

Constitutional Court rejects coal mining company's attempt to appeal

By [John Yeld](#)

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In a short, sharp smack-down, the Constitutional Court has rejected an attempt by would-be coal mining company Atha-Africa Ventures to draw it into a controversial plan to mine coal in a highly sensitive protected grassland and water catchment area in Mpumalanga.



The Constitutional Court has denied Athi-Africa Ventures leave to appeal against a judgment blocking its plan to mine coal in a protected area in Mpumalanga. Archive photo: Ashraf Hendricks

The company wanted the Constitutional Court to grant it leave to appeal against a Supreme Court of Appeal decision not to hear its challenge to a lower court judgment that blocked the mining proposal.

This judgment related to a decision taken in 2016 by then Environmental Affairs minister the late Edna Molewa and then Mineral Resources minister Mosebenzi Zwane to quietly grant Atha-Africa permission to develop its proposed 15-year Yzermyn underground coal mine within the Mabola Protected Environment in Mpumalanga.

This 8,772-hectare protected area was formally proclaimed in January 2014 under the National Environmental Management: Protected Areas Act because of its ecological sensitivity as a high-yielding, highly strategic water catchment area within a high-altitude, threatened grassland ecosystem.

Reversal

But the two ministers' controversial decision was reversed when a coalition of eight non-government environmental and social justice groups opposing the mining brought a successful review-and-rescind application in the North Gauteng High Court.

This court also turned down Atha-Africa's subsequent application for leave to appeal its judgment.

In April this year, the mining company approached the Supreme Court of Appeal (SCA), but the court refused to entertain the application for leave to appeal, saying there was no prospect of successfully overturning the earlier High Court judgment.

Atha-Africa then turned to the president of the SCA, Judge Mandisa Maya, but in July she dismissed its application to reconsider the SCA's refusal. Her decision was short and to the point: "The application ... is dismissed with costs for the reason that no exceptional circumstances warranting reconsideration or variation of the decision refusing the application for leave to appeal have been established."

Atha-Africa persisted and tried to persuade the Constitutional Court to grant it leave to appeal Judge President Maya's decision, but again it received short shrift. In a one-paragraph judgment handed down earlier this month, the Concourt dismissed with costs the application, stating tersely: "It (the Constitutional Court) has concluded that the application should be dismissed as it does not engage this Court's jurisdiction and, in any event, bears no prospects of success".

Decision welcomed

The latest court decision has been welcomed by environmental and social groups.

Elton Thobejane, chairperson of the Mining and Environmental Justice Communities Network of South Africa, one of the eight groups in the coalition opposing the proposed coal mine, said it was "a significant victory".

"Our courts continue to recognise the importance of the protection of the environment, and our strategic water resources, especially at a time when we are already suffering the impacts of climate change. Decisions to authorise coal mines should be critically scrutinised and questioned," he said in a statement.

However, while it is a severe blow to Atha-Africa, the Constitutional Court decision does not necessarily mark the end of the line for efforts to develop the controversial coal mine. This is because the Mpumalanga provincial government is again attempting to excise the proposed mining properties from the proclaimed protected area.

Notice of intention

Earlier this year, Mpumalanga MEC for Agriculture, Rural Development, Land and Environmental Affairs Vusi Shongwe flip-flopped, withdrawing his notice of intention to exclude properties proposed for the coal mining from the Mabola Protected Environment, published in the provincial gazette last year.

But three months ago, in August, he dropped a bombshell by again publishing notice of this intention.

This repeated move by the MEC is also being contested by the coalition, which it describes in a media release as "inexplicable".

Saying it would return to court if the decision was pushed through, the coalition said: "There is no rational or justifiable basis for any exclusion, particularly in the light of available science and policy highlighted in the coalition's objection."

Atha-Africa was approached for comment but no response had been received at the time this article was submitted for

publication.

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