

Court settles battle for NC mining rights

... but fraud allegations remain

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WHILE the battle for the lucrative Sishen mining rights may be over for now, with a Supreme Court of Appeal (SCA) judgment last week dismissing the idea that Kimberley-based company, Imperial Crown Trading (ICT) was entitled to a 21.4 percent slice of the rights to mine iron ore at the site, allegations of fraud and corruption in the awarding of the mining rights remain.

The court last week confirmed a high court decision to set aside the rights formerly granted to ICT.

The two-year-long battle has been nothing short of a bitter battle over the rights, with undertones of unproven bribery, corruption, and fraudulent rights.

The Department of Mineral Resources has not walked away unscathed. It was a co-applicant in the appeal, along with ICT.

The company is known to have links to the Gupta family and Deputy President, Kgalema Motlanthe's partner, Gugu Mtshali, although the ICT director Phemelo Sehunelo has previously refused to comment on these relationships and denied any impropriety on ICT's behalf. In an interview with the DFA in July 2011, shortly after a Hawks' raid on his home and offices, Sehunelo described the Sishen rights as "the best mining deal in the world".

The Sishen Mine, near Kathu, is a huge operation. It employs over 4 000 people and uses over 70 percent of the Sishen-Saldhana Bay railway line.

"Black Economic Empowerment is not for spectators. You must get in the ring. In cases like these, foreign companies try to scare off black businessmen. But like boxing, when you are in the arena, you expect these things. It is part of the game," Sehunelo said.

He explained that the 21.4 percent stake was worth about R5.5 billion per annum. He estimated that the stake would yield about 6.5 million tonnes of iron ore a year.

Sehunelo was not exaggerating. So lucrative was the deal, that a former legal consultant for Kumba claimed he was nearly assassinated in 2012, apparently because he levelled allegations of bribery against ICT, which the company denied.

The saga began almost two years ago, over the long weekend in the beginning of May 2009, when Arcelor Mittal SA's (Amsa) 21.4 percent mining rights lapsed.

Amsa had apparently failed to convert its rights from the old to new order rights by the May 1 2009 deadline. The requirement to do so stemmed from a change of mining legislation.

Kumba Iron Ore and ICT put in a bid for the stake to mine a portion of one of the world's largest open cast mines.

As May 1 is a public holiday, ICT and Kumba both apparently submitted their bids on May 4 2009.

Both companies have accused each other of being underhanded in their application by fiddling with the dates. They have both denied this.

ICT was handed the rights by the Department of Mineral Resources (DMR) in November 2009.

In March 2010, a company linked to the Gupta family, who are known to be close to President Jacob Zuma, became a 50 percent stakeholder in ICT.

In August that year, Amsa reportedly offered to buy out ICT. The proposed new consortium would have included Zuma's son and a Gupta-linked director. But the deal did not go through because a high court, in December 2011, ruled that the Sishen rights were indivisible and that the rights were Kumba's.

Six months prior, the Hawks conducted a raid on ICT's premises.

Sehunelo claimed they did not find anything there and denied any allegations of fraud or corruption on ICT's part. Instead, he claimed this was a ploy by Kumba to drum up public sympathy ahead of the court case.

A Kumba spokesman told the DFA the company was "flattered" by the assertion that it had sway over the Hawks, but that Sehunelo's allegation was a lie.

Now, the SCA has confirmed that the rights are Kumba's, dismissing the appeal which was brought by ICT and DMR.

According to the SCA judgment, "The SCA has dismissed the appeals of both the DMR and ICT.

"The SCA held that Sishen Iron Ore Company lodged its application for conversion of its old order right in 2005.

"The SCA held that the DMR granted to Sishen Iron Ore Company (SIOC) the exclusive mining right in 2008.

"The SCA further held that Amsa retained the right to lodge its old order right (21.4 percent undivided share) for conversion before midnight on 30 April 2009, but failed to do so. As a matter of law and as at midnight on 30 April 2009, SIOC became the sole holder of the mining right to iron ore in respect of the Sishen Mine, after Amsa failed to convert its undivided share of the old order mining right."

Sishen and Arcelor will now begin arbitration proceedings, relating to an agreement to supply iron ore. The proceedings were suspended pending the outcome of the court case.