

GENERAL INFORMATION ABOUT THE CASE	
Case URL	http://www.saflii.org/za/cases/ZACC/2010/26.html
Name of case:	Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others
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:	Nature of consultation with interested and affected parties and community land
Justice(s)/Judge(s)	Froneman J Ngcobo CJ, Moseneke DCJ, Brand AJ, Cameron J, Mogoeng J, Nkabinde J, Skweyiya J and Yacoob J
Reference No:	[2010] ZACC 26
Filing No:	CCT 39/10
DESCRIPTION	
Facts:	This case dealt with the administrative fairness of the allocation of prospecting rights to a third party in terms of the Mineral and Petroleum Resources Development Act (MPRDA) on land owned by a community. The land in question was owned by a community that had been previously deprived formal title to their land by the apartheid laws.

	<p>The first respondent (Genorah) was awarded prospecting rights on the community’s land. The community challenged the award of this right. The community argued that the respondent approached the tribal authority and not the affected community therefore award was defective because of irregularities in the required consultation process, additionally there was lack of compliance with environmental requirements and unfair administrative procedures.</p> <p>The Court held that the purpose of consultation with landowners, required by the Act, was to provide them with the information necessary to make an informed decision on how to respond to the application. As such, the Court concluded that the first respondents had not consulted with the community as required by MPRDA.</p>
<p>DECISION/JUDGMENT</p>	
<p>Decision/Judgment:</p>	<p>The Constitutional Court had to first deal with the question of whether the applicants had right to of appeal as it was challenged by the respondents. Secondly, and importantly, the court had to consider if the granting of prospecting was to be set aside.</p> <p>As such, the Court considered the nature of consultation that was required to take place and said that the level at which MPRDA required consultations indicates the seriousness of the process in light of the rights and interests of landowners and lawful occupiers. Furthermore, the process allows for arrangements to be made to accommodate the applicant from prospecting right and the landowner. The Court also considered the purpose of consultation as per common law and stated that although MPRDA does not require an agreement to be entered into, it is important that consultation should take place in good faith.</p> <p>Further, the Court held that the granting and execution of prospecting rights is a grave invasion of a property owner’s rights. The purpose of consultation with landowners, required by the Act, was to provide them with the information necessary to make an informed decision on how to respond to the application. The Constitutional Court, thus concluded that the respondent had not consulted with the community as required by the Act, that the DMR had not given the community a hearing or complied with the fairness requirements of Promotion of Administration of Justice Act (PAJA). The Court set aside the granting of the prospecting right.</p>



The Court further held that the applicants had right of appeal internally with Department. The Department's failure to deal with the appeal amounted to a conclusion of the internal appeal process.



REFERENCES	
Reference(s) to other court decision	