

### Pax Moot 2020 Asser Round – Facts

Claimants: A group of Almasian miners  
Defendants: The Primary Defendant: International Jewellery Co.  
The Main Subsidiary: Regional Mining Co.

International Jewellery Co. (IJC) is a precious gemstone trading company that has a vertically integrated supply chain. The company is domiciled in Belgium, with its headquarters located right on the Antwerp Diamond District, the largest diamond market in the world. Its primary business is the processing and trading of rough or polished diamonds, but it also has long standing relationships (including both joint venture agreements and exclusivity agreements) with multiple diamond production companies located in Almasi, a nation state situated in sub-Saharan Africa.

Regional Mining Co. (RMC) is a subsidiary of IJC registered in Almasi for the sole purpose of entering into a joint venture agreement with a state-owned company, forming a new mining company, Kotawongo Mining (KM). Pursuant to the agreement, RMC provided KM with all financial, technological, and operational resources, while the state-owned company provided the required licencing, land, and exploitation rights.

RMC has no employees. Its directors are all employees of IJC in Belgium and its Board meetings are held once annually, nominally at KM's offices in Almasi, but with the directors attending by video conference from Antwerp. Like other IJC subsidiaries, RMC's name appeared on a name plate at the entrance of IJC's headquarters in Antwerp.

The claimants are Almasian miners living in the region of Kotawongo for generations. From the 1960's, they operated as so called "artisanal miners", who worked independently along a riverbed that was situated near a kimberlite pipe.<sup>1</sup> They then sold the diamonds they found directly to buyers, and many families were able to support themselves solely on this trade. However, as the demand increased the government eventually decided in 1995 to divert the river, and began construction of an open pit mine in the region.

At first the construction of the Kotawongo Mine was welcomed by the villagers, as it meant better employment and a more consistent income for their work. When the mine started operation in 2010 the miners entered into contracts of employment with KM which were signed in blank by directors in Antwerp and co-signed by the employees in Almasi. The contracts contained a clause which stated, "This contract is governed by the law of Almasi and the courts of Almasi shall have exclusive jurisdiction to hear and determine all disputes arising out of your employment under this contract". However, the pollution and other environmental damage caused by the mine were not well regulated, and the various leaks and soil contamination severely affected the living conditions of the villages surrounding the mine, with adverse effect on their health. The working conditions also slowly deteriorated as the workers were constantly pushed to work longer hours and they quickly realized that their new employment was much more dangerous than they had expected.

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<sup>1</sup> A Kimberlite Pipe is well known for its rich deposits of diamonds. It is basically akin to a diamond vein.



The final straw came in 2014 when the government of Almasi declared martial law due to an ongoing border conflict and instituted a mandatory draft of 10 years for all able-bodied men. The workers were drafted by the military and were forced to continue their work in the mines but with little to no pay, in conditions described as "akin to a prisoner of war labour camp." Various human rights atrocities were reportedly committed by the security personnel at the mine as short bursts of violence broke out between the workers and the security personnel, always put down in brutal fashion.

On 1 January 2019, a military coup d'état overthrew the government of Almasi. The mandatory draft was revoked and the working conditions improved. So far, no steps have been taken to clean up or prevent further environmental damage. Almasi enacted a law conferring immunity on the Almasian government and on Almasian registered companies for any tortious acts causing personal injury or environmental damage in the mining industry on or before 31 December 2018.

Assisted by a London law firm, a group of miners and their families have done three things:

- (1) they have brought individual proceedings in Almasi against RMC and KM for an injunction to restrain further acts of pollution; these proceedings are pending;
- (2) they have subsequently started proceedings in Antwerp against IJC and RMC namely
  - (a) claims for damages by the miners in tort and contract for personal injury suffered by reason of their ill-treatment; and
  - (b) claims for damages by the miners and their families for the damage to their health; and
- (3) they have brought proceedings in England for a 'world-wide' freezing order against IJC and RMC, in order to restrain those companies from disposing of their assets below the level of 100m US dollars pending the outcome of the Belgian proceedings. The order states that IJC's assets include its shares in RMC and other subsidiaries. The English court held that it had jurisdiction to make the order as IJC conducted some business in England selling Almasian diamonds sourced from the Kotawongo mine, and the RMC was a necessary or proper party to that claim; it granted the order following an inter partes hearing at which IJC and RMC appeared and submitted arguments.

**You act before the Belgian courts for the Claimants / for IJC and RMC. Each of you is invited to present to the court your arguments of European law on:**

- (1) an application by IJC and RMC to stay or dismiss the Belgian proceedings according the Articles 29 to 34 of Brussels Regulation I Recast;**
- (2) an application by IJC and RMC to dismiss the Belgian proceedings due to lack of jurisdiction over the claims;**
- (3) an application by the Claimants for the English freezing order to be recognised and enforced in Belgium.**

**In doing so, please state what orders you believe the Belgian court should make and the basis on which it should do so.**

**On the assumption that the Belgian court dismisses the stay / dismissal applications, each of you is further invited to present to the court your arguments on (a) what system of law applies to the issue of each defendant's liability, and (b) whether the immunity legislation should be given effect.**

