

Another bite of the cherry

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LEAVE to appeal was granted yesterday by the North Gauteng High Court in the iron ore mineral rights saga that will see the process enter the next stage of a drawn out legal battle to secure ownership of 21.4% of the lucrative iron ore mineral rights at Sishen mine.

In what was largely thought to be a foregone conclusion, Judge Zondo's remarks from the onset of the hearing, indicated his intent to grant the leave for appeal due to the importance attached to the case.

Imperial Crown Trading (ICT) and the Department of Mineral Resources (DMR) submitted applications in February to appeal a court ruling that set aside the award of a prospecting right to the politically well connected ICT and instead awarded Kumba Resources' subsidiary, Sishen Iron Ore Company (Sioc), 100% of the mining rights to Sishen iron ore mine.

ICT's lawyer, Ronnie Mendelow, said that the Supreme Court of Appeal (SCA) would likely hear the matter at best in five to eight months from now.

Mendelow reiterated the stance that ICT has taken since the ruling in December, focusing on the disparity between what Kumba Iron Ore (Sishen) said it owned and what it had applied for. While Kumba applied for a 78.6% share of the mineral rights, Judge Zondo awarded the miner 100% on the premise that the mineral rights were not divisible and that the DMR decision to award the



GRANTED. Imperial Crown Trading's lawyer Ronnie Mendelow leaves the North Gauteng High Court yesterday after a leave to appeal was granted. The firm and the Department of Mineral Resources submitted applications to appeal a ruling that set aside the award of a prospecting right to the politically well-connected ICT. *Picture: Desiree Swart.*

rights was an "administrative act" which, right or wrong, stood until set aside.

ArcelorMittal South Africa's (Amsa) counsel, Advocate Michael Kuper, argued against the notion of taking the matter on appeal saying that there was no prospect of an appeal court taking a different view to the one that Judge Zondo laid out in his ruling in December. He also asked the court to have the matter marked as urgent in order to expedite the process.

Although Judge Zondo said AMSA's arguments were strong, he stood by his decision to let the matter

proceed. He also conceded that the matter should receive priority.

Amsa have a vested interest as the 21.4% undivided share of the rights to the iron ore entitled the steel maker to buy iron ore under a cost plus 3% agreement from Kumba.

Kumba CEO, Chris Griffith, said in an interview at the miner's AGM last week that the leave to appeal was not likely to be turned down and hoped that things would be resolved by the end of the year or at the latest the first quarter of next year.

"The Supreme Court of Appeal is normally quite focused and they don't drag these things out" said

Griffith.

ICT's CEO, Phemelo Sehunelo, who attended the court hearing, said that the granting of the leave to appeal was a foregone conclusion.

Now that the appeal process has been given the green light, Amsa and Kumba will enter into negotiations to renew the interim iron ore supply agreement for a third time as current agreement lapses in July.

Griffith said: "We've exchanged letters now (with Amsa), we're looking for dates so in the next week or so we will have our next round of discussions around what the interim price will be."

Kumba declared that its supply agreement with Amsa had lapsed along with the mining right and iron ore is now supplied to Amsa under an interim supply agreement at a much higher price.

If Kumba were to remain 100% owners of the mineral rights after the appeal process then Amsa would likely be able to argue, under arbitration surrounding the supply agreement dispute, that a return to the cost plus 3% supply agreement would be justified.

Griffith said that Kumba was not pre-empting any outcomes yet and that the arbitration around the supply agreement was necessary due to the fact that Amsa and Kumba's views on the matter were poles apart.

The case has largely become a barometer for the security of tenure of mineral rights in South Africa.

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