

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.

Minister of Minerals and Energy v Agri SA (CALS *amicus curiae*)

In a test case brought by Agri SA to determine whether the Minerals and Petroleum Development Act 28 of 2002 (the MPRDA) expropriated mineral rights in South Africa, the SCA today upheld an appeal by the Minister of Minerals and Energy against the judgment of the North Gauteng High Court, in which it held that there had been such an expropriation in respect of unused mineral rights to mine coal in Mpumalanga and ordered the payment of compensation.

The court held that it was necessary to examine the history of mineral rights in South Africa. When that was done it emerged that the right to mine, that is, the right to prospect for, mine and dispose of minerals, has always been regarded as a right vesting in the State and allocated by the State in accordance with the policies of the day. The MPRDA maintains this situation. The SCA held that as the right to mine has not been taken from holders of mineral rights, and the MPRDA afforded security of tenure by way of the transitional provisions, there has been no general expropriation of mineral rights in South Africa.

In extending the right to mine beyond those who traditionally held mineral rights to the community at large the monopoly previously enjoyed by the holders of mineral rights has been terminated. This

reflects government policy to transform the mining sector. It does not mean that there has been an expropriation of mineral rights. The court accepted the possibility of an argument that a right had been expropriated by the MPRDA in specific factual situations, but held that the contention advanced by Agri SA that there had been a general expropriation of mineral rights was unfounded. This was so whether one considered mineral rights generally or only unused mineral rights. It accordingly upheld the appeal and set aside the order for the payment of compensation made by the trial court.