

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO. 11488/17 P

In the matter between :

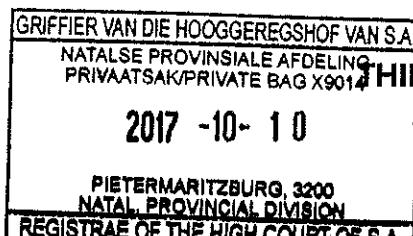
GLOBAL ENVIRONMENTAL TRUST FIRST APPLICANT

MFOLOZI COMMUNITY ENVIRONMENTAL SECOND APPLICANT  
JUSTICE ORGANISATION

SABELO DUMISANI DLADLA THIRD APPLICANT

and

TENDELE COAL MINING (PTY) LTD FIRST RESPONDENT



MINISTER OF MINERALS AND ENERGY SECOND RESPONDENT

MEC : DEPARTMENT OF ECONOMIC THIRD RESPONDENT  
DEVELOPMENT, TOURISM AND  
ENVIRONMENTAL AFFAIRS

MINISTER OF ENVIRONMENTAL AFFAIRS FOURTH RESPONDENT

MTUBATUBA MUNICIPALITY FIFTH RESPONDENT

HLABISA MUNICIPALITY SIXTH RESPONDENT

INGONYAMA TRUST SEVENTH RESPONDENT

EZEMVELO KZN WILDLIFE EIGHTH RESPONDENT

AMAFa aKWAZULU-NATALI NINTH RESPONDENT  
HERITAGE COUNCIL

**AFFIDAVIT**

S.D. *on*

I, the undersigned

**SABELO DUMISANI DLADLA**

do hereby make oath and say :-

1.

I am an adult male student studying Eco-tourism Management. I reside at Nlolokotho near the site of the coal mining conducted by First Respondent at Somkele.

2.

I am duly authorised to bring this application on behalf of the Applicants.

3.

The facts contained herein are within my own personal knowledge and belief except where the context indicates otherwise. When I make submissions of law I do so on the advice of my legal representatives, which I accept. I attach the confirmatory affidavits of :-

3.1. **Sheila Berry** who represents the First Applicant annexed hereto marked "A1";

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- 3.2. **Billy Mzokhona Mnqondo** who represents Second Applicant, annexed hereto marked "A2";
- 3.3. **Kirsten Mary Youens** ("Youens"), an adult female attorney of Youens Attorneys, to confirm certain formal aspects marked "A3".

4.

The submissions that I make herein are made on behalf of Applicants.

5.

First Applicant is the **Global Environmental Trust represented** by its Trustees being:-

- 5.1. Gareth Collingwood, an adult male;
- 5.2. Iain Ewing, an adult male;
- 5.3. Sheila Berry, an adult female;
- 5.4. Sinegugu Zukulu, an adult male;
- 5.5. Sally Jackson, an adult female;

all of whom have their offices as trustees of the Trust and which itself operates from Mafavuke House, 28 Old Main Road, Hillcrest, KwaZulu-Natal.

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6.

Second Applicant is **Mfolozi Community Environmental Justice Organisation**, an association which has a constitution and operates in the Mfolozi area of KwaZulu-Natal.

7.

I am Third Applicant.

8.

First Respondent is **Tendele Coal Mining (Pty) Ltd** a company registered and incorporated with limited liability according to the Company Laws of the Republic of South Africa and which has its registered head office at 1<sup>st</sup> Floor, 37 Peter Place, Bryanston, Gauteng and which operates the Somkele Mine, Nkolokolo, Mtubatuba, KwaZulu-Natal.

9.

Second Respondent is the **Minister of Minerals and Energy** and nominal head of the Department of Minerals and Energy which has its address at Union Buildings, Pretoria, Gauteng and a regional address in KwaZulu-Natal at 3<sup>rd</sup> Floor, Durban Bay House, 333 Anton Lembede Street, Durban, KwaZulu-Natal which is the administrative centre which has dealt and deals with the Somkele Mine.

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10.

Third Respondent is the **Member of the Executive Council for KwaZulu-Natal (MEC) for Environmental Affairs**, which has his office at the Department of Economic Development, Tourism and Environmental Affairs at 270 Jabu Ndlovu Street, Pietermaritzburg, KwaZulu-Natal.

11.

Fourth Respondent is the **Minister of Environmental Affairs** as nominal head of the Department of Environmental Affairs which has its address at Union Buildings, Pretoria, Gauteng.

12.

Fifth Respondent is **Mtubatuba Municipality** a local municipality established in terms of the Local Government : Municipal Structures Act 117 of 1998 which has its municipal offices at Mtubatuba, KwaZulu-Natal.

13.

Sixth Respondent is **Hlabisa Municipality**, a local municipality established in terms of the said Structures Act, which has its municipal offices at Hlabisa, KwaZulu-Natal.

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14.

Seventh Respondent is the **Ingonyama Trust**, which is a corporate body established in terms of Section 2 of the KwaZulu-Natal Ingonyama Trust Act 33KZ of 1994 and which is administered by the KwaZulu-Natal Ingonyama Trust Board at its head office at San Souci, 65 Treławney Road, Southgate, Pietermaritzburg, KwaZulu-Natal.

15.

Eighth Respondent is **Ezemvelo KZN Wildlife** which is the KwaZulu-Natal Conservation Board established as a juristic person in terms of the KwaZulu-Natal Nature Conservation Management Act 9 of 1997 which has its head office at 1 Peter Brown Drive, Montrose, KwaZulu-Natal.

16.

Ninth Respondent is **Amafa aKwaZulu-Natali Heritage Council** a juristic person established in terms of Section 5 of the KwaZulu-Natal Heritage Act 4 of 2008 which has its offices at 195 Langalibalele Street, Pietermaritzburg, KwaZulu-Natal.

17.

At all material times :-

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- 17.1. First Respondent ("Tendele") has been mining coal open cast at the area of the Somkele Mine in the district of Mtubatuba adjacent to the Hluhluwe-Imfolozi Park.
- 17.2. The Somkele Mine is situated at various sites within land inhabited by communities (tribes), which is part of Ingonyama Trust land administered by Seventh Respondent and is referred to as Reserve 3.
- 17.3. The Second Respondent has granted various mining rights to Tendele in respect of such mining.
- 17.4. Tendele has no Environmental Authorisation issued in terms of Section 24 of the National Environmental Management Act 107 of 1998 (or any equivalent thereof) in respect of the said mining.
- 17.5. Tendele has no land use authority or approval, permission or the like from any municipality having jurisdiction.
- 17.6. Tendele has no written approval in terms of Section 35 of the KwaZulu-Natal Heritage Act 4 of 2008 to damage, alter, exhume or remove any traditional graves from their original position.
- 17.7. Tendele has no waste management licence issued by the Minister of Environmental Affairs (Fourth Respondent) in terms of Section 43 (1) or the Minister of Minerals and Energy in terms of Section 43 (1A) of the

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National Environmental management : Waste Act 9 of 2008 ("the Waste Act") despite requiring such a licence by reason of its activities.

18.

Second and Third Applicants are in the process of appealing against the grant of Mining Right KZN 30/5/1/2/2/1004MR in favour of Tendele by Second Respondent's Department in KwaZulu-Natal. This is pending. It is an internal appeal.

19.

It is submitted that Tendele is non-compliant in respect of the permits or approvals required in respect of :

- 19.1. Mining;
- 19.2. environmental authorisation;
- 19.3. land use;
- 19.4. interference with graves; and
- 19.5. waste management.

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20.

On the basis of this non-compliance Applicants seek the interdicts and orders set out in the Notice of Motion herein. The orders sought are all in respect of Tendele only. No order is sought against any other Respondent, who are all joined in respect of the interest they have in the issues raised herein.

21.

First Applicant is the Trustees of the Global Environmental Trust, a Trust registered as a trust in terms of the Trust Property Control Act 57 of 1988. I annex hereto marked "B" the Deed of Trust thereof. In terms of the said Deed it is clear that the Trust has the general object of pursuing and supporting environmental causes and it has the power to bring legal proceedings to advance its objects. The Trustees have resolved to bring this application and to authorise Sheila Berry (a trustee) to make an affidavit in support thereof in terms of Annexure "C".

22.

The Trustees bring this application in pursuance of the rights set out in Section 24 of the Constitution 1996 and they rely upon the provisions of Section 38 (c) and (d) of the Constitution in that the application is brought in the public interest and in the interest of the groups of persons living in the area of the mining, or in proximity thereto or affected thereby.

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23.

Second Applicant is an association which has a constitution a copy of which is annexed hereto marked "D". In terms thereof Second Applicant represents its members to take legal action to achieve the objects of the Association. The main object is to protect the rights of the members of the association who are members of the communities affected by open cast mining in the vicinity of where they reside.

24.

In terms of Annexure "E" hereto the Association has resolved to bring this application and has resolved that **Billy Mzokhona Mngondo** is authorised to sign the affidavits of support hereto.

25.

The Association brings this application in pursuance of its Section 24 rights in the Constitution and it likewise relies upon the provisions of Section 38 (c)(d) and (e) of the Constitution, acting in the public interest, the interests of all the people residing in the vicinity of the open cast mining who are affected thereby and the interests of the members of the Association.

26.

Third Applicant is myself. I acted in pursuance of my Section 24 rights in the Constitution and I rely on the provisions of Section 38 (c) and (d) of the

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Constitution in that I live at the site of the mining and am affected thereby. I also bring this application in the public interest and the interests of the members of my family and the other persons who reside in the vicinity of the said mining.

27.

It is submitted that all three Applicants have locus standi to bring this application.

28.

Youens was instructed to, and has been investigating the mining activities of Tendele since 1<sup>st</sup> June 2017 on behalf of Applicants. Much of the information contained herein has been observed by Youens or is confirmed by the attached confirmatory affidavits. Youens has also corresponded with Tendele, the Department of Minerals and Energy, the applicable municipalities and Amafa (Eighth Respondent) and she confirms this correspondence annexed hereto.

29.

Not all correspondents have been forthcoming with the documents asked for. The documents attached hereto are those that have been received.

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30.

I know the area from personal knowledge. I am able to speak with personal knowledge about the mining and its effects on the environment from my own observation and what it looks like.

31.

I attach hereto and refer to a map / photograph marked "F" prepared by Eight<sup>th</sup> Respondent. This depicts the position of the Mfolozi River in the South West portion of the map. The area in green is the iMfolozi Game Reserve and Wilderness Area. The Areas of mining by Tendele are depicted as Area 1, Area 2 and Area 3. The areas bordered in yellow in the South Western and North-East portion of the map are the areas earmarked for future mining, these being Areas 4 and 5.

32.

Mining is presently only taking place in Area 1 and Area 2 and the extended Area of Area 2, named Kwa-Qubuka and Luhlanga.

33.

Youens' enquiries have revealed that Tendele presently holds three mining rights These are as follows :-

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- 33.1. The 2007 Mining Right (dated 22 June 2007) granted in terms of Section 23 of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) in respect of coal mining for 27 years until 21<sup>st</sup> June 2034 in respect of

**Area 1 on Reserve No 3 (Somkele)  
No. 15822 measuring 660.5321 hectares**

- 33.2. The 2011 Converted Mining Right (dated 30 March 2011) converted in terms of Item 7 of Schedule II of the MPRDA in respect of coal mining for 20 years up to 29<sup>th</sup> February 2031 in respect of

**Areas 2 and 3 on Reserve No. 3 (Somkele) No. 15822  
Measuring 779.8719 hectares**

- 33.3. The 2013 Amendment of a Mining Right (dated 8<sup>th</sup> March 2013) converted in terms of Section 102 of the MPRDA in respect of coal mining which added to the 2011 Right the

**Areas of KwaQubuka and Luhlanga areas on  
Reserve No. 3 No 15822 measuring 706.0166 hectares**

This extended Areas 2 and 3 to 1485.8885 hectares.

- 33.4. The 2016 Mining Right (dated 26<sup>th</sup> October 2016) granted in terms of Section 23 of the MPRDA in respect of coal mining for 30 years until 25<sup>th</sup> October 2046, in respect of

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**One part of the Remainder of Reserve No. 3 No. 15822  
in Extent 21 233.0525 hectares**

The map attached thereto shows this area to be the entire North East portion of the Reserve and refers to it as Area 5.

These four documents are annexed hereto as "G1", "G2" "G3" and "G4" respectively.

34.

The 2011 Converted Mining Right ("G2") superceded the Mining Licence, dated 9<sup>th</sup> April 2003 which is annexed hereto marked "G5".

35.

All the Mining Rights together cover almost the entire area of Reserve No. 3 of 15822 shown on the map attached to the 2016 Right (Annexure "G4").

36.

Normally speaking, mining is a listed activity which has an impact on the environment and as such an Environmental Authorisation ("EA") must be obtained in terms of the National Environmental Management Act 107 of 1998 (NEMA). This is procured by making an application in terms of Section 24 of NEMA which is adjudicated by the Minister of the Environment (Ninth Respondent) or the MEC (Third Respondent). Section 24 provides a detailed

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and precise procedure for the application in respect of an EA. Such process is referred to as EIA.

37.

Under the former Act, the Environmental Conservation Act 73 of 1989 (ECA) a similar authority was required.

38.

With effect from 7<sup>th</sup> June 2013 amendments were made to the MPRDA (by the MPRDA Amendment Act 49 of 2008). This comprised of the repeal of those provisions of the MPRDA governing approval of environmental management programmes (EMPR) and associated provisions. These were Sections 39 to 42, as well as the addition of two new sections, 38A and 38B.

39.

Section 38A deals with environmental authorisations :-

39.1. Section 38A(1): the Minister of Mineral Resources is the responsible authority for implementing environmental provisions in terms of NEMA as it relates to prospecting, mining, exploration, production or activities incidental thereto on a prospecting, mining, exploration or production area;

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39.2. Section 38A (2): an environmental authorisation issued by the Minister of Mineral Resources shall be a condition prior to the issuing of a permit or the granting of a right in terms of this Act (the MPRDA).

40.

"Environmental authorisation" is defined in the MPRDA as the authorisation referred to in Section 1 of NEMA.

41.

Section 38A was to come into effect on the date contemplated in section 14 (2) of the National Environmental Management Amendment Act, 62 of 2008 namely 18 months after the date of commencement of the MPRDA Amendment Act, i.e. 8 December 2014.

42.

Section 38B deals with EMPRs. It provides:-

(1) An environmental management plan or environmental management programme approved in terms of the MPRDA before, and at the time of coming into effect of the National Environmental Management Act, 1998, shall be deemed to have been approved and an environmental authorisation

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been issued in terms of the National Environmental Management Act, 1998.

- (2) Notwithstanding subsection (1), the Minister may direct the holder of a right, permit, or any old order right, if he or she is of the opinion that the prospecting, mining, exploration and production operations is likely to result in unacceptable pollution, ecological degradation or damage to the environment, to take any action to upgrade the environmental management plan or environmental management programme to address the deficiencies in the plan or programme.
- (3) The Minister must issue an environmental authorisation if he or she is satisfied that the deficiencies in the environmental management plan or programme in subsection (2) have been addressed and that the requirements in Chapter 5 of NEMA have been met.

43.

The coming into operation of Section 38B has been suspended indefinitely.

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44.

NEMA was amended by the National Environment Management Amendment Act, 62 of 2008. ("NEMAA").

45.

NEMAA commenced on 9 May 2009, save that in terms of section 14(2), any provision relating to prospecting, mining, exploration and production and related activities comes into operation on a date 18 months after the commencement of the MPRDA Amendment Act.

46.

NEMAA includes transitional provisions, including that:-

- 46.1. An application for authorisation of an activity that is submitted in terms of Chapter 5 of the principal Act (i.e. NEMA) that is pending when this Act (NEMAA) takes effect, must despite the amendment of NEMA by NEMAA, be dispensed with in terms of Chapter 5 of NEMA as if Chapter 5 had not been amended (12(2));
- 46.2. An environmental management plan or programme approved in terms of the MPRDA immediately before the date on which this Act came into operation (i.e. NEMAA) must be regarded as having been approved in terms of NEMA as amended by NEMAA (12(4));

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46.3. Notwithstanding subsection 12(4), the Minister of Mineral Resources may direct any holder or any holder of an old order right, if he or she is of the opinion that the prospecting, mining, exploration or production operations in question are likely to result in unacceptable pollution, ecological degradation, or damage to the environment, to take such action to upgrade the environmental management plan or programme to address the deficiencies in the plan or programme as the Minister may direct in terms of NEMA as amended by NEMAA.

47.

NEMA was further amended by the National Environmental Management Laws

Amendment Act, 2014 ("NEMLA"). The amendments included that:-

- 47.1. Section 12 of NEMAA was amended by insertion of subsection (7): An application for a right or permit in relation to prospecting, exploration, mining or production in terms of the MPRDA which is pending on the date referred to in section 14(2)(b) of the National Environmental Management Act, 2008 must be dispensed with in terms of that Act as if that Act had not been amended;
- 47.2. Section 14 of NEMAA was amended by the deletion of subsection (2) one day immediately before the commencement of NEMLA. i.e. one day before 2 September 2014.

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## 48.

The new NEMA EIA Regulations ("EIA Regulations 2014") and listing notices were published on 4 December 2014 and came into effect on 8 December 2014. The EIA Regulations also include transitional arrangements, amongst others:-

48.1. An application submitted in terms of the previous NEMA regulations and which is pending when these Regulations take effect, including pending applications for auxiliary activities directly related to

- a) prospecting or exploration of a mineral or petroleum resource; or
- b) extraction and primary processing of a mineral or petroleum resource;

must despite the repeal of these Regulations be dispensed with in terms of those previous NEMA regulations as if those previous NEMA regulations were not repealed.

48.2. Where an application submitted in terms of the previous NEMA regulations is pending in relation to an activity of which a component of the same activity was not identified under the previous NEMA notices, but is now identified in terms of section 24(2) of the Act (i.e. NEMA) the competent authority must dispense with such application in terms of the previous NEMA regulations and may authorise the activity identified in

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terms of section 24(2) as if it was applied for, on condition that all impacts of the newly identified activity and requirements of these Regulations have also been considered and adequately addressed.

- 48.3. An application submitted in terms of the previous MPRDA regulations and which is pending when these Regulations take effect must despite the repeal of these regulations be dispensed with as if those previous MPRDA regulations were not dispensed with.

49.

The EIA Regulations 2014 were published in the Government Gazette No. 38282 dated 4<sup>th</sup> December 2014.

50.

It is significant that a change to the listing notice is the inclusion of a listed activity pertaining to mining as follows:

- 50.1. Any activity, including the operation of that activity which requires a mining right as contemplated in section 22 of the MPRDA including associated infrastructure, structures, and earthworks, directly related to the extraction of a mineral resource, including activities for which an exemption has been issued in terms of section 106 of the MPRDA;

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50.2. "Activity" is defined in the EIA Regulations 2014 as an activity identified in any notice published by the Minister or the MEC in terms of section 24(D)(1)(a) of NEMA as a listed activity or specified activity.

51.

Although NEMAA came into effect on 2 September 2014, government only commenced the implementation of the new Environment System with effect from 8 December 2014 when the EIA Regulations 2014 and listing notices commenced.

52.

NEMA is legislation enacted in terms of Section 24 (6) of the Constitution. It is submitted that in any interpretation the provisions of Section 39 (2) of the Constitution enjoin the interpretation that promotes the spirit, purport and objects of the Bill of Rights and in this case, Section 24.

53.

The principles set out in Section 2 of NEMA guide the interpretation administration and implementation of NEMA, and in particular Section 24 and the scope and applicability of Environmental Authorisations.

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54.

✓ It is also submitted that the amending provisions referred to above are not retrospective and all come into effect on 8<sup>th</sup> December 2014 save for the provisions of Section 38 B of the MPRDA which remains suspended. The EIA Regulations 2014 have been amended by recent amendments with effect from 7<sup>th</sup> April 2017 which appeared in Government Notice 326 in Government Gazette 40772 dated 7<sup>th</sup> April 2017.

55.

It appears to be common cause from the correspondence from Tendele and Second Respondent that :-

- 55.1. No Environment Authorisation as contemplated by NEMA or ECA has been issued in respect of any of the mining sites referred to in the said Mining Rights referred to above;
- 55.2. Various EMPR's have been issued by Second Respondent in respect of the mining rights;
- 55.3. Second Respondent maintains that such EMPR's are equivalent to an EMPR issued under NEMA.

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56.

I annex hereto an email from Karoon Moodley, the Regional Manager of Mineral Regulation in the KwaZulu-Natal office of Second Respondent's Department in which he states as much, marked "H", which is dated 13<sup>th</sup> June 2017. This was received by Youens.

57.

Youens replied to Moodley in a letter dated 14<sup>th</sup> June 2017, which speaks for itself, marked "I".

58.

Tendele itself sets out its understanding of the implementation of the law in a public statement that it issued direct to SABC2 (the programme 50/50) sent to Julie Laurenz who has provided it to Youens. This is dated 28<sup>th</sup> June 2017 and is annexed hereto marked "J". On pages 2 to 3 of the letter in paragraphs 5 and 5.1 Tendele states its contentions relating to EAs. The response is that it received authority to mine in terms of the MPRDA from Second Respondent's Department. Tendele contends that the EMPRs submitted includes the EIA requirements of the law.

59.

Applicants dispute this and this is the first issue of dispute to be determined in this application. This will be resolved by legal argument.

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60.

There is no evidence of any EA granted by Second Respondent's Department as a responsible authority which complies with the definitions of "environmental authorisation" in both the MPRDA and NEMA.

61.

It is Applicants' contention that an EMPR issued by the Second Respondent's Department is NOT an environmental authorisation which is fully prescribed by NEMA. The amendments to the MPRDA and NEMA did not, it is submitted, change the requirements for an EA, it merely created the Second Respondent as a responsible authority.

62.

I draw attention to the provisions of Section 38A of MPRDA which provides that the EA issued by the Minister is a pre-condition to issue of a mining right in terms of the MPRDA.

63.

It is submitted that without a valid EA Tendele is mining unlawfully.

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64.

I now turn to the issue of land use permission by the local Municipality having jurisdiction to mining activities.

65.

The area in which the mining is taking place by Tendele was hitherto part of the Hlabisa Local Municipality (Sixth Respondent). On 18<sup>th</sup> January 2008 the Municipal Demarcation Board gave notice in terms of Section 21 of the Local Government: Municipal Demarcation Act 27 of 1998 that the boundaries would change. The changes were set out in the Provincial Gazette dated 18<sup>th</sup> January 2008. I annex hereto a copy thereof marked "K" hereto.

66.

In due course the MEC for Co-operative Governance and Traditional Affairs for KwaZulu-Natal issued a proclamation dated 16<sup>th</sup> May 2011 as Provincial Notice No. 49 altering the boundary between Hlabisa Municipality and Mtubatuba Municipality with the effect that Reserve 3 was henceforth in the Mtubatuba Municipality. I annex hereto a copy thereof marked "L". This notice refers to the demarcation notice referred to above.

67.

Youens has ascertained from both municipalities that they believe that no planning approval or land use approval was required for the mining by Tendele.

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They both confirmed to her that no land use or town planning permission has been granted in respect of the mining activities carried on by Tendele.

68.

This is confirmed by Tendele in Annexure "J".

69.

The land on which the mining rights have been granted is Ingonyama Trust land.

70.

However the Mtubatuba Municipality has had full jurisdiction over the land in the functional area of municipal planning since 6<sup>th</sup> May 2011, and before that Hlabisa Municipality had such full jurisdiction.

71.

The KwaZulu-Natal Planning and Development Act 6 of 2008 ("PDA") was assented to on 5<sup>th</sup> December 2008 and it came into effect in stages. It deals with the development of land within KwaZulu-Natal. Section 38 requires municipal approval to any development of the land. In granting such approval the Municipality having jurisdiction was required to take development norms and standards into account and the Integrated Development Plan ("IDP") (Section 43 (2)).

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72.

The Municipality had, in terms of Section 42, to take into account, *inter alia*, the protection or preservation of cultural and natural resources and biodiversity, and the potential impact of the proposal on the environment, socio-economic conditions and cultural heritage.

73.

The development application had to be made by the owner of the land (Ingonyama Trust) or a person acting with the consent of the owner.

74.

These provisions apply equally to a development of land outside a scheme.

75.

Section 48 (3) prohibits any development of the land unless the Municipality has approved it.

76.

It is submitted that the provisions referred to above apply equally to land within a scheme and all that is required is that the land be inside the Municipality. (Schedule 1).

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77.

On 1<sup>st</sup> July 2015 the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) came into effect. SPLUMA applies to the entire Republic and includes all land in all municipalities and all municipal planning (Section 2).

78.

Section 26 of SPLUMA provides that land may only be used for purposes permitted by a land scheme or by a town planning scheme or prior to that, for a purpose which the land was lawfully used or could lawfully have been used before the commencement of SPLUMA (Section 26 (2) and (3)).

79.

Schedule 2 contains the Scheduled Land Use purposes contemplated as land uses under SPLUMA. These include agricultural purposes, community purposes, residential purposes and “mining purposes.” The latter are defined as

“... purposes normally or otherwise reasonably associated with the use of land for mining.”

80.

It is clear that the land (Reserve 3) is presently being used for mining purposes. No permission for this land use has been obtained under SPLUMA or any other

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legislation. The mining is therefore unlawful in terms of SPLUMA. Chapter 6 of SPLUMA deals with the applications for a specific land use which are to be made to the Municipality Authority.

81.

No such application has been made by Tendele or anyone else.

82.

The Mtubatuba SPLUMA By Laws of January 2017 provide in Schedule 2 (3):-

**"Schedule 3 (2) :**

'mining operation' means the processing of any mineral as defined in section 1 of the Mineral and Petroleum Resources Development Act on, in or under the earth, water or residue deposit, whether by underground or open working or otherwise

-

(a) if a mining right contemplated in section 22 of the Mineral and Petroleum Resources Development Act is required or has been granted for the operation, but processing has not commenced by 10 October 2008, or

(b) if a mining right has been granted in terms of a repealed law for the operation, but processing has not commenced by 10 October 2008".

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83.

Section 46 of the By Laws provides :

"Activities for which an application for municipal planning approval is required

An application for municipal planning approval is required for-

- (a) the adoption of a land use scheme;
- (b) the amendment of a land use scheme;
- (c) the zoning or rezoning of land;
- (d) a Municipality's consent in terms of a land use scheme;
- (e) the repeal of a land use scheme;
- (f) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3.

84.

It is therefore submitted that Municipal approval is required to enable Tendele to conduct mining operations.

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85.

Tendele have never obtained municipal permission to conduct mining or to use the land for mining purposes and their mining activities are therefore unlawful.

86.

I now turn to the issue of graves.

87.

The site of the mining is the residence of the communities that have always lived there. The fenced-off areas of the Tendele Mine include some houses of people who have always lived there. This has caused grave dissent over the years. Over many meetings there are still families who are far from satisfied.

88.

The cemetery of one group of residents is located inside the Area 1 portion of the Mining operations. In respect of the extended Area 2 at KwaQubuka the cemetery has been fenced into the mining operations. As such they are inaccessible to the local residents who wish to visit them. There are notices posted at the site of the graves which inform the residents that they have a right

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to negotiate with Tendele on the relocation of their family graves. The notices themselves are inaccessible to the local residents as they are within the fenced security area. Furthermore, the access area is extremely dangerous with trucks and earthmoving equipment working in the vicinity. The graves are marked by plastic tape only.

89.

As is clearly conceded by Tendele in Annexure "J" hereto Tendele has no permission in terms of Section 35 of the KwaZulu-Natal Heritage Act 4 of 2008.

90.

At the moment the graves at KwaQubuka are being damaged and altered although they have not yet been relocated. It is therefore submitted that the non-compliance with Section 35 of the said Act is unlawful. Many graves have been moved in other areas.

91.

I now turn to non-compliance with the Waste Act. It is environmental legislation sourced in terms of Section 24 of the Constitution. The Waste Act prohibits any person carrying on a waste management activity from doing so except in accordance with the standards set out in Section 19 (3) and a waste management licence (Section 20).

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92.

"Waste" in terms of the Waste Act is defined so as to include all the waste included in Schedule 3 to the Act. Schedule 3 includes :

- a) "hazardous waste" which includes residue stockpiles and Item 4 includes the activity of the "pyrolytic treatment of coal".
- b) "residue stockpile" which includes the waste from a mining operation, and which include in Item 1, waste from mining.

93.

It is submitted that Section 20 read with the definition of "waste management activity" and the various categories of waste associated with mining operations requires a waste management licence.

94.

On the site of Tendele's mining there are massive stockpiles of waste rock and the production of coal sludge. This is known as slurry and is the liquid coal waste produced by coal mining activities. When the coal is crushed and washed this liquid waste is generated, along with the huge stockpiles of solid waste. Even the waste slurry water is toxic containing mercury, arsenic, beryllium, cadmium, nickel and selenium.

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95.

It is quite apparent from the responses of Tendele set out above that Tendele does not have an issued waste management licence in terms of the Waste Act.

96.

The noncompliance of Tendele in the respects set out above shows that it is operating the mining operations in Reserve 3 illegally.

97.

The residents in the area of Reserve 3 are suffering irreparable harm. Our environment has been polluted by dust and noise and in many cases our homes have been moved or destroyed. The mining activity will, in its ultimate full-blown authority of the whole of Reserve 3, destroy the environment and the amenity of all who live there and for the public at large. Those people who live there include the members of Second Applicant and me and my family.

98.

The tranquil rural environment which used to exist is being destroyed day by day.

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99.

The quality of the environment has been materially affected by the mining operations. What was once a quiet rural setting alongside the Wilderness area is now a vast industrial rock dump.

100.

I annex hereto marked "M1", "M2" and "M3" three photographs. I did not take them but I know the areas they depict and can verify what they represent :-

- a) "M1" is a picture of a rural household dwelling on the edge of the mine. The household animals can be seen in the foreground and the Tendele mining dumps in the background.
- b) "M2" depicts the massive rock dump at Tendele mine with cattle grazing at the foot of it.
- c) "M3" depicts the graves within the fenced off area of the mine described by me above.

101.

The sounds of blasting are massive and often no warning is given before blasting takes place.

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102.

The quality of life has been changed forever by the activities of Tendele.

103.

Tendele are determined to proceed without any cessation of the mining.

104.

My family and I have been opposed to the coal mining in this area since it started.

105.

In 2014 we lost two cattle during the mining operations because the fence put up by First Respondent is not properly maintained. The cows wandered into the mining area.

106.

The entire area was grazing before First Respondent arrived to mine. In 2009 First Respondent fenced it off without telling us that it was going to do this.

107.

The cattle are used to grazing there and so they often get through the fence and walk into the mining area. When the trucks were off-loading rocks, the cow was

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in the way and the bottom half of it was crushed by the rocks. We had to slaughter the cow to end its suffering.

108.

The same year another cow wandered into the mining area and got stuck in the mud. That cow died too.

109.

My father took photos of the cows and sent them to the mine with a letter of complaint [attached with photos]. My mother told me that a person from the mine had also taken photos of the cows. I also sent a letter of complaint to the mine. The mine requested a new letter of complaint to state that I would be the responsible person in this issue and told me to bring eye witnesses to the dead cattle being removed from under the rocks and from the mud. They said that when I could do that they would meet with me to discuss compensation. I found eye witness but when I phoned to arrange a meeting it was always postponed.

110.

The mine management never met with me and never gave me compensation for our cows. These cows were worth R12 000 each.

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111.

We have also lost so many goats across the fence. The goats go into the mining area and never come back. We used to have more than 15 goats and now we have none.

112.

We store rainwater in drums but can't drink it anymore because it is filled with coal dust. We now have to get drinking water from the taps that abstract water from the Mfolozi River. When the Mfolozi River is dry we get water from Mbukwini Dam. In 2016 both the Mfolozi and the dam were dry and we had no water for many months. The mine sunk 4 or 5 boreholes along the Mfolozi River to provide water for their operations only. What little water was left in the Mfolozi was channeled by the mine towards their pump. We had nothing.

113.

The Nkolokotho stream that feeds the Mbukwini Dam is often polluted from the wash down areas and makes the Dam polluted too.

114.

About twice a week we hear an alarm to warn us that there will be a blast within 30 minutes. When the blast happens the houses shake and the windows rattle. The mine also blasts without sounding the alarm to warn us.

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115.

In 2010 the mine was operating very close to our house and the blasting was happening more often. Our house developed cracks around the doorframes and in the walls. Some people's walls and houses collapsed.

116.

There is not enough land to collect firewood on now. All the bush that we relied on for firewood was fenced in by the mine or removed to make way for the mine. For big ceremonies we would use that bush to prepare in advance. Now we have to buy firewood as there is no longer enough.

117.

If we had been able to stop this mine before it started, I would have. I hate living next to the mine. It is noisy and there is dust everywhere all the time. My cattle now have to graze far away.

118.

Since 2008 my father tried to engage with the mine and tried to gain an understanding of what the mine was planning, what their development was and how the people were going to benefit from it all. He passed away on 18<sup>th</sup> October 2015. I am trying to carry on in his footsteps but I know that the mine is not interested in anything that I have to say.

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119.

On 9<sup>th</sup> May 2013, my father wrote to the Regional Manager of the Department of Mineral Resources setting out his concerns with Tendele's operations including the fact he had not seen any mining or prospecting licences, any environmental impact assessments or environmental management plans or a water use licence. He included a document listing all the people who had suffered and lost land as a result of Tendele's operations. There is no evidence of any response to this letter.

120.

My father also wrote to the Centre for Environmental Rights, the Public Protector's office, the Mpukunyoni Traditional Administrative Centre and repeatedly to Tendele mine management.

121.

We are now seeking an interdict to ensure that First Respondent is fully compliant with the law.

122.

It is submitted that Applicants are entitled to an interdict halting all mining until the mining activity being conducted is fully in compliance with the law, and has satisfied the above Honourable Court that it is so fully compliant.

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WHEREFORE I pray that the Court will grant an order as set out in the Notice of Motion.



**S. DLADLA**

SIGNED and SWORN to BEFORE ME,

at PIETERMARITZBURG

on this 09<sup>TH</sup> day of OCTOBER 2017, by the Deponent  
who has acknowledged that he knows and understands the contents of this  
affidavit, and he has declared that he has no objections to taking the oath,  
that he regards the oath as binding on his conscience and he has uttered  
the following words : "I swear that the contents of this Affidavit are true, so  
help me God".



\_\_\_\_\_  
**COMMISSIONER OF OATHS**

FULL NAME :  
ADDRESS :  
CAPACITY :  
AREA :

<b>COMMISSIONER OF OATHS</b>
<b>GARETH DALE NEAL</b>
Professional Accountant (SA)
Commissioner of Oaths (RSA)
2nd Floor, Alexander Forbes Wing
3 Highgate Drive, Redland Estate
PIETERMARITZBURG

"AI"

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO. 11488/17 P

In the matter between :

GLOBAL ENVIRONMENTAL TRUST FIRST APPLICANT

MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANIZATION SECOND APPLICANT

THIRD APPLICANT

SABELO DUMISANI DLADLA

and

TENDELE COAL MINING (PTY) LTD FIRST RESPONDENT

MINISTER OF MINERALS AND ENERGY SECOND RESPONDENT

MEC : DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS THIRD RESPONDENT

MINISTER OF ENVIRONMENTAL AFFAIRS FOURTH RESPONDENT

MTUBATUBA MUNICIPALITY FIFTH RESPONDENT

HLABISA MUNICIPALITY SIXTH RESPONDENT

INGONYAMA TRUST SEVENTH RESPONDENT

EZEMVELO KZN WILDLIFE EIGHTH RESPONDENT

AMAFa aKWAZULU-NATALI HERITAGE COUNCIL NINTH RESPONDENT

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AFFIDAVIT

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S.O. OV

S.A.S. OV

I, the undersigned

**SHEILA BERRY**

do hereby make oath and say :-

1.

I am an adult female and I am a Trustee of the Global Environmental Trust, First Applicant herein.

2.

The said Trust resolved on 15<sup>th</sup> September 2017 to bring this application. I refer to the resolution marked "C" to the founding affidavit. My signature appears thereon. I was authorised to bring this application and sign this affidavit.

3.

The Trust's duly authorised attorney is Kirsten Mary Youens and she has attested to a confirmatory affidavit herein.

4.

I refer to the founding affidavit of Sabelo Dumisani Dladla. I have read the said founding affidavit and I confirm the contents thereof.

S.D. on

*Sab on*

5.

The First Respondent (Tendele) is coal mining on an area called Somkele in Reserve 3 adjacent to the Wilderness area of iMfolozi.

6.

I have known the area since 1983, when I was a regular visitor to Somkele in my capacity as a Wilderness Psychologist running trails in iMfolozi. The environment was quiet and peaceful and the people of the communities there were healthy and had few complaints. In recent years there has been a growth of complaints about respiratory diseases, asthma and bronchitis. The quality of their lives has been dramatically affected. They used to live as rural farmers and some of them were wealthy.

7.

The open cast mining of coal is ugly, dusty and noisy and the landscape has been destroyed. The blasting has its effect on the peace of the area and it shakes the ground. Consequently I have investigated many complaints of cracked buildings as a result of the blasting, which shakes the earth for kilometres around.

S.D. on

SAB on

8.

The large stockpiles of rock and the extraction and washing of coal has made the area "dirty" with dust and dirty water.

9.

I have held various meetings with the Tendele Coal Mine Management, being Jan du Preez (the CEO) and the former CEO, Johan Gloy, about the Tendele mining activities and, without being unfair, I can say that Tendele have shown little regard for the concerns of the local communities.

10.

The Trust is most concerned that the mining, if it has to take place, must take place within the limits of the law. Proper consultation must take place and proper compensation must be paid and the mining activities must take place as regulated by the law.

11.

I confirm what Dladla has stated about the non-compliance of the Tendele Mine to date.

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12.

I have also, on behalf of the Trust, assisted the communities with the protection of their graves. When the Tendele mining started the area had many graves at the site of the mine. These graves were exhumed and moved to another graveyard. This is a shocking place that shows a lack of regard for the dead and for the Zulu people's deep respect for their ancestors (amaDlozi) and is situated close to the R618. This graveyard is situated on a slope and consequently a few of the graves have been undercut by rain and are slumping. In some instances it is possible to see parts of bodies.

13.

This has caused great unhappiness with the communities. Many of them cannot determine where their ancestors are buried. There are dozens of unmarked graves. Marble tombstones for the graves have been piled in an unused toilet block next to the graveyard. No attention has been taken to match the gravestones with the graves when they were moved.

14.

It is Tendele's responsibility to make sure the reburied graves are identified. All this has gone on without proper control and consent of Amafa.

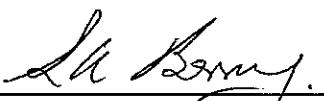
S.D. *on*

*SRK. on*

15.

The Trust supports the contentions set out in the affidavit of Dladla.

WHEREFORE the First Applicant seeks an order set out in the Notice of Motion herein.



S. Berry  
S. BERRY

SIGNED and SWORN to BEFORE ME,  
at PIETERMARITZBURG  
on this 09<sup>TH</sup> day of OCTOBER 2017, by the Deponent  
who has acknowledged that she knows and understands the contents of  
this affidavit, and she has declared that she has no objections to taking the  
oath, that she regards the oath as binding on her conscience and she has  
uttered the following words : "I swear that the contents of this Affidavit are  
true, so help me God".



\_\_\_\_\_  
COMMISSIONER OF OATHS

FULL NAME :  
ADDRESS :  
CAPACITY :  
AREA :

COMMISSIONER OF OATHS  
GARETH DALE NEAL  
Professional Accountant (SA)  
Commissioner of Oaths (RSA)  
2nd Floor, Alexander Forbes Wing  
3 Highgate Drive, Redland Estate  
PIETERMARITZBURG

2017/Tendele/Affidavit S. Berry

S.D. con

"A2"

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO. 11488/17P

In the matter between :

GLOBAL ENVIRONMENTAL TRUST FIRST APPLICANT

MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANIZATION SECOND APPLICANT

THIRD APPLICANT

SABELO DUMISANI DLADLA

and

TENDELE COAL MINING (PTY) LTD FIRST RESPONDENT

MINISTER OF MINERALS AND ENERGY SECOND RESPONDENT

MEC : DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS THIRD RESPONDENT

MINISTER OF ENVIRONMENTAL AFFAIRS FOURTH RESPONDENT

MTUBATUBA MUNICIPALITY FIFTH RESPONDENT

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INGONYAMA TRUST SEVENTH RESPONDENT

EZEMVELO KZN WILDLIFE EIGHTH RESPONDENT

AMAFa aKWAZULU-NATALI HERITAGE COUNCIL NINTH RESPONDENT

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AFFIDAVIT

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S.D. on

M. G. A. *[Signature]*  
on

I, the undersigned

**BILLY MZOKHONA MNQONDO**

do hereby make oath and say :-

1.

I am an adult male residing in the Fuleni Reserve, adjacent to the Hluhluwe iMfolozi Park and Somkele, where First Respondent is conducting mining operations.

2.

I am duly authorised to make this affidavit in support of the relief claimed in this application on behalf of Mfolozi Community Environmental Justice Organisation (MCEJO).

3.

I was duly authorised by a Resolution passed by MCEJO on 29<sup>th</sup> August 2017.

4.

I refer to a copy of the Constitution of MCEJO prior to amendment marked "D" to the founding affidavit. The Resolution, in respect of this application and

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M.C.M. *DN*

amendments to the Constitution is annexed, marked "E", to the founding affidavit.

5.

I submit that MCEJO has the constitutional power to bring this application.

6.

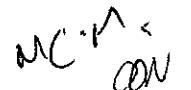
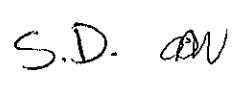
I refer to the affidavit of Sabelo Dumisani Dladla to which this affidavit is attached and I confirm all the facts stated therein and I join with and support all the contentions and submissions contained herein on behalf of MCEJO which acts in the public interest, the interests of all the people residing in the vicinity of the open cast mining who are affected thereby and the interests of the Members of MCEJO.

WHEREFORE I humbly pray that the above Honourable Court will grant the order set out in the Notice of Motion in this application.



**B. MNQONDO**

SIGNED and SWORN to BEFORE ME,  
at PIETERMARITZBURG



on this 09<sup>TH</sup> day of October 2017, by the Deponent who has acknowledged that he knows and understands the contents of this affidavit, and he has declared that he has no objections to taking the oath, that he regards the oath as binding on his conscience and he has uttered the following words : "I swear that the contents of this Affidavit are true, so help me God".



COMMISSIONER OF OATHS

FULL NAME :  
ADDRESS :  
CAPACITY :  
AREA :

**COMMISSIONER OF OATHS**  
**GARETH DALE NEAL**  
Professional Accountant (SA)  
Commissioner of Oaths (RSA)  
2nd Floor, Alexander Forbes Wing  
3 Highgate Drive, Redland Estate  
PIETERMARITZBURG



"A3"

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

CASE NO. 11488/17P

In the matter between :

GLOBAL ENVIRONMENTAL TRUST	FIRST APPLICANT
MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE ORGANIZATION	SECOND APPLICANT
SABELO DUMISANI DLADLA	THIRD APPLICANT

and

TENDELE COAL MINING (PTY) LTD	FIRST RESPONDENT
MINISTER OF MINERALS AND ENERGY	SECOND RESPONDENT
MEC : DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS	THIRD RESPONDENT
MINISTER OF ENVIRONMENTAL AFFAIRS	FOURTH RESPONDENT
MTUBATUBA MUNICIPALITY	FIFTH RESPONDENT
HLABISA MUNICIPALITY	SIXTH RESPONDENT
INGONYAMA TRUST	SEVENTH RESPONDENT
EZEMVELO KZN WILDLIFE	EIGHTH RESPONDENT
AMAFa aKWAZULU-NATALI HERITAGE COUNCIL	NINTH RESPONDENT

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AFFIDAVIT

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S.D. on

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I, the undersigned

**KIRSTEN MARY YOUENS**

do hereby make oath and say :-

1.

I am an adult female Attorney specialising in environmental law and I practice from the offices of Youens Attorneys at Sheffield Beach, KwaZulu-Natal.

2.

I have read the founding affidavit of Sabelo Dumisani Dladla herein and I confirm the contents thereof insofar as it refers to me and my correspondence and my enquiries in respect of this matter.



**K.M. YOUENS**

SIGNED and SWORN to BEFORE ME,

at *PiETERMARITZBURG*

on this 09<sup>TH</sup> day of *OCTOBER* 2017, by the Deponent who has acknowledged that she knows and understands the contents of this affidavit, and she has declared that she has no objections to taking the oath, that she regards the oath as binding on her conscience and she has

*S.D. AN*

*AN*

uttered the following words : "I swear that the contents of this Affidavit are true, so help me God".



\_\_\_\_\_  
**COMMISSIONER OF OATHS**

FULL NAME :  
ADDRESS :  
CAPACITY :  
AREA :

**COMMISSIONER OF OATHS**  
**GARETH DALE NEAL**  
Professional Accountant (SA)  
Commissioner of Oaths (RSA)  
2nd Floor, Alexander Forbes Wing  
3 Highgate Drive, Redland Estate  
PIETERMARITZBURG

