

Who owns the tailings generated from previous mining activities?

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In the decision of *Mpilo and Zen Holdings (Pty) Ltd v Centurion Mining Company (Pty) Ltd and Another*^[1] the High Court of South Africa, Mpumalanga Division was called upon to decide who owned the tailings located on the farm Camelot Lot 320 Ju ("**Property**").

The tailings had been generated from previous mining activities conducted prior to the enactment of the Mineral and Petroleum Resources Development Act, 2002 ("**MPRDA**"). The Property is owned by the Government.

Mpilo and Zen Holdings (Pty) Ltd ("**Mpilo**") had been granted a mining permit in terms of section 27 of the MPRDA. The permit granted Mpilo the right to mine the tailings containing gold ore (worth approximately R435 million) located on the Property.

Centurion Mining Company (Pty) Ltd ("**Centurion**") appealed the granting of the mining permit to Mpilo.

In support of its appeal, Centurion contended that it owned the tailings because it had purchased the tailings from the entity that had previously conducted mining activities on the Property and who had produced the tailings prior to the enactment of the MPRDA.

On 9 May 2023, the Regional Manager of the Mpumalanga Department of Mineral Resources ("**DMRE**") found in favour of Centurion ("**DMRE decision**").

The DMRE found that as per the decision of *De Beers Consolidated Mines Ltd versus Ataquia Mining (Pty) Ltd and Others*^[2] ("**De Beers**") the tailings that were produced prior to the enactment of the MPRDA are not regulated by the MPRDA and that ownership must be dealt with in terms of the common law and the Minerals Act^[3].

Mpilo consequently brought an urgent application to interdict Centurion from mining the tailings, pending the outcome of Mpilo's application to review the DMRE's decision.

The court therefore had to consider whether Mpilo had established a prima facie right to mine the tailings located on the Property.

Centurion argued that the court in De Beers had found that tailings constitute movable property which is owned by the entity which created the tailings and that through severing the tailings from the natural earth that the tailings constitute movable property not regulated by the MPRDA and that consequently the question of who owns the tailings is to be dealt with in accordance with the common law.

The court disagreed with the contentions advanced on behalf of Centurion. The court found that De Beers did not lay down the principle, that all tailings constitute movable property.

The court found further that each case must be considered on its own facts. In deciding the issue, the court had regard to the decision of *Konstanz Properties (Pty) Ltd versus WM Spilhaus en Kie (WP) Bpk*^[4] ("**Konstanz**").

The court found that, having regard to Konstanz, the tailings located on the Property are immovable property and therefore form part of the Property and that hence Centurion had not established that it is the owner of the tailings.

The court therefore granted an interim interdict in favour of Mpilo pending the outcome of Mpilo's application to review the MPRDA decision.

It is, however, important to emphasise that the Mpilo decision is specific to the facts that arose. The findings of the court were made in the context of considering whether or not Mpilo had established whether it had a prima facie right for purposes of obtaining a final interdict, pending the outcome of Mpilo’s application to review the DMRE decision.

The court did not make a final determination in regard to the ownership of the tailings and ultimately the court that finally decides the issue may come to a different decision.

The Mpilo decision must therefore not be regarded as support for the proposition that tailings generated prior to the enactment of the MPRDA are regulated by the MPRDA or that they are immovable property, which accedes to the immovable property on which they are situated.

[1] (2815/2023) [2023] ZAMPMBHC 43 (26 July 2023).

[2] (3215/06) [2007] ZAFSHC 74 (13 December 2007)

[3] 50 of 1991 (repealed)

[4] 1996 (3) SA 273 (SCA)



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