

BIG BATTLE:

Imperial Crown Trading and the minerals department have lodged applications for leave to appeal to the Constitutional Court against the decision of the Supreme Court of Appeal granting mining rights to the Sishen mine (picture) in the Northern Cape.



Fight over NC mine to continue

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IMPERIAL Crown Trading (ICT) and the minerals department will approach the Constitutional Court over a Supreme Court decision granting mining rights to the Sishen Mine in the Northern Cape.

“Both ICT and the department of minerals have lodged applications for leave to appeal to the Constitutional Court against the decision of the Supreme Court of Appeal,” a notice released by Kumba Iron Ore on the JSE, stated.

“Shareholders will be informed of any further material developments in this regard.”

On March 28, the Supreme Court of Appeal ruled the Sishen Iron Ore Company (SIOC) was the exclusive holder of a converted mining right for iron ore on the Sishen Mine.

It dismissed an appeal by the minister for mineral resources and Imperial Crown Trading (ICT) against a ruling by the High Court in Johannesburg in 2011.

The high court found SIOC became the exclusive rights holder on May 5 2008, and it set aside ICT’s prospecting right in relation to 21.4 percent of the Sishen Mine.

The dispute about the 21.4 percent mining right arose out of disagreement between Anglo American subsidiary Kumba Iron Ore and Arcelor Mittal SA (AMSA).

Unbinding

In 2001, as part of Iscor’s unbundling, it was agreed that a 21.4 percent stake in mineral rights at the Sishen Mine would vest in the company which is now AMSA.

At the time, it was agreed that Sishen would supply AMSA with iron ore at up to 6.25 million tonnes a year, at cost plus three percent.

When AMSA failed to convert its old order mining right in 2009, Kumba said it would sell its iron ore to the steel giant at market prices.

An undivided prospecting right was granted to ICT in relation to 21.4 percent stake in Sishen Mine. Kumba, which owns 74 percent of the SIOC, also applied to the department for the lapsed AMSA rights.

The SCA found the SIOC had held an undivided 78.6 percent share in the right to iron ore on the Northern Cape property, and that when it converted its old order mining right on May 5 2008, it became the holder of the sole and exclusive mining right.

The SCA found its mining authorisation clearly related to all the properties.

“It could not be otherwise,” the court held, and ruled there were therefore no rights to transfer.

There was no share of the “old order mining right” or the mining right which the minister could allocate to any other party. The conversion granted by the minister in 2008 “stands until amended or set aside”.

“As a matter of law, at midnight on April 30 2009, after AMSA failed to convert its undivided share of the old order mining right in respect of iron ore on the properties, SIOC became the sole holder of the mining right in respect of those properties,” the SCA held.

Charges

As a result of the dispute, SIOC and ICT brought criminal charges against each other, alleging various crimes.

ICT laid a complaint against National Prosecuting Authority prosecutions head Glynnis Breytenbach. It claimed she was favouring SIOC’s Kumba mine lawyers in their case against ICT.

The SCA said the SIOC operation was well-established as a mining operation, so it could not understand why the department of mineral resources had granted ICT prospecting rights.

The criminal case still has to be finalised.

Kumba Iron Ore Limited said in a notice on the Stock Exchange News Service that in the interim, the sale of iron ore from the Sishen Mine to AMSA remained regulated in terms of an interim pricing agreement concluded between the parties in December.

Mineral resources department spokeswoman Zingaphi Jakuja said the department noted the judgment and would study it with legal counsel, but would not comment further.