



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 25 May 2022
STATUS Immediate

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

Limpopo Economic Development Agency v Klopper NO and Others (982/2020)
[2022] ZASCA 73
(25 May 2022)

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today, in a majority judgment, dismissed the appeal of the Limpopo Economic Development Agency (LEDA) against the business rescue practitioners (BRPs) of Dilokong Chrome Mine (Pty) Ltd (DCM) and ASA Metals (Pty) Ltd (ASA), as well as Cheetah Chrome South Africa (Pty) Ltd (Cheetah). The minority judgment would have upheld LEDA's appeal.

LEDA held 40 percent, and Eastern Asia Metal Investment Co Ltd (EAMI) held 60 percent of the shares in ASA. It, in turn, was the sole shareholder in DCM. At all material times, both DCM and ASA were under business rescue. DCM's BRPs decided to sell DCM's mining right. Cheetah was the highest bidder. LEDA sought to stop the sale. It did so by applying inter alia for a declaratory order that it held a 40 percent stake in DCM's mining right and for an interdict to restrain DCM's BRPs from disposing of DCM's mining right without LEDA's consent. In the high court, LEDA's application was dismissed with costs.

The central issue in the appeal was whether a clause in DCM's mining right granted LEDA a 40 percent stake in DCM's mining right. The background to this clause was that LEDA and EAMI had concluded a shareholders agreement, in relation to ASA, in terms of which LEDA was to identify a BEE shareholder to whom it would sell most of its shares. It had failed to identify the new shareholder. When the Minister of Mineral Resources converted DCM's old order mining right into a mining right in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (the MPRDA), he referred to this shareholders agreement in clause 17 of the mining right.

Clause 17 stated that 'the Holder' was bound by the shareholders agreement 'entered into between the Holder/empowering partner' and that they would, within three months enter into a new agreement in which LEDA would hold a 40 percent stake in 'the right'. LEDA would however transfer that 40 percent stake to the State Owned Mining Company when the Minister gave it notice to do so.

The majority judgment held that the drafter of clause 17 had made a number of patent errors – such as that DCM had been a party to, and was bound by, the shareholders agreement. When these errors were recognised, the majority held, the intention of the drafter of the clause was to do no more than record that LEDA and EAMI had concluded a shareholders agreement in relation to ASA, and to provide for a new mechanism for LEDA to give up its shares to an empowerment shareholder, to replace the mechanism that had been a failure. Understood thus, clause 17 did not grant LEDA a 40 percent stake in DCM's mining right. Such an interpretation would have been premised on the Minister acting beyond his powers, as he had no power to arbitrarily grant a stake in a person's mining right to another. This would not be a sensible or a businesslike interpretation of clause 17.

The majority concluded that, as LEDA had not been granted a 40 percent stake of DCM's mining right, it had failed to establish an entitlement to any of the relief that it had claimed. The minority, on the other hand, held that when granting the mining right to DCM, the Minister had granted 40 percent of it to LEDA, and it thus would have been entitled to the relief that it had claimed.