



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

27 May 2015

STATUS: Immediate

**Minister of Mineral Resources v Mawetse (SA) Mining Corporation (Pty) Ltd
(20069/14)**

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

The Supreme Court of Appeal (the SCA) today dismissed with costs, including the costs of two counsel, an appeal by Dilokong Chrome Mine (Pty) Ltd (Dilokong) against a judgment of Masipa J in the Gauteng Division, Pretoria.

In that court Masipa J had granted the review application brought by Mawetse (SA) Mining Corporation (Pty) (Mawetse) and had set aside the decision of the fourth appellant, the Regional Manager, Limpopo Region of the Department of Mineral Resources (the Regional Manager) who had rejected Mawetse's application for a prospecting right for, amongst others, chrome ore (base metals), on the farm Driekop. Masipa J had ordered the remittal of Mawetse's application to the third appellant, the Deputy Director General: Mineral Development in the Department of Mineral Resources (the DDG). In addition, that court had granted a declaratory order that Dilokong did not hold a valid prospecting right as it had lapsed and, as a consequence, it no longer constituted a bar to the consideration of Mawetse's application for a prospecting right. Lastly, that court had also dismissed Dilokong's counter-application in which it sought to compel the Department of Mineral Resources (the DMR) to notarially execute the prospecting right that had been awarded to it. The basis for the aforementioned decisions by Masipa J was that, firstly, Dilokong had failed to comply with a suspensive condition attached to the grant of the prospecting right (namely to be BEE-compliant in accordance with section 2(d) of the Mineral and Petroleum Resources Development Act (the MPRDA)) and, secondly, that even if the prospecting right had been lawfully

awarded to Dilokong, the right had been lost due to Dilokong's unreasonable delay in exercising it and, as a result, the right has lapsed as it has expired.

The SCA endorsed these findings. It held that the Minister had, through her delegate, the DDG, lawfully requested Dilokong to comply with the section 2(d) BEE requirement. It held further that BEE is an important objective, as set out in the MPRDA and the Mining Charter and as enunciated by the Constitutional Court in a number of cases, to redress the historical inequalities in the mining industry. Dilokong's failure to comply with the BEE requirement had the effect, as Masipa J had correctly found, of barring Dilokong from implementing its right to prospect.

The SCA also agreed with Masipa J that the prospecting right has in any event lapsed because it has expired due to the effluxion of time, in terms of section 56(a) of the MPRDA. The SCA held that the period of the duration has to be computed from the date when a successful applicant receives notification of the prospecting right having been granted. In this regard the SCA overturned the decision of a Full Bench of the Northern Cape High Court in *Meepo v Kotze* 2008 (1) SA 104 (NC). The SCA held that *Meepo* was wrongly decided in respect of the following:

- (a) That no rights accrued to an applicant for a prospecting right at the time of an approval by the DDG of a recommendations before any terms or conditions in respect of the prospecting right, as well as the period of its validity, had been determined; and
- (b) That the legal nature of the granting of a prospecting right is contractual, inasmuch as the Minister, as the representative of the State as custodian of the country's mineral resources of the country, consensually agrees to grant to an applicant a limited real right to prospect. The prospecting right is only granted once the terms and conditions had been determined and communicated to an applicant for his acceptance, which only occurs when the notarial deed in respect of that prospecting right is executed.

With reference to South African and English authorities, the SCA explained why *Meepo v Kotze* was wrongly decided in the abovementioned respects. The SCA held that the granting of a prospecting right is not contractual in nature, but a unilateral administrative act by the Minister or her delegate in terms of their powers under the MPRDA. The SCA held further that a prospecting right is lawfully granted at the time when the DDG's decision is conveyed to a successful applicant. That must be distinguished, said the SCA, from the other two legal processes, namely the execution of a prospecting right (ie when it is notarially executed) and the time when the right comes into effect (ie when the applicant's environmental management plan is approved in terms of section 39 of the MPRDA).

For these reasons, the appeal was dismissed with costs, including the costs of two counsel.

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