



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Mr Nyiko Lucky Nkuna
Senior Assistant State Attorney
Attorney for the First Respondent
lnkuna@justice.gov.za

cc. Prof Tumai Murombo
Chair of the Appeal Panel
tumai.murombo@wits.ac.za

Mr Robert Mabe
Registrar, Water Tribunal
By email: maber@dws.gov.za

Mr Francois Joubert
GF Joubert Attorneys
Attorney for the Second Respondent
joubert@gfjattorneys.co.za

Mr Robert Davel
Mpumalanga Landbou/Agriculture
The Third Appellant
robert.mpl@mweb.co.za

Your ref.: 2315/2017/Z80
Our ref.: Mabola WUL Appeal CH/SP/ZO
13 April 2018

Dear Mr Nkuna

**APPEAL IN TERMS OF SECTION 148 OF THE NATIONAL WATER ACT, 1998, READ WITH THE WATER TRIBUNAL RULES, BY ENDANGERED WILDLIFE TRUST AND OTHERS AGAINST THE DECISION TO ISSUE A WATER-USE LICENCE TO ATHA- AFRICA VENTURES (PTY) LTD IN RESPECT OF ITS PROPOSED YZERMYN UNDERGROUND COAL MINE
(Appeal no.: WT 03/17/MP)**

1. We refer to the First Respondent's Notice of an Irregular Step dated 18 January 2018 ("the Irregular Step Notice") served on 18 January 2018 in respect of the Appellants' Amplified Grounds of Appeal. The Appellants' Amplified Grounds of Appeal were submitted electronically and by hand on 1 and 4 December 2017, respectively.
2. Our understanding is that the First Respondent does not persist in his objection to the Appellants' Amplified Grounds of Appeal. The purpose of this letter is to confirm whether this is correct.
3. The Irregular Step Notice appears to have been in terms of the Uniform Rules which regulate the proceedings of the High Court of South Africa ("the Uniform Rules"), specifically Rule 30. Rule 30 of the Uniform Rules specifies that:

Cape Town: 2nd Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa
Johannesburg: 9th Floor, Southpoint CNR, 87 De Korte Street, Braamfontein, 2001, South Africa
Tel 021 447 1647, Fax 086 730 9098
Email info@cer.org.za, www.cer.org.za

'(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if—

...

(b) the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days;

(c) the application is delivered within fifteen days after the expiry of the second period mentioned in paragraph (b) of subrule (2).'

4. Rule 30(2)(c) of the Uniform Rules therefore required the First Respondent to bring an application for the setting aside of the irregular step within fifteen days after the expiry of the time afforded to the recipient of the notice to remove the cause of complaint.
5. The fifteen days following the five days specified in the notice expired on **15 February 2018**. The First Respondent has not brought an application pursuant to the Irregular Step Notice and is now precluded from doing so.
6. The Appellants therefore assume that the First Respondent does not persist in his objection to the Amplified Appeal.
7. Should this assumption be incorrect and should the First Respondent advise that he does persist in his objection, we will at that stage set out more fully why the Irregular Step Notice is in any event not competent, including because the Appellants had a statutory right in terms of the Water Tribunal Rules to amplify the grounds of appeal at any time prior to or during the course of the appeal (Rule 3(2)). Rule 3(2) provides that "[t]he grounds of appeal may be amplified at any time prior to or during the course of the appeal". The Appellants have therefore not taken any step which could be considered to have been irregular. They have availed themselves of a statutory right.
8. In the circumstances, we respectfully request that you kindly confirm that the First Respondent does not persist in his objection to the Appellants' Amplified Grounds of Appeal.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

Catherine Horsfield

Attorney

Programme Head: Mining

Direct email: chorsfield@cer.org.za