisions were subjected to scrutiny by the court *a quo* in the case of *Debshan (Pvt) Limited* v *The Provincial Mining Director, Matebeleland South Province & Ors* HB 11/17 where the court *a quo* remarked that the provisions of s 45 (2) of the Mines and Minerals Act are supplemented by those of the Environmental Management Act and that there was no conflict between the two statutes. It concluded at p. 6 of the judgment that:

> "Ms *Hove* was therefore wrong to say that the environmental impact assessment certificate is not a pre-requisite for the grant of a prospecting licence or indeed a mining licence. The foregoing provisions clearly make it a requirement which the first and

> second respondents are enjoined to enforce. They cannot limit the scope of an application made to them in terms of the Mines and Minerals Act to the provisions of that Act only. The other Act has added the pre-requisite of an environmental impact assessment certificate before mineral prospecting, mineral mining, or processing and concentrating and indeed quarrying can be undertaken."

The *Debshan* judgment was followed in *Sandawana Mines (Pvt) Limited* v *The Mining Commissioner - Midlands Province* HH 539/23 where at pp 13-14 the court *a quo* stated:

> "An EIAC issued by the fourth respondent is a condition precedent to any mineral prospecting, mineral mining, ore processing and concentrating among other kindred mining operations…. It is wrong for anyone to assume that the EIAC is not a *sine qua non* for the granting of a prospecting licence or indeed a mining licence. Section 97 puts that beyond doubt. It is not possible for anyone to acquire mining title without first procuring an EIAC from the fourth respondent. It must be clear to all officials charged with the administration of the Act that whether they deem it tedious or not, the law requires the provisions of the Act to be read together with the provisions of the EMA Act which speak to mining operations."

Those pronouncements were followed by the court *a quo* in determining the dispute between the parties.

SYNTHESIS

The appellant`s case is that an environmental impact assessment certificate is not a pre-requisite for the procurement of a certificate of registration of a mining claim and that the court *a quo* erred in finding that it is. What is entailed by such a certificate is contained in s 99 of the Environmental Management Act. It specifies that an assessment report should, *inter alia,* give a detailed description of the project and the activities to be undertaken in implementing it, state the reasons for selecting the proposed site, a detailed description of the likely impact on the environment, proposed measures for eliminating or mitigating anticipated adverse effects on the environment and whether the environment of any other country is likely to be affected.

Clearly therefore, the report informs the Director- General whether to issue the certificate or not depending on the project`s impact on the environment. Should the Director-General elect not to issue the certificate, no mining operations can lawfully be carried out on the proposed area. I have already stated that the Environmental Management Act was introduced to ensure that mining operations comply with environmental regulations. This is in order to minimize their impact on land, water and biodiversity. It was also put in place to cure the long-standing conflict between miners and farmers arising from damage to land as a result of mining operations on farmland. To that extent, environmental assessments are mandatory, before one ventures into mining activities.

A close look at s 99 reveals that the process of assessment of the impact on the environmental is a comprehensive study that evaluates the potential environmental, social and economic impacts of the proposed mining project. Prior to the introduction of the legislation on environmental management, the Mines and Minerals Act allowed the miner to obtain registration of a claim without regard whatsoever to the mining activity`s impact on the environment with far -reaching consequences.

It occurs to me that the mischief sought to be addressed by introducing the legislation on environmental management was the adverse effects of mining activities on the environment. It is for that reason that more requirements for registration of mining claims were introduced by s 97 of the Environmental Management Act in addition to already existing requirements set out in s 45 of the Mines and Minerals Act.

The additional requirements, brought in to complement the already existing legislation make it a requirement that before any mining rights are granted, the miner must commission an environmental impact assessment which includes an evaluation of how the

project might impact the air and water quality, land use, biodiversity and natural resources. There is also the aspect of social impact assessment, that is, how the mining activity will affect the local communities, including any potential disruption of lifestyles and any healthy risk. The economic impact naturally relates to any financial benefits to be derived from the project like employment opportunities and building infrastructure.

Considering that the Environmental Management Act, was introduced several years after the Mines and Minerals Act was operational, by dint of the principle of *lex posterior derogate priori*, the former Act is deemed to be the superior one on the basis of implied repeal. The legislature is presumed to have had knowledge of the limitations of the mining legislation and deliberately added to it. See *Tamanikwa supra*.

In any event, there is no conflict at all in the two pieces of legislation which must simply be read together in a complimentary manner. See *Heavy Transport & Plant Hire (Pty) Limited & Ors, supra.* When one adopts that approach, it becomes clear that, to the list of requirements for registration set out in s 45 of the Mines and Minerals Act, must be added the requirement for an environmental impact assessment certificate provided for in s 97 as read with the First Schedule of the Environmental Management Act. It makes the issuance of that certificate a pre- requisite to the registration of a mining claim.

Indeed, such a construction of the provisions only makes sense. For a start, the law regulates mining operations to ensure protection of the environment. In light of the fact that a registration certificate confers rights to the holder, including rights to conduct mining operations on the block, it would not make sense to confer those rights by registration and then go on to take them away by the process of impact assessment.

It would amount to attempting to close the gate long after the horse has bolted. The attempt by the mining authorities to support the appeal only shows that the requirements of the law may have created an inconvenience to their day to day operations. However, that does not mean that the law does not make it a requirement for an environmental assessment to be carried out. It is not the function of courts of law to twist the law in order to create a convenient situation for functionaries. They should lobby for amendments to the law instead of petitioning courts to usurp legislative functions.

I come to the inescapable conclusion that the court *a quo* cannot be faulted for finding that the assessment certificate must be obtained first before registration of a mining claim. Having come to that conclusion, it followed that the certificates of registration obtained in breach of the law were a nullity and therefore susceptible to cancellation. It is a basic principle of law that anything done contrary to the dictates of the law is a nullity. See *Macfoy v United Africa Co Ltd* [1961] 3 All ER 1169 (PC) at 1172 and *Schierhout v Minister of Justice* 1926 AD 99 at 109.

DISPOSITION

The introduction of the Environmental Management Act as an addition to existing laws regulating mining operations in this country means that it must be read together with the Mines and Minerals Act. It complements the provisions of the latter, including the requirements for registration of mining claims.

Having added the issuance of an environmental impact certificate to the list of requirements before registration, it follows that its acquisition is a pre-requisite for registration. Any registration done without it is a nullity and of no force or effect. It ought to be cancelled.

The attempt by counsel for the appellant to suggest that s 97 of the Environmental Management Act should be interpreted to mean that it only applies to the implementation of a mining project after registration is a red herring. The appeal is demonstrably without merit. It ought to fail.

On the question of costs, Mr *Sithole* urged the court to dismiss the appeal with costs on the adverse scale of legal practitioner and client because the appellant has embarked on an "unreasonable and objectionable behaviour," thereby putting the first respondent to inconvenience and unwarranted expense. The court`s view is that the appellant was entitled to test the correctness of the judgments of the court *a quo*. This Court had previously not pronounced itself on the subject. No case has been made for any costs, let alone punitive ones.

It is for the foregoing reasons that the appeal was dismissed with no order as to costs.

GUVAVA JA : I agree

MAKONI JA : I agree

Messrs Murisi & Associates, appellant's legal practitioners

Maunga Maanda & Associates. 1st respondent`s legal practitioners

Civil Division of the Attorney General, 2nd, 3rd & 4th respondents' legal practitioners