

IN THE HIGH COURT OF SOUTH AFRICA MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT)

CASE NO: 1320 /2021

In the matter between:

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

GROUNDWORK Second Applicant

BIRDLIFE SOUTH AFRICA Third Applicant

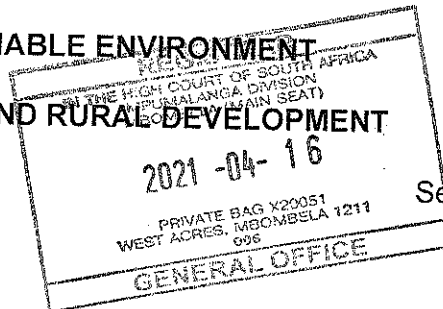
ENDANGERED WILDLIFE TRUST Fourth Applicant

FEDERATION FOR A SUSTAINABLE ENVIRONMENT Fifth Applicant

ASSOCIATION FOR WATER AND RURAL DEVELOPMENT Sixth Applicant

BENCHMARKS FOUNDATION Seventh Applicant

and



**MEC FOR AGRICULTURE, RURAL DEVELOPMENT,
LAND AND ENVIRONMENTAL
AFFAIRS, MPUMALANGA** First Respondent

UTHAKA ENERGY (PTY) LTD Second Respondent

**MINISTER OF FORESTRY, FISHERIES AND
THE ENVIRONMENT** Third Respondent

MINISTER OF MINERAL RESOURCES AND ENERGY Fourth Respondent

**THE MABOLA PROTECTED ENVIRONMENT
LANDOWNERS ASSOCIATION** Fifth Respondent

**THE VOICE COMMUNITY REPRESENTATIVE
COUNCIL** Sixth Respondent

THE OCCUPIERS OF THE EXCLUDED PROPERTIES Seventh Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicants intend to make application to this Court for an order in the following terms:

- 1 Reviewing and setting aside the decision of the first respondent, published on 15 January 2021 in Notice 2 of 2021 in Provincial Gazette Extraordinary No. 3225, to exclude the properties consisting of Portion 1 of Kromhoek 93HT; Remainder of Kromhoek 93HT; Goedgevonden 95HT; and Remainder of Yzermyn 96HT from the Mabola Protected Environment, in terms of section 29 of the National Environmental Management: Protected Areas Act 57 of 2003 ("**NEMPAA**").
- 4 Directing any respondent who opposes this application to pay the costs, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel.
- 5 Granting further and / or alternative relief.

TAKE NOTICE FURTHER that the affidavit of **NKWANE ELTON THOBEJANE** annexed, and the confirmatory affidavits of **JOHN CAPEL** and **YOLAN FRIEDMANN** to be filed shortly hereafter, will be used in support of this application.

TAKE NOTICE FURTHER that:

- (a) in terms of Rule 53(1)(a) of the Uniform Rules of this Honourable Court read with Rule 2(2) of the Administrative Review Rules, 2019, the first respondent is hereby called upon to show cause why the decision referred to in prayer 1

above should not be reviewed and corrected or set aside by this Honourable Court;

- (b) in terms of Rule 53(1)(b) of the Uniform Rules of this Honourable Court read with Rule 2(2)(b) and Rule 3(1) of the Administrative Review Rules, 2019, the first respondent is hereby called upon to deliver to the Registrar of this Honourable Court, within fifteen (15) court days after receipt of this notice of motion, the record of proceedings pursuant to which the decision referred to in prayer 1 above was taken (including all documents, letters, memoranda, reports, recommendations, minutes and other materials which were before the first respondents when his decision was taken), together with such reasons as the first respondent is by law required or desire to give or make, and to notify the applicants that they have done so, provided that, if any of these documents have already been provided to the applicants, it will be sufficient for them to be identified in a schedule in such a way that they are readily identifiable;
- (c) in terms of Rule 53(4), the applicants may within ten (10) court days of receipt of the record from the Registrar, amend, add to or vary the terms of the notice of motion and/or supplement their founding affidavit, by delivery of a notice and accompanying affidavit.

TAKE NOTICE FURTHER that the applicants have appointed the offices of their attorneys, the Centre for Environmental Rights, care of their correspondent attorneys, Du Toit-Smuts and Partners, Law Chambers, Van Niekerk Street,

Mbombela, as being the address at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if the respondents intend opposing this application they are required to –

- (a) within fifteen (15) court days after receipt of this notice of motion or any amendment of it, deliver notice to the applicants that they intend to oppose this application and appoint in such notice an address within fifteen (15) kilometres of the office of the Registrar of this Honourable Court at which they will accept notice and service of all process in these proceedings; and
- (b) within thirty (30) court days after the expiry of the time referred to in Rule 53(4) of the Uniform Rules of this Honourable Court, deliver any affidavits they may desire to answer the allegations made by the applicants.

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

TAKE NOTICE FURTHER that if no notice of intention to oppose is given, this application will be set down on the unopposed basis and proceed on a date to be determined by the Registrar of the above Honourable Court.

DATED at MBOMBELA on this the 16th day of APRIL 2021.

SUNITA TOWNSEND

(Right of appearance ito Section 25(3)
of the Legal Practice Act, Act 28 of 2014)

Applicants' Attorneys

CENTRE FOR ENVIRONMENTAL RIGHTS

2nd Floor, Springtime Studios

1 Scott Road

Observatory

Cape Town

Tel: (021) 447 1647

Email: chorsfield@cer.org.za / nmia@cer.org.za /

tmuponde@cer.org.za

Ref: Catherine Horsfield / Nabeelah Mia

C/O: DU TOIT-SMUTS AND PARTNERS

Law Chambers, Van Niekerk Street

Mbombela

Tel: (013) 745 3200

Email: stownsend@dtamp.co.za

Ref: S TOWNSEND/mg/M6/21 (CEN22/3)

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
MBOMBELA

AND TO:

First Respondent

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

Building 6, 2nd floor, Riverside Park

7 Government Boulevard

Nelspruit

Tel: (013) 766 6074

Fax: (013) 766 8437 / 086 697 8998

Email: mhmaboko@mpg.gov.za, pnntuli@mpg.gov.za,

dagadamc@gmail.com, nontobekomashaba@gmail.com

Ref: Honourable MEC Mandla Msibi

AND TO:

Second Respondent

UTHAKA ENERGY (PTY) LTD

30B French Lane

Morningside Ext 98

Sandton

2196

Tel: (011) 883 1750

Email:morgam.munsamy@athagroup.in
Praveer.tripathi@athagroup.in
Ref: Mr Morgam Munsamy

AND TO:

Third Respondent

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

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;

fshaik@environment.gov.za; mndamase@environment.gov.za

Ref: Honourable Minister Barbara Creecy

AND TO:

Fourth Respondent

MINISTER OF MINERAL RESOURCES AND ENERGY

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:vuyelwa.siyeka@dmr.gov.za; sheila.maweni@dmr.gov.za;

Ref: Honourable Minister Gwede Mantashe

AND TO:

Fifth Respondent

THE MABOLA PROTECTED ENVIRONMENT LANDOWNERS ASSOCIATION

Hospital Street 2U

Volkstrust

Email: pjuys@icloud.com

Ref: Piet Uys

AND TO:

Sixth Respondent

THE VOICE COMMUNITY REPRESENTATIVE COUNCIL

1534 Phumula Location,

Vukuzakhe

Volkstrust

Ref: Mr Thabiso Nene

By hand

AND TO:

Seventh Respondent

THE OCCUPIERS OF THE EXCLUDED PROPERTIES

Occupiers of Portion 1 of Kroemhoek 93 HT

Mpumalanga

By hand

AND TO:

Seventh Respondent

THE OCCUPIERS OF THE EXCLUDED PROPERTIES

Occupiers of Remainder of Kroemhoek 93 HT

Mpumalanga

By hand

AND TO:

Seventh Respondent

THE OCCUPIERS OF THE EXCLUDED PROPERTIES

Occupiers of Remainder of Yzermyn 96 HT

Mpumalanga

By hand

AND TO:

Seventh Respondent

THE OCCUPIERS OF THE EXCLUDED PROPERTIES

Occupiers of Goedgevonden 95HT

Mpumalanga

By hand

AND TO:

THE STATE ATTORNER Y NELSPRUIT

Mpumalanga High Court Building

R104 Samora Machel Drive

West Acres

3rd Floor, Admin Block, West Wing

Nelspruit

Tel: (013) 101 3722

Email: Stateattorneynelspruit@justice.gov.za