SWARTLAND MUNICIPALITY v LOUW NO & OTHERS 2010 (5) SA 314 (WCC)

Importance	This case, like the decision in *City of Cape Town v Maccsand (Pty) Ltd & others* 2010 (6) SA 63 (WCC) affirmed that the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) does not trump the Land Use Planning Ordinance 15 of 1985 (LUPO). The court found LUPO, as pre-constitutional legislation, was not inconsistent with the objectives of both the Constitution and the MPRDA and did not unlawfully intrude upon the exclusive national competence of mining. The court also dispensed with the argument that the municipality was not competent to approach the court on the basis of the provisions in the Intergovernmental Relations Framework Act 13 of 2005 (IGRFA).
Parties	**Applicant:** Swartland Municipality **First to Fourth Respondents:** Trustees of the Hugo Louw Trust (owner of a farm known as Langekloof) **Fifth Respondent:** Elsana Quarry (Pty) Ltd (Elsana) **Sixth Respondent:** Minister of Minerals
Facts	The Hugo Louw Trust owned a farm, Langekloof, some 589, 000 ha in extent and located close to the town of Malmesbury. Elsana obtained a mining right to mine granite on the farm. The mining area comprised 71, 25 ha of the property and had previously been used for cattle and sheep grazing. A complaint had been laid by the owner of the neighbouring farm on the basis that the blasting had adverse effects on the milk production of Land Use Planning Ordinance 15 of 1985their cows. In June 2000 Elsana submitted a rezoning application to the Swartland Municipality to rezone the farm from Agriculture I to Industrial III. Notice was given to interested and affected parties and governmental departments as required by the LUPO. The Department of Minerals subsequently advised Elsana that the granting of minerals rights over mining activities was the exclusive preserve of national government. Elsana accordingly withdrew its rezoning application in September 2008. The Swartland Municipality, however, contended that until the property was zoned Industrial III, Elsana was not permitted to conduct mining activities thereon.
Relief sought	Application for an interdict preventing mining activities on a farm that had not been properly rezoned.
Legal Issues & Judgment	***Issue 1:*** Related to the question whether the MPRDA took precedence over LUPO, the applicant argued that LUPO constituted 'relevant law' in the references to a mining right being subject to 'any relevant law' in s 23(6) and 25(2)(d) in the MPRDA. They further argued the LUPO, although pre-constitutional legislation, was not inconsistent with any provisions of the MPRDA or the Constitution, and that it played a central role in the efforts of local authorities to achieve the co-ordinated and harmonious use of land for the benefit of all inhabitants (para 15). The respondents countered that mining and minerals was an exclusive national competence and reference to 'any relevant law' in

	the MPRDA did not include LUPO to the extent that it purported to regulate and control the use of land for the purposes of mining (para 16). ***Judgment:*** The court found that LUPO (and its accompanying scheme regulations) did constitute 'any relevant law' for purposes of the relevant provisions in the MPRDA (para 17). The court found that the objective of LUPO – being the regulation of land-use planning – was in line with the constitutional and statutory obligations of municipalities to achieve the integrated, sustainable and equitable social and economic development of its area as a whole (para 18). At the time of enacting the MPRDA the legislature must have been aware that provincial and local legislation regulating land-use planning and zoning might be in place. (The MPRDA was however silent on this issue - para 20)
	Issue 2: The respondents further contended that the MPRDA prevails over LUPO and the scheme regulations by virtue of s 146 of the Constitution. ***Judgment:*** Having regard to s 146 of the Constitution, and the different functional areas listed in Schedules 4 and 5 of the Constitution (which determine the allocation of functions amongst national, provincial and local levels of government), the court found that LUPO was not inconsistent with the Constitution (para 33) and that it did not unlawfully intrude into an area of exclusive national legislative competence (para 34). The function of rezoning, which LUPO allowed for, fell within local authorities' constitutional mandate of 'municipal planning' and could not be regarded as a matter connected to the issuing of mineral rights to such an extent that it was also regulated thereby (para 38). The MPRDA could not be regarded as 'watertight' to the exclusion of relevant zoning legislation (para 40).
	Issue 3: The respondents also argued that s 45(1) of the Intergovernmental Framework Relations Act prohibited the applicant from approaching the court. This section provides that no government or organ of state may initiate judicial proceedings in order to settle and intergovernmental dispute unless is has been declared a formal intergovernmental dispute in terms of the Act and all attempts to settle the dispute have been unsuccessful. ***Judgment:*** The court held that s 45(1) was not applicable as the application had been launched against private parties (the first to fifth respondents) and not in order to settle an intergovernmental dispute *per se* (para 44).
Outcome	The first to fourth respondents were interdicted and restrained from conducting mining activities on the properties in question until the area had been properly rezoned.
Obiter	None.