

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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

Xstrata & others v SFF Association

The Supreme Court of Appeal upheld an appeal against the decision of the Gauteng South High Court, Johannesburg declaring that Tavistock Collieries, a subsidiary of Xstrata, would remain obliged to pay royalties to SFF Association in terms of a notarial mineral lease executed in June 2001 after the conversion of its rights under the lease to a mining right in terms of the Mineral and Petroleum Resources Development Act 28 of 2002. The issue in the case was whether the effect of converting an existing right to mine coal, under a mineral lease obliging the mining company to pay a royalty to the landowner, to a mining right under the Act is to terminate the obligation to pay the royalty.

The Court considered the changes to South Africa's mineral rights regime brought about by the Act and concluded that, insofar as the obligation to pay a royalty was concerned, but not necessarily other rights and obligations, the conversion of the rights under the lease to a mining right under the Act terminated the obligation. It held that the continuation of the obligation to pay a royalty, although not expressly terminated by the Act, was inconsistent with its provisions and the new minerals regime that it put in place. Accordingly the appeal was upheld and the declaratory order in favour of SFF Association was set aside.

