

HIGH COURT DECLARES THE APPOINTMENT OF THE KZN NATURE CONSERVATION BOARD TO BE INVALID

Today (4th September 2012) in the High Court in Pietermaritzburg, Justice Piet Koen declared the appointment of the current KwaZulu-Natal Nature Conservation Board to be invalid. This brought to an end a lengthy court battle between the Animal Interest Alliance (AIA,) and the MEC Agriculture, Environmental Affairs and Rural Development, the Ezemvelo Board, its members and Ezemvelo KZN Wildlife.



By agreement, the court was asked to suspend the declaration of invalidity of the board for six months to allow the MEC to follow due process in the appointment of a new board which must meet the requirements of the KwaZulu-Natal Nature Conservation Management Act 1997 (“the Management Act”). Were the court order to have taken immediate effect, it would have rendered all of the activities of the Ezemvelo Board and Ezemvelo KZN Wildlife illegal and would have thrown nature conservation in the province into a state of chaos.

Speaking after the hearing, Jim Stockley an AIA trustee said: “We are very pleased to bring the court matter to an end. It was never our wish to create a state of chaos in the province. Our concern was and remains, that without a properly constituted board that is representative of all relevant stakeholders in the province, there is no accountability for the actions of officials in Ezemvelo KZN Wildlife”.

AIA’s dispute with Ezemvelo KZN Wildlife began in 2006 when the latter attempted to introduce a policy for the keeping of wild animals in captivity which was clearly aimed at the prohibition of the keeping of any wild animals in captivity except for limited conservation purposes. The AIA contended that neither Ezemvelo KZN Wildlife nor the Ezemvelo Board had the statutory mandate to develop such a policy or to implement it as if it were law. Although this was conceded by Ezemvelo KZN Wildlife and it was abandoned under threat of legal action, it became clear that Ezemvelo KZN Wildlife intended to achieve the same purpose through the introduction of various “norms and standards” and then “standard terms and conditions” for the issue of permits for the capture and keeping of wild animals. So onerous were the “standard terms and conditions” that it made compliance virtually impossible.

During the course of the dispute, it came to the attention of AIA that the Ezemvelo Board did not have the full complement of members required by the Management Act. The Management Act stipulates that the Board must comprise a minimum of nine members and that various categories of member must be filled. It appeared that from about 2003, the Board operated without its full complement, having been served until the end of 2008 by only five members and then by only four members until the end of 2009. Without its full complement of members the Ezemvelo Board could not function legally.

Appointments made by the MEC during 2009 for the current board which took office from the beginning of 2010, did not follow the correct procedure and did not fill all of the categories of member required by the Management Act. It is these appointments that board that the court ordered were invalid.

“Our concern was not with the legal technicalities that rendered the operations of the Ezemvelo Board, and it follows Ezemvelo KZN Wildlife, illegal. It was that without a fully-fledged and competent Board, there was no proper oversight of the activities of Ezemvelo officials and no corporate governance in province’s nature conservation agency”, says Stockley. In recent times both the Ezemvelo Board and Ezemvelo KZN Wildlife have been plagued by financial and other woes. In September 2008, the then MEC suspended the entire Board and the organisation operated under the MEC’s administration. During this time, forensic audits uncovered serious financial and other maladministration within the organisation.

Stockley goes on: "It is our view that had a proper board been in place, it would not have sanctioned the unlawful processes that Ezemvelo KZN Wildlife embarked upon and which forced us to take the matter to court. We did not cause the problems in Ezemvelo. We merely exposed and took before the court an illegal state of affairs that had to be brought to an end in the public interest".

Stockley points out: "When we became aware of the illegal state of affairs in the Board, our attorney approach the Legal Services division attached to the MEC. A deal was struck in May 2010 in an attempt to avoid court action, long before the matter came to court". According to Stockley, the AIA agreed not to pursue court action to challenge the legality of the Board, provided the irregularities in the permitting procedures being applied by Ezemvelo KZN Wildlife were addressed. An agreement was apparently reached to this effect between the MEC's legal advisor and the Executive Director: Biodiversity of Ezemvelo KZN Wildlife. However, at the first meeting between AIA and Ezemvelo KZN Wildlife to implement the agreement, it was clear that officials present had no intention of honouring the agreement reached with the MEC's legal advisor. It was this that prompted the AIA to launch its court action in December 2010.

"The pity of it is that what the court has ordered and the parties have agreed to today, is pretty much what we agreed with the MEC's legal advisor in May 2010. The difference is that the taxpayer now has to foot a massive legal bill which will run into millions". The court ordered the MEC to pay the legal costs of the AIA and Helmut Bruss who joined the proceedings with the AIA. The MEC will also have to cover the legal costs of the Ezemvelo Board and Ezemvelo KZN Wildlife as the court directed that although their legal expenses essentially come out of the same coffers, they will not be taken out of the nature conservation budget allocated to Ezemvelo.

"While we think that somebody in Ezemvelo should be held accountable for allowing the matter to proceed as far as it did in the face of what was clearly an unlawful state of affairs, we would not like to see even more of the budget allocated to conservation being used for non-conservation purposes". Stockley was referring to the recent disclosure to the Portfolio Committee on nature conservation that only about 30% of the Ezemvelo budget was spent directly on nature conservation activities.

Stockley concludes: "We hope that through our actions, the serious problems that have beset Ezemvelo for years will now be addressed by the new MEC and that he will succeed where his predecessors have failed. This starts with the appointment of a new board that complies both procedurally and substantively with the Management Act, and is truly representative of all stakeholders who have an interest in nature conservation in the province. Most important for the AIA, is to see nature conservation back in the hands of an Ezemvelo Board that is competent and accountable for its actions and those of Ezemvelo KZN Wildlife".

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