

**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG**

Case No.: 1344/20

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

GERT SIBANDE DISTRICT JOINT MUNICIPAL PLANNING TRIBUNAL	First Respondent
DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY: MUNICIPAL APPEAL AUTHORITY	Second Respondent
UTHAKA ENERGY (PTY) LTD (formerly ATHA-AFRICA VENTURES (PTY) LTD)	Third Respondent
MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	Fourth Respondent
THE MABOLA PROTECTED ENVIRONMENT LANDOWNERS ASSOCIATION	Fifth Respondent

APPLICANTS' PRACTICE NOTE

NATURE OF THE APPLICATION

1. The application before court is for the review and setting aside of the first respondent's decision to approve a land use change on Portion 1 of the farm

Yzermyn 96 from agriculture to mining and ancillary purposes (**“Tribunal decision”**).

2. The applicants also seek the review and setting aside of the second respondent’s dismissal of the applicants’ appeal against the Tribunal decision (**“appeal decision”**).
3. The application is brought under rule 53 of the Uniform Rules of Court and a record of decision was filed before court.

ISSUES TO BE DECIDED

4. There are several questions that this court is called upon to determine. They are these:
 - 4.1. Whether the Tribunal decision should be set aside on any of the four grounds of review because it was either unlawful, irrational, or unreasonable.
 - 4.2. Whether the appeal decision should be set aside on any of the four grounds of review because it was either unlawful, irrational, or unreasonable.
 - 4.3. Whether a stay of the determination of this application pending the finalisation of the applicants’ (i) reviews of the decisions to grant the third respondent (**“Uthaka”**) a mining right and environmental authorisation, and (ii) appeal of the decision to grant Uthaka a water use license, should be granted.

5. The Tribunal and the appeal authority raise several preliminary issues for the court to determine:
 - 5.1. Whether the applicants have the requisite *locus standi* to prosecute this review.
 - 5.2. Whether all parties with a direct and substantial interest have been joined.
 - 5.3. Whether there is pending litigation between the same parties on the same cause of action.
 - 5.4. Whether the principle of subsidiarity has any bearing on the relief sought by the applicants.

6. A further issue, which was belatedly joined, pertains to the status of the allegations of fact in Uthaka's heads of argument, as well as the legitimacy of the legal arguments based on those allegations. Uthaka did not oppose these review proceedings, in that it did not file an answering affidavit. The applicants have filed brief submissions regarding the inadmissibility of Uthaka's heads of argument.

READING OF THE PAPERS

7. The following papers should be read:
 - 7.1. The applicants' notice of motion.
 - 7.2. All affidavits and annexures.
 - 7.3. The following documents contained in the Tribunal's rule 53 record:
 - 7.3.1. Uthaka's application for a land use change (p. 15-34).
 - 7.3.2. The professional planner's assessment report (p. 195-199).

7.3.3. The transcribed record of the meeting held on 6 February 2019 (p. 399-488).

7.3.4. The Mpumalanga Department of Co-operative Governance and Traditional Affairs' comments on Uthaka's application (p. 262-263).

8. It is not necessary to read the full rule 53 record delivered by the Tribunal (apart from the documents detailed at paragraph 7.3 above) and the record delivered by the appeal authority.

LEGAL REPRESENTATIVES

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