

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 39724/2019

In the matter between:

**THE TRUSTEES FOR THE TIME BEING OF
GROUNDWORK TRUST**

First Applicant

**VUKANI ENVIRONMENTAL JUSTICE
ALLIANCE MOVEMENT IN ACTION**

Second Applicant

and

THE MINISTER OF ENVIRONMENTAL AFFAIRS

First Respondent

NATIONAL AIR QUALITY OFFICER

Second Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Third Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE AND RURAL DEVELOPMENT,
GAUTENG PROVINCE**

Fourth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURAL, RURAL DEVELOPMENT, LAND
AND ENVIRONMENTAL AFFAIRS,
MPUMALANGA RESPONDENT**

Fifth Respondent

**THE UN SPECIAL RAPPORTEUR ON HUMAN
RIGHTS AND THE ENVIRONMENT**

Amicus Curiae

MINISTER'S SUPPORTING AFFIDAVIT

I, the undersigned

BARBARA DALLAS CREECY

AS
BMC

state the following under oath:

- 1 I am currently the Minister of the National Department for Forestry, Fisheries and the Environment (as the Department is now known). I deposed to the answering affidavit in the main application.
- 2 The facts contained in this affidavit are, to the best of my knowledge both true and correct and fall within my personal knowledge unless the context indicates otherwise. Where I make submissions of a legal nature, I do so on the advice of my legal representatives.
- 3 I have decided to seek leave to appeal against the Orders in paragraphs 241.2 to 241.5 of the Order made by Collis J on 18 March 2022 in Case No. 39724/2019 ("the Order"). I was cited as the first respondent in the main application. The grounds of appeal are set out in the application for leave to appeal.
- 4 In applying for leave to appeal, I do so on a limited basis and cognisant of my statutory and constitutional duties. In my answering affidavit in the main application, I said, *inter alia*, the following:

"3. Soon after taking office as the Minister of the National Department for Environment, Forestry and Fisheries ("the National Department") as from 30 May 2019, succeeding Ms Nomvula Mokonyane, I became acutely aware of, and familiar with, the pressing and continuing problem with air pollution in the Highveld Priority Area. Every individual person residing or working in the Highveld Priority Area has my sympathy and also the sympathy of every official in the National Department. I also realised and know that the ongoing state of affairs, regarding the unacceptable levels of air pollution in the Highveld Priority Area and the potentially adverse impacts thereof, not only on the health or wellbeing of individuals but also on the environment, falls within the domain of my political and legal responsibility as Minister ...

AMC
O.S

4. *Since taking office as the Minister of the National Department, I have in fact prioritised the issue of air quality, not only in the Highveld Priority Area but on a national scale. ..."*

5 My affidavit then goes on to detail the various steps that I had taken to address the identified problems since assuming office. Those steps included the initiation of generic regulations in terms of the National Environmental Management : Air-Quality Act, 39 of 2004 ("the AQA").

6 It is not my intention to use the appeal process to delay the drafting of regulations and that process will continue independently of any appeal. Indeed, I regard it as important, to ensure that the process of regulation-making is as inclusive and cooperative as possible. The need for engagement with all interested and affected parties is crucial if a practical and viable way forward is to be found. There are self-evidently many competing interests at stake. The health of affected communities will continue to enjoy priority as well as an endeavour to balance these demands with the many other relevant factors. I thus propose to continue an engagement with affected communities, including NGOs and specialists, energy producers and industries in the area, trade unions, local authorities and all other interested parties.

7 It will be seen from the application for leave to appeal that the ambit of the appeal is relatively narrow and essentially boils down to a question of law, namely, the proper interpretation of section 20 of the AQA. The appeal against the four Orders identified all have in common that they are predicated upon an interpretation of section 20 of the AQA which holds that I am not merely vested with a discretion to prescribe regulations, but am under a duty to do so.

AS
RME


8 The proper interpretation of section 20 of the AQA is of wider significance. This is because there are several statutes within the environmental sphere and for which I am responsible which contain similarly worded regulation-making powers. It is therefore of importance, beyond this case, to determine whether those powers also entail not merely a discretion, but also a duty. Apart from the statutory framework that falls within my domain of responsibility, there are many statutes which also contain similarly worded regulation-making powers. Hence, a decision in this case may have a wider impact on delegated regulation-making generally.

9 It is in this spirit that I seek leave to appeal.


BARBARA DALLAS CREECY

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Pretoria on this the 5th day of April 2022, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

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