

SOUTH AFRICA / JUDGMENT

Saidex (Pty) Ltd and Others v Minister Of Minerals And Energy N.O and Others (37651/2008) [2009] ZAGPPHC 355 (1 December 2009)

[2009] ZAGPPHC 355

COURT

North Gauteng High Court, Pretoria

BEFORE

Sapire

CASE / FILE NUMBER

37651/2008

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IN

THE NORTH GAUTENG HIGH COURT

GAUTENG

PROVINCIAL DIVISION

Case

No: 37651/2008

Date:

1 December 2009

In

the matter between

SAIDEX

(PTY)

LIMITED First

Applicant

FRITS

STEPHAN US

VISSER Second

Applicant

ESTE

MINERALS

CC Third

Applicant

D

& R DIAMOND

CC Fourth

Applicant

CS

DIAMOND
CC Fifth
Applicant
PLATINUM
SHADOW TRADE 101 (PTY)
LTD Sixth
Applicant
and
THE
MINISTER OF MINERALS & ENERGY
N.O First
Respondent
THE
DEPARTMENT OF MINERALS &
ENERGY Second
Respondent
S
A DIAMOND & PRECIOUS METAL REGULATOR
Third
Respondent
MARTIN
US MAMPHENYANE MONONELA N.O. Fourth
Respondent

JUDGMENT

SAPIRE. AJ:

The Applicants seek leave to appeal to the Supreme Court of Appeal against my judgment and order refusing their application in terms of a Notice of Motion the prayers to which read as follows:

“1. Dispensing with the forms and services in terms of Rule 6{ 12) of the Rules of the High Court and disposing of the matter as one of urgency in terms of that rule

2. That, pending the final determination of the application made in the above Honourable Court by the South African Diamond Producers

Organisation against the first and second respondents under case number 98085/07 (the main application)

2.1 the respondents are restrained from taking any steps whatsoever towards prohibiting-

- (i) the first applicant from continuing to conduct its business activities in accordance with its diamond exchange certificate no 8. issued in terms of section 47 of the Diamond Act. 56 of 1986. prior to its amendment by the Diamonds Amendment Act. 29 of 2005. and the Diamonds Second Amendment Act. 20 of 2005

(ii) the second, third, fourth and fifth applicants from continuing to conduct their business activities in accordance with their diamond dealer's licences, numbers DD628, DD005A, DD297A issued in terms of section 29 of the Diamond Act. 56 of 1986. prior to its amendment by the Diamonds Amendment Act. 29 of 2005. and the Diamonds Second Amendment Act. 30 of 2005. respectively

3. In amplification of the above, specifically ordering:

3.1. the third respondent and any of its employees and officials to cooperate with and assist the first applicant insofar as it may be necessary for the first applicant to run its Diamond Exchange business at the premises (the particulars of such premises are reflected on the first applicant's diamond exchange certificate (licence) above in the same manner⁴ as it did prior to 30 June 2008. including inter alia to

3.1.1 assist and cooperate with the first applicant and any party wishing to export through diamonds with the completion of all necessary forms and to assist with the insertion of such information as may be necessary to complete the forms irrespective of the stage that the export process has reached when the third respondent's cooperation is requested;

3.1.2. instruct at least one of its registering officers to the first applicant's business to weigh any parcel of rough diamonds, examine its contents and describe the contents on such forms which require such details as necessary to be inserted therein in the same manner as was done prior to 30 June 2008;

3.1.3. authorise any and all forms and documentation in such manner as it was required to do prior to 30 June 2008,

3.1.4. refrain from interfering with all licensed diamond dealers and licensed diamond cutters (beneficiaries). even if accompanied or assisted by such persons as were permitted in terms of the conditions of the first applicant's licence prior to 30 June 2008 to view the diamonds at the first applicant's diamond exchange and make formal bids in writing for any parcel of rough diamonds destined for export, at the first applicant's diamond exchanges;

3.1.5. order its registering offices to visit the first applicant's diamond exchange for the purposes of further completing forms and also for the checking and weighing of rough diamonds in those cases where rough diamonds had been available for viewing of four (4) days or more and where bids of less than the reserved price were received by the applicant,

3.1.6. sign and stamp all further documents which may be required by an exporter to enable the exporter to export the diamonds concerned and to sell all parcels of diamonds with a special seal of the first applicant's diamond exchange (which is unique to each parcel) and thereafter with a special seal of the third respondent (which is unique to each parcel) at the third respondent's premises.

3.1.7. do all things necessary at the premises of the third respondent to enable the exporter to export the parcels of diamonds which have completed the pre-export process at the first applicant's diamond exchange, including the issuing of such certificates as may be necessary in terms of the Kimberley process and to grant the exemption from export duty or certify that the necessary export duty has been paid if applicable.

3.2. The third respondent to cooperate with the second, third, fourth and fifth applicants insofar as it may be necessary for those applicants to run their diamond sales by tenders in their licensed premises (the particulars of such premises are reflected on the applicant's diamond dealer's licence identified hereinabove in the same manner as it did hitherto and inter alia to refrain from

3.2.1. interfering with the second, third, fourth and fifth applicants from inviting foreigners to view the rough diamonds at its aforesaid premises provided that such foreigner is accompanied or assisted by a licensed diamond dealer or licensed diamond cutter (beneficiators);

3.2.2. allowing all licensed diamond dealers and licensed diamond cutters (beneficiators) to view diamonds at those applicants' aforesaid premises and make formal bids in writing for any parcel of rough diamonds even if accompanied or assisted by such persons as were permitted by those applicants' licences as it was done prior to 30 June 2008.

3.3 The third respondent and all its employees and officials to refrain from in any way whatsoever restricting or preventing any client of the applicants from conducting business with the applicants in accordance with their diamond exchange certificates and/or diamond dealer's licences respectively, issued under the Diamond Act, 56 of 1986, prior to the amendments by the Diamonds Amendment Act, 29 of 2005 and the Diamonds Second Amendment Act, 30 of 2005, respectively.

4. The respondents be restrained from taking any decision on the application for a licence, certificate or permit in terms of section 26 of the Diamonds.

Act as amended by the legislation referred to in prayer 2 1. made by the second, third, fourth, fifth and sixth applicants.

5. Granting costs against those respondents who oppose this application jointly and severally, the one paying the other to be absolved

6. Granting the applicants further and/or alternative relief"

The relief sought is identical to that eventually granted in a similar application originally decided by me. The relief granted by me was extended by Preller, J in terms of a consent by the respondent. That part of the order granted by me was in terms of paragraph 1 and was conceived to be a preservation order pending the outcome of an application in which the constitutionality of provisions of Acts 29 and 30 of 2005 is being tested.

The remainder of the relief granted as I have observed, by consent goes much further than that granted by me. The relief sought by the present applicant comprises not only that granted by me but the further provisions which were intended to amplify the terms of my order.

As I explained in my judgement I considered that it was not competent to grant the relief in toto and for those reasons refused to grant the relief to the present applicant.

The matter is not free of contention and is apparently of great importance certainly to the applicant. The issues have not previously been considered by a Higher Court and in my view the possibility does exist that another court may come to a decision different to that given by me.

I have therefore decided to grant the leave to appeal sought by the applicants and I order

1. The applicants are granted leave to appeal against the judgement given by me on 16 October 2008 to the Supreme Court of Appeal,
2. The costs of this application are to be costs in the cause

SAPIRE. A J

JUDGE OF THE NORTH GAUTENG HIGH COURT

PRETORIA

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Prepared on 14 October 2026 · Esheria