



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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South Durban Community Environmental Alliance and Another v The Minister of Forestry, Fisheries and the Environment and Others (479/2023) [2025] ZASCA 134 (17 September 2025)

Today, the Supreme Court of Appeal (SCA) upheld an appeal against the dismissal of the review of the Minister's decision.

During December 2019 the Chief Director in the Integrated Environmental Authorisations section of the Department of Forestry, Fisheries and the Environment granted to Eskom an environmental authorisation for the construction and operation of a combined cycle gas power plant in Richards Bay. An appeal by South Durban Community Environmental Alliance (SDCEA), and the Groundwork Trust to the Minister of the same Department against the granting of the environmental authorisation was dismissed by the Minister. An application to the High Court, Pretoria, by SDCEA and the Groundwork Trust for a review and setting aside of the Minister's decision and environmental authorisation also failed.

The environmental authorisation relates to a power plant that Eskom proposes to build at the Richards Bay Industrial Development Zone. The proposed plant will be a mid-merit, gas and diesel fuelled 'gas-to power' power station, with an installed power generation capacity of 3000MW. The intention is to primarily power the plant with gas and to use diesel as back-up. Gas will be delivered to the plant from a gas terminal at the Richards Bay Port via a gas pipeline which is yet to be built. It is envisaged that Transnet will construct the port to power plant pipeline. The gas will be sourced from Mozambique, but it could also be sourced from the Karoo Basin.

The infrastructure related to the power plant will be located within Umhlathuze Local Municipality in the KwaZulu-Natal Province. In anticipation of the project Eskom engaged the services of Savannah Environmental (Pty) Ltd to conduct a scoping and environmental impact assessment in order to identify any significant environmental and social issues and concerns in relation to the project. Savannah published the first report on 21 August 2017 and the final environmental impact report was published in August 2019.

On 23 December 2019 the Chief Director approved the environmental authorisation for the project. In the appeal before the SCA, SDCEA and Ground Works argued that the environmental authorisation was granted without sufficient assessment of the power plant's climate change impacts, the need or desirability to have it, and without considering alternatives to it and its cumulative impacts. They also argued that the public participation process undertaken on the environmental impact report fell short of the requirements. The appellants argued that these factors should have been central to the

consideration of Eskom's environmental authorisation application and that failure to sufficiently consider any one or more of them must result in a review and setting aside of the environmental authorisation.

The Minister, the Chief Director and Eskom argued that renewable energy sources were not considered as alternative energy sources because what was needed was the provision of emergency power, for short periods of time, as and when required. Renewable power sources are not suitable for this function, Eskom argued. In addition, the Minister was exercising her executive power and interference by courts would constitute breach of the separation of powers principle. The argument was that the power plant is part of the implementation of the government's integrated energy resource strategy in terms of which, as coal is phased out as the country's main energy source natural gas will act as a 'bridge before renewable alternatives are fully implemented'. They warned that a hasty transition to renewables might be unsustainable.

The SCA did not agree. It held that public participation is pivotal to the fulfilment of the right to an environment that is not harmful to health and well-being that is protected in section 24 of the Constitution. Through this process, parties that are affected or likely to be affected by the project to which an environmental impact assessment relates are provided with an opportunity to make input with regard to the proposed project. To be effective, consultation must be conducted in good faith, through culturally appropriate measures and procedures. The Court found that the public participation process undertaken in relation to the environmental impact report was inadequate in that the invitations to the members of the public were all written in English despite the fact that 79% of the residents of Umhlathuze spoke isiZulu.

In addition, The Minister and Eskom did not heed the principles prescribed under National Environmental Management Act 107 Of 1998 (NEMA) for management of all activities which may result in significant damage to the environment. The SCA emphasised that organs of state are bound by NEMA and must interpret all sectoral environmental management laws and policies against the approach set in that legislation. It highlighted that NEMA establishes a comprehensive environmental management framework which guides the implementation of all environmental laws and policies. When considering environmental authorisations the Minister, must satisfy herself that the requirements stipulated in NEMA are met. When making evaluations prescribed under NEMA the Minister is not engaged in a multifaceted policy formulation process. The Court held further that NEMA requires the same approach from all competent authorities or organs of state. Under NEMA the Minister was compelled to consider the environmental impacts of the power plant, its cumulative effects and its need and desirability.

Having reviewed and set the Minister's decision aside, the SCA found that exceptional circumstances existed for it to substitute the Minister's decision with its own. It upheld the appeal by the SDCEA and Groundwork Trust, set aside the Minister's decision and substituted it with a decision upholding the internal appeal and setting aside the environmental authorisation.

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