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Attorneys for climate and environmental justice



Image on the left of Vhembe region taken from the MMSEZ Protected Tree Survey, January 2020. Image on the right of the proposed development taken from the EIA report of February 2021

MMSEZ Review Application

Description:

Environmental authorisation (EA) for the MMSEZ was granted on 23 February 2022. The decision relates specifically to the application for Environmental Authorisation for the proposed metallurgical cluster of the Musina-Makhado SEZ as defined in the Scoping Report appended to the 1 February 2019 application. The EA was granted to the Limpopo Economic Development Agency (LEDA) to undertake the list of activities specified on pages 2 and 3 of the authorisation and as described in the Environmental Impact Assessment Report (EIAR) dated 13 September 2021.

The EA that was granted in terms of section 24 of the National Environmental Management Act, 1998 (NEMA) and the Environmental Impact Assessment Regulations, 2014 (EIA Regulations) authorises clearance of vast swathes of indigenous vegetation for the construction and installation of bulk services infrastructure and fencing of the MMSEZ South Site.

We brought an application to review this decision in the Polokwane High Court on behalf of our clients, Living Limpopo, the Herd Reserve, and Centre for Applied Legal Studies (CALS).

The application is to review and set aside the decision made by the Chief Director: Environmental Trade and Protection, Department of Economic Development, Environment and Tourism, Limpopo, to grant environmental authorisation (EA) for the Musina-Makhado Special Economic Zone (MMSEZ) on 23 February 2022.

The application is also to review and set aside the decision of the MEC of Economic Development, Environment and Tourism, Limpopo, to dismiss our administrative appeal against the granting of environmental authorisation for the MMSEZ on 8 July 2022 and to declare the Minister of Forestry, Fisheries and the Environment (DFFE) as the competent authority to consider the application for EA for the MMSEZ.

Parties

Applicants (our clients): The Herd Nature Reserve, Living Limpopo NPC, and CALS

Respondents: The Limpopo Economic Development Agency (LEDA)*, MEC of Limpopo Department of Economic Development, Environment and Tourism (LEDET)*, Chief Director of Environmental Trade and Protection, Department of LEDET*, Minister of the DFFE, and Musina-Makhado Special Economic Zone (MMSEZ) State owned Company (SOC)*

*Respondents who oppose the application

- LEDA is a provincial government agency established in terms of the Limpopo Development Corporation Act, 5 of 1994 and is the implementing agency of LEDET. In terms of its mandate, LEDA is responsible for the facilitation and management of the planning and development of the MMSEZ.
- The MEC responsible for LEDET was the appeal authority that decided on the appeals against the decision made by LEDET to grant LEDA the EA.
- In terms of the National Environmental Management Act 107 of 1998 (NEMA) with EIA Regulations, 2014, LEDET was appointed as the competent authority for the MMSEZ EIA application.
- LEDET is also mandated with the primary responsibility of managing and monitoring biodiversity in the province. LEDA is a direct reporting entity of LEDET. LEDET was the driving force, funder and approver of the Limpopo Conservation Plan and the Vhembe Bioregional Plan. LEDET was also the endorser of the Vhembe Biosphere Reserve Zonation Plan, which conflicts with and contradicts the proposed land uses for the MMSEZ.
- LEDET was the competent authority that granted the EA to LEDA.
- The MMSEZ SOC is a wholly owned subsidiary of LEDA and is 'an entity mandated to develop and operate the Musina-Makhado Special Economic Zone (MMSEZ) in terms of the SEZ Act 16 of 2014, with the main purpose of promoting the Nation's economic growth. The South African Government through the Department of Trade and Industry (DTI) designated the MMSEZ located in the Limpopo Province.'

Court process to date:

Our clients filed founding papers on 15 December 2022. The main issues include:

1. LEDET's dual role in the application process. LEDET is the applicant for the MMSEZ and the department that determined whether the project could go ahead. This bias in the application process has not been addressed.
2. The EIA and public participation process were procedurally unfair in terms of how the public was informed of the application and how they were able to participate in it. Most of the comments submitted to the Environmental Assessment Practitioner (EAP) were not included in the EIA process and, therefore, were not considered when an EA was granted for the MMSEZ.
3. The MMSEZ used "project splitting" to underplay the negative environmental impacts of the project by conducting various piecemeal environmental impact assessments (EIAs)

so that the overall negative environmental impacts of the MMSEZ are not taken into consideration for its cumulative effects.

4. The granting of EA for the MMSEZ failed to consider the need and desirability of a special economic zone while we are in a climate and nature crisis. South Africa has made many commitments internationally, such as the signing of the UNFCCC Paris Agreement, to make a just transition to renewable energy, reduce greenhouse gas emissions (GHGs) and to invest in nature conservation. The MMSEZ will destroy thousands of indigenous trees for its developments. These developments are all within the Vhembe Biosphere Reserve - an area which South Africa has committed to safeguard in terms of its registration as a biosphere reserve with UNESCO.
5. Large quantities of water will be required to sustain all the activities in this SEZ. The studies from the EIA process showed that the water scarce area will be under more pressure with the presence of the MMSEZ, resulting in the SEZ needing to use water from Zimbabwe.
6. Whether in light of the climate crisis and South Africa's global commitments, and whether in light of LEDA's own expert's concerns regarding biodiversity, water security, and energy provision, the MEC's decision to refuse our clients' appeal on 8 July 2022 is contrary to the spirit and purport of section 24(a) right to an environment that is not harmful to health and well-being, as enshrined in the Constitution of the Republic of South Africa.

The State Respondents were required to issue the record of the decision in terms of Rule 53, including all the documentation that was taken into consideration by them when granting environmental authorisation.

The delays resulted in us having to put the matter under case management in May 2023. Case management meetings were held on 21 July 2023, 4 August 2023 and 2 November 2023. It was ultimately necessary to launch an interlocutory application for filing the record of decision. This was done in November 2024; the documents were finally delivered in December 2024. .

We filed our clients' supplementary founding affidavit on the 29th of March 2025.

Case No.	13525/2022
Court	Polokwane High Court, Limpopo Division
Date of Application	15 December 2022
Applicants' Advocates	Jatheen Bhima and Letlhogonolo Mokgoroane
Applicants' Correspondent Attorneys	Pratt, Luyt & De Lange
Hearing	Pending
Judgment	Pending

More Links to various sources

- 15 September 2023 interview with Kirsten Youens and Lauren Liebenberg on Just Us and the Climate titled, "The public versus the Musina-Makhado Special Economic Zone - Part 1"
<https://iono.fm/e/1360705>
- 19 March 2025-Carte Blanche, from media interest in the MMSEZ, conducted their own investigation on it. Find a link to a short clip of their exposé here:
https://www.youtube.com/watch?v=CW_CanP31Mk

- 14 January 2025- Business Day article by Toby chance, “Signs of progress at trade department, but trouble below the surface”: [TOBY CHANCE: Signs of progress at trade department, but trouble below the surface](#)
- 12 November 2024 interview with Lauren Liebenberg, Living Limpopo, on SAfm Night Talk with Oliver Dickson
<https://omny.fm/shows/late-night-conversation/vhembe-biosphere-reserve-under-threat>
- 16 November 2024 interview with Kirsten Youens on SAfm Jet Set Breakfast with Michelle Constant titled, “Thirsty, energy-hungry steel ‘monster’ set to destroy thousands of Limpopo protected trees in industrial drive”
<https://omny.fm/shows/the-jet-set-breakfast-1/thirsty-energy-hungry-steel-monster-set-to-destroy>
- 25 November 2024-Daily Maverick Opinion from Lauren Liebenberg called: [Old King Coal's pursuit of a marginal economic zone in Limpopo](#)

Updated 17/06/2025