

**DIRECTOR: MINERAL DEVELOPMENT, GAUTENG REGION & ANOTHER v SAVE THE VAAL
ENVIRONMENT (PTY) LTD [1996] 1 All SA 2004 (T)**

Importance	<p>This was one of the first pleasing cases grounding the new environmental jurisprudence in post-apartheid South Africa. The case is now probably most useful for its <i>obiter</i> remark that directly associates the principle of sustainable development with the issuing of a mining licence. The precedent established regarding the application of the <i>audi alteram partem</i> rule to the issuing of a mining licence was largely overtaken by both developments in administrative law (which would now accord the Promotion of Administrative Justice Act 3 of 2000 prominence over the common law principles of administrative justice) and the provisions on consultation in the Mineral and Petroleum Resources Development Act 28 of 2002.</p>
Parties	<p>First Appellant: Director: Mineral Development, Gauteng Region Second Appellant: Sasol Mining Respondent: 'Save' (an unincorporated association of property owners along the Vaal River interested in protecting and maintaining the environmental integrity of the Vaal River for current and future generations)</p>
Facts	<p>During May 1996 Sasol Mining urgently needed to extend its coal mining activities into an area comprising three farms in the Sasolburg district that fronted the Vaal river. The farms were situated between the Letaba Weir and the Barrage. It had been established that the only feasible manner of mining for coal in that area was by open-cast mining. Sasol Mining accordingly applied to the Director: Mineral Development, Gauteng Region for a mining licence in terms of s 9 of the Minerals Act 50 of 1991.</p> <p>Save, and a number of other property owners in the affected area, were united in their opposition to the development and exploitation of coal reserves by open-cast mining in the area under discussion. Their concerns were primarily of an environmental nature, <i>inter alia</i>, (a) the (at least) partial destruction of a wetland of nearly 1000 ha in extent that filtered and naturally purified in excess of 2 million cubic metres of water that flowed into the Vaal Barrage; (b) removal of the overburden would establish conditions for the large-scale generation of acid mine drainage; (c) threats to fauna and flora, including various red data species; (d) constant noise, light, dust and water pollution; (e) the destruction of conditions conducive to the recreational industry on the Vaal; (f) the adverse effects on property values in the area.</p> <p>While the mining licence was still under consideration Save raised the contention with the Director that they were entitled to be heard in opposing Sasol's application for a mining licence. In March 1997 the Director informed Save that he was not obliged to hear their concerns at that stage, nor was he prepared to do so. In May 1997 he issued a</p>

	<p>mining licence to Sasol Mining in respect of the envisaged open-cast mine.</p> <p>Save successfully took the Director’s decision to issue the mining licence on review in the Witwatersrand Local Division (WLD). The Director and Sasol Mining accordingly took this decision on appeal to the Supreme Court of Appeal (SCA) .</p>
Relief Sought	<p>The appellants sought to overturn the decision in the WLD in which the Director’s decision to grant the mining licence without allowing Save an opportunity to voice its objections was set aside.</p>
Legal Issues & Judgment	<p>Issue 1: Was the <i>audi alteram partem</i> rule applicable to the Director’s consideration of the criteria for granting a mining licence set out in s 9(3) of the Minerals Act?</p> <p>Judgment: The court rejected the appellants’ arguments that the <i>audi</i> rule was not applicable or that it was strictly related to the literal meanings of the items listed in s 9(3)(a) – (e). Instead the court held that the items enumerated in s 9(3) <i>involved</i> environmental issues. For example, s 9(3)(b) provided that the Director should only issue the mining licence if satisfied that the applicant had the necessary ability and provision to rehabilitate the disturbance of the surface (para 15). Parliament could not have intended to exclude such a fundamental principle as the <i>audi</i> rule simply on the basis that the criteria the Director needed to take into account were enumerated in a manner that did not specifically refer to the environment (ibid).</p> <p>Issue 2: Were any rights infringed by the issuing of a mining licence?</p> <p>Judgment: In opposition to the appellants’ claim that the mere issuing of a mining licence had no tangible, physical effect on the environment and that no rights were therefore infringed, the court held that the granting of a mining licence sets in motion a chain of events which, in the ordinary course of events, leads to the commencement of mining operations. Where a preliminary decision can have serious consequences it is settled law that the <i>audi</i> rule applies to the consideration of the preliminary decision (para 17).</p> <p>Issue 3: Could the <i>audi</i> rule be applied at the s 9 stage of granting a mining licence when it would in any event apply during the s 39 stage (approval of the environmental management programme)? Would this not result in unnecessary and costly duplication?</p> <p>Judgment: The court held that the objects of ss 9 and 39 of the Minerals Act differed. Moreover, the granting of a s 9 licence enabled the holder to apply for exemption from the obligation to submit an environmental management programme, or to commence mining with the temporary authorization of the Director. In these circumstances an objector would be placed in jeopardy, thus affirming the position that the <i>audi</i> rule should be applied at the s 9 stage (para 19). The <i>audi</i> rule accordingly applied when application for a mining licence was made in terms of s 9. The hearing accorded to objectors need not be a formal one, but objectors should at least be notified of the application and</p>

	given an opportunity to raise their objections in writing (para 20).
Outcome	The appeal was dismissed.
Obiter	The application of the rule was indicated 'by virtue of the enormous damage mining can do to the environment and ecological systems. What has to be ensured when application is made for the issuing of a mining licence is that development which meets present needs will take place without compromising the ability of future generations to meet their own needs (the criterion proposed in the <i>Brundtland Report : World Commission on Environment and Development, 'Our Common Future'</i> Oxford University Press 1987). Our Constitution, by including environmental rights as fundamental, justiciable human rights, by necessary implication requires that environmental considerations be accorded appropriate recognition and respect in the administrative processes in our country. Together with the change in the ideological climate must also come a change in our legal and administrative approach to environmental concerns.'