



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 06 February 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Modikwa Platinum Mine, an unincorporated joint venture between Rustenburg Platinum Mines Limited and Arm Mining Consortium Limited v Nkwe Platinum Limited and Others (1333/2021) [2023] ZASCA 08 (06 February 2023)

The Supreme Court of Appeal (SCA) dismissed with costs, including those of two counsel, an appeal by the appellant, Modikwa Platinum Mine (Modikwa), an unincorporated joint venture between Rustenburg Platinum Mines (Pty) Limited (RPM) and Arm Mining Consortium Limited (ARM MC), against the judgment of the Limpopo Division of the High Court, Polokwane (the court *a quo*).

The main issue in the appeal was whether the court *a quo* correctly dismissed an application by Modikwa against the first respondent, Nkwe Platinum Limited (Nkwe), and the second respondent, Genorah Resources (Pty) Limited (Genorah), in which, inter alia, the following relief was sought: a mandament van spolie ordering Nkwe and Genorah to restore possession to Modikwa of the spoliated area, being the Farm Maandagshoek 254 KT (Maandagshoek).

The background facts of the matter were as follows. The State-owned farms in Limpopo Province known as Maandagshoek and Garatouw that in part share a common boundary. The State had granted Modikwa, a platinum mining company, mining rights over Maandagshoek. Nkwe and Genorah were 'joint holders' of a mining right in undivided shares in respect of several farms, including that of a farm known as the Remaining Extent of the farm Garatouw 282 KT (Garatouw), which was issued by the Minister of Mineral Resources and Energy (the fifth respondent). By reason of the locality and available geological data, for Nkwe and Genorah to exercise their mining right, they had built infrastructure on Maandagshoek. To this end, Nkwe and Genorah sought and obtained the requisite permission from the authorities to build the necessary infrastructure on Maandagshoek, which was to be built a considerable distance away from the area where Modikwa was exercising its mining rights.

The SCA found that since the matter was brought in motion proceedings and there were clearly disputes of fact, the *Plascon-Evans* rule applied. In this regard, the SCA held that, in this case, it could not be said that a court would be justified in rejecting the version advanced in Nkwe's answering affidavit merely on the papers. It followed that the application had to fail and the court *a quo* could not be faulted for dismissing the application.

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