BALENI and 128 Others v. Department of Mineral Resources and 6 Others

Case No: 73768/2016
Case Update

- Ngomhla we 23 April ukuya kwi 25 April 2018, amagqwetha amele abantu base Mgungundlovu bayakuba besenkundleni ukuya kukhusela ilungelo lokuthatha isigqibo ngemayini ezakwenzeka kumhlaba wabo.
- Sekuyiminyaka emininzi, isicelo sokumayina senziwa kule ndawo, kodwa ngo 2015, inkampani yemayini yase Australian, Transworld Energy and Mineral Resources (" TEM ") yafaka impepha mvume kwisebe Department of Mineral Resources (" DMR ") yokumayina kunxweme Wild Coast phantsi kwe Xholobeni Mineral Sands Project. Abamangali kweli tyala zintsapho ekudala zihlala nekudala zisebenzisa umhlaba apho TEM izakwenze khona imayini, nalapho izilwanyana zendawo zitya khona, abantu bayafuya balobe bephila kwaye bexhomekeke kumhlaba namanzi walo ndawo. Kananjalo, urhulumente no TEM abathethananga ngokuvanayo nabantu bendawo malunga nesicelo sokumayina futhi abakumamelanga okuthethwa ngabamangali xa besithi makungamayinwa kula mhlaba. Isicelo sokumayina senze kwabanzima kubantu bendawo ukukhangela ezinye indlela zophuhliso lwendawo, oku kubangele iyantlukwano nobundlobongela kwindawo leyo. Ngo June 2017, iDepartment of Mineral Resources yagqiba kwelokuba irhoxise isicelo semayini kangange nyanga eziyi 18- kodwa oku kurhoxiswa kwethutyana akuzanga nesisombululo kwingxaki ezibangelwe sisicelo sokumayina.

- Abamangali baqhankqalaza bechasa imayini befuna urhulumente anike ingqwalasela kwisicelo soluntu ngezimvo zabo ngophuhliso lwendawo, befuna ukunikeza ngokukhululekileyo imvume phambi kokuba imayini yenzeke ngabakwa TEM kwindawo yabo. Ukusukela kunyaka ka 2008, Amadiba Crisi Committee isebenzisene nombutho wamagqwetha iLRC ukukhusela ilungelo lomhlaba.

- Ekuqaleni, LRC yafaka isibheno kwi Department of Mineral Resources iphikisa isicelo sokumayina emva koko yanyanzeleka imangalele inqanda izoyikiso nokugrogriswa kwabantu abachasene nemayini. Okwenzekileyo okuzizimangalo kweli dabi lemayini, kusekubeni kuvunyelwe kuhlonitshwe ilungelo labantu ukuba ngaba bayayifuna na imayini ibe luphuhliso lwendawo yabo kusini na.

- Kwinkundla zomthetho, amagqwetha ayakube exoxa ukukhuselwa ngokusemthethweni kweli lungelo lingentla kuvelelwa iinkalo ezimbini: Ukuba ingaba okuqulathwe ngumthetho osisigxina oyi Interim Protection of Informal Land Rights Act (IPILRA) nomthetho Mineral and Petroleum Resources Development Act (MPRDA) uthini na malunga nemayini kula ndawo. Le mithetho yaphunyezwa ukulwa ucalulo nokubuyiselwa

komhlaba nobutyebi obukulo ndawo nokubangela ukungahlonitshwa kwelungelo lomhlaba phantsi korhulumente wengcinezelo nowobukoloniyali. IPILRA ikhusela ngokomthetho ulawulo lweenkundla zasemakhaya, ngolawulo lo mhlaba lubambisene noluntu lwendawo, nokuba abangabo abanikazi bomhlaba abasemthethweni, ngoko mthetho oyi common law. IPILRA ikhusela uluntu lwasemakhaya, ilungelo lokwaziswa ngophuhliso oluziswa kwindawo yabo olungachaphazela ukusetyenziswa komhlaba, ngokwendlela abanxulumana ngayo nomhlaba kwaye kuba bengamaxhoba wohlukunyezo ngurhulumente neenkampani zabucala xa bathe banyhasha ilungelo lomhlaba.

- Phantsi kwale mithetho, TEM mayithethane neenkokheli zasemakhaya ifumane imvume yokumayina kuluntu olo. Inye indlela urhulumente anokunikeza ngayo imvume yokumayina, ngaphandle kwemvume yoluntu imayini ayenzeki ngaphandle kwendlela eyahlukileyo enikeza imbuyekezo yomhlaba. Ngendlela ephikisayo, urhulumente nenkampani TEM iphikisa ithi ayingomthetho ukuba uluntu lwase Mgungudnlovu ibe lulo olunika imvume yemayini ngoba umthetho olawula izimbiwa nobutyebi obuphantsi komhlaba ziphantsi kolawulo luka Rhulumente, ukuvumela imayini yenzeke nokuba umnini mhlaba uyala. Kodwa, abameli babamangali, bazakucacisa oku xa bexoxa kwinkundla zamatyala ukuba ithini na indlela emayisetyenziswe ukusombululo le ngxubakaxaka phantsi kwemithetho yolawulo lwasemakhaya nokulawulwa kwemihlaba zinkundla zasemakhaya, futhi MPRDA ayikuniki ngqwalasela ukulawulwa kwemihlaba luluntu lulonke kusetyenziswa iinkundla zasemakhaya. Xa urhulumente evumela imayini phantsi kolawulo lwenkundla zasemakhaya phantsi komthetho wethutyana IPILRA phantsi ko section 2 (1) awujongeli phantsi ulawulo loluntu lwalondawo nolufuna isigqibo sokumayina sithatyathwe luluntu lulonke, ukongeza kukhuseleko phantsi ko Sections 10 & 22 womthetho MPRDA, ofuna kwaziswe abantu bendawo ukuvumela imayini yenzeke kulo ndawo. Ezi ziziqinisekiso zokuba ilungelo lenkcubeko, elo mhlaba, elezempilo nokhuselo lwendalo nokusingqongileyo akunyhashwa phantsi komgaqo siseko welizwe.

- Okungamandla, uluntu lunelungelo lokuyala imayini nanjengoko oku kukhuselwa nangu mthetho wezamazwe okhusela abanini bomhlaba. Phantsi komthetho wehlabathi, uMzantsi Afrika mawulandele umthetho wolawulo lwasemakhaya okhusela abanini bendawo yase Mgungundlovu, banikeze ngokukhululekileyo ilungelo lokwazi, nokwaziswa ngophuhliso kwindawo yabo phambi kokuba urhulumente anikeze ilungelo lokumayina kwinkampani leyo. Oku kuthetha ukuba, emva kokuba uluntu lwazisiwe ngophuhliso olo ngaphandle konxinzelelo, uluntu lungazikhethela ukuba luyalufuna na uphuhliso okanye alulufuni. Isigqibo senziwa ngabantu phantsi kolawulo loluntu kwinkundla zasemakhaya, isigqibo siquka ilungelo lokuthi hayi.

- Uluntu lwaseMgungundlovu seluneminyaka emininzi luhlala kula mhlaba, kwaye isizukulwana esizayo sizakuxhomekeka kula mhlaba ngokuphila lusenza amasiko nezithethe zawo. Abantu bajongene, nokususwa

yimayini kwindawo leyo bahlala kuyo, nto leyo ezakubanyanzelisa ukuba bafudukele apho kuzakufuneka baqale ubomi obutsha, neendlela zokuphila ezintsha nto leyo enokubahlula phakathi abantu. Ukukhusela ulawulo lwasemakhaya, igqwetha lizakucela inkundla ephakamileyo ukuba iqwalasele oku kulandelayo. Okukuqala, inkundla yomthetho mayivumele ilungelo loluntu ukuvuma okanye ukwala uphuhliso phantsi komthetho IPILRA phambi kokuba inkampani TEM imayine kulo ndawo. Okwesibini, inkundla mayinike isindululo sokuba phantsi kolawulo loluntu nolukwi nkundla zasemakhaya, isiqgibo sithathwe ngokuvumelana noluntu, kwaye imbuyekezo mayibekwe kuqala yaziwe ngabantu phambi kokuba inkampani ifumane imvume yokumayina. Ngaphandle kweziziqinisekiso zikhusela uluntu, umthetho MPRDA uyakube unyhasha umgaqo siseko welizwe kwaye uchasene nomthetho wehlabathi.

Xa ufuna ukwazi banzi ngeli tyala, tsalela inombolo,okanye

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