



CONSTITUTIONAL COURT OF SOUTH AFRICA

Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others

**Case No: CCT 39/10
[2010] ZACC 26**

Date of Judgment: 30 November 2010

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court

On 30 November 2010 the Constitutional Court delivered a judgment concerning the administrative fairness of the allocation of prospecting rights to a third party in terms of the Mineral and Petroleum Resources Development Act (the Act) on land owned by a community.

The first respondent (Genorah) was awarded prospecting rights on the community's land.

The community's challenge to the award in the North Gauteng High Court, Pretoria was dismissed. An appeal to the Supreme Court of Appeal was also dismissed on the ground, like in the High Court, that the community had failed to bring the application for review timeously in terms of the provisions of the Promotion of Administrative Justice Act (PAJA). The Supreme Court of Appeal did not decide the merits of the community's grounds of review. The community applied to the Constitutional Court for leave to appeal against the decision of the Supreme Court of Appeal.

The community contended that the Supreme Court of Appeal erred in finding that the application was brought out of time and for not finding that the community should have been awarded a preferent right to prospect in terms of section 104 of the Act. In addition, the community argued that the award to Genorah was defective because of irregularities in the required consultation process, lack of compliance with environmental requirements and unfair administrative procedures.

Genorah contended that the community had no right of appeal and that the community's application to the High Court was late. It was argued that there was in any event, nothing untoward in the process and award to it of these prospecting rights.

The Constitutional Court decided the matter on the basis of whether the decision to allocate the prospecting rights was fair administrative action. The Court found that an internal appeal was available to the applicants, that the Department's failure to deal with the appeal amounted to a conclusion of the appeal process, and that the review application had thus been brought in time.

The Constitutional Court held further that the granting and execution of prospecting rights is a grave invasion of a property owner's rights. The Court held that the purpose of consultation with landowners, required by the Act, was to provide them with the information necessary to make an informed decision on how to respond to the application. The Constitutional Court, per Froneman J, concluded that Genorah had not consulted with the community as required by the Act, that the decision-maker had not given the community a hearing or complied with the fairness requirements of PAJA, and that the environmental requirements in terms of the Act had not been satisfied. Accordingly the community had not been treated as required by the Constitution.

Leave to appeal was accordingly granted to the community and the appeal succeeded. The awards of prospecting rights on the community's land were set aside. The Constitutional Court therefore ordered the relevant government department and Genorah to pay the applicants' costs, jointly and severally, in the High Court, the Supreme Court of Appeal and the Constitutional Court.