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

CASE NO: D3430/2020

In the matter between:

KWADUKUZA MUNICIPALITY **APPLICANT**

and

McDONALD'S SOUTH AFRICA **FIRST RESPONDENT**

MSA DEVCO (PTY) LTD **SECOND RESPONDENT**

ASHNEE MOTHILAL **THIRD RESPONDENT**

This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 09h45 on 18 September 2020.

ORDER

---

1. The second respondent is directed to vacate the property described as Erf 5705, Stanger, also known as 120 Balcome Street, KwaDukuza and not to permit the occupation thereof until or unless a certificate of occupancy in terms of section 14 of the National Building Regulations and Building Standards Act 103 of 1977 permitting such occupation may be issued;
2. The second respondent is interdicted and restrained from using or permitting to be used the property or any part of the property described as Erf 5705, Stanger, also known as 120 Balcome Street, KwaDukuza to carry on any business by the sale or supply to consumers of any foodstuffs in the form of meals for consumption on or off the premises, or any perishable foodstuff until or unless a licence in terms of section 2(3) of the Businesses Act 71 of 1991 permitting such

business, may be issued, and not to permit the occupation thereof until or unless a certificate of occupancy in terms of section 14 of the National Building Regulations and Building Standards Act 103 of 1977 permitting such occupation is issued;

3. The second respondent is directed to pay the costs of the main application on an attorney and client scale, such costs to include that of senior counsel.
4. The counter-application is dismissed, with no order as to costs.

JUDGMENT

Chetty J:

[1] The applicant, a local authority as contemplated in chapter 7 of the Constitution, brought an urgent application on 11 June 2020, in the form of a rule *nisi*, seeking the following relief:

(a) That the respondents are directed to vacate or cause to be vacated the property described as Erf 5705, Stanger also known as 120 Balcombe Street, KwaDukuza ('the property') and not to permit the occupation thereof until or unless a certificate of occupancy in terms of s 14 of the National Building Regulations and Building Standards Act 103 of 1977 ('the NBR Act') permitting such occupation may have been issued;

(b) That the respondents are restrained from using, or permitting to be used, the property or any part of the property to carry on any business by the sale or supply to consumers of any foodstuffs in the form of meals for consumption on or off the premises, or any perishable foodstuff until or unless a licence in terms of section 2(3) of the Businesses Act 71 of 1991 ('the Businesses Act') permitting such business may have been issued.

[2] When the matter came before D Pillay J on 11 June 2020, the respondents gave notice of their intention to oppose the relief sought and further indicated they would be filing a counter-application. In the circumstances the application was adjourned to 23 June 2020, with the parties being directed to file their affidavits within specific timeframes. Importantly, the order recorded an undertaking by the respondent not to open its KwaDukuza restaurant on the property until 23 June 2020

or until the applicant approved an application for a temporary occupancy certificate and a business licence. Those decisions were to be made by the applicant on or before 19 June 2020. In the intervening period, and pursuant to the earlier order, the applicant rendered its decision refusing both applications, being for a certificate of occupancy and a business licence. When the matter came before court on 23 June 2020, it was adjourned to 3 July 2020, with further directions issued to the parties relating to the exchange of affidavits.

[3] When the matter came before me on 3 July 2020 the second respondent's relief in the first paragraph of the counter-application, declaring the municipality's failure to make a decision in respect of application for a certificate of occupancy in terms of s 14 (1) of the NBR Act and a business licence in terms of s 2(3) of the Businesses Act was unfair and subject to review under the Promotion of Administrative Justice Act 3 of 2000 ('PAJA'), became academic as the municipality made its decision in the intervening period. In light thereof, Mr *Stokes* SC, who appeared together with Mr *Randles* for the respondents, informed me that the second respondent persisted in the relief sought in the remaining paragraph of the counter-application. At the hearing, the relief sought was amended to read as follows:

'2. It is declared that the applicant's refusal to grant the second respondent temporary permission to use the business premises situated at 120 Balcombe Street, KwaDukuza, unfair and subject to review in terms of section 6 (2)(f) of the Promotion of Administrative Justice Act (PAJA) of 2000, and that second respondent be permitted to occupy the said premises for 30 days on the condition that the second respondent complies with everything contained in annexure "U1".'

[4] It is appropriate at this point to set out the contents of 'U1',[1] a letter from the applicant's building control officer, and annexed to the supplementary answering affidavit of Mr Naidoo, the Director of Development Enforcement. Much of the argument focused on the interpretation of this letter, dated 19 June 2020. It reads as follows:

"APPLICATION: TEMPORARY OR FULL OCCUPATION APPLICATION
ERF NO: 5705 KWADUKUZA

[1] Record, p.320-322

STREET ADDRESS: 120 BALCOMB STREET, KWADUKUZA CBD

PLAN NO: 180/09/585. 20/03/113

Dear Sir/Mam

Your application in respect of the above refers.

Please be advised that your application made in terms of Section 14 of the National Building Regulations and Building Standards Act 103 of 1977, with specific reference to Plan Nos. 18/09/585 and 20/03/113 is hereby DISAPPROVED.

The reasons for the disapproval are recorded as follows:

1. Building Control Comments:

- Approval of deviations plans in respect of Plan No. 20/03/113 is required.
- The applicant has submitted an uncertified Surveyors setting out drawing. A certified Surveyors Setting out drawing is required, which is to capture dimensions of all structures on site.
- The dimensions on the as-built plans conflict with the surveyors setting out drawing. The applicant is required to resubmit the as-built plans which are to be in line with the survey submitted.
- The noise created by the on-site generator is objectionable and residents in the immediate vicinity have previously raised concerns. To this effect, a decibel verification certificate is required from the installer or competent person to establish whether the noise generated complies with the KwaDukuza Municipality Noise and Nuisance Bylaws.
- A consent is required from the immediate and affected property, referred to as Erf. No. 286 KwaDukuza-San-Te Fe Residential Block of Flats. The residents complained bitterly previously when McDonald's started operating using a generator, as there was no municipal electrical connection of the property.
- As per the survey document submitted, the applicant has deposited excess soil and created an earth embankment onto Council property. This is in contravention with Part F1 (4) of the National Building Regulations and Building Standards Act 103 of 1997. The applicant is hereby required to either remove the excess soil and create an earth banks on Council property and make good or make an application to Council for an Encroachment agreement.
- The applicant failed to submit the duly signed Electrical Compliance Certificate. The certificate submitted was not signed off by the recipient.
- A copy of certified Structural drawings is required.
- A Surveyors Beacon Certificate is required
- Final Clearances required from the following sections: Towing Planning, Electricity, Road and Civil Engineering Unit, Environmental Management Section (KDM).

2. TOWN PLANNING:

- The re-submitted as-built deviation plans (Plan NO.20/03/113) depict the retaining/boundary walls as being over 2m in height, excluding the palisade. This requires a new relaxation application as it was not included in the previous relaxation approval granted on 01st October 2019.

3. CIVIL ENGINEERING DEPARTMENT:

- Where access starts from the Main Road, Balcomb Street, no need to cut and remove asphalt as well as the old curbs to allow for access into the property (Construction of V-Drain incomplete)
- Finish the planting of grass on site.
- Clear (blockage) stormwater pit at the corner of Balcomb and Gizenga Street.

4. ELECTRICAL DEPARTMENT:

- Labeling of circuits in the DB
- Cables feeding the DB need to be covered.
- Fire Extinguishers to be placed in the right position and remove any obstacles or machinery in front of them.
- The old three-phase meter and cables are lying outside of the property boundaries. (applicant must take them back to the KDM Electrical office).
- Existing cables feeding neighboring properties must be buried underneath the ground surface.
- Once all the above items have been addressed, please let me so that I can conduct a follow-up site inspection, together with your Electrician on site.

5. PROPERTY MANAGEMENT DEPARTMENT:

- No clearance received from the Property Management Department indicating that the applicant has complied with the requirements as per the letter of approval granted on the 25th June 2019 (See attached letter from Property Management)

You are accordingly required to adhere to the requirements as mentioned above prior to any further consideration of this application.'

[5] The applicant seeks final relief against the second respondent (hereinafter referred to as 'MSA'), interdicting and restraining MSA from operating a McDonald's restaurant from the property, until it has obtained the necessary approval from the applicant to occupy the building in question and acquire the requisite licence in terms

of the Businesses Act. No relief is sought against the first and third respondents. Ms *Mahabeer* SC who appeared on behalf of the applicant submitted that the application for final relief in competent as MSA did not have the necessary permission, in law, to occupy the building or to trade from it. In so far as the relief sought in the counter application, Mr *Stokes* was somewhat non-committal as to whether the relief sought by MSA was a review or an application for a mandamus. Having regard to the facts as a whole, it would appear to me that if the applicant is entitled to final relief, that would be incompatible with any relief granted to MSA in the counter-application. It is perhaps convenient to first determine whether the applicant has satisfied the grounds for final relief in the main application and then consider whether MSA has made out a case for an order entitling it to temporarily occupy the premises.

[6] The facts of the main application are largely common cause, and can be summarised as follows:

(a) MSA is the registered owner of the property and the proprietor of the business to be conducted as a McDonald's fast food outlet. It is well known that McDonald's provides for on-site consumption and take away meals. The property in question is situated within the jurisdiction of the applicant, which is the designated authority in terms of the NBR Act for the approval of buildings, as well as business licenses in terms of the Businesses Act.

(b) Early in 2018 MSA submitted an application to the applicant for the approval of a demolition, and plans for the reconstruction of a building as a restaurant and takeaway. Provisional authorisation to erect the buildings, prior to approval of the building plans, was sought in May 2019, and granted by the municipality in September 2019. The building plans were eventually approved in December 2019.

(c) MSA took occupation of the buildings on the property on 5 February 2020, without the buildings being approved or without an occupancy certificate being issued, and without a business licence. On 19 February 2020 MSA, after commencing trading, applied for a business licence.

(d) The applicant's building inspectors visited the property on at least three occasions from February to March 2020 and on inspection found that the buildings had been occupied without the requisite approvals from the applicant. As a consequence, notices of violation were issued to MSA.

(e) On 6 March 2020 the building control officer, after several contravention notices having been issued, furnished MSA with a final contravention notice that provided that unless a certificate of occupancy is issued in terms of the NBR Act, MSA are precluded from occupying the building on the premises. The notice further brought to the attention of MSA that they had commenced trading without the necessary licence, in contravention of the Businesses Act.

(f) On 6 March 2020 the applicant's attorney of record addressed a letter to MSA's head office in Johannesburg, bringing attention to the contents of the final notice, calling on MSA to desist from their unlawful conduct, failing which an urgent application would be launched.

(g) Discussions thereafter took place between the applicant's attorney and the representatives of MSA. Despite discussions, MSA failed to provide the applicant with an unequivocal undertaking that it would not occupy the premises without a valid certificate of occupancy, or that it would cease trading.

(h) MSA's trading from the property (albeit unlawfully) was brought to a halt by the announcement of the nationwide lockdown due to the COVID-19 pandemic. However as soon as the lockdown fell to 'Alert level 3',[2] despite MSA not having authorisation to occupy, or to trade from the premises, it resumed business on 1 June 2020.

[7] The best evidence of authority to occupy a building or to trade from it is in the form of a certificate of occupancy and a business licence. MSA are unable to produce either. In response to the indisputable facts of acting in contravention of the NBR Act and the Businesses Act, all that MSA can point to is the delay of four months since the applicant received its applications for approval without the applicant having taken a decision. Its contention is that the only basis on which the business licence is being withheld is the absence of a certificate of occupancy. At the time when this application for an interdict was launched, the applicant contended that it was unable to finalise a decision on the application for a certificate of occupancy due to the interruption caused by the national lockdown. It contended in the founding affidavit that it did not have an adequate opportunity to evaluate the application for occupancy and takes the position but that a business licence will

[2] Disaster Management Regulations, GN R.480, GG 43258, 29 April 2020.

'almost certainly' not be granted until a certificate of occupancy is issued by the municipality. MSA attempts to draw a divide between the two approvals applied for, contending that the approval of occupancy is not a perquisite for a business licence.

[8] Counsel for the applicant submits that what MSA is effectively seeking is to circumvent the processes and procedures which are applicable to all other property owners within the jurisdiction of the applicant, and to carve out for itself its own procedure. The rule of law and the principle of legality require adherence to one set of rules for all. In this regard the provisions of the NBR Act provide for the following in relation to approval of certificates of occupancy:

'14. Certificates of occupancy in respect of buildings.—

(1) A local authority shall within 14 days after the owner of a building of which the erection has been completed, or any person having an interest therein, has requested it in writing to issue a certificate of occupancy in respect of such building—

(*a*) issue such certificate of occupancy *if it is of the opinion that such building has been erected in accordance with the provisions of this Act and the conditions on which approval was granted in terms of section* 7, and if certificates issued in terms of the provisions of subsection (2) and, where applicable, subsection (2A), in respect of such building have been submitted to it;

(*b*) in writing notify such owner or person that it refuses to issue such certificate of occupancy if it is not so satisfied or if a certificate has not been so issued and submitted to it.' (my emphasis)

[9] What is apparent from s 14(1) above is that a local authority is obliged to issue a certificate of occupancy '*if it is of the opinion that such building has been erected in accordance with the provisions of [the] Act'*. That implies that the decision whether or not to issue a certificate is a discretionary one, exercised in accordance with the requirements of the NBR Act. If follows that the discretion has to be exercised in a fair, reasonable and rational manner. A certificate of occupancy will generally be issued where the building has been erected in accordance with the approved building plans and where all relevant certificates pertaining to electricity compliance, sewer connections, storm water etc, have been issued by the relevant departments of the local authority. However, the local authority in terms of s 14(1A) of the NBR Act also has a discretion to permit the owner of a building to occupy it '*before the issue of the certificate of occupancy*' on such conditions and for such periods as the

local authority may allow. Again, this is a decision falling within the discretion of the applicant, having regard to the state of completeness of the building and the issues of health and safety for those who may occupy it pursuant to a certificate issued under subsection (1A).

[10] The default position, as I interpret the section, is that a certificate of occupancy will only be issued once the local authority is satisfied that there has been proper compliance with the NBR Act. The exception is catered for in subsection (1A). Section 14(4)(*a*)(i) makes it an offence to occupy a building erected or being erected, without the approval of a local authority unless a certificate of occupancy has been issued. There are certain exceptions listed in this subsection which do not apply in the present case. The applicant submits that MSA has not satisfied it that the building works on site have been completed in accordance with approved building plans, and for that reason no (permanent) certificate of occupancy has been issued in terms of s 14(1)(*a*) of the NBR Act.

[11] Since MSA intends operating a McDonald's restaurant from the property, Schedule 1 of the Businesses Act requires it to obtain a licence for the sale or supply of meals or perishable foodstuffs. The applicant is the licencing authority for any entity or person intending to sell meals or perishables within its area of jurisdiction. The Businesses Act applies to all persons, irrespective of a single trader or a multinational corporation. Section 2(3) of the Businesses Act provides that:

'(3) No person shall, with effect from the date specified in a notice under subsection (1) in respect of a specific licensing authority, carry on any business in the area of that licensing authority—

(a) unless, in the case of a business referred to in item 1 (1) or 2 of Schedule 1, he is the holder of an apposite licence issued to him by the licensing authority in respect of the business premises concerned;

. . . .

(4) A licensing authority shall, subject to the provisions of subsection (6), issue a licence which is properly applied for unless—

(a) in the case of a business referred to in item 1 (1) or 2 of Schedule 1, the *business premises do not comply with a requirement relating to town planning or the safety or health of the public of any law which applies to those premises*;

(*a*A) in the case of a business referred to in item 1 (1) or 3 (1) of Schedule 1, any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law relating to the health of the public.'

[12] It was not disputed that at the time when this application was launched, the applicant had not issued a business licence to MSA. It is also not disputed that MSA had been operating its business from the property since 3 February 2020 and that it only submitted an application for a business licence on 11 February 2020. MSA's complaint is that at the time that the application was launched, a period of almost four months had elapsed since it made the application, leading to the inference that it had been refused. If MSA's complaint was that the applicant had dragged its heels in assessing the application for a business licence, its remedy lay in applying for a mandamus, alternatively, if it construed the delay as amounting to a refusal, it could have applied to review the refusal under PAJA. It did neither. Instead, it proceeded to trade without a licence.

[13] MSA does not deny the visits by the applicant's building inspector or that various contravention notices were issued against it for acting in breach of the NBR Act. It is dismissive of the final notice to cease its unlawful conduct, referring to the notice as a 'threat'. MSA instead contends that the mere fact that it occupies the buildings on the premises and trades therefrom does not, in and of itself, create a dangerous or unhealthy situation. MSA denies that there was any basis for the urgency of the application, despite continuing to act unlawfully in breach of both the NBR Act and the Businesses Act.

[14] In a further attempt to defeat the interdict, MSA contends that the applicant had an alternative remedy under both Acts, in the form of criminal prosecutions. These Acts provide for the imposition of fines, alternatively imprisonment, for contravention. These options were not pursued by the applicant, which states that in its experience, the option of criminal prosecution is slow and ineffective. The applicant's Director of Enforcement contends that an application for an interdict is an effective and expeditious manner of dealing with the contravention, particularly if one considers (on MSA's version) that a fine of R4 000 could be imposed, weighted

against its projected sales of R1 360 000 for the month. In *Minister of Health v Drums and Pails Reconditioning CC t/a Village Drums and Pails* 1997 (3) SA 867 (N) at 877E-G, the court held that 'the fact that the Act makes provision by way of a criminal sanction for the respondent's alleged contravention of the Act is in my view no bar to the granting of an interdict.' However, this was statement was qualified in *Food and Allied Workers Union & others v Scandia Delicatessen CC & another* [2001] 3 All SA 342 (A) para 41 where the court stated:

'It follows from what I have said that the unmotivated statement in *Minister of Health v Drums and Pails Reconditioning CC* 1997 (3) SA 867 (N) at 877E–G, that the fact that an Act provides by way of criminal sanction for an alleged contravention of its provisions is no bar to the granting of an interdict, *is not correct for all cases*.' (my emphasis)

See also *Hotz & others v University of Cape Town* [2016] 4 All SA 723 (SCA) para 36 where the court stated that:

'There may also be instances where, in the case of a statutory breach, a criminal prosecution, in appropriate circumstances, will provide an adequate remedy, but there are likely to be few instances where that will be the case.'

[15] I would venture to suggest that the election to resort to interdictory relief, where the option of a criminal sanction is equally available, must be analysed in the context of the action sought to be arrested. Enforcement of a planning scheme and building controls, in my view, would not be dissimilar to that of enforcing environmental standards to ensure a safe environment. If the local authority discovers that a factory in its jurisdiction is discharging industrial waste into a river that is causing pollution and ecological degradation, the most efficient and effective way to contain such conduct is by way of an interdict. The delays in instituting a criminal prosecution, the obtaining of witness statements, securing the attendance of experts witnesses and the inherent delays in securing a successful prosecution point towards the use of an interdict as being a more practical and efficient remedy. For a comparison to enforcement of environmental legislation see Michael Kidd 'Alternatives to the Criminal Sanction in the Enforcement of Environmental Law' (2002) 9 *SAJELP* 21 at 42.

[16] The applicant submits that a clear right to interdictory relief is established on the basis that MSA does not deny acting in contravention of legislation. The

applicant is unequivocal that it considers the obstacle to MSA obtaining a business licence to be the fact that the buildings have not been erected in accordance with the approved building plans. For as long as this position remains, the business licence 'will almost certainly not be granted'. Counsel for the applicant submitted that there is nothing untoward in this process of considering both applications, either in tandem or following each other, as the applicant has an interest in ensuring that an entity or person applying for a business licence should only be allowed operate from premises which are safe and do not constitute a health risk. The interests that the applicant seeks to protect are those of patrons as well as staff employed at the restaurant. To the extent that the applicant has not approved the building plans, no occupancy certificate can be issued. That much is clear from the NBR Act. However, NBR Act also vests a local authority with a discretion in terms of s 18(1), on request of the owner, to permit a deviation or an exemption from the regulations. Deviation plans were submitted by MSA and after a series of referrals back to MSA, the applicant however resolved on 19 June 2020 not to approve those plans.

[17] In light of the above, the applicant submits that it has established the requirements for an interdict, especially as it has a statutory duty to enforce the provisions of the NBR Act and the Businesses Act. The obligation of local authorities in relation to enforcement of schemes (statutory enactments) was considered in *City of Tshwane Metropolitan Municipality v Grobler & others* 2005 (6) SA 61 (T) para 6, where the court pointed out that:

'It is therefore the duty of the relevant local authority to enforce the provisions of its town-planning scheme . . . And owners and occupiers of property governed by the scheme are obliged to use the property and any building thereon in conformity with the provisions of the scheme and comply with any lawful directives given to them by the local authority in relation to such use.'

[18] Similarly in *Chapmans Peak Hotel (Pty) Ltd & another v Jab & Annalene Restaurants CC t/a O'Hagans* [2001] 4 All SA 415 (C) para 12, although the court was concerned with the enforcement of a zoning scheme, it held the following:

'. . . the general purpose of a zoning scheme is "to determine use rights and to provide for control over use rights and over the utilisation of land in the area of jurisdiction of a local authority". The purpose of zoning and its concomitant restriction on the use rights attaching

to land is to provide for the orderly, harmonious and effective development of the affected area. It is the duty of the local authority to comply and enforce compliance with, *inter alia*, the provisions of the Ordinance and the zoning scheme. A zoning scheme is promulgated in the interests of the inhabitants of an area. It is legislative in character and is binding not only on owners and occupiers of land subject to the scheme, but also on the administering local authority.'

See also *eThekwini Municipality v Tsogo Sun KwaZulu-Natal (Pty) Ltd* 2007 (6) SA 272 (SCA). In my view, the same rationale in the above cases can be applied to a local authority's actions to enforce provisions of the NBR Act or the Businesses Act.

[19] In *Minister of Health v Drums and Pails Reconditioning CC t/a Village Drums and Pails* 1997 (3) SA 867 (N), the Minister of Health sought an interdict to prevent the 'carrying on with a chemical waste incineration process in contravention of the provisions of s 9(1)(*a*)(i) and s 9(1)(*b*) of the Atmospheric Pollution Prevention Act 45 of 1965'.[3] The court stated the following regarding the requirement that there is a clear right:

'. . . I am satisfied that the applicant, who is charged with the responsibility of ensuring that the provisions of the Act are being complied with and having regard to the interests of the population she serves and the protection of the environment, has a clear right to prevent, in particular, contraventions of the Act.'[4]

As in the present matter, *Minister of Health* was an application to enforce statutory obligations.

[20] As set out above, MSA's grounds for opposing the interdict are more concerned with the applicant's delay in deciding on the application and its approach to the issuing a business licence only once an occupancy certificate has been issued. MSA has not sought to challenge this procedure as being irrational and reviewable. In any event, the applicant has, subsequent to the launching of the application, made a decision to refuse both applications - the temporary and full occupation certificates, and the business licence. MSA has been unable to offer any substantive grounds of opposition to the requisites for the interdict, which the

[3] *Minister of Health v Drums and Pails Reconditioning CC t/a Village Drums and Pails* 1997 (3) SA 867 (N) at 869G-H.
[4] *Minister of Health* at 872C-D.

applicant has clearly set out. The question remains whether a final order can be granted in light of the counter-application brought by MSA.

[21] In considering the counter-application, MSA seeks an order that the applicant's refusal to grant a temporary certificate of occupancy, or temporary use of the premises, is unfair and subject to review under PAJA. The source document pertaining to the review application by MSA is the application for a temporary certificate of occupancy. This appears to have been submitted on or about 13 February 2020. The only document which evidences such an application is found at annexure 'RB11' to MSA's answering affidavit.[5] All that the document records is an application for temporary occupancy and payment of the prescribed fee of R1 170.00. Ms *Mahabeer* submitted that any attempt by MSA to couch its counter-application as a review must be dismissed out of hand as there is no record from which the court can determine the merits of the relief sought, or whether the local authority acted irrationally or unreasonably in refusing the temporary certificate of occupancy. The documents which are annexed to the affidavit of Robert Balderson, on behalf of MSA, reveal that on 11 February 2020 the applicant's building inspector addressed a letter to all relevant departments within the municipality in respect of the application for a 'temporary occupational clearance'. It is noteworthy that the letter urged the respective departments to respond with comments, noting that a failure to do so 'would be construed as an approval and such approval will be conveyed to the owner and an occupation certificate will be issued for the development of the property known as Erf 5705 120 Balcomb Street.'

[22] Following the letter, various departments responded positively to the request, indicating that they had no objections to the temporary certificate of occupancy being issued. Certain departments like the Electrical Engineering Business Unit indicated that they were satisfied that MSA had provided adequate housing for the supply of electricity in terms of an approved design and that a temporary certificate could be issued on the condition that outstanding issues pertaining to electrical design would be resolved at a later stage. Similarly, other departments such as waste management and environmental health had no objection to a temporary certificate

[5] Record, Vol.2, pp.145-6.

being issued. However, the Electrical Planning Directorate was not prepared to approve a certificate of occupancy on the grounds that there were certain outstanding issues that still needed to be rectified, including the covering of cables and the location and unhindered access to fire extinguishers. Equally, the Illembe District Municipality's Environmental Health Department opposed a temporary certificate contending that the bin area on the property was to be suitably paved and drained; that gas cylinders needed to be relocated and that the applicant was to lodge an application for a business licence as well as a certificate of acceptability in terms of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972.

[23] In the period leading up to the launching of this application, and thereafter, discussions had taken place between the applicant and MSA with the latter contending that it had attended to all outstanding issues raised by the applicant , including concerns raised by the Civil Engineering and Human Settlements Department. Despite MSA's contention that it complied with all of the queries set out in the referral notices, the applicant referred the matter back to MSA.

[24] The crux of MSA's argument is set out in its answering affidavit, at paragraph 78 which reads as follows :

'With every single one of the applicant's requirements now having been complied with, to the letter, there is simply no basis on which the applicant, acting rationally, can refuse to provide the second respondent, at the very least with a temporary occupation certificate pending its decision on whether to provide an occupation certificate in terms of section 14(1) of the Buildings Act. If the first respondent is technically in breach of its obligation not to trade or not to occupy until the relevant certificates have actually been issued, it is a highly formalistic and technical contravention. If the court accepts that the second respondent has fully complied with all the applicant's requirements, and that the building was constructed in accordance with the plans, the Act and conditions under section 7, the only reason for the continued contravention is that the applicant is dragging its heels and refuses to do what it must.'

[25] MSA brought a counter application for a declaratory order that the refusal of the applicant to grant a temporary certificate of occupancy was unfair. At the same time, as stated earlier, counsel for MSA also submitted that the relief sought in the counter-application was in the form of a review. The applicant submits that the

application for a temporary certificate was evaluated in accordance with its Standard Operating Procedures, being the internal guidelines which are followed before a certificate of occupancy, or a temporary certificate, can be issued. The applicant adopts a procedure that only after the 'as built' plans have been approved will it be in a position to make a decision concerning occupancy. The underlying fear of the applicant is that should it grant an indulgence to MSA in circumstances where no 'as-built' plans have been approved, this would set a precedent where other developers would seek to occupy and operate from properties without compliance with the NBR Act or the Businesses Act.

[26] However the argument advanced by Mr *Stokes* is that the applicant has adopted the same standard in assessing whether to grant a temporary or full occupancy certificate, and it makes no distinction between the two applications. The statutory framework for the granting of certificates of occupancy in respect of certain buildings is contained in s 14(1) of the NBR Act which provides for the following:

'(1) A local authority shall within 14 days after the owner of a building *of which the erection has been completed*, or any person having an interest therein, has requested it in writing to issue a *certificate of occupancy* in respect of such building-

(a) issue such certificate of occupancy if it is of the *opinion that such building has been erected in accordance with the provisions of this Act* and the conditions on which approval was granted . . . .

(b) in writing notify such owner or person that it refuses to issue such certificate of occupancy .. ' (My emphasis)

[27] As I understood Mr *Stokes*' argument, an application in terms of s 14(1) is for occupation of the building on the basis that the owner or developer has erected the building *in accordance with* the approved plans. On the other hand, s 14(1A) allows for an application to the local authority for occupation of a building *before* a certificate of occupancy can be issued – in other words without building plans being finally approved. The section reads as follows :

'(1A) The local authority may, at the request of the owner of the building or any other person having an interest therein, grant permission in writing to use the building *before the issue of the certificate of occupancy* referred to in subsection (1), for such period and on such conditions as may be specified in such permission, which period and conditions may be extended or altered, as the case may be, by such local authority.' (my emphasis)

[28] The relief sought in the counter-application however pertains only to the refusal to grant a temporary certificate of occupancy. In terms of the order made by D Pillay J on 11 June 2020, the applicant undertook to make a decision in respect of MSA's application for a temporary certificate of occupancy and a business licence, on or before 19 June 2020. The position of the applicant is that a business licence will *not be issued* for as long as MSA is still awaiting planning approval and a certificate of occupancy. The basis of its refusal is set out in Annexure 'U1', the contents of which has been set out at the outset of this judgement.

[29] The complaint of MSA is that the applicant has conflated the reasoning in deciding an application for occupancy *before* the approval of building plans (s 14(1A)), with that for occupancy where the building has been erected *in accordance* with building plans s 14(1). Clearly, s 14 contemplates occupancy in two scenarios, one where the erection of a building has already been completed (ss(1)). This is in the realm of a permanent or full certificate of occupancy. On the other hand, the permission sought in subsection (1A) is of a temporary nature and subject to conditions as may be imposed by the local authority, and for specified periods. In other words, it is a conditional authority to occupy. The essence of the distinction between the two forms of occupancy is that the authorisation sought in subsection (1) requires the approval of building plans, while the authorisation in subsection (1A) does not. Mr *Stokes* submitted that a consideration of an application under subsection (1A) presupposes that certain enquiries by the local authority are *still outstanding* or are yet to be resolved. The NBR Act does not provide guidelines as to what factors are to be considered in determining an application under subsection (1A).

[30] It was submitted by Mr *Stokes* that an analysis as to whether an applicant has satisfied the grounds for a temporary occupancy certificate must be measured against the local authority's Standard Operating Procedures,[6] issued in terms of s 14 of the NBR Act. The stated purpose of the document is to 'explain to owners, professionals and contractors the requirements for obtaining a certificate of

[6] Annexure 'L' to the applicant's answering and replying affidavit, p.215 onwards.

occupancy for new buildings, and to ensure consistency in the review and issuance of occupancy certificates'. Clause 4.2 provides that in issuing a certificate of occupancy, the building inspector must be satisfied that the issues concerning health and safety have been complied with. Clause 4.7 stipulates that the issuing of a certificate of occupancy is an acknowledgement that from a 'life safety standpoint that your house is safe and habitable'. Importantly, clause 4.13, which pertains to temporary certificates of occupancy, says the following:

'If the construction of a building is complete and the applicant has to take occupation of such building, but the building plan approval process, such as amendments or deviation plans, hasn't been finalised, the applicant may contact the building inspectorate and apply for a temporary certificate of occupancy (TCO). This grants residents and building owners all of the same rights as a Certificate of Occupancy (CO), however it is only for a temporary period of time. In KwaDukuza Municipality, TCO's are usually active for a period of 30 days from the date of issue, after which they expire. It is perfectly legal, and not uncommon in the given situation, for a building owner to re-apply for a TCO, for another period of time.'

[31] Clause 4.14 reveals that temporary certificates of occupacy are generally acquired when a building is still under minor construction, but a section of the building can be deemed to be habitable, and upon issuance of a temporary certificates of occupacy, the building can legally be occupied or sold. This is precisely the argument of MSA. Clause 14.5 provides that before a temporary certificates of occupacy can be issued, it must be preceded by a final inspection by the building inspector.

[32] The submission of MSA is that in terms of the applicant's own procedures, a temporary certificate of occupancy may be issued provided that the building is safe and habitable, or put differently, there are no concerns by the local authority as to the health and safety of persons using or occupying the premises. On this basis MSA contends that it has complied fully with the requirements for a temporary certificate of occupancy, and to the extent that the building inspector distributed the application for comment to various departments, and despite the few of whom have opposed the granting of a certificate of occupancy, none of the departments raised a ground that the condition of the building would pose a risk to the health and safety of patrons or

staff employed thereon. Notwithstanding, the building control officer on 19 June 2020 resolved to refuse the application for a temporary or full certificate of occupancy.

[33] Despite the persuasiveness of the argument that the applicant *may* have applied the incorrect standard in determining whether a temporary certificate of occupancy should have been issued to MSA, it was submitted by the applicant that MSA is to indicate what specifically are the grounds for attack within the provisions of s 6(2)(*f*) of PAJA.

[34] Moreover, if MSA were to contend that the review is a legality review, the applicant contends that this too must fail as the case for the relief pertaining to the challenge against the issuance of the temporary occupancy certificate is one which is made out in MSA's replying papers. While that is correct, it cannot escape my mind that the applicant filed a supplementary answering affidavit on 22 June 2020 and a further affidavit dated 25 June 2020, in which it had the opportunity to fully rebut the contentions of MSA. I am therefor no persuaded that there is any merit in the last mentioned argument.

[35] The attempt by MSA to seek relief in the form of a review and a mandamus in respect of the application for a temporary certificate of occupancy was met with strenuous resistance by the applicant on the basis that MSA had initially launched a collateral challenge under PAJA alleging unfairness on the part of the local authority to properly consider the applications. In *Oudekraal Estates (Pty) Ltd V City of Cape Town & others* 2004 (6) SA 222 (SCA) para 36, the court stated the following on when a collateral challenge may be raised:

'It is important to bear in mind (and in this regard we respectfully differ from the Court *a quo*) that in those cases in which the validity of an administrative act may be challenged collaterally a court has no discretion to allow or disallow the raising of that defence: The right to challenge the validity of an administrative act collaterally arises because the validity of the administrative act constitutes the essential prerequisite for the legal force of the action that follows and *ex hypothesi* the subject may not then be precluded from challenging its validity. On the other hand, a court that is asked to set aside an invalid administrative act in proceedings for judicial review has a discretion whether to grant or to withhold the remedy. It is that discretion that accords to judicial review its essential and pivotal role in

administrative law, for it constitutes the indispensable moderating tool for avoiding or minimising injustice when legality and certainty collide.'

[36] *Oudekraal* recognized that a court has no discretion to allow or disallow the raising of the defence of collateral challenge – unlike the court's discretion in the context of a judicial review. However, a collateral challenge will only be allowed 'if the right remedy is sought by the right person in the right proceedings . . . and at the right time'.[7] See also *V & A Waterfront Properties (Pty) Ltd & another v Helicopter & Marine Services (Pty) Ltd & others* 2006 (1) SA 252 (SCA); *Khabisi NO & another v Aquarella Investment 83 (Pty) Ltd & others* 2008 (4) SA 195 (T).

[37] To the extent that MSA contends for a review, there is nothing on the papers to point to unreasonableness or irrationality on the part of the building control officer in refusing the application for temporary occupancy although Mr *Stokes* contended that the decision to refuse the application is at odds with all of the comments received from the various departments – in other words, a rationality challenge. The building control officer has set out in his letter of refusal detailed reasons for refusing the application. It must be borne in mind that the applicant's Standard Operating Procedure suggests that a temporary occupancy certificate *may* be issued only if the building control officer is satisfied that the building is 'habitable' from a health and safety perspective. A number of queries raised in opposition to the occupancy certificate related to electrical compliance. This goes to the heart of safety – in the present case – not only to patrons, but also to staff of the establishment. The local authority would be failing in its statutory obligations if it succumbed to pressure from a business, whose primary concern is the loss of revenue at this time, and compromised on health and safety standards for the sake of expediency. In *Albutt v Centre for Violence and Reconciliation & others* 2010 (3) SA 293 (CC) para 51 the court said the following to say about irrationality:

'But, where the decision is challenged on the grounds of rationality, courts are obliged to examine the means selected to determine whether they are rationally related to the objective sought to be achieved. What must be stressed is that the purpose of the enquiry is to determine not whether there are other means that could have been used, but whether the

[7] *Metal and Electrical Workers Union Of South Africa v National Panasonic Co (Parow Factory)* 1991 (2) SA 527 (C) at 530C-D.

means selected are rationally related to the objective sought to be achieved. And if, objectively speaking, they are not, they fall short of the standard demanded by the Constitution.'

See also *Umgeni Water v Sembcorp Siza Water (Pty) Ltd & others and Another Appeal* 2020 (2) SA 450 (SCA).

[38] A further challenge to the review sought is that MSA originally sought an order declaring the local authority's failure to make decisions in respect of the applications for a business licence and a certificate of occupancy, to be unfair and set aside. It further sought that the refusal to grant it a temporary occupancy certificate, be declared unfair, and permission for it to occupy the premises pending compliance with the grounds for refusal. Following the decision by the local authority on 19 June 2020 to refuse both the application for occupancy (temporary or full) and a business licence, MSA now attempts to use those grounds of refusal ('UI') as a basis for seeking mandatory relief in paragraph 2 of the notice of counter-application.

[39] It was submitted by Ms *Mahabeer* that once the applicant complied with the relief sought in paragraph 1, and took a decision in respect of both applications before it, it was not competent for MSA to launch a further application (as it does in para 2 of the notice of counter-application) for consequential relief. The building control officer made a decision to refuse both a temporary and a 'full' certificate of occupancy.

[40] I agree with the submissions on behalf of the applicant. In my view the obstacle facing any relief in favour of MSA in the counter-application lies in the fact that the applicant had already (as at 19 June 2020) taken a decision both with regard to a temporary occupancy and with regard to 'full' occupancy. A mandamus is not competent once that decision has been taken. To do so would be tantamount to the court over reaching the powers of the applicant and granting an order without the primary decision having been set aside. This is canvassed in further detail below.

[41] In *Thusi v Minister of Home Affairs & another & 71 Other Cases* 2011 (2) SA 561 (KZP), para 42, the court stated that the common law remedy of a mandamus is similar to the ground of review in s 6(2)(*g*) of PAJA:

'Without saying that the two overlap entirely, s 6(2)(*g*) deals with a situation that under the common law would have attracted the remedy known as a mandamus. This was an order requiring a public authority to comply with a statutory duty imposed on it, or to perform some act to remedy a state of affairs brought about as a result of its own unlawful administrative action. As with the common-law mandamus, s 6(2)(*g*) of PAJA deals with the failure by an administrator to take a decision that the administrator is under a legal obligation to take.

[42] The court in *Thusi* stated further that the ground of review in s 6(2)(*g*) of PAJA is not available where the decision has been subsequently taken. It stated the following in para 45, which appears to be equally applicable to a mandamus:

'. . . As De Villiers CJ pointed out [in *Moll v Civil Commissioner of Paarl* (1897) 14 SC 463] relief can only be granted where there is a "continued infringement" of the applicant's rights. After a decision has been taken on an application for the issue of an identity document, whether the application is successful or unsuccessful, it is no longer possible to review and have declared unlawful the failure to take that decision. That being so, no basis for consequential relief to be granted still exists, as the grounds of review, upon the basis of which the claim for consequential relief is founded, have fallen away. The whole point of consequential relief in review proceedings is that it is relief that is dependent on the review succeeding. Where the review is based on a failure to take a decision, if the right to that relief falls away because the decision has been taken, then there is no longer a legal basis for other relief to be granted.'

[43] The point which must be emphasised is that there is nothing before me on the papers to suggest that the building control officer acted in bad faith or with improper motive in arriving at the decision to refuse a temporary or full certificate of occupancy, even though he may have come to an erroneous conclusion. As alluded to earlier, MSA are also faced with a further problem in that the relief sought for a *madamus* cannot be considered without first setting aside the decision of the building control officer dated 19 June 2020. In *Serengeti Rise Industries (Pty) Ltd & another v Aboobaker No & others* 2017 (6) SA 581 (SCA) the Supreme Court of Appeal criticized the demolition order made by the court *a quo* without first setting aside the decision in terms of which building plans had been approved. The court in para 12 held:

'Firstly, although in its reasons the High Court found that the rezoning and deviation approvals were invalid and should be set aside, it made no order(s) to that effect. The court

therefore granted a remedy of a consequential nature without granting the primary relief sought. However, the consequential relief depended upon the rezoning and plan approval by the Municipality being reviewed and set aside. Until set aside, they remain valid and have legal effect. The building thus complied with building and zoning approvals of the Municipality that remained extant. The demolition order was thus incompatible with those extant decisions.'

[44] MSA relied on the decision in *Pellencin v City of Tshwane Metropolitan Municipality* (47233/11) [2012] ZAGPPHC 133 (28 June 2012) which dealt with the failure to issue an occupancy certificate which resulted in the court issuing a mandamus. The facts in the present matter are distinguishable from those in *Pellencin* because in that case a review board reversed the local authority's decision not to approve a building plan, with the result that the court found that there was no residual discretion to refuse the certificate of occupancy. I do not consider *Pellencin* persuasive authority on the issue of granting a mandamus in the present circumstances where the building control officer has refused an occupancy certificate under s 14(1) for reasons that pertain to health and safety. Where those concerns still exist, a temporary certificate in terms of s 14(1A) cannot be granted by this court, as it would be inconsistent with the basis on which such certificates are issued by a local authority. Moreover in *Pellencin* the court was not faced with an application for a s 14(1A) certificate in circumstances where a decision had already been made to not to issue a s 14(1) certificate.

[45] Lastly, even if MSA succeeded in persuading me that the building control officer was wrong in their approach in assessing the application for a temporary occupancy certificate, I am still not persuaded that the relief sought is proper. Section 14(1A) of the Act states that this is a discretionary decision, based on a level of expertise which would be best suited to a building control officer – not a court. The applicant submitted that the substitution order sought by MSA is an extraordinary remedy, which should not be granted save in circumstances where an aggrieved party has satisfied the court that they are 'exceptional circumstances' as contemplated in s 8(1)(*c*)(ii)(*aa*) of PAJA. Counsel for MSA contended that if it were successful, a substitution order should be granted as the applicant 'has shown an inclination to refuse the certificate on spurious grounds, almost contrived' and that 'it

would be inappropriate to send the decision back to the applicant'. Mr *Stokes* submitted that this court has all of the information relevant to making an order in respect of a temporary occupancy certificate and should not send the matter back to the building control officer, who in his view, has misinterpreted the local authority's own internal guidelines on the issuance of temporary certificates.

[46] I am however mindful of the limits to a court making decisions for a functionary, as clearly set out in *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd & another* 2015 (5) SA 245 (CC), paras 42-43 where the Constitutional Court stated the following:

'[42] The administrative review context of s 8(1) of PAJA and the wording under ss (1)(*c*)(ii)(*aa*) make it perspicuous that substitution remains an extraordinary remedy. Remittal is still almost always the prudent and proper course.

[43] In our constitutional framework a court considering what constitutes exceptional circumstances must be guided by an approach that is consonant with the Constitution. This approach should entail affording appropriate deference to the administrator. Indeed, the idea that courts ought to recognise their own limitations still rings true. It is informed not only by the deference courts have to afford an administrator but also by the appreciation that courts are ordinarily not vested with the skills and expertise required of an administrator.'

[47] The court in *Trencon* further held in para 47:

'To my mind, given the doctrine of separation of powers, in conducting this enquiry there are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. These may include delay, bias or the incompetence of an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a consideration of fairness to all implicated parties. It is prudent to emphasise that the exceptional circumstances enquiry requires an examination of each matter on a case-by-case basis that accounts for all relevant facts and circumstances.'

See also *Kalisa v Chairperson of the Refugee Appeal Board & others* [2018] JOL 40568 (WCC).

[48] MSA has failed to establish a basis in law for this court to either review the decision of the applicant in refusing a temporary occupancy certificate, or for the granting of a mandatory order directing that such certificate be issued.

[49] In the final analysis, I am satisfied that the applicant has made out a case for final relief for an interdict in terms of the notice of motion. The purpose of the applicant seeking interdictory relief against the respondents stemmed from the high-handed manner in which MSA sought to commence business from the property without having obtained the necessary statutory compliance in terms of the NBR Act, or a business licence. The applicant must be seen to treat all those within its jurisdiction equally, whether they are hawkers on the street or a large multinational corporation. Neither is permitted to carry on business or to occupy the premises without the necessary statutory authorisation. The applicant cannot be criticized for its approach. The failure to act against large corporations would suggest that the applicant has two sets of rules for enforcement. I fully associate myself with the views set out in *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council* 1987 (4) SA 343 (T) with regard to the duty of a local authority. The court at 348H-J held:

'The respondent has not only a statutory duty but also a moral duty to uphold the law and to see to due compliance with its town planning scheme. It would in general be wrong to whittle away the obligation of the respondent as a public authority to uphold the law. A lenient approach could be an open invitation to members of the public to follow the course adopted by the appellant, namely to use land illegally with a hope that the use will be legalised in due course and that pending finalisation the illegal use will be protected indirectly by the suspension of an interdict.'

See also *Maccsand (Pty) Ltd v City of Cape Town & others* 2011 (6) SA 633 (SCA) para 21, where the court held:

'. . . municipalities play a central role in land use planning in their areas of jurisdiction. It is, no doubt, appropriate for them to do so given their knowledge of local conditions and their intimate link with the local electorate whose interests they represent.'

[50] Turning to the issue of costs, I agree with Ms *Mahabeer* that the applicant was obliged to approach the court in order to protect the integrity of its enforcement mechanisms and the underlying premise that all persons seeking to develop property

within its area of jurisdiction are obliged to follow the same procedures. The litigation pursued by the applicant is funded by the public purse, and in particular those of the ratepayers in KwaDukuza. I see no reason why the applicant should have to shoulder the burden for any part of the costs when seeking to uphold the rule of law and defend its statutory obligations. MSA's breach was flagrant and showed scant regard for the authority of the applicant, repeatedly ignoring instructions not to occupy the buildings and cease trading. For that reason, I am satisfied that costs should be granted on the attorney and client scale against MSA in respect of the application for the interdict (the main application).

[51] In respect of the counter-application, MSA has been unsuccessful in obtaining a temporary certificate. But for the issues of health and safety, it pointed out that the building control officer may have applied the incorrect standard in assessing their application. However, in *Harrielall v University of KwaZulu-Natal* 2018 (1) BCLR 12 (CC) para 11 the court noted in regard to costs that:

'In *Biowatch* this Court laid down a general rule relating to costs in constitutional matters. That rule applies in every constitutional matter involving organs of State. The rule seeks to shield unsuccessful litigants from the obligation of paying costs to the state.'

However, in *National Home Builders Registration Council & another v Xantha Properties 18 (Pty) Ltd* 2019 (5) SA 424 (SCA), the court refused to apply the *Biowatch* principle and found that it was 'nothing more than a commercial dispute' and that *Biowatch* does not mean 'risk-free' constitutional litigation.

[52] The court in *Harrielall* pointed out that the rule developed in *Biowatch Trust v Registrar, Genetic Resources, & others* 2009 (6) SA 232 (CC) is not a shield against frivolous litigation. It went further holding, in para 17, that 'a review of administrative action under PAJA constitutes a constitutional issue' because PAJA was passed specifically to give effect to the guarantee under s 33 of the Constitution. In light of my reasoning as to why the counter application should not succeed, although the dispute between the parties is of a commercial nature it cannot be said to have been 'friviolous or vexatious or in any other way manifestly inappropriate'. *Beweging v Christelik* [2012] 2 All SA 462 (SCA) citing *Biowatch*. In the result, MSA is shielded from a costs order in respect of the counter-application.

[53] I accordingly make the following order:

1. The second respondent is directed to vacate the property described as Erf 5705, Stanger, also known as 120 Balcome Street, KwaDukuza and not to permit the occupation thereof until or unless a certificate of occupancy in terms of section 14 of the National Building Regulations and Building Standards Act 103 of 1977 permitting such occupation may be issued;
2. The second respondent is interdicted and restrained from using or permitting to be used the property or any part of the property described as Erf 5705, Stanger, also known as 120 Balcome Street, KwaDukuza to carry on any business by the sale or supply to consumers of any foodstuffs in the form of meals for consumption on or off the premises, or any perishable foodstuff until or unless a licence in terms of section 2(3) of the Businesses Act 71 of 1991 permitting such business, may be issued, and not to permit the occupation thereof until or unless a certificate of occupancy in terms of section 14 of the National Building Regulations and Building Standards Act 103 of 1977 permitting such occupation is issued;
3. The second respondent is directed to pay the costs of the main application on the attorney and client scale, such costs to include that of senior counsel.
4. The counter-application is dismissed, with no order as to costs.

_____

M R CHETTY

Appearances:

For the Applicant:	S Mahabeer SC
Instructed by:	SHEPSTONE & WYLIE
Tel:	031 575 7000
Address:	Umhlanga Rocks, Durban, 4319
Email	nkosi@wylie.co.za

For the Respondent:	A Stokes SC and G Randles
Instructed by:	HSG Attorneys
Address:	15 Acacia Ave, Grayleigh, Westville
Tel:	031 266 7751
Email:	Jacquesdv@hsginc.co.za

Date reserved:	3 July 2020
Date delivered:	18 September 2020