

Suspensive Conditions and the Limits of Revival: The Vantage Goldfields Case

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INTRODUCTION

In the case of *Vantage Goldfields SA (Pty) Ltd v Siyakhula Sonke Empowerment Corporation (Pty) Ltd and Another* (853/2023) [2025] ZASCA 1 (9 January 2025), the Supreme Court of Appeal (the “SCA”) was required to determine the validity of various addenda concluded after the principal agreement had lapsed and whether such addenda had the effect of reviving the agreement.

BACKGROUND

In November 2017, Vantage Goldfields SA (Pty) Ltd (“Goldfields”) entered into a written agreement with Flaming Silver Trading 373 (Pty) Ltd (“Flaming Silver”) for the sale of shares. The terms of the agreement provided that Flaming Silver would purchase the shareholding of Goldfields in two of its subsidiaries, as well as claims in those companies for R310 Million.

The agreement was subject to certain suspensive conditions. They were the following:

1. Flaming Silver was required to obtain financing from reputable and verifiable institutions on or before 31 January 2018 (the “Financing Condition”);
2. Flaming Silver was required to pay R10 million plus R1 of the purchase price into trust within 60 days of the effective date, being the signature date of the principal agreement (thus being by 1 or 2 January 2018) (the “Payment Condition”); and
3. Flaming Silver was required to obtain all necessary regulatory approvals, including the Minister’s consent in terms of section 11 of the Mineral and Petroleum Resources Development Act 28 of 2002 (“MPRDA”), by no later than 31 January 2018 (the “Consent Condition”).

Critically, clause 3.2 of the principal agreement provided that if any of the conditions were 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.

The addenda

The parties subsequently concluded several addenda.

On **21 December 2017**, the first addendum was concluded, which extended the deadlines for the Financing and Consent Conditions to 31 March 2018.

On **3 May 2018**, a second addendum was concluded, which deemed the Financing and Payment conditions fulfilled by 31 March 2018, and further extended the Consent Condition to 30 July 2018.

On **2 August 2018**, a third addendum was concluded, introducing Siyakhula Sonke Empowerment Corporation (Pty) Ltd (“Siyakhula Sonke”) as an intervening party. Siyakhula undertook to provide post-commencement funding, including a non-refundable pre-payment of R1 million. It further extended the Consent Condition to 31 October 2018.

On **31 October 2018**, a fourth addendum was purportedly concluded, which stated that all conditions had been met, despite the fact that the Minister’s consent had not been obtained. This addendum was later found not to have been properly authorised and was thus invalid.

THE DISPUTE AND THE JUDGMENT

The failure to comply with the suspensive conditions, particularly the Financing and Consent conditions, created uncertainty about whether the principal agreement was still binding. Flaming Silver and Siyakhula took the view that the principal agreement had lapsed automatically when the Payment condition was not fulfilled by 1 or 2 January 2018, and that any subsequent attempts to revive it in the second to fourth addenda were invalid.

They sought clarity from the High Court of South Africa, Mpumalanga Division, Mbombela, as Goldfields continued to act in accordance with the addenda and attempted to enforce obligations under them.

In particular, the dispute escalated when Goldfields retained the R1 million “non-refundable” payment made in terms of the third addendum.

Siyakhula and Flaming Silver argued that because the principal agreement had already lapsed at the time of conclusion of the third addendum, no valid basis existed for retaining that payment. They therefore approached the High Court to obtain a declaration that the second and third addenda were void, that the principal agreement had lapsed, and that Goldfields was obliged to repay the R1 million on the basis of unjustified enrichment.

The High Court (court a quo) held that the principal agreement had lapsed on 31 January 2018 due to the failure to comply with the payment condition. This also meant that all addenda concluded after 31 January 2018 were void ab initio, and Goldfields was order to repay the R1 000 000.00.

THE APPEAL

On appeal to the SCA, Goldfields argued that even if the agreement had lapsed due to non-fulfilment, the consensus of the parties in subsequent addenda had the effect of reviving it and preventing it from “self-destructing.”

The SCA found that the principal agreement lapsed automatically on 1 or 2 January 2018 due to the non-fulfilment of the Payment Condition. The Court found that the first addendum was indeed valid, however due to the fact that it did not extend the payment conditions the agreement nonetheless lapsed on above specified date. The subsequent addenda were futile in reviving the agreement as the parties failed to extend the deadline for such conditions before they became due. Clause 3.2 remained intact and prohibited any retrospective extensions or deeming provisions. The Appeal was dismissed with costs.

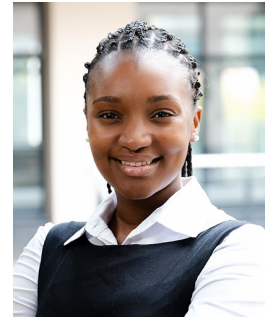
CONCLUSION

This case reaffirms the principle that where an agreement is subject to suspensive conditions, strict compliance is required. Any amendment to those conditions must be concluded before the contractual deadlines lapse, failing which the agreement may automatically lapse, rendering such agreement void and unenforceable.

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