



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

***Norgold v Minister of Mineral and Energy of the Republic of South Africa
(278/10) [2011] ZASCA 49 (30 March 2011)***

Media Statement

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Norgold Investments (Pty) Ltd (Norgold) against a judgment of the North Gauteng High Court (Phatudi J), dismissing an application by Norgold for an order reviewing and setting aside the decision of the Regional Manager, Mpumalanga of the Department of Minerals and Energy (fourth respondent) to convert an old order prospecting right of Rhodium Reefs Limited (Rhodium) over certain property into one in terms of item 6 of Schedule 2 of the Minerals and Petroleum Resources Development Act 28 of 2002 (the Act). Norgold also sought an order directing the Regional Manager, Limpopo to accept its application for a prospecting right over the property.

Rhodium had applied in April 2005 for a conversion of its existing prospecting permit in terms of item 6 of Schedule 2 of the Act. It was wrongly lodged in Mpumalanga as the property fell within the Limpopo, the region prescribed by the Act for the lodging of an application for conversion. According to Norgold the Act was peremptory in this regard. Norgold also contended that the Regional Manager, Mpumalanga lacked jurisdiction to grant the conversion as requested. Norgold had itself subsequently applied for a prospecting right in respect of the property in question and submitted that its application met all the prescribed requirements. It contended that it should have been granted the prospecting rights. Norgold's application for prospecting rights had been turned down on the bases that Rhodium already possessed prospecting rights over the property.

Rhodium, conceding that the application was lodged at the wrong regional office, argued that since it was the Minister or her delegatee who adjudicates applications for conversions the region in which the application is lodged is not crucial. The designated office is for administrative convenience and serves a practical purpose. Mr Dos Santos Rocha, The Deputy Director General: Mineral Regulation, in his affidavit stated that he, on the basis of a proper delegation of power, had made the decision to convert the old order prospecting right.

Dealing with the first question as to whether Rhodium's failure to lodge its application for conversion in the Limpopo regional office rendered the conversion ineffective the SCA, considered that since the application had reached the ultimate decision-maker Mr Dos Santos Rocha, an officer as defined in the Act, the purpose of the Act was served and that point had to be decided against Norgold.

The SCA then turned to the question of whether the untimely formal renewal of the prior permit precluded its conversion. All indications were that Rhodium met the requirements for renewal as prescribed by the act and that the late processing of its application could be laid at the door of department officials. Furthermore, a period longer than six years had passed without an application for review of that decision having been brought. The court held that the second point must also be decided against Norgold.

The last point to be decided was whether or not Rhodium had conducted prospecting operations on the property thereby meeting a necessary precondition for the conversion of the old order prospecting right. The court accepted Rhodium's assertions in this regard and held that the allegations to the contrary which were vague and unsubstantiated were made for the first time in replying and further affidavits and ought to have been struck out. The court held that Norgold's application in the court below had grown from a narrow focus to one that was dispersed and opportunistic.

Lastly, the court held that the Regional Manager, Limpopo had been correct in rejecting Norgold's application.

The appeal was dismissed with costs and the appellant was ordered to pay the costs of all the respondents, including, where applicable, the costs of two counsel.

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