

MINING RIGHTS

Once more into the fray

The department of mineral resources (DMR) and Imperial Crown Trading (ICT) will file papers this week to appeal against Judge Raymond Zondo's December ruling in the legal battle between ICT and Kumba Iron Ore involving mining rights at the Sishen iron ore mine.

All parties involved confirm there are no settlement discussions under way.

In a separate but similar case, Lonmin agreed earlier this month to pay Keysha, a subsidiary of Sivi Gounden's Holgoun Investments, US\$4m for the rights Keysha was granted by the DMR to prospect for platinum by-products on the Middelkraal portion of Marikana, where Lonmin is developing two new shafts.

Kagiso Asset Management analyst Jihad Jhaveri says it made no sense to grant a prospecting right over the associated minerals when Lonmin had been mining and selling them for years.

"The associated minerals are intrinsically linked to the UG2 ore body (a PGM bearing reef), and cannot be mined separately from the PGM metals," Jhaveri says.

This loophole opened up as a result of poor drafting in the Minerals & Petroleum Resources Development Act (MPRDA). Amendments to the act are in the pipeline, which may address this gap.

"While we think Lonmin would ultimately have been successful in the courts, they have obviously weighed the \$4m against management time, legal fees and uncertainty," Jhaveri says.

The Keysha case had some parallels with the fight over Sishen. Both raised the question of whether it is practically

cost-plus rate on a portion of Sishen's iron ore will be decided by separate arbitration.

An agreement between all the parties would make sense, since there is drawn-out uncertainty over the outcome and legal fees run into millions. Last year's hearing ran to over 6 000 pages. The appeal documents are lighter, at 16 volumes of 100 pages each, according to ICT's attorney, Ronnie Mendelow of Mendelow Jacobs.

Mendelow doesn't believe there's a loophole in the MPRDA. He says the wording of Kumba's letter of grant (for a larger percentage mining right, which included Amsa's lapsed partial right) was a notarial error. But a review of the prospecting right application is purely academic, anyway. ICT is not pursuing its application for a prospecting right any longer, as it has lapsed and Kumba would not allow it access to the Sishen property. ICT is now pursuing its entitlement to a full mining right.

Other developments in the case this year have been the rejection of the Sishen Iron Ore Co's (SIOC) application to strike out parts of the affidavits submitted by former DMR director-general Sandile Nogxina and ICT CE

Phemelo Sehunelo, where they alleged fraud in Kumba's attempts to ensure its application for the lapsed Amsa rights at Sishen predated ICT's application.

Mendelow says this is important, as Kumba's attempts at manipulation clearly disqualify it from being considered as a suitable candidate for those rights.

Earlier this month the courts turned down an appeal by Kumba and SIOC against Judge Hennie Lacock's ruling that the wording of the warrants used to search ICT's and the DMR's premises was too imprecise.

Kumba and SIOC spokesman Anne Dunn confirms this appeal was rejected, but adds "it doesn't change much". Their argument was that the broad warrant was similar to one upheld in another, similar case.

Charlotte Mathews



Raymond Zondo
Ruling to be appealed

possible to have two separate holders of mineral rights on the same property.

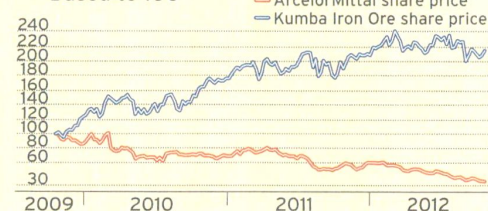
At Sishen, ICT was granted a 21,4% prospecting right, ahead of an application by Kumba Iron Ore, which held the other 78,6%, after ArcelorMittal SA (Amsa) failed to convert it from an "old order" to a "new order" mining right.

Amsa had obtained this partial right, which entitled it to 6 Mt/year of Sishen's iron ore at a "cost plus" price, before the MPRDA came into effect in 2004.

Judge Zondo ruled that the wording of the grant of the new order rights by the DMR to Kumba was for 100% of the rights. Whether Amsa is still entitled to a

IN CONTRAST

Based to 100



SOURCE: I-NET BRIDGE