

ENVIRONMENTAL ALERT

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KWAZULU-NATAL HIGH COURT CONFIRMS THAT NO TOWN PLANNING AUTHORISATION WAS REQUIRED FOR MINING ACTIVITIES AND DISMISSED THE APPLICATION WITH COSTS

In a recent application made by the Mtunzini Conservancy (Applicant) against Tronox KZN Sands (Pty) Ltd (Tronox), the court found that Tronox was not required to obtain town planning authorisation before it commenced with its mining activities.

The Applicant held mining authorisations (old order mining rights) under the Minerals Act, No 50 of 1991 (Minerals Act) that were later converted to mining rights under the Mineral and Petroleum Resources Act, No 28 of 2002 (MPRDA). Mining activities commenced in 2002, at which time the Town Planning Ordinance 27 of 1949 (TPO) was applicable and did not require mining companies to obtain town planning authorisations for the use of land for mining. Only 'non-agricultural activities' required such authorisation and the court found that mining did not fall within that definition. Although the KwaZulu-Natal Planning and Development Act, No 6 of 2008 (KZN PD) now prohibits developments, including mining activities, from occurring without planning authorisation, because the mining commenced under the TPO, the court found that the provisions of the KZN PD did not apply and did not operate retrospectively either.

The court also held that, unlike the MPRDA that required compliance with 'other relevant laws' (including, for example, town planning ordinances), it was clear from the Minerals Act that mining rights were absolute rights and subject only to other national legislation specifically relating to mining activities.

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The court therefore distinguished this case from the *Maccsand* case and held that because mining activities commenced under the Minerals Act, once Tronox obtained its mining authorisations, it was not required to comply with any other legislation not related to mining.

An application for leave to appeal has been lodged against the decision.

It is also interesting to note that, although the Applicant is a non-profit company and acted in the interest of the public and the environment, the court dismissed the application with costs as the applicant was found to have failed to engage with the respondent sufficiently to verify all the facts before applying to court.

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