THE JUDICIARY'S CONTRIBUTION TO PREVENTING PROTECTED AREA DOWNGRADING, DOWNSIZING, AND DEGAZETTEMENT: *MINING AND ENVIRONMENTAL JUSTICE COMMUNITY OF SOUTH AFRICA VS MEC FOR AGRICULTURE, RURAL DEVELOPMENT AND ENVIRONMENTAL AFFAIRS* (1322/2021) [2024] ZAMPMBHC 48 (18 JULY 2024)

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Abstract

The *Kunming-Montreal Global Biodiversity Framework*, agreed to by parties to the *Convention on Biological Diversity* in 2022, commits all countries to ensure that by 2030, 30 per cent of terrestrial, inland water, coastal and marine areas are effectively and equitable conserved and managed in protected areas and other effective area-based conservation measures. This is a weighty ambition given current global and domestic coverage statistics, and countries can ill afford to lose existing areas through protected areas downgrading, downsizing and degazettement (PADDD). The concept of PADDD has received growing international attention, with calls to implement an array of measures to prevent and track its prevalence. Within the South African context, studies on PADDD are few and far between, but this does not mean that events of this nature are not present. Efforts to establish a coal mine in the Mabola Protected Environment (MPE) in Mpumalanga provide a perfect example of downgrading and downsizing events in action, and the judiciary has been called upon on numerous occasions to intervene to halt these events. This note considers the most recent of these judicial interventions, namely that in *Mining and Environmental Justice Community Network of South Africa v MEC for Agriculture, Rural Development, Land and Environmental Affairs* (1322/2021) [2024] ZAMPMBHC 48 (18 July 2024). It critically traverses the array of review grounds invoked by the applicants to set aside a decision of the relevant provincial minister to remove certain properties situated within the MPE from its borders, to facilitate the establishment of the coal mine. It reflects on several apparent frailties in the court's decision relating to most of these review grounds. It concludes by proposing certain simple legislative reforms to the *National Environmental Management: Protected Areas Act* 57 of 2003, to improve the regulation of future PADDD events in South Africa, and thereby potentially preclude the necessity of disputes of this nature being brought before the judiciary in the future.

Keywords

Protected areas; downgrading; downsizing; degazettement; mining; administrative review.

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1 Introduction

In December 2022, parties to the *Convention on Biological Diversity*[1] (*CBD*) committed to realising the *Kunming Montreal Global Biodiversity Framework*,[2] including its 22 Targets. From a protected area perspective, the most important of these is Target 3, which commits parties to ensure and enable that by 2030, 30 per cent of terrestrial, inland water, coastal and marine areas are effectively and equitably conserved and managed in protected areas and other effective area-based conservation measures. This is a significant ambition as globally, protected and conserved areas only collectively currently cover 17.5 per cent of terrestrial and inland waters areas and 8.46 per cent of the marine environment.[3] From a South African perspective, reaching the target will be a major challenge as protected and conserved areas only currently cover 9.88 per cent of its terrestrial area[4] and 15.5 per cent of its marine environment.[5] As countries seek to realise Target 3 within the short remaining timeframe, they can ill afford protected areas downgrading, downsizing and degazettement (PADDD).

This acronym, coined in approximately 2011,[6] includes three types of events that impact upon the legal status, extent and permanence of protected areas.[7] Downgrading refers to reducing the legal restrictions relating to the number, scale and extent of human activities allowed in the protected area. Downsizing refers to a reduction in the size of the protected area through altering its boundaries. Degazettement is the most extreme of events and effectively amounts to the loss of the entire protected area through removing the legal protection accorded to it. While the term has only been coined relatively recently, commentators have identified examples of PADDD events dating back to the late 19th century.[8]

Since the coining of the acronym a little over a decade ago, several studies have specifically sought to understand and track the extent and distribution

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1 (1992) 31 ILM 818.

2 *CBD*, *Kunming-Montreal Global Biodiversity Framework* UN Doc UNEP/CBD/COP/DEC/15/4 (2022).

3 United Nations Environmental Programme - World Conservation Monitoring Centre (UNEP-WCMC) and International Union for the Conservation of Nature (IUCN) 2024 http:/www.protectedplanet.net/en.

4 Department of Forestry, Fisheries and the Environment (DFFE) 2023 https://www.dffe.gov.za/sites/default/files/docs/synthesis_30x30implementationworkshopreport.pdf 5.

5 UNEP-WCMC 2024 https://www.protectedplanet.net/en.

6 Mascia and Pailer 2011 *Conservation Letters* 9-11.

7 For a description of these events, see: Mascia and Pailler 2011 *Conservation Letters* 11; Mascia *et al* 2020 *PADDDtracker.org Technical Guide* 4-5.

8 Mascia and Pailler 2011 *Conservation Letters* 11.

of PADDD events. The geographic focus of these studies has spanned global,[9] regional,[10] and domestic scales.[11] These studies have also more recently extended the focus to marine protected areas.[12] Collectively, the studies commonly show an increase in PADDD events in recent times with the trigger for these events commonly associated with industrial-scale resource use, extraction and development.[13] According to the last reported statistics, between 1892 to 2018, 73 countries undertook 3749 PADDD events which resulted in 519857 square kilometers being removed from protected areas through degazettement events, and an additional 1659972 square kilometers subject to watered down regulation through downgrading events.[14] Of these events, almost 80 per cent of them took place since 2000.[15]

Not surprisingly, the past few years have seen international conservation fora formally acknowledging PADDD, the challenges it poses and the urgent need to address it.[16] In 2020, the International Union for the Conservation of Nature (IUCN) recognised PADDD as an emerging global trend and called on governments to implement an array of measures to both prevent and track its prevalence.[17] In 2022, parties to the CBD included PADDD as a complementary indictor in the monitoring framework for measuring progress towards realising Target 3.[18]

In the South African context, domestic studies expressly focusing on PADDD are few and far between.[19] There are, however, clear examples of PADDD events, with efforts to undertake coal mining activities within the

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9 See, for example: Mascia and Pailler 2011 *Conservation Letters;* Symes *et al* 2016 *Global Change Biology;* Qin *et al* 2019 *Conservation Biology.*

10 See, for example: Mascia *et al* 2014 *Biological Conservation*; Pack *et al* 2016 *Biological Conservation;* Golden Kroner *et al* 2019 *Science.*

11 See, for example: Bernard *et al* 2014 *Conservation Biology;* Golden Kroner *et al* 2016 *Ecology and Society;* De Vos *et al* 2019 *Conservation Letters.*

12 See Albrecht *et al* 2021 *Marine Policy.*

13 In the terrestrial context, see further: Mascia *et al* 2014 *Biological Conservation* 357-358; Symes *et al* 2016 *Global Change* Biology 662-663; Golden Kroner *et al* 2019 *Science 884.* In the marine context, see further: Albrecht *et al* 2021 *Marine Policy* 3-5.

14 Golden Kroner *et al* 2019 *Science* 881.

15 Golden Kroner *et al* 2019 *Science* 881.

16 Worldwide Fund for Nature (WWF) and IUCN World Commission on Protected Areas (WCPA) *30x30 A Guide to Inclusive, Equitable and Effective Implementation of Target 3 of the Kunming-Montreal Global Biodiversity Framework* 34.

17 IUCN WCC-2020-Res-084-EN "Global Response to Protected Area Downgrading, Downsizing and Degazettement (PADDD)".

18 *CBD*, *Monitoring Framework for the Kunming-Montreal Global Biodiversity Framework* UN Doc UNEP/CBD/COP/DEC/15/5 (2022) 13.

19 One local study focused specifically on PADDD in the context of privately protected areas in South Africa (De Vos *et al* 2019 *Conservation Letters*).

Mabola Protected Environment (MPE) perhaps one of the clearest contemporary examples attracting significant attention. These efforts initially included various downgrading events, in the form of the grant of various permissions to mine in the protected area. They have formed the focus of extensive judicial scrutiny in a range of concluded cases. In *Mining and Environmental Justice Community Network of South Africa v Minister of Environmental Affairs*[20] (hereafter *MEJCON-SA 2018*), the High Court set aside the decision of both the then Minister of Environmental Affairs (MinEA) and the Minister of Mineral Resources (MinMR) to permit coal mining activities within the MPE. In *Mining and Environmental Justice Community Network of South Africa v Uthaka Energy (Pty) Ltd*[21] (hereafter *MEJCON-SA 2021*), the applicants succeeded in obtaining an interdict against a mining company preventing it from conducting any mining activities within the MPE pending: firstly, the finalisation of several court challenges (appeals and reviews) that the applicants had brought against various permissions granted to the respondent previously; and secondly, the respondent obtaining certain additional statutory permissions. In *Endangered Wildlife Trust v Director General: Department of Water and Sanitation*[22] (hereafter *EWT v DG(DW&S)*), the High Court rejected the appellant's appeal against a decision of the Water Tribunal to uphold the grant of a water licence to a mining company associated with its anticipated coal mining activities within the MPE. Finally, in *Mining and Environmental Justice Community Network of South Africa v Gert Sibande District Joint Municipal Planning Tribunal,*[23] the applicants failed in their application to review and set aside the decision of the local authority and Municipal Planning Tribunal (in the context of a subsequent appeal to it) to rezone certain properties within the MPE to enable coal-mining activities to take place on them. The High Court dismissed this application on procedural grounds, namely non-joinder.

With various of the above judicial decisions creating hurdles to the attempted downgrading events, an associated downsizing event transpired, evident by efforts to exclude four properties from the boundaries of the MPE. The purpose behind the attempted downsizing event was to allow coal mining activities to take place on these four properties. It is this downsizing

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20 2019 (5) SA 231 (GP). For further discussion on this case, see: Mkhonza 2019 *SAJELP*; Vinti 2019 *SAJHR*.

21 (11761/2021) [2021] ZAGPPHC 195 (30 March 2021). For further discussion on this case, see Blackmore 2022 *Bothalia*.

22 (A155/2019) [2023] ZAGPPHC 2119 (10 May 2023). For further discussion on the background to this case and the initial decision of the Water Tribunal, see: Mkhonza 2022 *SLR*.

23 (1344/2020) [2024] ZAMPMHC 7 (22 January 2024).

event and the judiciary's response to it, which forms the focus of this note. The case in question is *Mining and Environmental Justice Community Network of South Africa v MEC for Agriculture, Rural Development, Land and Environmental Affairs*[24] (hereafter *MEJCON-SA 2024*).This note briefly sets out the salient facts of the case and then critically interrogates how the judiciary dealt with the applicants' eight grounds of review specifically challenging the decision to remove the four properties from the MPE.[25] This analysis highlights various anomalies inherent in the court's decision-making process and details what lessons can be drawn from this case in the context of dealing with future PADDD events. The note concludes by questioning whether PADDD events of this nature should be left to the judiciary to adjudicate, or whether amendments to the *National Environmental Management: Protected Areas Act*[26] (NEMPAA) could aid in ensuring that these events are more coherently dealt by the executive in the future.

2 The facts

In January 2014, operating under NEMPAA,[27] the erstwhile Minister of the Executive Council (MEC) for the Department of Economic Development, Environment and Tourism (Mpumalanga), declared the MPE.[28] The stated purposes for doing so was to enable the landowners whose property fell within the area to take collective action to conserve the biodiversity within it; to protect the area which is sensitive due to its biological diversity, natural characteristics, scenic and landscape value; to protect specific ecosystems; and to ensure that the use of natural resources in the area is sustainable. This decision was informed by the identification of the area as being sensitive and of high conservation value in a number of national and provincial policy documents and strategic plans applicable at the time.[29] The

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24 (1322/2021) [2024] ZAMPMBHC 48 (18 July 2024).

25 While the judgment does deal with two additional issues (an application to strike out certain allegations contained in the second respondent's answering affidavit and for a punitive cost order), the focus of this article is purely on the substantive review grounds.

26 *National Environmental Management: Protected Areas Act 57* of 2003 (NEMPAA).

27 Section 28 of NEMPAA.

28 PN 20 in Extraordinary PG 2251 of 22 January 2014 9-16.

29 These included the: Government of South Africa *National Protected Areas Expansion Strategy 2008*; Mpumalanga Tourism and Parks Agency (MTPA) *Mpumalanga Protected Areas Expansion Strategy (2009-2028)*; MTPA *Mpumalanga Biodiversity Conservation Plan*; Gert Sibande District Municipality *Spatial Development Framework* (2014); Dr Pixley Ka Isaka Seme Local Municipality *Spatial Development Framework*; Water Research Commission *Atlas of National Freshwater Ecosystem Priority Areas in South Africa*. These are comprehensively

area had also been recognised as including an endangered ecosystem[30] and constituting a strategic water source area.[31]

Notwithstanding the above, in September 2014, the Director-General of the then Department of Mineral Resources and Energy (DMRE), operating in terms of the *Mineral and Petroleum Resources Development Act*,[32] granted Uthaka Energy (Pty) Ltd (the second respondent in the matter) a right to undertake underground coal mining in an area spanning four properties falling within the boundaries of the MPE. Uthaka subsequently secured a range of other necessary permissions to enable it to commence with its mining activity, including: approval of its environmental management programme;[33] an environmental authorisation;[34] a water use license;[35] land use planning approval;[36] and permission to mine in a protected environment.[37] A broad range of legal challenges were brought against each of the above.[38]

Notwithstanding this swathe of litigation, all of which was still pending at the time, the MEC for Agriculture, Rural Development, Land and Environmental Affairs (Mpumalanga) (the first respondent in this matter) announced his initial intention to exclude the four properties on which the mining activities were anticipated from the MPE in October 2018.[39] In November 2018, the

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canvassed in Thobejane 2021 https://cer.org.za/programmes/mining/litigation/mabola-protected-environment (hereafter *First Applicant's Founding Affidavit*) paras 92-120.

30 Listed in terms of section 51(1)(a) of the *National Environmental Management Biodiversity Act* 10 of 2004 (NEMBA). See specifically National List of Ecosystem that are Threatened and in Need of Protection (GN 1002 in GG 34809 of 9 December 2011) - Listed Ecosystem 115 (Wakkerstroom / Luneburg Grasslands - MP11).

31 WWF-SA *An Introduction to South Africa's Water Source Areas* 47.

32 Section 23(1) of the *Mineral and Petroleum Resources Development Act* 20 of 2002 (MPRDA).

33 Granted by the Mpumalanga Regional Manager of the then Department of Mineral Resources (DMR) in terms of section 39 of the MPRDA in June 2016.

34 Granted by the Chief Director: Environmental Affairs within the Department of Agriculture, Rural Development, Land and Environmental Affairs (Mpumalanga) in terms of section 24 of the *National Environmental Management Act* 107 of 1998 in June 2016.

35 Granted by the Acting Director of the Department of Water and Sanitation in terms section 22(1)(b) of the *National Water Act* 36 of 1998 in July 2016.

36 Granted by the Gert Sibande District Joint Municipal Planning Tribunal in terms of section 26(4) (read together with its regulations and the relevant municipal planning by-laws) of the *Spatial Planning and Land Use Management Act* 16 of 2013 in April 2019. This approval only covered one of the four properties in question.

37 Granted jointly by then MinEA and MinMR in terms of section 48(1)(b) of NEMPAA in August and November 2016 respectively.

38 For a summary of these, see: *First Applicant's Founding Affidavit* paras 141-151.

39 PN 127 in PG 2975 of 12 October 2018. The MEC withdrew this notice in January 2019 (PN 11 in PG 3005 of 25 January 2019) and published a fresh notice

High Court handed down its judgment in the *MEJCON-SA 2018* case, which set aside the permission granted by the then MinEA and MinMR to permit coal mining activities within the MPE. Despite this judgment and receiving strong objection from a coalition of seven non-profit organisations[40] (the applicants in this matter), the MEC formally excluded the four properties from the MPE in January 2021.[41] This effectively rendered redundant the decision in the *MEJCON-SA 2018* case, as, if the four properties no longer fell within a protected environment, Uthaka would no longer require permission from the two relevant ministers under NEMPAA to undertake mining on them. The MEC's stated rationale for extracting these four properties from the MPE was to achieve a balance between the use of natural resources in the area to realise socio-economic benefits while promoting environmental protection and sustainability; ensure economic growth; and promote co-existence of mining activities and conservation in the area.

This was reaffirmed when the applicants requested and were provided with reasons for the MEC's decision in March 2021,[42] following their request lodged in terms of the *Promotion of Just Administrative Act*.[43] The applicants disputed that any real socio-economic benefits would flow to the community from the proposed mining activities, and highlighted how these activities would rather threaten the community's already fragile livelihoods and cause long-term negative environmental impacts to the biodiversity, fresh water resources in the area and essential water services this area provides to adjacent areas.[44] Within this same month, the High Court handed down its order in the *MEJCON-SA 2021* case, which included a direction for the applicants to file their application to review the MEC's decision to exclude the four properties from the MPE within 30 days. This they duly did, founding their review application on eight grounds, each of which is outlined and discussed below. The relevant MEC and both relevant national ministers chose not to oppose the application, which rather robbed the court of valuable insights on the rationale underpinning their respective decision-

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reconveying his intention to exclude the properties in August 2019 (PN 115 in PG 3077 of 9 August 2019).

40 These were: Mining and Environmental Justice Community Network of South Africa; Groundwork; Birdlife South Africa; Endangered Wildlife Trust; Federation for a Sustainable Environment; Association for Water and Rural Development; and the Benchmarks Foundation.

41 PN 2 in PG 3225 of 15 January 2021.

42 Letter of MEC to Centre of Environmental Rights dated 18 March 2021, *First Applicant's Founding Affidavit* (Annexure FA41).

43 Section 5 of the *Promotion of Administrative Justice Act* 3 of 2000.

44 *MEJCON-SA 2024* paras 18-19. For further details on these allegations, see *First Applicant's Founding Affidavit* paras 165-201.

making and their dealings with one another in the context of this decision-making. The only party to oppose the application was Uthaka, the second respondent.

3 The grounds of review

3.1 Contravention of section 48 of NEMPAA and a usurpation of the ministers' powers

NEMPAA governs all aspects relating to protected areas, and it allocates nuanced authority to a range of national and provincial authorities in respect of declaring, managing and regulating activities in these areas. This division of authority accords with the way the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*) allocates legislative and executive competence over environmental matters (which would naturally include protected areas) to both the national and provincial spheres of Government.[45]

The arguments presented by the parties relating to this ground of review spanned two different provisions in NEMPAA, one relating to the exclusion of land from a protected environment (section 29); and the other to the regulation of prospecting and mining activities in protected areas (section 48).

Section 29 specifically empowers the MinEA or the relevant MEC to degazette or downsize a protected environment. Prior to doing so, provision is made for mandatory consultation between the relevant national and provincial authorities.[46] Post such consultation, both sets of authorities are empowered to make their decision, as no express provision is made for obtaining the consent of the other prior to exercising such power. Furthermore, no specific grounds or decision-making criteria are prescribed in this section to inform or circumscribe the breadth of their discretion.

Section 48 of NEMPAA deals with a different issue, the regulation of prospecting and mining activities in various types of protected areas.[47] These activities are not prohibited in protected environments, but in terms

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45 Section 44 and section 104, read together with schedule 4 of the *Constitution*. The only clear exception to this shared competence in the context of protected areas specifically relates to national parks, which fall to the exclusive residual competence of the national sphere of government (section 44(1)(a)(ii) read with schedule 4).

46 Section 32 of NEMPAA.

47 For a general critique of the provisions applicable at the time, see generally: Paterson (2017) 3 *SAJELP*; Vinti (2017) *Obiter*.

of the provisions applicable at the time,[48] written permission of both the MinEA and the MinMR was required prior to undertaking them. As highlighted above, written permission of this nature was obtained by Uthaka in late 2016, with these permissions being subsequently set aside in the *MEJCON-SA 2018* case.

The applicants argued that in exercising his powers under section 29, the MEC had: circumvented the need for ministerial permission in terms of section 48; usurped the national ministers' powers to regulate mining activities in the protected environment; and used his power for an improper purpose.[49] As a result, they argued that the decision fell to be set aside because: the MEC was not authorised by section 29 to act in the manner he did; the decision was taken for a reason not authorised by section 29; and it was not rationally connected to the purpose for which it was taken or the purpose of the empowering provision.[50] To this they added that the decision was taken in bad faith and constituted arbitrary and capricious decision-making, although tangible evidence for these is difficult to distil from the applicant's court papers.[51]

The second respondent countered these by arguing that NEMPAA expressly enabled the MEC to declare, degazette and downsize a protected environment; the MEC had clearly conveyed his reasons for exercising the power; and had accordingly not acted unlawfully, irrationally, in bad faith, capriciously or arbitrarily.[52]

At their core, both sets of arguments largely focussed on whether the MEC had acted within the authority accorded to him in terms of NEMPAA. Issues relating to the merits of the decision, whether key relevant considerations had been taken into account, bias and whether other prescribed procedural

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48 Section 48 of NEMPAA was subsequently amended by the *National Environmental Laws Amendment Act* 2 of 2022 with effect from 30 June 2023. These amendments vest the authority to permit such activities in the Minister of Forestry Fisheries and the Environment alone and sets out mandatory and discretionary decision-making criteria (section 48(4)).

49 *MEJCON-SA 2024* para 21(1). For further details on the applicants' arguments relating to this ground, see: *First Applicant's Founding Affidavit* paras 207-213.

50 *First Applicant's Founding Affidavit* paras 212-213.

51 *First Applicant's Founding Affidavit* paras 212-213.

52 *MEJCON-SA 2024* para 21(1). For further details on the respondents' arguments relating to this ground, see: Tripati 2022 https://cer.org.za/programmes/mining/litigation/mabola-protected-environment (hereafter *Second Respondent's Founding Affidavit*) paras 119-132.

steps had been followed prior to the decision being made, formed the focus of subsequent grounds for review.

The High Court found in favour of the applicants on this ground, but its reasoning reflected in the judgment is rather superficial and confused. It highlighted how authorities can only operate within the purpose and ambit of the powers accorded to them by the relevant legislation,[53] placing emphasis on certain key decisions of the Constitutional Court.[54] It furthermore emphasised how the authority to approve mining in a protected environment in terms of section 48 of NEMPAA fell to the relevant national ministers, and highlighted the range of considerations these specific ministers needed to take into account when exercising such power.[55]

What the court seemingly failed to acknowledge, was that the MEC's decision to downsize the area had been made in terms of section 29, a provision expressly granting him the authority to do so. He had not purported to be acting under section 48 in respect of which he clearly had no authority. Accordingly, the court's brief overview of the array of considerations that the relevant national ministers were compelled to consider in the context of exercising their authority under section 48 of NEMPAA was irrelevant in the context of determining whether the MEC had the authority to act under section 29 of NEMPAA.

The court's only concrete conclusion relating to this ground was that the "MEC's conduct is therefore contrary to the scrutiny required in terms of section 48(1)(b) of NEMPAA".[56] This is rather puzzling as the MEC had not purported to be acting in terms of this provision. With NEMPAA failing to prescribe any specific grounds or decision-making criteria informing or circumscribing the discretion accorded to the MEC in terms of section 29 (the authority under which the MEC purported to act), perhaps the court was rather hamstrung in concluding that the MEC: had used his power for an improper purpose; was not authorised to act in the manner he did; had taken the decision for a reason not authorised by section 29; had made a decision that was not rationally connected to the purpose for which it was taken or the purpose of the empowering provision.

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53 *MEJCON-SA 2024* para 33(1)(i-iv).

54 Specifically: *Fuel Retailers Association of South Africa (Pty) Ltd v Director General Environmental Management Mpumalanga Province* (2007 (6) SA 4 (CC) (hereafter *Fuel Retailers*); *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC).

55 *MEJCON-SA 2024* para 33(1)(v).

56 *MEJCON-SA 2024* para 33(1)(ii).

More broadly, it is interesting that the court failed to deal with the broad allocation of constitutional competence and how this manifest in NEMPAA. It failed to draw a distinction between the different types of authority accorded to different authorities under the Act. It failed to acknowledge the rich jurisprudence from the Constitutional Court expressly recognising how:

> The Constitution allocates powers to three spheres of government in accordance with the functional vision of what is appropriate to each sphere. But because these powers are not contained in hermetically sealed compartments, sometimes the exercise of powers by two spheres may result in an overlap. When this happens, neither sphere is intruding into the functional area of another. Each sphere would be exercising power within its own competence.[57]

This case clearly dealt with overlapping authority within one Act, namely NEMPAA, with different authorities exercising different powers under the Act over different yet somewhat overlapping aspects. Had NEMPAA prescribed that the MEC obtain the consent of the relevant national minister prior to deciding to downsize the area, then exercising such power without obtaining such consent would be unlawful. But this is not what NEMPAA prescribed at the time.

3.2 Unlawful circumvention of the MEJCON-SA 2018 judgment

The *MEJCON-SA 2018* judgment was handed down on 8 November 2018. It set aside the decision of the then MinEA and MinMR to permit coal mining activities within the MPE in terms of section 48 of NEMPAA and remitted it back to the relevant authorities for reconsideration.[58] The court order included a series of directions relating the reconsideration of the above decision, none of which related to the MEC or any application under section 29 of NEMPAA. These included delaying the reconsideration of the above decision until such time as the management plan for the MPE had been formally approved in terms of NEMPAA.[59] The court order further expressly indicated that if prior to such reconsideration, the MEC decided to finalise the downsizing of the MPE in terms of section 29 of NEMPAA, which he had anticipated doing in his notice published in October 2018, any party could apply to court on the same papers to alter those components of the order specifically providing for the remission of the application in terms of section 48 of NEMPAA for reconsideration.[60] This seemed to reflect an express recognition on the part of the court, that if the properties on which the mining

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57 *Maccsand (Pty) Ltd v City of Cape Town* 2012 (4) SA 181 (CC) para 47.
58 *MEJCON-SA 2018* para 14.
59 *MEJCON-SA 2018* para 14(4.4).
60 *MEJCON-SA 2018* para 14(5).

activities were anticipated were excluded from the MPE, the need for the above authorisation in terms of section 48 of NEMPAA may fall away, thereby leaving a pathway for either party to approach the court to alter this component of the order to reflect this reality. Neither of the parties made application to alter this specific component of the order.

The applicants argued that in exercising his authority in terms of section 29 of NEMPAA to downsize the MPE, the MEC had circumvented the *MEJCON-SA 2018* judgment.[61] As a result, they claimed the decision had been taken for an ulterior purpose/motive and in bad faith, and was arbitrary, capricious, irrational, unreasonable, unconstitutional and unlawful.[62] The second respondent contended that this was not the case as the judgment itself anticipated this occurring, specifically provided a mechanism to apply to alter the terms of the judgment to reflect this reality should it occur, and in their view this did not accordingly constitute a circumvention of the judgment.[63]

The High Court found in favour of the applicants. In doing so, the court briefly highlighted the importance of having a management plan in place to inform any decisions relating to a protected area.[64] It further highlighted how the *MEJCON-SA 2018* judgment dictated that the MinEA and MinMR's reconsideration of their decision in terms of section 48 of NEMPAA should be delayed until the management plan for the MPE had been finalised, and that this same requirement should have applied to the MEC in terms of its decision to downsize the area under section 29 of the Act. It reemphasised the important role of the judiciary in protecting the environment and giving effect to the principle of sustainable development, indicating that in the matter, the interests of protecting the environment outweighed the economic benefits the proposed mining operations would bring to the local community.[65]

This is all well and good, but what the court failed to deal with was that this ground of review was based on an apparent circumvention of the judgment in *MEJCON-SA 2018* case. Nothing in the court order emanating from this case expressly precluded the MEC making the decision he did. The order directing consideration of the management plan applied to the MinEA and

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61 *MEJCON-SA 2024* para 21(2).
62 *First Applicant's Founding Affidavit* para 224.
63 *MEJCON-SA 2024* para 21(2). For further details on the second respondent's arguments relating to this ground, see: *Second Respondent's Founding Affidavit* paras 133-139.
64 *MEJCON-SA 2024* para 33(2)(iv).
65 *MEJCON-SA 2024* para 33(2)(v-vi).

MinMR acting in terms of section 49 of NEMPAA, and not to the MEC exercising his power in terms of section 29. In the context of the latter, the order appeared to expressly anticipate the MEC exercising his power. Given the above, it is questionable how the court came to the conclusion it did. The court's recognition of the vital role played by a protected area's management plan as an instrument that should inform all decisions relating to the area is important. However, in the absence of NEMPAA expressly prohibiting downsizing events in the absence of an approved management plan or in conflict with its content, the impact of this judicial recognition in the context of similar future events may be limited for the reasons highlighted above.

3.3 Failure to consider available science, policy and law

As mentioned above, section 29 under which the MEC exercised his authority prescribes no specific grounds or decision-making criteria. The only relevant prescribed criteria circumscribing his decision-making authority is found in section 3 of NEMPAA. It dictates that all organs of state must act as the trustee of protected areas when implementing NEMPAA, and accordingly exercising any authority in terms of it.

The applicants argued that the decision of the MEC failed to take into consideration the available science, policy and law relevant to the MPE.[66] While not reflected on in the judgment, their founding affidavit provided an overview of the relevant national policies and plans, environmental importance of the area and the potential impact of mining activities upon it.[67] It also stated that the decision allegedly contravened the obligation of the State to act as the trustee of protected areas.[68] As a result, the applicants claimed that the MEC's decision not only failed to take into account relevant considerations, but was also irrational and unreasonable.[69]

The second respondent contested the veracity of the applicant's version of the available science and purported that its experts had determined that the environmental impacts associated with the outcome of the decision would be negligible.[70] While similarly not reflected in the judgment, it furthermore argued that in any event, all the relevant issues had been comprehensively canvassed by the MEC prior to making his decision, in addition by the Water

66 *MEJCON-SA 2024* para 21(3).
67 *First Applicant's Founding Affidavit* paras 225-234.
68 *First Applicant's Founding Affidavit* para 227.
69 *First Applicant's Founding* Affidavit para 235.
70 *MEJCON-SA 2024* para 21(3).

Tribunal in the context of the grant of a water licence to Uthaka, and by an advisory panel specifically appointed by the MEC to advise him in this particular matter.[71] They argued that a careful scrutiny of the record of proceedings conducted by the MEC prior to making his decision and the reasons provided therefore, reflected his thorough consideration of these issues. Interestingly, they did not annex the record of proceedings of the advisory panel to their answering affidavit as evidence thereof. In the second respondent's opinion, this did not constitute a ground of review, but rather simply the "applicant's dissatisfaction that the MEC does not agree with their version of events, its reports and research".[72] With the MEC choosing not to oppose the application, the court unfortunately had no clarity from the decision-maker himself, but for that reflected in those documents annexed to the litigants' court papers.

In a mere two paragraphs, the High Court found in favour of the applicants on this ground, ruling that the MEC's failure to consider the available science, policy and law was "flawed".[73] What amounted to "flawed" is unclear, but this generic term presumably incorporated all four components of the applicants' argument relating to this ground. How the court came to its conclusion in such a fleeting manner given the apparent contested perspectives presented by the parties is puzzling.

It partially appears based on the court's flawed assumption that it was common cause that the proposed mine would pollute ground water and damage the biodiversity in the area.[74] However, a consideration of the second respondent's answering affidavit appears to clearly contest the applicant's allegations in this regard.[75] Disputes of fact appear to have been present in this matter, and therefore the application of the Plascon vs Evans rule[76] not at play. The court did not engage with or find that the nature of the second respondent's denials relating to the applicants' allegations did not raise real, genuine or bona fide disputes of fact, thereby enabling it to simply rely on the applicant's aversions. It is therefore difficult to understand how in the absence of a systematic interrogation of the conflicting arguments presented by both parties, and referring the matter to oral evidence, the court came to the conclusion it did. Furthermore, specifically in the context of the court finding that that the MEC failed to consider relevant

71 *Second Respondent's Answering Affidavit* paras 140-152.
72 *Second Respondent's Answering Affidavit* para 140.
73 *MEJCON-SA 2024* para 33(3)(ii).
74 *MEJCON-SA 2024* para 32.
75 Second Respondent's Answering Affidavit paras 77-79, 87-94, 99-112, 140-152.
76 *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

considerations and acted irrationally and unreasonably, it may constitute evidence of a clear encroachment into the realm of the discretion accorded to the MEC in terms of legislation. This component of the judgment does not properly interrogate the steps taken by the MEC prior to and post making his decision, which included appointing an advisory panel, holding a public participation process and providing reasons for his decision. Surely the court needed to properly interrogate these steps to discern the fine line identified by the judiciary in the past when determining: whether the decision-maker took relevant considerations into account as opposed to the court prescribing the weight which the decision-maker must attached to each consideration;[77] the rationality of the decision;[78] and/or the reasonableness of the decision.[79]

Decisions of the nature undertaken by the MEC in this matter are clearly complex involving the consideration of a multitude of issues and competing interests, and the need to balance these in some coherent, rational and reasonable manner. In the absence of NEMPAA prescribing a clear process (inclusive of some formal assessment of the impact of the downsizing on the MPE) and a set of grounds or decision-making criteria, the judiciary was compelled to wade through the morass of contested allegations and in the absence of additional clarity provided by the decision-maker himself, come to a conclusion, which itself may well constitute a further example of the judiciary unduly encroaching into the turf of the executive.

3.4 Failure to consider the precautionary principle and the vulnerable ecosystem principle

The *National Environmental Management Act*[80] (NEMA) prescribes a set of environmental management principles that "apply to the actions of all organs of state that may significantly affect the environment".[81] NEMPAA cross refers to these principles and indicates that the Act must be interpreted and applied in accordance with them.[82] Two of these principles formed the focus of this ground of review, namely the precautionary

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77 *Durban Rent Board and Another v Edgemount Investments* Ltd 1946 AD 962 at 974; referred to in *MEC for Environmental Affairs and Development Planning v Clairison's CC* 2013 (6) SA 235 (SCA) paras 17-22.

78 *Bel Porto School Governing Body v Premier, Western Cape* 2002 (3) SA 265 (CC) para 45.

79 *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) 490 (CC) paras 44 and 45.

80 Act 107 of 1998.

81 Section 2 of NEMA.

82 Section 5(1)(a) of NEMPAA.

principle[83] and what the court terms the "vulnerable ecosystem" principle.[84] Their relevance was specifically considered in the context of the potential impacts the mining activity would have on the biological and fresh-water resources in the MPE. The applicants argued that the MEC had not considered these principles when making his decision as they were not referred to in the MEC's decision or the reasons provided for it.[85] Accordingly, they argued that the decision fell to be set aside as the MEC had: failed to comply with a mandatory and material procedure or condition prescribed by the empowering legislation; had not taken relevant considerations into account; and his decision was irrational and unreasonable.[86] The second respondent argued that the MEC had considered these principles when making his decision, following the same approach adopted by the Water Tribunal when making its decision to uphold the water licence granted to Uthaka in terms of the *National Water Act*.[87]

In again a very superficial manner, the court found in favour of the applicants, with its judgment focusing on only the precautionary principle. The court held that there was uncertainty and inadequate information regarding the impact of the proposed mine, that it was common cause that damage would be occasioned to wetlands in the area, and quoting the *Fuel Retailers* case, that the court should accordingly "err on the side of caution and protection of the environment".[88] On this basis, it ruled that "on a proper application of the precautionary principle, the exclusion decision should not have been made, thus rendering the decision reviewable".[89] The court appeared to view the precautionary principle as a rigid rule in so far as any decision not adhering to it should not be made. Furthermore, it is unclear on which of the specific review grounds put forward by the applicants it came to this conclusion.

As has been highlighted above, the court's determination that the anticipated damage to the wetlands was common cause is debatable. Furthermore, it is unfortunate that the court again chose not to engage in any depth with the steps taken by the MEC prior to and post making his decision, such as appointing an advisory panel, holding a public participation process and providing reasons for his decision. Surely these again warranted interrogation for the court to reach the conclusion it did. It

83 Section 2(4)(a)(vii) of NEMA.
84 Section 2(4)(r) of NEMA.
85 *First Applicant's Founding Affidavit* paras 236-244.
86 *First Applicant's Founding Affidavit* para 245.
87 *Second Respondent's Answering Affidavit* paras 153-156.
88 *MEJCON-SA 2024* para 33(4)(i-iv).
89 *MEJCON-SA 2024* para 33(4)(v).

is interesting to note that in the written reasons provided to the applicants by the MEC in March 2021, the MEC expressly referred to NEMA's environmental management principles generally, and specifically the precautionary principle.[90] In the context of the latter, the MEC had clarified that: in applying this principle when making his decision he had sought to strike a balance when applying all the relevant principles that are founded on the principle of sustainable development; the precautionary principle embraced proportionality and did not prohibit development; and that the principle did not amount to a "zero risk standard".[91] This would appear to provide evidence of the MEC expressly taking the precautionary principle into account.

Furthermore, the approach reflected in the MEC's reasoning would appear to accord with several prior court decisions in which the form and nature of NEMA's environmental management principles generally, and the precautionary principle in particular, have been far more elaborately canvassed than in this case.[92] These have confirmed, in seemingly rather stark contrast to the court's reasoning and decision in this matter that generally, NEMA's national environmental management principles "do not demand a so called zero standard which frown upon any kind of impact on the environment"; and "do not constitute a checklist for ticking off each requirement that a proposed development has to comply with nor are these principles rigid rules of the positive law which must be complied with in each instance".[93] They are rather "normative guidelines, all of which have to be considered but none of which stands in any particular hierarchical relation to the other", effectively relevant considerations for the decision-maker to consider in coming to their final decision.[94] In specific relation to the precautionary principle, these prior court decisions have also emphasised that it is mainly concerned with "mitigation measures in respect of the consequences of decisions and actions", and that "limits of current knowledge about the consequences of decisions and actions or the lack of full scientific certainty cannot be used as a reason for postponing cost-

90 Letter of MEC to Centre of Environmental Rights dated 18 March 2021, *First Applicant's Founding Affidavit* (Annexure FA41).

91 Letter of MEC to Centre of Environmental Rights dated 18 March 2021, *First Applicant's Founding Affidavit* (Annexure FA41).

92 These include most recently: *WWF South Africa v Minister of Agriculture, Forestry and Fisheries* 2019 (2) SA 403 (WCC); *EWT v DG(DW&S)*.

93 *EWT v DG(DW&S)* paras 136-137.

94 *EWT v DG(DW&S)* paras 136-137.

effective measures to prevent those consequences".[95] The court's decision in this matter did not appear to accord with the above approach.

3.5 Disregard of the minister's advice and the principle of co-operative governance

As highlighted above,[96] the concurrent constitutional competence allocated to the national and provincial spheres of government over the environment has translated into authority being allocated to both the national and provincial spheres of government in the context of protected areas. This ground of review dealt mainly with the manner in which these spheres of government should cooperate with one another informed by the principles of cooperative government and intergovernmental relations enshrined in the *Constitution*,[97] as elaborated on in the *Intergovernmental Relations Framework Act*[98] and specifically codified in the context of NEMPAA through the inclusion of mandatory cross-consultation requirements between the different government authorities exercising powers under the Act.[99] The applicants argued that the decision of the MEC to downsize the MPE contravened these requirements, and fell to be set aside on this basis.[100] The main evidence on which the applicants relied was correspondence sent from the MinEA to the MEC in October 2019 on being notified of the MEC's intention to downsize the MPE.[101] In this correspondence, the MinEA requested the MEC to reconsider his intention to do so and to rather wait and allow the decision-making process as outlined in the *MEJCON-SA 2018* judgment to play out. In going ahead with the downsizing process, the applicants argued that the MEC had disregarded the MinEA's advice, thereby contravening the constitutional and legislative requirements promoting cooperative governance.[102] The second respondent countered the above highlighting that the above set of provisions aimed at promoting cooperative governance did not cumulatively amount to the need to obtain the consent of the Minister, with the correspondence itself providing

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95 *EWT v DG(DW&S)* paras 138-139. See further *WWF South Africa v Minister of Agriculture, Forestry and Fisheries* 2019 (2) SA 403 (WCC) paras 100-104.
96 Para 3.1 above.
97 Chapter 3 of the *Constitution*.
98 *Intergovernmental Relations Framework Act* 13 of 2005.
99 Section 32 of NEMPAA.
100 *First Applicant's Founding Affidavit* para 255.
101 Letter of MinEA to MEC dated 14 October 2019, *First Applicant's Founding Affidavit* (Annexure FA51).
102 *First Applicant's Founding Affidavit* paras 246-254.

evidence of the MEC having consulted with other relevant government functionaries.[103]

In dealing with this ground, the court provided a fleeting overview of the above relevant provisions, and the correspondence mentioned above.[104] Having briefly highlighted what the rule of law and legality require, the court hastily concluded that the MEC's failure to adhere to the provisions enabling cooperative governance rendered the decision reviewable.[105] What the court failed to highlight is how the MEC's downsizing decision specifically contravened the relevant provisions aimed at promoting cooperative governance. The decision of the MEC did clearly not follow the advice of the MinEA, but this alone surely cannot form the foundation of the court's decision, as the MEC was surely free to make his own decision, given that he was accorded the authority to do so by the relevant legislation. If one were to adopt the reasoning of the court through to its illogical conclusion, it may mean all authorities in all three spheres exercising powers accorded to them through the *Constitution* and empowering legislation would be compelled to agree with one another, as if not, they would be deemed to fall foul of the constitutional and legislative requirements promoting cooperative governance. What these requirements promote is surely collaborative governance and not consensual governance, as if they anticipated the latter, surely all provisions of the nature contained in NEMPAA would prescribe consent as opposed to consultation as the standard form.

3.6 Bias or a reasonable suspicion of bias

The applicants' sixth ground of review was founded upon bias or a reasonable suspicion of bias on the part of the MEC. The applicants based their argument on three main things: a public statement allegedly made by the MEC in May 2020; an article appearing in the City Press in this same month in which the MEC is reported to have allegedly made certain statements; and the alleged failure on the part of the MEC to take into account a range of reports detailing the negative environmental impacts associated with the proposed mine and the impacts these may have on the surrounding communities.[106] In their opinion, the above reflected bias or a reasonable suspicion of bias on the part of the MEC towards the establishment of the mine.[107] The second respondent contended that the

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103 *Second Respondent's Answering Affidavit* paras 157-161.
104 *MEJCON-SA 2024* para 31(5)(i-vi).
105 *MEJCON-SA 2024* para 31(5)(iii) read (viii).
106 *First Applicant's Founding Affidavit* paras 256-263.
107 *First Applicant's Founding Affidavit* paras 256-263.

above allegation lacked foundation or evidence and merely reflected that the MEC was aware of the potential for the mine to alleviate poverty in the area.[108] It further contended that the latter was simply one of several competing interests the MEC had weighed up in making his decision, following his consideration of the report of the panel of experts he had appointed to specifically advise him on the matter.[109]

The court found in favour of the applicants, highlighting that the *alleged* MEC's public statements and support for the mine provided evidence that the MEC had not approached the matter with an open mind, had shown favour for the establishment of the mine in the MPE before making his decision, and accordingly reflected bias or a reasonable suspicion of bias.[110] The word *alleged* is purposely emphasized above, as the veracity of these public statements and the broader context within which they were made were not interrogated by the court. In the absence of the MEC opposing the matter, and any evidence to corroborate or contradict these alleged public statement, perhaps the court could have been more assiduous in: interrogating the extent to which these alleged and hearsay statements were true; the context in which they were made if true; and the extent to which they influenced the MEC's decision, something that would surely have required a more thorough consideration of the process leading up to the decision, the decision itself, and the reasons provided thereafter by the MEC. The court appears to have been very quick to come to its conclusion, without due consideration of the above.

3.7 Failure to consider the impacts of mining

This ground of review appears to have significantly overlapped with the applicants' third ground of review, which argued that the MEC had failed to consider the relevant science, policy and law, inclusive of the negative impacts associated with the proposed mine and how these conflict with the national environmental management principles embedded in NEMA. The applicants highlighted how the notion of sustainable development has been entrenched in both the *Constitution* and NEMA.[111] They then contested the array of alleged socio-economic benefits the proposed mine would bring to communities in the area; contrasted these with the alleged long-term social, economic and environmental costs associated with the proposed mine; and

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108 *Second Respondent's Answering Affidavit* paras 162-163.
109 *Second Respondent's Answering Affidavit* paras 164-166.
110 *MEJCON-SA 2024* para 33(6) (iii-iv).
111 *First Applicant's Founding Affidavit* paras 264-266 and paras 235-243 (misnumbered).

highlighted how on this basis no reasonable decision-maker could have come to the conclusion the MEC did, adding generally the same list of specific review grounds alleged in the context of the third ground of review.[112] Given the similarity between this and the third review ground, the second respondent argued that this ground added little new to that it had already contested in the context of the preceding grounds canvassed above.[113]

In a characteristically fleeting manner, the court accepted the applicants' version and ruled that the "MEC's failure to consider the impact of mining renders the exclusion decision reviewable".[114] The court again did not interrogate each of the specific review grounds raised by the applicants. Given the large overlap between this and the third ground, many of the concerns raised in the context of the latter are equally relevant here.[115] These include the apparent failure of the court to weigh up the merits of the contested views of the parties to the dispute and to interrogate the steps taken by the MEC prior to and post making his decision, before coming to its decision. Equal criticism may accordingly be applicable to this component of the judgment.

3.8 Failure to take into account South Africa's international obligations

The final ground of review was founded on an alleged failure on the part of the MEC to take into account several of the country's obligations under a range of international and regional conventions.[116] The applicants argued that NEMA's national environmental management principles[117] imposed an obligation on the government (and hence the MEC) to discharge global and international responsibilities relating to the environment in the national interest, and that the MEC's decision reflected a failure to have done so.[118]

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112 *First Applicant's Founding Affidavit* paras 264-266 and paras 235-243 (misnumbered).

113 *Second Respondent's Answering Affidavit* paras167-168.

114 *MEJCON-SA 2024* paras 33(7)(iii).

115 See part 3.3 above for a full discussion of these issues, which are equally relevant in the context of this ground of review.

116 *First Applicant's Founding Affidavit* paras 244-253. These were the: CBD; *Convention on Wetlands of International Importance Especially as Waterfowl Habitat* (1983); *Convention on Migratory Species of Wild Animals* (1980) (and its *Agreement on the Conservation of African-Eurasian Waterbirds* (1995)); *United Framework Convention on Climate Change* (1992) (together with its *Kyoto Protocol* (1997)); *Paris Agreement* (2016); *SADC Revised Protocol on Shared Watercourses* (2000).

117 Section 2(4)(n) of NEMA.

118 *First Applicant's Founding Affidavit* para 254.

The second respondent contended that there was no evidence of the above and that the MEC's decision did not violate any international obligation.[119]

Again, in a very pithy manner, the court held that the proposed mining operations would negatively impact on the wetlands and species in the area, and that the failure on the part of the MEC to reference the country's international commitments under a range of international and regional instruments when providing his reasons for the decision, rendered the decision reviewable. The questionable way the court dealt with apparently contested evidence raised in the context of several of the preceding review grounds, is equally relevant here. What is also noteworthy is the very high bar the court potentially sets for all domestic decision-makers operating under any of the country's environmental laws. These domestic environmental laws invariable give effect to the country's international and regional obligations. According to the court in this matter, a failure on the part of a decision-maker to reference all international and regional instruments relating to the power exercised through the domestic law, could render the decision reviewable. This is potentially a very high bar to be met.

4 Conclusion

While the outcome of this case is clearly a win for the long-term protection of the MPE and against PADDD, what this note has sought to highlight is several frailties in the court's decision across almost all the review grounds raised by the applicants. Decisions relating to PADDD are clearly complex often involving competing interests, contested science and the need to balance these in some coherent, rational and reasonable manner. With the executive theoretically vested with the relevant technical and scientific skills and expertise, perhaps they are best placed to decide on PADDD events.

However, what this matter has also highlighted is potential frailties in NEMPAA's regime regulating such events, which is currently exceptionally vague. To both improve executive decision-making relating to PADDD events and thereby potentially preclude matters of this nature being dragged before the judiciary in the future, perhaps the legislature could consider prescribing a clearer process (inclusive of some formal assessment of the impact of the PADDD events on the protected area) and set of mandatory grounds or decision-making criteria for PADDD events, thereby providing clearer guidance to the executive on how to exercise their discretion. The latter could include mandatory consideration of the protected area's

119 *Second Respondent's Replying Affidavit* paras 169-175.

management plan, thereby confirming its central status in decisions affecting not only the current management of the area but its future when targeted with PADDD events. This may also provide an essential framework against which to systematically "measure" the procedural and substantive merit of executive decisions relating to PADDD events should they be challenged before the judiciary in the future. Furthermore, and following guidance provided in relevant international protected areas law guidelines,[120] perhaps NEMPAA should be amended to reserve the authority relating to all PADDD events across all forms of protected areas for the highest level of authority, namely the Minster of Forestry Fisheries and the Environment. This would also ensure that in the specific context of protected environments, there is unanimity in the authority tasked with both regulating significant potentially deleterious activities in the area, such as prospecting and mining, and any associated PADDD events.

120 Lausche *Guidelines for Protected Areas Legislation* 17-18.

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LIST OF ABBREVIATIONS

CBD	Convention on Biological Diversity
DFFE	Department of Forestry, Fisheries and Environment
DMR	Department of Mineral Resources
DMRE	Department of Mineral Resources and Energy
IUCN	International Union for the Conservation of Nature
MEC	Member of the Executive Council
MinEA	Minister of Environmental Affairs
MinMR	Minister of Mineral Resources
MPRDA	Minerals and Petroleum Resources Development Act
MTPA	Mpumalanga Tourism and Parks Authority
NEMA	National Environmental Management Act
NEMBA	National Environmental Management: Biodiversity Act
NEMPAA	National Environmental Management: Protected Areas Act

MPE	Mabola Protected Environment
MPEAS	Mpumalanga Protected Areas Expansion Strategy
NPAES	National Protected Areas Expansion Strategy
PADDD	Protected Areas Downgrading, Downsizing and Degazettement
SAJELP	South African Journal of Environmental Law and Policy
SAJHR	South African Journal of Human Rights
SLR	Stellenbosch Law Review
UNEP	United Nations Environment Programme
WCMC	World Conservation Monitoring Centre
WCPA	World Commission on Protected Areas
WDPA	World Database on Protected Areas
WWF	Worldwide Fund for Nature