



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 22 May 2015

STATUS Immediate

African Exploration v Minister of Mineral Resources [2015] ZASCA 77

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.

On 1 May 2004, Tavistock Collieries (Pty) Ltd, a wholly owned subsidiary (through a holding company) of Xstrata (Pty) Ltd, became the holder of an old order mining right when the Mineral and Petroleum Resources Development Act 28 of 2002 came into operation. Its former rights under a mineral lease with the Strategic Fuel Fund Association (SSF), in terms of which it was granted the exclusive right to prospect and mine for coal by SSF on portions of the farm Klippoortje in Mpumalanga, were transformed into old order rights when the Act came into effect.

In December 2007 Tavistock lodged its old order right for conversion with the Department of Mineral Resources. In due course, in March 2010, the right was converted in terms of item 7 of Schedule II to the Act by the Director General. But before that happened, African Exploration Mining and Finance Corporation (Pty) Ltd (AFEX) applied for a prospecting right in respect of coal in the same area of Klippoortje in which Tavistock conducted mining

operations. That application was rejected because Tavistock already held the rights applied for.

AFEX and SSF applied to the Gauteng Division of the High Court for an order setting aside the conversion of Tavistock's old order right, and setting aside the decision to refuse its application. AFEX raised several grounds of review. The Gauteng Division refused the application on procedural grounds, amongst others AFEX's failure to pursue any right of appeal to the Minister under the Act before making the application, and its lack of standing to impugn the conversion.

The SCA today dismissed AFEX and SSF's appeal to it. The appellants argued that on the date when the Act came into effect Tavistock had not complied with its obligations under the mineral lease in that it had not met specified mining targets, and that accordingly its rights had reverted to SSF. The conversion of Tavistock's right was thus of no force, they argued. The SCA found, however, that Tavistock had as a matter of fact complied with its obligations under the lease, and that it was not possible for rights to revert to SSF in terms of the lease once an old order right had vested in Tavistock. The appeal thus could not succeed.

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