

KATZ v BENEPROPS TWO (PTY) LTD 1998 JDR 0052 (O)

Importance	This case is primarily of historical interest. Section 96(2) of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) currently clearly provides that the lodging of an internal appeal against the decision to grant a prospecting or mining right does not suspend the administrative decision unless it is so suspended by the Director-General or the Minister, as the case may be. This case illustrates the manner in which the issue was dealt with prior to the MPRDA, with the court holding that the common law rule that suspends the execution of a judgment of the court upon the lodging of an appeal does not similarly apply to administrative decisions.
Parties	<p>Applicant: Katz, individual granted prospecting rights by previous landowner</p> <p>First Respondent: Beneprops Two (Pty) Ltd – the registered owner of a farm subject to a prospecting right</p> <p>Second Respondent: Minister of Minerals</p>
Facts	<p>Katz, and another individual by the name of Mathews had entered into a prospecting contract for diamonds with the previous owner – Mr Van Aswegen – of certain land (at the time mineral rights still vested with the owner of the land – a situation which has completely changed under the MPRDA). The prospecting contract was for a period of two years (thus beginning January 1995 and ending January 1997), but included a provision allowing Katz and Mathews to exercise an option to extend the contract for a further period of 12 months.</p> <p>Mr Van Aswegen died and the first respondent, as new owner of the land to which the prospecting contract was subject, registered its right thereto at the Deeds office about six months after the prospecting contract had started running. Its registered right in the property was subject to the prospecting contract. The applicant had, in the meantime, already addressed a letter to the deceased (in February 1995) exercising its option to extend the prospecting contract by a further twelve months.</p> <p>In December 1995 the Minister of Minerals granted the applicant a mining permit to prospect for diamonds until December 1997. The first respondent lodged an appeal against this decision in March 1997. This appeal was still pending at the time the case was heard. In the meantime, the first respondent prevented the applicant from gaining access to the land for purposes of conducting its prospecting activities. The applicant maintained that the lodging of the appeal against the granting of the mining permit suspended the operation of that decision and thus justified its refusal to grant the applicant access to the land.</p> <p>The case deals mainly with the issue whether the prospecting contract had been validly extended with arguments centring on</p>

	<p>whether the extension had occurred in the manner prescribed by the Deeds Registries Act 47 of 1937, whether the applicant could still exercise the option, and whether the extension had occurred in the manner prescribed in the contract. The arguments and the court's decisions in this regard are not relevant to the mining and environmental litigation project review. The court's finding on whether the lodging of an appeal against the decision to grant a mining permit suspends the operation of that permit is, however, arguably still relevant.</p>
Relief sought	<p>Order confirming that the applicant still held prospecting rights to the property in question, and that the prospecting rights had thus been validly extended.</p>
Legal Issues & Judgment	<p>Issue 1: Does the lodging of an appeal against the granting of a mining permit suspend the operation of that permit?</p> <p>Judgment: The court dismissed the argument that the lodging of an internal appeal suspends the operation of the decision to grant the mining permit (at 12) as well as the claim that the court <i>should</i> suspend the operation of the permit. The court held that the common law rule that the execution of a judgment by a court of law is suspended upon the noting of an appeal does not apply to such administrative decisions (ibid). Such decisions remain valid and binding until set aside on appeal by statutory appeal tribunals or on review by a court of law. The authorities cited in this regard were <i>Johannesburg Local Road Board & others v David Morton Transport (Pty) Ltd</i> 1976 (1) SA 887 (A) and <i>Coalcor Cape (Pty) Ltd v Boiler Efficiency Services CC & others</i> 1990 (4) SA 349 (C).</p>
Outcome	<p>The court affirmed that the applicant had validly extended the prospecting contract.</p>
Obiter	<p>None</p>