

The Bottom Line

Judge was a pal of defendant

IT DOESN'T just happen in SA. It can happen anywhere, as Hugh Brown and his executives discovered to their company's (HB&A's) cost.

Brown runs a South African project development team concentrating in minerals and energy. A nickel, cobalt and copper deposit called Musongati in Burundi popped up on Brown's radar when an Australian mining company, Argosy Minerals, lost the concession after a dispute with the Burundi government.

Led by Rand Merchant Bank to Kermas, a Russian group which earlier bought (and sold) Samancor Chrome from BHP Billiton, the companies formed a joint venture, Samancor Ni (HK), with Kermas as the majority shareholder. Samancor Ni secured an exclusive exploration agreement valid for three years on the three nickel properties.

Brown's team designed a full bankable study programme with the Mineral Corporation and in March 2009 revealed significant platinum discoveries to Kermas. That's when

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its partner decided to help itself to the lot by repudiating the joint venture. Samancor Ni was turned into BMM International Mining but failed to secure the mining licence because it hadn't submitted the required bankable feasibility study.

Enter the law. Before arbitration proceedings could get under way in January 2011, Kermas managed to put spokes in the already slow wheels of justice. It was rather good at this, so good that HB&A and its UK company, Merlin, took the matter to the British Virgin Islands (BVI).

That turned out to be a serious error. Judge Edward Bannister heard the case and gave judgment in December last year. He ruled comprehensively against HB&A.

Then it transpired that Bannister has been chummy with Kermas's chief financial officer, Milan Radman, for eight years, and Radman is related by marriage to Kermas chairman Danko Koncar. And Koncar has a criminal record — sentenced to 12 years in jail for fraud in the former Yugoslavia, he served half.

Koncar claimed he'd been framed and that the charges against him had been "politically motivated".

Preparing an appeal, Stanley Brodie QC described Bannister's findings as "objectionable" and "wrong in law". Kemp J Kemp SC described Bannister's injunction preventing HB&A from any communication whatsoever with the Burundi government as being inconsequential. The BVI court, he said, has no jurisdiction in this area.

Until all this is resolved, about 150-million metric tonnes of mineable nickel sits undisturbed, denying benefits to the people of this landlocked country, one of the five poorest in the world. There are shysters to be found everywhere.



TORQUE
David Gleason

HB&A and its associate company Merlin Mineral Resources Limited took Kermas Limited (BVI) to Court in the BVI over the fact that HB&A and Merlin shareholders were intentionally deprived of their shares in Samancor Nickel (HK) Limited by Kermas. Three proceedings were heard in the BVI Court before presiding Judge Edward Bannister. The Judge failed to declare his relationship with the CFO of Kermas Limited in the first two proceedings prior to the trial, ignored clear and substantiated evidence presented by HB&A/Merlin in the trial, made false allegations against HB&A/Merlin shareholder Mr Hugh Brown in his judgement, and preferred unsubstantiated evidence given to his Court by a convicted fraudster (the Chairman of Kermas Limited Dr Danko Koncar). Mr Brown's substantiated evidence, which the Judge dismissed as false and untrue in his judgement was further upheld through the submission of an affidavit post the judgment, by a partner from Webber Wentzel in Johannesburg who had acted as Samancor Ni legal counsel prior to legal proceedings. The Judges findings and judgement were described by Stanley Brodie QC (Inner Temple London) as "unbalanced, "unfair", "unsound in fact", "wrong in law" "regrettable", and that "wrongly the learned Judge preferred the evidence of Koncar on every issue, without any credible explanation". Mr Brodie QC also said that the Judges findings related to the document dated September the 28th (judgement para 47) were false. The Judge also did not question (and accepted in his judgement) Koncar's evidence given in Court that his previous sworn statement admitted into evidence by the Court, "had not been sworn to by him, and that it was a fabrication on the part of his attorney". (The attorney in question was in Court at the time Koncar gave this "new evidence", but he was not questioned by the learned Judge on this issue). The learned Judge also accepted (stated in his judgement) false claims made by Koncar in his evidence related to the status of the project studies and the value of the project at the time, in the face of contrary credible evidence from independent competent persons stating the status of the studies and the value of the mineral resources in question, already submitted to Court.

1. Samancor Nickel (HK) limited was a joint venture between Kermas (BVI) Limited and Merlin Mineral Resources Limited, to develop the Musongati nickel and platinum resource in Burundi.

2. In 1980 Danko Koncar was convicted of fraud in the former Czechoslovakia and sentenced to 12 years imprisonment. He served 6 years.

3. A valuation of the mineral resources conceded to the company, based on drilling and assays and studies done at that time, by a recognized, registered independent professional organization which is recognized and relied on by listed companies and stock exchanges worldwide on mineral resource/reserve valuations.