

SOUTH AFRICA / JUDGMENT

Promispace CC v DRDGold Limited and Others (062949/2023) [2024] ZAGPPHC 959 (26 September 2024)

[2024] ZAGPPHC 959

COURT

North Gauteng High Court, Pretoria

BEFORE

Collis

CASE / FILE NUMBER

062949/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
CASE
NO: 062949/2023

REPORTABLE:

NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED.

DATE:

26 September 2024

SIGNATURE:

In

the matter between:

PROMISPACE
CC
REGISTRATION
NO: 2010/139045/23
Applicant
-and-
DRDGOLD
LIMITED
REGISTRATION
NO: 1895/00926/06
First
Respondent
THE

CITY OF JOHANNESBURG
METROPOLITAN
MUNICIPALITY
Second
Respondent
THE
CITY OF JOBURG PROPERTY COMPANY
SOC
LTD (JPC)
Third
Respondent
THE
MINISTER OF MINERAL RESOURCES
AND
ENERGY
Fourth
Respondent
REGIONAL
MANAGER, GAUTENG REGION,
DEPARTMENT
OF MINERAL RESOURCES
AND
ENERGY (DMR)
Fifth
Respondent
This judgment is issued
by the Judge whose name is reflected herein and is submitted
electronically to the parties/their legal representatives
by email.
The judgment is further uploaded to the electronic file of this
matter on CaseLines by the Judge or her Secretary. The
date of this
judgment is deemed to be 26 September 2024.

JUDGMENT

COLLIS J

INTRODUCTION

1. This is an application for an order declaring the mine dump (“mine dump”) located on Farm Roodepoort, Portion Number 125, Farm Number 237, Registration Division QI (“the property”) as a movable property owned by the applicant through appropriation.[1]
2. The applicant contends that it has taken ownership of the mine dump through appropriation and seeks to be declared the lawful owner thereof. It does so on the basis that the mine dump is res derelicta and therefore res nullius.

3. The second and third respondents (“the respondents”) oppose the application. They contend, in the first instance, that the mine dump is neither res derelict nor res nullius as it belongs to the second respondent (“the COJ”).
4. Secondly, in the event that this Court finds that the mine dump does not belong to the second respondent, the respondents contend that the mine dump has acceded to the property, becoming one with the property itself.
5. The first respondent does not oppose these proceedings and has filed a notice to abide this Courts’ decision. It has however

proceeded to file an affidavit setting out that it has informed the applicant that the mine dumps do not form part of its property

portfolio and referred the applicant to the Department of Mineral Resources and Energy for any ownership enquiries.[2]

6. It further asserts that it is not the holder of inter alia, any servitudes, surface right permits, mining rights and any freehold associated with the mine dumps. As it has no interest in the ownership of the mine dumps and there thus is no dispute between it and the applicant, it contends that it has been incorrectly joined as a respondent in these proceedings.

ISSUES

TO BE DECIDED

7. In a Joint Practice Note filed by the parties, they set out the following issues to be decided by this Court, namely:[3]
 - 7.1 Whether the second respondent (“COJ”) is the lawful owner of the mine dump;
 - 7.2 In the event that the Court does not find that the COJ is the lawful owner of the mine dump, then and in that event:
 - 7.2.1 Whether the mine dump has acceded to the property; or
 - 7.2.2 Whether the mine dump is res derelict and therefore res nullius.
8. As a starting point the term ‘mine dump’ is used to refer to waste that is derived from or incidental to mining operations.[4] With this definition in mind, a mine dump is not a mound of waste placed in a location simply by chance.
9. It is placed in a location to serve the mining operations surrounding it. There is no good reason why a mining company would want to move a mine dump when such mine dump was created consequential to, and in order to serve the mining operations around it. It is similarly not a standard practice for mining companies to physically move dumps.
10. In anticipation of the hearing the parties further proceeded to file a chronology setting out the events to be the following:[5]

10.1 During 1888, the mine dumps forming the subject matter of the proceedings were deposited by Princess Estates Gold Mining Company Ltd. From 1888 -1920, Princess Estates Gold Mining Company Ltd. Gold mining operations were conducted.

10.2 In the same year, being 1920, Princess Estates Gold Mining Company Ltd ceased its mining operations due to increased input costs from the First World War.

10.3 Thereafter 1923, Durban Deep, a competing mining company in the same locale acquired 129 claims from Princess Estates Gold Mining Company Ltd.

10.4 From 1923 – 1946, Durban Deep gradually acquired other neighbouring mines to Princess Estates Gold Mining Company Ltd, which included but not limited to New Steyn Estates Gold Mining Company Ltd, Roodepoort United Gold Mining Company Ltd and Kimberly Roodepoort Gold Mining Company Ltd, which is presently known as DRDGold.

10.5 Last year on or about 10 May 2023, the applicant addressed an email to the Chief Operations Officer of DRDGold requesting a meeting for the purposes of discussing a possible cession of the residue stockpile or mine dumps to the applicant.

10.6 Around 19 May 2023, DRDGold forwarded a response to the applicant, advising it that Princess Gold Mining Dumps do not form part of the DRDGold property portfolio.

10.7 Thereafter on or about 25 May 2023 the applicant addressed an email to the Regional Manager, Gauteng Department of Mineral Resources enquiring about any records of ownership relating to the mine dumps in question. No response to the enquiries was however received.

10.8 Approximately, a month thereafter around 14 June 2023 the applicant gave a Notice of its intention to take possession of the mine dump and it is from around this date that the applicant alleges that it acquired ownership of the mine dumps through appropriation.

COMMON CAUSE FACTS

11. It is common cause between the parties that the COJ is the lawful owner of the property, i.e. the registered owner of the farm

Roodepoort 237/125 IQ over which the subject matter of this application is located.[6]

12. Secondly that the COJ purchased the property from Princess Sandwerk (Pty) Ltd, which transfer was registered in 1985.[7]

Whether the COJ is the lawful owner of the mine dump

13. The first question to be decided by this Court is whether the COJ is the lawful owner of the mine dump. In this regard, the applicant does not dispute the fact that the city is the owner of the property upon which the mine dump is located.

14. In its Replying affidavit,[8] the applicant asserts that this court can accept that it is not in dispute that the property is owned by the city and that the applicant has made it demonstrably clear that the city owned the property.
15. It is however the applicant's contention that the mine dump on the property of the city is res derelicta and or res nullius and therefore capable of being owned by the applicant.
16. In its founding affidavit the applicant provides a brief background of the history of the mine dump and its creation.[9] The history of the mine dump and its creation is however unknown to the respondents.
17. The applicant alleges that the mine dump was created by Princess Estate Gold Mining Company Limited ("Princess Estate")

which conducted gold mining operations until 1920.[10] No documentary evidence of its aforesaid narration has however been annexed to the founding papers, but nothing really turns on it, as what is known to the respondents is that the mine dump was present on the property at the time that the COJ purchased the property from Princess Sandwerke (Pty) Ltd in 1985.

18. As mentioned earlier, the applicant has out of its own volition deemed it necessary to verify the ownership of the mine dump.

In so doing, it first addressed correspondence to the first respondent, who informed the applicant that it is not the owner of

the mine dump.

19. Upon failing in its quest, to thereafter addressed correspondence to the fifth respondent enquiring about any record of ownership he may possess relating to the mine dump in question. It never received a response to its correspondence addressed to the fifth respondent in this regard.
20. Having received no response from the fifth respondent, it as a result concluded that the Department of Mineral Resources and Energy ("DMRE") has no records of ownership of the mine dump and absent any member of the public putting up a competing claim to the mine dump, it therefore asserts that the mine dump should be considered res nullius.[11]
21. What is telling from the founding affidavit however, is that after being made aware that the COJ is the owner of the property on which the dump is situated the applicant does not address any correspondence to the COJ enquiring from it as to whether it could appropriate the mine dump situated on its land.
22. On behalf of the applicant it was argued that the city has abandoned the property where the mine dump is situated as it is not fenced off to control access and it is largely an open field which is used collaterally as a dumping site by the members of the public.

23. In opposition, the respondents opposing alleges that when it purchased the property from Princess Sandwerke Pty Ltd ("Princess"), on which the mine dump is situated, its intent was clear, i.e. that the property was to be utilized for dumping purposes, aligning with its operation needs at the time. [12]
24. In addition, and as per the title deed transferring ownership of the mine, Princess willingly relinquished the property, surrendering all rights, title and interest to the COJ, including the mine dump situated on the property at the time.[13]
25. Premised on this, the respondents had argued that the inference to be drawn is that the alleged mine dumps were also transferred to the COJ alongside the property sale, given that Princess exhibited no intention to retain ownership of the alleged mine dump post-sale and after transfer of the property.[14] In accordance with the abstract theory of the transfer of property, the requirements for the passing of ownership in immovables are also twofold, namely delivery-which in the case of immovable property is by registration of transfer in the deeds office-coupled with a so called real agreement.[15]
26. In response to the above argument advanced by the opposing respondents, the applicant asserts that the respondents never purchased the property with the view to owning the mine dumps, but that it merely purchased the property with a view to using the property as a dumping site.[16]
27. On this basis the applicant therefore, asserts is a demonstration that the opposing respondents never had the intention of owning the mine dumps.
28. The argument advanced by the applicant on this score with respect holds no water. It matters not that the opposing respondents had purchased the property upon which mine dump is situated with the intention to utilize the property as a dumping site. If the dumping site was a res nullius as argued by the applicant it precisely negates the argument as to why the opposing respondents would pay a consideration for the property and have it registered into its name at a cost, if indeed it belonged to no one.
29. On the argument that the opposing respondents were buying the property and not the chemically treated material on the property itself, this argument likewise has no merit. If one becomes an owner of a piece of land, on what basis would you not become the owner of what is situated on the land as at date of registration, whether movable or immovable. In casu, the property was never purchase by the applicant, it never paid a consideration for it, nor was it a party when the sale of the property was concluded.
30. It further is of no moment that the dumping site was not fenced-off at any point in time. The absence of any fence from a property does not give anyone permission to remove from it that which belongs to another. The applicant having been made aware that the dumping site belonged to the COJ ought to have taken the steps to seek permission from the COJ first before it removed any material found on the latter's property. This, the applicant had failed

to do, and in essence removed material from the dumping site without authorisation from the owner of the property.

31. Therefore, on the first issue to be decided by the Court as to whether the COJ is the owner of the mine dump, this Court concludes

that the COJ indeed is the owner. Having concluded as aforesaid, the other issues calling for my determination then fall

away.

32. Consequently, the applicant cannot succeed with its request for a declarator that it is the lawful owner of the mine dump through

appropriation, which mine dump is situated on the property of the COJ.

ORDER

33. For the above reasons the following order is made:

33.1 The application is dismissed with costs.

33.2 The Applicant is to pay the costs, including Counsel fees as per scale B.

C.COLLIIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

APPEARANCES

Counsel for Applicant:

Adv. M.R. MAPHUTHA

Instructed By:

PHUTI MANAMELA INC

ATTORNEYS

Counsel for Second and Third Respondents: Adv. N. LOOPOO

Instructed By

KUNENE RAMAPALA INC

Date of Hearing:

23 May 2024

Date of Judgment:

26 September 2024

[1] Notice of Motion. CaseLines.

[2] First Respondents' Affidavit 02-2.

[3] Joint Practice Note 04-2.

[4] While not defined in the MPRDA, the MPRDA at Section 1 defines 'residue stockpile' as "any debris, discard,

tailing, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation..."

[5] Chronology 06-1.

[6] Founding affidavit para 7; Answering affidavit para 7.

[7] Answering affidavit para 7.

[8] Replying Affidavit 01-3 para 15-17.

[9] Founding affidavit paras 17 to 17.6.

[10] Founding affidavit paras 17 to 17.5.

[11] Founding affidavit para 29.

[12] Answering Affidavit 03-2 para 8.

[13] Answering Affidavit 03-2 para 9. See also Title Deed annexure TM3 at 03-104.

[14] Answering Affidavit 03-2 para 10.

[15] Legator McKenna Inc v Shea [2009] 2 ALL SA SA 45 (SCA); 2010 (1) SA 35 (SCA).

[15] Legator McKenna Inc v Shea [2009] 2 ALL SA SA 45 (SCA); 2010 (1) SA 35 (SCA).

[16] Replying Affidavit 01-3 para 23.

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