



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.

Merafong City Local Municipality v AngloGold Ashanti Ltd (20265/14)
[2015] ZASCA 85 (28 May 2015)

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) dismissed an appeal brought by the Merafong City Local Municipality.

At issue in this appeal was whether the appellant municipality was entitled to ignore a ruling made by the Minister of Water Affairs and Forestry (the Minister) in terms of powers vested in her by s 8(9) of the Water Services Act 108 of 1997 (the Act). The ruling overturned the municipality's levying of surcharges on water supplied to the AngloGold mines by Rand Water for industrial and domestic use.

Municipalities assumed the status of water service authorities in July 2003. In 2004, the municipality sent written notice to all the mines in the area of jurisdiction including AngloGold, informing them that it had been accorded the powers and functions of a water services authority, and further requested the mines to apply for approval for the supply of water for industrial use in terms of s 7 of the Act.

AngloGold requested the municipality's approval to continue receiving water from Rand Water. In response the municipality informed the respondent that it had appointed Rand Water as its water service provider which would supply water to the mines directly. It also set out proposed tariffs for water supply which were significantly higher than Rand Water's prices.

This prompted AngloGold to appeal to the Minister in terms of s 8(4) of the Act. The effect of the Minister's ruling prevented the municipality from levying incremental surcharges on water for industrial use supplied to AngloGold's mines. It also directed the municipality, Rand Water and AngloGold to negotiate a reasonable tariff for the supply of water for domestic use. The municipality ignored the Minister's ruling and continued to invoice AngloGold at the increased rate as it considered itself entitled to do on constitutional grounds. AngloGold then launched application proceedings to enforce the Minister's ruling; the municipality opposed the application and launched a counter-application. The court below granted the relief sought by the respondent and dismissed the counter-application to have the Minister's ruling set aside or s 8(9) declared unconstitutional. The court below acknowledged the municipality's executive and legislative powers as a water services authority but held that such power was subject to national legislation, ie the Act, which expressly entitled the Minister to intervene where a municipality conducted itself in an unreasonable manner.

On appeal, the SCA held that the Minister's ruling existed in fact, had legal consequences which the municipality could not simply disregard until the ruling was set aside by a court of law in judicial

proceedings. The municipality had breached the principle of legality by disregarding it and its attempt to raise a collateral challenge to the ruling could not succeed because the remedy does not avail a state organ. The SCA concluded that the municipality was obliged to approach the court to set the Minister's ruling aside.

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