

GENERAL INFORMATION ABOUT THE CASE	
Case URL	<a href="http://www.saflii.org/za/cases/ZACC/2018/41.html">http://www.saflii.org/za/cases/ZACC/2018/41.html</a>
Name of case:	<i>Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another.</i>
Court name:	Constitutional Court
Type of court:	<input checked="" type="checkbox"/> Constitutional Court <input type="checkbox"/> Supreme Court of Appeal <input type="checkbox"/> High Court <input type="checkbox"/> Other
Issue:	The right to mine cannot trump tenure security
Justice(s)/Judge(s)	Petse AJ  Zondo DCJ, Dlodlo AJ, Froneman J, Goliath AJ, Jafta J, Khampepe J, Madlanga J, Theron J
Reference No:	[2018] ZACC 41
Filing No:	CCT 265/17
DESCRIPTION	
Facts:	The applicants in this case were the representatives of 13 families from the Lesetlheng Community which is a part of Bakgatla-Ba-Kgafela, at the farm Wilgespruit, North West Province (the farm). The respondent was Itereleng Bakgatla Mineral Resources (Pty) Ltd (IBMR), a company registered by the Traditional Council of the Bakgatla-Ba-Kgafela Community. The respondent was granted a prospecting permit and later, a mining right over the farm. Two meetings were convened with members of Lesetlheng Community. At the last meeting, a resolution to enter into surface lease agreement with IBMR was taken.

	<p>Preparations to commerce with mining production were underway. However, these activities disturbed the applicants' possession of the farm. When a dispute arose, the respondents applied for an eviction order against the applicant.</p> <p>The High Court granted an order evicting the applicants. It also granted an interdict against the applicants preventing them from entering, remaining or conducting farming operations on the farm. The applicants sought leave to appeal against the decision of the High Court.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>Central to this inquiry was the question of whose rights trumped who's between the applicants' right to security of tenure and the respondents' rights to engage in economic activity. Answering this question depended on the correct interpretation of the Interim Protection of Informal Land Rights Act, 1996 (IPILRA) and the Mineral and Petroleum Resources Development Act (MPRDA). Both the right to land ownership and the right to mine are highly regarded as they are crucial to the human dignity of persons as well as the economic growth of the country as a whole. Section 39(2) of the Constitution which provides that a statutory provision should be interpreted in accordance with the spirit, purport and objects of the Bill of Rights was applied in the court's interpretation of the aforementioned legislation.</p> <p>The court found that having the right to mine does not nullify the occupants land right. The court held that the applicants' lawful occupation rested on their informal land rights as protected by the IPILRA. This right still existed notwithstanding the award of the mining right to the respondents.</p> <p>The court stated that the purpose of the IPILRA is to foster the protection of informal rights to and interests in land that were not adequately protected by the law as a result of apartheid laws. Therefore, provisions of IPILRA are to be interpreted benevolently in order to afford holders of informal rights to land the fullest possible protection in light of the purpose of the act.</p> <p>Third, during the interpretative exercise, the very reason for the existence of the IPILRA which is to redress past discriminatory laws is to be remembered at all times.</p> <p>In interpreting the MPRDA, the court found that the relationship between land owners and mining rights holders was meant to be such that the land owner does all that is possible to allow the mining rights holder to perform the tasks they need to, and that the mining rights holders act reasonably in carrying</p>



*Maledu v Itereleng Bakgatla Mineral Resources*

out their mining rights by consulting the land occupiers prior to making major decisions concerning them for instance. In conclusion, the court found that the MPRDA must be considered in consonance with IPILRA. This meant that the award of a mining right did not nullify occupational rights of land owners under IPILRA.



REFERENCES	
Reference(s) to Court Decision	<p>Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In Hyundai Motor Distributors (Pty) Limited v Smit N.O. [2000] ZACC 12; 2001 (1) SA 545 (CC); (10) BCLR 1079 (CC)</p> <p>Affordable Medicines Trust v Minister of Health [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC)</p>