

DRUMMOND OFFICE

8 Buffelsdrift, Drummond, KwaZulu-Natal
PO Box 520, Bothas Hill 3660;
Tel: (031) 7834610
Fax: 0866188809
Cell 082 5555481
e-mail : jaridl@absamail.co.za

**RIDL & CO**

**Attorneys & Notaries
Environmental Law Specialists**

Jeremy Ridl BA LLB LLM PhD

Associate

Thami Majola LLB

Our reference: JA Ridl
Your reference:

5th January 2011

Dr Bandile Mkhize
Chief Executive Officer
KwaZulu-Natal Nature Conservation Service
Queen Elizabeth Park
Pietermaritzburg

PER EMAIL c/o Cecilia Sampson: sampsonc@kznwildlife.com

Dear Dr Mkhize

**PROPOSED PROCEDURES AND STANDARD TERMS AND CONDITIONS FOR KEEPING
ANIMALS IN CAPTIVITY IN KWAZULU-NATAL**

As you are aware, we act for the Animal Interest Alliance and its trustees.

This letter is written to you in your capacity as Chief Executive Officer ("CEO") of the KwaZulu-Natal Nature Conservation Service which is established in terms of section 20 of the KwaZulu-Natal Nature Conservation Management Act 9 of 1997 ("the Act"), and in your personal capacity.

Your appointment as CEO in terms of section 22 of the Act is made by the MEC Agriculture, Environmental Affairs and Rural Development ("the MEC") "in consultation with the Board".

You are also aware that:

- the "Board" (the KwaZulu-Natal Nature Conservation Board) at the time of your appointment comprised fewer than nine members and therefore was not lawfully constituted;
- in the court papers lodged and served on the MEC, the "Board", the KwaZulu-Natal Nature Conservation Service and others, the legitimacy of the current Board is challenged.

Since it was not possible in the circumstances for your appointment to have been made by the MEC "in consultation" with the Board, your status is in question.

Ordinarily we would not have raised the issue with you directly as your position will be determined by the court in due course. However, we must assume that you were the



author of the notice dated 23rd December 2010 addressed to stakeholders in the abovementioned process.

You either do not have a proper grasp of the seriousness of the position in which the Board and the KwaZulu-Natal Nature Conservation Service has been placed, or you are acting in disregard of the consequences of the court application. Your defiant attitude is the very conduct of officials in your organisation that has led to the court application.

We must remind you that your organisation has embarked upon and abandoned a number of processes over the last four years. None of these processes have been conducted with proper legal authority and all have been at great public expense. The processes have yielded nothing, and have inconvenienced stakeholders who have felt compelled to participate in order to protect their rights.

It would be prudent for you to suspend the most recent process until the court has determined the future of your organisation and your position.

As for the "the legal mandate in the province" that you claim "Ezemvelo KZN Wildlife" to have, we point out the following:

- You appear to refer to the KwaZulu-Natal Conservation Board and the KwaZulu-Natal Nature Conservation Service as a single entity. It is not. Two separate and distinct legal entities are established by the Act.
- The "Board" has the power to recommend policy to the MEC and to develop norms and standards. It does not have the power to develop the procedures, standard terms and conditions proposed. This is likely to become academic as the very existence of the "Board" is challenged in the court application.
- The powers of the KwaZulu-Natal Nature Conservation Service are confined to the matters set out in section 23 of the Act. The power to develop procedures or standard terms and conditions is not included.
- Neither the "Board" nor the KwaZulu-Natal Nature Conservation Service has delegated powers from the MEC to deal with any aspect of the Threatened or Protected Species Regulations 2006.

We must caution you that if you proceed in the face of the court application against your organisation, our client will ask the court to hold you personally liable for the wasted costs of the current process. In this regard, you are referred to section 49 of the National Environmental Management Act 107 of 1998 which provides:

"Limitation of liability

Neither the State nor any other person is liable for any damage or loss caused by –

(a) the exercise of any power or the performance of any duty under this Act or any specific environmental management Act; or



RIDL & CO
Environmental Law Specialists

(b) the failure to exercise any power, or perform any duty under this Act or any specific environmental management Act, unless the exercise of or failure to exercise the power, or performance of or failure to perform the duty was unlawful, negligent or in bad faith."

Proceeding as you and your organisation are with disregard for the difficulties that you both face is unlawful, is negligent and in bad faith.

We are instructed to demand that you terminate the process immediately and that you publish a notice to this effect in all of the publications in which the public was invited to participate. Should you fail to give us your undertaking to do so by close of business on Friday 7th January 2011, and should the public notice not be published within 7 (seven) days thereafter, our client will seek an urgent court order interdicting you and your organisation from proceeding with the process, and compelling you to issue the relevant notices.

For your information, we attach a copy of a letter addressed to the State Attorney who represents the MEC and the Premier.

A copy of this letter has been sent to the State Attorney and Mr Mzimela of the MEC's office as representative of the "Board" and the KwaZulu-Natal Nature Conservation Service.

Yours faithfully



JA RIDL
RIDL & CO