



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 29 November 2017
STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Pan African Mineral Development Company (Pty) Ltd & others v Aquila Steel (S Africa) (Pty) Ltd (179/2017) [2017] ZASCA # (# November 2017)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Gauteng Division, Pretoria (High Court) and dismissed the cross appeal with costs. At the crux of the appeal was whether the Department of Mineral Resources is permitted to grant rights to two different entities in respect of the same land and minerals.

The facts of the matter were: On 19 April 2005 Ziza Limited (ZIZA), the second appellant, submitted an application in terms of s 16 of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) to the sixth appellant, the Regional Manager of the Northern Cape Region (the RM) of the then Department of Minerals and Energy (now Department of Mineral Resources (the DMR)) for a prospecting right in respect of its Kuruman properties. On 17 August 2005 the RM confirmed in writing that ZIZA's application for a prospecting right had been accepted. Despite this, on 2 May 2006 the RM accepted a prospecting right application in respect of certain overlapping properties from the respondent, Aquila Steel (S Africa) (Pty) Ltd (Aquila) and in October of that year the fifth appellant, the Deputy Director General (the DDG): Mineral Regulation of the DMR issued a letter of grant to Aquila. Nonetheless, on 26 February 2008 the DDG granted a prospecting right over the Kuruman properties to ZIZA.

On 29 October 2013 Aquila launched an appeal under s 96(1) of the MPRDA against the decision of the DMR to grant ZIZA a prospecting right which was opposed by the first

appellant, Pan African Mineral Development Company (Pty) Limited (PAMDC) – a company which was incorporated for the purpose of taking over the prospecting and possible mining activities of ZIZA in South Africa. The Minister of Mineral Resources (the Minister) dismissed Aquila's appeal and upheld PAMDC's cross appeal in which ZIZA and PAMDC challenged the acceptance and grant of Aquila's application for a prospecting right.

Following the failure of its internal appeal, Aquila applied to the high court under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) to review and set aside the decision of the Minister to dismiss its appeal and uphold PAMDC's cross appeal. It further sought to substitute the Minister's decisions on the internal appeals, as well as his decision to refuse the Aquila mining right application, with a decision upholding that appeal and the granting of a mining right. The high court upheld the review and granted the substitution sought. It agreed with Aquila that the ZIZA prospecting right had lapsed in November 2010 when ZIZA was deregistered, but declined to grant declaratory relief to that effect.

With the leave of the high court, ZIZA and PAMDC appealed to the Supreme Court of Appeal against certain aspects of the orders of the high court, whilst the Minister, the DG, the DDG, and the RM appealed the whole of the high court's judgment and order. Aquila conditionally cross-appealed the high court's refusal to grant it declaratory relief that ZIZA's prospecting right lapsed with effect from 9 November 2010, upon deregistration.

Interpreting s16 read with Item 8 of Schedule 2 of the MPRDA the majority of the Supreme Court of Appeal held that the RM is precluded from accepting or doing anything with a later application until an existing application has been decided. The court reasoned that once the holder of an unused old order right submits an application within the one year exclusivity period, both the unused old order right and the exclusivity which it confers remain extant until the application is either granted and dealt with or refused in terms of the MPRDA. Where the application is made but neither granted nor refused the unused old order right and its exclusivity period endure and that precludes the acceptance and processing of the later application. In respect of the substitution orders, the majority held that the high court erred in setting the Minister's decisions aside and granting Aquila substitutionary relief. Moreover, it dismissed Aquila's conditional cross appeal.