

Community consent is not needed for mining rights, says lawyer

By Zoë Postman

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The Department of Mineral Resources (DMR) failed to make a distinction between "legal deprivation and physical deprivation", the Pretoria High Court heard.



Photo: Zoë Postman

Advocate Tembeka Ngcukaitobi, representing the Amadiba Crisis Committee (ACC), was arguing that the consent of a community is needed before the department can grant mining rights to a company.

The ACC has long battled to prevent Transworld Energy and Mineral Resources (TEM) from getting rights to mine titanium in Xolobeni, a village in Umgungundlovu on the Wild Coast. TEM is a subsidiary of Australian mining company MRC.

DMR lawyer Vincent Maleka argued on Monday that the award of a mining right cannot qualify as deprivation because the community would not experience any harm or loss. He said Ngcukaitobi could not argue that the community would be deprived just because mining rights were awarded.



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"Consent may come into play at a later stage, once the mining right has been awarded and the implementation phase begins, but consent is not required to grant mining rights," Maleka had told the court.

But Ngcukaitobi said the award of a mining right constituted legal deprivation because the rights of indigenous people to the land were taken away.

“When the trucks actually come into the area and the implementation begins, that will be an extension of the legal deprivation into physical deprivation,” said Ngcukaitobi.

Ngcukaitobi said Maleka’s argument suggested that the community should wait for the mining trucks to come into the area, “then they must rush off to court and prevent the trucks from coming in because now [the mining company] needs their consent”.

Ngcukaitobi said if the company already has mining rights, it is entitled to come on to the land. This is why, he said, the legal conditions should be decided before the mining trucks are allowed to enter.

Ngcukaitobi also said that granting mining rights before the legal conditions are decided would create “conditions of conflict”. He said the community would defend their land when the excavation trucks from the mining company arrived.

“They will not wait for the actual deprivation to take place, which according to the state is the physical displacement,” said Ngcukaitobi.

Although the case was scheduled to continue till Wednesday last week, by Tuesday afternoon both sides had concluded their arguments. The court adjourned and Judge Annali Basson said she would consult widely and take her time in making the judgment because it was an important case.

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