

MINING - SISHEN RIGHTS

Advantage ICT

Two important judgments were handed down this month regarding the dispute over the mineral rights at the Anglo American-owned Sishen iron ore mine.

In one which was widely reported, Judge Raymond Zondo in the North Gauteng high court granted both the department of mineral resources (DMR) and Imperial Crown Trading (ICT) leave to appeal a ruling which set aside the awarding of a prospecting right to ICT. The appeal is expected to be presented in a few months' time.

In the other ruling, which received less attention, Judge Hennie Lacock of the Northern Cape high court ruled that some of the paragraphs in the search and seizure warrant used by the Hawks to raid several premises belonging to ICT and the DMR's head office went too far in the access they gave to gather evidence and, as a result, are null and void.

The rulings and the constant appeals show the parties involved are willing to use every legal avenue available to fight for the right to mine iron ore.

In July 2011, just weeks before the civil court case in Pretoria of Sishen Iron Ore Co (SIOC) and ArcelorMittal SA against the DMR and ICT was to get under way, the directorate of priority crime investigation (the Hawks), headed by Anwa Dramat, raided several premises belonging to ICT as well as the head office of the DMR. It was a show of independence by the police investigating unit, but the raids were questioned by both ICT and the DMR.

ICT launched an urgent application against the magistrate who had granted the search and seizure warrant, the minister of police, the Hawks and Sandra van Wyk, the unit's investigating officer. The application sought to ensure that the seized material remained unavailable to the Hawks and anyone connected with SIOC pending the outcome of the urgent application.

On August 19 Lacock granted an interim order sealing the seized material and preventing the police, the Hawks and Van Wyk from disclosing any information obtained during the raid directly or indirectly to SIOC. At this stage Kumba

Iron Ore, which operates the Sishen Mine, applied for and was granted leave to intervene as a friend of the court. According to the iron ore miner this was done to ensure that as the original com-

Both SIOC and Kumba have made an application for leave to appeal against the finding that certain portions of the warrant were not sufficiently precise

plainant against ICT, on charges of fraud, uttering and corruption, its rights were upheld.

ICT attacked the validity of the warrant on three grounds: that the wording was overbroad; that it was obtained for an ulterior purpose; and that it authorised the seizure of privileged documents and data unrelated to the complaints levelled against the company.

ICT also alleged that Sishen's representatives had an inappropriate relationship with the office of the director of public prosecutions — an allegation which led to the suspension of advocate Glynnis Breytenbach. However, Kumba strongly denied that the assistance provided to the police was inappropriate.

In his judgment Lacock refused to make a ruling

Anwa Dramat

Raid found wanting

on this specific allegation, saying "to resolve these issues on the papers would be tantamount to jungle justice". At first sight, though, he failed to see how the assistance of the investigating officer by Kumba was either "unwarranted or indicative of an ulterior motive" as alleged by ICT.

He found that the contents of some of the paragraphs in the warrant were indeed too broad and would "give unlimited access to the police of all the data and correspondence electronically captured". He also found that some of the records obtained were not limited to the offences intended for the police to investigate. Yet in other instances Lacock felt that the documentation and other goods referred to in the warrant were "clearly relevant to the investigation of the offences". As a result he struck down only those parts of the warrant found to be "defective" and upheld the rest. He also granted a preservation order in respect of the downloaded data to "protect" ICT's claim that legally privileged information could have been obtained.

Both SIOC and Kumba have "made an application for leave to appeal against the finding that certain portions of the warrant were not sufficiently precise", says a Kumba spokesman. ICT's lawyer, Ronnie Mendelow, interpreted the ruling favourably.

Lindo Xulu

