



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 3128/2021

In the matter between:
AFRIFORUM NPC

APPLICANT

and

ABAQULUSI LOCAL MUNICIPALITY

FIRST RESPONDENT

**MUNICIPAL MANAGER OF THE ABAQULUSI LOCAL
MUNICIPALITY**

SECOND RESPONDENT

**ADMINISTRATOR OF THE ABAQULUSI LOCAL
MUNICIPALITY**

THIRD RESPONDENT

**MUNICIPAL COUNCIL OF THE ABAQULUSI LOCAL
MUNICIPALITY**

FOURTH RESPONDENT

HENDRICK VUSUMUZI MBATHA

FIFTH RESPONDENT

**MEC FOR THE DEPARTMENT OF COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS,
KWAZULU-NATAL**

SIXTH RESPONDENT

**MINISTER OF COOPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS, KWAZULU-NATAL**

SEVENTH RESPONDENT

ORDER

The following order is issued:

1. The decision of the first and/or second and/or third and/or fourth respondents to appoint the fifth respondent as caretaker of forestry operations on the land known as: Remainder of Subdivision 13 of the Farm Grootgewacht No.76 and Leasehold No.7 over the Remainder of Vryheid Townlands No.6711 at a Council meeting on 20 November 2020 and any possible agreement/s concluded in this regard are reviewed and set aside.
2. The fifth respondent is divested of all profits derived from the decision and possible agreement/s mentioned in the prayer 1 above..
3. The first, second, third and fourth respondents are ordered to conduct a survey on the affected land and to file a report and a comprehensive statement indicating the value of all wood harvested by the fifth respondent (supported by expert report/s, if required) within 30 calendar days from the date of this order. The said report/s and statement/s shall indicate at least the size of each areas/blocks harvested, the types/species of tree concerned, approximate age of the trees, estimated or actual weight harvested and commercial value per ton. The said report/s and statement/s shall be filed with the honourable court and served on the applicant through its attorneys and on the fifth respondent at his address, which is 3 Steenbok Street, Vryheid.
4. The applicant may enter the relevant land and may conduct a survey of its own and compile a report/s and/or statement/s of its own within 30 calendar days of receipt of the report/s and statement/s referenced in prayer 3 above, in the event that the accuracy of the reports is disputed. Should such documents be compiled by the applicant, they shall also be filed with the court and served on the first, second, third and fourth respondents through their attorneys and on the fifth respondent at his address, which is 3 Steenbok Street, Vryheid.
5. If the fifth respondent wishes to deduct any actual expenses/loss incurred during the harvesting or handling of the wood concerned, he shall file a statement/s detailing all such expenses/losses, with supporting vouchers and documents (and possible expert evidence) indicating all alleged expenditure/losses within 30 calendar days of service of this order on him at his address being 3 Steenbok Street, Vryheid. Such documents shall be filed with the court and applicant, and first to fourth respondents through their respective attorneys.

6. All possible expert witnesses engaged shall file joint minutes within 15 calendar days from the date of filing of the last report in terms of this order, or the date on which such report would be due.
7. On the day for filing of joint minutes all parties will indicate in writing if they dispute the expenses/losses that the fifth respondent might claim to have incurred/suffered and indicate which amount/s or items are disputed.
8. In the event that the amount which the fifth respondent is liable to pay to the first respondent is agreed on between the applicant and the first to fifth respondents, such agreed amount may be made an order of court for repayment. Should such amount remain disputed, any party may set the matter down for evidence for determination of the amount due. The office of the Judge President may be approached for a preferential date in this regard.
9. After the amount payable by the fifth respondent to the first respondent is determined, the first, second, third and fourth respondents are ordered to pursue all valid forms of taxation, including possible sequestration, to obtain payment of any amount due without delay. In this regard the first, second, third and fourth respondents shall report to the court and the applicant in writing every 60 calendar days from date of determination of the final amount on progress in retrieving payment.
10. The first, second, third and fourth respondents shall report to the court and the applicant every 30 calendar days on the status of the final award of the right to harvest the relevant plantation land concerned, until it is reported that a final appointment has been made;
11. The first respondent is ordered to pay the costs of the application.

JUDGMENT

Delivered: 16 May 2024

SABELA AJ

Introduction

- [1] This is a review application where in the applicant seeks the following relief:
- a. That the decision of the first and/or second and/or third and/or fourth respondents to appoint the fifth respondent as caretaker of forestry

operations on the land known as: Remainder of Sub-division 13 of the Farm Grootgewacht No.76 and Leasehold No.7 over the Remainder of Vryheid Townlands No.6711 at a Council meeting on 20 November 2020 and any possible agreement/s concluded in this regard be reviewed and set aside.

- b. The first second and third and fourth respondents are ordered to institute action in a competent court against the fifth respondent for the recovery of all loses and or damages resulting from the impugned resolution within ten calendar days from the date of this order and pursue such proceedings to finality without delay;
 - i. The first, second, third and fourth respondents are ordered to report to this honourable court and the applicant monthly on or before the last day of each consecutive month on the status of the litigation in this regard and the process therein.
- c. The first, second, third and fourth respondents are ordered to advertise the relevant tender for a long-term caretaker/lessee in respect of the plantation within ten calendar days from date of this order and pursue the procurement process in this regard without delay;
 - i. The first, second, third and fourth respondents are ordered to report to this honourable court and the applicant monthly on or before the last day of each consecutive month on the status of the tender process in this regard and progress therein.
- d. The first, second, third fourth and fifth respondents are ordered to pay the costs of this application on an attorney and client scale, jointly and severally the one paying the other to be absolved. Costs is only sought against the other respondents in the event of opposition.
- e. Further and/or alternative relief.

The application is opposed by the first to the fourth respondents. The review is in terms principles of legality despite the applicant contending that it is also in terms of Promotion of Access to Justice Act 3 of 2000 (PAJA). S 1 of PAJA specifically excludes decisions of Municipalities from the application of PAJA.

The Parties

[2] The applicant Afriforum NPC, a is a non-profit organisation registered in accordance with the relevant laws of this country and brings this application in terms of s 38(d) of the Constitution, 1996 (the Constitution) which allows for a party to launch an application acting in the public. The first respondent is a local municipality as contemplated in s 2 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act), the second respondent is a municipal manager of the first respondent, the third respondent is the administrator of the first respondent, the fourth respondent is the municipal council of the first respondent appointed in terms of the Systems Act, the fifth respondent is an adult male who was appointed by the second respondent , the sixth respondent is the member of executive council responsible for Co-operative Government and Traditional Affairs in the province of KwaZulu-Natal and the seventh respondent is a cabinet minister responsible for Co-operative Government and Traditional Affairs. For purposes of this judgment the first to fourth respondents will jointly be referred to as 'the respondents'.

The facts

[3] As part of its activities and functions, the first respondent operates plantation land of over five hundred hectares. Planted in the plantation are pine, eucalyptus and black wattle trees. A 30-year lease agreement was concluded with Woodbasket (Pty) Ltd which ended on 30 October 2021. The expiry of the lease agreement could not have invoked an emergency since it was always known that it would expire after 30 years. A technical report was received by the first respondent listing deficiencies on the leased premises. There was also a need to address the lack of maintenance and overgrown nature of the Grootgewacht dam.

[4] On 20 November 2020, the fourth respondent took a resolution that: “That the lease Contract of Wood Basket be terminated by the end of November 2020, as per the signed contract”; and “That Council authorise or mandates the Municipal Manager with powers vested to him to appoint a caretaker or manager to look after all the management of the farm which includes plantation, harvesting, etc in the farm, for a period of 24 months, while waiting for Supply Chain Management processes to unfold and commence.” The resolution was aimed as an interim measure, pending the tender awarding process.

[5] On 4 December 2020, arising from the authority conferred on the second respondent, he resolved to appoint the fifth respondent as the caretaker and issued him with an appointment letter. The letter specified that a meeting was to be held with the fifth respondent within 14 days to conclude the terms and conditions of his appointment, following which a caretaker agreement would be concluded between him and the first respondent.

[6] the fifth respondent was appointed from 1 December 2020 to 30 November 2022 which appointment was made subsequently the meeting. A recommendation was made for an agreement of between eight to 15 years because of the forestry cycle. Upon enquiry, the applicant was informed that the appointment corresponded with the first respondent’s transformation objectives. However, the applicant held a view that the appointment was illogical in a forestry setting because of the much longer production cycle of trees. Additionally, the applicant contends that there was no caretaker agreement in existence since none was ever produced. It avers that the fifth respondent is not the caretaker since he is also allowed to harvest from the plantation land. According to the applicant, the first and second respondents actively participated in seeking to benefit of the fifth respondent and/or his grouping.

[7] While the property is owned by the first respondent, on 8 July 2021, a letter was forwarded to the first respondent confirming that a lands claim was submitted on behalf of the fifth respondent’s group being the Grootgewacht Group. According to the applicant, the land claim was suspicious as it was submitted after the claims were re-opened and only for a short period. The re-opening was subsequently

declared inconsistent with the Constitution and the new land claims was interdicted from being processed.¹

[8] A meeting was held between the applicant and the first and second respondents. The applicant was advised that the estimated value of the wood from the plantation of R2 million was already harvested by the fifth respondent and that he could potentially harvest wood valued at R25 million. Additionally, that an agreement could be finalised within two to three days with the delay being due to compliance with regulation 36 of the Municipal Supply Chain Regulations of 30 May 2005, 'the regulations'.

[9] The applicant suggested that harvesting stop pending the conclusion of a contract and that the harvesting which was already carried out be measured and that such contract be concluded within three weeks. At a subsequent meeting, the applicant was advised that the fifth respondent continued harvesting. It was indicated that the tender process would be finalised by October 2021. Further, that the fifth respondent harvesting of the trees was necessary to preserve the nature resource.

[10] The applicant contends that a decision of this magnitude could only be taken in accordance with s 14(2) of the Local Government: Municipal Finance Management Act 'the MFMA' which requires such decisions to be taken in a meeting open to the public after it has resolved that the asset is not required to provide minimum service and consideration of a fair market value is given. The applicant contends further that there was no compliance with this provision since the impugned resolution was taken in a closed council meeting and it was not decided whether the asset implicated was necessary for basic service delivery and the asset value was not indicated. The first respondent's new manager confirmed in his answering affidavit that the new lease could only occur in terms of the necessary supply chain management policies and not by council resolution.

[11] According to the applicant, the two-year appointment of the fifth respondent was illogical and was irrational due to the forestry cycle. In addition to this, it contends that the land should have been leased to meet the financial needs of the community but was 'given' to an individual which was a further act of irrationality. On 25 June 2020, the first respondent resolved to terminate the lease of the former lessee in favour of the community with a land claim. As at 17 November 2020, there had been an internal memorandum with three options regarding the land which were to: renew the old lease, sell the property or to conclude a new lease. The memorandum also provided for public participation in the process and a need to ensure compliance with supply chain policies including the valuation of the property. The applicant contends that there was no compliance with the memorandum.

[12] The applicant contends that the first and second respondents evidenced bias in favour of the fifth respondent and a consideration of irrelevant considerations as they went as far as seeking the land claim information and confirmation on behalf of the fifth respondent. There was no basis to deviate from the provisions of the supply chain management regulations.

¹ *Speaker of the National Assembly and Another v Land Access Movement of South Africa and Others* [2019] ZACC 10; 2019 (5) BCLR 619 (CC); 2019 (6) SA 568 (CC).

[13] A written agreement was annexed to the answering affidavit which only mentions the two-year period of the appointment . It sets out the rental of R183 per hectare on 625.7 hectares totalling to R114 503.10 and records that rental should be paid monthly, in advance, in the amount of R5000. The yearly rental would equal R60 000. The applicant estimates wood to the value of R9 million having been harvested as at the signing of its replying affidavit. It further records that the plantation is insured for R18 million which is an under value. It was also alluded that the written document recorded that 20 per cent of the profits less operating expenses should be paid to the municipality. The result was that the fifth respondent could calculate profit and then deduct his expenses from the said calculation.

[14] After setting out the importance of the record in the review proceedings as alluded in *Helen Suzman Foundation v Judicial Service Commission*,² the applicant stipulated what was missing from the record. This included the agreement between the first and fifth respondents which was only produced as an annexure to the answering affidavit; the first respondent's supply chain documents and there was nothing was provided to justify why emergency measures had to be taken.

[15] Regarding the production of the agreement regulating the relationship between the first and fifth respondents, the applicant avers that it raises possible disputes of fact. It however, contended that this is related to the fact that a justification cannot be raised outside the record. The applicant relied on *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd*³ to support the submission that there are exceptions to the *Plascon-Evans rule*⁴ and argued that in some instances, the court can reject the respondent's version. It was submitted that in this case, the court should adopt the approach set out in *Soffiantini v Mould*.⁵

[16] The applicant contended that the only finding which the court could arrive at was that the agreement was a fabrication after the fact in an attempt to justify the impugned award or to reconstruct the reason which was denounced in *National Energy Regulator of South Africa and Another v PG Group (Pty) Limited and Others*.⁶ It was submitted that, even if the court did not find that the agreement was a fabrication, it in any event fell to be set aside on other grounds which included the unlawfulness of the resolution and the subsequent agreement with the fifth

[17] As mentioned earlier, the applicant relied on PAJA as the basis of review. It set out its grounds of review relying on the provisions of s 6(2) as being:

1. That the decision was not authorised by the empowering provisions;
2. The decision maker was biased or could reasonably be suspected to be;
3. The action was procedurally unfair. Other possible caretakers were not considered;

² *Helen Suzman Foundation v Judicial Service Commission* [2018] ZACC 8; 2018 (4) SA 1 (CC); 2018 (7) BCLR 763 (CC).

³ *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd* [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 at 635.

⁴ *Ibid.*

⁵ *Soffiantini v Mould* 1956 (4) SA 150 (C) at 154.

⁶ *National Energy Regulator of South Africa and Another v PG Group (Pty) Limited and Others* [2019] ZACC 28; 2019 (10) BCLR 1185 (CC); 2020 (1) SA 450 (CC) para 39.

4. The action was taken for reasons not authorised by the empowering provision whilst taking into account irrelevant considerations (possible land claims) and the decision was taken for an ulterior purpose or motive and in bad faith and was arbitrary or capricious;
5. The action contravenes the law and the decision was irrational in terms of s 6 (2)(f) of PAJA;
6. The decision is unreasonable that no reasonable person could have exercised power in the manner it was exercised;
7. The action is unconstitutional and unlawful in terms of s 6 (2)(i) of PAJA.

[18] Pertaining to bias, the applicant relied on *Turnbull-Jackson v Hibiscus Court Municipality and Others*⁷ where the following was stated:

'[30] The Constitution guarantees everyone the right to administrative action that is procedurally fair. Section 6(2)(a)(iii) of PAJA, which is legislation enacted in terms of section 33(3) of the Constitution to give effect to, *inter alia*, the right contained in section 33(1) of the Constitution, makes administrative action taken by an administrator who was 'biased or reasonably suspected of bias' susceptible to review. Whether an administrator was biased is a question of fact. On the other hand, a reasonable suspicion of bias is tested against the perception of a reasonable, objective and informed person. To substantiate, borrowing from *S v Roberts*:

- (a) There must be a suspicion that the administrator might — not would — be biased.
- (b) The suspicion must be that of a reasonable person in the position of the person affected.
- (c) The suspicion must be based on reasonable grounds.
- (d) The suspicion must be one which the reasonable person would — not might — have.' (Footnotes omitted)

[19] Regarding unlawfulness, the applicant relies on s 14 of the MFMA and submits that the first respondent contravened its own supply chain policy. In addition to this, that the relevant respondents were not able to justify invoking the provisions of regulation 36 allowing for the accounting officer to dispose of official procurement processes only in case of emergency. The applicant submitted that there was no emergency and that in any event, it was not the accounting officer that took the impugned decision but the municipal council.

[20] The applicant submitted that in terms of relief, the court has a wide discretion in terms of s 172 of the Constitution and s 8(2) of PAJA which provides for an order that is just and equitable, including orders directing the parties to refrain from doing any act which the court considers necessary to do justice between the parties. A further submission was that the fifth respondent should not be allowed to benefit from this patently unlawful and invalid decision to the detriment of the first respondent and its residents. They argued that this was effectively giving away

⁷ *Turnbull-Jackson v Hibiscus Court Municipality and Others* [2014] ZACC 24; 2014 (6) SA 592 (CC); 2014 (11) BCLR 1310 (CC) para 30.

municipal council and that the first respondent should be compelled to institute legal action to recover the value which would be in the interest of the public. To this regard, the applicant relied on *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others*.⁸

[21] In terms of costs, it was submitted that the *Bio-watch principle*⁹ should be applicable in that the applicant should not be discouraged from enforcing its right should it be unsuccessful.

[22] *Mr Broster* for the respondents submitted that there was nothing offensive by the resolution of November 2020. This was because the first respondent is authorised to appoint a caretaker whilst the tender is underway. This is in terms of s 60 of the Local Government Municipal Finance Act which identifies the municipal manager as the accounting officer. This section deals with the powers and functions of the municipal manager which record him as the accounting officer who must exercise the functions and powers assigned to an accounting officer in terms of this Act; and provide guidance and advice on compliance with this Act to political structures, office bearers and the municipality as a whole.

[23] The court is called upon to determine whether the first to the fourth respondents acted outside s 14 of the MFMA in appointing the fifth respondent as caretaker of forestry operations at a council meeting on 20 November 2020.

[24] In terms of s 14 (2) of the MFMA, a municipality may transfer ownership or other dispose of a capital asset other than one contemplated in ss 1 , but only after the municipal council, in a meeting open to the public:

1. has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
2. has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

[25] In dealing with reviews based on the principles of legality, the court in *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*¹⁰ held that this was a rule of law and that the principle implied that a body exercising public power, which was the municipality, had to act within powers lawfully conferred onto it . Further, the principle required the holder of public power to act in good faith and not misconstrue his powers.¹¹ In *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of*

⁸ *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2014] ZACC 12; 2014 (6) BCLR 641 (CC); 2014 (4) SA 179 (CC) paras 24-28.

⁹ *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

¹⁰ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* [1998] ZACC 17; 1999 (1) SA 374; 1998 (12) BCLR 1458 at 56-58.

¹¹ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999] ZACC 11; 2000 (1) SA 1; 1999 (10) BCLR 1059 para 148.

the Republic of South Africa and Others,¹² it was held that the exercise of public power should not be arbitrary or irrational. Decisions must be rationally related to the purpose for which the power is given otherwise they are arbitrary and inconsistent with the principle of legality. To pass constitutional scrutiny, the exercise of public power by the executives and other functionaries must comply with this requirement.

[26] The principle of legality gives courts control over action which is not administrative as defined in PAJA, as in this case, but involves the exercise of public power. The court then must consider the lawfulness of the exercise of public power.¹³ As mentioned above, *Mr Broster* submitted that the impugned resolution was lawful as it was taken in accordance with s 60 of the MFMA.

[27] While it is not in dispute that the second respondent, as the municipal manager, is the accounting officer of the first respondent and has certain responsibilities, the issue in this matter related specifically to the management of transfer of or disposal of an asset belonging to the first respondent. As stated above, the relevant section governing such an issue is s 14 of the MFMA. As was submitted by the applicant, the decision of this nature and magnitude may only be taken in a meeting open to the public. There is no evidence that such a meeting was convened, this appears to be common cause. From the facts, it is patent that the decision was taken at a meeting of the fourth respondent. Therefore, there was a procedural irregularity in the passing of the resolution.

[28] As stated in *Albutt v Centre for the Study of Violence and Reconciliation and Others*,¹⁴ it is irrational for public power to be exercised without hearing the affected people. The fact that the impugned resolution was taken without ensuring compliance with the requirements of consultation with members of the public resulted in the exercise of the public power to be procedurally unfair.

[29] For similar reasons, the impugned decision was unlawful since it was taken in contravention of the provisions of s 14(2) of the MFMA. The argument advanced by *Mr Broster* to suggest the lawfulness of the decision is misguided. While the second respondent is the accounting officer, his exercise of public power is still subject to and regulated by the MFMA and other legislative prescript. Lawfulness requires that the impugned decision must be duly authorised by law and that any statutory requirements attached to the exercise of such power must be complied with.¹⁵

[30] In *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*,¹⁶ the court held that legislature and executive are constrained by the principle that they may exercise no power and perform no function beyond that conferred to them by law. Therefore, any action

¹² *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others* [2000] ZACC 1; 2000 (2) SA 674; 2000 (3) BCLR 241.

¹³ C Hoexter and G Penfold *Administrative Law in South Africa* 3 ed (2021) at 157.

¹⁴ *Albutt v Centre for the Study of Violence and Reconciliation and Others* [2010] ZACC 4; 2010 (3) SA 293 (CC); 2010 (2) SACR 101 (CC); 2010 (5) BCLR 391 (CC).

¹⁵ Hoexter above fn 13 at 355.

¹⁶ *Fedsure Life Assurance Ltd and Others* above fn 10 para 58.

performed without necessary authority is ultra vires or illegal. The action by the fourth respondent in passing the resolution was without necessary authority and therefore ultra vires. It should be set aside.

[31] A further requirement is that of the rationality of the impugned decision. This requires that there must be a rational connection between the exercise of public power and the purpose for which the power was given.¹⁷ It is irrational for the respondents to appoint a caretaker to oversee the forestry for a period of 24 months when it is clear that this would affect the harvesting. There was also no indication as to the basis upon which the fifth respondent was selected as the appropriate person to occupy the position of a caretaker. There was also no advancement as to his suitability to the position and how his appointment would be in the interest of the public and the mere fact that he belonged to a group which had launched a land claim, was insufficient to justify his appointment.

[32] On the issue of dispute of fact raised by the respondents, while I note the application of the *Plascon-Evans rule*¹⁸ in such instances, I agree with the applicant that the conduct of the respondents is questionable. As was stated in *Helen Suzman Foundation v Judicial Service Commission*,¹⁹ it is imperative that documents relied upon to prove the reasonableness of a decision in review proceedings forms part of the record provided to afford the applicant opportunity to adequately address the issues in a supplementary affidavit. It is questionable when such documents are produced later without any explanation to the reason they were not furnished earlier.

[33] In my view, whether an agreement exists regulating the relationship between the first and the fifth respondent is produced, having found that the decision to pass the impugned resolution was unlawful and irrational has the effect of nullifying any action subsequently taken and arising from it. Accordingly, once the resolution falls away, so does the agreement between the first and fifth respondents.

[34] The applicant has satisfied the court that the resolution taken was not lawful, reasonable and procedurally fair. Therefore, it follows that such decision is subject to be reviewed in terms of s 6 (2) and (3) of the PAJA..

Order

[35] In the circumstances, I make the following order:

1. The decision of the first and/or second and/or third and/or fourth respondents to appoint the fifth respondent as caretaker of forestry operations on the land known as: Remainder of Subdivision 13 of the Farm Grootgewacht No.76 and Leasehold No.7 over the Remainder of Vryheid Townlands No.6711 at a Council meeting on 20 November 2020 and any possible agreement/s concluded in this regard are reviewed and set aside.

¹⁷ *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others* above fn 12 paras 85 and 90.

¹⁸ *Plascon-Evans Paints (TVL) Ltd* above fn 3.

¹⁹ *Helen Suzman Foundation* above fn 2.

2. The fifth respondent is divested of all profits derived from the decision and possible agreement/s mentioned in the prayer 1 above..
3. The first, second, third and fourth respondents are ordered to conduct a survey on the affected land and to file a report and a comprehensive statement indicating the value of all wood harvested by the fifth respondent (supported by expert report/s, if required) within 30 calendar days from the date of this order. The said report/s and statement/s shall indicate at least the size of each areas/blocks harvested, the types/species of tree concerned, approximate age of the trees, estimated or actual weight harvested and commercial value per ton. The said report/s and statement/s shall be filed with the honourable court and served on the applicant through its attorneys and on the fifth respondent at his address, which is 3 Steenbok Street, Vryheid.
4. The applicant may enter the relevant land and may conduct a survey of its own and compile a report/s and/or statement/s of its own within 30 calendar days of receipt of the report/s and statement/s referenced in prayer 3 above, in the event that the accuracy of the reports is disputed. Should such documents be compiled by the applicant, they shall also be filed with the court and served on the first, second, third and fourth respondents through their attorneys and on the fifth respondent at his address, which is 3 Steenbok Street, Vryheid.
5. If the fifth respondent wishes to deduct any actual expenses/loss incurred during the harvesting or handling of the wood concerned, he shall file a statement/s detailing all such expenses/losses, with supporting vouchers and documents (and possible expert evidence) indicating all alleged expenditure/losses within 30 calendar days of service of this order on him at his address being 3 Steenbok Street, Vryheid. Such documents shall be filed with the court and applicant, and first to fourth respondents through their respective attorneys.
6. All possible expert witnesses engaged shall file joint minutes within 15 calendar days from the date of filing of the last report in terms of this order, or the date on which such report would be due.
7. On the day for filing of joint minutes all parties will indicate in writing if they dispute the expenses/losses that the fifth respondent might claim to have incurred/suffered and indicate which amount/s or items are disputed.
8. In the event that the amount which the fifth respondent is liable to pay to the first respondent is agreed on between the applicant and the first to fifth

respondents, such agreed amount may be made an order of court for repayment. Should such amount remain disputed, any party may set the matter down for evidence for determination of the amount due. The office of the Judge President may be approached for a preferential date in this regard.

9. After the amount payable by the fifth respondent to the first respondent is determined, the first, second, third and fourth respondents are ordered to pursue all valid forms of taxation, including possible sequestration, to obtain payment of any amount due without delay. In this regard the first, second, third and fourth respondents shall report to the court and the applicant in writing every 60 calendar days from date of determination of the final amount on progress in retrieving payment.

10. The first, second, third and fourth respondents shall report to the court and the applicant every 30 calendar days on the status of the final award of the right to harvest the relevant plantation land concerned, until it is reported that a final appointment has been made;

11. The first respondent is ordered to pay the costs of the application.

SABELA AJ

CASE INFORMATION

DATE OF HEARING : 07 November 2022

DATE DELIVERED : 16 May 2024

APPEARANCES

COUNSEL FOR APLICANT : JGC HAMMAN

INSTRUCTED BY : **HUNTER SPIES INCORPORATED,
PRETORIA**

COUNSEL FOR FIRST RESPONDENT : JP BROSTER
INSTRUCTED BY : **GARLICHE & BOUSFIELD,
UMHLANGA**