

When President Jacob Zuma accepted the determination of the Commission for Traditional Leadership in July 2010 – that the King of amaMpondo, Mpondombini Justice Sigcau, was not the rightful heir, it seemed to eliminate a troublesome obstacle to the government’s ambitions to award Wild Coast titanium mining rights to an Australian company and their BEE partner, Xolco.

The commission found that a nephew, Zanuzuko Sigcau – a third-generation descendent of one of two brothers involved in a 1937 succession dispute – should have been king because, it said, the royal family ought to have opted for Nelson rather than his brother Botha Sigcau, both of whom had an equal claim. The matter was settled through the courts in 1944.

A section of the Wild Coast that would be ravaged by the proposed N2 shortcut

When
Botha

died in 1978, ironically, Mpondombini’s uncle Nelson, who was still alive, was first to formally move that Botha’s son Mpondombini should be king because, he said, his nephew Mpondombini and his Columbia University-educated Swazi-born wife, Queen Lombikiso Dlamini, had served the amaMpondo devotedly for over 30 years.

Mpondombini challenged the commission through the courts and won what was to be the first round – securing an interdict to prevent Zuma from acting on the commission’s Claims and Disputes determination pending a high court review.

The next round, in the North Gauteng High Court, was won by the pretender, when on 12 April, acting Judge A□J de Klerk dismissed King Mpondombini’s application. He also dismissed an application for leave to appeal as did, in turn, the Supreme Court of Appeal. That hastened the matter to the Constitutional Court where the judges have been petitioned by King Mpondombini to grant leave to appeal. The matter has been set down for 21st February. Various interested parties are expected to apply to be admitted *as amicus curiae* (those who are not a party to a case but who can assist with information). The constitutionality of the entire Traditional Governance Framework Act (which has effectively empowered the executive to be a kingmaker) is at stake. The outcome has ramifications for the Traditional Courts Bill too in that, if King Mpondombini prevails as king, upon his death his daughter, Princess Wesizwe will become the

Senior Traditional Leader as Crown Princess – which is unlikely to go down well with traditional leaders who show a strong patriarchal bent.

The incumbent royal family has shown itself far more sympathetic to the constitutional rights of their subjects than have a succession of cabinet ministers (all of whom have sworn an oath to uphold the constitution) who have visited Pondoland over the past 10 years to try to persuade the amaMpondo that the mining scheme and associated toll road is what they need.

Up in arms Mbuthuma sisters Zanele, Nacamisile and Nonhle at a beach protest

The royal house, however, has unflinchingly supported the communal land rights of their subjects. And the amaMpondo have withstood first Zulu, then colonial and apartheid conquests with legendary courage.

In 1886, when gold was discovered on the Witwatersrand, it was clear that a source of cheap labour had to be found. The only way the Cape Prime Minister Cecil Rhodes could get the amaMpondo to make themselves available, was to compel them to enter the cash economy by imposing taxation that had to be paid in British currency rather than in cattle. This necessitated a surrender of their sovereignty, thus in 1894 Pondoland was the last African territory of South Africa to be annexed by the British Colonial Government. The amaMpondo, in contrast to the Tembu, Gcaleka, Xsibe, Mfengu, and Mpondomise clans, nevertheless retained functional autonomy. Forty-two years later, in 1936, Prime Minister Jan Smuts wrote that the Pondos had “retained their ancient tribal domains, and have not an acute land question such as obtains among other native tribes”.

King	Queen	In 1960 the apartheid regime attempted to rationalise land use in terms of the Tomlinson Commission recommendations and the imposition of the Bantu Authorities Act. Despite having co-opted the king and many chiefs, the Malan government faced rebellion from unarmed Pondo tribesmen. Eleven people were killed by police. Over 4,700 were arrested and 22 people were tried and executed.
Mpondombini	Masobhuza	
Justice Sigcau	Sigcau	

As South Africa moved toward democracy, ominously, the Wild Coast’s heavy mineral deposits became increasingly valuable, especially the “space-age” titanium. It was no longer only the cheap labour of the amaMpondo but the vast titanium deposits buried in their ancestral lands

that the mining industry wanted. The “land question” was about to become a whole lot more acute.

And there was no escaping the significant environmental impact of a mining venture. The well-organised environmental lobby had successfully defeated the bid by Richards Bay Minerals to extend its dune-mining ambitions to St Lucia. Even President Nelson Mandela had signed the “Save Saint Lucia” petition, which envisaged eco-tourism and the declaration of the St Lucia Estuary as a World Heritage Site as a better alternative.

Road Rage The proposed N2 shortcut through the Wild Coast

The Wild Coast was in many respects even more meritorious for conservation status because the same deep gorges that had thwarted Shaka’s ambitions remain relatively undisturbed and thus host to one of the planet’s ever-diminishing centre’s of rare endemic biodiversity. Nearly 200 endemic plant species thrive in gorges cut over millennia by rivers that meet the sea in pristine estuaries.

But the mining entrepreneurs are only interested in the rich deposits of heavy minerals in the dunes between the estuaries – estuaries that would be unspoiled no more once the titanium deposits had been exhausted. Even Richards Bay Minerals – the fight taken out of them in losing the battle for St Lucia – opted in 1996 to relinquish the prospecting rights it owned for Xolobeni.

Enter entrepreneur Mark Caruso of Perth, Australia, coaxed by top officials and politicians into a deal that, on paper, made good sense. The government would grant him the prospecting rights up for grabs and guarantee him the mining rights if prospecting work and analysis of core samples confirmed the feasibility of a dune-mining operation – provided Caruso raised the funds on the international venture-capital market. He would also have to cut emerging black businesspeople into a BEE deal.

Caruso knew however that the financial feasibility of the mine hinged as much on efficiently getting the mineral concentrate to a smelter for export, as on fetching good prices on the global market. Also, the Eastern Cape government was under pressure to ensure minerals were beneficiated at a new smelter that would help revive East London's harbour facilities. The city was quick to offer a prime site.

Crucially, mining would not be feasible if the ore-carriers had to use the crumbling N2 inland route via Kokstad, Mount Ayliff, Mount Frere and Tsolo. East London was only 300km down the coast, and to make a journey of twice that distance via the inland scenic route made no sense.

The rugged geography of Pondoland and the history of the amaMpondo conspired to make the minerals unobtainable – unless engineers could flatten the topography, and politicians engineer the sentiments of locals to embrace mining.

Enter the canny (then) Transport Minister Mac Maharaj, who enjoined his director-general Nazir Alli to come up with a solution, which was to construct a new 100km short cut to re-route the N2 between Port Shepstone and Mthatha via the Wild Coast, running conveniently close to the proposed mining site, including four large-span bridges over the Mzamba, Mnyameni, Mntentu and Msikaba gorges.

Caruso was promised a road – with R18 million in seed capital from the DTI-controlled Export Development Fund – to enable him to float a prospectus in the venture-capital market via the Australian Securities Exchange, through a public listing, MRC Ltd (Mineral Resource Commodities).

It took some time and a change of political leadership from President Mandela to President Mbeki for the right institutional arrangements to be made. The National Roads Agency was born again as the SA National Roads Agency Ltd (Sanral) with Nazir Alli appointed as the proselytising first CEO who devoted himself to “harness the efficiencies of the private sector” in public-private partnerships to address infrastructure backlogs and spatial distortions of the apartheid era – the amaMpondo had been left with no modern industrial infrastructure to speak of and had only

treacherous winding roads.

Alli began by packaging the N3 between Durban and Johannesburg as the first private tolling concession, entrusting it to his deputy Neil Tolmie, who resigned from Sanral to immediately take charge of the N3 Tolling Company (N3TC). It proved lucrative, not only for Tolmie; Maharaj's wife Zarina received contracts from the N3TC, as did the notorious Shabir Shaik.

Flushed with pride in having stitched together the N3TC deal – while the Xolobeni Venture was incubated in secret – Alli set to work on what he openly proclaimed to be his lifelong ambition: to ensure the national road between Durban and East London was made shorter, safer and faster – in the process, uplifting the sorely neglected amaMpondo.

As a civil engineer, Alli had no shortage of eager professional engineers to turn to for the four bridges. They would be hugely expensive, but do-able if a private sector consortium could be seduced into a “Build Operate and Transfer” (BOT) deal.

In order to justify the capital expenditure and attract the interest of profit-minded private sector construction companies into another tolling concession, significant volumes of traffic would be required to use the highway. The case for the costly scheme could only be made if the co-conspirators could openly state that 30 large ore carriers per day would be transporting 40 tonnes of mineral sand concentrate each, on a 24/7 basis for 25 years, from Xolobeni to East London, and return empty by the same route.

That is how Caruso worked out the logistics – perhaps somewhat overstated – since one of his other business interests is Simto Australia, which specialises in procuring heavy earth-moving equipment. No such disclosures could be made, for to do so would arouse the suspicions of the strong environmental lobby that another coastal dune-mining operation was behind the scheme.

Behind the scenes Alli solicited an “unsolicited proposal” from a consortium of construction and engineering firms, unimaginatively named the N2 Wild Coast Consortium.

Realistically the only stretch of the N2 road that offered anything approaching the traffic volumes needed to make a tolling concession viable was the stretch between Port Shepstone and Durban – already tolled with a plaza at Port Shepstone. If the South Coast N2 could be embedded in a larger infrastructure scheme it could unlock a revenue stream that would make the short cut viable: motorists travelling between Durban and

its southern satellite suburbs. Thus the N2 Wild Coast Toll Road was conceived, with a new toll plaza planned at Isipingo as a catchment for the money of the commuters whom Alli was convinced could be persuaded to part with hefty toll tariffs to help pay for the new short cut.

They weren't. In fact opposition from KwaZulu-Natal residents was arguably the only contentious issue over which all five political parties represented in the KZN Provincial Legislature were united in opposing. Even the controversial former Durban City Manager Mike Sutcliffe stoutly refused to be converted by Alli's mission to get Durban motorists to help him address the "extreme poverty" of the rural amaMpondo by cross-subsidising the promised jobs that the N2 short cut would bring.

More money would have to be found. Alli proposed breaking the rules and mixing Sanral's two revenue streams: Treasury budget allocations and revenue from private tolling concessions. He manipulated the board of Sanral to approve the use of Treasury funds to pay for the four large-span bridges. (He'd arranged the board meeting at a time when the two board members who might oppose the decision, notably Treasury representative Andrew Donaldson, were conveniently absent. The other, chief financial officer Catherine Smith, was deliberately sidelined by Alli; she resigned.)

Alli made a critical mistake in assuming the amaMpondo wanted the bridges and the high-speed motorway.

It was pointed out to him by Cormac Cullinan – the attorney representing the Wild Coast residents who have applied to the high court for the environmental authorisation to be set aside – that his clients had much higher priorities for an allocation of R3 billion for road infrastructure than the construction of large-span bridges.

Director General of Mineral Resources, Advocate Sandile Nogxina, also misapprehended the sentiments of the amaMpondo towards the mining venture. He assumed that the jobs and other material benefits they were promised would more-than outweigh the protests of environmentalists.

Of course the ontological link between the mining and the toll road was a very closely guarded secret. It is possible Alli was not even aware of it. He had, after all, sought and found some noted environmentalists to endorse his plan to package the N2 Short Cut as an inland boundary for an imagined Pondo National Park to conserve Wild Coast biodiversity. Elephants could be reintroduced to a place that still remembers them. ("Pondo" means "tusk" and Mpondombini, "the two-tusked one". Ironically, the tribal area where the heavy mineral deposits occur is named *Umgungundlovu*: Place of the Elephants.)

Whether or not Alli and Nogxina together hatched the elaborate deception of the environmental lobby is a matter of conjecture, but neither took the precaution of conferring with the residents whose land would be sacrificed for their respective schemes. Nor did they take the trouble to delve into Pondo history, for had they done so they would have learned you don't take land from the amaMpondo.

The N2 Wild Coast Toll Road scheme would indeed have solved the problems of geography, albeit with the illegal recourse to Treasury funds, but such practices have become commonplace under ANC administration.

Solving the problems of history were more challenging. More so because King Mpondombini insisted the development schemes could not proceed without a thorough and transparent consultation process. Only if the amaMpondo were able to see manifest benefits would the royal house support the schemes – notwithstanding any benefit to the national economy.

In 2004 Minister Marthinus van Schalkwyk led a delegation of three cabinet colleagues and the Premier of the Eastern Cape, Nosimo Balindlela (now the DA's newest member) to consult with the royal house. Afterwards the government acknowledged there had been poor consultation and promised prompt remedy. Balindlela was the most emphatic. She became one of the first casualties in the ANC/Cope split. And deputy minerals minister Lulu Xingwana was also vocal in her insistence that consultation with the royal family and traditional leaders was obligatory in terms of new legislation. She was redeployed.

Four years later, with Buyelwa Sonjica in the Mining Ministry hotseat, she echoed the exact words that Xingwana had uttered in 2004 in her apology to the community in 2008. She was redeployed to the Environment portfolio and was then dropped from Zuma's cabinet altogether a year later – after she also recanted over other errors of judgement she had made about the Saint Lucia dune mining battle.

There were hopeful signs when Sbu Ndebele became national Transport Minister in 2009. He genuinely wanted to see the dispute over the N2 Wild Coast Toll Road resolved out of court (and the Gauteng e-tolling saga for that matter). Just when a breakthrough was imminent, he was redeployed to Correctional Services.

Presidents can redeploy, fire or otherwise dispose of cabinet ministers, but the prerogative of choosing or deposing kings and chiefs rests with those for whom the institution of traditional leadership matters most – the people who communally own the land.

Four years apart, both Lulu Xingwana, deputy Minister of Minerals and Energy and her successor, Buyelwa Sonjica, promised to redress the problem personally. Neither of them did so; nor did their successor, Minister Susan Shabangu. Perhaps they've been waiting for a king more amenable to the Xolobeni mining venture and the N2 Wild Coast Short Cut to be installed.

One need only look at the tribal politics at the lower tiers of the traditional authority system to epose the hidden agenda. The chief of the amaMdiba tribal authority, Nkosi Lunga Baleni, also faced a claim on his position, brought by the third wife of his late father (who died in 2002) on behalf of her minor son aged 10. Judgment has been reserved. But whatever the merits of the case, the fact that the claimant was accompanied by directors of Xolco (the BEE partner to the Australian mining outfit) makes it clear.

Behind the dune-mining venture, the N2 Wild Coast Toll Road and the traditional leadership challenges are fundamentally corrupt corporate and political interests.

But the amaMpondo have on their side the South African Constitution and a free press to publicise their predicament – and through which public sympathy and voluntary contributions can be sought to pay for the best lawyers.

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