



CONSTITUTIONAL COURT OF SOUTH AFRICA

**Minister for Environmental Affairs and Another v Aquarius Platinum (SA) (Pty)
Ltd and Others**

CCT 102/15

Date of hearing: 17 November 2015

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Tuesday, 17 November 2015 at 10h00, the Constitutional Court will hear an application concerning the constitutional validity of the President's decision to give effect to the National Environmental Laws Amendment Act without publishing the regulations for the implementation of the amendments envisaged in the Amendment Act.

Aquarius Platinum SA (Pty) Ltd, a company which conducts mining operations, submitted an application for a water use license. In 2012 the Department of Water and Sanitation declined Aquarius's application. Aquarius instituted review proceedings in the North Gauteng High Court, Pretoria, challenging the refusal by the Department. It also challenged the validity of the President's decision which put into operation the Amendment Act before publishing regulations necessary for its implementation. The President and other State parties, including the Minister of Environmental Affairs, were cited as respondents. In May 2015, the High Court set aside the decision of the President to publish the Amendment Act without the required regulations having been published. It held that such a decision, which is part of the legislative process, did not pass the rationality test, as the uncertainty in the application of the Amendment Act resulted from the non-existent regulations.

Before the Constitutional Court, Aquarius seeks confirmation of the High Court's order. However, on 24 July 2015 while the matter was pending before this Court, the relevant regulations were published and this prompted Aquarius's withdrawal from the proceedings. Mr Leon Bekker, who represented Aquarius before the High Court, nevertheless participates in the proceedings as a friend of the Court. The Minister opposes and appeals the confirmation of the High Court's order.

The Minister advances three arguments in support of setting aside the High Court's order. First, the Minister claims that when the President gives effect to an Act he exercises a constitutional obligation. Therefore, the President's decision should not be analysed under the rationality test. Second, the Minister contends that the President's decision to put into force the Amendment Act was rational in any event. Lastly, the Minister argues that since the regulations have now been published, the confirmation of the High Court's order would have no practical effect.

Mr Bekker supports the confirmation of the High Court's order. He contends that the President's power to give effect to an Act is a discretionary power. Consequently, by putting into force the Amendment Act before the publication of regulations necessary for the Amendment Act's implementation, the President acted irrationally. Mr Bekker argues that the confirmation would have a practical effect as the Amendment Act was irregularly put into operation between June 2014 and July 2015.