

Judicial Interpretation and Climate Governance: A Review of the South African Highveld Case

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Introduction: Judicial Interpretation and Climate Governance

Climate change is one of the most pressing global challenges of the 21st century. It is not only an environmental issue but also a human rights concern that impacts the fulfilment of internationally protected human rights (Humphreys, 2009), including the right to life, food, health, and housing (International Covenant on Economic, Social and Cultural Rights, 1966; Universal Declaration of Human Rights, 1948). This is because increased mortality from heatwaves, floods, and storms leads to loss of life, food insecurity, malnutrition, and adverse health issues (United Nations, 2015). Worker and Palmer argue that climate change is also a social crisis that highlights global inequalities, where countries that have emitted less severely suffer the consequences (Worker and Palmer, 2021) due to fossil fuel consumption patterns in wealthier and rapidly developing economies (Mapp and Gattenio, 2019). Africa has been identified as one of the regions most prone to risks from the effects of climate change, mainly due to rising temperatures, floods, droughts, and limited adaptation capacity (African Climate Policy Centre, 2013; Serdeczny et al., 2016; World

Meteorological Organisation, 2024). The socioeconomic challenges that many African nations face, including poverty, insufficient infrastructure, and political instability, compound these vulnerabilities (Outreach International, 2023). While everyone is affected by climate change, the most vulnerable groups are likely to suffer and bear the consequences of climate change depriving them from achieving their basic living conditions (Ahsan, 2016; Humphreys, 2009; Ngcamu, 2023). It is projected that by 2030, approximately 118 million individuals in Africa surviving on less than \$1.90 a day will be increasingly affected by the impacts of climate change (World Meteorological Organisation, 2024).

Climate Change, Air Pollution, and Environmental Governance in South Africa

South Africa, located in Southern Africa, is one of the most diverse economies on the African continent, with a population of 64.7 million people (World Population Review, 2025). The country has a gross domestic product of US\$400.3 billion (World Bank Group, 2025). However, the country's economy has faced prolonged low growth due to several challenges,

including infrastructure deficit, a weak business environment, unemployment, and poverty, which have hindered economic growth (Tregenna et al., 2021). Adding to these challenges, South Africa has been facing a climate crisis. According to the Notre Dame Global Adaptation Initiative's country index, which assesses a nation's vulnerability to climate change and its readiness to improve resilience, South Africa is ranked 94 out of 187 countries, indicating a significant climate threat (University of Notre Dame, 2025). This is due to mean annual temperatures, which have increased by twice the global average (0.7°C), and changes in rainfall patterns, which have occurred with increased intensity and variability (Igamba, 2023). The changes in weather patterns have led to an upsurge in natural disasters such as severe droughts and floods over the past years in South Africa (Meza et al., 2021; Tlou and Mollin, 2025). These disasters have increased citizens' susceptibility to waterborne diseases, malnutrition due to drought, and increased exposure to air pollution, which causes respiratory diseases (Wright et al., 2021). Additionally, the droughts and floods have impacted the agricultural sector, which is a key sector for economic growth, and have significant implications for food security and job creation (Moore, 2021).

While the climate change crisis in South Africa has affected the whole community and different sectors, it is noteworthy to note that South Africa is widely recognized as the most unequal country in the world, and this is influenced by factors such as race, gender, class, and socioeconomic status (Deghaye and McKenzie, 2012; Francis and Webster, 2019; Khine and Langkulsen, 2023). According to Khine and Langkulsen, this inequality forces vulnerable communities, such as women, children, disabled individuals, and the elderly, to reside in areas that are more susceptible to climate hazards, which increases their exposure to risks such as flooding (Khine and Langkulsen,

2023). Due to socioeconomic inequality and lack of savings, they cannot effectively adapt to the climate crisis (Khine and Langkulsen, 2023; PreventionWeb, 2023). Smallholder farmers who are dependent on agriculture for their livelihood and income are severely affected by the droughts and floods (Jacobs and Msulwa, 2019; Meza et al., 2021; Mpandeli, Nesamvuni, and Maponya, 2015). Therefore, the climate crisis exacerbates existing inequalities and presents significant challenges to their daily lives.

Due to the factors mentioned above, the role of the judiciary in regulating and preventing the impact of climate change on marginalized communities becomes imperative. This review article examines the recent case of *Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others* (2025) and the judiciary's interpretation of the executive's powers in ensuring that everyone has the right to a healthy environment. The article in the upcoming session will explore the constitutional mandates, followed by a detailed analysis of arguments and legal principles involved in the case to shed light on the *ratio decidendi* of the Supreme Court of Appeal (SCA) and its significance for future cases regarding the right to an environment not harmful to people's health.

Constitutional Framework and Right to Safe Environment: A South African Context

In 1996, South Africa adopted the Constitution of South Africa. (herein referred to as the Constitution). The Constitution is considered an outstanding achievement and one of the most progressive Constitutions in the world (Dube, 2020; Klug, 2010). The Bill of Rights in South Africa's Constitution is a fundamental pillar of democracy, which guarantees fundamental rights and reaffirms the values of human dignity, equality, and freedom (Chapter 2 of the Constitution of the

Republic of South Africa, 1996). The state is obligated to respect, protect, promote, and fulfil these rights under Section 7 (2) Constitution of the Republic of South Africa, 1996.

While the Constitution does not explicitly state the doctrine of separation of powers, it clearly outlines the roles of the legislative, executive, and judiciary in Chapters 4–8 (Mojapelo, 2013). In South Africa, Parliament consists of the National Assembly and the National Council of Provinces. The National Assembly represents the people's interests by electing the President, facilitating public discussions, passing legislation, and ensuring executive accountability (Section 42 [3] of the Constitution of the Republic of South Africa, 1996). It is crucial for the National Assembly to establish mechanisms that ensure accountability of all executive organs in the national government, particularly regarding the implementation of legislation and oversight of state organs (Section 55 [2] of the Constitution of the Republic of South Africa, 1996). Section 85 of the Constitution vests the executive power of the Republic in the President, who, together with the Cabinet, exercises this power by enforcing national law, developing and implementing national policy, and coordinating the actions of the government departments and administrations (Constitution of the Republic of South Africa, 1996). Section 165 confers powers to the judicial authority in the court to act independently and make binding decisions (Constitution of the Republic of South Africa, 1996). Each organ of the State is accorded with the duty to protect the interests and fundamental rights for the benefit of all citizens. O'Regan argues that this fundamental component of the separation of powers reinforces the role of the legislature in monitoring executive action and holding the executive accountable for failing to fulfil its constitutional duties (O'Regan, 2017). However, there have been instances wherein the Executive has raised several questions on their "duty to regulate." In the case between the *Minister of Environmental*

Affairs v Trustees for the time being of Groundwork and Others, 2025, the main issue was whether the executive had the duty to prescribe regulations to reduce air pollution in the Highveld Plan Area (HPA).

The right to a clean, healthy, and sustainable environment is a fundamental human right (United Nations, 2021; 48/13; United Nations, 2022; A/RES/76/300). To prevent pollution and ecological deterioration, the Environmental Management Air Quality Act of 2004 was enacted to manage air quality in South Africa. The Act promotes sustainable development and establishes national standards for air quality monitoring and management at all governmental levels. (Air Quality Act, 2004). Chapter 4, Part 1 of the Air Quality Act allows the Minister or MEC in charge of air quality management to declare an area a priority zone in the Gazette if air quality standards exceed the national standards (Air Quality Act, 2004). After declaring an area as a high-priority area, the Minister or MEC may create rules to implement and enforce air quality management plans in priority areas (Section 20 of the Air Quality Act, 2004) in accordance with the Constitution, which guarantees everyone the right to an environment that is not harmful to their health or wellbeing (Section 24 [a] of the Constitution of the Republic of South Africa, 1996).

Factual Matrix of Minister of Environmental Affairs v Trustees for the Time Being of Groundwork and Others, 2025 Case

In 2007, the Minister of Environmental Affairs designated an area of 31,106 square kilometres in Mpumalanga and Gauteng, which is home to Eskom's coal-fired power stations and Sasol's refinery, as a High Priority Area under the Air Quality Act. This High Priority Area came within the purview of the HPA Air

Quality Management as categorized by the Air Quality Act. This decision was made in response to public concerns about pollution from coal mines (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). However, after 12 years of stagnant progress on air pollution solutions in the Highveld Plan, GroundWork, a nonprofit environmental organization, filed an application in the Gauteng High Court in 2019. The application was based on two points: (i) the high air pollution levels violated the residents right to a healthy environment (Section 24 [a] of the Constitution), and (ii) the Minister's failure to prescribe regulations to reduce air pollution, in accordance with section 20 of the Air Quality Act significantly affected vulnerable groups, particularly low-income populations including women, youth, children, and individuals with disabilities (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). It was pointed out that the aforementioned vulnerable groups lived in poorly insulated informal settlements, which exposed them to high pollution levels, leading to chronic respiratory diseases and, in some cases, premature death (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025).

The Minister argued that there was no legal duty to develop regulations for the HPA, as this would amount to a waste of state resources. Furthermore, the Minister stated that there was no causal connection between the health issues of the inhabitants and air pollution as prescribed for the HPA (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). The dispute was heard in the Gauteng High Court, which held that the Minister's unreasonable delay in prescribing regulations in the HPA breached the residents constitutional right to a healthy environment. As a result, the court ordered the Minister to immediately create regulations within 12 months and

develop a strategic plan to reduce air pollution in the HPA in accordance with the Air Quality Act (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). Aggrieved with the High Court's orders, the Minister sought leave to appeal to the SCA.

Judicial Reasoning of the Supreme Court of Appeal Judgement

Legal nuances of the word “may”— judicial interpretations

The main issue before the SCA was whether the Minister of Environmental Affairs was obliged to prescribe regulations to ensure the HPA met the air quality standards (Section 20 Air Quality Act). The Minister argued that although the right to a healthy environment is protected by the Constitution, the wording in section 20 of the Air Quality Act, which reads, “The Minister or MEC may prescribe regulations necessary for implementing and enforcing approved priority area air quality management plans,” gives the Minister a choice or option rather than imposing a duty to do so. However, the respondents contended that the Minister was legally required to implement reasonable legislative measures and establish regulations to lower air pollution in the HPA under section 20 of the Air Quality Act. To resolve the ambiguities of the term “may,” the SCA cited the *Cool Ideas 1186 CC v. Hubbard and Another*, which stated that statutes should be interpreted in accordance with their ordinary grammatical meaning. In this case, the Constitutional Court emphasized the significance of ensuring that interpretation is purposeful and correctly contextualized in conformity with the Constitution (*Cool Ideas 1186 CC v Hubbard and Another*, 2014; CCT 99/13). Furthermore, the SCA referred to *Schwartz v Schwartz*, which held that the word “may” in statutes does not imply that the legislature intended to grant the decision-maker discretion. Rather, when interpreting a statute, one must consider its overall goal and

scope. A statute with permissive language mandates that the power be used by the relevant authorities (*Schwartz v Schwartz*, 1984). In *Motala v Master of the North* Gauteng High Court, the court explained that the word “may” in statutes can imply not only a choice to act but also a duty to act under certain conditions (*Motala v Master of the North Gauteng High Court*, 2019). The case of *Saidi and Others v Minister of Home Affairs and Others* established that the word “may” implies a mandatory legal obligation. The court highlighted that this approach ensures that fundamental rights are better protected (*Saidi and Others v Minister of Home Affairs and Others*, 2018). Therefore, although the Air Quality Act uses the term “may,” the SCA ruled that in this instance, the word “may” should be interpreted as “must” to effectively reduce air pollution and protect people’s rights to a healthy environment. After designating the HPA as a high-priority area, the Minister was required to prescribe regulations within a reasonable time and ensure that the air quality met the national standards.

Air quality act and the constitutional right to a healthy environment

After assessing the judicial interpretations of the word “may,” the SCA assessed the constitutional right to a healthy environment alongside the Air Quality Act’s purpose of regulating air quality to prevent pollution and ecological degradation and giving effect to section 24(b) of the Constitution (Sections 2 and 3 of the Air Quality Act, 2004). The court stressed the need to read Section 24 of the Constitution in its entirety when interpreting the Air Quality Act (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). The interpretation relied on the intertwined impact of part (a) and part (b) of section 24. While part (a) gives everyone the right to an environment that does not endanger citizens’ health, part (b) states that this right includes protecting the environment for the benefit of current and future generations. This protection is

to be attained by appropriate legislative and other measures that, among other things, prevent pollution and ecological deterioration (Section 24 of the Constitution of the Republic of South Africa, 1996). The SCA also denoted the significance of three Constitutional provisions, namely, section 7 (2), which mandates the state to uphold, safeguard, promote, and fulfil the rights in the Bill of Rights; section 39 (2), which requires courts to uphold the spirit and intent of the Bill of Rights in their interpretations; and section 233, which emphasizes that courts should favor interpretations of legislation consistent with international law (Constitution of the Republic of South Africa, 1996). These provisions serve as a cornerstone of constitutional interpretation in South Africa, reinforcing the country’s commitments to human rights. They impose a positive duty on the state to act and give effect to constitutional rights, ensuring that court interpretations align with international standards. Moreover, effective air quality governance requires continuous monitoring and systematic reviews of air quality standards (UNEP, 2021).

The necessity to prescribe regulations in the Highveld Plan Area

The third interpretation by the Court related to the element of “necessity” and the obligation of the Minister. The term “necessity” was defined as a sense of urgency or obligation, emphasizing actions or conditions that are essential and cannot be overlooked or avoided in the *Minister of Finance v Afribusiness*, 2022. The enquiry into necessity should be based on an objective legal standard, where the court assesses the facts, evidence, and reasonableness instead of subjective beliefs (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). This is because the word “necessary” reflects a fundamental requirement that, if ignored it can lead to significant consequences or challenges. The SCA noted that despite the Minister’s declaration of the HPA as a priority area, no rules were

established to guarantee that the air pollution met the acceptable national standard. This led to major polluters not being held responsible for the region's excessive air pollution. As a result, the HPA's residents experienced poor health and well-being due to consistently high pollution levels (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). Consequently, the residents, especially vulnerable groups, suffered through no fault of their own, and some lost their lives. Given that high levels of pollution persisted for years without any action taken and violated the residents' right to a healthy environment, it was necessary for the Minister to implement regulations and develop effective strategies to combat excessive air pollution (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). This necessity, to address air quality concerns, was crucial for saving thousands of lives and fulfilling the responsibilities assigned to the Minister under the Air Quality Act. This is because the Act mandates that the Minister not only identify and address issues related to air pollution but also ensure the effective implementation of strategies and action plans within a reasonable time frame (Chapter 4 of the Air Quality Act, 2004). Moreover, the Constitution of South Africa provides that all "constitutional obligations must be performed diligently and without delay" (Section 237 of the Constitution of the Republic of South Africa, 1996). Therefore, this highlights the need for prompt and responsible action to uphold the principles and rights enshrined in the Constitution.

Furthermore, the SCA specifically highlighted that a human rights-based approach should be utilized to better understand the need to prescribe rules. This approach is vital in identifying policy shortcomings while ensuring they are rectified to protect the human rights of the public. This approach was applied in the *Grootboom case*, where the Constitutional Court underscored that the State is obligated to act to bring about positive outcomes and that

parliamentary steps need to be supported by the executive's implementation of well-targeted housing policies and programs (*Government of the Republic of South Africa and Others v Grootboom and Others*, 2000). The Constitutional Court also noted that attaining socioeconomic rights is needed to advance equality, as well as exercising other rights (*Government of the Republic of South Africa and Others v Grootboom and Others*, 2000). Notably, it is worth highlighting that the progressive realization of social and economic rights requires constant assessment as well as modification of state policies (*Mazibuko and Others v City of Johannesburg and Others*, 2009). This approach ensures that policies adapt to changing conditions, improve living standards, and provide access to essential services.

The negligent delay in implementing the regulations violated the residents' right to a healthy environment. Taking due consideration of the purpose and object of the Air Quality Act and constitutional obligations, the SCA, while upholding the decision by the Gauteng High Court, ruled that the HPA residents' right to a safe and sustainable environment was violated. (*Minister of Environmental Affairs v Trustees for the time being of Groundwork and Others*, 2025). Further, the Court elucidated that, despite the area being recognized as a priority zone, no action was taken, and this seriously affected residents' health and well-being. In affirming the Gauteng High Court's ruling, the SCA emphasized the paramount significance of executive duty action in protecting public health and environmental integrity.

Contemporary Relevance of the SCA Judgement in the 21st Century

The constitutional right to a healthy environment, along with the provisions established in the Air Quality Act, serves as a fundamental foundation for protecting citizens from hazardous environment. The recent ruling by the SCA emphasizes

the critical responsibility of the executive to take proactive measures in safeguarding the public's right to a healthy environment. Moreover, the court's decision highlights the imperative to strengthen protections for marginalized communities, who are disproportionately affected by climate change and environmental degradation. This decision not only reaffirms the legal obligation of the government to protect environmental interests but also emphasizes the importance of fostering sustainable practices that benefit current and future generations. By highlighting the necessity for action, the court has reinforced the notion that environmental protection is a fundamental right that must be respected and upheld to ensure the well-being of all citizens. In doing so, this ruling sets a precedent for a more comprehensive and just strategy in addressing the challenges posed by climate change and promoting sustainability.

Conclusion

South Africa has made notable progress in realizing the constitutional promise of a clean and healthy environment. *Minister of Environmental Affairs v Trustees for the time being of Groundwork Trust and Others* (2025) sets a precedent in affirming the duty of the executive in interpreting and protecting this right. The ruling paves the way for a more robust approach to environmental governance, ensuring that the principles of sustainability and public health are prioritized in decision-making processes. By linking environmental justice to gender, class, and socio-economic inequalities, the judgment underscores the need for inclusive and equitable climate action. Beyond South Africa, it sets a valuable precedent for climate governance globally, reminding governments that the right to a healthy environment must be translated from principle into practice.

Authors' Contributions

The authors contributed to the study's conception and design.

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