THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 491/10

In the matter between:

S A SOUTWERKE (PTY) LTD **Appellant**

v

SAAMWERK SOUTWERKE (PTY) LTD **First Respondent**
MINISTER OF MINERALS AND ENERGY **Second Respondent**
DIRECTOR-GENERAL: MINERALS AND ENERGY **Third Respondent**
REGIONAL MANAGER: MINERALS AND ENERGY NORTHERN CAPE **Fourth Respondent**

Neutral citation: *SA Soutwerke v Saamwerk Soutwerke* (491/2010) [2011] ZASCA 109 (1 June 2011).

Coram: Brand, Heher, Ponnan, Cachalia and Theron JJA
Heard: **13 May 2011**
Delivered: **1 June 2011**

Summary: A person who relies on an illegally issued permit to occupy land has no right to be consulted by an applicant for a mining right as contemplated by s 22(4) of the Mineral and Petroleum Resources Development Act 28 of 2002.

ORDER

On appeal from: Northern Cape High Court, Kimberley (Lacock J sitting as court of first instance).

The following order is made:

1 The appeal is dismissed with costs;

2 The registrar of this court is directed to deliver copies of this judgment to The National Commissioner of the South African Police Service, the National Director of Public Prosecutions and the Minister responsible for the Department of Minerals and Energy.

JUDGMENT

CACHALIA JA (Brand, Heher, Ponnan and Theron JJA concurring):

[1] This appeal concerns a dispute between two companies over the right to mine salt in the Northern Cape. It is appropriate to set out the facts in some detail so that the legal issues that arose both in the high court and in this court are properly understood.

[2] On 13 July 2005 Saamwerk Soutwerke (Pty) Ltd applied to the Department of Minerals and Energy (the DME) for a right to mine salt on a property known as Vrysoutpan in the Gordonia District of the Northern Cape.[1]

[1]The property is fully described as Portion 146 of Portion 58 (Vrysoutpan) and Portion 59 (Vrysoutpan) van die plaas Kalahari-Wes No 251, District of Gordonia, Northern Cape Province.

The property is state-owned. The application was made in terms of s 22 of the Mineral and Petroleum Resources Development Act 28 of 2002 (the Act) and delivered to the Regional Manager, Mr Mdaweni in line with s 22(1)(a).[2] On 5 September 2005 Mdaweni by letter accepted the application, as he was obliged to do, because no other person was on record as holding a right or permit to mine salt on the property.[3] Mdaweni's letter stated that in terms of s 22(4)[4], Saamwerk had to submit a scoping report by 4 October 2005, conduct an environmental impact assessment and submit an environmental management plan by 3 November 2005, notify in writing and consult with the landowner or lawful occupier and any other affected party, and submit the result of such consultation to him by 4 October 2005. One of the issues in this appeal relates to whether Saamwerk had complied with its obligation to consult.

[3] On 7 December 2005 Saamwerk lodged its environmental management programme, as s 39(1) requires.[5] This was after Mdaweni's deadline, but well within the 180 days that the section specifies. Section 39(4) says that the Minister must approve the plan within 120 days of its lodgement if it meets

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[2] Section 22: '(1) Any person who wishes to apply to the Minister for a mining right must lodge the application-
(a) at the office of the Regional Manager in whose region the land is situated.'

[3] Section 22: '(2) The Regional Manager must accept an application for a mining right if-
(a) the requirements contemplated in subsection (1) are met; and
(b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.'

[4] Section 22: '(4) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing-
(a) to conduct an environmental impact assessment and submit an environmental management programme for approval in terms of section 39, and
(b) to notify and consult with interested and affected parties within 180 days from the date of the notice.'

[5] Section 39: '(1) Every person who has applied for a mining right in terms of section 22 must conduct an environmental impact assessment and submit an environmental management programme within 180 days of the date on which he or she is notified by the Regional Manager to do so.'

certain requirements.[6] The date of approval is important because s 25(3) declares that it is only then that the mining right becomes effective.

[4] On 27 September 2006 the DME informed Saamwerk by letter that its application had been approved provisionally in terms of s 23(1) and that the Regional Manager would approve the environmental plan by 22 November 2006. The 'proposed mining right' was made conditional on Saamwerk's submission of a revised social and labour plan, which took place on 5 December 2006.

[5] Saamwerk thus believed that it had fulfilled all its obligations and all that remained was the Minister's approval of the environmental plan before it could commence mining. At the same time another company, SA Soutwerke (Pty) Ltd (SA Salt) – the appellant – also asserted a right to mine on the property. Because of these conflicting claims the DME prevaricated over the approval of Saamwerk's environmental plan. Saamwerk thus became embroiled in a dispute with the DME over its failure to approve the plan and with SA Salt over its competing claim.

[6] SA Salt had been mining salt on the property since 1981. The history of how it began its mining operations there is not relevant to the current dispute.

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[6] These are set out in s 39(3). It provides as follows:

'(3) An applicant who prepares an environmental management programme or an environmental management plan must-

(a) establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;

(b) investigate, assess and evaluate the impact of his or her proposed prospecting or mining operations on-

(i) the environment;

(ii) the socio-economic conditions of any person who might be directly affected by the prospecting or mining operation; and

(iii) any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act 25 of 1999), with the exception of the national estate contemplated in section 3(2)*(i)*(vi) and (vii) of that Act;

(c) develop an environmental awareness plan describing the manner in which the applicant intends to inform his or her employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or the degradation of the environment; and

(d) describe the manner in which he or she intends to-

(i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;

(ii) contain or remedy the cause of pollution or degradation and migration of pollutants; and

(iii) comply with any prescribed waste standard or management standards or practices.'

What is germane is that it applied for a mining right under the subsequently repealed Minerals Act 50 of 1991 (the Minerals Act) on 13 November 2000. On 21 May 2001 the DME consented to the application and on 19 August 2001 the Director-General authorised the Regional Manager to conclude a written agreement with SA Salt. That was done on 17 December 2001 when SA Salt's managing director, Mr André Blaauw, signed the agreement on its behalf. After some delay the permit was ultimately issued on 28 April 2004.

[7] The DME sent the permit to SA Salt's attorneys under a covering letter by registered post on the same day. They received it on 25 May 2004. SA Salt thus conducted its mining operations under this permit, which had the number MP 169/2003 and an expiry date of 27 April 2005. So, when Saamwerk applied for a mining permit on 13 July 2005 and Mdaweni accepted it on the DME's behalf on 5 September 2005, SA Salt's permit number MP 169/2003 had expired. This permit was therefore not a barrier to Saamwerk's obtaining a mining right.

[8] However, on 16 August 2006, SA Salt wrote to Mdaweni asserting that it was the holder of another permit – permit number MP 169/2004 – which gave it an 'old order mining right'. This meant, if the assertion was correct, that SA Salt was entitled exclusively to continue mining on the property for a period of five years after the Act had commenced its operation on 1 May 2004 – as s 7(1) of the Act's transitional arrangements in Schedule II envisages. On this basis SA Salt objected to the DME's acceptance of Saamwerk's application for a mining right.

[9] The DME had supposedly issued this permit to SA Salt under the Minerals Act on 28 April 2004 – on the very same day it had issued MP 169/2003. However, unlike MP 169/2003, which had an expiry date, MP 169/2004 did not have one. This was irregular because s 9(1), read with s 9(3) of the Minerals Act, required mining authorisations to be issued for a determined period. Be that as it may, MP 169/2004 not only duplicated MP 169/2003 – except for its omission of an expiry date – but purported to authorise SA Salt to mine on the very same

property (and for the same period) over which Saamwerk's application had been accepted.

[10] On 30 August 2006 Saamwerk asked SA Salt to terminate its mining operations and vacate the property as it intended to commence its mining operations there on 1 September. SA Salt did not budge. Instead, on 1 September 2006 its attorneys wrote to the Regional Manager again asserting that 'it is the lawful holder of a valid mining permit number MP 169/2004' and threatened to approach the high court should the DME not suspend Saamwerk's mining right. SA Salt also ignored a demand from the Department of Public Works on 4 September 2006 to vacate the property in favour of Saamwerk.

[11] After Saamwerk became aware of SA Salt's competing claim to mine on the property, it took up the matter with the DME. The DME informed it that SA Salt's permit MP 169/2004 had lapsed a year after its issue – on 27 April 2005 – because SA Salt had not applied to convert it as an old order right. Saamwerk's attorneys then wrote to SA Salt on 20 October 2006 demanding that it vacate the property within a week. Again, it would not and continued to assert its right to mine on the property. On 28 November 2006 Saamwerk addressed a letter to the DME to complain about the delay in resolving the dispute.

[12] On 6 December 2006 Mdaweni convened a meeting with SA Salt to discuss the conflicting authorisation to Saamwerk. He informed SA Salt that the DME had no record of having issued MP 169/2004. This contradicted the DME's earlier statement to Saamwerk that this permit had expired. Of greater concern, Mdaweni now made the startling claim that there were serious question marks over the permit's validity because it appeared to have been forged. The only permit that the DME had on record, he told SA Salt's representatives, was MP 169/2003, which had an expiry date of 27 April 2005. However, he thought, and told SA Salt's representatives, that it was valid for a period of five years as an old order right. It is difficult to understand how he came to this erroneous view because that permit was valid for one year only and was therefore not capable of

being converted under s 7(1) of the Act. Even if it was, SA Salt had not applied for the right to be converted. Nevertheless, Mdaweni adopted the stance that DME had approved Saamwerk's application in error as MP 169/2003 to mine on the property already existed.

[13] Thereafter Saamwerk continued to pressurize the DME to bring finality to the matter. On 26 January 2007 the DME gave Saamwerk an undertaking that it would investigate the validity of MP 169/2004. It said it would do so by sending an inspector to the property, and also take immediate steps to evict SA Salt from the property if it transpired that the permit was invalid. Strangely, the DME said nothing about Mdaweni's view concerning the validity of MP 169/2003, which would obviate the need to investigate the validity of MP 169/2004. On 7 February 2007 Saamwerk's attorneys again wrote to the DME for confirmation that an inspector had been sent to the property, but received no response. The Minister had also not approved the environmental plan as promised.

[14] In the meantime the DME arranged a meeting with SA Salt on 13 March 2007 and requested it to produce the original MP 169/2004. Mr John Block, one of SA Salt's directors, produced the permit at the meeting. Mdaweni and Mr Byron Guthrie from DME's head office in Pretoria inspected the permit and concluded that it was valid, which was contrary to the view Mdaweni had earlier held. In the absence of an expiry date on the permit, Block and Mdaweni agreed that it permitted SA Salt to mine for five years; but that SA Salt would have to apply for the permit to be converted as an old order right within five years of the Act's commencement. This effectively meant that once SA Salt lodged its conversion application, Saamwerk would not be able to mine on the property.

[15] Against this background Saamwerk commenced proceedings in the Northern Cape High Court on 22 March 2007 to compel the Minister to approve the environmental plan and also to have MP 169/2004 declared invalid. The very next day Block and Mr Bester, SA Salt's financial manager, lodged an application with the DME to convert what SA Salt now regarded as an old order right under

MP 169/2004 to a right to continue mining under the Act. On 7 April 2007 the DME granted the conversion application, which confirmed SA Salt's belief that it could continue mining until 30 April 2009; that is for five years after the Act had commenced.

[16] A month later SA Salt filed its answering affidavits. And it relied mainly on the permit that Mdaweni and Guthrie had authenticated, that is MP 169/2004, to resist the relief Saamwerk sought. Mdaweni filed an affidavit on behalf of the DME supporting SA Salt's stance. He stated that the DME had approved Saamwerk's application through a bona fide error, the error being that SA Salt's permit MP 169/2004 had not been recorded on its computer system. The DME was thus not aware of this permit when it accepted Saamwerk's application on 5 September 2005. SA Salt also opposed Saamwerk's relief on another ground; that it had not met all its obligations under the Act, including having failed to consult with SA Salt as an 'occupier' of the property.

[17] However, the only dispute that was ventilated in the high court was whether any valid permit had been issued to SA Salt to mine on the property and, if so, what the duration of the permit was, and also whether it was valid at the time that the DME had accepted Saamwerk's application. As there were disputes on the papers over these issues the court, at the request of the parties, referred them to oral evidence.

[18] The hearing lasted five days in October 2009. Several DME officials testified. They were not only unable to provide a satisfactory explanation concerning the origin of MP 169/2004, but they also gave contradictory evidence on this aspect. In addition, Saamwerk called a handwriting expert who testified that the impugned permit had been falsified. His evidence was not disputed.

[19] Because of the nature of the oral testimony and the documentary evidence that was placed before the court, the DME and SA Salt were driven to concede that MP 169/2004 was invalid; that the only valid permit issued to

SA Salt was MP 169/2003, which had expired on 27 April 2005; and that SA Salt had no valid authorisation to mine on the property on 5 September 2005, when the DME accepted Saamwerk's application. It is particularly curious – and troubling – that SA Salt adduced no evidence by any of its officials to explain how it came to possess MP 169/2004. At the very least, one would have expected Block, who, on SA Salt's behalf, had produced the permit at the meeting with the DME on 13 March 2007, to have explained from where he had got it. So it is hardly surprising that the high court later found the permit to be a forgery, and that someone in SA Salt's service was aware of this.

[20] At the conclusion of oral evidence the matter was postponed to 10 December 2009 for argument. However on 29 October 2009, SA Salt launched a counter-application. This time it sought to review and set aside the Minister's approval of Saamwerk's application on 27 September 2006. Its cause of action was based on a single ground – that the then acting Regional Manager of the DME, Mr Mfetoane, did not have the authority, in terms of s 9(2) of the Minerals Act to issue MP 169/2003, which was valid only for a year because the Minister had authorised the issue of a permit for a five-year period; or a two-year period at least. The permit Mfetoane issued to SA Salt was therefore null and void. The consequence of the nullity, so it was submitted, was that its application for a mining permit in November 2000 remained pending. This meant that the DME had no authority to grant a right to Saamwerk without first properly processing SA Salt's pending application in terms of s 9(1)(b) of the Act.[7] SA Salt thus sought a declaratory order to this effect. Saamwerk opposed the application and the DME elected to abide by the decision of the court.

[21] In a closely reasoned judgment, Lacock J dismissed the counter-application with costs. First, he found that as SA Salt had not instituted review proceedings to set aside MP 169/2003, it remained valid, whether or not its issue

[7] Section 9: '(1) If a Regional Manager receives more than one application for a prospecting right, a mining right or a mining permit, as the case may be, in respect of the same mineral and land, applications received on-
(a) . . .
(b) different dates must be dealt with in order of receipt.'

was *ultra vires.*[8] And further, he rejected SA Salt's contention that the relief it sought arose from a collateral challenge to the Regional Manager's purported unlawful administrative act on the ground that it was not being coerced to comply with any act.[9] Second, the learned judge found that even if he were to exercise a discretion regarding SA Salt's claim to declaratory relief, he would have found against it. In this regard, the factors that weighed with him were that the SA Salt already had the benefit of having mined illegally for more than five years; that it took no steps itself to investigate the source of the impugned permit and that it is improbable that no one at SA Salt was aware that it had been falsified. In my view the judge's reasoning cannot be faulted. He was therefore correct to have dismissed the counter-application.

[22] In the main application the court declared Saamwerk the holder of the mining right over the property and also that the Minister was deemed to have approved Saamwerk's environmental plan. It also declared MP 169/2004 invalid. The DME and SA Salt were ordered jointly and severally to pay Saamwerk's costs.

[23] SA Salt was dissatisfied with this outcome and applied to the high court for leave to appeal against the orders granted in the main application and in the counter-application, but it did not challenge the declaration that MP 169/2004 was invalid or the costs order that was granted against it in the main application.

[24] In its application for leave to appeal SA Salt advanced a new ground of review to attack the decision to approve Saamwerk's application for a mining authorisation – one that the high court was not asked to consider either in the main application or the counter-application. This was that the mining right could not have been granted to Saamwerk since it had failed to consult with SA Salt as an 'occupier' of the property. Although, as I mentioned earlier, SA Salt had raised this defence in the main application, counsel for SA Salt chose not to pursue it at the time. The high court dismissed the new ground and refused leave to appeal,

[8] *Oudekraal Estates (Pty) (Ltd) v City of Cape Town* 2004 (6) SA 222 SCA at para 26.
[9] Ibid para 32.

but this court granted the necessary leave. The DME has no interest in this appeal.

[25] In refusing SA Salt's application for leave to appeal, the high court considered that there was a factual dispute on the papers (in the main application) as to whether Saamwerk had consulted with SA Salt. But, said the judge, SA Salt chose not to make an issue of it through a referral for oral evidence with the other issues that were referred. This meant, so the court reasoned, that Saamwerk was denied the opportunity to adduce further evidence to support its case on this point. It would therefore be unfair, so it said, to allow SA Salt to resuscitate this issue.

[26] I do not share the learned judge's view that there was a dispute of fact on this issue. SA Salt raised the defence that it had not been consulted in its answering affidavit. In reply Saamwerk did not adduce facts to gainsay SA Salt's assertion. The reason it did not do so, it stated pertinently, was because this issue was immaterial ('ontersaaklik') to the relief it was seeking, which was a *mandamus*[10] to compel the DME to execute the decision it had already taken to award a mining right to it; it also had no bearing on the dispute regarding the validity of MP 169/2004, which constituted the basis of SA Salt's defence in the main application.

[27] So the question remains; was the high court entitled to have refused to review and set aside the Minister's approval of Saamwerk's application without considering whether it had complied with the consultation requirement in the Act? The answer to this question, in my view, depends upon the legal basis relied on by SA Salt for its occupation of the property. As SA Salt's occupation was premised on the validity of MP 169/2004, which the high court correctly found

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[10]Now incorporated under s 6(2)(g) of the Promotion of Administrative Justice Act 3 of 2000. It provides:
'A court or tribunal has the power to judicially review an administrative action if –
(a) . . .
. . .
(g) the action concerned consists of a failure to take a decision.'

was not valid, the further question that arises is whether SA Salt had a right to be consulted even though the permit was invalid. To answer this question it is necessary to examine the relevant provisions of the Act briefly.

[28] Section 22 sets out the procedure for the application for a mining right. Any person who wishes to apply for a mining right must lodge the application with the Regional Manager concerned.[11] The Regional Manager must accept it if no other person holds a mining right or mining permit for the same mineral and land.[12] If the application is accepted, the Regional Manager must, within 14 days of that date by written notice, inform the applicant to conduct an environmental impact assessment and submit an environmental management programme for approval in terms of s 39,[13] and to notify and consult with 'interested and affected parties' within 180 days from the date of the notice.[14]

[29] The purpose of the notification and subsequent consultation is to enable the applicant to assess the impact that its mining operations may have on such parties. This will place the applicant in a position to prepare an environmental management programme that takes their concerns into account. The Regional Manager must also, within 14 days of accepting the application, call upon these parties to submit their comments regarding the application within 30 days of the date of the notice. The rationale for soliciting comments is to allow the Regional Mining and Development Committee to consider objections and to advise the Minister thereon.[15]

[30] The Act does not define who an interested or affected party is. But it seems clear that an 'interested' party is one with a lawful interest in land on which a mining right is sought, such as the landowner or lawful occupier. From the notification that the DME sent to Saamwerk on 5 September 2005, which I

[11] Section 22(1).
[12] Section 22(2)(b).
[13] Section 22(4)(a).
[14] Section 22(4)(b).
[15] Section 10(2).

referred to earlier, this is how the DME understood the reference to interested parties.[16]

[31] 'Affected parties' appears to refer to persons whose socio-economic conditions might be directly affected by the mining operation. These would, for example, include persons who earn a livelihood in the immediate environment where mining operations are to be conducted. This is why the applicant for a mining permit must prepare an environmental management programme referred to above that deals with, among other things, this issue.[17] SA Salt is clearly not an 'affected party' as contemplated in the section and had no right to be consulted on this basis; although there is a suggestion in its written argument that its eight employees, and their families, who reside on the property, are. Whether that is so would necessarily depend on the facts attaching to the circumstances of each employee, which was not canvassed in the papers. In any event, to the extent that the employees derive their interest purely through their employer, SA Salt, they can certainly have no stronger interest than SA Salt itself possesses.

[32] I have mentioned that in its answering affidavit in the main application SA Salt asserted that Saamwerk had a duty to consult with it as an 'occupier'. Its right to occupy the property was firmly anchored in its belief that MP 169/2004 was valid. On a proper reading of its answering affidavit, this was the basis upon which it claimed a right to occupy the property. It thus asserted that it was a lawful occupier of the property.[18]

[33] But this claim contains the seeds of its own destruction; because if the permit was valid Saamwerk's application to mine would have been rejected. And no question of Saamwerk's obligation to consult could arise. The permit, as we now know, was declared invalid; and with that declaration, any suggestion that

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[16] See para 2 above.
[17] Section 39(3)(b)(ii).
[18] *Cf Bengwenyama Minerals (Pty) Ltd & others v Genorah Resources (Pty) Ltd & others* 2011 (3) BCLR (CC) paras 62-67.

SA Salt remained a lawful occupier, and thus had a right to be consulted, disappeared.

[34] To demonstrate how disingenuous SA Salt's claimed right to be consulted is, one only has to ask what would have happened if Saamwerk had attempted to consult SA Salt? The answer is obvious. SA Salt would have firmly rebuffed the attempt on the ground that it had a valid permit, and therefore, a prior right to mine on the property, just as it did in resisting Saamwerk's attempts to evict it from the property. So the reason that Saamwerk did not take issue with SA Salt over this question in its replying affidavit in the main application was because SA Salt's very claim to have a valid permit was inconsistent with its assertion that it also had a right to be consulted by Saamwerk – and that Saamwerk had a corresponding duty to do so. SA Salt's belated attempt to raise this issue, which had no proper basis in the main application and was not pursued in those proceedings, or in the counter-application, was therefore doomed to fail.

[35] Counsel for SA Salt contended that even if the counter-application was dismissed there were a number of other reasons why the high court, in the main application, was not entitled to grant any declaratory order other than that MP 169/ 2004 be declared invalid. I need not deal with this contention; because once the counter-application was dismissed, correctly in my view, SA Salt had no standing to impugn the order that the high court granted in the main application. In the result the appeal must fail.

[36] I have dealt with the consultation issue in some detail because SA Salt made it its principal ground of appeal, and argued the matter on this basis. The counter-application could, however, have been dismissed on a much simpler basis – SA Salt's failure to exhaust internal remedies before launching review proceedings. The high court does not appear to have considered this, perhaps because it too had a firm view on the merits of the case against SA Salt.

[37] The facts show that the decision to grant Saamwerk a mining right, which SA Salt sought to have set aside, was communicated to Saamwerk by letter on 27 September 2005. The Deputy Director-General, Mr J F Rocha, signed the letter; but the Director-General probably made the decision under the Minister's delegated authority. However, it is immaterial whether Rocha or the Director-General made the decision. It is beyond dispute that the Minister did not. This means that SA Salt was obliged to appeal to the Minister, as s 96(3) of the Act envisages, before launching review proceedings.[19] It did not do so and it was therefore was not competent to have approached the high court for any relief.

[38] One matter remains. This dispute commenced in 2005 with the DME's decision to accept Saamwerk's application for a mining right. Saamwerk apparently complied with whatever obligations the law and the DME expected of it. In the meantime, SA Salt, which had been mining on the property since 1981, produced a mining permit authorising it to mine on the property. The DME had no record of this permit. Then, SA Salt and the DME suspiciously came to an agreement that the permit was valid, when it obviously was not. So Saamwerk was compelled to litigate against both SA Salt and the DME to vindicate its right.

[39] In the court proceedings that followed, the high court found, as I have mentioned, that the permit had been forged, and that SA Salt must have been aware of this. It beggars belief that the officials of the DME, who dealt with this matter, purported to validate the permit even though it visibly was not valid, and the DME had no record of it. The result was that Saamwerk, despite continuing throughout to pay its rental to the Department of Public Works, was denied its right to mine on the property. Instead SA Salt continued to mine for at least five years without a valid permit.

[40] During the hearing before us, we were informed by Saamwerk's legal representatives that they had lodged a complaint with the South African Police Service approximately two years ago to investigate the forgery, but had since

[19] *Bengwenyama Minerals (Pty) Ltd & others v Genorah Resources (Pty) Ltd & others* 2011 (3) BCLR (CC) paras 43-52.

heard nothing. Equally disturbing is that there is more than a hint of ineptitude – if not venality – among one or more of the officials of the DME who dealt with this matter. Yet no one has been held accountable. I shall accordingly request the registrar of this court to deliver a copy of this judgment, as well as the judgments of the high court, to the National Commissioner of the South African Police Service, the National Director of Public Prosecutions, and the Minister who is responsible for Department of Minerals and Energy.

[41] I make the following order:

1 The appeal is dismissed with costs;

2 The registrar of this court is directed to deliver copies of this judgment to The National Commissioner of the South African Police Service, the National Director of Public Prosecutions and the Minister responsible for the Department of Minerals and Energy.

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A CACHALIA

JUDGE OF APPEAL

APPEARANCES

For Appellant:	W H G van der Linde SC (with him E F van Huyssteen) Instructed by: Wessels & Smith Inc, Upington McIntyre & Van Der Post, Bloemfontein
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