

THE AIA'S CASE AGAINST THE MEC AND EZEMVELO ADJOURNED TO THE END OF MARCH 2012

While the legal teams of the AIA and Helmut Bruss (the Applicants) geared up to argue the matter in court on 25th November 2011, it seems that Ezemvelo had other ideas.

At the 11th hour, the MEC and Ezemvelo filed lengthy affidavits that raised issues which have to be contested by the AIA and Bruss. Had the Applicants attempted to object to the filing of the affidavit at this late stage of the proceedings, valuable court time would have been wasted in arguing the point, as a result of which, the case would never have been completed in the one day allocated to its hearing.

After careful consideration of the risks associated with allowing the new matters raised by Ezemvelo to go unchallenged, and after consultation with the Judge President who agreed that the matter should be given preference on the court roll, three “reserved” days have been allocated for the hearing of the matter on the 28th, 29, and 30th March 2012.

The new issues raised by Ezemvelo in an affidavit deposed to by Dr Jean Harris cannot be left unchallenged. She makes reference to the many comments received on the proposed new procedures and standard terms and conditions, and to a series of workshops that were held with stakeholders. She creates the impression that these new procedures and standard terms and conditions have gained some sort of credibility. INCREDIBLY she claims that the AIA made comments on the documents and/or participated in the workshops. This is untrue. From the outset the AIA made it clear that the process that was embarked upon in December 2010, coincidentally in the same week in which the AIA launched its court action, was illegitimate and it would not participate in any of the procedures.

It was pointed out in correspondence that the Premier of KwaZulu-Natal who was a co-sponsor of the process had no constitutional mandate or any authority under the Threatened or Protected Species Regulations 2007 (“TOPS”) to undertake such a process. As for Ezemvelo, the AIA re-affirmed its contention that the Ezemvelo Board and the KZN Nature Conservation Service were operating illegally, had no delegated authority to deal with any aspect of TOPS and faced a serious court challenge to their very existence. Helmut Bruss’ case goes to the very heart of these matters and in his court action against Ezemvelo, he challenges the legality of Ezemvelo and their right to dictate the onerous procedures and standard terms and conditions that are proposed.

For Dr Harris to even hint that the AIA in any way endorses the process she has instigated is preposterous. What is more it is untruthful and cannot be allowed to stand before the court unchallenged.



The affidavit filed by the erstwhile MEC, Lydia Johnson is most interesting. She informed the court that she had rectified the defective delegation of authority for the administration of TOPS to Ezemvelo by “re-delegating” this authority to Ezemvelo by way of a notice published in September 2011. This is a clear statement by her that she accepts the part of the Applicants’ case that at least until September 2011, no valid delegation of TOPS to Ezemvelo existed and their administration of these important national regulations was unlawful. This, with her clear acceptance that up until the end of 2009, the Ezemvelo Board operated illegally, and her apparent concession that after the appointment of the current board of Ezemvelo it was still defective and had to be supplemented with categories of persons dictated by the KZN Nature Conservation Management Act, leaves very few facts for the Applicants to prove in court.

All that remains in the case against the MEC is to argue the legal effect of the functioning of an improperly constituted board, which the Applicants contend, renders their entire operation and all actions taken by the board, illegal.

Unfortunately for the beleaguered erstwhile MEC, like her equally beleaguered predecessor, she seems to have perpetuated the woes of Ezemvelo. The recent purported delegation of TOPS to Ezemvelo, on the face of it, is also fatally flawed. It will be necessary for the Applicants to compel the MEC and Ezemvelo to produce various supporting documents, including resolutions of the board, before a proper determination of the validity or otherwise of these recent actions can be made.

While the delay in bringing this matter to finality is unfortunate, the Applicants will at least approach the next hearing in the safe knowledge that the matter will be dealt with fully in a single hearing.

It would be too much to hope that the new MEC will have a good, long hard look at the mess that he has inherited and do the decent thing by bringing the court proceedings to an end. He should call a halt to the enormous waste of public funds that are being squandered on legal fees directly by his department and indirectly through Ezemvelo.

On the question of legal fees, PLEASE, the AIA needs you! We have to see this case through to the end. Too much is at stake for everybody that has an interest in the keeping of wild animals and the management of the wildlife resources of the province, with ripple effects on the entire county. Please give generously to the AIA as we go into the next round of our court battle with our coffers empty.

Yours in the quest for justice,

THE TRUSTEES

THE ANIMAL INTEREST ALLIANCE

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