



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

DATE 23 September 2021

STATUS Immediate

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

Traxys Africa Holdings Ltd and Another v Westbrook Resources Ltd (509/2020)

[2021] ZASCA 122 (23 September 2021)

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today dismissed the appeal of Traxys Africa Holdings Ltd and Traxys Africa Holdings (Pty) Ltd, formerly known as Metmar (Metmar), and upheld the cross-appeal of Westbrook Resources Ltd (Westbrook).

Westbrook had been involved in a mining operation in Croatia in which it had extracted manganese from slag. It entered into three partly oral and partly written agreements with Metmar for the purchase and delivery of three jigs with which to extract the manganese. A dispute arose between the parties as to whether Metmar or Westbrook had undertaken the obligation to commission the jigs on site in Croatia.

In a trial in which Westbrook claimed damages from Metmar, the commissioning obligation and two related matters were separated from the rest of the issues. The trial court found that Metmar had undertaken to commission the jigs but instead of issuing a declarator to this effect, the trial judge found for Westbrook on the merits of the claim. Metmar appealed and Westbrook cross-appealed to a full court. The full court also found that the commissioning obligation fell upon Metmar but,

instead of making an order to that effect, it only made a costs order in favour of Westbrook. This necessitated yet another appeal and cross-appeal.

The SCA found that the written parts of the agreements related to the delivery of the jigs, their purchase price and payment terms. The evidence established, however, that Metmar had in the oral parts of the agreements undertaken to commission the jigs in Croatia. The result was that Metmar's appeal was dismissed, Westbrook's cross-appeal was upheld and a declaratory order was made in respect of the commissioning obligation.