



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Ezulwini Mining Company (Pty) Ltd v Minister of Mineral Resources and Energy and Others (Case no 289/2021) [2023] ZASCA 80 (30 May 2023)

The Supreme Court of Appeal (SCA) today dismissed an appeal against the judgment of the Gauteng Division of the High Court, Johannesburg (Fabricius J)(the high court), which declared that a mine operator is obliged to continue pumping and treating extraneous water from its underground mining works until closure of the mine.

Ezulwini Mining Company (Pty) Ltd (Ezulwini) is the owner and operator of a deep level mine on the Gauteng West Rand. Ezulwini acquired the mine in 2014. The mine, which is adjacent to and interlinked with a mine owned by GFI Joint Venture (Pty) Ltd and operated by Goldfields Operations Limited (together Goldfields), had been mined since the 1960's. When Ezulwini acquired the mine, the pumping of extraneous water from the underground works had already been undertaken for many years. Ezulwini continued to pump water. In 2016 Ezulwini ceased its underground mining operations. It then applied to the Department of Mineral Resources and Energy for authorisation to discontinue pumping. It also applied to the Department of Water Affairs for an amendment of its water use licence.

Subsequently, and while the applications for authorisation were pending, Ezulwini brought an application in the high court for a declaratory order that it was not obliged to continue its pumping operations. The application was opposed by the Ministers of Mineral Resources and Energy; Environment, Forestry and Fisheries; and Human Settlements, Water and Sanitation. It was also opposed by Goldfields. Goldfields brought a counter-application seeking a declaration that Ezulwini was obliged to continue pumping extraneous water until authorised by the issue of a closure certificate

The high court determined the matter on the basis of the counter-application brought by Goldfields. It granted the declaration sought by Goldfields. Ezulwini appealed to the SCA with leave of the high court.

Before the SCA, Ezulwini argued that its pumping of extraneous water was not an imposed obligation. It pumped water to facilitate its underground mining operations. Since it had ceased those operations, it was not obliged to continue pumping and could cease pumping without obtaining authorisation. . It was common ground that the cessation of pumping would, over time, result in the underground mining area being filled with groundwater. This would, in turn, result in the gradual rewatering of voids in the dolomitic layers between the underground works and the surface.

The SCA undertook examined the legislative framework regulating the conduct of mining operations as authorised in terms of the Mineral Petroleum and Resources Development Act (MPRDA) and the National Environmental Management Act (NEMA). It held that all authorised and incidental operations are subject to environmental management during the life cycle of a mining operation. Such operations are subject to the regulated process of mine closure provided for in s 43 of the MPRDA and s 24N of NEMA. The cessation of pumping underground water would necessarily impact the immediate physical environment of the mine. The SCA held that such impact required assessment since it fell within the scope of mine closure. The SCA found that s 43(1) of MPRDA and s 24N(7)(f) of NEMA obliged Ezulwini to continue pumping extraneous groundwater until certified closure.

The high court had included a reference to s24R of NEMA in its order. That section primarily concerned financial obligations which may extend beyond certified closure of a mine. The SCA held that the imposition of consequential obligations under s24R of NEMA was a matter to be determined during the mine closure process as provided by s43 of the MPRDA and s24N of NEMA. It was therefore necessary to correct the high court order by deleting reference to s24R of NEMA. Save to this extent, the SCA dismissed the appeal with costs.

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