THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Minister of Environmental Affairs v The Trustees for the time being of Groundwork Trust and Others (549/2023) [2025] ZASCA 43 (11 April 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein the appeal was dismissed with costs, against an order of the Gauteng Division of the High Court, Pretoria, sitting as court of appeal (the high court).

This matter concerned a widespread public outcry in 2007 about the high levels of pollution in an area where there were several coal mining activities. This area was an industrial home to 12 coal-fired power stations, a Sasol refinery and numerous coal mines. It led the Minister of Environmental Affairs and Tourism to declare a 31 106 square km area as a High Priority Area (HPA) in terms of the National Environmental Management: Air Quality Act 39 of 2004 (the Air Quality Act). The declaration was made in accordance with the provisions of Chapter 4, Part 1 of the Air Quality Act, which permits the Minister of Environmental Affairs (the Minister) or a Member of the Executive Council to identify regions where air quality poses a significant threat to public health and the environment.

In 2012, after recognising that ambient air pollution in the HPA exceeded the National Ambient Air Quality Standards, the Minister published the Highveld Plan. The objective of the Highveld Plan was to reduce air pollution to acceptable levels by 2020 and had one of its goals aimed at ensuring that air quality in low-income settlements complied fully with ambient air quality standards. Despite the Highveld Plan being published, the Minister did not enact the necessary implementation regulations, even though internal departmental assessments and a health study indicated that the continued exposure to high levels of pollution posed severe risks to public health.

On 7 July 2019, the applicants (first and second respondents in the appeal), GroundWork and Vukani Environmental Movement, two non-profit organisations, launched an application in the high court. The Minister was cited as the first respondent (and is the only appellant in the appeal). The applicants argued that the failure to prescribe the necessary regulations not only breached residents' constitutional right to an environment that is not harmful to their health in

terms of s 24 of the Constitution but also amounted to a breach of the statutory obligations imposed on the Minister by the Air Quality Act.

The high court found in favour of the applicants by declaring that the poor air quality in the HPA constituted a violation of the constitutional right to a healthy environment. It further held that the Minister had a legal duty to prescribe regulations under s 20 of the Air Quality Act to implement and enforce the Highveld Plan. This duty was interpreted to arise not merely as a discretionary power but as an obligation imposed by the statute, once the conditions for necessity were met. In addition, the court found that the Minister had unreasonably delayed in taking the necessary regulatory action. As a result, the high court inter alia ordered the Minister to prepare, initiate and prescribe the required regulations within 12 months. The appeal is with leave of the high court

The central issue was whether the language of s 20, which uses the word 'may', merely conferred a discretionary power on the Minister or whether it imposed a legal duty to prescribe regulations.

The SCA confirmed that, although the Minister disputed any obligation to make regulations, it was not attacked on appeal that the poor air quality in the HPA had violated residents' constitutional right to an environment that is not harmful to their health and well-being, as guaranteed by s 24 of the Constitution. The Court further held that, while the matter was moot due to the publication of draft regulations that had resolved the immediate dispute, the broader legal question remained significant. The Court emphasised that while it is trite that a case without a live controversy or practical effect is generally not adjudicated, the proper interpretation of the statute and the Minister's duty under it were issues of public importance.

The Court held that the correct interpretation of s 20 of the Air Quality Act, in particular, the term 'may' in this context was not to be understood as a mere discretionary power but as a mandate to act once the conditions of necessity were met. The Court found that it imposed a legal duty on the Minister to prescribe regulations necessary for implementing and enforcing the Highveld Plan. Further, the SCA held that the Minister had unreasonably delayed in initiating, preparing and prescribing the required regulations. This delay was found to be indefensible given the continued exposure of residents to harmful levels of air pollution and the demonstrable failure of the Highveld Plan to achieve its objectives.

As a result, the SCA dismissed the appeal with costs and varied the high court's order.

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