

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**CASE NO: 13703/09**

**Before the Honourable Mr Justice A Le Grange**  
Wednesday 1 September 2010

In the matter between:

**SWARTLAND MUNICIPALITY**

**Applicant**

**and**

**HUGO WIEHAHN LOUW N.O  
CORNELIA JOHANNA ELIZABETH LOUW N.O  
IGNATIUS VILJOEN N.O  
IZAK BATHOLOMEAS VAN DER VYFER N.O  
ELSANA QUARRY (PTY) LTD  
MINISTER OF MINERALS AND ENERGY  
MINISTER OF LOCAL GOVERNMENTAL,  
ENVIRONMENT AND DEVELOPMENT  
PLANNING, WESTERN CAPE**

**First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
Fifth Respondent  
Sixth Respondent  
Seventh Respondent**

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**ORDER:**

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[1] There are two applications before me. The first is an application for leave to appeal to the Supreme Court of Appeal by First tot Sixth Respondents against the whole of my judgment as delivered on the 21<sup>st</sup> of December 2009, wherein I interdicting the Respondents from conducting mining activities. The second, is an application by the Applicant in terms of rule 49(11) of the

Uniform Rules of this Court for leave to execute in the event that leave to appeal is granted.

[2] The test for granting leave to appeal is well-known. An Applicant must show that there are reasonable prospects of success on appeal.

[3] In my judgment I held that the words "*any relevant law*" in section 23(6) and section 25(2)(d) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("the MPRDA"), include the Land Use planning Ordinance No. 15 of 1985 (Cape) ("LUPO"). It was also held that if it did not, the proper functioning of municipalities to achieve integrated, sustainable and equitable social and economic development in its area as a whole would be undermined.

[4] Having heard counsel for the respective parties and having read the papers filed of record, I cannot exclude the reasonable possibility that another court may come to a different interpretation in respect of section 23(6) and section 25(2)(d) of the MPRDA and that the words "*any relevant law*" does not include LUPO in the context of this case.

[5] It follows that the application for leave to appeal should succeed to the Supreme Court of Appeal as a result of the question of law.

[6] In respect of the second application, the Sixth Respondent abided by the decision of this Court and the First to Fifth Respondents opposed the application.

[7] It is trite that the Court to which an application for leave to execute is made, has a wide general discretion to grant or refuse leave. In the exercise of its discretion, the Court will have regard to the following factors:-

- 7.1 the potentiality of irreparable harm or prejudice being sustained by the Appellant if leave to execute were to be granted;
- 7.2 the potentiality of harm or prejudice being sustained by the Respondent on appeal if leave to execute were to be refused;
- 7.3 the prospects of success on appeal, including more particularly the question as to whether the appeal is frivolous or vexatious or has been noted not with the *bona fide* intention of seeking to reverse the judgment, but for some indirect purpose;
- 7.4 where there is the potentiality of irreparable harm or prejudice to both Appellant and Respondent, the balance of hardship or convenience, as the case may be.

[8] Having regard to the argument of counsel and weighing up all the relevant factors, I am of the view that the potential of irreparable harm and prejudice to the Applicant outweighs that of the Respondents. Moreover, the fact that the Respondents may commit a criminal offence in pursuing their mining activities is a factor that I cannot ignore. In lieu of the above, it is therefore just and equitable that the application for leave to execute should succeed.

[9] In the result, the following order is made:-

- a) Application for leave to appeal is granted to the Supreme Court of Appeal with costs to be costs in the appeal.
- b) Application for leave to execute in terms of rule 49(11) of the Uniform Rules of this Court, is granted with costs. Costs to include the costs occasioned by the employment of two counsel.



**LE GRANGE, J**