



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 19 May 2017

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

SAAMWERK SOUTWERKE (PTY) LTD V MINISTER OF MINERAL RESOURCES
(1098/2015 & 206/2016) [2017] ZASCA 56

1. On 7 June 2011, the first respondent in this appeal, the Minister of Mineral Resources (the Minister), issued a mining right in terms of s 23(1) of the Mineral and Petroleum Resources Development Act 28 of 2002 in favour of the appellant, Saamwerk Soutwerke (Pty) Ltd (Saamwerk). The mining right authorised Saamwerk to mine salt on the property known as Portion 146, a portion of Portion 58 of the farm Kalahari-Wes no 251 (Vrysoutpan). On that date, however, the second respondent, SA Soutwerke (Pty) Ltd (SA Soutwerke), had been in possession of Vrysoutpan for many years. SA Soutwerke vacated Vrysoutpan on 25 June 2011.

2. In an action instituted in the Northern Cape Division of the High Court, Kimberley, Saamwerk claimed payment of damages from the Minister and SA Soutwerke. Saamwerk maintained that it had been prevented from mining salt at Vrysoutpan from 1 January 2007 to 25 June 2011 by the unlawful conduct of the Minister and of SA Soutwerke. Saamwerk alleged that it had been so prevented by SA Soutwerke's reliance on a forged mining permit in respect of Vrysoutpan, as well as the Minister's failure to issue its mining right during

December 2006 and to prevent SA Soutwerke from mining at Vrysoutpan after 1 January 2007.

3. The high court ordered that the issues in respect of the quantum of damages stand over for later determination. At the conclusion of the trial, the high court dismissed Saamwerk's claims. It, however, granted leave to Saamwerk to appeal to the Supreme Court of Appeal (SCA) in respect of the claim against the Minister. The SCA subsequently granted leave to Saamwerk to appeal to it in respect of the claim against SA Soutwerke. The central issues in the appeal before the SCA were whether Saamwerk had proved fraudulent conduct from the part of SA Soutwerke and wrongfulness on the part of the Minister.

4. On 19 May 2017 the SCA dismissed the appeal in respect of the claim against the Minister. The SCA held that the conduct of the Minister's department (the Department) relied upon, were administrative omissions, and that on a judicial evaluation of the relevant considerations of public and legal policy, the omissions were not wrongful. The SCA held that the principal policy consideration was that during most of the period in question, the validity of the mining permit relied upon by SA Soutwerke was the subject of earlier proceedings instituted in the high court and that the Department could not be criticised for not issuing the mining right to Saamwerk whilst that litigation was pending.

5. The SCA analysed the evidence and concluded that the probabilities are overwhelming that SA Soutwerke, with assistance from within the Department, was complicit in forging the mining permit that SA Soutwerke relied upon and that SA Soutwerke's reliance on the forged permit was fraudulent. The SCA thus held that save in respect of the period prior to 6 September 2008, which part of Saamwerk's claim against SA Soutwerke had prescribed, SA Soutwerke was liable to Saamwerk for payment of damages suffered as a result of being unable to mine salt at Vrysoutpan. The quantum of the damages is to be determined by the high court.

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