

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 11761 / 2021

In the matter between: -

MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA	First Applicant
GROUNDWORK	Second Applicant
EBIRDLIFE 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
MINISTER OF ENVIRONMENT, FORESTRY AND FISHERIES	Third Respondent
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	Eight Respondent
THE WATER TRIBUNAL	Ninth Respondent
ESTATE LATE PIERRE WILLIAM BRUWERUYS	Tenth Respondent
OCCUPIER OF PORTION 1 OF THE FARM YZERMYN	
96 HT	Eleventh Respondent
THE VOICE COMMUNITY REPRESENTATIVE	
COUNCIL	Twelfth Respondent
THE MABOLA PROTECTED ENVIRONMENT	
LANDOWNERS ASSOCIATION	Thirteenth Respondent

TWELFTH RESPONDENT'S CONCISE HEADS OF ARGUMENT

A. THE 12TH RESPONDENT'S POSITION

- 1 The twelfth respondent represents the local community situated within the district of the Dr Pixley Ka Isaka Seme Local Municipal district ("the Voice") and wishes to raise its "voice" as per section 38 of the Constitution and section 32 of NEMA.¹
- 2 The Voice will be directly affected by the outcome of this application: positively should the mine open and negatively should it not.

¹ AA par 6 – 8, p8-7

3 The affidavit filed is not in direct opposition of the application. It simply serves to place before court very relevant economical facts as per the socio economical impact assessment report done by Demacon².

4 The overwhelming majority of the local community comprise of the historically disadvantaged sections of society and are living in abject poverty, deprivation and are devoid of major development³.

5 The facts herein has a direct bearing on the very “pillars” the applicant has to base its application: the balance of convenience and a real apprehension of injury.

6 In terms of the Demacon report⁴:

6.1 Currently the local community consists of:⁵

6.1.1 87 611 people in 25 448 households with an average household size of 4.01;

6.1.2 61.2% of the community is aged between 15 and 64;

6.1.3 92.1% of the population is Black African;

6.1.4 Only 44.2% of the population are economically active. So more than half the population is economically unactive;

² AA par 24, p8-10

³ AA par 15, p8-8

⁴ AA p8-20

⁵ Annexure “AA2”, p 8-22

6.1.5 Of the economically active 63.9% are employed and 36.1% are unemployed;

6.1.6 73.4% of the households (being 4.01 persons per household) has a monthly income of less than R3 500.00 = R875.00 per person for the whole month.

7 The analysis show that should the mine become operational⁶:

7.1 Capital investment in excess of R1.5 billion to be spent in construction of the mine;

7.2 Capital investment during construction could generate R3.86 billion in additional business sales, R1.63 billion in GGP and create 8 464 new employment opportunities;

7.3 Operational revenue of R2.27 billion by year 9 of the mine and generate business sales of R3.92 Billion, additional GGP of R2.32 billion and 5 321 new employment opportunities;

7.4 Of the 8464 jobs:

7.4.1 5 356 will be direct;

⁶ Annexures "AA3 to AA8", p8-26 – 8-54

7.4.2 5 321 will be sustained operational jobs of which 1 856 will be direct. All of this will have a considerable impact on the unemployment rate.

7.5 There will be a huge economical advantage for SMME:

7.5.1 70 SMME to be established during construction phase;

7.5.2 98 SMME during operational phase;

7.5.3 1 SMEE will give work for between 1 to 200 people.

7.6 to pay costs on the scale as between attorney and client.

8 The COVID 19 pandemic literally may be the last straw to brake the proverbial back of the local community. The community is down and out, is poverty stricken and in desperate need of economical injection. The opening of the mine cannot be delayed.

B. LEGAL PRINCIPLES

Interdicts

9 The applicants must satisfy the requirements for an interim interdict:

- 9.1 **Prima facie right**: *“Need not be shown by a balance of probabilities, if it is prima facie established, though open to some doubt... that is enough”⁷.*
- 9.2 **Apprehension of harm**: *“the test is objective and the question is whether a reasonable man, confronted by the facts, would apprehend the probability of harm”⁸.*
- 9.3 **Balance of Convenience**: *“In exercising its discretion the Court weighs, inter alia, the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience. The foregoing considerations are not individually decisive, but are interrelated; for example, the stronger the applicant's prospects of success the less his need to rely on prejudice to himself.”⁹*
- 9.4 **No other adequate remedy**: *“The Respondents contended that the appellant could sue for damages or cancel the lease. This argument cannot prevail. The first appellant is entitled to enforce its bargain: to obtain the lessee's promised rental while preventing the latter from conducting itself in a manner that*

⁷ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189

⁸ *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at 347B -C

⁹ *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 (3) SA 685 (A) at 691 D - E

involves breaking the law. The only ordinary remedy which provides it with the necessary protection is an interdict. Cancellation would be quite the opposite of that to which the first appellant is entitled.¹⁰

CONCLUSION

- 10 It is the 12th respondent's plea that the court takes cognisance of the facts set out in the answering affidavit when one has regard to the elements of balance of convenience and apprehension of harm.
- 11 The 12th respondent will abide by the court's ruling.

ADV H VAN DER VYVER

SANDOWN VILLAGE

071 3313 779

¹⁰ *V&A Waterfront Properties (Pty) Ltd v Helicopter & Marine Services (Pty) Ltd* 2006 (1) SA (SCA) at B-C