

GENERAL INFORMATION ABOUT THE CASE	
Case URL	http://www.saflii.org/za/cases/ZAGPPHC/2018/829.html
Name of Case	Baleni v Minister of Mineral Resources
Court name:	High Court of South Africa Gauteng Division, Pretoria
Type of court:	<input type="checkbox"/> Constitutional Court <input type="checkbox"/> Supreme Court of Appeal <input checked="" type="checkbox"/> High Court <input type="checkbox"/> Other
Issue:	Application of IPLRA and MPRDA
Justice(s)/Judge(s)	AC Basson J
Reference No:	2019 2 SA 453 (GP)
Filing No:	73768/2016
DESCRIPTION	
Facts:	<p>This case concerned an application by members of the Umgungundlovu community to oppose a mining right being granted to a company without the community's prior consent. The community sought a declaratory order to this effect.</p> <p>The community had lived in Umgungundlovu for decades and the land was central to their culture and way of life. They had rights in this land in terms of both living customary law (under which land accrues to persons by virtue of their membership of the community) and the Interim Protection of Informal Land Rights Act, 1996 (IPILRA). Land applications by outsiders were typically subjected to</p>

	<p>robust assessment by the community, requiring a degree of consensus higher than a simple majority before a decision was approved.</p> <p>A mining company, Transworld Energy and Mineral Resources (TEM), applied for a mining right and was granted a mineral right in this land. The right was granted without following the community's consultation and consent processes.</p> <p>The court considered whether the obligation to consult with affected parties when granting a mining right (contained in the Mineral and Petroleum Resources Development Act, 2002) applied to the exclusion of the requirement that full and informed consent be obtained before a community could be deprived of their land (contained in section 2(1) of the Interim Protection of Informal Land Rights Act, 1996).</p> <p>The court found that the requirements of consultation and consent were not mutually exclusive. In light of the purpose of each act and the fact that both acts were enacted to redress the economic and territorial dispossession and marginalization brought about by colonial and apartheid structures, the requirements of consultation and consent were found to operate alongside one another. The court thus found that the Minister of Mineral Resources and Energy was required to obtain the full and informed prior consent of the community according to the communities recognised processes before granting a mining right.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>The key question in this case was whether the obligation to consult with affected parties when granting a mining right (contained in the Mineral and Petroleum Resources Development Act, 2002) applied to the exclusion of the requirement that full and informed consent be obtained before a community could be deprived of their land (contained in section 2(1) of IPILRA).</p> <p>The court found that the grant of a mining right would constitute a deprivation in terms of IPILRA, as mining operations would interfere substantially with the community's agricultural activities and way of life.</p>

The court further found that the two acts must be read together, as per section 39 of the Constitution, which required legislation to be interpreted in a manner that upholds the spirit, purpose, and object of the Bill of Rights. Both acts served different aims: IPILRA aimed to protect those with insecure tenure due to a failure to recognise customary title; while MPRDA was concerned with promoting equitable access to the country's resources. The court found no reason they could not operate alongside each other.

Thus, it was found that the Minister was obliged to obtain full and informed consent from the community according to the customary processes of the community before granting any mining right.

REFERENCES	
Reference(s) to other court decision	<ul style="list-style-type: none">- Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another [2018] ZACC 41- Agri South Africa v Minister for Minerals and Energy [2013] ZACC 9- Bhe and Others v Khayelitsha Magistrate and Others [2004] ZACC 17- Alexkor Ltd and Another v Richtersveld Community and Others [2003] ZACC 18- Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others [2010] ZACC 26