

## TENDELE MINING RIGHT MAINTAINED AS JUDGE CALLS FOR PRAGMATISM

**Johannesburg, 8 May 2022.** On 4 May 2022, the Pretoria High Court handed down a judgment relating to a Mining Right and an environmental management programme (EMPr) held by Tendele Coal Mining Proprietary Limited (Tendele) in respect of its Somkhele Mine near Mtubatuba, KwaZulu-Natal.

The Court application by Mfolozi Community Environmental Justice Organization (MCEJO) and others sought to set aside the mining right and EMPr, which serve as the basis for a 10-year extension of the life of the mine. Their setting aside would result in the end of the mine.

The Mining Right and its EMPr were not, however, set aside by the Court but rather sent back to the Minister of Mineral Resources and Energy for reconsideration, on the clear basis that the Mining Right and EMPr remain in force pending that determination.

The Somkhele Mine has been in operation for more than 15 years, and when the mine is in full operation, employs more than 1200 people (with 87% of these employees being from the impoverished Mpukunyoni community).

The continued operation of the mine would ensure that benefits in the order of R4.7 billion flow to the community around the mine over a 10-year period. These benefits include employment of some 1200 people, procurement opportunities for local businesses and Social and Labour Plan spend, including training and water provision (amongst other benefits). In addition, the mine would contribute some R2.5 billion to SA INC. through PAYE, company tax and royalties.

The Court recognised these contributions by Tendele and, more specifically, the fact that 12,000 people from the local community benefit from the operation of the mine. It was for this very reason that the Court did not set aside the mining right and EMPr. The Judge concluded that “I have reflected on the parties’ cases including the reasons placed by the applicants. But this is a case that calls for pragmatism to guide the court”.

Leading up to the hearing, Tendele conceded that there were certain irregularities in the processes followed in order to obtain the mining right and EMPr. Tendele will rectify the irregularities during the appeal process before the Minister. In this regard, Tendele will conduct a comprehensive public participation process and has already compiled 27 additional specialist studies addressing its intended additional mining operations.

Tendele was supported in the case by the Mpukunyoni Traditional Council, (MTC) which operates as Mpukunyoni Traditional Authority (MTA) and is constituted by 30 iziNdunas of the 30 izigodi (communities)

of the Mpukonyoni area and represents the entire community of some 220 000 people in the Mpukonyoni area. Tendele was further supported by the Mpukonyoni Community Mining Forum (MCMF), a structure established by Tendele at the recommendation of DMRE, KwaZulu-Natal and by the thirteenth and fourteenth respondents, the Association of Mineworkers and Construction Union (AMCU) together with the National Union of Mineworkers (NUM) which together represent about 90% of the unionised workers employed by Tendele.

Tendele has been in operation since 2006 and is in good standing with all regulators and has never been issued with a Section 54 Notice that has resulted in the operation being halted and has operated for 15 years without any fatality.

In a separate previous interdict application, MCEJO requested that Tendele's operations be stopped, and Tendele successfully defeated this case in the Maritzburg High Court and in the Supreme Court of Appeal (SCA). In early 2022, the Constitutional Court refused leave to appeal and indicated that "MCEJO has no prospects of success". In the SCA four out of five judges found in favour of Tendele, and even the minority judge ruled that the mine should not be closed and that Tendele should be provided time to rectify any shortcomings identified in the court proceedings.

Tendele's aim is simply to avoid the closure of the mine, to ensure the continued employment of some 1200 people, and to continue to assist the Mpukonyoni community with the economic development in the area.

Tendele once again calls on all stakeholders to assist and proactively resolve issues to ensure the survival of the mine. KwaZulu-Natal and SA INC cannot allow a mine operating in a poverty-stricken area where unemployment is in excess of 72%, to close.

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