

SOUTH AFRICA / JUDGMENT

**eThekwini Municipality and Others v Haffejee NO
and Others, Haffejee NO and Others v eThekwini
Municipality and Others (9845/2006, 7098/2008)
[2009] ZAKZDHC 76; 2010 (6) BCLR 578 (KZD);
[2010] 2 All SA 358 (KZD) (14 December 2009)
[2009] ZAKZDHC 76**

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Theron

CASE / FILE NUMBER

9845/2006, 7098/2008

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**REPORTABLE
IN THE
KWAZULU-NATAL HIGH COURT
DURBAN, REPUBLIC OF SOUTH
AFRICA**

CASE NO. : 9845/2006

In the matters between : eTHEKWINI
MUNICIPALITY
.....Applicant
and
YUSUF
GOOLAM MAHOMED HAFJEJEE N.O.
.....First
Respondent
MOHAMMED
YUSUF HAFJEJEE N.O.
.....Second
Respondent
EBRAHIM
YUSUF HAFJEJEE N.O.
.....Third
Respondent
And
CASE
NO. ; 7098/2008

SARAH
HAFFEJEE N.O.
.....First
Applicant
MOHAMMED
YUSUF HAFFEJEE N.O.
.....Second
Applicant
EBRAHIM
YUSUF HAFFEJEE N.O.
.....Third
Applicant
eTHEKWINI
MUNICIPALITY
.....First
Respondent
MINISTER
OF PUBLIC WORKS
.....Second
Respondent
PREMIER
OF THE PROVINCE OF KWAZULU-NATAL
.....Third
Respondent
Dates
heard; 24
March 2009; 22 and 23
June
2009Date delivered: 14 December
2009

JUDGMENT

THERON J

[1] There are two applications before the court. In the first application ('the eviction application') eThekweni Municipality ('the municipality1) seeks the eviction of the occupiers of immovable property described as portions 8 and 9 of Erf 234, Durban North ('the property1) and owned by the YGM Haffeejee Family Trust ('the trust'). The property has been expropriated by the municipality. Sarah Haffeejee,

Mohammed Yusuf Haffeejee and Ebrahim Yusuf Haffeejee are the trustees of the trust. In the second application ('the constitutional

application') the trustees claim that certain provisions of the Expropriation Act 63 of 1975 are inconsistent with the Constitution

and ought to be declared invalid. The Minister of Public Works ('the Minister') and the Premier-of KwaZulu-Natal ('the Premier') have no interest in tire eviction application and abides the decision of the court in respect of that matter. They have an interest in the constitutional application to the extent that the trustees seek constitutional relief designed to declare certain provisions of the Expropriation Act unconstitutional and invalid,

- [2] The trustees had applied for the consolidation of the two applications in terms of Rule 11 of the Uniform Rules of this court. This application was opposed by the municipality and the Minister. The parties were agreed that the court should hear argument in respect of both applications and thereafter determine whether the application for consolidation should be granted. I am satisfied that there is a possibility that the municipality, in particular, may suffer prejudice as a result of the consolidation of the applications. As has already been mentioned, the Minister and the Premier have no interest in the eviction application. In the premises, the application for consolidation is refused.

Dates heard; 24 March 2009; 22 and 23 June 2009 Date delivered: 14 December 2009

JUDGMENT

THERON J

- [1] There are two applications before the court. In the first application ('the eviction application') eThekwin Municipality ('the municipality1) seeks the eviction of the occupiers of immovable property described as portions 8 and 9 of Erf 234, Durban North ('the property1) and owned by the YGM Haffejee Family Trust ('the trust'). The property has been expropriated by the municipality. Sarah Haffejee,

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premises, the application for consolidation is refused.

- [3] The facts giving rise to these applications are largely common cause. The property was, at all material times, owned by the trust and registered in the name of 'the trustees for the time being of the YGM Haffjee Family Trust⁵. During 1972, the municipality decided to embark on a program to canalise the Umgem River in an endeavour to counter-act the

consequences which were likely to arise from the flooding of the river. Certain properties along the river bank, including the

property which forms the subject matter of this dispute, were earmarked for canalisation. To this end, and on 27 October 2004⁷ the municipality resolved to expropriate the property. On 23 May 2005, the municipality gave the trustees notice of its intention to expropriate the property for the proposed canalisation project. In terms of the notice, the trustees were invited to submit any objections they may have to the proposed expropriation. An information brochure, which generally set out the details of an

expropriation, as well as a reply form, was enclosed with the notice of intention to expropriate. In terms of a notice of expropriation

dated 30 June 2005, the municipality advised the trustees that the date of expropriation would be 31 July 2005 and that the municipality intended taking possession of the property on 31 July 2005.

- [4] During July 2005, Yusuf Goolam Mahomed Haffjee, one of the trustees of the trust who died on 7 March 2006, responded to the notice of intention to expropriate, noting, inter alia, that the trustees were willing to allow the municipality immediate occupation of the property. The response recorded that the trustees preferred to enter into a private agreement with the municipality and requested the allocation of an alternative site. By notice dated 28 February 2006, the municipality afforded the trustees one month's notice to vacate the property. On 14 July 2006, the municipality tendered to the trustees the amount of about R73 8 000 being 80 per cent of the assessed market value of the property, plus solatium. The trustees rejected the tender. On 11 September 2006, the municipality launched the eviction application. During June 2008, the trustees launched the constitutional application. In September 2008, the municipality tendered to the trustees 100 per cent of the assessed market value of the property, plus solatium.

- [5] The trustees, in resisting the eviction application, have challenged the validity and lawfulness of the expropriation on various grounds. I will deal with each of these grounds ad viaticum. The municipality failed to give all the trustees notice of its intention to expropriate the property

- [6] Once a municipality has taken a decision to expropriate immovable property it is required, in terms of s 190(3) of the Local Authorities Ordinance 25 of 1974,¹ to give the owner of the such property notice of its intention to expropriate the property and to invite the owner to lodge any

objections to the proposed expropriation within thirty (30) days of the service of such notice,

- [7] It was common cause that the property was registered in the name of 'the Trustees for the time being of the YGM Haffeejee Family Trust', and that the trust had more than one trustee. It was argued on behalf of the trustees that on a proper construction of the Ordinance, each of the trustees qualified as an 'owner' of the property and the municipality was therefore obliged to serve the notice of intention to expropriate on each of the trustees, which it had failed to do. Such failure, so the argument went, constituted non-compliance with a mandatory provision of the Ordinance, rendering the notice invalid.
- [8] It was further common cause that the notice of intention to expropriate had not been addressed to a particular trustee but to the trustees of the trust at 'P.O. Box 4969, Durban'. In the answering affidavit to the eviction application, one of the trustees, Ebrahim Yusuf Haffeejee (Ebrahim) asserted that the box address was not known to him. Ebrahim has not disclosed which address was communicated to the municipality as being that of the trust and/ or its trustees. In its replying affidavit in the eviction application, the municipality pointed out, inter alia} that: (a) all property owners are obliged to advise the municipality of their postal address in order to facilitate communication between the municipality and such owners; (b) the municipality sends to such owners their consolidated bills relating to electricity, water, sanitation, refuse, rates and other charges to the address so furnished; (c) the address to which the notice was sent was the postal address provided to the municipality by the trust; (d) the municipality had used that address in communicating with the trust and that was the address to which all bills in respect of the trust were sent; (e) the municipality's records reflected various payments made to the municipality by the trust pursuant to bills and assessments addressed to the given post office box address.
- [9] It was common cause that the notice of intention to expropriate had been received by the deceased trustee, Yusuf Goolam Mahomed Haffeejee, and that he had acted thereon. The fact that the notice had "been acted upon by the deceased trustee only, is immaterial. It would appear that the deceased trustee was the custodian of the post office box to which the notice was sent. He was designated as the representative of the trust relating to its May to day' affairs. In these circumstances, it follows that the address to which the notice of intention to expropriate had been sent, was, the address of the trust and/or the trustees. The notice of intention to expropriate was misleading
- [10] It was common cause that an information brochure had been sent together with the notice of intention to expropriate. It was recorded in the information brochure that compensation would be determined with reference to the market value of the property, including improvements. It was contended, on behalf of the trustees, that the municipality's representations were materially incorrect in that the municipality had no intention of compensating the trust for any improvements. It was further contended that properly interpreted, the provisions of s 190(3) of the Ordinance implied that the notice should be free from material misrepresentation. It was argued that the notice addressed to the trust was not one contemplated in s 190(3) of the Ordinance.

- [11] The contention that the notice was misleading because it was accompanied by a general information brochure which suggested that the trustees would be compensated for improvements could not have served as a legitimate objection to the proposed expropriation. The Expropriation Act establishes an elaborate scheme in terms of which an aggrieved expropriatee can pursue a claim for just and equitable compensation. An expropriatee's right to just and equitable compensation is entrenched in both the Expropriation Act and the Constitution. Provided that the act of expropriation itself is not impugned, the owner suffers no prejudice if the amount of compensation is determined at a later date. This issue is dealt with in greater detail in paragraphs [22] to [25] of this judgment. In any event, even if the information brochure was misleading in that it may have contained information which suggested that; compensation will include the value of improvements, this would not detract from the validity of the notice, having regard to the particular requirements of s 190 of the Ordinance. The thirty day notice period was not complied with
- [12] It was contended by the trustees that the provisions of s 190(4) of the Ordinance² were not complied with in that, firstly, the municipality had failed to prove that the mandatory thirty day objection period had expired and secondly, that the municipality had acted prematurely in securing the approval of the Member of the Executive Council of KwaZulu-Natal ('the MEC) responsible for Local Government and Traditional Affairs, It was alleged by the trustees that there was no evidence as to when the notice was served on or posted to the trust. It was common cause that s 190(3) of the Ordinance obliges the municipality to afford a property owner notice of its intention to expropriate the property. The owner is then entitled to lodge objections to the proposed expropriation 'within thirty (30) days of the service of such notice*. It was argued that the date of service was relevant in determining when the thirty day objection period commenced.
- [13] The administration of the Ordinance was assigned to the province of KwaZulu-Katal in terms of Proclamation 107 of 1994 (Government Gazette 15813) and in turn the Premier assigned the administration of the Ordinance and the responsibility under the Ordinance (described as that of the 'Administrator') to the MEC. On 20 June 2005, Heyjyothi Krishnan, an employee in the Department of Local Government and Traditional Affairs ('the department'), was authorised to perform the duties and functions of General Manager: Local Government for the period 21 June 2005 until 1 July 2005. This appointment was for the purposes of performing the duties and functions of the 'Administrator' referred to in s 190 of the Ordinance.
- [14] On 20 June 2005, a manager in the department drew up a memorandum relating to the expropriation in this matter for consideration by Krishnan. The memorandum set out that the municipality was applying for the MEC's approval in terms of s 190 of the Ordinance. The memorandum also records a request by the municipality that the application be processed on the basis that there were no objections thereto and to pend granting consent until such time as the objection period had lapsed and any objections were resolved. On the expiry of the thirty day period, and after recording that there were no objections to the expropriation,

the municipality sought the Premier's consent. On 24 June 2005, the municipality advised the department that no objections had been received by the expiry date. On 27 June 2005, Krishnan approved the proposed expropriation. On 28 June 2005, the department advised the municipality that the MEG had approved of the expropriation.

- [15] The importance of the thirty day period is that it is designed to afford a landowner a reasonable period within which to object to the proposed expropriation. There is no indication that if the trust had been afforded a period of 30 days from the date of service of the notice as opposed to the date of the notice, that its response thereto would have been any different. The correspondence which subsequently ensued demonstrates that the trust, through the deceased trustee, had consented to the expropriation. Even if the notice was defective, no prejudice whatsoever was occasioned by the trust.
- [16] It does not appeal that the MEC's consent had been sought prematurely. No consequence attaches to the fact that the recommendation to the MEC was dated 20 June 2005. The recommendation clearly recorded that it was subject to the expiry of the period within which to lodge objections and subject to any objections which were received. In any event, no objection to the notice of intention to expropriate was lodged.
- [17] In *Maharaj & others v Rampersad*,³ the Appellate Division in dealing with the principles applicable to statutory injunctions stated as follows; The enquiry, I suggest, is not so much whether there has been "exact" "adequate" or "substantial" compliance with this injunction but rather whether there has been compliance therewith. This enquiry postulates an application of the injunction to the facts and a resultant comparison between what the position is and what, according to the requirements of the injunction, it ought to be. It is quite conceivable that a Court might hold that, even though the position as it is is not identical with what it ought to be, the injunction has nevertheless been complied with. In deciding whether there has been a compliance with the injunction the object sought to be achieved by the injunction and the question of whether this object has been achieved are of importance.' Counsel for the municipality referred to *Durban City Council v Jailani Cafe*⁴ where property had been expropriated by the city council pursuant to the provisions of Ordinance 19 of 1945, a predecessor to the current Ordinance, in support of the argument that the courts adopt a common sense approach in determining whether a statutory injunction has been complied with. In opposing the application for ejection, one of the points raised by the respondent in *Jailani Cafe* was that the notice requiring 'Jailani Cafe' to vacate the property was not valid because it had not been addressed to the respondent. It was alleged that there was no firm with the name 'Jailani Cafe' and that the address to which the notice had been addressed, was
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The thirty day notice period was not complied with

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The enquiry, I suggest, is not so much whether there has been "exact" "adequate" or "substantial" compliance with this injunction but rather whether there has been compliance therewith. This enquiry postulates an application of the injunction to the facts and a resultant comparison between what the position is and what, according to the requirements of the injunction, it ought to be. It is quite conceivable that a Court might hold that, even though the position as it is is not identical with what it ought to be, the injunction has nevertheless been complied with. In deciding whether there has been a compliance with the injunction the object sought to be achieved by the injunction and the question of whether this object has been achieved are of importance.'

Counsel for the municipality referred to *Durban City Council v Jailani Cafe*⁴ where property had been expropriated by the city council pursuant to the provisions of Ordinance 19 of 1945, a predecessor to the current Ordinance, in support of the argument that the courts adopt a common sense approach in determining whether a statutory injunction has been complied with. In opposing the application for ejectment, one of the points raised by the respondent in *Jailani Cafe* was that the notice requiring 'Jailani Cafe' to vacate the property was not valid because it had not been addressed to the respondent. It was alleged that there was no firm with the name 'Jailani Cafe*' and that the address to which the notice had been addressed, was

the business address of *Jailani Cafe (Pty) Ltd*. Milne J, noting that there was no allegation in the papers that *Jailani Cafe (Pty) Ltd* did not carry on business as *Jailani Cafe*, concluded, 'that the business that is conducted at those premises is indeed carried on under the name of "Jailani Cafe", and there is, in my view, no substance in the suggestion that the notice was not properly addressed to the *Jailani Cafe*. There is certainly not the slightest suggestion that it was not received by the persons for whom it was intended.'⁵

More recently, in *Merry Hill (Pty) Ltd v Engelbrecht*⁶ Brand JA confirmed that even where the formalities required by a statute are peremptory, the approach of the Supreme Court of Appeal was that not every deviation from literal compliance would be fatal, but the enquiry was *whether, in spite of the defects, there was substantial compliance with the requirements of the statute.'

[18] In my judgment the municipality and the MEC have complied substantially with the requirements of s 190 of the Ordinance. The trustees have not been able to identify any prejudice suffered by them by reason of any non-compliance with the section. There is nothing to indicate that were it not for any such deficiencies, the trustees' response to the v .otice of intention to expropriate would have been any different. The various grounds relied upon by the trustees in challenging the validity of the expropriation have no substance and are 'over-technical and lacks common sense'.⁷

The Constitutional Application

[19] For the purpose of this application, the dispensation designed by the Expropriation Act may be summarised as follows. The Expropriation Act creates rights and obligations for both the municipality and the trust. The municipality has the power, subject to an obligation to pay compensation, to expropriate property for public purposes.⁸ Once it has decided to expropriate the property, the municipality is required to serve a notice of expropriation on the trust.⁹ The notice had to:¹⁰ contain a clear description of the property; state the date of expropriation and the date upon which the municipality would take

possession of the property; draw the attention of the trust to the provisions of s 9(1) and s 12(3)(a) (ii); and if it contained the amount offered as compensation, inform the trust that if the property was subject to a lease of which the municipality was unaware, it was entitled to withdraw that offer. Section 7(4) provides for service of the notice on interested parties.

[20] Within 60 days of the date of the notice, the trust was required to deliver to the municipality a notice indicating the following:¹¹ whether it accepted the amount offered as \mpensation, if that was contained in the notice, and if it did not the amount it claimed as compensation; if the amount offered as compensation had not been included in the notice, the amount it claimed; full particulars of the improvements that had been effected on the property; details of any unregistered lease or of any liens and an address for service. Themunicipality was entitled to request that the trust deliver to it the title deeds in respect of the property,

[21] In the constitutional application the trustees assert that certain provisions of the Expropriation Act unjustifiably violates their rights to property, administrative justice and equality and are liable to be struck down as invalid. It was contended that s 25(2) of the Constitution¹² provides that a pre-determination of compensation is a jurisdictional pre-requisite for a valid expropriation. It was submitted by the trustees, that any provision of the Expropriation Act which provides otherwise is unconstitutional, namely, ss 2(1), 7(1), 8(1), 9(1), 10, 11, 21 and 22. It was also contended that the unilateral decision of the expropriator

as contemplated in ss 2(1)13 and 7(1)14 of the Expropriation Act, is inconsistent with administrative justice as guaranteed in s 33 of the Constitution¹⁵ and in the Promotion of Administrative Justice Act 3 of 2000. It was further contended that ss 8(1), 8(4), 8(6), 9(1), 9(3), 9(6), 10(1) and 10(2) of the Expropriation Act afford an expropriator an unjustifiably amplified protection and benefit of the law, rendering parties 'unequal' before the law in violation of the equality

guarantee in s 9(1) of the Constitution. In particular, it was argued that ss 9(1), 9(3), 9(6), 10(1) and 10(2) are unconstitutional in that they impose no obligation on the expropriator to take steps to agree compensation in advance and before expropriation occurs.

[22] Two of the purposes that s 25 of the Constitution serves are the following two: it prohibits the arbitrary deprivation of property and it allows for the expropriation of property under the following conditions. First, the expropriation must be in terms of a law of general application. Second, it must be for a public purpose or in the public interest. Third, the time and manner of the compensation that must be paid must either be agreed to by those affected or must be decided or approved by a court and must in addition be just and equitable. Both a plain and a purposive reading of the section suggests that, in respect of expropriation, s 25 lays down that a law of general application may allow for expropriation if the expropriation is for a public purpose or in the public interest and compensation is paid for the expropriated property. The trustees do not contend otherwise. However they contend that s 25, properly interpreted, requires that before there can be a valid expropriation, agreement must be reached on the amount of compensation to be paid or the amount must have been determined or approved by a court.

[23] In order to determine the validity of the contention by the trustees that the issue of compensation must be resolved before an expropriation can take effect, the following must be considered. A prior agreement or decision in respect of the amount and time of payment of compensation is not an express requirement of s 25 of the Constitution. Section 25

contemplates that the expropriation process requires that there must be a decision to expropriate and that the amount of compensation and the time and manner of its payment must be agreed upon or determined or approved by a court'. The Expropriation Act sets out a detailed mechanism in terms of which finality on these matters may be reached.¹⁶

[24] In my view, the scheme created by the Expropriation Act to secure agreement on the matters referred to in s 25 of the Constitution does not unconstitutionally violate any of the rights of a person whose property has been expropriated in terms of the Expropriation Act. This scheme is also consistent with one of the purposes of s 25, namely, to empower the state to expropriate property in an

expeditious manner, without prejudicing the right of the owner to compensation. Provided that the act of expropriation itself is not impugned, the owner suffers no prejudice if the amount of compensation and the time and manner of payment are agreed to or

determined at a later date. To require prior agreement or determination, would create the opportunity for obstructive owners to

frustrate legitimate government purposes. This construction of s 25 accords with the statement by Mokgoro J, writing for the majority in *Toit v Minister of Transport*¹⁷ that 'every act of expropriation, including the compensation payable following expropriation, must comply with the Constitution, including its spirit, purport and objects generally and s 25 in particular/ (Emphasis added,) The learned judge explained that:

'Section 25(2) of the Constitution requires property to be expropriated only in terms of a law of general application and subject to compensation. The amount of compensation must then be agreed upon between the affected parties. Alternatively, it may be decided or approved by a court of law.¹⁸ (Emphasis added) In the circumstances, the trustees' argument that the provisions of sections 2(1), 7(1), 8(1), 8(4), 8(6), 9(1), 9(3), 9(6), 10, 11, 21 and 22 of the Expropriation Act are inconsistent with the provisions of s 25(2) of the Constitution, is misconceived.

[25] The trustees complain that ss 2(1) and 7(1) of the Expropriation Act are inconsistent with the provisions of s 33 of the Constitution to the extent that they authorise the relevant Minister or local authority to make a decision to expropriate property without affording the parties affected by that decision notice of the intention to make a decision to expropriate and a reasonable opportunity to make representations in connection therewith. It was contended that the offending sections violates the trustees' right to lawful, reasonable and procedurally fair administrative action.

[26] In *Buffalo City Municipality v Gauss & another*,¹⁹ the Supreme Court of Appeal had to deal with a similar argument in relation to an Eastern Cape Ordinance in terms of which a decision to expropriate is taken before the affected land owner is afforded an opportunity to object to the proposed expropriation. Nugent JA, writing for the court, found that the mechanism created by the Ordinance for a local authority to expropriate property passed constitutional muster in respect of procedural fairness. The learned judge stated as follows: But once the local authority has marked the property for expropriation I can see no reason why the failure to afford the owner an opportunity to be heard before the status quo is temporarily preserved will operate against him unfairly.

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But once the local authority has marked the property for expropriation I can see no reason why the failure to afford the owner an opportunity to be heard before the status quo is temporarily preserved will operate against him unfairly.

Clearly the ordinance does not envisage a hearing before the local authority's decision is taken - that the owner is invited to object only after the decision is made necessarily means that no objection before then is contemplated - and this construction is not in conflict with the Constitution.²⁰

[27] In expropriating the property, the municipality relied on the provisions of the Ordinance read with the Expropriation Act. Section 190 of the Ordinance is consistent with just administrative action. In terms of this section the municipality is obliged to notify the affected land owner of its intention to expropriate and invite such owner to lodge objections to the proposed expropriation. The municipality has complied with the provision of s 190 of the Ordinance. The trustees were invited to lodge objections, On the facts of this matter, the trustees' argument that their right to fair administrative action was violated is devoid of any substance.

[28] Finally, there is no merit in the argument that ss 8(1), 8(4), 8(6), 9(1), 9(3), 9(6), 10(1) and 10(2) of the Expropriation Act result in the municipality being afforded an unjustifiably amplified protection and benefit of the law and this argument is summarily rejected.

[29] For these reasons, the following order is made: 29.1. The application for consolidation is refused. 29.2 The constitutional application is dismissed. 29.3. The YGM Haffeeje Family Trust, alternatively, the trustees of the trust, and all persons claiming occupation through the YGM Haffeeje Family Trust, alternatively, the trustees of the trust, are directed within 7 (seven) days of the date of grant of this order to vacate the immovable properties described as Sub 8 and Sub 9 of Lot 234 Durban North and situated at 3 Roadhouse Crescent, Durban. 29.4. The sheriff is hereby authorised to evict the YGM Haffeeje Family Trust, alternatively, the trustees of the trust, and all persons claiming occupation through the YGM Haffeeje

Family Trust, alternatively, the trustees of the trust, from the said property in the event of non-compliance with paragraph 29.3 of this order. 29.5. The YGM Haffejee Family Trust, alternatively, the trustees of the trust, jointly and severally, the one paying the others to be absolved, are directed to pay the costs, including, all reserved costs, of the eviction application brought under case number 9845/2006, which costs are to include the costs of two counsel. Legal representatives YGM Haffejee Family Trust Counsel: T N Aboobaker SC with H S Gani and M Sewpal Attorneys: Sunita Sewpal Attorneys eThekweni Municipality Counsel: V I Gajoo SC with S Mahabeer Attorneys: Naidoo Maharaj Inc Minister of Public Works Counsel: V Soni SC Attorneys: State Attorney (KwaZulu-Natal) Premier of the Province of KwaZulu-Natal Counsel: A J Dickson SC Attorneys; PKX Attorneys c/o Luthuli Sithole Attorneys

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Legal representatives

YGM Haffejee Family Trust

Counsel: T N Aboobaker SC

with H S Gani

and M Sewpal

Attorneys: Sunita Sewpal Attorneys

eThekwini Municipality

Counsel: V I Gajoo SC

with S Mahabeer

Attorneys: Naidoo Maharaj Inc

Minister of Public Works

Counsel: V Soni SC

Attorneys: State Attorney (KwaZulu-Natal)

Premier of the Province of KwaZulu-Natal

Counsel: A J Dickson SC

Attorneys; PKX Attorneys

c/o Luthuli Sithole Attorneys

11 Section 190(3), in relevant parts, reads as follows: '(3) Whenever the council has taken a decision in accordance with the provisions of subsection (2) it shall cause a notice to be served on the owner of the immovable property concerned -

- (a) containing a description sufficiently clear to identify such Immovable property; and
- (b) informing such owner that -

- (i) it intends to expropriate or take the right temporarily to use such immovable property; and
- (it) any objections he may have to the proposed expropriation or taking may be lodged with the town clerk within thirty days of the service of such notice,,. '

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thirty days of the service of such notice,,. '

2Section 190(4) of the Ordinance provides as follows: After the expiration of the period of thirty days contemplated by subsection (3) (b) (ii) the council shall - (a) transmit to the Administrator the objections (if any) lodged by ihc owner in terms of subsection (3) (b) (ii) together with its comments thereon and a certificate by the town clerk that the provisions of subsection (3) have been complied with, and (b) obtain the Administrator's approval of the proposed expropriation or taking as the case may be.'

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- (b) obtain the Administrator's approval of the proposed expropriation or taking as the case may be.'

3 1964

(4) SA 63S (AD) at 646C-E.

41978 (1)SA 151(D).

5At 157H-J58A-

62008 (t) SA 544 (SCA) para 23.

7Per Olivier JA in M&J Morgan Investments (Ply) Ltd v Pinetown Municipality 199?

(4) SA 427 (SCA) at 4381-J.

8Section 2(1) read with s 5.

9Section 7(1).

10Section 7 (2)(a)-(d).

11Section 9(l)(aV(e),

12Section 25(2) provides as follows: 'Property may be expropriated only in terms of law of general application- (a) for a public purpose or in the public interest; and (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.'

12Section 25(2) provides as follows:

'Property may be expropriated only in terms of law of general application-

- (a) for a public purpose or in the public interest; and
- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.'

13Section 2(1) provides; 'Subject to the provisions of this Act {he Minister may, subject to an obligation to pay compensation, expropriate any property for public purposes or take the right to use temporarily any property for public purposes.'

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14Section 7(1) reads: " If the Minister has decided to expropriate, or to take the right to use temporarily, any property in terms of the provisions of section 2, he shall, subject to the provisions of subsection (5)s causeto be served upon the owner in question an appropriate notice in accordance with the provisions of subsection (3).'

14Section 7(1) reads:

" If the Minister has decided to expropriate, or to take the right to use temporarily, any property in terms of the provisions of section 2, he shall, subject to the provisions of subsection (5)s causeto be served upon the owner in question an appropriate notice in accordance with the provisions of subsection (3).'

15Section 33(1) of the Constitution reads as follows: 'Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.'

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16To that end, the Expropriation Act details the steps that the expropriating authority may take to secure the agreement contemplated by s 25(2)(b) of the Constitution. If agreement cannot be reached on these matters, s 10(5)(a) of the Expropriation Act makes express provision for the circumstances in which it is deemed that agreement on these matter has been reached.

172006(1) SA 297(CC) para26.

18Du Toit v Minister of Transport para 28.

19 2005

(4) SA 498 (SCA).

20Buffalo City Municipality v Gauss paras 14 and 15.

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