**MABOLA BREATHES AGAIN – LEAVE TO APPEAL REFUSED**

Terrestrial protected areas in South Africa cover approximately 8% of the total land area and enjoy varying layers of protection depending on their classification. The National Environment Management Protected Areas Act (NEMPAA) governs these protected areas and has as its stated intention the protection and conservation of ecologically viable areas.

The Mabola Protected Environment (MPE) proclaimed in terms of NEMPAA in January 2014 is one such protected area. Atha-African Ventures (Pty) Ltd held mining rights granted to them over land that fell within the MPE and set out obtaining all the relevant authorisations required to mine. In addition to the numerous authorisations required, including a water use licence, environmental authorisation and an approved Environmental Management Plan, NEMPAA requires that mining activities in protected areas must, over and above the ordinary authorisations required, obtain written permission from the Minister of Environmental Affairs and the Minster of Minerals Resources. Atha-Africa having obtained all the necessary authorisations, although they are currently being challenged, made application and were provided with the Ministers’ written permission.

A number of civic organisations challenged the decision of the Ministers to grant the written permission and called upon the North Gauteng High Court to review and set aside the written permission granted on no less than 13 grounds of review. They were successful and the decisions of the respective Minsters to grant the written consent were set aside by Judge Davis in November 2018.

Importantly, Judge Davis clarified how the provision in NEMPAA requiring the Ministers’ consent should be interpreted and found that the Ministers must be transparent in their decision making process, are required to bring a strict measure of scrutiny and act as custodians of the protected environment concerned when exercising their discretion to grant or withhold their consent.

Atha Africa, the Ministers and the MEC for Agriculture, Rural Development, Land and Environmental Affairs immediately sought leave to appeal the decision, which application was argued on the 22nd January 2019. The Ministers and the MEC, however, in a last minute about turn withdrew their respective applications and Atha Africa stood alone in its bid to appeal the decision.

The application was refused and unless application is made to the Supreme Court of Appeal, the Ministers, both of whom are new to their respective posts, will be required to reconsider their predecessors’ positions in light of the guidance given by Judge Davis. The judgment has been lauded by environmental groups and confirms that the written consent required for activities such as mining should afford protected areas an additional layer of protection and careful scrutiny is required before listed activities should be permitted to take place within their boundaries.

This article has been written by Patrick Forbes, a Director in the Litigation Department of Garlicke & Bousfield Inc.

**NOTE: This information should not be regarded as legal advice and is merely provided for information purposes on various aspects of environmental law.**

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