

**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 GROUND WORK EARTHLIFE AFRICA, JOHANNESBURG BIRDLIFE SOUTH AFRICA ENDANGERED WILDLIFE TRUST FEDERATION FOR A SUSTAINABLE ENVIRONMENT ASSOCIATION FOR WATER AND RURAL DEVELOPMENT BENCH MARK FOUNDATION</b>	<b>First Applicant Second Applicant Third Applicant Fourth Applicant Fifth Applicant  Sixth Applicant  Seventh Applicant Eighth Applicant</b>
<b>vs</b>	
<b>MINISTER OF ENVIRONMENTAL AFFAIRS MINISTER OF MINERAL RESOURCES ATHA AFRICA VENTURES (PTY) (LTD) MABOLA PROTECTED ENVIRONMENT MEC FOR AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS: MPUMALANGA PROVINCE</b>	<b>First Respondent Second Respondent Third Respondent Fourth Respondent    Fifth Respondent</b>

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**FIRST, SECOND AND FIFTH RESPONDENTS' (now APPLICANTS)  
NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

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**BE PLEASED TO TAKE NOTICE** that the first, second and fifth Respondent (the State respondents) intend applying for leave to appeal to the Supreme Court of Appeal or to the Full Bench of the North Gauteng High Court, as this honourable Court may direct, against the judgment and orders 4, 5, 6 of His Lordship Mr Justice Davis handed down on the 08<sup>th</sup> of November 2018.

**TAKE NOTICE FURTHER** that grounds, findings of fact and/or conclusions of law on which leave to appeal is sought are the following:

1. The learned judge erred in awarding costs on an attorney and client scale in respect of the unsuccessful postponement application (judgment para 3). There are reasonable prospects that another court will find that, in light of the circumstances set out in the application for postponement party and party costs ought to have been awarded;
2. The learned judge erred in finding that “reading-in is permissible if the implication is a necessary one” (judgment para 10.5). There are reasonable prospects that another court will find that a constitutional remedy of reading-in may only be granted consequent on a declaration of constitutional invalidity.
3. The learned judge erred in finding that section 48(4) of NEMPAA should be interpreted as providing that authorisation under section 48(4) may only be provided after a person has obtained as all the necessary authorisations required in terms of all other applicable statutory provisions in order to lawfully conduct mining activities on a portion of land that falls within a protected environment as contemplated in NEMPAA (judgment para 10.7).

4. The learned judge erred in finding that the decision by Ministers lack transparency due to Atha-Africa (the third Respondent) being “politically connected” (judgment para 11.1.3). There existed no factual or legal basis for the court to reach such a conclusion.
  
5. The learned judge erred in finding that the NEMPAA decision should be reviewed and set aside on the basis that there was no approved management plan in place when it was made. (judgment para 11.5). There are reasonable prospects that another court will find that:
  - 5.1. On a proper interpretation of NEMPAA, a final approved management plan is not a prerequisite for decision under section 48 of NEMPAA;
  
  - 5.2. The NEMPAA decision was made on the basis of the draft management plan for MPE which was in existence at the time.
  
6. The learned judge erred in finding that the Ministers failed to take into consideration the interest of local communities when making NEMPAA decision ( paragraph 11.6. of the judgement) Instead, there are reasonable prospects that another court will find that:
  - 6.1. The interest of local communities, which included among others job opportunities, were considered during the EIA process for mining right, integrated water use licence and other environmental authorisations;
  
  - 6.2. The evidence showed that the local communities supported the application to mine;

6.3. The specialist reports, including the Social and Labour Plan were considered by Ministers before making NEMPAA decision.

7. The learned judge erred in finding that the Ministers failed to consider the SAS 2015 Report when making the NEMPAA decision (judgment para 11.7). There are reasonable prospects that another Court will find that:

7.1. The water use licence issued by the competent authority, indicates that the Director-General: DWS considered the SAS 2015 assessment before granting the water use licence under the National Water Act and the SAS 2015 assessment is the subject of the statutory appeal under section 148 (1) of National Water Act and pending before the Water Tribunal-the competent forum to adjudicate on water use authorisation issued under the National Water Act.

7.2. In these circumstances, it was not required for the Ministers to study that report afresh.

8. The learned judge erred in finding that the Ministers failed to apply risk adverse and cautionary approach when making NEMPAA decision (judgment para 118). There are reasonable prospects that another Court will find that:

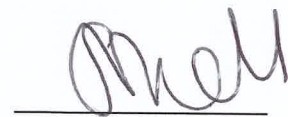
8.1. The Ministers took into consideration the principle of NEMA when making NEMPAA decision.

- 8.2. The specific conditions imposed as part of the decision to approve under NEMPAA were in line with the national environmental management principles, the risk averse and cautionary principle.
9. The learned judge erred in finding that NEMPAA decision must reviewed and set aside on the basis of insufficient rehabilitation costs (judgment para 11.9). There are reasonable prospects that another Court will find that this was not a disqualifying criterion given that it would be dealt with in the course of the application for a mining right.
10. The learned judge erred in finding that the Minister ought to have waited for finalisation of statutory appeals before making the NEMPAA decision. (paragraph 11.10 of the judgement). There are reasonable prospects that another Court will find that the Ministers were not obliged to wait for the finalisation of other appeals. Instead it sufficed that the section 48 approvals were made conditional to all other authorisations being obtained.
11. The learned judge erred in finding that the Minister failed to take into consideration South Africa's international responsibilities relating to environment and the use and exploitation of non-renewable natural resources. There are reasonable prospects that another Court will find that the specific conditions attached to NEMPAA decision show that this was taken into account, and that the decision (and conditions) is in line with South Africa's international responsibilities relating to environment and the use and exploitation of non-renewable natural resources.

12. The learned judge erred in dismissing the application with costs on an attorney and client scale. There are reasonable prospects that another Court will find that party and party costs ought to have been awarded.

**WHEREFORE** the state respondents ask that leave to appeal and condonation for late filing be granted as aforesaid, and that the costs of this application be costs in the appeal.

DATED AT SANDTON ON THIS THE <sup>18</sup>~~13~~<sup>th</sup> DAY OF DECEMBER 2018



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and 5<sup>th</sup> Respondent

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