

# Death, lies and tape recordings in

The three-year battle between Imperial Crown Trading and Kumba Iron Ore for a multibillion-rand stake in Sishen — one of the world's richest iron ore mines — is getting dirtier and dirtier. In a week that state intervention topped the agenda in the mining sector, **Lionel Faull** and **Sam Sole** report on:

- An alleged assassination attempt that drove a witness to go public with allegations of collusion between ICT and the department of mineral resources (DMR);
- A DMR official who died days before he reportedly planned to make a statement confirming the allegations of collusion; and
- Allegations by ICT of an 'unnaturally close' professional relationship between top prosecutor Glynnis Breytenbach, who was driving the criminal case against ICT, and a senior advocate representing Kumba, Mike Hellens SC.

## Sishen: The story so far

Under 2004 mining legislation, companies were required to convert mining rights under old law by applying for "new order" rights by May 1 2009.

By the deadline, iron-ore miner Kumba, had applied to convert its 78.6% stake in the Sishen iron mine. But steel manufacturer ArcelorMittal, with the remaining 21.4%, had not. Kumba and an obscure shelf company, Imperial Crown Trading 289 (ICT), raced to acquire the rights to ArcelorMittal's 21.4% stake, estimated to be worth R800-billion over the mine's remaining life.

But May 1 — a Friday — was a public holiday.

On Monday May 4, Kumba and Imperial's applications for the vacant Sishen stake were recorded on the department's system in Kimberley. ICT applied for a prospecting right, Kumba for a mining right. Controversy now surrounds both applications.

ICT claims Kumba acted deceit-

fully by handing in its application early and asking department officials to lodge it on May 4.

Kumba claims that ICT's application was not ready on May 4, but that officials recorded ICT's application as lodged on that day — even though ICT's application trickled in over succeeding days.

Both companies also accuse one another of bribing officials to tamper with their rival's application.

In November 2009, the department handed ICT a prospecting right on the basis that both applications had arrived on May 4, but that ICT had superior BEE credentials.

One of ICT's founding directors was Prudence "Gugu" Mtshali, reportedly Deputy President Kgalema Motlanthe's romantic partner. Motlanthe was South Africa's caretaker president in May 2009 when ICT applied for the stake.

In March 2010 ICT handed over a 50% stake to JIC Mining, rep-

resented on its board by Jagdish Parekh. JIC is controlled by the Gupta brothers, benefactors of the Zuma family.

In August 2010 Arcelor offered to buy out Imperial and incorporate its directors into a new consortium that included President Jacob Zuma's son Duduzane and Parekh, making them instant billionaires.

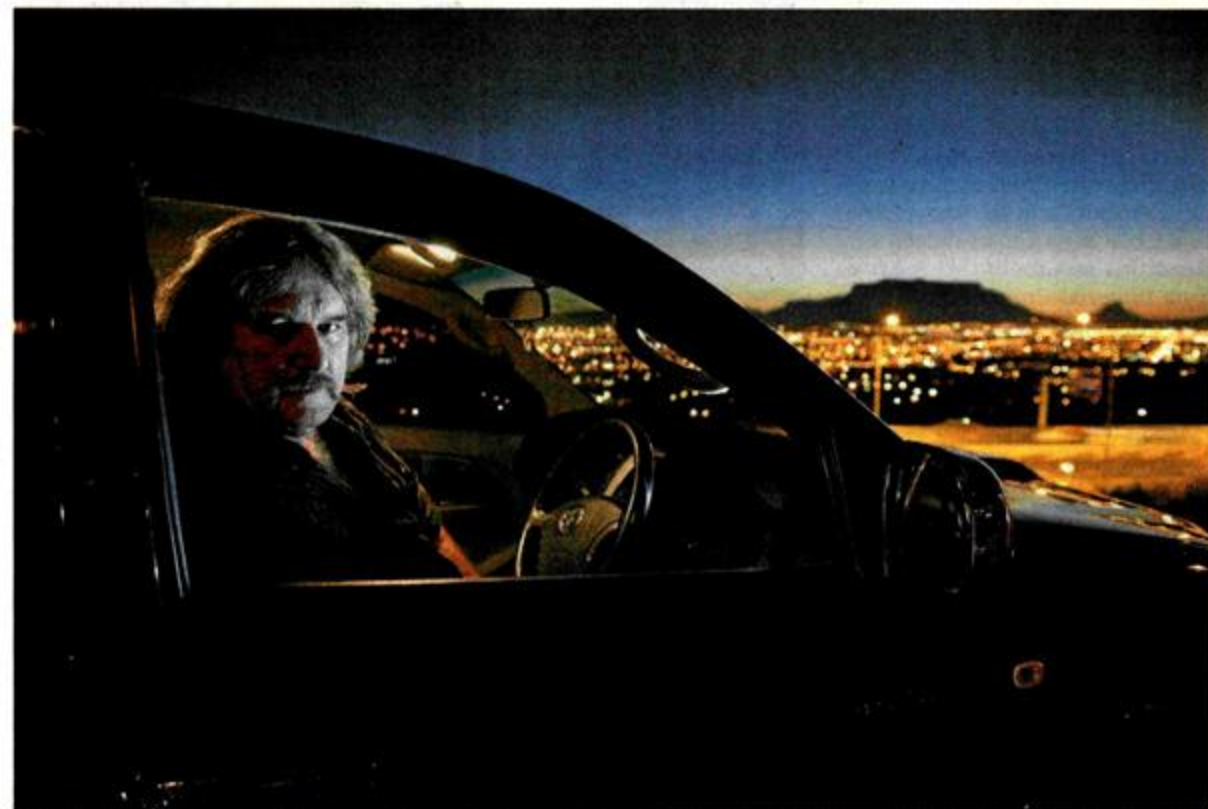
But the buy-out was never consummated. Instead, Kumba and Arcelor won a High Court judgment in December 2011 that mineral rights over a single area are indivisible and that Arcelor's old order 21.4% stake is fully Kumba's.

ICT are now out in the cold, although it finalised its appeal against Zondo's ruling last week.

In July 2011, the Hawks raided ICT's office and the department in Kimberley for evidence of fraud when the applications were made.

ICT has challenged the legality of the raids, and the seized materials are currently out of the Hawks' reach.

# battle for Sishen iron ore rights



Legal consultant Gawie Hendriksz claims he knows how the ICT deal went down. Photo: David Harrison

His employer in this matter, Du Toit (owner of Saamwerk Soutwerke) said: "In the court case there was a lot of bullshit on the department's side. I stood alone; nobody in the department would help me understand where the other permit came from. But Gawie helped me.

"Without Gawie's investigation I could not have taken this case to court."

## Building trust

The relationships Hendriksz built with department of mineral resources officials during the Saltworks case, particularly with Lerumo, were crucial to the alleged disclosures they made to him about ICT.

Said Hendriksz: "Lerumo was the department's legal advocate, so I was working a lot with him [on the Soutwerke matter]. I slowly built up trust with him ..."

In mid-2010, the department charged Lerumo with misconduct and regional manager Swart summoned him to a departmental disciplinary inquiry. On June 10, Hendriksz said that Lerumo had approached him for advice.

He had suggested to Lerumo that he remind Swart of his own alleged conduct in the ICT matter. According

to Hendriksz, the charges were then withdrawn.

In February 2011, when the department revived misconduct charges against Lerumo, he and Hendriksz met again – and on this occasion Hendriksz decided to record the conversation. He asked ex-policeman Andreas Steenkamp to sit in a car outside the Protea Hotel in Kimberley, where the two men met, tap their exchange using a remote listening device and transcribe it in a notebook.

The alleged conversation took place on February 21 in the hotel reception area. Steenkamp refused to discuss the encounter with the *M&G*, but confirmed that he had given a sworn affidavit to the police, the content of which is unknown.

The *M&G* has seen a copy of Steenkamp's purported shorthand notes from this encounter. At face value, they support Hendriksz's claim that Lerumo admitted receiving money from ICT's Sehunelo and that he also implicated department of mineral resources official Basi.

The *M&G* understands that Swart eventually proceeded with disciplinary action against Lerumo, who was found guilty. The charges included an allegation that Lerumo accepted R5 000 from a mining consultant to

speed up the processing of their applications, though it is not known if this particular charge was proved.

Lerumo is still employed at the department in Kimberley.

Hendriksz said his attempts to persuade Lerumo to approach the police and seek indemnity from prosecution had not borne fruit.

## 'Controversial decision'

In addition to developing ties with Jansen van Rensburg and Lerumo, the third – and possibly most controversial – aspect of Hendriksz's investigation was his decision to approach all five parties in the dispute, the police, the department of mineral resources, Kumba, ArcelorMittal and ICT, to offer information.

According to Hendriksz, he first approached Colonel Tobias Marais of the South African Police Service, who had investigated SA Soutwerke, to tell the Hawks that if they wanted to know "exactly what happened about ICT" they should get in touch with him. The Hawks did not respond.

Hendriksz then approached Kumba's attorney, Robert Botha, who told him that "Kumba does not buy information". Hendriksz said he responded that he did not want to sell anything, but that Kumba could take

him on as a consultant. Botha's reluctance gave Hendriksz "a feeling that they had already burnt their fingers somehow".

Hendriksz said that because "ArcelorMittal and Kumba were the only two companies that had nothing to do with ICT's fraud and bribery of DMR personnel", he approached Arcelor next. Hendriksz claims he made contact with a senior Arcelor executive, who told him that they were not worried about ICT. Only later did he learn that Arcelor had been negotiating to buy ICT.

Finally, Hendriksz said he was contacted by Lerumo, who wanted him to meet ICT chief executive Sehunelo. Lerumo set up the appointment, and the two met at ICT's Kimberley offices on October 25 2010.

"During this meeting, Sehunelo said that he understood that I was someone who knew a lot about what had transpired regarding ICT's application over the 30 April to 4 May 2009 weekend. I replied that I did.

"He then said that I could perhaps assist ICT by depositing an affidavit that would support ICT's case.

"Sehunelo explained that I would have to depose an affidavit in which I would falsely state that I was aware of collaboration between Kumba and officials in the department which resulted in department officials tampering with the ICT application by inserting documents from the Kumba application. This was to make it appear that the ICT application had been submitted using copied documents."

Hendriksz undertook to work with ICT, saying: "I wanted to play along with them, to understand who the key role players are behind the curtains there. I wanted to establish what political roleplayers with influence were ... in ICT."

Saamwerk Soutwerke's lawyer Tredoux supported his explanation, saying: "Sometimes you have to go under cover and disguise your intentions in order to uncover the truth."

The following week ICT flew Hendriksz from Cape Town to Johannesburg, where he met ICT attorney Mendelow and advocate Edmund Wessels in the latter's Sandton chambers. The *M&G* has seen a record of the ITime return flight booking made by Sehunelo's personal assistant Sharifa Ferris.

At the Johannesburg meeting Hendriksz said he had "said what

Sehunelo asked me to say".

Mendelow confirmed the meeting, and gave the *M&G* access to a transcript in which Hendriksz indeed repeated the claim that Kumba paid a former official from the department to meddle with ICT's application.

In a transcript of the recording which the *M&G* has seen, Hendriksz promised ICT further information about who took bribes in the department from Kumba in return for employment as a consultant. He also offered to testify for ICT in court.

Wessels expressed interest in Hendriksz's information, but the interview did not end with a definitive undertaking by either party.

In their response, Mendelow and Hendriksz agreed that both parties had lost interest in each other soon after this meeting. Mendelow said that he believed Hendriksz was an information-peddler, while Hendriksz said: "I would not have consented to being so engaged, given my knowledge of the fraud perpetrated by ICT."

In July 2011, a consultancy called Risk Analysis, retained by Kumba's legal team to identify evidence or witnesses which could assist the company's litigation strategy in the ICT matter, made contact with Hendriksz.

Risk Analysis's Mungo Soggot said: "We approached Mr Hendriksz ... after learning that, on account of his work in the Saamwerk matter, he was uniquely placed to provide an insight into what took place at the DMR Kimberley office in April 2009.

"His brief was to help us identify other potential witnesses to the impropriety he described. In particular, his brief was to explore whether Charles Lerumo – with whom he had a close relationship – could become a witness. It was never intended at this stage that he would be a witness himself," said Soggot, a former *M&G* journalist who left the newspaper in 2002.

Hendriksz entered into a contract with Risk Analysis. Ultimately, Kumba and its legal advisers introduced him to the Hawks. Hendriksz said his ultimate goal was to stamp out corruption in the department, which is "damaging the mining industry".