

Battle over Sishen mining right far from over

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INVESTORS in Kumba Iron Ore and ArcelorMittal may have to wait until January for a ruling from the Constitutional Court to end a three-and-a-half-year battle over a valuable mining right in the Sishen iron-ore mine.

The Constitutional Court's decision will not only set an important legal precedent on the interpretation of the Mineral and Petroleum Resources Development Act over undivided and divided mining rights and the transformation of the mining sector, but will also be crucial for a private arbitration between Kumba and ArcelorMittal over a cheap iron-ore supply agreement.

Before the enactment of the act in 2004, Kumba subsidiary Sishen Iron Ore Company (SIOC) and ArcelorMittal held mineral rights of 78.6% and 21.4% respectively in the Sishen deposit.

The act required companies to apply to convert old-order mineral rights to new-order rights, which ArcelorMittal failed to do.

When ArcelorMittal's 21.4% lapsed at midnight on April 30 2009, SIOC and politically connected Imperial Crown Trading (ICT) applied for the prospecting right. The Department of Mineral Resources awarded a 21.4% prospecting right over Sishen to ICT, whose shareholders included Gugu Mtshali, the girlfriend of Deputy President Kgalema Motlanthe.

This prospecting right, which is also the subject of an ongoing investigation by the Hawks, has since lapsed.

While the North Gauteng High Court ruled a full 100% right was granted to SIOC when it applied for conversion in 2008, the Supreme Court of Appeal ruled slightly differently, saying ArcelorMittal could have applied for conversion. SIOC only became the de facto holder of the right at midnight on April 30 2009.

The department and ICT argued that ownership of the 21.4% reverted to the state, giving the department the right to award it again to an appropriate applicant.

Kumba has argued that a supply deal, which entitles ArcelorMittal to 6.25 million tons of iron ore at cost plus 3%, is linked to the 21.4% right. Without the right, Kumba argued, the deal had lapsed, and it was no longer required to supply the cheap ore.

Should the Constitutional Court find that ArcelorMittal could have applied to convert its portion, Kumba's position in the private arbitration over the deal will be strengthened. Kumba now supplies ore to ArcelorMittal at rates estimated at about double the cost plus 3% deal, but still significantly below market prices.

Government, on the other hand, has been eager to prove that it was right in awarding the 21.4% prospecting right to ICT, as it is in line with the transformational objectives of the act.