



**GAUTENG DIVISION, PRETORIA**

**CASE NO: CC 82/2017**

- (1) REPORTABLE: **NO**  
 (2) OF INTEREST TO OTHER JUDGES: **YES**  
 (3) REVISED.

**3 November 2025**

SIGNATURE

In the matter between:

**UZANI ENVIRONMENTAL ADVOCACY CC**

Prosecutor

And

**BP SOUTHERN AFRICA (PTY) LTD**

Accused

as represented in terms of s332(2)

of Act 51 of 1977 by Mr Thuto Gasealahwe

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**JUDGMENT – LEAVE TO APPEAL**

***(Uzani (5))***

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**SPILG, J:**

**3 November 2025**

**INTRODUCTION**

1. On 29 June 2017 the then Judge President of the Gauteng Division granted the UZANI Environmental Advocacy CC (“UZANI”) leave to institute the private

prosecution in the Gauteng Division against BP Southern Africa (Pty) Ltd (“BPSA”). A writ of summons and indictment was subsequently issued out of this court and served on 3 August 2017.

2. A number of pre-trial issues were raised and dealt with<sup>1</sup>, after which BPSA pleaded and the trial commenced.
3. BPSA was found guilty under s 29(4) of the Environmental Conservation Act 73 of 1989 (“ECA”) for failing to obtain the required written environmental authorisation to construct filling stations, including associated structures and infrastructure, or other facilities for the underground storage of petrol and diesel. Petrol and diesel fall within the definition of dangerous goods and their storage is a controlled activity which required such authorisation under s 22(1) of ECA.

The judgment was delivered in April 2019 and is reported as *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd* [2019] ZAGPPHC 86 (see also 2019 (5) SA 275 (GP); [2019] 2 All SA 881 (GP)). The judgment has been referred to as *Uzani (1)*.

4. In terms of s 29(4) of ECA any person who contravenes s 22(1) is guilty of an offence and liable on conviction to a fine or to imprisonment.

Aside from the imposition of a sentence under s 29(4), in terms of s 34(3) of the National Environmental Management Act 107 of 1998 (“NEMA”), a person who is convicted of an offence under any provision listed in Schedule 3 of that Act, and in addition to any other punishment imposed, is subject to pay damages, or compensation or a fine equal to the amount which the court must assess is “*the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence*”, or alternatively require the offender to take remedial measures. This is the current wording of the section.

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<sup>1</sup> For example *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd* [2017] ZAGPPHC 749 (14 November 2017)

The assessment is made pursuant to a summary enquiry which is expressly provided for at the commencement of the section.

5. UZANI then applied for an order to hold a post-conviction s 34(3) enquiry. BPSA argued that a contravention of s 22(1) read with s 29(4) of ECA was not a listed Schedule 3 offence under NEMA and therefore such an enquiry was not competent in respect of the offences at the time they were committed.
6. In a judgment delivered during May 2020 and cited as *Uzani Environmental Advocacy CC v BP Southern Africa* [2020] ZAGPPHC 222 (“*Uzani 2*”) the court held that such an enquiry was competent under the legislation which prevailed at the relevant time.
7. An enquiry was held and a sentence imposed. The judgment is cited as *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd* [2024] ZAGPPHC 1387 (“*Uzani 3*”). The sentence imposed was:
  - a. In respect of the counts under s 34(3) of NEMA, a fine of R 6 245 424
  - b. In respect of the counts under s 29(4) of ECA, an initial fine of R 6 187 650
  - c. In respect of the additional fine under s 29(4) of ECA, an amount of R 47 112 970.

The total amount of fines was therefore R59 546 044

8. As explained in *Uzani (3)*, the court wished to reconsider the costs issue and subsequently delivered a separate judgment. It is cited as *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd* [2025] ZAGPPHC 263 and was referred to as *Uzani (4)*. The order provided that BPSA was to pay:
  - a. the costs of the private prosecution including the section 34(3)(g) inquiry on the attorney and client scale save that it shall not be liable for the following costs;

- a. all costs associated with the application to compel of 10 November 2017
- b. all costs associated with the fraud charges which were subsequently withdrawn
- c. The postponements occasioned on 20 March 2018, 19 February 2019, 25 March 2019 and 18 March 2022.
- d. The costs payable by BPSA included the qualifying fees of certain experts engaged by the prosecution, the costs attendant on the engagement of senior counsel and, if applicable, junior counsel.

## **APPLICATIONS FOR LEAVE TO APPEAL AND CROSS APPEAL**

### **BPSA's application**

- 9. BPSA applied for leave to appeal in respect of both conviction and sentence. It submitted that the court erred in finding;
  - a. that the private prosecutor had title to prosecute, whereas it should have found that:
    - 1. Section 33(2) of NEMA as read with s 8 of the CPA had not been complied with;
    - 2. Section 33(1) of NEMA had not been complied with since it had not proven that the private prosecution was instituted in the public interest or in the interests of protecting the environment;
  - b. that the s 24G applications submitted by BPSA were admissible as evidence in that they violated its right against self-incrimination, absent forewarning that evidence of the commission of the offences contained in the applications may be used against it in criminal proceedings or absent of any use indemnity in s 24G or the s 24G process;

- c. that an enquiry under s 34(3) of NEMA was competent having regard to the legislation prevailing at the relevant time in relation to the charges upon which BPSA was convicted;
- d. on sentence. BPSA submitted that the sentence imposed was based on misdirections, a failure to take relevant considerations into account or to afford them sufficient weight and that the sentence was disproportionate in the circumstances and created a sense of shock.

10. In its application for leave to appeal BPSA submitted that if granted the appeal should be referred to the Supreme Court of Appeal (*“the SCA”*).

#### **UZANI's opposition and cross-appeal application**

11. UZANI gave notice opposing BPSA's application for leave to appeal and brought an unconditional cross-appeal.

12. In respect of BPSA's application for leave to appeal against the conviction, UZANI disputed that BPSA had demonstrated reasonable prospects of success on appeal.

13. UZANI however supported BPSA's submissions that the court had erred in respect of sentence. It contended that the court had;

- a. failed to impose an adequate fine having regard to the factors set out in para 2 of its cross-appeal application;
- b. erred in its legal interpretation of s29(4) of ECA read with item 1(c) of GN R1182 of 5 September 1997, contending further that the court had failed to apply the SCA decision of *Fuel Retailers Association* which was binding on it;
- c. erred in its interpretation of s 34B of NEMA.

14. UZANI added a further ground for its cross-appeal. It sought leave to cross-appeal:

*“Against BP’s use of a SLAPP and Stalingrad-inspired strategy to escape and delay appropriate sentences”.*

It was assumed that this was an additional factor which should have been taken into account in aggravation of sentence and therefore be reflected in a severer fine. This was confirmed by the contents of para B3 of UZANI’s Draft Court Order presented on 8 August 2025.

15. UZANI in its application also submitted that if leave was granted that the matter be directed to the SCA.

#### **AGREEMENT BETWEEN THE PARTIES AT THE HEARING**

16. At the hearing the parties confirmed that leave be granted to appeal and cross-appeal. They also agreed that the appeal should be to the SCA.
17. The court accepted that it would not be in the interests of justice, having regard to expedition, costs and avoiding a piecemeal disposal of the appeal, if certain grounds which it considered did not meet the requirement of having reasonable prospects of success on appeal were excluded from the grant of leave. It is evident that the unique issues raised by the legislation in respect of sentencing requires a decision by an appellate court able to set binding precedent nationally.
18. The parties were requested to prepare a draft order and the court indicated that it wished to mention an aspect or two in its reasons for granting leave.

#### **SUBSEQUENT EVENTS**

19. BPSA presented its draft of the court order granting leave to appeal and cross-appeal on 7 August. UZANI disagreed with the formulation used to describe the

grounds it relied on for the cross-appeal on sentence. On the following day it submitted its own draft.

20. The difference between the two drafts is that UZANI wishes to flesh out its three grounds in more detail than BPSA has done. It contends that BPSA's formulation of the draft order enables it to add grounds not necessarily argued at the trial while precluding it from doing likewise.

21. Due to the court's other commitments it regrettably did not address the competing drafts. On 27 October 2025 it received a copy of a Rule 32 application by UZANI for leave to appeal directly to the Constitutional Court.

22. On the same date BPSA's attorneys requested the court for feedback or directions regarding the status of the matter.

### **THE GRANT OF LEAVE TO APPEAL AND CROSS-APPEAL TO THE SCA**

23. On 6 Augst 2025 and by agreement between the parties this court granted BPSA leave to appeal on conviction and sentence and UZANI leave to cross-appeal on sentence. This was done by way of a remote hearing with the parties.

24. The manner in which the order should be formulated does not derogate from the fact that an order was granted. This court should have adopted the position that it is adequate to simply grant leave by describing the grounds generally, leaving it to the reasons for its grant to clarify what was actually before the court. The parties can then convince the appellate court as to whether an issue had been raised during the proceedings, and if not whether it is one of law or fact or both and if it is permissible to raise the point for the first time on appeal having regard to the relevant considerations which would weigh with the appellate court. I regret failing to adopt this position earlier.

## OBSERVATIONS REGARDING THE GROUNDS OF APPEAL

25. The court does not recall BPSA arguing in relation to conviction that s 24G fails to forewarn a person that the evidence of the register of s 24G applications will be admissible as evidence in subsequent criminal proceedings relevant to the offences with which BPSA was charged or that s 24G or its process fails to provide a use indemnity, thereby violating (so it is alleged) an accused's right against self-incrimination.
26. The court also does not recall UZANI arguing in relation to sentence that BPSA was adopting SLAPP tactics. It may have argued that BPSA's strategy, particularly in relation to the production of documents or the failure to do so, was delaying and debilitating the prosecution.
27. The court does not have a transcript of the arguments and accepts that it may be in error.
28. Finally, if the grounds of appeal had been confined;
  - a. on BPSA's behalf to non-compliance with s 33(2) of NEMA read with s 8 of the CPA, this court would not have granted leave.

This is for the additional reason that it is for the accused to show that, if there had been any defect in the notification, the prosecuting authority would have itself prosecuted. Moreover the requirement of enabling a private prosecution through the Judge President of the Division granting leave for the private prosecution would also have to be undone, even if the decision of the Judge President was determined on a *prima facie* basis. The defence may also at best amount to a dilatory defence. This is because there would first have to be confirmation from the prosecuting authority that it wished to prosecute and secondly it would have to give an undertaking to do so within a reasonable time, failing which the private prosecution can continue (if the object and purpose of the Act was to be given meaning and effect);

- b. on BPSA's behalf to contending that UZANI had not instituted the prosecution in the public interest or in the interest of protecting the environment, this court would not have granted leave to appeal.

In addition to the grounds set out in the judgment, the evidence presented during the subsequent s 34(3) enquiry and sentencing phases revealed an abject failure by the authorities to comply with their statutory obligations, even when granting the s 24G applications.

In the result, in order to ensure that environmental legislation served its intended objects, a purposive approach is required so as to enable civil society organisations to secure the environmental rights guaranteed to present and future generations under s 24 of the Constitution in cases where both the authorities charged with securing compliance with the very legislation enacted pursuant to the provisions of s 24 and the prosecuting authority fail to do so;

- c. on UZANI's behalf to contending that s 34B is not limited to informers.

Aside from the reasoning given in its judgement on sentencing, the court cannot legislate for Parliament and intrude on the separation of powers. It will require Parliament to replace the references to an informant if it's intention was to enable a civil society organisation to obtain an award in terms of s 34B of NEMA or to make separate provision for compensating organisations which prosecuted in the public interest or in the interest of protecting the environment out of monies which otherwise would not have been received by the *fiscus*.

## ORDER

29. The court therefore confirms that it made an order on 6 August 2025 granting BPSA leave to appeal on conviction and sentence and granted UZANI leave to cross-appeal on sentence, such appeals being to the Supreme Court of Appeal.

30. The ordinary limitations in the grant of such leave apply, being the basic grounds as identified and relied on in the respective notices for leave to appeal and cross-appeal are set out as follows:

- A. The accused is granted leave to appeal to the Supreme Court of Appeal on the conviction of the 17 counts and the sentence imposed on the following grounds:
  1. Whether s 33(2) of the National Environmental Management Act 107 of 1998 ("*NEMA*") as read with s 8 of the Criminal Procedure Act had been complied with;
  2. Whether s 33(1) of NEMA had been complied with, the accused contending that the private prosecutor had not proven that prosecution was instituted in the public interest or in the interests of protecting the environment;
  3. Whether the s 24G applications submitted by BPSA were admissible as evidence in that BPSA contends that they violated its right against self-incrimination, absent forewarning that evidence of the commission of the offences contained in the applications may be used against it in criminal proceedings or absent of any use indemnity in s 24G or the s 24G process;
  4. Whether an enquiry under s 34(3) of NEMA was competent having regard to the legislation prevailing at the relevant time in relation to the charges upon which BPSA was convicted;
  5. Whether the sentence imposed was based on misdirections, a failure to take relevant considerations into account or to afford them sufficient weight and whether the sentence was disproportionate in the circumstances and created a sense of shock.

B. The private prosecution is granted leave to cross-appeal to the SCA on the sentence imposed on the following grounds:

1. Whether the court failed to impose an adequate fine having regard to the factors set out under the heading "*ad fines imposed on the accused*" and "*BP's use of SLAPP and Stalingrad-inspired strategy ...*,"
2. Whether the court erred in its legal interpretation of s29(4) of ECA read with item 1(c) of GN R1182 of 5 September 1997, contending further that the court had failed to apply the SCA decision of *Fuel Retailers Association* which was binding on it;
3. Whether the court erred in its interpretation of s 34B of NEMA.

C. The costs to be awarded, if any, to the accused or to the private prosecutor in relation to their respective applications for leave to appeal to be determined by the SCA.



**SPILG J**

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DATES OF HEARING : 6 August 2025

DATE OF JUDGMENT: 3 November 2025

FOR PROSECUTION: Attorney G Erasmus  
FVS Attorneys, Pretoria

FOR ACCUSED: Adv B Roux SC  
Adv AC McKenzie  
Warburton Attorneys