

# Legal setback for seabed mining plan

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THE company Namibian Marine Phosphate's controversial plan to carry out seabed mining off the Namibian coast has received another setback, with a High Court judge finding that the company did not correctly apply for an environmental clearance certificate which it needed to commence test mining and mining.

In a judgement delivered in the Windhoek High Court yesterday, judge Harald Geier also found that Namibian Marine Phosphate (NMP) was in breach of the 20-year mining licence issued to it in July 2011 when it carried out what it termed "trial mining" and "bulk sampling" without a valid environmental clearance certificate.

At the end of a 131-page judgement, Geier declared that NMP is not entitled to undertake any "listed activity" under the Environmental Management Act of 2007 until it has obtained a valid environmental clearance certificate for such activity.

The judgement was delivered in a case in which three organisations representing the Namibian fishing industry were asking the High Court to review and set aside a decision to grant an environmental clearance certificate to NMP, and also to declare that a mining licence issued to the company is invalid.

The Confederation of Namibian Fishing Associations, the Namibian Hake Association, the Midwater Trawling Association of Namibia and the company Omualu Fishing claimed the process leading to the granting of the environmental clearance certificate to NMP was "fundamentally flawed", as various provisions of the Environmental Management Act were not complied with.

Namibian Marine Phosphate (NMP) is owned by Omani billionaire Mohammed Al Barwani through his company Mawarid Mining LLC, which has a shareholding of 85% in NMP, while businessman Knowledge Katti's company Havana Investments has a shareholding of 15% in NMP.

The company's plan to start a marine phosphate seabed mining project in Namibian waters about 120 kilometres south-west of Walvis Bay has drawn fierce opposition from environmentalists and the Namibian fishing industry, who fear that mining activities could cause serious and long-term harm to the country's marine resources and endanger fishing activities.

The pressure group Swakopmund Matters, which is opposed to the marine phosphate mining plan, commented yesterday that the significance of the judgement lies in the fact that documents presented by NMP in its application for an environmental clearance certificate "have been measured and found wanting".

The organisation remarked that the company would have to apply anew for an

environmental clearance certificate. “Judicial sanity prevailed,” it commented.

NMP did not respond to a request for comment yesterday.

Geier noted that the mining licence issued to NMP was subject to a condition that the company had to undertake an environmental impact assessment over the area covered by its exclusive prospecting licence, and that it had to forward an environmental management plan to the Ministry of Mines and Energy within six months after the licence had been issued.

NMP submitted a draft environmental impact assessment (EIA) report to the ministry in January 2012, but submitted a final EIA report only in April 2012, the judge also noted.

Geier found that the company failed to adhere to the condition to provide an environmental management plan within six months after it received the mining licence. He also concluded that NMP did not apply in the prescribed manner for the environmental clearance certificate which the environmental commissioner in the Ministry of Environment, Tourism and Forestry granted to it in September 2016.

He further noted that the Environmental Management Act states that “listed activities” may not be undertaken without an environmental clearance certificate.

“Listed activities” are defined broadly, and include “extraction of any natural resources” and also “resource extraction, manipulation, conservation and related activities”, the judge remarked.

The “trial mining” and “bulk sampling” which NMP stated it had carried out after it received its mining licence fell under a “listed activity” as defined in the act, Geier concluded.

NMP received a first setback when environment minister Pohamba Shifeta, after a public outcry, in November 2016 set aside the environmental clearance certificate which had been granted to the company.

However, NMP scored a victory against that decision of Shifeta in May 2018, when a High Court judge set aside Shifeta’s decision after finding that he had not given the company a proper hearing.

Shifeta then again set aside the environmental clearance certificate in June 2018, and directed that a consultation process on NMP’s application for a certificate should again take place.

Senior counsel Jean Marais, assisted by Natasha Bassingthwaighe and Yoleta Campbell, represented the fishing industry applicants in the case before Geier.

Senior counsel Reinhard Töttemeyer, assisted by Deon Obbes, represented NMP.