

9/4/2010

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO. 20326/2007

In the matter between:

MYELETI MINERALS (PTY) LTD

APPLICANT

and

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	☒ NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	☒ NO
(3) REVISED. ✓	
6/4/10 DATE	<i>MFahus</i> SIGNATURE

MINISTER OF MINERALS & ENERGY

1ST RESPONDENT

DIRECTOR-GENERAL : DEPARTMENT OF

MINERALS & ENERGY

2ND RESPONDENT

GENORAH RESOURCES (PTY) LTD

3RD RESPONDENT

DEPUTY DIRECTOR GENERAL - MINERAL REGULATION:

DEPARTMENT OF MINERALS & ENERGY

4TH RESPONDENT

REGIONAL MANAGER - LIMPOPO REGION:

DEPARTMENT OF MINERALS & ENERGY

5TH RESPONDENT

JUDGMENT

FABRICIUS AJ

1. In terms of an amended notice of motion the applicant herein seeks relief essentially against the 5th respondent in the context of his decision to “award” a prospecting right to 3rd respondent in place of itself. Only the 3rd respondent filed opposing affidavits, whilst the relevant rule 53 record of the rules of this Court is before me as well. It appears that 5th respondent is deceased, and in the absence of any version of the 2nd and 4th respondent, I propose to decide this application on the objective facts, and the version put before me by applicant. Applicant’s case was put to me essentially as follows: the Minerals and Petroleum Resources Development Act, No 28 of 2002, provides that applications for prospecting rights must be processed in the chronological order in which they have been received by the Regional Manager. Applicant applied for a prospecting right over the farm Hoepakrantz 2019 KT (“the farm”) on 28 July 2005. The application was subsequently approved/granted on 17 July 2006. The effect of that grant was that the prospecting right in respect of the farm could not be granted to anyone else. Despite this, and after the 3rd respondent applied on 6 February 2006 for a prospecting right over the farm and certain adjoining properties, the prospecting right in respect of the farm was inexplicably granted to it. Although respondents are under a duty to explain how and why this came about, they have not, as said, filed any affidavits. Consequently, what on the face of it is unlawful and unreasonable, must be regarded conclusively to be so. It was contended that once the grant of the prospecting right the applicant was made, it could not be reversed, withdrawn or refused. Having regard to the mentioned chronology of the relevant applications,

the grant of the same right to the 3rd respondent could not be validly and legally made. It was thus null and void and of no force and effect. In addition, the relevant facts are common-cause, and in any event 5th respondent admitted in the course of correspondence, that the prospecting right ought not to have been granted to the 3rd respondent and that it occurred as a result of an error.

2. Before dealing with applicant's contentions and the law, it is convenient at this stage to briefly refer to 3rd respondent's submissions:

- 2.1 The application was instituted outside the statutory period prescribed by the provisions of Section 7(1) of the Promotion of Administrative Justice Act, No 3 of 2000 ("PAJA");

- 2.2 No decision "to award" the relevant mineral prospecting rights had been made to applicant;

- 2.3 It would not be just and equitable, in any event, to grant applicant any relief at this late stage, as such relief would not be just and equitable as required by the provisions of Section 8 of PAJA;

- 2.4 The relief sought was in any event also not competent in as much as 3rd respondent was granted a prospecting right over five farms, of which Hoepekrantz was only one, and neither the applicant nor I could excise out

of this decision a portion in respect of which it allegedly had been awarded a prospecting right.

3. It is in my view that there is merit in all of 3rd respondent's contentions. The application was not brought within the 180 day period stipulated in PAJA, and in this context it is significant to note that applicant did not state when precisely the relevant decision which is the subject matter of this application came to its notice. On its own version the 5th respondent purportedly refused the right which had already been granted to it on 17 July 2006. On 27 October 2006 applicant was given written notice that its application had been unsuccessful. The original notice of motion is dated May 2007. The delay is to some extent sought to be explained by the fact that applicant purported to file an appeal in terms of Section 96 of the Act with the Director-General, also outside the prescribed period. Furthermore, such appeal was incompetent in as much as the decision to award a prospecting right lay with the Minister on the one hand, and secondly, that if indeed a lawful decision had been taken by the Regional Manager, the appeal would lie to the Director-General. No proper internal remedy, if one indeed existed, was therefore exercised, and in any event no proper application for condonation was before Court. The regulations under the Act (Government Notice R527 of 23 April 2004) stipulated that any appeal under Section 96 of the Act must be brought within 30 days of the person having become aware or should reasonably have been aware of the particular administrative decision concerned.

4. Section 96(4) makes Section 7 of PAJA applicable to any Court proceedings contemplated in Section 96 of the Act. Even in the absence of Section 96(4), Section 7 of PAJA would have applied in any event, and I am of the view that the relevant 180 day period has not been complied with, and that there are insufficient grounds before me to justify a variation of this period in the interest of justice.
5. On the objective facts of this application, the 5th respondent did no more, and could do no more than acting in terms of Section 9 of the Act. He received applicant's application in terms of Section 9 of the Act, thereafter acted in terms of Section 10 and 16, but what is abundantly clear objectively speaking, is that the Minister of Minerals and Energy did not consider the application, nor grant it. [See: Section 16(5) read with Section 17(1) of the Act]. Any "*grant*" of a prospecting right to applicant in this context had not become effective in law, nor were any terms and conditions stipulated that were relevant to the granting of such right. [See: Section 17(6) of the Act]. Neither was any such right registered with the Mining Titles Office at all. [See: Section 19(2) of the Act]. In the premises it is clear that no prospecting right in respect of the mentioned farm had been granted to applicant.

See: Meepo v Kotzé 2008(1) SA 104 (N.C.) at para 46 - 48.

6. In terms of the provisions of Section 8(1) of PAJA I must grant an order that is just and equitable. It would not be just and equitable if I now excise a portion of the

farm over which the 3rd respondent had been granted prospecting rights. This is so having regard to financial considerations and costs incurred by the 3rd applicant up to date, the public interest and finality of administrative decisions, and the effluxion of time that is so obvious herein.

See: Chairperson, Standing Tender Committee v JFE Sapela Electronics (Pty) Ltd 2008(2) SA 638 (SCA) at par 28.

It would not be just and equitable in my view if I were to grant an order in favour of applicant in this case on any of the bases suggested. In as much as I do have a discretion in this regard, I decline to exercise it in favour of applicant, even if there were sufficient facts before me to support its claim herein.

7. For all of the abovementioned reasons the application is dismissed with costs.

SIGNED AT PRETORIA ON THIS THE 6TH DAY OF APRIL 2010.



**FABRICIUS
ACTING JUDGE
NORTH GAUTENG HIGH COURT
PRETORIA**