



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: 5676/2024

In the matter between:

**THE GREEN CONNECTION NPC
NATURAL JUSTICE**

**First Applicant
Second Applicant**

and

**MINISTER OF FORESTRY, FISHERIES
AND THE ENVIRONMENT**

First Respondent

**MINISTER OF MINERAL RESOURCES
AND ENERGY**

Second Respondent

**DIRECTOR GENERAL: DEPARTMENT OF
MINERAL RESOURCES AND ENERGY**

Third Respondent

**TOTAL ENERGIES EP SOUTH AFRICA
BLOCK 567 (PTY) LTD**

Fourth Respondent

SHELL EXPLORATION & PRODUCTION

SOUTH AFRICA B.V.

Fifth Respondent

Neutral citation: The Green Connection NPC & Natural Justice v Minister of Forestry, Fisheries and the Environment, Minister of Mineral Resources and Energy, Director General: Department of Mineral Resources and Energy, Total Energies EP South Africa Block 567 (Pty) Ltd & Shell Exploration & Production South Africa B.V.

Coram: MANGCU-LOCKWOOD J

Heard: 16 October 2025

Delivered: 12 November 2025

ORDER

In the circumstances, the following order is granted:

- a. The applications for leave to appeal are granted in relation to the third and fourth grounds of review.
- b. Costs of this application are to be costs in the appeal.

JUDGMENT: LEAVE TO APPEAL

MANGCU-LOCKWOOD, J

[1] The fifth respondent (Shell) and the state respondents¹ have applied for leave to appeal against the judgment and order of this Court dated 13 August 2025 ('the Judgment') on the basis that an appeal would have reasonable prospects of success and that there are compelling reasons why an appeal should be heard, as contemplated in s 17(1) of the Superior Courts Act 10 of 2013. In the Judgment the Court found in favour of the applicants - the Green Connection and Natural Justice - in respect of the first to fifth grounds of review raised by them ('the five grounds') and reviewed and set aside the decisions of the third respondent and the first respondent, with ancillary relief.²

[2] In *Ramakatsa*,³ the Supreme Court of Appeal (SCA) explained the principles governing a decision whether to grant leave to appeal as follows:

'... leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco*, concerning the provisions of s 17(1)(a)(ii) of the [Superior Courts Act] pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason

¹ While the Minister of Forestry, Fisheries & The Environment delivered a notice to abide, their counsel confirmed their appearance on his behalf and his persistence with this application.

² The relevant order granted was as follows:

"...(3) The decision taken by the third respondent on 17 April 2023 to grant an environmental authorization to the fourth respondent ("*Total*") to conduct exploratory operations in Block 5/6/7 is reviewed and set aside.

(4) The decision taken by the first respondent on 24 September 2023 dismissing the appeal of the first and second applicants is reviewed and set aside.

(5) The decision of granting an environmental authorization to Total is remitted to the third respondent for reconsideration, which process must provide for the following:

5.1 Total must be afforded opportunity to submit new or amended assessments, as the case may be, to cure the deficiencies identified in the first to fifth grounds of review of this judgment.

5.2 Public participation must be conducted in regard to the new and/or amended assessments submitted by Total, before decision is made by the third respondent".

³ *Ramakatsa v ANC & Another* [2021] ZASCA 31 para 10.

[Superior Courts Act] pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that ‘but here too the merits remain vitally important and are often decisive’. I am mindful of the decisions at high court level debating whether the use of the word ‘would’ as opposed to ‘could’ possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.’

[3] The applications for leave to appeal seek, in essence, to challenge the Court’s finding regarding all five grounds in the main application, and to rehash the respondents’ opposition in the main application regarding those grounds. For the sake of brevity, the arguments are not repeated here, since the issues are all extensively dealt with in the Judgment.

[4] Having regard to the applications, I am of the view that there are reasonable prospects of success as well as compelling reasons for an appeal to be entertained in respect of the third and fourth grounds of review, in the respects set out below.

[5] Regarding the third ground of review⁴, there is reasonable prospect that an appeal court may disagree as regards this Court’s finding that exploration and production activities are intertwined such that the final EIR’s assessment of need and

⁴ The third ground of review was that the Final EIR failed to assess, and the state respondents failed properly to consider, the need and desirability of the proposed project because no consideration was given to the climate change impacts which will be caused by burning any gas discovered by the proposed project.

activities. This ground raises a question of law regarding the extent of the inter-relatedness between exploration and production activities, and what is required in an assessment at exploration stage.

[6] As regards the fourth ground of review⁵ the effect of the Judgment's interpretation of NEMA in light of sections 232 and 233 of the Constitution is to place an obligation upon the Final EIR to assess transboundary impacts which may be caused by the proposed project. This raises important questions of law relating to applicability of international law instruments that are not expressly part of domestic law, and issues of separation of powers.

[7] As regards the remainder of the grounds for leave to appeal, I am not satisfied that they meet the requirements of section 17(1) for the grant of leave to appeal. That being the case, the order granted at paragraphs 3 to 5 of the Judgment is not affected. Nevertheless, insofar as the issues mentioned at paragraphs 5 and 6 above raise questions of law, they raise issues of public importance that will have an effect on future disputes, deserving of consideration on appeal.

[8] In the circumstances, the following order is granted:

- a. The applications for leave to appeal are granted in relation to the third and fourth grounds of review.
- b. Costs of this application are to be costs in the appeal.

⁵ The fourth ground is that the Final EIR failed to assess, and the state respondents failed to consider, the transboundary impacts of the proposed project, both on Namibia and on international waters.



N. MANGCU-LOCKWOOD
Judge of the High Court

Appearances

For the applicants	:	I. Jamie SC I. Learmonth J. Blomkamp
Instructed by	:	Mr. L. Seema, Cullinan & Associates
For the first, second and third respondents	:	G.L. Grobler SC L. Gumbi
Instructed by	:	S. Mathebula, State Attorney
Counsel for the fourth respondent	:	C. Loxton SC J.L. Gildenhuys SC T. Sarkas
Instructed by	:	A. Vos, Norton Rose Fulbright
Counsel for sixth respondent (joinder)	:	C. Loxton SC J.L. Gildenhuys SC