



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED**

FROM The Registrar, Supreme Court of Appeal
DATE 18 November 2022
STATUS Immediate

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

Rustenburg Platinum Mines Limited and Another v The Regional Manager, Limpopo Region, Department of Mineral Resources and Others (1109/2020) [2022] ZASCA 157 (18 November 2022)

MEDIA STATEMENT

Today the Supreme Court of Appeal dismissed an appeal against an order of the Gauteng Division of the High Court, Johannesburg which dismissed an application for review of certain decisions of the Regional Manager of the Department of Mineral Resources and Energy, Limpopo Region. The Regional Manager approved applications by Genorah Resources and Bauba A Hlabirwa Mining for prospecting rights in respect of an area known as the Modikwa Deeps Properties and refused an application by Rustenburg Platinum Mines Ltd (RPM) for the same rights. In addition the Regional Manager approved an application by Genorah Resources for mining rights.

The applications by Genorah and Bauba for prospecting rights were submitted to the Department after RPM had submitted its application for the upgrading of its old order (prospecting) right for the same minerals in respect of the Modikwa Deeps Properties. When RPM's application was refused and Genorah and Bauba's were approved RPM challenged these decisions saying the Deputy Director General should not have accepted the applications by the other two entities because of the period of exclusivity that RPM had in respect of its old order right application. RPM also argued that the unlawful grant of the prospecting rights all subsequent rights, including renewal of the prospecting rights and the granting of the mining right Genorah were also unlawful and should be set aside. Genorah and Bauba responded disputing the unlawfulness of the approval decisions and arguing that RPM's review

application should be dismissed based only on the delay in instituting the application for review. The high court agreed with the latter argument and dismissed the review application because of the unreasonable delay in instituting the review proceedings. It also made certain findings on the merits; including that Bauba's application should not have been accepted by the Department and that RPM's application had been correctly refused.

The SCA held that it was unnecessary to consider the lawfulness of the approvals of the prospecting rights because those rights and subsequent renewals thereof had long expired by the time the application for review was heard by the court. Furthermore a prospecting right was not a pre-requisite for a mining right. Therefore the challenge on the grant of Genorah's mining right based on the alleged unlawfulness of the prospecting right failed. As to the refusal of RPM's application for a prospecting right the SCA found that that decision had to be evaluated independently of the applications by the other two entities. The court found that the reasoning of the Regional Manager, in considering the extent of participation of RPM and its partner ARM, in the platinum mining sector, was in line with the provisions of the applicable sections of the Mining and Petroleum Resources Distribution Act of 2002. Therefore RPM's application had been correctly refused.

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