

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

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

ATHA-AFRICA VENTURES (PTY) LTD

Third Respondent

**MINISTER OF AGRICULTURE, LAND REFORM AND
RURAL DEVELOPMENT**

Fourth Respondent

**MABOLA PROTECTED ENVIRONMENT
LANDOWNERS ASSOCIATION**

Fifth Respondent

SUPPLEMENTARY FOUNDING AFFIDAVIT

I, the undersigned

MARGARET MOLOMO

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state under oath that:

1. I am the chairperson of the first applicant and was appointed as such on 16 June 2021. I have been on the first applicant's steering committee for several years and I am fully apprised of this matter. The resolution signed by the various applicants in this matter authorise the chairperson of the first applicant to depose to any affidavit which may be required in respect of these legal proceedings. These resolutions are attached as annexure **FA1** to the founding affidavit. Therefore, as the newly elected chairperson of the first applicant, I am duly authorised to depose to this supplementary founding affidavit on behalf of each of the respective applicants.
2. The facts in this affidavit are, save where the context indicates otherwise, within my personal knowledge and belief, and are true and correct. Where I make submissions of a legal nature, I do so on the advice of the applicants' legal representatives, which advice I believe to be correct. Where I rely on information supplied by others, I believe that such information is true and correct.
3. This affidavit is filed as a consequence of the Rule 53 record filed by the first and second respondents (the Tribunal and the Municipal Appeal Authority). The purpose of this affidavit is multifaceted:
 - 3.1. First, I supplement the grounds of review in the founding affidavit.
 - 3.2. Second, I deal briefly with the delays in the filing of the Rule 53 record by the Tribunal and Municipal Appeal Authority.

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3.3. Third, I address condonation for any non-compliance with Rule 53(4), or section 7(1) of PAJA, insofar as it may be necessary.

4. In this affidavit, I use the same abbreviations as were used in the founding affidavit. Subsequent to the date when the founding affidavit was filed, Atha-Africa (the third respondent) has changed its name to Uthaka Energy (Pty) Ltd with its principal place of business situated at 30B French Lane, Morningside Extension 98, Sandton, Gauteng. Any reference to "Atha", "Atha-Africa" or "Uthaka" is a reference to the third respondent.

SUPPLEMENTATION OF THE GROUNDS OF REVIEW

5. There are three documents in the Rule 53 record which the applicants have not previously had sight of and which are relevant to the grounds of review.

5.1. The first document is the land development assessment report of the professional town planner as prescribed by section 53(1)(g) of the SPLUM By-Law (the Tribunal's Rule 53 record pp 195-199) ("**Town Planner's Report**").

5.2. The second document is the transcribed record of proceedings of the Tribunal's meeting held on 6 February 2019 (the Tribunal's Rule 53 record pp 399-488) ("**record of Tribunal's proceedings**").

5.3. The third document is the Mpumalanga Department of Co-operative Governance and Traditional Affairs' comments on Atha's Application, dated 27 July 2018 (the Tribunal's Rule 53 record pp 262-263) ("**Department of Co-operative Governance's comments**").

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6. I deal with each in turn below.

Town Planner's Report

7. Section 53(1)(g) of the SPLUM By-Law provides that the Tribunal must have regard to a written assessment by a professional planner in respect of land development applications considered by the Tribunal. The Town Planner's Report evaluates an application submitted to the Tribunal against SPLUMA's development principles and norms, the IDP, the SDF as well as related policies and plans, and makes a recommendation regarding the application to the Tribunal.
8. The Town Planner's Report was compiled by Mr Mbekanyeni Ramukosi, a Town and Regional Planner at the Local Municipality who is registered with the South African Council for Planners. The report was completed on 15 June 2018 and was signed by Mr Ramukosi on 27 June 2018.
9. In his report, Mr Ramukosi confirms that Atha applied on 5 April 2018 in terms of section 66(1) of the SPLUM By-Law for the rezoning of Portion 1 of Farm Yzermyn 96 HT from "agricultural" to "mining activity".
10. Under 'section I: summary of public participation', it is recorded that the public participation was undertaken in accordance with the relevant by-law.
11. Under 'section J: summary of comments received during public participation', only comments from what appear to be various government departments were recorded.

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12. Under 'section K: summary of comments from organs of state', Mr Ramukosi states that: *"[t]he proposed development is outside the town planning scheme, therefore the application was circulated to external departments."* The comments and/or responses of external departments, if any, are not provided or attached.
13. Under 'section M: municipal planning evaluation', Mr Ramukosi states that the proposal is consistent with the principles referred to in Chapter 2 of SPLUMA and decision guidelines in the SPLUM By-Law. He also confirms that Atha's application is not inconsistent with SPLUMA, the IDP, the SDF and applicable policies. Although these conclusions are made, there is no detail or assessment of the application against any relevant policy.
14. Under 'section O: summary of evaluation', Mr Ramukosi states under sub-section 2, titled 'Local Spatial Development Framework':

"The SDF recognises the importance of the economic leveraging which may result from mining activities on condition that the same have unaccepted (sic) impact on the receiving environment more particularly, conservation and wetland areas. It follows that the applicant accord positively with the adopted policy of the Municipality in terms of spatial development framework."

15. Under sub-section 4, titled 'Municipal policies guides decision making', Mr Ramukosi states that *"[t]he development is in line with the municipal SDF"*.
16. Under sub-section 8, titled 'Affected parties', Mr Ramukosi indicates that: *"[a]ll affected parties have been addressed through the notification process (refer*

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to Documented 27 June 2018)." Mr Ramukosi appears to reference Atha's response to written objections and comments to its application (FA24).

17. Under 'section P: recommendations', Mr Ramukosi states:

"the development must be in line with the requirements of the Municipal Policies and regional SDF

That the development will be limited to the following land use components shaft conveyor, transfer tower, stock pile conveyor [...]

that all conditions set out in the comments from external departments be adhered."

18. Under 'section Q: reason for recommendation', Mr Ramukosi concludes:

"Recommendation: approval be done in terms of section 52(2)(a) of SPLUMA".

19. Mr Ramukosi's recommendation to the Tribunal was to refer Atha's application to the Minister of Rural Development and Land Reform on the basis that it may be prejudicial to the economy, health or security interests of one or more provinces or the Republic as a whole. I submit that the Town Planner's Report, which the Tribunal was required to have regard to, confirms the applicants' first ground of review, as detailed in paragraphs 30 to 42 below.

The record of the Tribunal's proceedings

20. It is apparent from the record of the Tribunal's proceedings that Atha's application was considered and decided at a sitting of the Tribunal on 6

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February 2019. The Tribunal approved Atha's application subject to imposing conditions, which were to be determined at a later date. The start of the Tribunal's deliberations over Atha's application can be found at page 439 of the Tribunal's Rule 53 record.

21. The Chairperson welcomed the attendees and explained the Tribunal's approach. First he indicated that it is a practice of the Tribunal to allow the applicant to accompany the municipalities in the presentation of the applications before the Tribunal, where the municipalities decide to invite applicants and other persons or specialists. The Chairperson then explained the order of events as:

- 21.1. the administrator would go through the checklist and the issues and concerns of members of the Tribunal would be dealt with;
- 21.2. the professional planner who undertook the assessment of the application would present the application to the Tribunal;
- 21.3. the applicant (Atha) would then be provided with an opportunity to *"add and then or if you want to deny some of the facts you will present to us"*;
- 21.4. members of the Tribunal would be allowed to ask questions of the professional planner or the applicant (Atha); and
- 21.5. following the engagement, the members of the Tribunal would deliberate and announce the outcome.

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22. It is apparent from the record of the Tribunal's proceedings that the following persons were present at the Tribunal's meeting on 6 February 2019:

22.1. Tribunal members –

- 22.1.1. Mr Mkhoza (Chairperson; Manager: Planning and Economic Development, Gert Sibande District Municipality)
- 22.1.2. Mr Maroun (Deputy Chairperson; Manager: Legal Services, Dr Pixley ka Isaka Seme Municipality)
- 22.1.3. Mr Marodi (external member of the Tribunal)
- 22.1.4. Mr Nkosi (Administrator; Senior Manager, Gert Sibande District Municipality)
- 22.1.5. Mr Jonas (surname not indicated on the transcript), Manager: Planning, Dipalaseng Local Municipality
- 22.1.6. Ms Shelbane, Chief Albert Luthuli Municipality
- 22.1.7. Mr Masilele, civil society
- 22.1.8. Ms Chiloane, Manager: Economic Development, Gert Sibande District Municipality
- 22.1.9. Mr Mogakabe, Manager: Environmental Services, Gert Sibande District Municipality

22.2. Non-Tribunal members and observers –

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22.2.1. Mr Ramukosi, Town Planner, Dr Pixley ka Isaka Seme Municipality

22.2.2. Robert (surname not indicated on transcript), Town Planner, Gert Sibande District Municipality

22.2.3. Mr Maake, Director: Planning and Economic Development, Msukaligwa Local Municipality

22.2.4. Mr Ntego, Town Planner, Gert Sibande District Municipality

22.2.5. Mr Mathebula, Town Planner

22.3. Atha representatives –

22.3.1. Mr Zuma

22.3.2. Mr Munsamy

22.3.3. Mr Tripathi

22.3.4. Mr Soleng, Chairperson of the Voice

22.3.5. Mr Joubert, legal representative

22.3.6. Mr Venter, legal representative

22.3.7. Mr Dacomb, Town Planner, Practice Group

23. The record of the Tribunal's proceedings confirms the applicants' second ground of review. It is apparent from the record that:

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- 23.1. the impugned decisions failed to take into account whether the correct procedures were followed in processing the application, which is a material non-compliance with section 53 of the SPLUM By-Law;
- 23.2. the Tribunal and Municipal Appeal Authority failed to consider the desirability of the proposed utilisation of land and any guidelines issued by the Member of the Executive Council regarding proposed land uses, as prescribed by section 53(1)(c) of the SPLUM By-Law; and
- 23.3. the impugned decisions failed to consider the municipal spatial development framework; applicable local spatial development frameworks; and the policies, principles, planning and development norms and criteria set by national and provincial government.
24. The record of the Tribunal's proceedings plainly shows the procedural unfairness and that there was no meaningful public participation process. This is apparent from the fact that Atha's representatives were invited to attend the Tribunal's meeting, but that none of the objectors were informed of the meeting or invited to attend. Atha's representatives not only attended the Tribunal's meeting, but they also made numerous submissions and arguments in favour of the application.
25. The applicants were not afforded the same opportunity, despite their formal objection to the application (**FA23**) and their petition to be granted intervener status in the appeal lodged on behalf of Atha on 8 January 2019 (**FA28**). In fact, it was incorrectly noted by a Tribunal member that there is no evidence of anyone requesting to be an intervener. This was not corrected by any of the

parties present, including Atha, who were aware of the applicants having petitioned to be granted intervener status.

26. The record of the Tribunal's proceedings also confirms the applicants' third ground of review that the Tribunal failed to consider environmental considerations, as detailed at paragraphs 56 to 61 below.

Department of Co-operative Governance's comments

27. On 27 July 2018, the Mpumalanga Department of Co-operative Governance and Traditional Affairs wrote a letter to the Practice Group wherein it provided comments on Atha's application. The Department concluded that it supports the development, subject to *inter alia* the following conditions:

- 27.1. Atha complies with the stipulations of NEMA;
- 27.2. all conditions imposed by the local municipality and other Government Departments are adhered to;
- 27.3. the Land Claims Commission is consulted regarding the land claim status of the Application property;
- 27.4. the rights of the nearby communities are not adversely affected and should such be the case, mediation processes should be engaged to resolve any disputes;
- 27.5. the municipality ensures and enforces compliance with policies and prescripts; and

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27.6. the Department of Agriculture, Rural Development and Land and Environmental Affairs comments on the application.

28. There is no evidence in the Rule 53 record that Atha and/or the Tribunal complied with, or even considered, any of the Department's conditions. There is no evidence that the Land Claims Commission or the Department of Agriculture were consulted. It is also not apparent from the Rule 53 record that the adverse effects on the rights of nearby communities were considered. Mr Ramukosi had also recommended that all conditions set out in the comments from external departments be adhered to.
29. The Rule 53 record confirms the applicants' second ground of review in that the Tribunal and Municipal Appeal Authority also failed to have regard to the comments in response to the notice of the application as well as the comments received from organs of state and internal departments, as required by section 53(1)(d) of the SPLUM By-Law, and detailed at paragraphs 43 to 55 below.

Supplementation of the first ground of review: The Tribunal and Municipal Appeal Authority failed to refer the application to the Minister pursuant to section 52 of SPLUMA

30. In paragraphs 175 to 188 of the founding affidavit, the applicants state that Atha's application is an application envisaged in terms of section 52 of SPLUMA which would affect the national interest. The applicants contend that section 52(2) of SPLUMA applies in that a positive outcome to the application:
- 30.1. may be prejudicial to the economic or health interests of one or more provinces (i.e. Mpumalanga, KwaZulu Natal and Gauteng) or the Republic as a whole;

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- 30.2. may impede the effective performance of the functions by one or more municipalities or provinces relating to matters within their functional area of legislative competence; and
- 30.3. may affect and endanger SWSAs.
31. Furthermore, the applicants state that in terms of section 52, read with section 87 of the SPLUM By-Law, it was incumbent upon the Tribunal to direct that such application be referred to the Minister to decide, alternatively, to inform the Minister of the application and to supply her with a copy of the application for her comment.
32. It is apparent from the Tribunal's Rule 53 record, particularly the transcript of the Tribunal's proceedings, that the Tribunal did not direct that the application be referred to the Minister, nor did the Tribunal inform the Minister of the application. As such, the Tribunal did not comply with a mandatory and material procedure or condition prescribed by section 52 of SPLUMA.
33. The applicant's first ground of review is further strengthened by the fact that Mr Ramukosi's recommendation in the Town Planner's Report was that the approval be done in terms of section 52(2)(a) of SPLUMA (i.e. that the application be referred to the Minister on the basis that the outcome of the application may be prejudicial to the economic, health or security interests of one or more provinces or the Republic as a whole).
34. The Tribunal was required to have regard to Mr Ramukosi's written assessment in terms of section 53(1)(g) of the SPLUM By-Law. Not only did

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the Tribunal not have regard to Mr Ramukosi's recommendation that the application be referred to the Minister; it also:

34.1. failed to engage with the facts in support of the recommendation, including but not limited to the:

34.1.1. fact that the impacts of the proposed development will cut across various government departments;

34.1.2. fact that the environmental significance pertaining to the Subject Property and surrounding areas had already been recognised by different departments at national level;

34.1.3. fact that it is located within an area that is of great strategic importance to the water supply of South Africa - a SWSA; and

34.1.4. impact that the proposed mine may have, including the dewatering of aquifers, decant of contaminated ground water, impact on flora and fauna, and the harm to local communities;

34.2. allowed Mr Ramukosi to change the recommendation in his written assessment, at the meeting of the Tribunal, to recommend that the Tribunal instead approve the application, and if any matters arise from the Tribunal it can be dealt with in terms of section 52(2)(a) of SPLUMA (which is irrational in itself – either the application must be submitted to the Minister under section 52(2)(a) or it must not); and

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- 34.3. allowed Atha's legal representatives an opportunity to make submissions and representations on its understanding/interpretation of Mr Ramukosi's recommendation, which submissions were considered by the Tribunal. The applicants and other interested and affected parties were not provided with such an opportunity, rendering the process procedurally unfair.
35. Mr Venter, a legal representative of Atha, was at great pains to emphasise Atha's role at the Tribunal meeting. It is worth repeating Atha's view regarding its participation. Mr Venter said:

"Insofar as we were invited we received a letter on 9 April inviting us to be here at 9 o'clock and we – I can tell you, your address when you deal with how the process is going to work today. You indicated that we will have an opportunity to, to make representation (sic). We do not intend to say one word in representation, because it will be procedurally unfair.

We are not going to make any submissions or any presentation. We are not going to hand up any documents. What we are aware of is that the application is complete it is comprehensive and we have dealt with the objections in our reply. The objections (sic) are not here and you all know the provisions of Section 33 of the Constitution insofar as procedural fairness is concerned as well as the provisions of PAJA.

We do not want a situation that a decision is taken by this Tribunal and it is susceptible to review based on procedural unfairness. So we are not going to make one representation if get the opportunity to do

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so (sic). *Just based on that exactly that will be procedurally unfair.*"
(Tribunal Rule 53 record p 455). [Underlining added].

36. Later on, Mr Venter further clarified Atha's role at the Tribunal meeting as follows:

"Thank you Mr Chairman. Just one more thing. With regard to the view now expressed we would be satisfied the only reason why we are here and because this application is a bit technical. It refers to the land that falls outside a scheme and there is difficulty in the Power of Attorney and it is quite easy to explain.

So the reason why we are here and that is what, how we understood our invitation is to simply answer a technical question. Say there is a, a question of clarity that the Tribunal members want us to highlight and clarify a part of the application. We are here to do so, but we are not, we are not going to submit an argument or make representations on the application." (Tribunal Rule 53 record p 456).

37. Despite what Mr Venter explained to be Atha's role at the meeting, he made detailed submissions prior to these statements to the Tribunal on Atha's interpretation of Mr Ramukosi's changed recommendation. In this regard Mr Venter said:

"How I understand the recommendation I, I must agree with the, one of the members. It differs from what is written there. As I understood what, how he explained it is he wants your, he recommends that the application be approved, but if there are other issues that may in, in

future relate to matters that might involve a land development application must be referred to the Minister and it may involve the, may be prejudicial to economic, health and security interests or one more provinces. (sic)

Then it may be dealt with on that basis. So that is how I understood it. Here, here his recommendation is that it may be approved, but if there are other difficulties relating to what is provided for in section 52(2). Then it can be dealt with at a later stage. That is, that is how I understand. Otherwise it does not make sense what we are doing here.

The recommendation must either be approved or refused. That is at 52(2)(a) there is a decision and, and I have not seen anything in his report relating to anything that may trigger 52(2)(a). There is not a single word in his report stating that it may be prejudicial to the economic, health and security interests of one or more provinces.

That is not stated anywhere. So it simply does not make sense to then make that or approve or subject to your approval. [...]" (Tribunal's Rule 53 record pp 453-454). [Underlining added].

38. I submit that contrary to Mr Venter's explanation of Atha's role at the meeting, Atha's representatives made material and detailed submissions and/or representations regarding its application, which submissions were considered by the Tribunal in making its decision.

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39. The Tribunal erred in its decision to consider Atha's application, despite Mr Ramukosi's recommendation that it be referred to the Minister. The following exchange took place at the meeting:

"Chairperson: *I hope I understand that clearly if not my colleagues will assist me. Members, Mr Masilele has moved that we consider the application irrespective of the, the issues we have discussed around the recommendation. Your take. Yes, no, no, yes.*

Unknown person: *I will accept. Second it.*

Chairperson: *Different view? Nothing. Thank you. We are proceeding with the application."* (Tribunal's Rule 53 record pp 456-457).

40. The Tribunal further erred in finding that if Mr Ramukosi's recommendation was that the application be referred to the Minister, there would be no need for the Tribunal to meet (Tribunal's Rule 53 record p 456). The Tribunal was required to properly consider Mr Ramukosi's recommendation together with all of the information that was available to it at the time, including the applicants' detailed written objection to the application (**FA23**). There is no evidence in the record that the Tribunal did so.

41. I submit, in any event, if the Tribunal had any doubts on whether to submit the application to the Minister in terms of section 52(2)(a), then it should have and was required to, at the very least, inform the Minister about the application.

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42. Finally, I submit that in addition to the grounds on which the impugned decisions fall to be reviewed set out in the founding affidavit, the Tribunal's decision falls to be set aside in terms of section 6(2)(c) of PAJA on the basis of procedural unfairness because it allowed Atha's legal representatives an opportunity to make material submissions and representations on its understanding/interpretation of Mr Ramukosi's recommendation, which submissions were considered by the Tribunal.

Supplementation of the second ground of review: The Tribunal and the Municipal Appeal Authority failed to comply with the criteria for consideration and determination of an application by Municipal Planning Tribunal as set out in section 53 of the SPLUM By-Law

43. In paragraphs 189 to 220 of the founding affidavit, the applicants state that the Tribunal and the Municipal Appeal Authority failed to comply with the criteria as set out in section 53 of the SPLUM By-Law, specifically that:

- 43.1. they failed to consider whether the correct procedure was followed in processing the application (section 53(1)(b));
- 43.2. they failed to consider the desirability of the proposed utilisation of land and any guidelines issued by the Member of the Executive Council regarding the proposed land uses (section 53(1)(c)); and
- 43.3. the impugned decisions failed to consider the municipal spatial development framework; applicable local spatial development frameworks; and the policies, principles, planning and development norms and criteria set by national and provincial government (section 53(1)(h), (i), (n)).

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44. In addition to the grounds listed above, the Tribunal and Municipal Appeal Authority also failed to have regard to the comments in response to the notice of the application as well as the comments received from organs of state and internal departments, as required by section 53(1)(d) of the SPLUM By-Law.
45. The Tribunal's Rule 53 record includes the Department of Cooperative Governance's comments in which its support for the development was subject to various conditions. These include that the Land Claims Commission be consulted and the Department of Agriculture, Rural Development and Land and Environmental Affairs provide its comments on the application. It also required that the rights of the nearby communities not be adversely affected by the application. Should it be the case, mediation processes must be engaged to resolve any disputes. There is nothing in the record to show that the Tribunal took comments received from organs of state and internal departments into account. Mr Ramukosi informed the meeting, incorrectly, that all of the departments, the internal departments supported the application (Tribunal's Rule 53 record p 449). This cannot be true, if some of the departments were not even consulted.
46. The applicants' second ground of review is confirmed by the Rule 53 record. Not only was there no proper notification of the application given to any of the interested and affected parties, there was also no proper public participation process carried out before the decision to approve the application was made.
47. The Tribunal confirmed that the objectors had not been notified of, or invited to the meeting. Yet it is clear from the record of the Tribunal's proceedings that

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Atha was invited by the Local Municipality to attend. Atha was in attendance and made material and substantive detailed submissions at the proceedings.

48. The Tribunal was also incorrect when it found that there was no evidence of anyone requesting to be an intervener. The CER, on behalf of the applicants, had on numerous occasions notified the Local Municipality of the applicants' interest in the matter. This is set out in detail in the founding affidavit. In addition to the applicants' objection to the application (**FA23**), the applicants had also filed a petition to be granted intervener status in the appeal by Atha (**FA28**). Atha itself, in its correspondence to the Local Municipality on 30 January 2019 (**FA29**), states that *"[t]hose parties who submitted objections timeously with regards to the first application in this matter remain on record and are to be invited to attend the hearing to be conducted by MPT."*
49. The applicants did seek to be admitted as interveners. They were and remain interested and affected parties in terms of section 45(2) of SPLUMA. Despite this, no section 99(1)(c) and (d) notices were ever served on the applicants.
50. Atha, on the other hand, was invited to the Tribunal's meeting and was provided with an opportunity to make submissions and/or representations to the Tribunal regarding:
- 50.1. its interpretation of Mr Ramukosi's changed recommendation;
- 50.2. "technical corrections", which in Atha's view ought to be made to Mr Ramukosi's written assessment of the application, including various additions suggested by Atha to be included in Mr Ramukosi's assessment;

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- 50.3. advising the Tribunal on what it is able to determine under various statutes;
- 50.4. why Atha was not required to have a power of attorney signed by the owner of the land authorising it to make the application;
- 50.5. Atha's "continued engagement" with the landowner;
- 50.6. why the bondholders consent was not applicable;
- 50.7. the status of the environmental authorisation. I specifically record that Atha informed the Tribunal that the Environmental Authorisation Appeal had been dismissed but failed to advise the Tribunal that the environmental authorisation and the Environmental Authorisation Appeal are the subject of an ongoing judicial review, instituted on 22 May 2018, as detailed in the founding affidavit; and
- 50.8. the fact that the decisions by the Ministers of Environmental Affairs and Mineral Resources to permit mining in Mabola were set aside by the High Court, Gauteng Division, Pretoria under case number 50779/17. I specifically record that Mr Joubert, Atha's legal representative submitted, incorrectly, that the situation "*has been rectified*" when in fact Atha still lacked the permission to mine required under section 48(1)(b) of NEMPAA.
51. Despite Mr Venter's submission to the contrary, Atha also handed documents to the Tribunal. Mr Dacomb, after proposing numerous substantial amendments and additions to the Town Planner's Report, said:

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"I will hand this document to the Chair, because it is a lot of wording so I do not expect you to write it down. . . For - at Section F, application description it may be prudent to insert a further description of the application under Section F as opposed to Section E. We suggest that will suffice. In other words E and F are in our view the same, but perhaps you must choose one of the two not both and Section K, summary of comments from organs of State: in this section it is confirmed that the proposed development is located beyond the boundaries of the scheme which is correct as alluded to under Section C and reference is made to the scheme." (Tribunal's Rule 53 record p 461 - 462).

52. Furthermore, I submit that the Tribunal erred:

- 52.1. when it found that there was evidence and/or proof of a public participation process;
- 52.2. in finding that because the contents of the notice had been adhered to and objections were recorded, there was public participation;
- 52.3. in accepting that affected parties had been addressed through the notification process; and
- 52.4. in finding that the Local Municipality *"disposed of the objections such that in the presentation of the applications there was no mention of the objections"*.

53. The Municipal Appeal Authority erred in finding that the applicants' points of objection were considered by the Tribunal before the decision to approve the land development application was handed down. The Tribunal's Rule 53

record confirms the exact opposite – there was no mention nor discussion of the applicants' (or any other) objections before the Tribunal.

54. The Tribunal's Rule 53 record confirms that the impugned decisions failed to consider that the land use change contemplated in the application being applied for was highly undesirable. There is nothing in the record to show that the Tribunal considered the factors and guidelines listed in the SDF. In addition, although the Town Planner's Report stated that the development was in line with the municipal SDF, it is clear from the Tribunal proceedings that the Tribunal did not confirm that this was correct (and which the applicants allege is not in fact correct). Accordingly, the ensuing Municipal Appeal Authority's conclusion in this regard is erroneous, without foundation and irrational.

55. For these reasons, the Tribunal and the Municipal Appeal Authority failed to comply with the criteria for consideration and determination of the application as set out in section 53 of the SPLUM By-Law.

Supplementation of the third ground of review: The impugned decisions failed to consider environmental considerations

56. In paragraphs 221 to 228 of the founding affidavit, the applicants assert that the impugned decisions failed to consider environmental considerations and that the Tribunal and the Municipal Appeal Authority, in reaching the impugned decisions failed to:

56.1. apply the NEMA principles; and

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- 56.2. consider that the area within which the Subject Property is located, adjacent to Mabola, is important from a conservation perspective with regard to national water supply and biodiversity protection.
57. The Rule 53 record confirms the applicants' third ground of review, and that overall the impugned decisions failed to note that the strategic importance of the area was a relevant consideration that the Municipal Appeal Authority ought to have considered in its decision. It is not in fact correct as contended by the Municipal Appeal Authority, that as evidenced from the record before the Tribunal, relevant information relating to environmental authorisations that had previously been pronounced upon had been before the Tribunal, and was taken into account in reaching the Tribunal's decision.
58. Although Atha omitted to mention the fact that there is a pending judicial review of the decision to issue an environmental authorisation to it, and of the Mpumalanga MEC for Environment's decision to dismiss the appeal, this fact was contained in the applicants' objection to the application. It is clear from the record of the Tribunal's proceedings that this was not considered or taken into account.
59. At the start of the Tribunal's meeting, the environmental authorisation was raised as a concern by the administrator Mr Nkosi, because of instances where environmental authorisations are set aside. Following Atha's incomplete account of the status of the environmental authorisation, Mr Nkosi acknowledged Atha's response and the matter was not discussed again.
60. In the Tribunal's deliberations, Mr Marodi raised concerns regarding the location of the Subject Property and suggested that the Tribunal impose

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environmental conditions on its approval. I submit that this was not done and no environmental conditions were imposed in the Tribunal Decision.

61. I submit therefore that in addition to the grounds listed at paragraph 228 of the founding affidavit, the impugned decisions are also reviewable on the basis of section 6(2)(e)(iii) of PAJA and the principle of legality because irrelevant considerations were taken into account or relevant considerations were not considered.

The fourth ground of review: The Tribunal and the Municipal Appeal Authority misdirected themselves by engaging in incremental decision-making

62. In paragraphs 229 to 233 of the founding affidavit, the applicants submit that the Tribunal misdirected itself by engaging in incremental decision-making when approving Atha's application.
63. The Tribunal's Rule 53 record confirms that this is precisely what the Tribunal did in accepting Atha's submission that for purposes of the application, the Tribunal needs to know that Portion 1 of Yzermyn does not fall within Mabola and is outside of the area entirely. I submit that the Tribunal's acceptance of Atha's contention, without more, is irrational for the reasons detailed in the founding affidavit.
64. In addition to the grounds listed at paragraph 233 of the founding affidavit, the impugned decisions are also reviewable on the basis of section 6(2)(h) of PAJA and the principle of legality in that no reasonable decision-maker would have exercised its power or performed its function in this manner.

Date of the Tribunal's decision

65. The resolution of the Tribunal is dated 29 April 2019. On this basis, initially the applicants believed that this was the date when the Tribunal took the decision to approve Atha's Application (**FA31**). Although the resolution bears the heading 'Gert Sibande District Joint Municipal Planning Tribunal held on 29 April 2019', it appears from the Tribunal's Rule 53 record that the decision was made at the Tribunal's meeting on 6 February 2019.
66. I note that the sequence of the dates is confusing and it seems that there is an error regarding the dates. The record of the Tribunal's proceedings indicates that Atha was invited on 9 April 2019 to attend the Tribunal's meeting (Tribunal's Rule 53 record p 455). Based on the record, if the invitation was sent on 9 April 2019, the meeting took place in February before the invitation was sent. This cannot be correct.
67. Therefore, the applicants' seek to review and set aside the decision of the Tribunal made on 6 February 2019, and/or on 29 April 2019.

THE RULE 53 RECORD AND CONDONATION FOR ANY NON-COMPLIANCE WITH RULE 53(4), OR SECTION 7(1) OF PAJA, INsofar AS IT MAY BE NECESSARY

Rule 53(4)

68. In terms of Rule 53(1)(b) of the Uniform Rules read with Rule 2(2) of the Administrative Review Rules, the applicants' notice of motion called upon the Tribunal and the Municipal Appeal Authority to deliver, within fifteen days of receipt of the notice of motion, to the Registrar of this Court, the record of proceedings pursuant to which the Tribunal and Appeal Decisions were taken,

together with any reasons that each of them desires to give or is in law required to give, and to notify the applicants that they have done so.

69. The respective records were required to be delivered to the Registrar by 17 June 2020 in respect of the Tribunal and 18 June 2020 in respect of the Municipal Appeal Authority.
70. On 17 August 2020 the Tribunal filed the first part of the record of proceedings in terms of Rule 53, excluding the transcribed record of proceedings of the Tribunal's meeting held on 6 February 2019 and/or 29 April 2019. The Tribunal filed the second part of the record of proceedings, including the transcribed record of proceedings, on 4 September 2020.
71. On 21 August 2020, the Municipal Appeal Authority filed the first part of the record of proceedings in terms of Rule 53.
72. On 18 September 2020 the applicants' attorneys of record, the CER, wrote to the respondents' legal representatives indicating that:
 - 72.1. in preparation of this affidavit and in working through the Rule 53 record, it appeared that there are certain documents missing from the record;
 - 72.2. they would revert shortly with a complete list of missing documents; and
 - 72.3. they are accordingly not in a position to file the affidavit within the prescribed 10 day period and seek an indulgence in that respect.

A copy of the CER's letter is attached as **SFA1**.

73. On 22 September 2020 the Tribunal and Municipal Appeal Authority's attorneys of record, Mohlala Attorneys, responded to the CER granting the indulgence as requested. A copy of Mohlala Attorney's letter is attached as **SFA2**.

74. On 14 October 2020 the CER wrote to Mohlala Attorneys indicating that documents appear to be missing from the Rule 53 record filed by the Tribunal and the Municipal Appeal Authority. The CER recorded that the following documents appear to be missing from the record:

74.1. In respect of the record filed by the Tribunal –

74.1.1. copies of any internal correspondence between members of the Tribunal, and records of any of the aforementioned members' deliberations: (i) for the period during which the matter was in the process of being heard and deliberated on at the meeting on 19 February 2019; and (ii) for the period after the meeting held on 19 February 2019 leading up to the date when the Tribunal passed the resolution granting the land use change application, that is, for the period from 19 February 2019 to 29 April 2019;

74.1.2. copies of all of the objections made against Atha's application;

74.1.3. copies of the letters in support of Atha's application, as listed in Atha's response to written objections and comments, dated 27 June 2018;

74.1.4. copies of responses from governmental departments, if any;
and

74.1.5. a copy of the Feasibility Report: Detailed Mine Engineering
Study.

74.2. The CER also notified Mohlala Attorneys that the following pages
appeared to be missing from the record –

74.2.1. 23, 41, 43 and 45 of the Socio-Economic Study, and

74.2.2. every second page of the Storm Water Management Plan.

74.3. In respect of the record filed by the Municipal Appeal Authority –

74.3.1. copies of any internal correspondence between members of the
Municipal Appeal Authority, and records of any of the members'
deliberations, for the period within which the Applicants' appeal
against Atha's land use change application was being
considered by the Municipal Appeal Authority until the date
when the appeal decision was communicated to the Applicants
on 27 November 2019;

74.3.2. copies of all of the objections made against Atha's application;

74.3.3. copies of the letters in support of Atha's application, as listed in
Atha's response to written objections and comments, dated 27
June 2018; and

- 74.3.4. a copy of the transcribed record of deliberations of the Municipal Appeal Authority in coming to its decision, if any.

A copy of the CER's letter dated 14 October 2020 is attached as **SFA3**.

75. On 2 November 2020 after no response to the abovementioned letter had been received, the CER sent an email to Mohlala Attorneys requesting a response. On 3 November 2020, Mohlala Attorneys wrote to the CER and advised that they were still taking instructions regarding the abovementioned letter. A copy of the email exchange is attached as **SFA4**.
76. On 1 December 2020, further documentation was filed by the Municipal Appeal Authority. After consideration of the further documents received, on 11 December 2020 the CER again addressed correspondence to Mohlala Attorneys noting that not all of the documents requested on 14 October 2020 had been provided and accordingly requested:
- 76.1. copies of any internal correspondence between members of the second respondent, and record of any of the members' deliberations, for the period within which the applicants' appeal against the third respondent's land use change application was being considered by the second respondent until the date when the appeal decision was communicated to the applicants on 27 November 2019, which have not already been provided;
- 76.2. copies of all responses, if any, received from other government departments that were notified of the third respondent's land use change application;

76.3. all pages of the Specialist Study: Socio-Economic dated 19 August 2013;

76.4. all pages of the Stormwater Management Plan dated 3 March 2014; and

76.5. the legal opinion provided by senior counsel to the first respondent on the legal authority of the third respondent to submit the land-use change application under review.

A copy of the CER's letter dated 11 December 2020 is attached as **SFA5**.

77. On 19 February 2021, the CER addressed further correspondence to Mohlala Attorneys requesting an update on their request for documentation of 11 December 2020 and indicated that they are instructed to proceed with the finalisation of the supplementary founding affidavit. A copy of the CER's letter is attached as **SFA6**.

78. Mohlala Attorneys responded on 22 February 2021 and confirmed that they are instructed that the record furnished constitutes the entire available set of documents in their respective clients' possession. A copy of Mohlala Attorneys' letter is attached as **SFA7**.

79. While awaiting the documents which had not initially been included in the Rule 53 record filed on 17 August, 21 August, 4 September, and 1 December 2020, respectively, the CER prepared a comprehensive draft of this affidavit.

80. I note that the record is incomplete, at least insofar as the missing pages of the various annexures is concerned. Despite this, the applicants resolved to

file this supplementary affidavit without the full record having been furnished and did so as expeditiously as possible. The applicants reserve their right to supplement the papers if further relevant documents are provided at a later stage.

81. While a draft of this affidavit was prepared after receipt of SFA7 by the CER, in March and April that draft was not finalised because the CER was representing the applicants in bringing an urgent application to interdict Atha from commencing mining activities pending the various reviews of the various authorisations referred to elsewhere in these papers. That interdict application was granted in the Pretoria High Court on 23 March 2021. That Court Order also required the applicants to institute their application for the judicial review of the MEC's decision to exclude the proposed mining properties from Mabola by 16 April 2021, which the applicants did with the assistance of the CER. At the same time, Atha applied for direct access to the Constitutional Court to appeal the interdict and the applicants opposed that application. These three applications affected the CER's ability to finalise the draft of this affidavit more promptly. Once it did so and sent the draft to the applicants' Counsel, the applicants' Counsel contracted Covid-19 and was unable to settle the affidavit before 6 June 2021. On receipt of the settled affidavit from Counsel, CER attended to outstanding questions and instructions from the applicants and attended to the filing of it as swiftly as possible.
82. Given the importance of the issues raised in this application, I submit that there is good cause to grant condonation for the late filing of this supplementary affidavit insofar as may be necessary. I also submit that there will be no

prejudice to the respondents, as the matter is not yet enrolled for hearing and they will be provided with sufficient opportunity to answer to this affidavit.

Section 7(1) of PAJA

83. The expiry of the period within which to institute this review in terms of section 7(1) of PAJA was 25 May 2020. The applicants' correspondent attorneys located in Middelburg issued the application on 25 May 2020. This application had been drafted and was ready to be issued on 12 May 2020, but there was a slight delay as a result of alert level 4 lockdown regulations, which resulted in a delay:
- 83.1. in delivering a printed hard copy of the papers via courier to the deponent to be signed and commissioned in Burgersfort;
 - 83.2. in delivering the signed and commissioned founding affidavit via courier from Burgersfort to the correspondent attorneys in Middelburg;
 - 83.3. in delivering the signed and commissioned confirmatory affidavits via courier from Johannesburg and Pretoria to the correspondent attorneys in Middelburg; and
 - 83.4. due to the fact that the Middelburg High Court was not issuing new applications at the time, and only started issuing new applications on 25 May 2020.
84. On 25 May 2020, the correspondent attorneys arranged for copies of the papers to be couriered to attorneys firms in Ermelo, Volksrust, Johannesburg and Pretoria so that service via sheriff on the respondents could be arranged.

85. The application was served on the respondents as follows:

85.1. the first, third and fourth respondents on 27 May 2020,

85.2. the second respondent on 28 May 2020, and

85.3. the fifth respondent on 9 June 2020.

86. I am advised that the slight delay in the service of this application was not unreasonable due to the Covid-19 pandemic and the nature of the restrictions imposed aimed at curtailing the spread of infections. I refer to paragraphs 239 to 245 of the founding affidavit and submit that it is in the interests of justice for the Court to condone the delay insofar as it may be necessary.

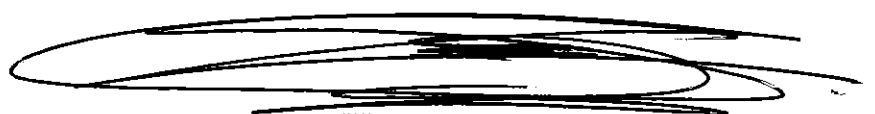
CONCLUSION

87. The applicants accordingly stand by the grounds of review in the founding affidavit, as supplemented in this affidavit, and persist in the relief sought in the notice of motion.



MARGARET MOLOMO

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 MOKOPANE on this the 06 day of JULY 2021, 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.



COMMISSIONER OF OATHS

Full names:

Address:

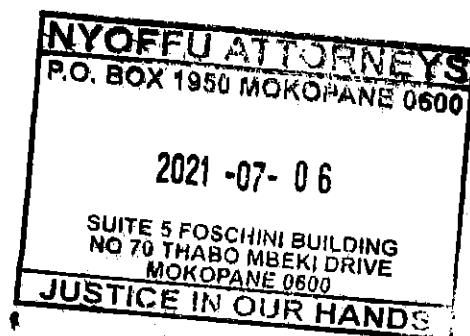
Capacity: COMMISSIONER OF OATH

PRACTISING ATTORNEY

NO 70 THABO MBEDI DRIVE

SUITE NO. 5 FOSCHINI BUILDING

MOKOPANE





Mr Mohlala
Mohlala Attorneys Inc
Attorney for the 1st and 2nd Respondents
By email: info@mohlalainc.co.za

Francois Joubert
Fasken Inc
Attorney for the 3rd Respondent
By email: fjoubert@fasken.com; cstark@fasken.com; bdacosta@fasken.com

The State Attorney
Attorney for 4th Respondent
By email: StateAttorneyPretoria@justice.gov.za

The Mabola Protected Environment Landowners Association
Fifth Respondent
By email: malansp@vodamail.co.za

Our ref: Catherine Horsfield/Nabeelah Mia
18 September 2020

Dear Sirs/Mesdames

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA & OTHERS V GERT SIBANDE
DISTRICT JOINT MUNICIPAL PLANNING TRIBUNAL & OTHERS (CASE NO: 1344/2020)**

We refer to the above matter.

In preparing our clients' supplementary founding affidavit and working through the Rule 53 records filed on 17 August 2020, 21 August 2020 and 4 September 2020, respectively, it appears that there are certain documents missing from the record. We shall revert to you shortly with a complete list.

We are accordingly not in a position to file the affidavit within the prescribed 10 day period and seek your indulgence in that respect.

Yours faithfully
CENTRE FOR ENVIRONMENTAL RIGHTS

per: **Catherine Horsfield**
Attorney
Programme Head: Mining
Direct email: chorsfield@cer.org.za

Cape Town: 2nd Floor, Springbloss-Flats, 1 Cliff Road, Observatory, 7925, South Africa
 Johannesburg: 1st Floor, 11 du Plessis Building, West Group, University of the Witwatersrand, Johannesburg, 2001, South Africa
 Tel: 021 447 1647 (Cape Town) | Tel: 011 462 6530 (Johannesburg) | Fax: 021 430 9085
www.fishbase.org

[illegible]

No: 1 Macdonald street
 Ermelo 2360 MP
 Telephone: (017) 811 3000
 Tel/fax: (017) 811 2533
 E-mail: info@mohlalainc.co.za
 website: www.mohlalainc.co.za



MOHLALA
Attorneys

Vat Reg No. 4630276378

P.O.BOX 1356
 Ermelo 2360
 Cell No: 072 293 7653
 079 464 9351
 082 840 8984
 Fax to email: 086 556 0339

Our Ref: MOHLALA/CVL/1108

Your Ref: Catherine Horsfield/Nabeelah Mia

22 September 2020

CENTRE FOR ENVIROMENTAL RIGHTS

PER EMAIL: chorsfield@cer.org.za

AND TO: FRANCOIS JOUBERT

FASKEN INC

ATTORNEY FOR THE 3RD RESPONDENT

PER EMAIL: fjoubert@fasken.com; cstark@fasken.com;

bdacosta@fasken.com

AND TO: THE STATE ATTORNEY

ATTORNEY FOR THE 4TH RESPONDENT

PER EMAIL: StateAttorneyPretoria@justice.gov.za

AND TO: THE MABOLA PROTECTED ENVIROMENTAL

LANDOWNERS ASSOCIATON

ATTORNEY FOR THE 5TH RESPONDENT

PER EMAIL: malansp@vodamail.co.za

Dear Sir/Madam

ALSO IN MBOMBELA

Office No.1 Copper building
 40 Bester Street
 Mbombela 1200

Telephone: (013) 752 3653
 Cellphone: 086 071 6667
 fax: (013) 752 3770

E-mail: office@mohlalainc.co.za
 Website: www.mohlalainc.co.za

GIM

S-15

Mr. N.C. Mohlala
 LLB
 University of
 Venda
 (Director)

Ms. M.E. Mokoena
 LLB
 University of
 Venda
 (Conveyancer)

Mr. B.S. Ngwenya
 Dip B-Juris LLB
 University of Zululand
 (Snr Consultant)

Mrs. N.N. Yende
 Dip Paralegal Studies
 University of Technology
 (Consultant)

Ms. N.M. Bhebe
 Dip Paralegal
 University of South
 Africa
 (Consultant)

Ms. N.P. Ngobeni
 LLB LL.M.
 (Master in Maritime Law)
 University of Kwa Zulu Natal
 (K.Z.N)
 (Professional Assistant &
 Office Manager Mbombela)

Mr. M.B. Yabakazi
 LLB
 University of
 Limpopo
 (Candidate Legal
 Practitioner)

Mr. M.L. Shabangu
 LLB
 University of Zululand
 (Candidate Legal
 Practitioner)

Ms. L.H. Thango
 LLB
 University of Zululand
 (Candidate Legal
 Practitioner)

**RE: MINING AND ENVIROMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA AND SIX OTHER
APPLICANTS // GERT SIBANDE DISTRICT JOINT
MUNICIPAL PLANNING TRIBUNAL AND FOUR OTHER
RESPONDENTS- CASE NUMBER 1344/20**

Mr. N.C. Mohlala
LLB
University of
Venda
(Director)

Your letter dated the 18th of September 2020, instantly refers.

Ms. M.F. Makola
LLB
University of
Venda
(Conveyancer)

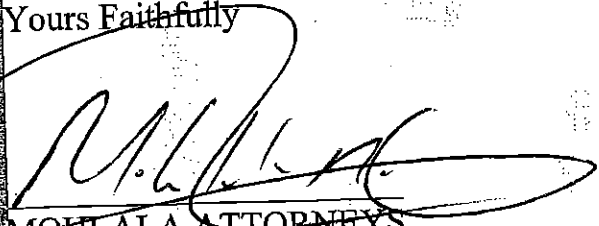
We hereby grant yourselves indulgence, as requested in terms of your letter
referred to above.

Mr. B.S. Ngwenya
Dip B-juris LLB
University of Zululand
(Snr Consultant)

Yours Faithfully

Mrs N.N. Yende
Dip Paralegal/Tswana
University of Technology
(Consultant)

Ma N.M. Sbdhooana
Dip Paralegal
University of South
Africa
(Consultant)


MOHLALA ATTORNEYS

Ms. N.P. Ngcobo
LLB, LLM
(Masters in Maritime Law)
University of Kwa Zulu Natal
(KZN)
(Professional Assistant) &
(Office Manager) Mbombela

Mr M.S. Vlakazi
LLB
University of
Limpopo
(Candidate Legal
Practitioner)

Mr M.L. Shabangu
LLB
University of Zululand
(Candidate Legal
Practitioner)

Ms L.H. Thango
LLB
University of Zululand
(Candidate Legal
Practitioner)

ALSO IN MBOMBELA

Office No.1 Copper building
40 Bester Street
Mbombela 1200

Telephone: (013) 752 3653
Cellphone: 066 071 6567
fax: (013) 752 3770

E-mail: office@mohlalainc.co.za
Website: www.mohlalainc.co.za

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- 2.1.3. Pages 23, 41, 43 and 45 of the Specialist Study: Socio-Economic dated 19 August 2013 are missing from the record.
- 2.1.4. Every second page of the Stormwater Management Plan dated 3 March 2014 is missing from the record.
- 2.1.5. The First Respondent's record shows that several government departments were notified of the application. However, only the response from the Provincial Department of Co-Operative Governance and Traditional Affairs is attached to the record and we have not received copies of responses from other government departments that were notified.
- 2.2. In respect of the Second Respondent's record:
 - 2.2.1. The deliberations of the Second Respondent's decision to dismiss the Applicants' appeal do not form part of the record received.
- 2.3. In respect of both the First and Second Respondents' records:
 - 2.3.1. It appears from both the First and Second Respondents' records that there were objections made against the Third Respondents' land use change application as well as letters of support as listed in the Practice Group's response dated 27 June 2018. However, we have not been provided with the letters of support, nor have we been provided with all the objections that were submitted.
3. Accordingly, we hereby request:
 - 3.1. copies of any internal correspondence between members of the First Respondent, and records of any of the aforementioned members' deliberations: (i) for the period during which the matter was in the process of being heard and deliberated on at the meeting on 19 February 2019; and (ii) for the period after the meeting held on 19 February 2019 leading up to the date when the First Respondent passed the resolution granting the land use change application, that is, for the period from 19 February 2019 to 29 April 2019, which have not already been provided to us; and
 - 3.2. copies of any internal correspondence between members of the Second Respondent, and records of any of the members' deliberations, for the period within which the Applicants' appeal against the Third Respondents' land use change application was being considered by the Second Respondent until the date when the appeal decision was communicated to the Applicants on 27 November 2019, which have not already been provided to us.

In this regard we draw your attention to the judgement in *Helen Suzman Foundation v Judicial Service Commission* [2018] ZACC 8; 2018 (4) SA 1 (CC); 2018 (7) BCLR 763 (CC), particularly paragraphs 12 to 27, in which the majority held that a Tribunal's deliberations in respect of a decision under review must form part of the record.
4. In addition, we also request full copies of the following documents:
 - 4.1. the Feasibility Report: Detailed Mine Engineering Study dated October 2017;
 - 4.2. the Specialist study: Socio-Economic dated 19 August 2013;
 - 4.3. the Stormwater Management Plan dated 3 March 2014;
 - 4.4. copies of all responses, if any, received from other government departments that were notified of the Third Respondent's land use change application; and

G. M. S. J.

4.5. copies of all objections and letters of support received as part of the land use change application process that formed part of both the First and Second Respondents' record which have not already provided to us.

5. We look forward to your response.

Yours sincerely

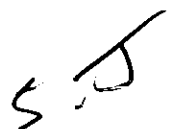
CENTRE FOR ENVIRONMENTAL RIGHTS



per:

Nabeelah Mia
Attorney

Direct email: nmia@cer.org.za



Tatenda Muponde

From: Nabeelah Mia
Sent: Monday, 02 November 2020 15:38
To: Mohlala Attorneys
Cc: Tatenda Muponde; 'Catherine Stark'; bdacosta@fasken.com; Catherine Horsfield; StateAttorneyPretoria@justice.gov.za; 'Francois Joubert'; malansp@vodamail.co.za
Subject: RE: MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA AND SIX OTHER APPLICANTS // GERT SIBANDE DISTRICT JOINT MUNICIPAL PLANNING TRIBUNAL AND FOUR OTHER RESPONDENTS - CASE NUMBER 1344/20

Dear Mr Mohlala

I refer to the above matter and our correspondence dated 14 October 2020.

Please advise whether you have been able to obtain instructions regarding the outstanding documents.

We look forward to hearing from you at your earliest convenience.

Kind regards

Nabeelah Mia (she/her)

Attorney

Centre for Environmental Rights NPC

A non-profit company with registration number 2009/020736/08

PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653

and a Law Clinic registered with the Legal Practice Council

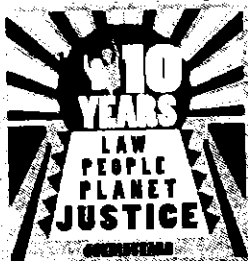
First Floor, DJ du Plessis Building, West Campus, University of the Witwatersrand
 Braamfontein, 2001, South Africa

nmia@cer.org.za www.cer.org.za

www.facebook.com/CentreEnvironmentalRights

www.twitter.com/CentreEnvRights

The Centre for Environmental Rights acknowledges the extraordinary circumstances of this moment and the devastating impacts of COVID-19 on lives, health, and livelihoods for people around the world and in our country.



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Environmental Rights**
 Advancing Environmental Rights in South Africa

Honouring a decade of activism, advocacy and litigation for environmental justice



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@CentreEnvironmentalRights

@centreenvrights

G.M

S.J

Report violations of environmental rights to the 24-hour Environmental Crimes & Incidents Hotline on **0800 205 005**. More reports of environmental violations assist in justifying more investment in more inspectors, and more enforcement of environmental laws. Numbers matter! Take the time to report violations, even if you have done so elsewhere. For more information about this CER campaign, visit <http://cer.org.za/news/numbers-matter-join-us-in-reporting-violations-of-environmental-rights>.

From: Nabeelah Mia

Sent: Wednesday, 14 October 2020 4:19 PM

To: Mohlala Attorneys <info@mohlalainc.co.za>

Cc: Tatenda Muponde <tmuponde@cer.org.za>; 'Catherine Stark' <cstark@fasken.com>; bdacosta@fasken.com; Catherine Horsfield <chorsfield@cer.org.za>; StateAttorneyPretoria@justice.gov.za; 'Francois Joubert' <fjoubert@fasken.com>; malansp@vodamail.co.za

Subject: MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA AND SIX OTHER APPLICANTS // GERT SIBANDE DISTRICT JOINT MUNICIPAL PLANNING TRIBUNAL AND FOUR OTHER RESPONDENTS - CASE NUMBER 1344/20

Dear Mr Mohlala

Please see attached correspondence for your attention.

Kind regards

Nabeelah Mia (she/her)

Attorney

Centre for Environmental Rights NPC

A non-profit company with registration number 2009/020736/08

PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653

and a Law Clinic registered with the Legal Practice Council

First Floor, DJ du Plessis Building, West Campus, University of the Witwatersrand

Braamfontein, 2001, South Africa

Tel 010 442 6830 Fax 086 730 9098

nmia@cer.org.za www.cer.org.za

www.facebook.com/CentreEnvironmentalRights

www.twitter.com/CentreEnvRights

The Centre for Environmental Rights acknowledges the extraordinary circumstances of this moment and the devastating impacts of COVID-19 on lives, health, and livelihoods for people around the world and in our country.



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Report violations of environmental rights to the 24-hour Environmental Crimes & Incidents Hotline on **0800 205 005**. More reports of environmental violations assist in justifying more investment in more inspectors, and more enforcement of environmental laws. Numbers matter! Take the time to report violations, even if you have done so elsewhere. For more information about this CER campaign, visit <http://cer.org.za/news/numbers-matter-join-us-in-reporting-violations-of-environmental-rights>.

From: Catherine Horsfield

Sent: Friday, 18 September 2020 4:33 PM

To: Mohlala Attorneys <info@mohlalainc.co.za>; StateAttorneyPretoria@justice.gov.za; 'Francois Joubert' <fjoubert@fasken.com>; malansp@vodamail.co.za

Cc: Nabeelah Mia <nmia@cer.org.za>; Tatenda Muponde <tmuponde@cer.org.za>; 'Catherine Stark' <cstark@fasken.com>; bdacosta@fasken.com

Subject: RE: MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA AND SIX OTHER APPLICANTS // GERT SIBANDE DISTRICT JOINT MUNICIPAL PLANNING TRIBUNAL AND FOUR OTHER RESPONDENTS - CASE NUMBER 1344/20

Dear all

Please see our attached letter for your kind attention.

Regards

Catherine Horsfield

Attorney and Programme Head: Mining

Centre for Environmental Rights NPC

A non-profit organisation with registration number 2009/020736/08

PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653

and a Law Clinic registered with the Legal Practice Council

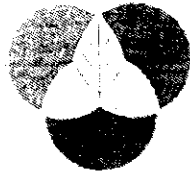
Cape Town: 2nd Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa

Tel 021 447 1647 (Cape Town)

Email: chorsfield@cer.org.za

Web: www.cer.org.za and follow us on Facebook: www.facebook.com/CentreEnvironmentalRights

Gert Sibande



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Honouring a decade of activism, advocacy and litigation for environmental justice



@centreenvrights



Centre for Environmental Rights



@centreenvrights

From: Mohlala Attorneys [<mailto:info@mohlalainc.co.za>]

Sent: Friday, 04 September 2020 12:37

To: Catherine Horsfield <chorsfield@cer.org.za>

Cc: Nabeelah Mia <nmia@cer.org.za>; Christie.brandmullers@gmail.com

Subject: RE: MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA AND SIX OTHER APPLICANTS // GERT SIBANDE DISTRICT JOINT MUNICIPAL PLANNING TRIBUNAL AND FOUR OTHER RESPONDENTS - CASE NUMBER 1344/20

Good day

The above matter bears reference.

Kindly find the attached amended index in respect of the Second Respondent's reply to Rule 53 (1) (b), read with Rule 2 (2) of administrative review Rules, 2019.

Kind regard

Secretary

Mohlala Attorneys

Phone: +27(0)17 811 3000

Cell: +2779 464 9351

Fax: +27(0)17 811 2533

Fax-Email: +27(0)86 556 0339

Email: info@mohlalainc.co.za

VAT Reg No: 4630276378

Physical Address: No. 1 Macdonald Street, Ermelo



MOHLALA Attorneys

G. my S.J

No: 1 Macdonald street
Ermelo 2350 MP
Telephone: (017) 811 3000
Tel/fax: (017) 811 2633
E-mail: info@mohlalainc.co.za
website: www.mohlalainc.co.za



MOHLALA
Attorneys

Vat Reg No. 4630276378

P.O.BOX 1368
Ermelo 2350
Cell No: 072 293 7853
079 464 9351
082 840 8984
Fax to email: 086 666 0339

Mr. N.C. Mohlala
LLB
University of
Venda
(Director)

Mr. M.F. Maloka
LLB
University of
Venda
(Conveyancer)

Mr. B.S. Mwenya
Dip B-Juris LLB
University of Zululand
(Snr Consultant)

Mrs. N.N. Yende
Dip Paralegal, Tswane
University of Technology
(Consultant)

Ms. N.M. Sibosana
Dip Paralegal
University of South
Africa
(Consultant)

Ms. N.P. Ngobu
LLB LL.M.
(Master in Maritime Law)
University of KwaZulu Natal
(KZN)

(Professional Assistant)
(Office Manager Mbombela)

Mr. M.R. Vasekzi
LLB
University of
Limpopo
(Candidate Legal
Practitioner)

Mr. M.L. Shabangu
LLB
University of Zululand
(Candidate Legal
Practitioner)

Ms. L.H. Thango
LLB
University of Zululand
(Candidate Legal
Practitioner)

Our Ref: MOHLALA/CVL/1107

Your Ref: Catherine Horsfield/Nabeelah Mia

03 November 2020

CENTRE FOR ENVIROMENTAL RIGHTS

PER EMAIL: nmia@cer.org.za

AND TO: FRANCOIS JOUBERT

FASKEN INC

ATTORNEY FOR THE 3RD RESPONDENT

PER EMAIL: fjoubert@fasken.com; cstark@fasken.com;

bdacosta@fasken.com

AND TO: THE STATE ATTORNEY

ATTORNEY FOR THE 4TH RESPONDENT

PER EMAIL: StateAttorneyPretoria@justice.gov.za

AND TO: THE MABOLA PROTECTED ENVIROMENTAL

LANDOWNERS ASSOCIATON

ATTORNEY FOR THE 5TH RESPONDENT

PER EMAIL: malansp@vodamail.co.za

Dear Sir/Madam

ALSO IN MBOMBELA

Office No.1 Copper building
40 Bester Street
Mbombela 1200

Telephone: (013) 752 3653
Cellphone: 086 071 8867
fax: (013) 752 3770

E-mail: office@mohlalainc.co.za
Website: www.mohlalainc.co.za

G.M. S.J.

**RE: MINING AND ENVIROMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA AND SIX OTHER
APPLICANTS // GERT SIBANDE DISTRICT JOINT
MUNICIPAL PLANNING TRIBUNAL AND FOUR OTHER
RESPONDENTS- CASE NUMBER 1344/20**

We refer to your letter dated the 14th of October 2020, as well as your email

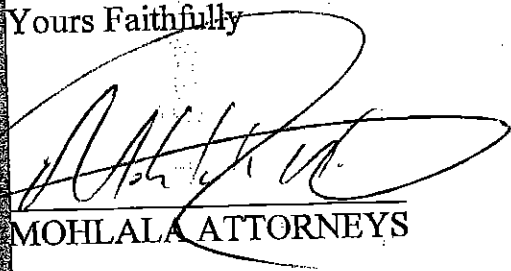
dated the 02nd of November 2020.

Kindly be advised that we are currently taking instructions with regard to

your letter dated the 14th of October 2020 and we shall revert as soon as

possible.

Yours Faithfully


MOHLALA ATTORNEYS

Mr. N.C. Mhlanga
LLB
University of
Venda
(Director)

Ms. M.F. Makoa
LLB
University of
Venda
(Conveyancer)

Mr. B.B. Ngwenya
Dip. B-Juris LLB
University of Zululand
(Snr Consultant)

Mrs. M.N. Yanga
Dip. Paralegal Studies
University of Technology
(Consultant)

Ms. N.M. Bhebeane
Dip. Paralegal
University of South
Africa
(Consultant)

Ms. N.P. Ngobeni
LLB LL.M.
(Master in Maritime Law)
University of Kwa Zulu Natal
(KZN)
(Professional Assiant) &
(Office Manager/Mbombela)

Mr. M.S. Vilakazi
LLB
University of
Limpopo
(Candidate Legal
Practitioner)

Mr. M.L. Shabangu
LLB
University of Zululand
(Candidate Legal
Practitioner)

Ms. L.H. Thando
LLB
University of Zululand
(Candidate Legal
Practitioner)

ALSO IN MBOMBELA

Office No.1 Copper building
40 Bester Street
Mbombela 1200

Telephone: (013) 752 3853
Cellphone: 066 071 5667
fax: (013) 752 3770

E-mail: office@mohlalainc.co.za
Website: www.mohlalainc.co.za

G.M. S.J.

[illegible]

2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682,

- 3.1. only every second page of the Specialist Study: Socio-Economic dated 19 August 2013 has been provided with the Further Documentation;
- 3.2. every second page of the Stormwater Management Plan dated 3 March 2014 is missing from the Further Documentation; and
- 3.3. on page 178 of the Further Documentation in a letter dated 13 November 2019 from the Administrator of the First Respondent to the Municipal Manager of the Dr. Pixley Ka Isaka Seme Local Municipality, the following document is listed:

"Legal opinion sought by the JMPT on the legal authority of the applicant to submit the application to the municipality. Having questioned the legal standing of the applicant, the tribunal approached a Senior Council to interpret Section 45 of SPLUMA on which the applicants relied on to lodge the application. The advice was received on the 24th of April and considered by Members on the 29th."

We have not been provided with this document.

4. Accordingly, we request the following:
 - 4.1. copies of any internal correspondence between members of the Second Respondent, and records of any of the members' deliberations, for the period within which the Applicants' appeal against the Third Respondents' land use change application was being considered by the Second Respondent until the date when the appeal decision was communicated to the Applicants on 27 November 2019, which have not already been provided to us;
 - 4.2. copies of all responses, if any, received from other government departments that were notified of the Third Respondent's land use change application;
 - 4.3. all pages of the Specialist Study: Socio-Economic dated 19 August 2013;
 - 4.4. all pages of the Stormwater Management Plan dated 3 March 2014; and
 - 4.5. the legal opinion provided by Senior Counsel to the First Respondent on the legal authority of the Third Respondent to submit the land-use change application under review.
5. Finally, we request that to the extent that your clients do not have the documentation requested, that this be confirmed in writing.
6. We trust that you find the above in order.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



Nabeelah Mia

Attorney

Direct email: nmia@cer.org.za

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS



per:

Nabeelah Mia

Attorney

Direct email: nmia@cer.org.za

SFA7

No: 1 Macdonald street
Ermelo 2350 MP
Telephone: (017) 811 3000
Tel/fax: (017) 811 2533
E-mail: info@mohlalainc.co.za
Website: www.mohlalainc.co.za



MOHLALA
Attorneys

Vat Reg No. 4630276378

P.O.BOX 1356
Ermelo 2350
Cell No: 072 283 7853
079 464 9351
082 840 8984
Fax to email: 086 858 0338

Mr. M.C. Mohlala
LLB
University of
Venda
(Director)

Ms. M.E. Mokoena
LLB
University of
Venda
(Conveyancer)

Mr. B.E. Nkomo
Dip. B-Juris LLB
University of Zululand
(Snr. Consultant)

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Dip. Paralegal
University of Technology
(Consultant)

Ms. N.M. Nkomo
Dip. Paralegal
University of South
Africa
(Consultant)

Ms. N.P. Nkomo
LLB LL.M.
(Master in Maritime Law)
University of Kwa-Zulu Natal
(KZN)
(Professor/Attorney)
(Office Manager Mbombela)

Mr. M.S. Vekazi
LLB
University of
Limpopo
(Candidate Legal
Practitioner)

Mr. M.T. Shabalala
LLB
University of Zululand
(Candidate Legal
Practitioner)

Ms. L.H. Tlano
LLB
University of Zululand
(Candidate Legal
Practitioner)

Our Ref: MOHLALA/CVL/1107

Your Ref: Catherine Horsfield/Nabeelah Mia

22 February 2021

CENTRE FOR ENVIROMENTAL RIGHTS

PER EMAIL: Nabeelah Mia nmia@cer.org.za

AND TO: FRANCOIS JOUBERT

FASKEN INC

ATTORNEY FOR THE 3RD RESPONDENT

**PER EMAIL: fjoubert@fasken.com; cstark@fasken.com;
bdacosta@fasken.com**

AND TO: THE STATE ATTORNEY

ATTORNEY FOR THE 4TH RESPONDENT

PER EMAIL: StateAttorneyPretoria@justice.gov.za

AND TO: THE MABOLA PROTECTED ENVIROMENTAL

LANDOWNERS ASSOCIATON

ATTORNEY FOR THE 5TH RESPONDENT

PER EMAIL: malansp@vodamail.co.za

Dear Sir/Madam

ALSO IN MBOMBELA

Office No.1 Copper building
40 Beater Street
Mbombela 1200

Telephone: (013) 752 3653
Cellphone: 086 071 8667
fax: (013) 752 3770

E-mail: office@mohlalainc.co.za
Website: www.mohlalainc.co.za

G.M
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Mr. N.C. Mhlatse
LLB
University of
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Dip B-Juris LLB
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University of Technology
(Consultant)

Ms N.M. Gikhoena
Dip Paralegal
University of South
Africa
(Consultant)

Ms. N.P. Ngcobo
LLB,LLM
(Masters in Maritime Law)
University of Kwa Zulu Natal
(K.Z.N)
(Professional Assistant) &
(Office Manager) Mbombela

Mr. M.S. Vlekazi
LLB
University of
Limpopo
(Candidate Legal
Practitioner)

Mr. M.L. Shabangu
LLB
University of Zululand
(Candidate Legal
Practitioner)

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LLB
University of Zululand
(Candidate Legal
Practitioner)

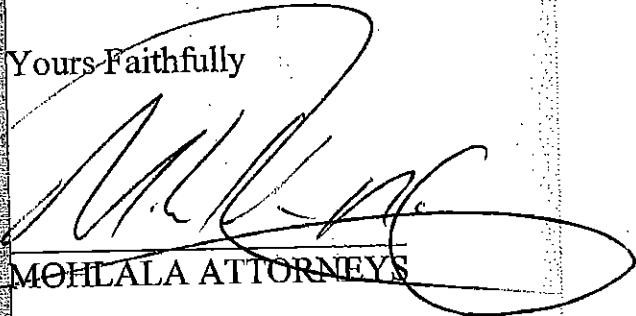
We refer to your letter dated the 19th of February 2021.

Having consulted with our clients we are instructed that the record furnished already constitutes the entire available set of documents in our respective clients' possession.

Consequently you are at liberty to proceed to deliver your clients' Supplementary Affidavit as stated in your letter dated the 19th of February

2021

Yours Faithfully


MOHLALA ATTORNEYS

ALSO IN MBOMBELA

Office No.1 Copper building
40 Bester Street
Mbombela 1200

Telephone: (013) 752 3653
Cellphone: 086 071 6667
fax: (013) 752 3770

E-mail: office@mohlalainc.co.za
Website: www.mohlalainc.co.za

Givm.

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