

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

Case No: 50779/17

In the matter between:

**MINING AND ENVIRONMENTAL JUSTICE
COMMUNITY NETWORK OF SOUTH
AFRICA** First Applicant

GROUND WORK Second Applicant

EARTHLIFE AFRICA, JOHANNESBURG Third Applicant

BIRDLIFE SOUTH AFRICA Fourth Applicant

ENDANGERED WILDLIFE TRUST Fifth Applicant

**FEDERATION FOR A SUSTAINABLE
ENVIRONMENT** Sixth Applicant

**ASSOCIATION FOR WATER AND RURAL
DEVELOPMENT** Seventh Applicant

BENCH MARK FOUNDATION Eighth Applicant

and

V.R.

L.M.

MINISTER OF ENVIRONMENTAL AFFAIRS

First Respondent

MINISTER OF MINERAL RESOURCES

Second Respondent

ATHA- AFRICA VENTURES (PTY) (LTD)

Third Respondent

THE MABOLA PROTECTED ENVIRONMENT

LANDOWNERS ASSOCIATION

Fourth Respondent

**MEC FOR AGRICULTURE,
RURAL DEVELOPMENT, LAND AND
ENVIRONMENTAL AFFAIRS:
MPUMALANGA PROVINCE**

Fifth Respondent

SUPPLEMENTARY AFFIDAVIT

V.R.

L.M

I, the undersigned,

VUSIMUZI ROBERT SHONGWE

do hereby state under oath that:

1. I am the Member of the Executive Council for Agriculture, Rural Development, Land and Environmental Affairs in Mpumalanga ("the MEC"), the eighth respondent in the main application. I am the third applicant in the postponement application.
2. All the facts stated herein are within my personal knowledge unless otherwise stated or indicated by the context. I also believe them to be both true and correct.
3. Where I make legal submissions in this affidavit, I do so on the advice of my legal representatives, which advice I accept as correct.
4. I confirm that I instructed my legal team to seek a postponement of the main application. The postponement is sought pending the culmination of a process initiated by me, acting in my capacity as MEC, in which I gave notice of intention to exclude the farms at issue in the main application from the Mabola Protected Environment ("the MPE").
5. This affidavit is filed in support of the application for postponement. I have read the founding affidavit deposed to by Mr Siphon Mathebula in that application and confirm the contents thereof insofar as they relate to me.

V.R. L.M

Scheme of the affidavit

6. This affidavit is arranged in the following scheme:

- 6.1. I deal with the contents of the notice of intention to exclude;
- 6.2. I explain the rationale for the decision to publish the notice; and
- 6.3. I explain why this decision was not communicated earlier to the court and the other parties.

The notice of intention to exclude

7. The notice of intention to exclude was published in the government gazette on 12 October 2018. A copy of the notice is attached to Mr Mathebula's affidavit marked "A".

8. In the said notice:

- 8.1. I gave notice of intention to exclude Portion 1 of Kromhoek 93 HT, Remainder of Kromhoek 93 HT, Goedgevonden 95 HT and Remainder of Yzermyn 96 HT from the existing MPE;
- 8.2. I indicated the purpose of the proposed exclusion; and

V. R. L.M

8.3. I invited interested and affected parties to submit their written representations or objections to the proposed exclusion within 60 days of its publication..

9. The notice was published on 12 October 2018 but it was signed by me on 27 September 2018.

The rationale for the notice

10. In around March 2018, we received a memorandum dated 6 March 2018 from an organisation called the "Voice Community Representative Council" ("the VCRC"). According to the memorandum, a copy of which is attached marked "MEC1" it was indicated that:

10.1. The VCRC is based in Volksrust and represents the majority of the community residing in the Dr Pixley Ka IsakaSeme Municipality.

10.2. The memorandum was accompanied by a petition signed by approximately 8500 community members;

10.3. The community has serious concerns about the impact of declaring the area in question as part of the MPE. These concerns were complex and included, amongst others the following:

10.3.1. The procedure followed by my predecessor in declaring the area a protected was flawed and there was insufficient consultation with the affected communities;

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- 10.3.2. The four farms in question had a history of coal mining;
- 10.3.3. The management plan for the MPE has never been finalised and approved notwithstanding the passage of five years since the declaration of the areas in question as protected areas. Thus the farmers were flouting the very purpose for conservation;
- 10.3.4. The area is severely disturbed from past farming activities; and
- 10.3.5. The past five years there has been a development freeze bringing no benefits to the community. This has had a devastating effect on the impoverished community; and
- 10.3.6. There was a desperate create employment in the area.

11. Given the fundamental concerns raised in the memorandum, I initiated discussions with my counterparts in the Mpumalanga provincial government on the issues raised. I also raised the matter with the late Minister of Environmental Affairs, Minister Edna Molewa.

12. I subsequently conducted interviews with members of the community in order to understand more fully what they were experiencing.

13. With the benefit of this preliminary investigation I decided, on 27 September 2018, to publish the proposed exclusion notice. The purpose behind publication of the notice is to initiate a public participation process on the proposed exclusion. All comments and objections received in the course of this process will be taken into account in deciding whether or not to exclude the area concerned from the MPE.

V.R

L.M

Why the decision was not communicated to this Court

14. After I received the memorandum from the VCRC, I focussed on addressing the issues raised in the memorandum. This led to me eventually publishing the notice.

15. It genuinely did not occur to me at any point that I ought to bring the proposed notice to the attention of my attorney of record in this matter or to the attention of this Court. To my mind the current litigation raised the questions of whether or not the decisions reached by the Ministers under section 48 of NEMPAA were lawful or not. I did not appreciate that the notice would have any relevance for decisions already taken. It is only when I had a telephone discussion with Mr Mathebula on 14 October 2018, that it was explained to me that the notice has a direct bearing on the current litigation.

16. Furthermore, I was unaware that this application had been set down for hearing on 15, 16 and 16 October 2018. This information had been relayed by Mr Mathebula to my legal advisor.

17. Once the unintended effect of the notice was explained to me, I immediately instructed Mr Mathebula to seek a postponement of the matter and to tender the wasted costs. This was done in order to:

- 17.1. Prevent this Court from considering and deciding this application which could be rendered redundant if I eventually decide to exclude the properties in question from the MPE; and

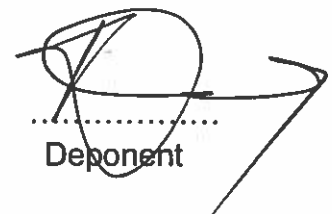
V.R.

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17.2. Allow the process initiated on 12 October 2018 to unfold.

18. I categorically state that I did not intend any disrespect to the Court. I humbly apologise for any perceived disrespect or any inconvenience caused as a result of what I set out above.

WHEREFORE I humbly pray that the application be granted.

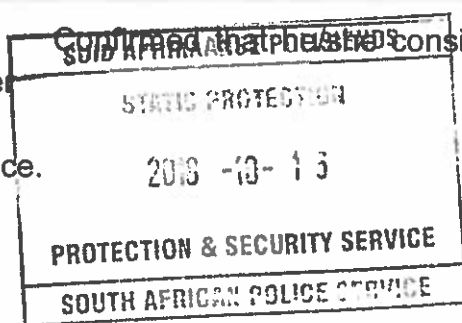

Deponent

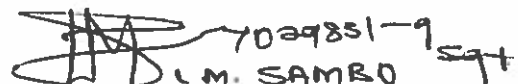
Thus signed and sworn to at MBOMBELA on this 16 Day of October 2018.

THE DEPONENT HAVING:

1. Acknowledged that he/she knows and understands the contents hereof:
2. Confirm that he/she has no objection to taking the prescribed oath:

1. Confirmed that he/she considers the prescribed oath to be binding on his/her conscience.




L.M. SAMBO SGT
COMMISSIONER OF OATHS

Full names LUCY MKHULEKO SAMBO

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Capacity SGT

Area NELSPRUIT