

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

Case No: 50779/17

In the matter between:

**MINING AND ENVIRONMENTAL JUSTICE**

**COMMUNITY NETWORK OF SOUTH AFRICA**

**GROUND WORK**

**EARTHLIFE AFRICA, JOHANNESBURG**

**BIRDLIFE SOUTH AFRICA**

**ENDANGERED WILDLIFE TRUST**

**FEDERATION FOR A SUSTAINABLE**

**ENVIRONMENT**

**ASSOCIATION FOR WATER AND RURAL**

**DEVELOPMENT**

**BENCH MARK FOUNDATION**

vs

**MINISTER OF ENVIRONMENTAL AFFAIRS**

**MINISTER OF MINERAL RESOURCES**

**ATHA AFRICA VENTURES (PTY) (LTD)**

**MABOLA PROTECTED ENVIRONMENT**

**MEC FOR AGRICULTURE,**

**RURAL DEVELOPMENT, LAND AND**

**ENVIRONMENTAL AFFAIRS:**

**MPUMALANGA PROVINCE**

First Applicant

Second Applicant

Third Applicant

Fourth Applicant

Fifth Applicant

Sixth Applicant

Seventh Applicant

Eighth Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

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**APPLICATION FOR CONDONATION**

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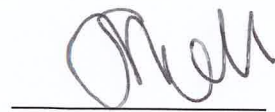
**KINDLY TAKE NOTICE** that application will be made at a date and time determined by the Registrar for an order in the following terms:

1. Condoning the late filing of the application for leave to appeal.

**TAKE NOTICE FURTHER** that the accompanying affidavit of the instructing attorney for State respondents will be used in support of the application for condonation for late filing of the application for leave to appeal.

**KINDLY TAKE FURTHER NOTICE** that the Respondents may file an answering affidavit within 15 days if they wish to oppose this application.

DATED AT SANDTON ON THIS THE <sup>15<sup>th</sup> SP</sup> 13<sup>th</sup> DAY OF DECEMBER 2018



**The State Attorney, Pretoria**

Attorneys for the 1<sup>st</sup>, 2<sup>nd</sup>

and 5<sup>th</sup> Respondent

Salu Building

255 Thabo Sehume

Cnr Thabo Sehume (Andries &  
Francis Baard (Schoeman Str)

Private Bag X 91

Pretoria

0001

TO : Registrar of the above Honourable Court, Pretoria

TO : **Centre for Environmental Rights**

Respondents' attorneys

2<sup>nd</sup> Floor, Springtime Studio

1 Scott Road

Observatory

Cape Town

Tel: 021 447 1647

Email: [chorsfield@cer.org.za](mailto:chorsfield@cer.org.za), [spowell@cer.org.za](mailto:spowell@cer.org.za)

Ref : Chatherine Horsfield

**C/O: Du Plessis and Kruyshaar Inc**

Suite No 2 Route 21

Corporate Park

118 Sovereign Drive

Irene

Pretoria

Tel : 0861 000 779

Fax : 086 548 0837

Ref : Rentia Kruyshaar/RK 0048

**TO :**

GF Joubert Attorneys  
Attorneys for the Ninth Respondent  
03 Oak Fields, 67 Portobella Drive  
Highveld Ext, 0169  
Pretoria  
Cell: 083 680 207  
Email : joubert@gfjattorneys.co.za

Ref : Francois Joubert

**AND TO : The Mabola Protected Environment Landowners Association**

10<sup>th</sup> Respondent  
Farm Schoongezicht  
Volkrust  
Mpumalanga  
Tel: 084 3206071  
Email: malansp@vodamail.co.za

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Third Applicant

**BIRDLIFE SOUTH AFRICA**

Fourth Applicant

**ENDANGERED WILDLIFE TRUST**

Fifth Applicant

**FEDERATION FOR A SUSTAINABLE**

**ENVIRONMENT**

Sixth Applicant

**ASSOCIATION FOR WATER AND RURAL**

**DEVELOPMENT**

Seventh Applicant

**BENCH MARK FOUNDATION**

Eighth Applicant

vs

**MINISTER OF ENVIRONMENTAL AFFAIRS**

First Respondent

**MINISTER OF MINERAL RESOURCES**

Second Respondent

**ATHA AFRICA VENTURES (PTY) (LTD)**

Third Respondent

**MABOLA PROTECTED ENVIRONMENT**

Fourth Respondent

**MEC FOR AGRICULTURE,**

**RURAL DEVELOPMENT, LAND AND**

**ENVIRONMENTAL AFFAIRS:**

**MPUMALANGA PROVINCE**

Fifth Respondent

*SD* *cut*

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**AFFIDAVIT IN SUPPORT FOR CONDONATION FOR LATE FILING OF THE  
APPLICATION FOR LEAVE TO APPEAL**

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I, the undersigned,

**SIPHO MATHEBULA**

do hereby state under oath that:

**INTRODUCTION**

1. I am an adult male employed by the Department of Justice and Constitutional Development, Pretoria State Attorney as Senior Assistance Attorney. The offices of Pretoria State Attorney are situated at Salu Building, 255 Thabo Sehume, cnr Thabo Sehume (Andries& Francis Baard (Schoeman Str) Pretoria.
2. All the facts stated herein are within my personal knowledge unless otherwise stated or indicated by the context. I also believe them to be both true and correct.
3. To the extent that some facts may not be within my personal knowledge, I have satisfied myself of their correctness from the relevant official records of the office which I believe to be reliable and accurate.
4. I am duly authorised by the first, second and third applicant to depose to this affidavit.

*SP*  
*CS*

5. The main purpose of this application is to seek condonation for late filing of the application for leave to appeal against the decision of His Lordship Mr Justice Davis handed down on the 08<sup>th</sup> of November 2018.
6. This application for leave to appeal has been filed outside the time limit prescribed by the Rules of the above Honourable Court. I hereinafter set out the grounds, submissions and contentions in support of this application:-

### **LENGTH OF THE DELAY**

7. In this matter, and in terms of the Rules of the above Honourable Court, the State Respondents were required to file an application for leave to appeal within 15 Court days after the decision of His Lordship Mr Justice Davis handed down on the 08<sup>th</sup> of November 2018.
8. In terms of the Rules of the above Honourable Court, the application for leave to appeal had to be filed on or before 29 November 2018. However, this application was only served on the parties on 14 December 2018. The application is thus 12(twelve) court days late.

### **EXPLANATION FOR THE DELAY**

13. This matter is a complex and intricate matter. The complexity is compounded by the fact that this matter involves novel questions of law. There has to date been no judgment on the proper interpretation of section 48 of NEMPAA.

SP  
CS

14. For this reason, when judgment was handed down on 8 November 2018, it was necessary for the DEA, DMR and MEC to carefully consider the meaning and import of judgment.
15. This process consisted consultations with various officials across the affected departments as well as input from various decision makers (the DMR, DEA, MEC and DWS) involved in the various authorisations required in order to mine in the MPE. This was necessary in order to assess the practical implications of the judgment.
16. This process of considering the impact of the judgment was further delayed by a cabinet reshuffle which took place on 22 November 2018. This reshuffle resulted in the appointment of Ms Nomvula Mokonyane as Minister for Environmental Affairs, replacing the late Ms Edna Molewa.
17. Once she took office, the Minister had to be apprised of the judgment and the implications thereof. For this reason, an opinion dealing with the practical implications of the judgment was procured.
18. Based on the above, it is submitted that there was never any deliberate disregard for the rules of this Court. Instead, the delay in bringing the application for leave to appeal was attributable to the complexity of the judgment as well as the changes within the Ministry.

#### **IMPORTANCE OF THE CASE**

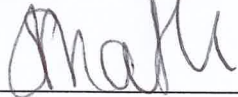
18. This matter is of considerable importance for the state respondents.

SP  
CEI




19. There is, as yet no case authority on the proper interpretation of NEMPAA. More importantly, the inter-relationship between decision-making under section 48 of NEMPAA and other statutory processes has as yet not enjoyed judicial consideration. Given that this judgment sets out to definitively deal with both of these issues, it is important that these be dealt with by the Supreme Court of Appeal.
20. I submit that the parties to this application will not in any way be prejudiced by a decision to condone the late filing of this application. However, if condonation is not granted, the state respondents stand to suffer considerable prejudice in that it will not participate in the leave to appeal (and the subsequent appeal) which deals with important questions of law.

**WHEREFORE** I pray that condonation be granted as sought in the notice of motion to which this affidavit is annexed.

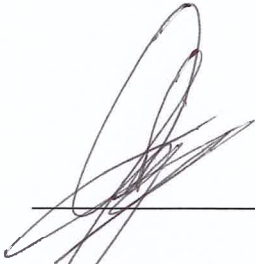
  
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**DEPONENT**

**THUS SIGNED AND SWORN TO ME AT** PRETORIA **ON THIS THE**  
18 **DAY OF DECEMBER 2018 THE DEPONENT HAVING**  
**ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS**  
**OF THIS AFFIDAVIT, THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF**  
**HIS KNOWLEDGE AND BELIEF, THAT HE HAS NO OBJECTION TO TAKING**



THE PRESCRIBED OATH AND THAT HE CONSIDERS THE PRESCRIBED OATH TO BE BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS  
GERT JOHANNES STONE  
ADAM LIGER  
28 CHURCH SQUARE  
PRETORIA  
0002

DIRECTOR OF PUBLIC PROSECUTIONS
PRIVATE BAG X300
18 DEC 2018
APPEAL SECTION PRETORIA 0001
NORTH GAUTENG: PRETORIA

SP

LET