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: 11 March 2026

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

Nkwe Platinum Limited and Another v Genorah Resources (Pty) Ltd and Others (921/2024) [2026] ZASCA 27 (11 March 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the Gauteng Division of the High Court, Pretoria (the high court) and replaced the orders of the high court with an order dismissing the application, with no order as to costs.

The dispute concerned a mining right held jointly by the first appellant, Nkwe Platinum Limited (Nkwe) and the first respondent, Genorah Resources (Pty) Ltd (Genorah). Nkwe held a 74 per cent interest in the Garatouw mining right, while Genorah held the remaining 26 per cent. The dispute arose after Nkwe, a company incorporated in Bermuda, concluded an amalgamation agreement with another Bermuda company in terms of the Bermuda Companies Act.

Genorah approached the high court seeking declaratory and interdictory relief. It contended that the amalgamation agreement resulted either in the transfer of Nkwe's interest in the Garatouw mining right or in a change of control of Nkwe, without the written consent of the Minister of Mineral Resources and Energy as required by s 11 of the Mineral and Petroleum Resources Development Act 28 of 2002 (the MPRDA). In the alternative, Genorah argued that the amalgamation resulted in Nkwe being deregistered within the meaning of s 56 of the MPRDA, which would cause Nkwe's undivided share in the mining right to lapse.

The high court accepted Genorah's arguments and granted orders declaring that the amalgamation constituted a transfer or change in control of the mining right without ministerial consent, that Nkwe had been deregistered for purposes of the MPRDA and that its share in the mining right had lapsed.

Nkwe appealed to the SCA. Before the appeal was heard, Nkwe and Genorah concluded a settlement agreement in terms of which Genorah withdrew its opposition to the appeal and the parties jointly sought an order setting aside the high court's orders. Because the high court's order included a judgment *in rem* affecting the status of the mining right, the SCA was required to consider the merits of the appeal before sanctioning the settlement agreement.

The SCA held that the amalgamation did not result in Nkwe's deregistration or cessation. Under Bermuda law, the amalgamating companies continue to exist as a single amalgamated entity and their assets become the assets of that entity by operation of law. Nkwe therefore remained in existence and its share in the mining right did not lapse under s 56 of the MPRDA.

The SCA further held that the amalgamation did not result in the transfer or disposal of Nkwe's interest in the mining right, nor did it result in a change in control of the company for purposes of s 11 of the

MPRDA. The majority shareholder of Nkwe retained control of the company both before and after the amalgamation. Consequently, the statutory provisions requiring ministerial consent were not triggered.

The SCA concluded that the high court had misinterpreted the legal effect of the amalgamation agreement and had therefore erred in granting the declaratory orders. The appeal was upheld and the high court's orders were set aside and replaced with an order dismissing the application with no order as to costs.

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