



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal and Others**

**CCT 114/15**

**Date of hearing: 9 November 2015**

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#### **MEDIA SUMMARY**

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*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 Monday 9 November 2015 at 10h00 the Constitutional Court will hear an application concerning the constitutional validity of a provision of the KwaZulu-Natal Planning and Development Act (PDA).

The applicant, Tronox KZN Sands (Pty) Ltd (Tronox), is a large producer of titanium ore and titanium dioxide. In February 2014 its application for prospective land-use rights in terms of the PDA was approved by the fourth respondent, the Umlalazi Municipality. In terms of the impugned provision of the PDA, any person who is aggrieved by a municipality's decision may appeal that decision to the first respondent, the KwaZulu-Natal Planning and Development Appeal Tribunal (Tribunal). This Tribunal is created by a chapter of the PDA. The second and the third respondents, the Mtunzini Conservancy (Conservancy) and the Mtunzini Fish Farm (Pty) Ltd (Fish Farm), were aggrieved with the granting of the application and lodged appeals with the Tribunal.

Before the Tribunal could hear the appeals, Tronox launched proceedings in the KwaZulu-Natal Division of the High Court, Pietermaritzburg (High Court), challenging the constitutionality of the impugned provision. The Court held that this provision was unconstitutional since it enabled provincial interference with the municipalities' constitutionally defined area of governance, which is impermissible. The High Court granted an interim interdict in respect of the two appeals, stopping them from being heard. It also ordered that, in the event that the declaration of invalidity is confirmed by the Constitutional Court, the two appeals are to be declared unlawful.

Before the Constitutional Court Tronox seeks confirmation of the High Court's order declaring the impugned provision constitutionally invalid. It contends that this provision and the chapter which creates the Tribunal interfere with a municipalities' exclusive constitutional power to make municipal planning decisions. It also argues that the order of constitutional invalidity should not be suspended to allow the legislature time to cure the invalidity.

The fifth respondent, the MEC for Co-operative Governance and Traditional Affairs (MEC), argues that the order of constitutional invalidity should not be confirmed. It contends that the impugned provision is constitutionally valid, as there is no appellate oversight from provinces. Nevertheless, with the advent of the Spatial Planning and Land Use Management Act, a provision for a municipal appeal is made and therefore would not require the contentious appeal mechanisms in the PDA. If a confirmation order is granted, the MEC calls for a 24-month suspension to give the legislature enough time to remedy the defect. Alternatively, this Court should read in to render the provision constitutionally valid.

The sixth respondent, eThekweni Municipality (Municipality), argues that various provisions of the PDA, including the impugned provision, are constitutionally invalid. Suspending the order would perpetuate an influence from the province. Finally, the Municipality submits that any reading in should be crafted in a just and equitable manner.