

78/1959

In the Supreme Court of South Africa  
In die Hooggeregshof van Suid-Afrika

{ APPELLATE ~~Division~~ Division.)  
~~Afdeling~~ Afdeling).

Appeal in Civil Case.  
Appèl in Siviele Saak.

NOVA ESTATES (PTY) LTD. Appellant,

LOWER SOUTH COAST REGIONAL WATER SUPPLY CORP. & AFD. Respondent.

Appellant's Attorney *Kalil & Sorour* Respondent's Attorney *(1) Davidson & Marais*  
Prokureur vir Appellant Prokureur vir Respondent  
Appellant's Advocate *B.A. Calinger QC* Respondent's Advocate *D.J. Shaw Q.C.*  
Advokaat vir Appellant *J.D. Schwartz* Advokaat vir Respondent *John Hewat*

Set down for hearing on *Thursday, 5th November, 1959.*  
Op die rol geplaas vir verhoor op

(A)

*14/11/59 9.45 a.m. - 3.30 p.m.* C.A.V.

Coram: Steyn, Beyers, Malan, van Blerk et van Wyk.

Appeal dismissed WITH COST.

*RB*  
11/12/59

IN THE SUPREME COURT OF SOUTH AFRICA.

( APPELLATE DIVISION.)

In the matter between:

NOVA ESTATES (PROPRIETARY) LIMITED,

Appellant

and

LOWER SOUTH COAST REGIONAL WATER SUPPLY  
CORPORATION,

First  
Respondent.

and

THE ADMINISTRATOR OF NATAL,

Second  
Respondent.

Coram: Steyn, C.J. Beyers, Malan, van Blerk, J.J.A.  
et van Wyk, A.J.A.

Heard on: 5th November, 1959.

Delivered: 11 Dec. 1959

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J U D G M E N T.

VAN WYK: A.J.A.

The appellant (Applicant in the Court a quo) is and has been since about 1952 the registered owner of a township known as Margate Township Extension No. 3, which is situated within the municipal area of Margate. First Respondent (hereinafter referred to as Respondent) was established in 1946 under the provisions of Ordinance No. 21 of 1945 (Natal). This is an appeal against an Order of the Natal Provincial Division dismissing, with costs, Appellant's application for the following orders:

~~The applicant asks for an order declaring:~~

(a) that section 9(a) of Ordinance 21 of 1945 (Natal)

2/.... is.....

is ultra vires.

(b) that the water scheme of the first respondent

is ultra vires.

(c) that the first respondent had no power ~~to~~ in

law to levy, impose or collect water rates

under Ordinance 21 of 1945 (Natal) for the

water scheme or for the purposes of such

scheme, and that all such rates collected

were unlawfully collected.

The Borough of Margate falls within the respondent's proclaimed area. In or about 1951 respondent purchased the water undertakings of the said Borough and since then the respondent has with the consent of the said Borough supplied water direct to consumers in the area of the said Borough. At all material times respondent, acting with the approval of the Administrator of Natal, has ~~fixed~~ levied a water rate to be collected from the owner of every lot in the area of supply. The appellant has been rated at the rate of £3.10.-. per lot, totalling more than £6000.

At this stage it will be convenient to set out the relevant legislation.

Section 13 of Act 38 of 1945 (~~subsection 3~~ is

(a portion is  
not relevant and is omitted) reads as follows:

...3/..13(1).....

- "13(1) When and so often as it may be deemed desirable to add to the matters entrusted to a province by the South Africa Act, 1909, or by this Act, any additional matter may be entrusted to that province subject to the following provisions, that is to say:
- (a) If it be a matter specified in the second Schedule the Governor-General may, with the concurrence of the executive committee of the province, determine whether that additional matter shall be so entrusted.
- 13(2) When any matter shall have been entrusted to a province by the Governor-General as provided by paragraph (a) of sub-section (1), notice thereof shall be given by proclamation in the Gazette and, as from the date ~~in that~~ specified in that proclamation, all powers, authorities and functions relating to that matter shall thereupon be vested in the executive committee of the province as if they were powers, authorities, and functions referred to in section eighty-one of the South Africa Act, 1909, and the provincial council shall be competent to make ordinances in relation to that matter as if it were a matter mentioned in section eighty-five of the said Act."

Paragraph 20, in its original form, of the Second Schedule to Act 38 of 1945 read as follows:

"The establishment and control of schemes for the supply of water to local authorities and townships including areas sub-divided or laid out for building purposes or urban settlement or deemed by the executive committee of the province concerned to be destined for such purposes or settlement."

On the 24th August 1945 the Governor-General issued Proclamation 169 of 1945 (hereinafter referred to as the said Proclamation) It reads as follows (omitting words

not here relevant):

"Under and by virtue of the powers vested in me by paragraph (a) of sub-section (1) of Section thirteen of the Financial Relations Consolidation and Amendment Act 1945 (Act No. 38 of 1945), I do hereby declare, proclaim and make known that I have ~~be~~ determined with the concurrence of the Executive Committee of the Province of Natal, that as from the date hereof, the matters specified in paragraphs 19 and 20 of the Second Schedule to the said Act, viz.,

the expropriation of land for public ~~purposes~~ purposes in the Province of Natal, and the establishment and control of schemes for the supply of water to local authorities and townships including areas sub-divided or laid out for building purposes or urban settlement or deemed by the Executive committee of the province concerned to be destined for such ~~pr~~ purposes or settlement, shall be entrusted to the said Province of Natal."

Thereafter in November 1945, Ordinance 21 of 1945 (Natal) came into operation. This Ordinance provides for the establishment of Regional Water Supply Corporations. Section 9(a) thereof in stating the functions and duties of a Corporation, read as follows (in its original form):

"to establish or acquire and maintain and work a scheme or schemes for pure and adequate supplies of water to local authorities, ~~Departments~~ Departments of the Government including the South African Railways and Harbours Administration, the Provincial Administration, persons, companies and bodies of persons corporate or unincorporate, engaged in mining, industry or the like, and other persons in local authority areas and townships situate within the <sup>defined</sup> ~~fedined~~ area; provided that ~~su~~ such supplies are required primarily for domestic purposes as defined in this Ordinance."

"Township" is defined in Section 1 as follows)-

"township" means any township situate outside the area of jurisdiction of any local authority and includes any area which has been sub-divided or laid out for building purposes or urban settlement or is deemed by the Administrator to be destined for such purposes or settlement likewise situated outside the area of jurisdiction of any local authority.")

Section 11 provides for the establishment of a scheme by a corporation, "scheme" being defined in Section 1 as follows:

"scheme" means any undertaking for the ~~supply~~ supply of water under the control of a corporation, water company or local authority, including all the assets and liabilities appertaining thereto".

Section 13(2) provides that the Corporation shall supply water either in bulk or by retail to persons in any local authority area or township situated within the defined area who make application therefor and agree to accept the same. Section 22 (3) empowers the Administrator to make regulations for Corporations or any Corporation providing for the levying and collection of the water rate.

In May 1946 the second schedule to Act 38 of 1945 was amended by section 2 of Act 22 of 1946 which reads:

2(1) The Second Schedule to the ~~principal~~ principal Act is hereby amended by the substitution for paragraph 20 of the following paragraph:

"20. The ~~Pre~~ preparation and carrying out of schemes for the supply of water to local authorities and in townships (including areas sub-divided or laid out for building purposes or urban settlement or deemed by the executive committee of the province concerned to be destined for

" such purposes or settlement), and the establishment of corporations with power to prepare or to carry out such schemes and, for the purposes of such schemes, to levy rates on immovable ~~pe~~ property and to raise fees in respect of water supplied by them; Provided that no such corporation shall be empowered to levy rates on State owned property in the occupation or under the control of the railway administration, save such property as is not used for railway purposes.

- (2) Sub-section (1) shall be deemed to have come into operation on the first ~~day~~ day of April, 1945".

Thereafter on 12th September, 1946 the Administrator of Natal acting under the powers conferred on him by section 7 (1) of Ordinance 21 of 1945 (Natal), defined an area, assigned the name Lower South Coast, and constituted the respondent for such area. See ~~Per~~ Proclamation 46 of 1946 (Natal).

In 1954, Paragraph 20 of the Second Schedule to Act 38 of 1945 was further amended by the deletion of the words "to local authorities and in townships (including areas sub-divided or laid out for building purposes or urban settlement or deemed by the executive committee of the province concerned to be destined for such purposes or settlement)" and the substitution therefor of the words "in any area". See Section 4 of Act 45 of 194<sup>54</sup>~~5~~.

On the 2nd August, 1956, Ordinance 25 of 1956

(Natal) came into operation. Section 1 of this Ordinance amended section 9(a) of Ordinance 21 of 1945 by <sup>the</sup> deletion of the words "in any local authority areas and townships situate." Section 13(3) bis was added by section 3 (b) of Ordinance 25 of 1956 and reads as follows:-

"(3)bis. The corporation may contract for the supply of water either in bulk or by retail to the occupier of any land situated within the defined area but without the area of any local authority or any township, upon such terms and conditions as may be approved by the Administrator."

The main submissions advanced by Mr. Ettlenger, who appeared on behalf of the appellant, was that Ordinance 21 of 1945 ~~was~~ ultra vires in that its provisions ~~go~~ far beyond the matters entrusted to Provincial Councils by the said proclamation. He further submitted that inasmuch as no further proclamations were issued by the Governor-General neither Act 22 of 1946 nor Act 45 of 19~~45~~<sup>54</sup> affected the said proclamation. I shall ~~no~~<sup>now</sup> proceed to deal with the submissions in regard to the interpretation of the said proclamation, and thereafter I shall consider the legal effect of the said statutes.

Mr. Ettlenger contended that the aforesaid proclamation merely authorised <sup>legislation in respect of</sup> the supply of water, in bulk, to local ~~authorities~~ authorities or township owners



for reticulation by such authorities or township owners to ~~indiv~~ individual consumers, and that ~~it did not authorise~~ <sup>could not be authorised.</sup> the supply of ~~w-~~ water direct to such consumers. It was accordingly contended that section 9(a) of the said Ordinance 21 of 1945 ~~was~~ ultra vires. The words "to local authorities" in the said paragraph 20 appear ~~to me~~ to be clear and unambiguous, and I find no justification for not giving them their <sup>wellknown</sup> ~~wellknown~~ ordinary meaning. "Local authorities" are legal personae such as Municipal councils, and should not be construed - as was contended by Mr. Shaw, who appeared on behalf of the respondent - as referring to the areas of local authorities. On the other hand the words "to townships" refer to areas of land and not to persons. ~~That this is so~~ appears clearly from the words "including areas <sup>subdivided</sup> ~~submitted~~ etc." Erven in townships and subdivided areas may belong to a large number of owners, and there <sup>may</sup> ~~could~~ conceivably be many instances where no arrangements exist for the supply of water to such owners through one person. There may be no township owner or other person willing and able to obtain water in bulk for distribution to the individual consumers. <sup>There is accordingly in my opinion no</sup> ~~In my view there is no~~ justification for reading the word "Township" as "township owners!"

Mr. Ettlenger contended that in any event authority to

supply water to townships and the other areas mentioned in the said paragraph 20, is not wide enough to authorise a direct supply to any person in a local authority area as is done in section 9(a) of Ordinance 21 of 1945. This submission requires a determination of the meaning of the word "township" in said paragraph 20. Mr. Ettlenger referred to the definition of "township" in Ordinance 21 of 1945, but this definition is of no assistance inasmuch as one cannot refer to an enactment to construe its own enacting authority. This word is defined in a large number of statutes and Ordinances, but these definitions ~~are of technical nature and~~ vary to such an extent that ~~very~~ little assistance is derived therefrom. I quote a few of these definitions: Sect. 2 of the Township and Hamlet Ordinance No. 26 of 1928 (O.F.S.):

"Township shall mean a piece or pieces of land which has or have been surveyed into or laid out as sites for residential, business, industrial or similar purposes (or which are in the opinion of the administrator destined or ~~likely~~ likely to be used for such purpose) and as streets, roads, thoroughfares or rights of way giving access thereto and shall include an extention of a township."

Section 1 of Ordinance 10 of 1934 (Natal)(repealed in 1949) defines "private township" as follows:

"Private township" means any area of land (other than an area of land laid out as agricultural holdings or farming lands,

...10/..provided....

"provided that each of such holdings is not less than five acres in (extent) registered as one or more pieces of land either contriguous or in close proximity to each other which is being or is intended to be laid out or divided into sites for residential, business, industrial, building occupational or similar purposes or for urban settlement arranged in such a manner so as to be intersected or connected by or to abut on streets, thoroughfares, rights-of-ways squares or open spaces."

The definition in section 1 of the Transvaal Ordinance No. 11 of 1931 as amended by Section 10 of Ordinance 1 of 1933 and section 27 of Ordinance 20 of 1941 includes the following:

"(c) any area of land registered as one or more pieces of land either contiguous or in close proximity to each other which is being or is intended to be laid out or divided into sites for residential, business, industrial, building, occupational or similar purposes or for urban settlement arranged in such a manner so as to be intersected or connected by or to abut on streets, thoroughfares, rights-of way, squares or open spaces."

See also Act 34 of 1908(Transvaal), Section 102 of Act 47 of 1937, ~~Act 47 of 47 of 1937, Section 37 Act 36 of 1937~~ and Ordinance 33 of 1934 (Cape).

It is common knowledge that the areas of local authorities consist mainly, ~~if not entirely,~~ of townships ~~as~~ defined in

<sup>VARIOUS</sup> the Townships Ordinances and other areas ~~subdi~~ subdivided

11/.. or.....

or laid out for building purposes or ~~urban~~ urban settlement, and in <sup>my</sup> view there is no conceivable reason why it should have been thought fit to authorise a direct supply to these properties and other properties deemed by the executive committee of the <sup>Province</sup> Provincial Council concerned to be destined for building purposes or urban settlement, but to insist that any other properties within the area of a local authority should be supplied by local authorities only. In this regard one must bear in mind that in 1945 Ordinance 21 of 1942 (Natal) was in force and in terms of section 179 thereof <sup>a</sup> a Municipal Council is empowered to ~~either~~ either supply the consumers itself or to contract with any person to do so. No ~~distinction~~ distinction was made between the inhabitants of any particular area and another within the area of a local authority, and in my view it is improbable that the legislature had any such discrimination in mind when enacting the said paragraph 20. One of the meanings of the word "township" is the area of a village or town. The Standard Dictionary <sup>defines it as</sup> "the district belonging to a town tithing or vill." The word for "township" in the Afrikaans version of the said paragraph 20 is "dorp", and the ordinary meaning of "dorp" when used to denote an area is the area within the boundaries of a town or ~~village~~ village.

The above considerations lead me to the conclusion that the word "townships" in the said paragraph 20 was intended to include the areas of local ~~authorities~~ authorities.

It was further submitted on behalf of the appellant that the said proclamation did not authorise the creation of corporations, nor the imposition of a water rate as distinguished from charging for water actually supplied

The legal principles applicable in ~~the~~ regard to the interpretation of legislation relating to ~~by~~ the powers of Provincial Councils are dealt with in Middelburg Municipality vs. Getzen 1914 A.D. p. 544. At page 570 WESSELS A.J.A. (as he then was) said: "<sup>in</sup> Interpreting the powers of a Provincial Council the courts ought to be slow to restrict their powers so as to make progressive legislation difficult or impossible. It seems to me, therefore, that the correct way for a court of justice to interpret the powers of the Provincial Councils is to give them as wide a scope as possible, compatible with the nature and extent of the conferred or delegated authority. As long as the Provincial Councils deal with matters under Sec. 85 of the South Africa Act, and as long as they do not trench upon matters which exclusively belong to the Union ~~Parle~~ Parliament, their powers should be ~~benevel~~ benevolently and not restrictively interpreted."

At page 552 INNES C.J. remarked: "And in deciding whether or not there has, in any particular instance, been an excess of that authority, regard must be had to the maxim "Quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse ESSE non potest." The principle therein embodied is of wide application, and bearing in mind the aim and scope of the South Africa Act, I think we may say that ~~ex~~ the legislative ..13.. authority.

authority committed to the Council must ( in the absence of manifest intent to the contrary) be taken to include all powers properly required to effect the purpose for which it was conferred."

It was submitted on behalf of the respondent that one of the most effective ways in which schemes for the supply of water to local authorities and townships can be established is the creation of water corporations, and that in view of the wide and unqualified powers entrusted to Provincial Councils by the said Proclamation the establishment of corporations by Ordinance 21 of 1945 cannot be said to be beyond the powers thus entrusted.

It was further submitted that it must have been foreseen that a water corporation supplying water to a large number of consumers might require an assured minimum income, and that inasmuch as one of the ways in which institutions of this kind obtain the necessary assured income is by the means of the imposition of rates, paragraph 20 should be interpreted as conferring the right to impose such rates.

However in view of the conclusion I come to in regard to the legal effect of ~~section~~<sup>section</sup> 2 of Act 22 of

1946 it is not necessary to decide whether <sup>h</sup> <sup>the</sup> powers conferred on Provincial Councils by the Proclamation included the power to pass Ordinances providing for the creation of Corporations or the imposition of a water rate, and no decision is accordingly made in respect thereof.

I now proceed to deal with the legal effect of section 2 of Act 22 of 1946. The only object the legislature could have had in mind when enacting that the new paragraph 20 of the second schedule to the said Act would be deemed to have come into operation on the 1st April, 1945, was to validate legislation under the Proclamation or to remove doubts as to the validity of such legislation. If <sup>f</sup> a further Proclamation by the Governor-General was contemplated, the necessary powers to amend the aforesaid Proclamation with retrospective effect would have been conferred, as otherwise a further Proclamation could not validate any existing legislation retrospectively, nor could it remove any doubt as to the validity of such legislation. I accordingly conclude that it was not contemplated that there should be a further proclamation by the Governor-General, and that when Parliament passed Act 22 of 1946 it intended that the new paragraph 20

would become part of the Proclamation forthwith, with retrospective effect. See Pretoria City Council v Levinson (1949 (3) S.A. 305 at 318-9).

If respondents submissions in regard to the original paragraph 20 set out above are sound, it follows that the new paragraph 20 <sup>are</sup> ~~are~~-substituted by Act 22 of 1946 merely states in express terms powers already included in the general powers contained in the original paragraph 20. However should the submissions that the said Proclamation authorised the creation of water corporations <sup>were</sup> ~~and~~ the imposition of a water rate be wrong, these powers are added with retrospective effect by section 2 of Act 22 of 1946. This means that if Ordinance 21 of 1945 was ultra vires on account of the absence of power on the part of the Provincial Council to pass ordinances providing for the creation of water corporations and the imposition of a water rate, it was validated with retrospective effect by the said section 2.

The.. ...../16.



The substitution ~~in-th~~ of the preposition "in" for "to" in the new paragraph 20 also removes any doubt that may have existed as to whether the words "to..townships" referred to persons or areas.

In support of his contention that respondent's water scheme <sup>is</sup> ~~was~~ ultra vires Mr. Ettlenger, <sup>further</sup> submitted that even if section 9(a) of Ordinance 21 of 1945, in its original form, was not ultra vires, the amendment thereof by section 1 of Ordinance 25 of 1956 was ultra vires, and that the addition of section 13(3) bis by section 3(b) of Ordinance 25 of 1956 was also ultra vires. The argument in support of this submission was as follows:

Matters specified in the second schedule to act 38 of 1945 are only entrusted to Provincial Councils when the Governor-General gives notice to that effect by proclamation, and when the scope of any matter is enlarged by means of an amendment of the said second schedule a ~~fe~~ fresh proclamation is necessary in order to confer the necessary power to legislate in respect of what has been added. If this ~~is~~ is so it follows that section 4 of Act <sup>45 of</sup> 1954 did not amend the said proclamation by incorporating therein its amendment of the said paragraph 20 of the said second schedule, and the Natal Provincial Council according...17/...ly had.....

ly had no authority to empower water corporations to supply areas other than those mentioned in the said paragraph 20 prior to its amendment in 1954, and the amendment of section 9 (a) by section 1 of Ordinance 25 of 1956, as well as the addition of section 13 (3) bis by section 3 (b) of Ordinance 25 of 1956 would accordingly be ultra vires. As already stated Mr. Etlinger's submission is that if the aforesaid provisions are ultra vires the respondent's scheme must also be ultra vires.

Section 4 of Act 45 of 1954 contains no retrospective provision such as is found in section 2 of Act 22 of 1946, and it cannot therefore be said, as we said in regard to that section, that Parliament must have intended <sup>ed</sup> to amend the Proclamation. There<sup>is</sup> however, is no provision for the Governor-General withdrawing powers once conferred, and if an amendment of any matter specified in the said second schedule does not automatically also amend pro tanto such matter in a proclamation issued under section 13 of Act 38 of 1945, the result would be that where the matters specified in the said second ~~schedule~~ schedule are restricted or reduced by Parliament any proclamations already issued remain unamended. If such proclamations are not affected by...../18.

by such amendments these amendments would be ineffective inasmuch as the powers originally conferred by such proclamations would remain, and cannot be restricted or reduced by further proclamations. It is of course, always possible for <sup>p</sup>parliament when restricting or reducing the matters set out in the said second schedule to amend, or to authorise the Governor-General to amend, the relevant proclamations, but it may well be that such procedure was not envisaged. This reasoning affords some support for the view that it was intended that the amendment of any matter in the second schedule would ipso jure constitute an amendment of such matter in a proclamation, and that once the power to legislate has been transferred no further proclamations in regard to such matter would be necessary.

However,<sup>a'</sup> I shall show presently, there is no satisfactory evidence before us as to what the respondent's scheme comprises. We do not know to what extent the respondent's scheme is based on the provisions of Ordinance 25 of 1956. It is accordingly impossible to conclude that should these aforesaid sections of Ordinance 25 of 1956 be ultra vires, the whole scheme must be ultra vires.

In view of this and in view of the decision I come to in regard to the legal effect of the said Proclamation prior to Act 45 of 1954 a decision in regard to the legal effect of section 4 of <sup>this</sup> Act ~~is~~ is unnecessary inasmuch as even if appellant's contentions in this regard should be sound, they do not justify any order in its favour in respect of its claims.

In support of its claim that respondent's water scheme is ultra vires appellant also relied on certain factual statements in the affidavits filed. In paragraph 14 of the affidavit of one Wartski, a director of appellant, the following allegations are made:

" The first respondent's water supply Scheme embraces the supply of water to consumers other than local authorities and also in areas outside townships as defined. More particularly, Applicant refers to the following examples:

- (a) One T.W.Baker on the Farm Property, remainder of farm 'Sea Slopes', which is entirely outside the area of any local authority, and which is not in any township;
- (b) The Electricity Supply Commission sub-station which is outside a local authority area, and is not in a township;
- (c) Certain Mrs. Feldman, who farms on 'The Breeze' No.6921, known as 'NIALEBEN', near Margate, outside the area of a local authority and not in a township;
- (d) Margate Textile Company, whose premises are situated on the property of Mrs. Feldman referred to in sub-paragraph (c) supra.

The consumers of water mentioned in this paragraph do ~~not~~ not pay...../20.

pay the water rate which has been levied, but the pay for the water that they actually consume. The said Baker was supplied with water prior to the passing and coming into operation of Ordinance 25 of 1956 (Natal) but the date of commencement of supply to the other persons mentioned in this paragraph are unknown to applicant."

To this the respondent's secretary replied as follows:

" I admit that the First respondent supplies water to the persons set out in sub-paragraph (a)-(d) of paragraph 14, and that they are not in a local authority area and that they pay for the water they consume, but do not pay the water rate which has been levied. I further admit the last sentence of the said paragraph. I say however that the supply of water to the persons concerned causes no extra expense. Save as aforesaid I deny each allegation in paragraph 14."

I have already held that respondent is entitled to supply consumers inside local authority areas, and it accordingly follows that even if it is true that respondent's scheme embraces the supply of water to consumers other than local authorities and also in areas outside townships as defined (in Ordinance 21 of 1945), the conclusion that the scheme is ultra vires is not justified, in that an area outside a township as defined in Ordinance 21 of 1945 may be inside the area of a local authority. It is also alleged in the said paragraph 14 that the four persons mentioned therein are outside the area of a local

authority...../21.

authority or township and, as already stated above, such supply would not be authorised if appellant's submission in regard to the legal effect of section 4 of Act 45 of 1948<sup>54</sup>, ~~is~~ sound. I however, fail to see why the whole undertaking should be declared ultra vires merely because some persons are being supplied contrary to law. In any event no scheme has been placed before the Court and it is impossible to conclude on the facts ~~placed~~ before us that it is ultra vires. I may add that if persons are being illegally supplied with water by respondent it would appear that the proper remedy of any person adversely effected by such illegal conduct, is to avail himself of the ordinary ~~remedy~~ ~~of instituting~~ interdict proceedings.

I am accordingly in agreement with the order made by the Court a quo.

The appeal is dismissed with costs.

*H. van Wyk.*

STEYN C.J.  
BEYERS J.H.  
MALAN J.A.  
VAN BLERK J.H. } *Concur*