

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

CASE NO A QUO: 11488/17P

SCA CASE NO: 1105/2019

In the matter between:

MPUKUNYONI TRADITIONAL COUNCIL	First Applicant
MPUKUNYONI COMMUNITY MINING FORUM	Second Applicant
ASSOCIATION OF MINE WORKERS AND CONSTRUCTIONS UNION	Third Applicant
NATIONAL UNION OF MINE WORKERS	Fourth Applicant
and	
GLOBAL ENVIRONMENTAL TRUST	First Respondent
MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANISATION	Second Respondent
SABELO DUMISANI DLADLA	Third Respondent
TENDELE COAL MINING (PTY) LTD	Fourth Respondent
MINISTER OF MINERALS AND ENERGY	Fifth Respondent
MEC: DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	Sixth Respondent
MINISTER OF ENVIRONMENTAL AFFAIRS	Seventh Respondent
MTUBATUBA MUNICIPALITY	Eighth Respondent
HLABISA MUNICIPALITY	Ninth Respondent
INGONYAMA TRUST	Tenth Respondent
EZEMVELO KZN WILDLIFE	Eleventh Respondent
AMAFA AKWAZULU-NATLI HERITAGE	Twelfth Respondent

In re:

GLOBAL ENVIRONMENTAL TRUST

First Appellant

MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANISATION	Second Appellant
SABELO DUMISANI DLADLA	Third Appellant
and	
TENDELE COAL MINING (PTY) LTD	First Respondent
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APPLICANTS' FILING NOTICE

FILED HEREWITH:

- 1. PRACTICE NOTE.**
- 2. LIST OF AUTHORITIES**

Dated and signed at Bloemfontein on 17 June 2020.

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TO:

THE REGISTRAR

SUPREME COURT OF APPEAL
BLOEMFONTEIN

AND TO:

APPELLANTS' ATTORNEYS

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17/06/2020

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In re:

GLOBAL ENVIRONMENTAL TRUST

First Appellant

MFEOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANISATION	Second Appellant
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and	
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APPLICANTS' PRACTICE NOTE

1. NAME AND NUMBER ON THE MATTER

Global Environmental Trust and Two Others v Tendele Coal Mining (Pty)
Ltd and Eight Others.
SCA Case No: 1105/2019
KZP Case No: 11488/17P

2. **NATURE OF THE APPEAL**

2.1. The appeal is against the whole judgment and order by His Lordship Mr Justice Seegobin in the KwaZulu-Natal Provincial Division, Pietermaritzburg on 20 November 2018 under Case No: 11488/17P.

2.2. The appeal concerns interpretation and application of various environmental statutory regime enacted to give effect to the section 24 of the Constitution of the Republic of South Africa, Act 108 of 1996 ("Constitution") as well as the applicability of and compliance with KwaZulu Natal Planning and Development Act 6 of 2008, Spatial Planning and Land Use Management Act 16 of 2014, Mtubatuba Spatial Planning and Land Use Management By-Law, January 2017 and KwaZulu Natal Heritage Act 4 of 2008.

3. **CONSTITUTIONAL ISSUES**

The appellants seek an order in terms of section 172(1)(a) and (b) of the Constitution declaring the First Respondent's conduct to be unconstitutional.

4. **JURISDICTION**

Leave to appeal was applied for and granted to the appellants on 17

September 2019 by the court a quo. The appellants and as required filed the notice of appeal and appeal record.

5. **ISSUES ON APPEAL**

5.1. Having regard to the present particular factual circumstances and the socio-economic rights of the entire community members where the First Respondent operates, the court and in terms of section 172(1)(b) is not obliged to grant the order sought by the appellants to stop the mining operations of the First Respondent, even if the conduct of the First Respondent (“Tendele”) is declared unconstitutional in terms of section 172(1)(a) of the Constitution.

5.2. The court and in terms of section 172 (1)(b) is required to weigh the particular factual circumstances following a declaration of unconstitutionality and give an order that is just and equitable which may include structural interdict and/or other alternative remedies including suspension of the interdict to ensure that socio-economic rights and interests of the parties concerned are protected.

6. **ESTIMATED DURATION OF THE ARGUMENT**

The proceedings are not expected to exceed 1 (one) day.

7. **PORTIONS OF RECORD IN LANGUAGE OTHER ENGLISH**

None.

8. **NECESSARY PARTS OF THE RECORD FOR THE PURPOSES OF THE APPLICANTS' ARGUMENT**

8.1. It is noted that except for pages 309 to 335 in Volume 2 of the Record which is the request for admission as amici and consents thereto, the Applicants' written submissions before the court a quo have been omitted from the appeal Record.

8.2. In anticipation of the Applicants being admitted by this Court, the written submissions made by the Applicants before the court a quo are filed herewith in a separate bundle.

9. **SUMMARY OF THE ARGUMENT**

9.1. The need for the court to consider socio-economic impact of the Tendele's mining operations in the community.

9.2. The court should weigh and balance the effect and impact on the community of the prohibitory interdict being sought by the appellants which equates to closing Tendele's mine, whether for a short or long period of time.

9.3. The impact of the stoppage of the mine operations of the First

Respondent should be weighed against the socio-economic rights and interests of the affected community members in light of the availability of less evasive alternative orders which the court is entitled to consider and grant in terms of section 172(1)(b) of the Constitution, in the event of the court finding that the conduct of Tendele is unconstitutional;

9.4. The Applicants will seek to persuade the court to consider alternative remedies, short of closing Tendele's mine, including structural interdict or suspension of the interdict to ensure that Tendele complies within a particular period of time to the extent that all what is required is for Tendele to apply for the various authorisations as contended for by the appellants;

9.5. The financial impact of closing the mine for few months or so to allow Tendele to apply for and be granted the necessary authorisations far outweighs the benefits that will accrue to the community if Tendele is allowed to continue to operate under strict conditions that it applies for and secure the authorisations with a specified period of time;

9.6. It has been proven in the mining industry that closing a mine, even if it is for a short duration of time, has serious negative impact and costly to resume the operations at a later stage, hence it would make more sense and justifiable so for the court to consider alternative remedies including

structural interdict or suspension of the interdict, short of closing the mine.

10. **CORE BUNDLE**

None

Dennis Sibuyi
Attorney for 2nd to 5th Amicus Curiae
Applicants
8 June 2020

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LIST OF AUTHORITIES

CASES

1. Hoffmann v South African Airways 2001 (1) SA 1 (CC)
2. City of Cape Town v Rudolph and Others 2004 (5) SA 39 (C)
3. Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others 2014 (4) SA 179 (CC)
4. BW Bright Water Way Props (Pty) Ltd v Eastern Cape Development Corporation 2019 (6) SA 443 (ECG)
5. Robertson and Another v City of Cape Town and Another

Truman-Baker v City of Cape Town 2004 (5) Sa 412 (C)

6. Sibiya and Others v Director of Public Prosecutions, Johannesburg, and Others 2005 (5) SA 315 (CC)

STATUTES

Constitution of the Republic of South Africa, Act 108 of 1996

LITERATURE

Christopher Mbazira: Litigation Socio-Economic Rights in South Africa: A choice between corrective and distributive justice. Published in 2009 by Pretoria University Law Press

