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IMPERIAL CROWN TRADING

Banking on the 'absurd'

Imperial Crown Trading (ICT) might have lost the first round in its bid to get a 21,4% undivided share of the Sishen mine, but the fight is far from over.

Two weeks ago the politically connected company lodged its notice for leave to appeal against Justice Raymond Zondo's judgment, delivered in December last year. ICT counts among its shareholders deputy president Kgalema Motlanthe's partner, Gugu Mtshali, and Jagdish Parekh, a business associate of the Gupta family, which is said to have strong ties with President Jacob Zuma's family.

In a mostly unexpected ruling, Zondo declared that Sishen Iron Ore Co (SIOC) had with effect from May 5 2008, alternatively June 18 2008 (as argued by ArcelorMittal SA), become the "exclusive" holder of a converted mining right when it applied for and was granted conversion of its old-order mining right.

According to Zondo, when the minister granted SIOC a converted mining right, "nowhere in the converted mining right documentation" was there any reference to a "restriction" or "limitation" of the grant to 78,6%.

In his judgment Zondo was at pains to show that there could be no doubt that what the minister had granted to SIOC was not a 78,6% undivided share equal to what it held before the conversion. The minister or her delegate had in fact granted to the iron ore miner a full 100% right for its sole and exclusive use which it no longer jointly held with anyone.

> "Granting SIOC more than what it asked for has amounted to an unlawful expropriation or seizure of Amsa's old-order mining right"
>
> **– RONNIE MENDELOW**

ICT's lawyer, Ronnie Mendelow, tells the *FM*: "The moment I heard that, I knew SIOC's apparent victory would be short-lived because the basis on which that victory was handed down would, on appeal before a panel of five judges, be found to have been flawed in the extreme."

In ICT's notice of appeal there are indications why Mendelow believes his clients have a case. Both the state and ICT attack Zondo's ruling in a number of ways, but the most potent argument is that the North Gauteng high court judgment relied too heavily on the notarially executed "converted mining right document" where the words "sole" and "exclusive" appear in connection with the SIOC mining right application.

Says Mendelow: "It was a clerical error, and cannot be said to have constituted an administrative act with legal consequences. Just because the notarial document did not expressly limit the right to 78,6% does not somehow ignore SIOC's intention to apply for 78,6%."

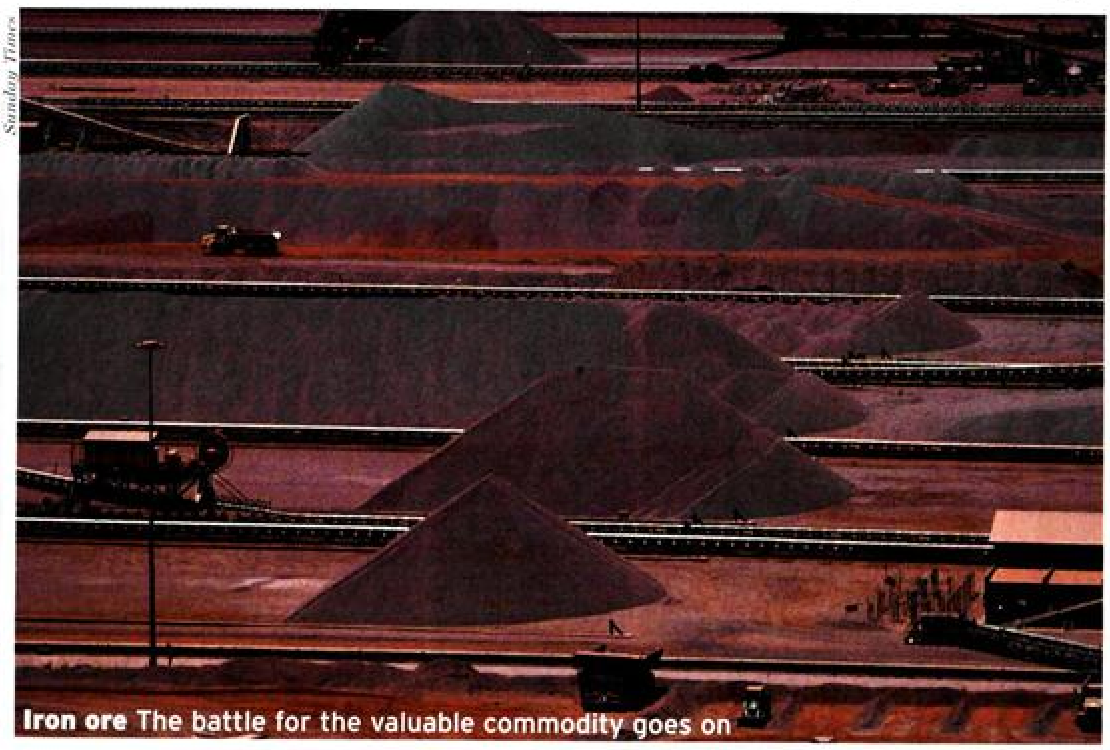
He continues: "What makes this judgment particularly interesting is that granting SIOC more than what it asked for has amounted to an unlawful expropriation or seizure of ArcelorMittal SA's (Amsa) old-order mining right, without its knowledge and without it having performed an act of transfer.

"How can it be that an asset worth billions can be shifted from one company's balance sheet to another overnight without Amsa surrendering it to SIOC?"

Mendelow goes on to claim that the high court ruling failed to bring certainty to the debate on fractional rights.

He suggests it will create an absurdity and if Zondo's precedent were accepted, a company with a 1% undivided share in a mine by virtue of having merely converted its old-order right would legitimately be entitled to the other 99% without the majority shareholders' knowledge or consent.

What appears to have emboldened ICT in its attempt to have the ruling overturned is Zondo's ruling on the



Sunday Times

Iron ore The battle for the valuable commodity goes on

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application, brought by SIOC in terms of rule 6 (15) of the uniform rules of court, for an order striking out portions of certain affidavits filed by the state respondents and ICT.

In that ruling, which was handed down on the same day ICT lodged its notice to appeal, Zondo dismissed the SIOC application with costs.

This ruling effectively means that all the statements made by department of mineral resources director-general Sandile Nogxina and ICT chief executive Phemelo Sehunelo, in which they alleged fraud on the part of SIOC regarding the manner in which the miner went about applying for a 21,4% mining right at the department's Kimberley office, would stand.

While presenting his company's annual results last week, Kumba Iron Ore CE Chris Griffith (Kumba owns a majority stake in SIOC) told investors that "the company is carefully studying the submissions made by both ICT and the state in regard to their notice of appeal and upon its conclusion the decision on whether or not to cross-appeal will be taken".

A Kumba spokesman said: "There is nothing further to add."

Zondo's decision to grant the state and ICT leave to appeal will depend on whether he feels that on the same set of facts a different judge could arrive at a different outcome.

Lindo Xulu