



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal

Vantage Goldfields SA (Pty) Ltd v Siyakhula Sonke Empowerment Corporation (Pty) Ltd and Another (853/2023) [2025] ZASCA 01 (9 January 2025)

Today, the Supreme Court of Appeal (SCA) handed down judgment, dismissing an appeal with costs, against an order of the Mpumalanga Division of the High Court, Mbombela (the high court). The high court declared a sale of shares agreement (the principal agreement) between the appellant, Vantage Goldfields SA (Pty) Ltd (Goldfields) and the second respondent, Flaming Silver Trading 373 (Pty) Ltd (Flaming Silver), void and of no force and effect due to the non-fulfilment of certain suspensive conditions. The first respondent, Siyakhula Sonke Empowerment Corporation (Pty) Ltd (Siyakhula), also sought repayment of R1 million paid to Goldfields under a subsequent addendum to the principal agreement.

On 1 November 2017, Goldfields and Flaming Silver entered into the principal agreement. Under this agreement, Flaming Silver was to purchase Goldfields' shareholding in two subsidiary companies and Goldfields' claims in those companies and another, for R310 million. The principal agreement was subject to the fulfilment of conditions precedent. They were the following. Firstly, Flaming Silver was required to secure financing of the purchase price by 31 January 2018 (the financing condition). Secondly, Flaming Silver was required to pay R10 million plus R1.00 (of the purchase price) into the trust account of attorneys Martins Weir-Smith Inc within 60 days of the 'effective date', namely, 1 November 2017 (the payment condition). And, thirdly, all regulatory and statutory approvals, including consent from the Minister in terms of s 11 of the Mineral and Petroleum Resources Development Act 28 of 2002 (the MPRDA), had to be obtained by 31 January 2018 (the consent condition). Critically, clause 3.2 of the principal agreement provided that if any conditions precedent was not fulfilled by its due date, the agreement would automatically lapse and be of no force and effect, unless the fulfilment period was extended in writing before the deadline.

Subsequent to the various deadlines lapsing, Goldfields, Flaming Silver and Siyakhula purported to conclude various written addenda to the principal agreement. The first addendum concluded on 21 December 2017, changed the date for the fulfilment of the financing and consent conditions in the principal agreement to 31 March 2018. On 3 May 2018 a second addendum purported to deem the financing and payment conditions as fulfilled by 31 March

2018. The consent condition deadline was extended to 30 July 2018. The third addendum purported to further extend the consent condition to 31 October 2018. It was also agreed that Siyakhula would pay a non-refundable prepayment of R1.1 million a month of the purchase price. In the fourth addenda, the parties purported to agree that all conditions, including the consent condition, were fulfilled. However, the Minister's consent under s 11 of the MPRDA had not been obtained.

In a prior application to the high court, Flaming Silver sought specific performance against Goldfields in terms of the fourth addendum. That application was dismissed and, instead, the fourth addendum was set aside on the application of an erstwhile director of Flaming Silver. That decision was not appealed and remained binding. In a subsequent high court application, Siyakhula and Flaming Silver sought an order declaring that the principal agreement had lapsed and the repayment of monies paid under the lapsed agreement on the grounds of unjustified enrichment. The high court found that the principal agreement had indeed lapsed on 31 January 2018 due to non-fulfilment. It also held that the subsequent addenda were void *ab initio* because the lapsed contract could not be revived. Goldfields was ordered to repay Siyakhula R1 million, as it was unjustly enriched when it received that payment from Siyakhula. Leave to appeal that judgment was granted by this Court.

The SCA held that the principal agreement lapsed automatically on 1 or 2 January 2018 when the payment condition was not fulfilled. The Court found that the parties' failure to extend the deadline for the payment condition in writing before the due date rendered subsequent attempts to amend the agreement futile. The SCA found that the second and third addenda, concluded after the principal agreement had lapsed, were incapable of reviving it. Clause 3.2 remained intact and prohibited any retrospective extensions or deeming provisions. The Court found that even if the addenda reflected an intention to revive the agreement, they 'self-destructed' when the consent condition was not fulfilled by its extended deadlines (30 July 2018 and 31 October 2018).

The SCA held that clause 4.3 of the third addendum, which described the payment as a non-refundable prepayment, was not a self-standing obligation. The payment was linked to the principal agreement, which had lapsed and was void. Consequently, Goldfields was not entitled to retain the payment. The payment was recoverable on the basis of unjust enrichment.

The SCA reaffirmed that a lapsed contract cannot be revived unless the conditions precedent causing the lapse are properly amended. Any attempt to extend deadlines or deem conditions fulfilled after their expiry is legally ineffective unless explicitly allowed by the agreement.

As a result, the SCA dismissed the appeal with costs.

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