

Molewa slammed for suspending Water Tribunal

By [Sue Blaine](#)

13 Dec 2012

Water and Environmental Affairs Minister Edna Molewa contravened the constitution and the National Water Act when she suspended the Water Tribunal, a Pretoria judge ruled last week.



Image: GCS

The upshot is that miner Exxaro can continue using water without complying with directives the Department of Water Affairs issued to it. The directives were issued because the department contended Exxaro was illegally using the water.

Molewa suspended the tribunal last year and introduced a temporary system of mediation, which the court has now ruled as "invalid and *ultra vires*".

"The exercise of public power must comply with the constitution, which is the supreme law and the doctrine of legality," Judge Cynthia Pretorius said. "The action is a failure to comply with her constitutional obligations.

"It is not in her power to suspend certain sections of the National Water Act, when they do not suit her. That decision is the exclusive domain of the legislature upon whose functions she is intruding," said Pretorius

Water affairs spokesman Mava Scott said the department had received and respected the court's findings. "We are studying the contents and we will issue a statement once we have finalised our analysis of (the court's) findings," he said.

Democratic Alliance water and environmental affairs spokesman Gareth Morgan said Molewa should rectify the situation urgently, especially as Pretorius had ruled that no one could be compelled to participate in mediation.

Molewa suspended the tribunal - the statutory body that has jurisdiction over water disputes in South Africa - after its chairman resigned in November last year. She had done nothing to reconstitute it despite legal opinion that the department

requested from advocate Paul Kennedy SC.

Kennedy had advised that the tribunal could not make decisions that withstood review as it needed a legally-trained chairman. The department's legal expert, Anil Singh, said a new chairman had not been appointed because Molewa had decided that the legislation governing the tribunal should be changed.

The tribunal is South Africa's only one for which the chairman is appointed by the Judicial Service Commission instead of being nominated by a minister and appointed by the president.

Molewa wanted to change the law to give the tribunal greater powers and align the appointment process of its members with that of other tribunals.

Morgan said the minister had subverted dispute resolution in her department: "The minister has made a mockery of the dispute process in her department by actively allowing the Water Tribunal's existence to lapse."

Centre for Environmental Rights director Melissa Fourie said the minister's decision had resulted in a situation where it was business as usual for Exxaro.

"It was not as if Exxaro was without any other remedy. It could still bring a review application in the high court to set aside the directives."

Judge Pretorius had stopped short of actually ordering Molewa to reconstitute the tribunal, Fourie said.

"Instead, the court decided to do what not even the National Water Act itself does: suspend the operation of the directives issued against Exxaro - directives issued to compel Exxaro to comply with the National Water Act - pending the final determination of Exxaro's appeals to the Water Tribunal."

This meant Exxaro could in the meantime go ahead with its water use activities without complying with the department's directives.

Source: *Business Day* via I-Net Bridge

For more, visit: <https://www.bizcommunity.com>