

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

CASE NO: 50779/17

In the matter between:

<b>MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA</b>	First Applicant
<b>GROUNDWORK</b>	Second Applicant
<b>EARTHLIFE AFRICA, JOHANNESBURG</b>	Third Applicant
<b>BIRDLIFE SOUTH AFRICA</b>	Fourth Applicant
<b>ENDANGERED WILDLIFE TRUST</b>	Fifth Applicant
<b>FEDERATION FOR A SUSTAINABLE ENVIRONMENT</b>	Sixth Applicant
<b>ASSOCIATION FOR WATER AND RURAL DEVELOPMENT</b>	Seventh Applicant
<b>BENCH MARKS FOUNDATION</b>	Eighth Applicant
and	
<b>MINISTER OF ENVIRONMENTAL AFFAIRS</b>	First Respondent
<b>MINISTER OF MINERAL RESOURCES</b>	Second Respondent
<b>ATHA-AFRICA VENTURES (PTY) LTD</b>	Third Respondent
<b>THE MABOLA PROTECTED ENVIRONMENT LANDOWNERS ASSOCIATION</b>	Fourth Respondent
<b>MEC FOR AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS, MPUMALANGA</b>	Fifth Respondent

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**JOINT PRACTICE NOTE**

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**1 NAMES OF PARTIES, CASE NUMBER AND HEARING DATES**

1.1 The names of the parties and the case number appear above.

1.2 The matter is set down for hearing as a special motion on 16, 17 and 18 October 2018.

**2 NAMES AND CONTACT DETAILS OF COUNSEL IN THE MOTION**

2.1 For the applicants:

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2.3 For the third respondent:

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### **3 NATURE OF THE MOTION**

- 3.1 The application was for relief in two parts, Part A and Part B. This special allocation pertains only to Part B of the notice of motion, as amended, being the main relief.
- 3.2 The main relief sought is for the review and setting aside in terms of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) of the decisions of the first and second respondents to grant the third respondent written permission in terms of section 48(1)(b) of the National Environmental Management: Protected Areas Act 57 of 2003 (“NEMPAA”) to conduct commercial coal mining in the Mabola Protected Environment (“MPE”) in Mpumalanga (“the NEMPAA decisions”).
- 3.3 The relief sought in Part A of the amended notice of motion is for an interim interdict pending the final determination of the main relief, should such relief prove necessary (“the interim relief”). The interim relief is not before the court in the special allocation and will only be sought in the event that the third respondent gives notice of its intention to commence mining before the review has been finally disposed of by this court or on appeal and this practice note therefore concerns only the main relief.
- 3.4 The third respondent does not oppose the relief aimed at the review

and setting aside of the NEMPAA decisions; however it opposes certain of the directions sought to be given upon the remittal of the NEMPAA decisions to the first and second respondents for reconsideration.

- 3.5 The first, second and fifth respondents oppose all of the main relief sought.

#### **4 THE ISSUES TO BE DETERMINED**

- 4.1 Whether or not the decisions of the first and second respondents under section 48(1)(b) of NEMPAA to permit commercial coal mining in the MPE stand to be reviewed and set aside;
- 4.2 Whether directions should be given by this Court to the first and second respondents pertaining to the reconsideration of their decisions in terms of section 8(1)(c)(i) of PAJA;
- 4.3 The duties imposed on, and factors to be considered by, the first and second respondents in making their decisions in terms of NEMPAA;
- 4.4 The place of NEMPAA in the overall legislative scheme;
- 4.5 Whether or not the NEMPAA decisions were taken in an open and transparent manner;
- 4.6 Whether or not the NEMPAA decisions were taken in a procedurally fair manner;
- 4.7 What the implications are for a decision in terms of section 48(1)(b) of

NEMPAA where the management of a protected environment has been assigned to a management authority, but the MEC has failed to approve a management plan submitted by the management authority in terms of section 39(2) of NEMPAA;

4.8 Whether the first and second respondents took into account the interests of local communities in terms of section 48(4) of NEMPAA;

4.9 Whether or not the first and second respondents failed to apply the precautionary principle and the vulnerable ecosystems principle in section 2 of NEMA;

4.10 Whether the first and second respondents were obliged to take into account the question whether the third respondent had provided for rehabilitation on termination of the mining;

4.11 Whether or not the first and second respondents failed to take into account South Africa's international obligations, alternatively to give effect to them;

4.12 Whether the first and second respondents otherwise complied with the section 2 NEMA principles including intergovernmental co-ordination and harmonisation, and that the use and exploitation of non-renewable natural resources must be responsible and equitable.

## **5 MAIN RELIEF SOUGHT BY THE APPLICANTS**

5.1 The applicants pray for an order:

5.1.1 reviewing and setting aside the NEMPAA decisions;

- 5.1.2 remitting the third respondent's application for written permission to conduct commercial mining in the MPE in terms of section 48(1)(b) of NEMPAA to the first and second respondents for reconsideration; and
- 5.1.3 directing the first and second respondents in terms of section 8(1)(c)(i) of PAJA to –
- (a) consider all relevant considerations;
  - (b) comply with sections 3 and 4 of the Promotion of Administrative Justice Act, No. 3 of 2000;
  - (c) take into account the interests of local communities;
  - (d) take into account the environmental principles referred to in section 2 of the National Environmental Management Act, No. 107 of 1998 ("NEMA");
  - (e) defer any decision in terms of section 48(1)(b) of NEMPAA until after the decision of pending statutory appeals under other legislation;
  - (f) not to grant permission to conduct commercial mining in the MPE in terms of section 48(1)(b) of NEMPAA unless (alternatively, without considering whether) a management plan for the MPE has been approved by the fifth respondent and the management plan's zoning of the area permits such mining; exceptional circumstances have been shown

by the third respondent to exist which justify the mining of coal within the MPE; and the third respondent has provided for the complete rehabilitation of the MPE upon termination of the mining.

**6 ESTIMATE OF THE PROBABLE DURATION OF THE MOTION**

2-3 days

**7 NECESSITY OF READING THE PAPERS**

The number of pages in the main application is 932.

It is necessary to read –

- 7.1 the amended notice of motion;
- 7.2 the founding, supplementary, answering and replying affidavits;
- 7.3 the annexures to them, where the material parts are not quoted in the body of the affidavit.

It is not necessary to read the supplementary notices bundle.

It is not necessary to read the three volumes constituting the record, save where expressly referred to in the affidavits or the heads of argument and not attached to the affidavits.

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July 2018