

Proposed coal mine in Mpumalanga grasslands back in court

By [John Yeld](#)

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Uthaka Energy persists with plans for a colliery in Mabola Protected Environment despite six court judgments.



Mabola Protected Area in the Mpumalanga grasslands is under threat of coal mining. Archive photo: supplied

- Uthaka Energy is back in court seeking to mine coal in the heart of the Mabola Protected Environment near Wakkerstroom in Mpumalanga.
- The latest legal round focuses on government's controversial decision to deproclaim parts of the Mabola Protected Environment.
- A coalition opposing the mine argues the decision was "inexplicable" and the MEC was biased in favour of mining.

Judgment has been reserved in the latest battle in a decade-long legal war to prevent a large underground coal mine from being established in the heart of the Mabola Protected Environment near Wakkerstroom in Mpumalanga.

This 8,772-hectare protected area was formally proclaimed in January 2014 because of its ecological sensitivity as a high-yielding, strategic water catchment area within a threatened grassland ecosystem.

The proposed Yzermyn coal mine lies within the Enkangala-Drakensberg Strategic Water Source Area, one of only 21 such areas in the country, described by the national water department as “strategic national assets that are vital for water security, and need to be acknowledged as such at the highest level across all sectors”.

Both the protected environment and also the water source area were established before Yzermyn mining rights were awarded to then Atha-Africa Ventures, now Uthaka Energy, a spin-off company of India-based mining and minerals corporation Atha Group.

A coalition of eight civic, faith and environmental organisations is opposing the mine.

There have already been six [court judgments](#) or decisions, including two by the Constitutional Court, that have blocked efforts by Uthaka to obtain all the required authorisations for its proposed mine. Another half-dozen legal challenges to other aspects of the mine are yet to be adjudicated by the courts.

Currently, the coalition is waiting to hear the outcome of its latest challenge: a review application in the Mpumalanga High Court in Mbombela, relating to what it describes as the government’s “apparent attempt to circumvent those [earlier court] judgments and the Protected Areas Act itself” through a deproclamation of four properties in the Mabola Protected Environment owned by Uthaka.

If this decision stands, the deproclamation will help the mining company clear one of the biggest hurdles in its path to start mining.



Court overturns state's approval of controversial coal mine

John Yeld 9 Nov 2018



Legal battles

Under the Protected Areas Act, no commercial mining is permitted in proclaimed protected areas without the joint approval of the national environment minister and the national mining minister.

In 2016, the then ministers of these two portfolios, Edna Molewa and Mosebenzi Zwane respectively, tried to quietly slip through approval for the Yzermyn project.

But the coalition challenged this, and in November 2018 the Pretoria [High Court set aside](#) the ministers’ decision and awarded punitive costs against them. Two months later, this court also refused Uthaka permission to appeal the judgment.

In April 2019, the Supreme Court of Appeal (SCA) refused to consider an appeal by Uthaka, finding that there was no prospect of the 2018 judgment being overturned. In July 2019, SCA Judge President Mandisa Maya dismissed Uthaka’s application to reconsider the SCA’s decision.

In November 2019, Uthaka tried to persuade the Constitutional Court to grant it leave to appeal Judge President Maya’s decision, but that application was dismissed with costs.

The Mpumalanga provincial government was drawn into the fray by MEC for Agriculture, Rural Development, Land and

Environmental Affairs Vusi Shongwe, who flip-flopped several times before in January 2021, finally [revoking](#) the protected area status of the properties within the Mabola Protected Environment owned by Uthaka.

This effectively nullified the requirement for joint national ministerial permission for any mining there, and Uthaka soon gave notice of its intention to start construction of Yzermyn, a requirement stipulated in an earlier court ruling.

In response, the coalition brought an urgent interdict application in the Pretoria High Court, asking for the court to block any mining until all the other legal challenges had been adjudicated.

This application was successful. In March 2021, Uthaka was interdicted from mining coal in the Mabola area until all the coalition's legal challenges had been settled.

The would-be mining company again tried to engage the Constitutional Court with an application for leave to appeal this interdict order, but on 4 November 2021 the court again dismissed its application.



Court drama as state tries to force through coal mining plan

John Yeld 17 Oct 2018



Latest challenge

In April, the coalition brought a review application in the Mbombela High Court, challenging Shongwe's decision to revoke the protected status of Uthaka's properties within the boundaries of the Mabola Protected Environment.

The coalition called the MEC's decision "inexplicable" and stated: "The mine is set to cause irreversible damage to the sensitive and critically important aquatic environment."

It argued that Shongwe's decision was unlawful, biased and "erodes protection for an area that is ecologically sensitive and economically important as a strategic water source area for South Africa as a whole".

"The decision disregards the reasons why this Protected Environment was declared ... [It] undermines South Africa's existing protected area network, and makes a mockery of South Africa's dedicated efforts at protected area expansion."

In an answering affidavit, signed for Uthaka Energy, the second respondent and the only one of seven respondents to file an affidavit, company representative [Praveer Tripathi](#) described the coalition as "opaque and unclear".

"Although they purport to act on behalf of the community at large, they certainly don't speak on behalf of the local inhabitants in the proposed mining area, or its closest municipality ... in fact the Sixth Respondent [The Voice Community Representative Council, which initially indicated it would oppose the application but then did not file an affidavit] represents 9,000 inhabitants of the Pixley Ka Seme Local Municipality in the immediate vicinity of the mine, which community opposes the application and the relief sought, and is clamouring for jobs and for the mine to be open, as they are completely impoverished and have no prospects of finding work."

Tripathi argued that the coalition members were all part of a "Green Lobby" which he described as "an advocacy group which seeks to achieve one outcome only, namely the eradication of coal mining in totality, not only in South Africa, but worldwide".

The matter was argued on 16 April and judgment was reserved.

- The coalition consists of eight organisations: the [Mining and Environmental Justice Communities Network of South](#)

[Africa](#), [groundWork](#), [Earthlife Africa Johannesburg](#), [BirdLife South Africa](#), the [Endangered Wildlife Trust](#), the [Federation for a Sustainable Environment](#), the [Association for Water and Rural Development \(AWARD\)](#) and the [Bench Marks Foundation](#).

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