IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)

CASE NO: 3176/2018

In the matter between:

ZOLANI DINWA Appellant

and

DIRECTOR OF PUBLIC PROSECUTION First Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENTAL AFFAIRS AND TOURISM Second Respondent

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE SIGNATURE

JUDGMENT

POTGIETER J

INTRODUCTION

[1] This is an appeal, with the leave of the court *a quo,* against the order issued by Dawood J on 13 February 2020 dismissing the appellant's application, *inter-alia,* impugning the constitutionality of section 39(2)*(c)* of the Environmental Conservation Decree, 9 of 1992 ("the Decree") together with ancillary relief[1].

BRIEF BACKGROUND

[2] The relevant background briefly is that the appellant is facing a pending charge of having contravened section 39(2)*(c)* of the Decree in that he was in the process of erecting a house within the coastal conservation area as defined in the Decree, without a permit.

[3] The Decree was enacted in 1992 by the ruling Military Council of the former homeland of Transkei and it, in summary, defines the protected coastal conservation area as the entire then existing Transkeian shoreline starting from the high-water

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[1] The Decree was signed and assented to by the President of the Republic of Transkei on 14 July 1992 and published in Special Gazette Vol 17 No 51 on 24 July 1992. The relevant provisions of section 39 thereof are as follows:

'**Coastal conservation area**

39.(1) There is hereby established on the landward side of the entire length of the sea-shore … a coastal conservation area 1 000 metres wide measured –

(a) in relation to the sea … from the high-water mark.

(2) Notwithstanding anything in any other law or in any condition of title contained *(sic)*, no person (including any department of State) shall within the coastal conservation area, save under the authority of a permit issued by the Department in accordance with the plan for the control of coastal development approved by resolution of the Military Council –

…

(c) erect any building'.

mark extending landward for a distance of 1000 metres. It effectively outlaws any unauthorised development within the area in question. The territory of the former Transkei currently falls entirely within the boundaries of the Eastern Cape Province.

[4] The further background facts pertinent for present purposes are the following: the appellant is an adult male who was born and bred and at all material times resided in the village of Nqabarha in the district of Willowvale, Eastern Cape Province. At the beginning of July 2017, the appellant became aware of a vacant site situated along the east coast of the Indian Ocean in the vicinity of the village of Msendo in the district of Willowvale. The appellant's village and Msendo are in close proximity to each other and are both situated within the former territory of the Transkei. It is common cause that the site falls within the coastal conservation area.

[5] Given that the appellant was interested in acquiring the vacant site and after having ascertained that Mr Ndlumbini was the headman of the Msendo Administrative District, he met with Mr Ndlumbini with a view to applying for the site to be allocated to him. The appellant acted on the understanding that the headman was vested with the authority to allocate sites in traditional communal areas such as Msendo. At their meeting, Mr Ndlumbini explained the applicable procedure for allocating sites to the appellant. This entails, amongst others, introducing the appellant at a meeting of the residents of the locality where his application for the allocation of the site would be considered. Should the application be approved, the site would be allocated to him there and then in the presence of the residents. This meeting was subsequently held and his application was approved and the site allocated to him. In the understanding of the appellant, this meant that he could proceed to build a house on the site without requiring any further authorisation. This was patently wrong in light of the express provisions of section 39(2)*(c)* of the Decree.

[6] The appellant obtained the services of builders and commenced erecting a house on the site. On 14 July 2017 the police, accompanied by law enforcement officers of the local Mbhashe Municipality, arrived at the site and arrested him and the builders for

building a house in a prohibited area in breach of the provisions of the Decree. They were transported to Willowvale police station where they were charged and released on warning to appear in court on a stipulated date which he can no longer remember.

[7] The Director of Public Prosecutions eventually decided to withdraw the case against the builders and to charge the appellant in the Regional Court on a contravention of section 39(2)*(c)* of the Decree. The criminal case is still pending.

[8] Against the above background, the appellant launched an application initially only against the present first respondent[2] in this court on 10 July 2018 for the following relief:

> *"1. That section 39(2)(c) of the Environmental Conservation Decree No 9 of 1992 (the decree) be and is hereby declared unconstitutional.*
> *2. That the decision of the respondent to prosecute the applicant for the contravention of the decree* ***(the decision)*** *be and is hereby declared unlawful, set aside and of no force and effect.*
> *3. That the decision be and is hereby reviewed and set aside.*
> *4. The respondent pay costs of this application* (sic).
> *5. That the applicant be granted such further and other relief as to this Honourable Court seems meet."*

[9] As indicated, the application was dismissed by Dawood J who concluded that the issue of costs should be dealt with on the so-called *Biowatch*[3] principle and accordingly directed that each party should pay their own costs.

THE STATUS OF THE DECREE

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[2] The second respondent subsequently successfully applied to be joined as a party pursuant to a point *in limine* of non-joinder of the second respondent raised in the first respondent's answering affidavit.

[3] *Biowatch Trust v Registrar, Genetic Resources & Others* 2009(6) SA 232 (CC) para 22.

[10] The Decree is old order law that survived the advent of democracy by virtue of the savings provisions of section 229 of the Interim Constitution, Act 200 of 1993 and item 2 of Schedule 6 read with section 241 of the Constitution, 1996 ("the Constitution") subject to it being consistent with the Constitution. It thus continued to apply post-1994 only in the territory that encompassed the former Transkei.

[11] In the matter of *S v Khohliso*[4] (dealing with an appeal from an order of the Magistrates' Court) two Justices of this court declared the following sections of the Decree unconstitutional, namely section 13(c) which outlawed possession of the carcass of a protected wild animal (in that case vulture's feet for the production of traditional medicine) and section 84(13) which imposed strict criminal liability in respect of offences under the Decree. The court referred the matter to the Constitutional Court for confirmation of the declaration of constitutional invalidity.

[12] The Constitutional Court held that the declaration of invalidity does not require its confirmation as envisaged in section 167(5) of the Constitution, because the Decree is not a Provincial Act, an Act of Parliament or conduct of the President. The declaration therefore had immediate effect.[5] Importantly, the court concluded that the Decree is valid and applicable law in the territory of the former Transkei.[6] This is in line with the conclusion in *Khohliso 1.*[7]

[13] The Supreme Court of Appeal came to a similar conclusion in *Barnett and Others v Minister of Land Affairs and Others*[8] where it stated '[i]t is not in dispute that, despite the cessation of the Republic of Transkei as an independent country, the Decree remained in force by virtue of s 229 of the Interim Constitution, Act 200 of 1993, in the area where it previously found application'.

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4 2014(2) SACR 49 (ECM) ['*Khohliso 1'].*
5 *Khohliso v S* 2015(2) BCLR 164 (CC) paras 47 – 51 ('*Khohliso 2').*
6 Para 47.
7 Para 45.
8 2007(6) SA 313 (SCA) para 14 ('*Barnett').*

[14] The court continued in similar vein (dealing, *inter alia,* with the legal force of section 39(2) of the Decree):

> 'The further defence, that the Decree did not come into operation, because the Military Council never adopted an overall development plan, is, in my view, equally devoid of substance. The mere fact that, in the absence of an overall plan, no permit authorising development could be issued under s 39(2), does not mean that the prohibition pronounced by s 39(2) could simply be ignored. The main operative part of the section was the prohibition. A permit would constitute an exception. Clearly the operative part could function without any exception.'[9]

[15] On at least two other occasions that have come to my attention, single Justices of this court proceeded on the basis that the Decree, in particular section 39(2), continues to apply in the territory of the former Transkei. I should add, however, that the constitutionality of the provisions of the Decree has not arisen in any of these matters. In *Wildlife Society of Southern Africa & Others v Minister of Environmental Affairs and Tourism of the RSA & Others*[10], Pickering J directed the national Minister of Environmental Affairs & Tourism to enforce the provisions of s 39(2) of the Decree in relation to the illegal building of cottages and roads in the coastal conservation area. The court furthermore interdicted four Chiefs or Headmen of certain administrative areas from purporting to grant rights in land which formed part of the territory that formerly constituted the Transkei. In *Deana & Others v Minister of Environmental Affairs and Tourism & Others*[11], Locke J refused an application for a *mandament van spolie* by the illegal occupiers of cottages within the coastal conservation area in contravention of section 39(2) of the Decree and endorsed the judgement in *Wildlife Society.*

[16] Notwithstanding the weight of the above authorities, Mr Maswazi, who appeared on behalf of the appellant together with Ms Mncotsho-Boya, submitted that the Decree should be regarded as *pro non scripto* given the finding by the Constitutional Court in *Khohliso 2* that the Decree was neither provincial nor national legislation. He

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9 Para 28.
10 [1996] 3 All SA 462 (Tk) ['*Wild Life Society'].*
11 [2002] JOL 9962 (Tk) [*'Deana'*].

submitted that the conclusion of the Constitutional Court that the Decree was applicable law within the territory of the former Transkei, was an *obiter dictum.* He argued that the *ratio decidendi* of the decision was that the Decree was neither a Provincial Act, a National Act nor conduct of the President and that there was no need for the Constitutional Court to confirm the relevant declaration of constitutional invalidity. Although the submission of Mr Maswazi is to some extent persuasive, there is no need in my view to decide this issue given the concession properly made by Mr Maswazi that this court is bound by the above-mentioned finding of the Supreme Court of Appeal in *Barnett* that the Decree continued to remain in force. This coincides with the conclusion of this court in *Khohliso 1, Wildlife Society* and *Deana* and undoubtedly reflects the correct legal position. Nonetheless, the central issue in this matter, namely the constitutionality of section 39(2)*(c)*, remains an open question to which I now turn.

CONSTITUTIONALITY OF SECTION 39(2)(c) OF THE DECREE

[17] It is necessary to deal briefly with the proceedings in the court a quo, before considering the principal submissions advanced by the parties in this court concerning the challenge to section 39(2)*(c)*.

Proceedings in the court a quo

[18] The court *a quo* duly considered, but rejected, the appellant's challenge to the constitutional validity of section 39(2)*(c)* of the Decree. The challenge was mounted on the basis that the impugned provision discriminated unfairly against persons wishing to undertake developments within the affected area in the territory of the former Transkei. The further challenge to the decision of the first respondent to prosecute the appellant for a contravention of section 39(2)*(c)* was similarly dismissed.

[19] The court found that there was self-evidently differentiation between persons who undertake developments within the affected area and those who undertake comparable developments within the rest of the Republic of South Africa ('RSA') who cannot be

prosecuted under the Decree. The appellant was, however, required to show that the differentiation amounted to unfair discrimination and also exactly in what respects it fell foul of the equality or other provisions of the Constitution. It is not for the court, *mero motu,* to infer unfair discrimination where the appellant has not demonstrated that his conduct would not constitute a criminal offence in the rest of the RSA or that he was exposed to a more onerous penalty than persons facing similar charges in the rest of the RSA or that the prosecution is assisted by presumptions that do not apply elsewhere. The court indicated that the appellant's rights are in fact protected in that section 84(13) of the Decree, which imposes strict liability in respect of offences under the Decree, has been declared unconstitutional in *Khohliso 1.* The court found that the appellant has failed either to plead crucial aspects that are necessary to enable the court to determine whether or not there has been unfair discrimination or to set out sufficient factors to justify a ruling that the impugned provision is unconstitutional on the grounds alleged. The appellant specifically failed to deal with the effect of the applicable national environmental legislation as compared to the provisions of the Decree. The court concluded that the application therefore must fail not because the appellant of necessity does not have a case, but rather that he has failed to make the necessary averments and set out facts to establish that the impugned provision is in fact unconstitutional.

Submissions of the parties

[20] Mr Maswazi submitted that the court *a quo* erred in concluding that while there was differentiation, the appellant had failed to demonstrate that it amounted to unfair discrimination. He contended as follows: it was sufficient for the appellant to show, as he did, that he would not be liable to prosecution (at all) if he were to perform the same conduct outside of the territory of the former Transkei. This is so because the affected area (coastal conservation area) in terms of the Decree is defined differently from the comparable protected area (coastal public property) in the National Environmental Management: Integrated Coastal Management Act, 24 of 2008. The coastal conservation area commences where the coastal public property ends, ie at the high-

water mark. Developments within the coastal conservation area (which area falls outside coastal public property that only extends up to the high-water mark) are not criminalised in the Integrated Coastal Management Act which, unlike the Decree, does not deal with property situated on the landward side of the high-water mark. There is thus even intra-provincial differentiation in the Eastern Cape Province depending on whether persons undertake developments within the affected area in the territory of the former Transkei or not. The continued application of the Decree in the territory of the former Transkei serves no rational purpose, especially given the observation of the court a quo that it could not conceive of a legitimate basis for the continued existence of and reliance upon pre-1994 legislation of a now non-existent 'country' more than a decade after the advent of democracy. Mr Maswazi further submitted that if the court a quo had properly applied the *Harksen*[12] discrimination analysis, it would have concluded that the impugned provision unfairly discriminates against the appellant and falls to be declared unconstitutional. The appeal should accordingly be upheld with costs.

[21] Mr Notsche SC, who appeared on behalf of the second respondent together with Mr Madlanga, submitted that there was no merit in the appeal which should be dismissed with costs. Section 39(2)*(c)* remains valid until it is set aside. The real issue is that the section does not differentiate between people who wish to effect developments within the coastal conservation area. The only differentiation is between developments within and outside of that area. Such differentiation bears a rational connection to the legitimate government purpose of protecting the environment pursuant to the provisions of section 24 of the Constitution. He submitted that the appellant has not rebutted the applicability of such purpose. Furthermore, the mere fact that the impugned provision only applies in a certain part of the RSA, does not *per se* render it inconsistent with the Constitution. In *Khohliso 2* the Constitutional Court acknowledged that it was conceivable that a law may pertain only to a particular area or region. The fact that it applies only in a confined geographical area does not militate against the constitutional validity of the Decree or of the impugned provision. The appellant has accordingly failed

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[12] *Harksen v Lane NO & Others* 1998(1) SA 300 (CC) para 54.

to establish that the impugned provision unfairly discriminates against him. Mr Notsche submitted that the appeal therefore falls to be dismissed with costs.

[22] The appellant did contend somewhat tentatively in the papers that the impugned provision violated his right to dignity and unlawfully interferes with the power of the Headman to allocate sites. These issues were, however, wisely not pressed at the hearing and do not require any further comment.

[23] Mr Pitt, who appeared on behalf of the first respondent, confined his submissions to the decision to prosecute the appellant. He correctly contended that the Decree was valid and binding law and that the first respondent was therefore fully entitled to prosecute the appellant in terms of the provisions of the Decree which remain extant. The decision to do so can accordingly not be assailed. In the result the application falls to be dismissed with costs.

ASSESSMENT

[24] In my view, the court *a quo* did not err in its conclusion that the case made out in the founding papers falls far short of establishing that section 39(2)*(c)* of the Decree unfairly discriminated against the appellant and, if so, on what particular grounds and in which particular respects. It is indeed so, as alluded to by the court a quo, that it is not for the court to divine a case from the bare bones which the litigant is content to place before the court, as happened in this case. It is trite that an applicant stands or falls on the case set out in the founding papers. The appellant's failure to make out a proper case in the founding papers therefore redounds to his detriment.

[25] Furthermore, while it is indeed puzzling to say the least that old order law, such as the Decree, continues to exist and be applied in the present day, the mere fact of its pedigree does not constitute a sufficient reason to invalidate such law. It is also not a cogent reason (as the appellant would have it) to invalidate the impugned provision merely because sections 13*(c)* and 84(13) of the Decree have been declared to be

unconstitutional in *Khohliso 1.* The challenge to the impugned provision must be considered on its own merits in particular because it deals with a completely different issue from that considered in *Khohliso 1.*

[26] Reverting to the *Harksen*[13] analysis, it is to be noted that the court *a quo* found that the impugned provision does differentiate between developments undertaken within and outside of the coastal conservation area. It was correct in this regard. Prosecutions under the Decree are limited to the territory of the former Transkei.

[27] The next question to be considered is whether or not such differentiation is rationally connected to a legitimate government purpose. Both respondents refer in this regard to the need to conserve the affected coastal area. The first respondent graphically describes the situation as follows in its answering affidavit:

> '15. Also, the section and decree as a whole is for the conservation of the coastal area formerly known as Transkei. … I, however, from dealing with the DEDEAT officials and our

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[13] Although the court in that matter dealt with the relevant provisions in the interim Constitution, it has been accepted that the analysis is also appropriate for determining equality issues under section 9 of the Constitution. The stages of the analysis have been conveniently summarised as follows by Currie & De Waal *The Bill of Rights Handbook* 6 ed at 216 para 9.2(b):

> '(a) does the challenged law or conduct differentiate between people or categories of people? If so, does the differentiation bear a rational connection to a legitimate government purpose? If it does not, then there is a violation of s 9(1). Even if it does bear a rational connection, it might nevertheless amount to discrimination.
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> (b) does the differentiation amount to unfair discrimination? This requires a two-stage analysis:
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> (i) firstly, does the differentiation amount to "discrimination". If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner.
> (ii) secondly, if the differentiation amounts to "discrimination", does it amount to "unfair discrimination"? If it has been found to have been on a specified ground, then unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation.
> If, at the end of this stage of the enquiry, the differentiation is found not to be unfair, then there will be no violation of s 9(3) and (4).
>
> (c) if the discrimination is found to be unfair then a determination will have to be made as to whether the provision can be justified under the limitation clause.'

working relationship of our respective offices in enforcing the section of the decree, know that the section and decree are for the direct benefit of the coastal area of the former Transkei.

16. I do not know of any other coastal areas in the country which face massive illegal land invasions and destruction of sensitive coastal habitats such as the area of the former Transkei which is directly affected and the subject of this application.'

[28] The above averments of the first respondent have not been controverted by the appellant. Apart from the fact that generally speaking environmental protection is a legitimate government purpose sanctioned by section 24 of the Bill of Rights, the pressing need for protection in this instance is vividly exemplified by the first respondent's description of the prevailing situation in the affected area which has been referred to by the Supreme Court of Appeal as an 'exquisitely beautiful, virtually pristine part of nature'.[14] Significantly, the threat to the ecological integrity and environmental sensitivity of the affected part of the former Transkeian coastline has, for example, also been commented upon by the court in *Wildlife Society*[15]*.* The differentiation resulting from the impugned provision is accordingly self-evidently rationally connected to the legitimate government purpose of providing needed protection of the environment within the coastal conservation area. The regulation of development and proscribing unauthorised developments without a permit within the affected area are undoubtedly necessary measures to protect the environment in the affected area.

[29] The immediately preceding determination does not, however, conclude the enquiry. The existence of the rational connection in itself does not preclude the impugned provision from amounting to unfair discrimination. The latter aspect also requires consideration. The differentiation in the present matter is clearly not based on any of the specified grounds set out in section 9(3) of the Bill of Rights which are *per se* discriminatory and are presumed to be unfair. It is furthermore also not based on attributes and characteristics having the potential to impair the fundamental human dignity of the appellant or to affect him adversely in a comparably serious manner. The

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14 Barnett fn 8 above para 5.

15 Fn 10 above at 466.

aim of the differentiation is to protect the environment. It is not to unfairly prejudice persons or categories of persons or to impair their fundamental human dignity. It follows that the differentiation does not amount to unfair discrimination but rather to what is termed, 'mere differentiation'[16] which is not proscribed by section 9. Section 39(2)*(c)* of the Decree accordingly does not violate the provisions of section 9 or any other provision of the Bill of Rights.

[30] I should add for the sake of completeness, that in my view the appellant's bald averment is misguided that conduct similar to his own *in casu*, does not amount to a criminal offence outside of the coastal conservation area. As indicated, this is based upon the submission that there is no overlap between the respective affected areas regulated by the Decree and the Integrated Coastal Management Act. No other authority is referred to in support of this remarkable contention. The effect of the contention is that landward developments above the high-water mark (where the coastal public property ends) in the rest of the RSA can be undertaken without being exposed to a criminal sanction for having failed to obtain any authorisation; in a sense that such developments are completely unregulated. This is patently untenable.

[31] Although it is not entirely clear whether the relevant site is unalienated State land or is in private ownership, the true position in this regard makes no difference to the appellant's case. First, it is trite that it is unlawful for a private individual to develop unalienated state land, without authorisation. Such conduct, if committed anywhere in the RSA, would at the very least constitute trespass which is a criminal offence[17]. Furthermore, the development of privately owned land, especially in the coastal areas, is regulated in the RSA and requires authorisation in terms of the applicable spatial planning, land use management and zoning laws.[18] This notorious fact hardly requires any further elaboration. Nonetheless, by way of example, the Coastal Protection Zone established in terms of section 16 of the Integrated Coastal Management Act is defined

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[16] *Prinsloo v Van der Linde* 1997 (3) SA 1012 (CC) para 25. It is of note that in this matter the Constitutional Court validated differentiation between landowners in fire-controlled areas and those in non-fire controlled areas aimed at preventing and controlling veld fires.

[17] Section 1 of the Tresspass Act, 6 of 1959.

[18] Cf section 26 of the Spatial Planning & Land Use Management Act, 16 of 2013 (*'SPLUMA'*).

as including, inter-alia, land units situated wholly or partially within one kilometre of the high-water mark. The Zone is created to enable the use of land adjacent to coastal public property to be managed, regulated or restricted in order, inter-alia, to protect the ecological integrity of the coastal environment[19]. The land encompassing the Zone clearly overlaps with the coastal conservation area as established in terms of the Decree. Both extend landward for a distance of one kilometre measured from the high-water mark. More importantly, in terms of section 62 of the Integrated Coastal Management Act, all land use management legislation (regulating planning and the development of land) must be applied in relation to land which is situated within the Zone.[20] It is trite that the land use management legislation provides for criminal liability and sanctions in the event of a breach of these laws.[21] It accordingly appears that, pursuant to the relevant provisions of the Integrated Coastal Management Act, no one may with impunity develop any affected land in the RSA which is situated within one kilometre of the high-water mark, without having obtained the requisite authorisation. This coincides with the provisions of the Decree. On this premise, there is no merit in the appellant's contention that the requirement of authorisation linked to a criminal sanction for non-compliance provided for in the Decree, amounts to unfair discrimination in that it only applies to developments within the coastal conservation area. At least on the face of it, a similar regime appears to apply in respect of comparable land within the rest of the RSA. However, there is no need to deal with this aspect in any more detail or to express a final view thereanent given the appellant's failure (as correctly pointed out by the court *a quo*) to elucidate the effect of the environmental and land use management laws applicable in the RSA as compared to the Decree in substantiation of his case of unfair discrimination. The constitutional challenge was accordingly correctly dismissed by the court *a quo*.

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19 Section 17 of the Integrated Coastal Management Act.

20 The section provides as follows:

'**62. Implementation of land use legislation in coastal protection zone**

(1) An organ of state that is responsible for implementing national, provincial or municipal legislation that regulates the planning or development of land must, in a manner that conforms to the principles of co-operative governance contained in Chapter 3 of the Constitution, apply that legislation in relation to land in the coastal protection zone in a way that gives effect to the purposes for which the protection zone is established as set out in section 17.'

21 Cf section 58(1) of *SPLUMA.*

[32] It furthermore goes without saying that the outcome of the appellant's attack on the first respondent's decision to prosecute him, is inextricably intertwined with the constitutional challenge to section 39(2)*(c)* and must follow the result of that challenge. Clearly if section 39(2)(c) is valid and binding the decision of the first respondent to prosecute the appellant for a breach of that section, cannot be assailed.

CONCLUSION

[33] It follows that the appellant's constitutional challenge to the impugned provision as well as the attack on the first respondent's decision to prosecute him for a violation of such provision, must fail.

[34] Insofar as the issue of costs is concerned, I agree with the conclusion of the court *a quo* that the appellant was pursuing the protection of a constitutional right. On the basis of the *Biowatch* principle he should not be mulcted in costs.

ORDER

[35] In the result, the following order shall issue:

(a) The appeal is dismissed;

(b) Each party shall pay their own costs.

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D.O. POTGIETER

JUDGE OF THE HIGH COURT

I agree:

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S RUGUNANAN

JUDGE OF THE HIGH COURT

I agree:

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L RUSI

JUDGE OF THE HIGH COURT

APPEARANCE

For the appellant: Adv B Maswazi and Adv L Boya

	Instructed by: Mbabane & Maswazi Inc., Mthatha
For the first respondent:	Adv D.V Pitt Instructed by: The State Attorney, Broadcoast House, No. 94 Sisson Street, Fortgale, Mthatha
For the second respondent:	Adv V.S Notshe SC and Adv Madlanga Instructed by: The State Attorney, Broadcoast House, No. 94 Sisson Street, Fortgale, Mthatha
Date of hearing:	14 August 2023
Date of delivery of judgment:	01 November 2023