



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: 23 December 2021

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

Samancor Chrome Ltd v North West Chrome Mining (Pty) Ltd and Others (Case no 30/20) [2021] ZASCA 183 (23 December 2021)

Today the Supreme Court of Appeal (SCA) granted leave to appeal and upheld the appeal with costs, against the judgment of the North West Division of the High Court, Mahikeng (high court).

The applicant, Samancor Chrome Limited (Samancor) brought an urgent application in the high court for an order interdicting and restraining the first respondent, North West Chrome Mining (Pty) Ltd (Chrome Mining) and the second respondent, Monageng Family Mining Services (Pty) Ltd (Monageng) from conducting unlawful mining activities in an area where Samancor held a prospecting right. The high court dismissed the application with costs. It further refused Samancor's application for leave to appeal its judgment as well as its application for leave to introduce further evidence.

On 11 December 2017 Samancor was issued with a prospecting right in respect of the chrome mineral, in terms of s 17(1) of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). It was to endure for five years until 10 December 2022. The prospecting area was described in the prospecting right as the 'remaining extent of portion 5, 7, 8 and 9 of the farm Tweelaagte 175 JP', situated in North West, Mankwe. On 6 November 2018 it was discovered that the description in the prospecting right was incorrect because portion 3 of the farm Tweelaagte was never sub-divided into portions 5, 7, 8 and 9.

The respondents contended that Monageng held three mining permits over portion 3 of the farm Tweelaagte 175 JP which were issued on 8 June 2010. They also argued that the prospecting right was void ab initio owing to the non-registration of the respective portions and that the Minister of Mineral Resources (the Minister) ought to have been joined as a party to the proceedings. Samancor, however, contended that despite the error in the description there could be no real dispute as to the area forming the subject of its prospecting right. The high court found in favour of the respondents holding, inter alia, that Monageng held valid mining permits in respect of the area concerned; that Samancor's prospecting permit was issued on the basis of insufficient or incorrect information and that the Minister ought to have been joined in the application as he had started a process in terms of s 47 of the MPRDA which entitled him to cancel or suspend a prospecting right under certain circumstances.

The SCA held that the high court erred by approaching the matter on the basis that the validity of Samancor's prospecting right was an issue before it. It found that although there was an error in the text of the prospecting right, it was lawfully issued and remained in place until cancelled or set aside. The high court was not sitting as a court reviewing the decision to award the prospecting right, nor was it asked to make a declaratory order as to the sub-division of portion 3. The SCA further found that the respondents did not dispute that they were conducting mining activities in the prospecting area. There was evidence that the area in respect of which Monageng held mining permits was situated on a separate portion of portion 3 which did not in any way overlap with the prospecting right area. These permits were also limited to 1.5 hectares and had in any event expired. There was no evidence of their renewal.

The SCA further found that the Minister had no legal interest in the matter and that s 47 did not stand in Samancor's way as it was not an internal remedy available to private parties seeking to enforce their rights by way of an interdict. The Court however declined to receive further evidence sought to be introduced by Samancor on appeal (which was that the error in the prospecting right had been rectified) on the basis that exceptional circumstances had not been shown. Considering that Samancor had satisfied the requirements for an interdict against the respondents, the SCA granted leave to appeal and upheld the appeal.

-----oOo-----