

## LIST OF COURT DECISIONS RELATING TO ENVIRONMENTAL LAW<sup>1</sup>

### ***Wildlife Society of Southern Africa and Others v Minister of Environmental Affairs and Tourism* 1996 (3) SA (TKS)**

“Case on environmental law- environmental conservation. Application for mandamus compelling state to comply with its obligations to protect environment imposed by statute.”

### ***Lascon Properties (Pty) Ltd v Wadeville Investment Co (Pty) Ltd and Another* 1997 (4) SA 578 (W)**

“Case on mines and mineral. Mines, escape of water containing injurious matter from the mines, mines and works regulation, reg 5.9.2, promulgated under the Mines and Works Act 27 of 1956 and saved by s 68(2) of the Mineral Act 50 of 1991, prohibiting escape of such water without having been previously rendered innocuous - regulation enacted for benefit of owner of land which might be polluted actions of mining company- regulation imposing duty in absolute terms-legislature intending to provide civil remedy for damage caused by breach of regulation-exception against particulars of claim on ground that fault on part of defendants not alleged dismissed.”

### ***Regal v African Superslate (Pty) Ltd* 1963 (1) SA 102 (A)**

“Case on nuisance. Action to prevent nuisance, nuisance caused by previous owner of defendant’s land. Slate waste washed by river onto plaintiff’s land. Threatened damage very little, prevention thereof would be very expensive, absolution from the instance rightly granted.”

### ***Khabisi No and Another v Aquarrella Investment (Pty) Ltd Others*, 2008 (4) SA 195 (T)**

“Environmental law environmental legislation enforcement”

### ***BP Southern African (Pty) Ltd v Mec for Agriculture and Land Affairs* 2004 (5) SA 124 (w)**

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<sup>1</sup> This list pertains not to be a complete list of all cases published on South African environmental law but is a reflection of the information that could be found on the date of publication of the CD

“Case on environmental law, protection of the environment. Prohibition on undertaking of environmentally detrimental activities without written authorisation of competent authority as intended in s 22 of Environment Conservation Act 73 of 1989.”

***Eagles Landing Body Corporate v Molewa No and Others 2003 (1) SA 412 (T)***

“Environmental law-National Environmental Management Act 107 of 1998, s 32 (1), whether section enlarging locus standi of bodies corporate as provided for in s 36 (3) of Sectional Titles Act 95 of 1986”

***Sasol Oil (Pty) Ltd and Another v Metcalfe No 2004 (5) SA 161 (W)***

“Environmental law, protection of the environment. Prohibition on undertaking of environmentally detrimental activities without written authorisation of competent authority as intended in s 22 of Environmental Conservation Act 73 of 1989.”

***Silvermine Valley Coalition v Sybrand van der Spuy Boerderye and Others 2002 (1) SA 478 (C)***

“Environmental law, protection of the environment, environmental impact assessment where required. EIA required, pursuant to Environmental Conservation Act 73 of 1989 and the National Environmental Management Act 107 of 1998, as part of procedure to ensure that official approval granted before certain land put to specific uses. EIA not remedy for unlawful failure to comply with such prescribed procedures but is an aid to authorising official in deciding whether particular activity should be permitted on land. EIA not to be wrenched from particular purpose - legislative structure and employed as independent remedy, if person elect to ignore prescribed procedure, remedy to curb unlawful conduct lying in battery of other remedies, but not in directing such person to

***Hichange Investment (Pty) v Cape Produce Company (Pty) Ltd t/a Pelts Product and Others 2004 (2) SA 393 (ECD)***

“Case on environmental law, pollution, atmospheric pollution. Carrying on of ‘scheduled process’ within controlled areas in contravention of s 9(1) of *the Atmospheric Pollution Prevention Act* 45 of 1965. Relief sought under ss 28 (12) and 32 (1) of the National Environmental Management Act 107 of 1998, ‘appropriate relief’ as intended in s 32(1). No reason for applicant to be limited to relief under s 28 (12) if facts justifying other

appropriate relief being granted under s 31(1). On facts 'appropriate relief as intended in s32 not constituting order effectively shutting down polluter's tanning processes. Section 28 (12) may be relied upon to found relief sought against head of department of economic environment and tourism, but not empowering court to direct air pollution control officer appointed under APPA to suspend polluter's registration certificate or to direct it to halt its activities. Evidence showing pollution of environment in sense envisaged by definition of pollution in NEMA at level regarded as significant, polluter conceding inability to comply with requirements of chief air pollution officer appointed in terms of APPA relating to levels of two hydrogen sulphide precursors repellent stench caused by hydrogen sulphide pollution generated on polluter's premises detectable on applicant's premises, hydrogen sulphide pollution adverse to human well-being. No one to be obliged to work in such environment. Section 28(13) in addition obliging court to take into account factors set out in s 28(5), problems at polluter's tannery longstanding and persisting despite efforts to curtail them, local head of environmental affairs and tourism ordered to direct polluter to investigate evaluate and assess impact of its activities and to report thereon."

***Verstappen v Port Edward Town Board and Others 1994 (3) SA 569 (D)***

"Environmental law, waste disposal-operating site without a permit required by s20(1) of Environmental Conservation Act 73 of 1989-Minister not having prescribed form for application for permit and information required therein as contemplated by s 20(2)-clear intention of legislature that permit required to 'establish, provide or operate' a waste disposal site expressed in s20(1) not to be overridden by Minister's failure to make appropriate regulations-operation of waste disposal site without permit unlawful even though regulations providing for application for permit not made. Party seeking to interdict local authority from unlawfully operating such site required to show that a contravention of Act has caused him or her some special damage."

***HTF Developers (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others 2007 (5) SA 438(SCA)***

"Case on environmental law, protection of the environment. Control of activities detrimental to environment-identification of such activities-cultivation or any other use of

virgin ground as intended in s 21(1) of Environment Conservation Act 73 of 1989. Meaning of virgin ground defined in reg 1182 of regulations promulgated under s 21(1) of the act as land not used or developed in ten years, confined to land destined for agricultural purposes. Written direction by competent authority under s 31A of Environment Conservation Act 73 of 1989- legality of whether compliance with procedure prescribed in s 32 of the Act required validity of directive issued under s 31A”

***Earthlife Africa (Cape Town) v Director General of Environmental Affairs and Tourism and Eskom Holding***, unreported case no, 7653/03 25 January 2005

“Case on administrative function- principle of natural justice, *audi alteram partem* rule, when applicable. Preliminary decision in administrative process, principle applying to preliminary decision in administrative process where decision laying foundation for remainder of process. Such decision immediately reviewable, no need to await final step in process. Court reviewing and setting aside director- general’s decision to grant authorisation in terms of s 22(3) of the Environmental Conservation Act 73 of 1989 for the construction of nuclear reactor.”

***Oudekraal Estate (Pty) Ltd v City of Cape Town and Others 2002 (6) SA 573 (CPD)***

“Case of township establishment. Validity of s 19(1) of Townships Ordinance 33 of 1934 requiring that general plan for proposed township be submitted to Surveyor General within 12 months of owner’s receiving administrator’s approval to lay out township or within such further period as allowed by administrator. No provision made for ex post facto condonation of non compliance. Time period thus definitive. Language of s 19(1) and (3) unambiguous, administrator approving laying out of township on 17 September 1957 such approval lapsing after 12 months extension of period within which to submit general plan applied for and granted more 12 months after approval. Extension a nullity, subsequent registration of township development right against title deeds of property ultra vires and invalid. Formal act of registration not immune from being set aside.”

***Provincial Heritage Resources Authority for Eastern Cape v Gordon 2005 (2) SA 283 (E)***

“National monuments, buildings, historical interest. Alteration or demolition of National Heritage Resources Act 25 of 1999, s 34. S 34(1) providing that no person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by relevant provincial heritage resources authority. Provision to be given its ordinary and clear grammatical meaning no building older than 60 years may be demolished or altered unless required permission obtained. No grounds for argument that protection under s 34 (1) shall lapse if application for permit refused but formal protection not thereafter extended within three month period prescribed by s 34(2).”

***Grand Mines (Pty) Ltd v Giddey No 1999 (1) SA 960 (SCA)***

“Mines and mineral, mines obligation to rehabilitate after opencast mining, contract providing for party to mine and deliver to coal to owner of colliery, contract obliging party doing mining to rehabilitate site during mining. Payment made for coal mined and delivered during previous month, mining party not complying with obligation to rehabilitate, other party raising exception non adimpleti contractus when sued for payment for coal mined and delivered. Clear from intention of parties that obligations bilateral and correlation between obligation to rehabilitate and to pay, but obligation not reciprocal, exception not available.”

***South Durban Community Environmental Alliance v Head of Department: Department of Agriculture and Environmental Affairs 2003 (6) SA 631 (D)***

“Environmental law- Environmental Conservation Act 73 of 1989,s 28A-validity of exemption granted in terms of s 28A-review brought under s 36 of Environmental Conservation Act. Application for and granting of exemption must be in writing. Purported exemption not valid as it was not given in writing nor was it based on written application wherein reasons were given for exemption.

**Judgement**

The court accordingly held that the application had been properly and timeously brought and that the exemption purportedly granted in terms of s 28A was a nullity, it not having been given in writing, nor was it based on a written application wherein reasons were given for the exemption.”

***Wright and Another v Cockin and Another 2004 (4) SA 207 (E)***

“Case on nuisance, abatement of application for final interdict. Four applicants’ cattle being infected by viral disease associated with blue wildebeest. Blue wildebeest being carrier of viral disease, non endemic game, blue wildebeest brought onto neighbouring farm by respondents. Damages suffered applicants not trivial. Applicants, facing continuous and ongoing damages to their cattle industry. Spreading of disease limited if cattle and wildebeest separated by distance.

Facts: the applicants and respondents were owners of neighbouring farms. The applicants conducted a cattle farming operation and the respondents a conservancy. Blue wildebeest, which were not endemic to the area, were recently brought into respondent conservancy. The applicants had suffered damages as a result of four cows contracting a disease believed to be emanating from the blue wildebeest. The evidence had shown that the blue wildebeest were a carrier of the viral disease, which was fatal if contracted by cattle. The spread of the disease could be limited if the blue wildebeest were separated from the cattle. If the animals were separated by 1000 meters the transmission rate was low as 0.1%. The applicants sought a final interdict ordering the respondents to remove their blue wildebeest to an area beyond 1000 meters of the second applicant’s farm property. The respondents had opposed the application and had argued inter alia that, it was not proved that it was the blue wildebeest that caused the infection in the applicant’s cows; that the mortality rate from the illness on the applicant’s farm was only 0.6% and therefore negligible and that the loss the respondents would suffer if the order were granted was far more than the applicant’s loss.”

***Eskom v Rini Town Council 1992 (4) SA 96(E)***

“Case on nuisance, nuisance caused by offensive odour from sewage treatment works operated by local authority. Local authority is relying on indemnity against legal proceedings provided for in s 58 of health act 63 of 1977, particularly s 20 of the act, enjoining operator of such works to operate them hygienically, to prevent nuisance

emanating therefrom or to abate nuisance once it exist. Indemnity, not operative when operator of works fails to perform such duties.

Judgement, the court held *inter alia* that, where the duties imposed on the operator as set out above are not performed, a fortiori the prerequisite for the operation of the indemnity are lacking. The operator would only be indemnified for acts done or functions performed in pursuance of the duty to take all necessary and reasonable practicable steps to abate the nuisance and or operate the plant in a hygienic manner. “

***Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture Conservation and Environment, Mpumalanga Province and Others, 2007 (6) SA 4(CC)***

“Case on environmental law, identified activities, prohibition on undertaking same-impact on environment. Obligations of environmental authorities in considering application in terms of s 22 of Environment Conservation Act 73 of 1989, as well as National Environmental Management Act 107 of 1998. Nature and scope of obligation to consider social, economic, and environmental impact of proposed development, whether environmental authorities complying with that obligation, if not, appropriate relief. Environmental law-protection of environment, administrative approval of activities deemed detrimental to environment, grant of authorisation for construction of filling station in terms of Environment Conservation Act 73 of 1989, s 22 (1). Review of, on ground of failure by environmental authorities to consider socio-economic impact of proposed development. Respondents relying on need and desirability’ assessment by local authority obliged to consider cumulative impact on environment. Consideration of socio-economic impact wider than consideration of need and desirability, environmental authorities misconstruing obligations and failing to apply minds to socio-economic impacts of proposed development, decision set aside.”

***Trustees, Biowatch Trust v Registrar: Genetic Resources, and Others 2005 SA 111(T)***

“Case on environmental law, genetically modified organism, access to information concerning application under Genetically Modified Organism Act 15 of 1997, National

Environmental Management Act 107 of 1998 and s 32 of the Constitution of the Republic of South Africa, 1996. Request for information made between dates of promulgation of promotion of Access to Information Act 2 of 2000 and its coming into operation. Applicant having established that it had a clear right to information, applicant however, ordered to pay costs of one of opposing parties where it had sought portion of information in inappropriate manner, where relief claimed incorrectly formulated, and it had compelled party to come to court to protect its interests. National Environmental Management Act 107 of 1998, claim for relief based on act, joinder of responsible Minister not necessary to join Minister merely by virtue of the fact that administration of Act is assigned to Minister of Environmental Affairs and Tourism.”

***Harmony Gold Mining Co Ltd v Regional Director: Free State, Department of Water Affairs and Forestry*** 2006 JDR (SCA)

“Case on environmental law. Directive in terms of s 19 (3) of the National Water Act 36 of 1998, gold mining company required to take anti-pollution measures in respect of pollution on its land but such measures to be taken on land of other gold mines, whether directive empowered by s 19(3).”

**Swartland Municipality v Wiehahn N.O. and Others, Case number 13703/09 reported as: Swartland Municipality v Louw NO and Others 2010 (5) SA 314 (WCC)**

The Land Use Planning Ordinance 15 of 1985 (Western Cape) is a “relevant law”, and is not rendered invalid or unenforceable by the MPRDA.

**Sea Front For All and Another v The MEC: Environmental and Development Planning, Western Cape provincial Government and Others, Case number 15974/07; judgment granted on 26 March 2010, per Fourie, J reported 2011 (3) SA 55 (WCC)**

Review of appeal decision i.r.o. record of decision: appeal in the wider sense; failure to consider the “no-go” alternative; reliance on outdated report; specialists must be independent.

**Joint Owners, Erf 5216 Hartenbos v Minister for Local Government, Environmental Affairs & Development Planning, Western Cape and Another 2011 (1) SA 128 (C)**

Interpretation of “commence” for activities listed in the NEMA EIA Regulations.

**Oudekraal Estates (Pty) Ltd v City of Cape Town and Another 2010 (1) SA 333 (SCA)**

Lengthy delay condoned in applying to review decision to approve a township without taking into consideration religious and cultural rights of the Muslim community; promotion of spirit, purport and objects of Bill of Rights and advancing principle of legality and interests of justice.

**Camps Bay Ratepayers and Residents' Association v PS Booksellers (Pty) Ltd 2011 (2) BCLR 121 (CC)**

Interpretation of section 7(1) of the National Building Regulations and Building Standards Act 103 of 1977 - when derogation of market value arises – when a law is contravened or legitimate expectations exceeded.

**Mazibuko v The City of Johannesburg and Others 2010 (3) BCLR 239 (C)**

Constitutional right of access to water; installation of pre-paid water meters; what constitutes “sufficient water”.

**Nokotyana v Ekurhuleni Metropolitan Municipality 2010 (4) BCLR 312 (CC)**

Disconnection of electricity supply; right to procedural fairness of tenants whose electricity supply disconnected.

**Joseph and Others v City of Johannesburg and Others 2010 (4) SA 55 (CC)**

Service delivery: communal water taps, temporary sanitation facilities, refuse removal and high-mast lighting; duties on municipality.

**S v Mostert and Another 2010 (2) SA 586 (SCA)**

National Water Act 36 of 1998: although Water Act 54 of 1956 repealed, the state can charge with offences under the old act; common law and statutory offences regarding water abstraction; no common law crime of theft of water in a stream or river.

**City of Cape Town v Maccsand (Pty) Ltd and Another 2010 (6) SA 51 (C)**

Holder of MPRDA mining right has to comply with local authority zoning scheme as well.

**City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010 (6) SA 182 (CC)**

Zoning i.t.o. a municipal zoning scheme is a municipal planning competence; unconstitutional for provincial development tribunals set up i.t.o. the Development Facilitation Act 67 of 1995 to approve rezoning applications.

**Wrapex (Pty) Ltd v Barnes and Others, Case numbers 30729/05, 30730/05, 32648/05 and 32649/05, judgment granted on 6 December 2010 per Sapire, AJ. A punitive costs order was granted in a separate order on 8 February 2011. The developer's application for leave to appeal was dismissed by Sapire, AJ on 9 June 2011.**

Damages claim for false and malicious statements about a developer: interlocutory application about seeking further particulars i.t.o. the rules of court.

**Nature's Choice Properties (Alrode) (Pty) Ltd v Ekurhuleni Municipality 2010 (3) SA 581 (SCA)**

Atmospheric pollution control, and application of municipal smoke control regulations.

**Shear v Eye of Africa Development (Pty) Ltd 2010 (5) SA 129 (GSJ)**

Public participation required for amendment of environmental authorisation.

**Landev (Pty) Ltd v Black Eagle Project, Roodekrans Unreported case 6085/07 (SGJ)**

SLAPP suit (strategic litigation against public participation): application to provide security for costs; no vexatious or reckless litigation; locus standi of environmental body.

**Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others [2010] ZACC 26**

Prospecting right on community land i.t.o. the MPRDA set aside for failure to consult and give sufficient consideration to environmental concerns.

**South African Predator Breeders Association and Others v Minister of Environmental Affairs and Tourism (2010) ZASCA 151**

Regulations i.t.o. NEM: Biodiversity Act prohibiting hunting of captive bred lions set aside; rationale for regulations based on ethical grounds, whereas regulations are required to protect the survival of species; rehabilitation of captive bred lions not possible.

**West Coast Rock Lobster Association and Others v The Minister of Environmental Affairs, Case number 32/09; judgment granted on 22 September 2010 in the Supreme Court of Appeal**

Application for review; exercise of Minister's power under section 81 of the MLRA in regard to rock lobster.

**State v Frylinck and Another, Case number 14/1740/2010, judgment granted on 6 April 2011 per Magistrate Patterson in the Regional Division of North Gauteng**

Environmental assessment practitioner found guilty of providing incorrect or misleading information in a document submitted i.t.o. the NEMA EIA Regulations.

**Agri SA v Minister of Minerals and Energy, Case number 55896/07, judgment granted on 28 April 2011 per Du Plessis, J in the North Gauteng High Court (reportable)**

Mineral and Petroleum Resources Development Act (Act No. 28 of 2002); whether commencement of Act amounted to expropriation of mineral rights.