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23rd December 2010

The State Attorney (KwaZulu-Natal)
308 Sangro House
417 Smith Street
Durban

ATTENTION MR FT GRAY
Email:fgray@justice.gov.za

Dear Sirs

WAH HORSFIELD AND OTHER S V THE MEC AGRICULTURE, ENVIRONMENTAL AFFAIRS AND RURAL DEVELOPMENT AND OTHERS

We are in receipt of your Notice of Opposition on behalf of the First and Fourth Respondents.

We have two issues that require an urgent response from your clients.

IDENTITY OF MEMBERS OF THE SECOND RESPONDENT

Our citing of the Sixth to Fifteenth Respondents was based on information provided by the office of the First Respondent in response to notices issued under the Promotion of Access to Information Act 2 of 2000 ("PAIA"). The people shortlisted and submitted to the selection committee for consideration for appointment to Second Respondent ("the board") are cited in the application before the court. In the absence of any other information on the appointees of the board, our assumption was that the ten people listed, were the ten people appointed.

We have been unable to find any correct public notice or publication of the names of the members appointed to the board of the Second Respondent. The media release issued by the First Respondent 19th February 2010 announcing the appointment of board members is incorrect in that it excludes Mrs Dold. This notice appears to have been published only by the government information service on its website. None of the popular newspapers published the media release issued by the First Respondent.

As you will have observed from the papers served on your clients, it is our clients' complaint that no public process was followed in the appointment of the current board.



Mr Nel and Dr Nzama are apparently board members but their names do not appear on the shortlist submitted to the selection committee.

We call upon the First Respondent, through you, to provide the names of the people appointed to the board of the Second Respondent as a matter of urgency.

We would also like an explanation as to how Mr Nel and Dr Nzama were appointed to the board without having been shortlisted, or if they were shortlisted, why the First Respondent did not comply properly with the PAIA notice served on her. If your client is not prepared to provide the information, it will be extracted during the course of the application, which as you know includes an order for the disclosure of this information.

Our concern is that in the meanwhile, the affected parties (including our clients) are prejudiced and this is a consequence of your client's omission. Our clients' rights in this regard are reserved.

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

The Fourth Respondent together with the CEO of the Second Respondent have issued a notice of their intention to develop the above procedures and standard terms and conditions.

It is our respectful submission that the Fourth Respondent does not have the power to embark upon this process, and in view of the submissions made in our clients' application, the Second Respondent does not legally exist. At the very least, it is inappropriate for your client and the Second Respondent to embark upon such a process.

We accept that your client's notice was issued on the same day that the papers were served on him. We call upon him to immediately give notice that the process is suspended, at least until the application before the court is finally determined.

It appears that the Second Respondent intends to proceed with the process notwithstanding the challenge to its existence. It has issued a notice to stakeholders in which it states:

"Some of you may be aware of the actions of certain stakeholders who are opposed to the process and who now refuse to comment and would rather put this matter before a court. This is their democratic right. Ezemvelo will defend the challenge and a court will eventually decide; this could take some time. Ezemvelo will continue to execute its full responsibilities and powers, including this process. Stakeholders are still therefore invited to exercise their right to comment and partake in this important administrative process."



It also appears that the Second Respondent intends to oppose the court application. No notice of opposition has yet been received from either the Second or Third Respondents. When this is received, our client will no doubt challenge the ability of either the Second or the Third Respondents to pass the necessary resolution to oppose the application. Our client will resist further wasting of public resources by the First and Second Respondents.

With regard to the Fourth Respondent's power to embark on the public process, we point out the following:

- 1 The proposed procedures and standard terms and conditions will apply to all permits, licences and registrations under the relevant legislation, being the KwaZulu-Natal Nature Conservation Ordinance 1974 ("the Ordinance") and the Threatened or Protected Species Regulations 2006 (TOPS) read with the National Environmental Management: Biodiversity Act 10 of 2004 ("NEMBA").
- 2 Regulation 4 of TOPS states:

"A permit issued in terms of provincial legislation by a provincial department that is an issuing authority in terms of regulation 3 for a restricted activity involving a listed threatened or protected species is regarded as a permit issued in terms of the Biodiversity Act and these regulations".
- 3 In terms of regulation 3 of TOPS the issuing authority (in the case of KwaZulu-Natal) is the First Respondent. Logically therefore, the First Respondent has the responsibility to conduct the process embarked upon by the Fourth Respondent with the Second Respondent.
- 4 The Fourth Respondent's powers are governed by section 127 of the Constitution. He may exercise only those powers that are entrusted to his office by the Constitution or any legislation. The administration of permits, licences and registrations under the Ordinance and TOPS, fall exclusively under the purview of the First Respondent and not the Fourth Respondent.
- 5 In the administration of TOPS, the First Respondent is undertaking a function entrusted to her by national legislation and she is accountable to the national minister for the performance thereof. This is not a function of the executive assigned to her by the Fourth Respondent in terms of section 133(1) of the Constitution.
- 6 Permits, licences and registrations under the Ordinance in which the Fourth Respondent may have an interest fall under the CEO (Director) of the Second and/or Third Respondent, who in turn is accountable to the First Respondent. The Fourth Respondent has no statutory right to participate in any aspect of the administration of this legislation.



- 7 In any event, for the reasons stated above, the permits, licences and registrations issued under the ordinance are deemed to be integrated permits under regulation 4 of TOPS. The Fourth Respondent plays no part in the administration of this legislation.
- 8 With respect therefore, the Fourth Respondent has no constitutional or statutory mandate to lead the process embarked upon.

The proposed process is yet another costly, time consuming and wasteful exercise undertaken by the Second and Third Respondents that is fatally flawed from the outset. The Second and Third Respondents apparently supported by the First Respondent and now it seems the Fourth Respondent, have undertaken the following futile exercises:

- An overarching policy for the keeping of wild animals in captivity when they had no power to do so;
- The compilation of recommendations for a policy for submission the First Respondent , which process was abandoned;
- The development of various norms and standards without proper authority and at a time when the board of the Second Respondent was not validly constituted.

The public statement that the Second and Third Respondents intend to proceed with the proposed process notwithstanding a court challenge to their very existence is typical of the arrogance and disregard for the law they have displayed since our client first engaged them in 2006.

We are instructed to demand of your clients that they take the necessary steps to bring the Second and Third Respondents in check, at least pending the outcome of the High Court Application, failing which our client will consider an urgent application for an interdict restraining your clients and the Second and Third Respondents from proceeding any further with the process.

We await your urgent response to these matters.

Yours faithfully



JEREMY RIDL
RIDL & CO