

SOUTH AFRICA / JUDGMENT

Julovista (Pty) Ltd v Hoshoha Resources Vryheid (Pty) Ltd (2024/080004) [2024] ZAGPPHC 999 (2 October 2024)

[2024] ZAGPPHC 999

COURT

North Gauteng High Court, Pretoria

BEFORE

Swanepoel

CASE / FILE NUMBER

2024/080004

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

number: 2024/080004

Date

of hearing: 20 September 2024

(1) REPORTABLE:

YES/NO

(2) OF INTEREST TO

OTHERS JUDGES: YES/NO

(3)

REVISED

DATE:

2/10/2024

SIGNATURE

In

the matter of:

JULOVISTA

(PTY) LTD

Applicant

and

HOSHOZA

RESOURCES VRYHEID (PTY) LTD

Respondent

JUDGMENT

SWANEPOEL J:

- [1] The applicant (I refer to the parties as they are in this application) seeks leave to appeal against my order of 16 August 2024 in which I interdicted the applicant from conducting mining operations in the Karaboo area. The grounds for the application are, in summary, the following:
- [1.1] That the mining right upon which the respondent relied is invalid;
- [1.2] That the respondent did not prove that the mining right is registered;
- [1.3] That factual disputes existed relating to the rectification of the agreement between the parties that could not be resolved on the papers;
- [1.4] That the respondent could have sought an alternative remedy, namely a damages claim, and that an interdict should therefore not have been granted.
- [1.5] That there are compelling reasons why leave to appeal should be granted, that the matter raises an important question of law, and the administration of justice requires an appeal to be heard.
- [2] The first ground is based on the fact that the Director-General's power of attorney granting the Regional Manager the authority to renewal of the mining right for "fifteen", without stating whether the period is for years, months, weeks or days. Based on the power of attorney the Regional Manager renewed the mining right for fifteen years. That omission, applicant says, has the result that the respondent has not proven that the mining right is valid.
- [3] The applicant's difficulty with this argument is that it says itself that it is mining lawfully and in accordance with a valid mining right, a right that it could only derive from the respondent. The entire crux of this dispute, on the applicant's own version, is whether the applicant is entitled to mine until 2034, or whether the agreement in terms of which it exercised the mining right has terminated.
- [4] Litigation is not a game, and the applicant cannot have its cake and eat it. Either the applicant is mining in terms of a valid mining right, or it is not. In any event, the right was renewed until 2034, and until that administrative action is set aside, it is valid.[1]
- [5] The same is applicable to the argument that the respondent has not proven that the original mining right was registered. If it were not registered, the mining right would not exist, the applicant's mining operation would be unlawful, and the parties would not be at loggerheads over a mining right that both wish to exercise until 2034.

- [6] As far as the alleged factual dispute is concerned, the applicant has made the averment that an agreement to mine for a short period of time makes no business sense, suggesting that it would not have concluded the agreement in its current form. That may be so, but the manner in which the alleged mutual error occurred is not explained. It is also not explained why the applicant's own attorney wrote in a letter, and in subsequent pleadings, that the agreement was due to terminate on 30 June 2024, if that had not been the parties' intention.
- [7] In truth there was no factual dispute, because the applicant failed to put up any version as to how the alleged error came about. The papers in motion proceedings contain the pleadings and the evidence, and it is incumbent on a party to put up evidence to support its case. The applicant failed to do so. It is also not sufficient to say that the answering affidavit was drafted under pressure, and should have expanded on this particular subject. If that were so, then the applicant could have sought to supplement its papers before the application was heard. It did not do so.
- [8] As for the alternative remedy, it is not in dispute that the applicant is exploiting, and reducing, the available ore body on an ongoing basis. In terms of the mining right, that right attaches to the respondent. In my view the possibility of the respondent being successful in a damages claim at some point in future is not sufficient to ameliorate the fact that the respondent is being prevented at present from exercising its rights.
- [89] Finally, I do not find any merit in the argument that the matter is so important to the applicant, that there are compelling reasons why leave to appeal should be granted. All matters in the High Court are of great importance to the parties. In my view there should be an additional element of importance generally, and not only to the particular party, before leave to appeal would be granted. Furthermore, there should also be a weighing of the prospects of success on appeal, which in my view, in this matter, are dismal. There are no important questions of law to be determined, nor does the administration of justice require the matter to be considered on appeal.
- [10] Consequently, the application for leave to appeal is dismissed with costs.

SWANEPOEL J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION ,PRETORIA

Counsel for the applicant: Adv. S G Maritz SC Adv. JF van der Merwe Instructed by: Venter de Villiers Attorneys
Counsel for respondent: Adv. PWT Lourens Instructed by: Krone and Associates
Date heard: 20 September 2024 Date of

judgment:

2 October 2024

[1] Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6) SA 222 (SCA)

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