

SHELL CASE in the Constitutional Court

Coastal communities and civil society organisations are taking the legal fight to defend the ocean against oil company, Shell, and the government, to the highest court in the land.

In June 2024, Wild Coast communities, Sustaining the Wild Coast, All Rise Attorneys, Natural Justice and Greenpeace Africa filed petitions with the Constitutional Court to appeal against an order of the Supreme Court of Appeal (SCA) which allows Shell to conduct seismic testing on the Wild Coast of South Africa.

In the **Constitutional Court papers**, the communities and environmental justice organisations argue that the SCA's order that allows the Minister to decide on Shell's latest renewal application, is not "just and equitable", is contrary to the law and should be set aside.



- **December 2021:** Interdict applications to stop Shell from commencing with seismic surveys. Second interdict granted.



- **May 2022:** High Court hearing in respect of the review.



- **1 September 2022:** High Court judgment setting aside the exploration right. Shell then appeals to the Supreme Court of Appeal.



- **17 May 2024:** SCA appeal hearing.


- **03 June 2024:** SCA judgment dismisses Shell's appeal and upholds the High Court Judgment in favour of Wild Coast communities. But it did allow the Shell's latest renewable to still be decided.



- **June 2024:** Communities and CSO's appeal part of the SCA judgment to the Constitutional court.



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In brief, Wild Coast communities and environmental justice organisations argue:

- The SCA's order that allows the Minister to still decide on Shell's latest renewal application of the disputed exploration right, is *not* "just and equitable";
- It gives Shell the chance to make up for their failed consultation process when the right was applied for over a decade ago. The law does not allow this.
- The SCA's order does not protect the rights of the communities and other parties to fair administrative action. *It fails to protect their livelihoods and their cultural and spiritual rights;*
- It fails to make it clear what Shell and the Minister must do to fix the defects of the earlier processes, which means that, inevitably, more litigation will follow. To be just and equitable, an order must at least be clear;
- The SCA found that a complete setting aside of the exploration right was "too harsh". But the organisations argue that there is no need for the SCA to make something less harsh for the parties involved;
- The SCA's order does not make it clear what process needs to be followed before exploration may be undertaken. In the current law, environmental authorisation is needed.

A positive outcome in the Constitutional Court will not only be important for future court cases, but it will show the importance proper community consultation. It will also recognise communities' cultural practices linked to our oceans and affirm our human rights to a healthy environment as it is enshrined in the South African constitution.

