

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.: 11761/21

In the matter between:

MINING AND ENVIRONMENTAL COMMUNITY NETWORK OF SOUTH AFRICA	First Applicant
GROUNDWORK	Second Applicant
BIRDLIFE SOUTH AFRICA	Third Applicant
ENDANGERED WILDLIFE TRUST	Fourth Applicant
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	Fifth Applicant
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	Sixth Applicant
THE BENCH MARKS FOUNDATION	Seventh Applicant
and	
UTHAKA ENERGY (PTY) LTD	First Respondent
MEC FOR AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS, MPUMALANGA	Second Respondent
THE MINISTER OF ENVIRONMENT, FORESTRY AND FISHERIES	Third Respondent
THE MINISTER OF MINERAL RESOURCES AND ENERGY	Fourth Respondent
MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION	Fifth Respondent
ACTING CHIEF DIRECTOR: ENVIRONMENTAL AFFAIRS, DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS, MPUMALANGA	Sixth Respondent
GERT SIBANDE DISTRICT MUNICIPALITY	Seventh Respondent
DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY	Eighth Respondent
THE WATER TRIBUNAL	Ninth Respondent



**ESTATE LATE PIERRE WILLIAM BRUWER UYS
OCCUPIER OF PORTION 1 OF THE FARM YZERMYN 96
HT**

Tenth Respondent
Eleventh Respondent

**THE VOICE COMMUNITY REPRESENTATIVE
COUNCIL**

Twelfth Respondent

**THE MABOLA PROTECTED ENVIRONMENT
LANDOWNERS ASSOCIATION**

Thirteenth Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicants will apply to this Honourable Court on **16 MARCH 2021**, at 10h00 or so soon thereafter as the matter may be heard, for an order in the following terms:

1. Dispensing with the forms, periods and other provisions of the Uniform Rules of Court and directing that this matter be heard on an urgent basis in terms of rule 6(12).
2. Condoning the wholly electronic exchange of papers as agreed between the parties, in accordance with paragraph 166 of the Judge President's Consolidated Directive of 18 September 2020, to the extent necessary.
3. Interdicting and restraining the first respondent ("Uthaka") from conducting any mining activities and mining-related operations (including any activities preparatory, ancillary or incidental to mining, including without limitation any fencing, cutting or clearing of vegetation, any establishment of roads, any construction or installation of buildings, infrastructure or equipment and any drilling, excavation, digging, removal of soil, coal, ore or any mineral) ("mining

activities”), on the properties listed in annexure ‘A’ (“the properties”) unless and until, the following has taken place –

3.1. The final determination of the following reviews and appeals –

3.1.1. The applicants’ appeal in this division under case number A155/19 in terms of section 149 of the National Water Act 36 of 1998;

3.1.2. The applicants’ judicial review of the water use licence (in this division under case number 86261/19);

3.1.3. The applicants’ internal statutory appeal against the approval of Uthaka’s Environmental Management Programme and any judicial review proceedings instituted in respect of that appeal decision;

3.1.4. The applicants’ judicial review of the environmental authorisation (in the Mpumalanga Division of the High Court, Mbombela under case number 1390/18);

3.1.5. The applicants’ judicial review of Uthaka’s mining right (in this division under case number 73278/15);

3.1.6. The applicants’ judicial review of the decisions by the Gert Sibande District Joint Municipal Planning Tribunal to approve the rezoning of Portion 1 of the farm Yzermyn 96 HT from agriculture to mining, and the Municipal Appeal Authority of the Dr Pixley Ka Isaka Seme Local Municipality’s confirmation of the approval of that decision (in the Mpumalanga Division of the High Court, Middelburg under case number 1344/20); and

- 3.1.7. The applicants' judicial review of the MEC's decision to exclude the properties from the Mabola Protected Environment, which the applicants will institute on or before the end of April 2021.
- 3.1.8. The reconsideration by the Ministers of Environmental Affairs and Mineral Resources of Uthaka's application for written permission to conduct mining in terms of section 48(1)(b) of NEMPAA, as ordered by Davis J in his judgment under case number 50779/2017 (reported at [2019] 1 All SA 491 (GP), a copy will be made available at the hearing of this application).
- 3.2. The grant of the following authorizations and permissions –
- 3.2.1. A valid mining right, in respect of which the period for commencement has been duly extended in terms of section 25(2)(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA");
- 3.2.2. Uthaka has exhausted the statutory procedures in terms of section 54 of the MPRDA vis-à-vis the owner of portion 1 of Yzermyn 96 HT and any occupier of that land; and
- 3.2.3. Uthaka has fulfilled all relevant conditions laid down in statutory authorisations, including those imposed by the Water Tribunal.
4. Directing Uthaka together with those of the other respondents who may oppose the application, to pay the costs of this application including the costs of two counsel, such costs in respect of the applicants' instructing attorneys and senior counsel to be payable in terms of section 32(3)(a) of the National Environmental Management Act 107 of 1998.

5. Further and/or alternative relief.

TAKE NOTICE FURTHER that the annexed founding affidavit of **NKWANE ELTON THOBEJANE**, together with the annexures to it, and the confirmatory affidavits of **YOLAN FRIEDMANN** and **JOHN CAPEL** will be used in support of this application.

TAKE NOTICE FURTHER that the applicants have appointed the address of its attorneys of record, as set out below, as the address at which the applicants will accept notice and service of all process in these proceedings.

AND TAKE NOTICE FURTHER that if any of the respondents intend to oppose this application, they are required to:


1. Notify the applicants' attorneys in writing on or before **17h00 on Monday, 8 March 2021** and in such notice appoint an address referred to in rule 6(5)(b), together with an email address, at which they will accept notice and service of all documents in these proceedings.
2. Deliver their answering affidavits, if any, by no later than **17h00 on Tuesday, 9 March 2021**.
3. The applicants will then file their replying affidavit, if any, by **10h00 on Thursday 11 March 2021**.

TAKE NOTICE FURTHER that in accordance with paragraphs 161 and 162 of the Judge President's Consolidated Directive of 18 September 2020, all papers must be uploaded onto CaseLines, and only when the uploading of papers on CaseLines is

impossible to achieve, may a physical set of papers be delivered as directed by the Urgent Court Judge, which shall include an affidavit explaining, in full, why it was impossible to transmit the papers via CaseLines or email.

TAKE NOTICE FURTHER that the applicants' legal representatives will accept service via email at the address provided below.

Dated at **PRETORIA** on this the *5th* day of **MARCH 2021**



CENTRE FOR ENVIRONMENTAL RIGHTS
Applicants' Attorneys
2nd Floor, Springtime Studios
1 Scott Road
Observatory
Cape Town
Email: chorsfield@cer.org.za and
nmia@cer.org.za and
tmuponde@cer.org.za
C/O GILDENHUYS MALATJI ATTORNEYS
Harlequins Office Park
164 Totius Street
Groenkloof
PRETORIA
Tel: 012 428 8608/073 135 8770
Email: JSmalberger@gminc.co.za
Ref: Johan Smalberger

To:

**THE REGISTRAR OF THE
ABOVE HONOURABLE COURT**

And to:

FASKEN
Attorney for the First Respondent
Inanda Greens
54 Wierda Road West
Sandton
Tel: (011) 586 6089
Cell: 083 680 2075

Fax: (011) 586 6104

Email: fjoubert@fasken.com; cstark@fasken.com; bdacosta@fasken.com

Ref: Francois Joubert

And to:

MEC FOR AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS, MPUMALANGA

Second Respondent

Building 6, 2nd floor, Riverside Park

7 Government Boulevard

Nelspruit

Tel: (013) 766 6074

Fax: (013) 766 8437 / 086 697 8998

Email: uismail@mpg.gov.za; nndlanya@mpg.gov.za; sitholenl@mpg.gov.za;

akoojeeaa@mpg.gov.za

Ref: Honourable Mandla Msibi

And to:

THE MINISTER OF ENVIRONMENT, FORESTRY AND FISHERIES

Third Respondent

Environment House

473 Steve Biko Road (Cnr. Steve Biko and Soutpansberg Roads)

Arcadia

Pretoria

Tel: (012) 310 3537 / (012) 399 9141

Fax: 086 593 6526

Email: minister@environment.gov.za; msipilica@environment.gov.za;

labader@environment.gov.za; fshaik@environment.gov.za;

mndamase@environment.gov.za

Ref: Honourable Barbara Creecy

And to:

THE MINISTER OF MINERAL RESOURCES AND ENERGY

Fourth Respondent

Floor 4, Block 2C

71 Trevenna Campus

Cnr Meintjies and Francis Baard Streets

Sunnyside

Pretoria

Tel: (012) 444 3999/3956

Fax: (012) 444 3145

Email: yuyelwa.siyeka@dmr.gov.za; buang.mokate@dmr.gov.za;

sheila.maweni@dmr.gov.za; pieter.alberts@dmr.gov.za

Ref: Honourable Samson Gwede Mantashe

And to:

THE MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION

Fifth Respondent

Sedibeng Building

185 Francis Baard Street

Pretoria

Tel: (012) 336 7500

Email: francois.hugo@dhs.gov.za; nenesi@dws.gov.za; centralp@dws.gov.za;
loselop@dws.gov.za

Ref: Honourable Lindiwe Nonceba Sisulu

And to:

ACTING CHIEF DIRECTOR: ENVIRONMENTAL AFFAIRS, DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS, MPUMALANGA

Sixth Respondent

Building 6, 2nd floor, Riverside Park

7 Government Boulevard

Nelspruit

Tel: (013) 766 6020

Cell: 082 520 3680

Fax: (013) 766 8429

Email: pnntuli@mpg.gov.za

Ref: Pamela Ntuli

And to:

GERT SIBANDE DISTRICT MUNICIPALITY

Seventh Respondent

Corner of Joubert and Oosthuise Streets

Ermelo

Mpumalanga

C/O MOHLALA ATTORNEYS

1 Macdonalds Street

Ermelo

Mpumalanga

Tel: (017) 811 3000

Email: info@mohlalainc.co.za; HabileC@gsibande.gov.za;

centrec@gsibande.gov.za; info@mohlalainc.co.za

Ref: Mr Mohlala

And to:

DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY

Eighth Respondent

Corner of Dr Nelson Mandela Drive and Adelaide Thambo Street

Volkstrust

Mpumalanga

C/O MOHLALA ATTORNEYS

1 Macdonald Street

Ermelo
Mpumalanga
Tel: (017) 811 3000
Cell: 079 464 9351
Email: info@mohlalainc.co.za mm@pixleykaseme.gov.za;
Ref: Mr Mohlala

And to:

THE WATER TRIBUNAL
Ninth Respondent
Sedibeng Building
185 Francis Baard Street
PRETORIA
Tel: (012) 336 7034/7709
Email: maber@dws.gov.za; madimabes@dws.gov.za
Ref: Robert Mabe (Registrar)

And to:

ESTATE LATE PIERRE WILLIAM BRUWER UYS
Tenth Respondent
C/O WERKSMANS ATTORNEYS
The Central
96 Rivonia Road
Sandton
2146
Tel: +27 11 535 8000
Fax: +27 11 535 8600
Email: cstevens@werksmans.com
Ref: Chris Stevens

And to:

OCCUPIER OF PORTION 1 OF YZERMYN 96 HT
Eleventh Respondent
Portion 1 of Yzermyn 96 HT
Mpumalanga

And to:

THE VOICE COMMUNITY REPRESENTATIVE COUNCIL
Twelfth Respondent
C/O AYOOB KAKA ATTORNEYS
182 Barry Hertzog Avenue
Greenside
Johannesburg
Tel: 011 726 1710/011 726 1711
Email: kakalaw@mweb.co.za; Ebrahim@kakalaw.co.za
Ref: Ebrahim Kaka

MABOLA PROTECTED ENVIRONMENT LANDOWNERS ASSOCIATION

Thirteenth Respondent
Farm Schoongezicht
Volsrust
Mpumalanga
Email: pjuys@icloud.com
Ref: Piet Uys

And to:

THE STATE ATTORNEY PRETORIA

Old Mutual Centre
8th Floor, 167 Andries Street
Pretoria
Tel: (012) 309 1627/1554
Cell: 072 219 0627 / 073 841 5056 / 076 144 6762
Fax: 086 517 5732
Email: simathebula@justice.gov.za; lnkuna@justice.gov.za
Ref: Sipho Mathebula / Nyiko Lucky Nkuna

And to:

THE STATE ATTORNEY NELSPRUIT

Mpumalanga High Court Building
R104 Samora Machel Drive
West Acres
3rd Floor, Admin Block, West Wing
Nelspruit
Tel: 013 101 3722
Email: Stateattorneynelpruit@justice.gov.za

ANNEXURE "A"

List of properties comprising of the proposed mine area

1. Portion 1 of Kromhoek 93 HT
2. Remainder of Kromhoek 93 HT
3. Goedgevonden 95 HT
4. Remainder of Yzermyn 96 HT
5. Portion 1 of Yzermyn 96 HT
6. Zoetfontein 94 HT