

**IN THE SOUTH GAUTENG HIGH COURT (JOHANNESBURG)  
REPUBLIC OF SOUTH AFRICA**

Case No: 39646/12

In the matter between:

**VAAL ENVIRONMENTAL JUSTICE ALLIANCE**

Applicant

and

**COMPANY SECRETARY OF ARCELORMITTAL  
SOUTH AFRICA**

First Respondent

**ARCELORMITTAL SOUTH AFRICA LIMITED**

Second Respondent

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**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

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**TAKE NOTICE** that the first and second respondents will, on a date to be arranged with the Registrar, make application for leave to appeal to the Supreme Court of Appeal, alternatively to the full court of the Gauteng Division of the High Court against the whole of the judgment (including the order as to costs) of His Lordship the Honourable Mr Acting Justice Carstensen handed down on 10 September 2013.

**TAKE NOTICE FURTHER** that the grounds upon which the appeal will be based are the following:

1. The court held that the applicant's requests made in terms of section 50 of the Promotion of Access to Information Act 2 of 2000 ("**PAIA**") for access to certain records held by the second respondent met the threshold set in

section 50(1)(a) of PAIA of showing that the requested records must be required for the exercise or protection of a right. The court held further that the "*nature and scope*" of the rights relied upon by the applicant, namely sections 24(a) and 24(b) of the Constitution, included a right to monitor the compliance by the second respondent of its obligations in terms of environmental legislation and that the applicant is entitled in terms of PAIA to access to records held by the second respondent to enforce or protect this right. In so holding, the court erred for the following reasons:

- 1.1. Section 24(a) of the Constitution, properly interpreted, does not grant a right to the applicant to monitor the compliance by the second respondent of its obligations in terms of environmental legislation, particularly in the absence of any evidence to suggest that the health or well-being of the applicant's members or the public in general has been or is likely to be threatened by the second respondent's activities.
- 1.2. Section 24(b) of the Constitution, properly interpreted, cannot be invoked directly against the second respondent or indirectly through the mechanism of a PAIA request, particularly in the absence of any evidence to suggest that the relevant environmental departments have been unable or unwilling to discharge their statutory duties in relation to the environmental impacts of the second respondent's operations.

1.3. The court ought accordingly to have held that the applicant has failed to demonstrate that the requested records are required for the exercise or protection of a right as contemplated in section 50(1)(a) of PAIA and has thus failed to meet the threshold specified in that section.

2. The court held that, despite the second respondent's averments in its answering affidavit that the Environmental Master Plan contains out-dated and scientifically flawed information and does not inform the current environmental management practices of the second respondent's Vanderbijlpark Works, the Master Plan is nevertheless relevant and thus required for the applicant to protect its rights. In so holding, the court erred for the following reasons:

2.1. In accordance with the ordinary rules for the resolution of disputes of fact in application proceedings, the second respondent's version fell to be accepted.

2.2. The Court ought accordingly to have held that the Master Plan has no bearing on the second respondent's environmental impact or its current environmental management practices.

2.3. The Court ought further to have held that, as a consequence of its irrelevance, the Master Plan cannot assist the applicant to enforce or protect the rights that the applicant claims to seek to protect and, as

a consequence, the Master Plan has not been shown to be required to protect the claimed rights as required by section 50(1)(a) of the PAIA.

3. The court held that, despite the second respondent's averments in its answering affidavit that the Vaal Disposal site is no longer in operation and is in the process of being rehabilitated in accordance with relevant legislation, the Vaal Disposal site records are nevertheless relevant and thus required for the applicant to protect its rights. In so holding, the court erred for the following reasons:

3.1. The second respondent's evidence was that the Vaal Disposal site is no longer in operation and is in the process of being rehabilitated in accordance with relevant legislation.

3.2. There was no suggestion on the papers that the relevant environmental departments are not performing their statutory duties or that the second respondent is not complying with these departments' directives.

3.3. The Court ought accordingly to have held that there is no connection between the Vaal Disposal site records and the exercise or protection of the rights claimed by the applicant. The records have accordingly not been shown to be required to protect the claimed rights as required by section 50(1)(a) of the PAIA.

4. The court held that the second respondent, having declined to process the request on the basis that the threshold requirement had not been met, was not entitled to a further opportunity to consider the merits of the applicant's requests and determine whether any of the grounds for refusal contemplated in PAIA apply to the requested records. In so holding, the court erred for the following reasons:

4.1. The requirements of section 50 of the PAIA are a threshold requirement that must be met by a requester.

4.2. A private body is entitled to decline to deal with a request on the basis that it fails to meet the threshold showing that the records requested are required for the exercise or protection of rights.

4.3. Accordingly, even if the court was correct in holding that the applicant had met the threshold, the second respondent ought to have been afforded an opportunity to consider the applicant's requests in terms of section 50(1)(c) of PAIA and determine whether any of the grounds of refusal listed in Chapter 4 of part 3 of PAIA apply to the records that have been requested and to grant or refuse the requests, in whole or in part, on that basis.

5. The court held that section 24 of the Constitution envisages, encourages and entitles organisations such as the applicant to monitor, protect and exercise the rights of the public by seeking, through the mechanism of a PAIA

request, information from private bodies to enable them to assess the impact of the activities of such private bodies on the environment. In so holding the court erred for the following reasons:

- 5.1. Section 24 of the Constitution does not impose an obligation of transparency on private bodies such as the second respondent in terms of which such private bodies are required to give an account to organisations such as the applicant of their compliance with environmental laws.
- 5.2. PAIA distinguishes between requests made to public bodies and requests made to private bodies and does not seek to impose the same obligations of accountability and transparency on private bodies as are imposed on public bodies.
- 5.3. The court ought accordingly to have found that the applicant is not entitled through the mechanism of a PAIA request to require the second respondent (as a private body) to give an account to it of its compliance with environmental laws.

SIGNED AT SANDTON ON THIS THE 1<sup>st</sup> DAY OF OCTOBER 2013.

  
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