



VORSTER & MARX  
PROKUREURS / ATTORNEYS

BTW/VAT NO: 4750232540

*U verw / Your ref: 9/2/321/0002*

*Ons verw / Our ref: J H VORSTER/ib*

*Datum / Date: 2013-06-19*

**SOUTH AFRICAN HERITAGE RESOURCES AGENCY COUNCIL**

**AND**

**SOUTH AFRICAN HERITAGE RESOURCES AGENCY**

111 Harrington Street

Cape Town, 8001

**Attention: Mariagrazia Galimberti**

([mgalimberti@sahra.org.za](mailto:mgalimberti@sahra.org.za))

**Attention: Colette Scheermeyer**

**Attention: Ms Telana Halley ([thalley@sahra.org.za](mailto:thalley@sahra.org.za))**

**RE: JAGERSFONTEIN COMMUNITY TRUST:**

**REQUEST FOR REASONS AND NOTICE OF APPEAL: PERMIT 308 (CASE 508) DATED 3 JUNE 2013**

- **NOTICE OF APPEAL AGAINST THE DECISION OF THE SOUTH AFRICAN HERITAGE RESOURCES AGENCY (SAHRA) IN RESPECT OF THE ISSUE OF PERMIT 308 (CASE 508) IN TERMS OF SECTION 35(4) OF THE NATIONAL HERITAGE RESOURCES ACT 25 OF 1999 (“NHRA”); AND**
- **REQUEST FOR WRITTEN REASONS IN TERMS OF SECTION 5 OF THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT 3 OF 2000 (“PAJA”) READ with SECTION 49(1) OF THE NHRA.**

1. We act on behalf of the Jagersfontein Community Trust (IT225/2009) (or the “Trust”).
2. Our client holds interests in the people of Jagersfontein and in mining at Jagersfontein and an interested party in respect of the heritage sites at Jagersfontein. Our client furthermore acts in the interest of and on behalf of the community of Jagersfontein including historically disadvantaged persons (who are the Trust beneficiaries), under the provisions of section 38(a) to (d) of the Constitution. Herein our client acts in the interests of the historically disadvantaged Jagersfontein community in relation to the issue of the above permit (referenced Permit 308 (case 508)).
3. Our client as appellant had only become aware of the permit in terms of section 35(4) of the NHRA on Wednesday 12 June 2013 and do not hold possession of the written reasons underlying the permit, issued on 3 June 2013.
4. The Trust represents these Jagersfontein community’s socio-economic and cultural rights, and including their environmental interests. The Trust also acts in its own interest.
5. The Jagersfontein Community Trust instructed us to lodge an appeal against the issuing of a permit (permit 308 (case 508), the “permit”) to Jagersfontein Developments (Pty) Ltd (“Jagersfontein Developments”) which permit was issued in very broad and vague terms under section 35(4) of the NHRA..
6. It is inferred from the permit that Jagersfontein Developments seek to destroy, damage, alter, deface or otherwise disturb the heritage site *inter alia* by filling the open pit mine. It has already destroyed and damaged several protected buildings on the site. As discussed below, the permit fails to state in clear terms what precisely what actions are authorised under section 35(4) and purports to authorise unstated actions without qualification.
7. With reference to the provisions of section 35(4) of the NHRA, it is unclear what actions are authorised by the permit.

## BACKGROUND

8. The Jagersfontein mine is the largest manmade open pit mine in the world. The mine predates the mine at Kimberley with several years and represents the first major diamond mining operation in terms of South African history and contain some of the richest diamond mineral resources in South Africa, both currently and historically.

9. The Jagersfontein community lives in severe poverty and economic deprivation.
10. Notwithstanding the huge tourism potential for the site of the Jagersfontein mine, the site has been closed to the public, neglected and utilised for mining operations unlawfully and without authority. Such mining operations are conducted by Jagersfontein Developments apparently through the facilitation of De Beers Consolidated Mines Limited (“DBCM”) and to some extent the Reinet group of companies (“Reinet”).
11. Details of the pending litigation between the Jagersfontein Community Trust and Jagersfontein Developments, including DBCM and Reinet are documented and set out in a voluminous set of documentation provided to Mariagrazia Galimberti by way of email on 13 June 2013 (to her dropbox, at her request). Receipt of this extensive set of documentation was confirmed and it is incorporated by reference into this document. Due to the voluminous nature of the papers of more than 900 pages, it is not delivered in a printed format. Not all parts of these papers directly relate to this appeal and the request for reasons.
12. The High Court application under case number 1891/2013 is enrolled for hearing in Bloemfontein on 6 August 2013 before three judges. The papers set out the disputes between our client and Jagersfontein Developments and the other interested parties sharing or participating in the illegal mining at Jagersfontein. Our clients are the applicants for a prospecting permit on the mine dumps at Jagersfontein, details of which appear from the papers in the Bloemfontein High Court matter.
13. In the founding and supporting affidavits various transgressions of environmental laws including the NHRA are set out. These include *inter alia* the unlawful demolition of buildings on the National Heritage site including the sleeping compound (workers’ hostel). The workers’ hostel was partly demolished by Jagersfontein Developments without authority to make room for large industrial mining equipment for processing of diamonds from the mine dumps at Jagersfontein.
  - 13.1. According to the information available to our client it is incorrect that the workers’ hostel had been destroyed in a fire. The building was partly demolished in order to make way for installation of mining equipment.
  - 13.2. We refer to two photographs taken by a deponent (Vermeulen) of a supporting affidavit in the pending High Court application. This deponent was the engineer responsible for the erection and installation of the plant. On both photographs the plant is visible relative to the buildings, in the process of being demolished. The buildings are more than 60 years old, if not older than 100 years.

14. These aspects referred to above were not properly considered and in any event considered on the basis of incorrect information, when the permit was issued.

## **NO NOTICE OF PERMIT APPLICATION TO JAGERSFONTEIN COMMUNITY TRUST AND THE ABSENCE OF REASONS**

15. As the our client as appellant had only become aware of the application for a permit in terms of section 35(4) of the NHRA on Wednesday 12 June 2013 and do not hold possession of the written reasons underlying the permit that had been issued on 3 June 2013, our clients are unable to pursue the matter with a detailed set of reasons and grounds whereupon this appeal is based.
16. Our client is procedurally prejudiced as it is required to file an appeal in a short period of time, where it had no notice of the proceedings.
17. Our client is furthermore prejudiced as it holds no written reasons. The permit contains no reasons and fails to state in clear terms what precisely what actions are authorised and authorises unstated actions without qualification.
18. We are in possession of the aforesaid permit. The permit provides for a fourteen day period within which an appeal may be lodged.
19. Enquiries with SAHRA established that the fourteen days are calculated as court or working days and not as calendar days. Notwithstanding the more generous interpretation applied with regard to the calculation of the fourteen day period within which an appeal must be lodged, the appellants are unable to duly file a comprehensive notice of appeal as they (a) firstly lack the reasons for the decision made; and (b) lack adequate time to prepare a notice of appeal, in the absence of the reasons aforesaid.
20. Insofar as it may be required, our client hereby accordingly requests condonation for the late filing of this notice of appeal and the request for reasons. We note that under PAJA we are well within the time period for the filing of the notice requesting reasons.

## **GROUND OF APPEAL**

21. We wish to record on behalf of the appellants the following grounds of appeal, whilst reserving the right to expand these grounds of appeal in due course:

- 21.1. Notwithstanding the dire socio-economic conditions at Jagersfontein, the historically disadvantaged or no other community members were approached prior to the issue of the permit in respect of the filling in of the open pit mine. From the report filed by SAHRA it appears that no social consultation processes had in fact been undertaken under NEMA or any other laws. There had been no consultation process under the MPRDA.
- 21.2. The permit fails to state in clear terms what precisely what actions are authorised under section 35(4) and purports to authorise unstated actions without qualification. Section 35(4) is cast in wide terms and the permit is silent on what actions are authorised; and
- 21.3. The proposed filling of the open pit mine is not discussed in the document on the SAHRA website (as “Jagersfontein permit.pdf”). The permit is subject to conditions and is unclear as to what it purports to authorise.
- 21.4. The position at Jagersfontein and the interests of the Jagersfontein community have been largely misrepresented and disregarded by Jagersfontein Developments who had failed to inform SAHRA of the pending dispute or of the interests of the Jagersfontein community in respect of the permit that they seek.
  - 21.4.1. Notwithstanding Jagersfontein Developments’ direct and clear knowledge of the interests of the Jagersfontein Community Trust in the mining operation including what Jagersfontein Developments are doing on the mining site at Jagersfontein, our clients received no notice of the intended or pending application at any time; and
  - 21.4.2. It is clear that Jagersfontein Developments disingenuously and purposefully failed to inform SAHRA of our clients’ interest in the matter.
  - 21.4.3. By 30 May 2013, the High Court papers had already been issued, with the permit recipients Jagersfontein Developments and its representative, Mr Henk van Zuydam having been served with the papers on or before 17 May 2013.
- 21.5. Disingenuously, Jagersfontein Developments and its Mr Henk van Zuydam made no mention SAHRA of the relief sought and the challenge to the unlawfulness of the mining, unauthorised under the MPRDA.

- 21.6. The open pit mine is a valuable national heritage capable of generating significant tourism income, employment and social upliftment in respect of the community. In absent of consultation with the community at any level or sufficiently significantly, it cannot be said that these aspects can or may be duly served in respect of the issue of the permit.
- 21.6.1. No opportunity was given to our client or any other interested parties to consider the basis whereupon Jagersfontein Developments, (notwithstanding their illegal mining activities) have motivated their effective destruction of the open pit as a heritage site. A swamp land can never be an open pit mine; and
- 21.6.2. It is clear that insufficient reasons exist, on the balance in order to justify the closure of the national heritage site and its effective destruction.
- 21.7. The information provided to SAHRA has misrepresented the true state of affairs on the site of the Jagersfontein mine including in respect of the demolition of the workers' hostel. This workers' hostel was in fact not burned down as alleged but demolished but in order to make room for a mining operation. Jagersfontein Developments did not apply for any permit for the destruction of the workers' hostel. For the demolition of such an old building a permit is required, whether it is 60 or 100 years old. The building is much older than 60 years and probably in excess of 100 years old. It is clear that the foregoing aspect was ignored on the issue of the permit.
- 21.7.1. In short, SAHRA turned a blind eye to the unlawful and unauthorised demolition of the workers' hostel at the Jagersfontein mine. Eyewitness evidence and photographs indicate that the building had in fact not been damaged or destroyed by a fire but had been significantly and methodically demolished in order to make room for the installation of mining equipment.
- 21.7.2. In this regard we refer to *inter alia* pp778 and 779 of the founding papers in the pending Bloemfontein High Court application (wherein at annexures "DV7" and "DV8" the workers' hostel in the process of demolition is clearly shown).
- 21.7.3. According to the deponent of the affidavit provided to you, Gideon Jacobus Vermeulen (that appears at pp704-795 of the indexed

record), the operators of the mine had been fully aware that they required authority to demolish the building in order to make room for the mining equipment, but failed to do so.

- 21.7.4. Copies of the said annexures are annexed hereto marked as “DV7” and “DV8”.
- 21.8. It accordingly appears from the foregoing that the permit had been applied for based on factual misrepresentations, intentionally made to SAHRA.
- 21.9. Unfortunately SAHRA failed to consider and/or could not thoroughly investigate the background, history and current unlawfulness of the mining on the dumps at Jagersfontein.
- 21.10. SAHRA failed to consider the application for the permit with regard to the wider socio-economic and cultural context of the Jagersfontein open pit mine.
- 21.11. Further to the foregoing, the community at Jagersfontein was completely disregarded.
- 21.12. None of the well-known community representatives from Jagersfontein was approached by Jagersfontein Developments in order to consult with them *prior* to the closure of the heritage site at Jagersfontein, or more importantly, *prior* to the application for the permit to fill the mine and more, by Jagersfontein Developments.
- 21.13. The Jagersfontein open pit mine is a unique and extraordinary heritage site. The site attracts significant international interest and can be rated amongst one of the top heritage sites in the world, as it is the largest manmade open pit mine for diamonds in the world.
- 21.14. These facts, relative to culture, the socio-economic rights of the people of Jagersfontein and the lawfulness of the mining operation, were not considered.
22. Unfortunately our clients are unable to elaborate further on the grounds for their appeal and reserve the right to amplify their papers in due course.
23. Kindly advise us of further notices and the periods applicable to such notices and/or filing of papers that may be applicable.

**REQUEST FOR IMMEDIATE ACTION AND RELIEF IN DUE COURSE**

24. In the premises we respectfully request SAHRA and/or the SAHRA Council to
- (a) in the *interim* to forthwith suspend the permit *in toto*; and
  - (b) in due course, set aside the permit.

**REQUEST FOR WRITTEN REASONS**

25. We hereby request on behalf of our clients in terms of section 5 of PAJA written reasons for the administrative action, constituted by the issue of the permit; to be delivered within a period of 90 days in accordance with the provisions of section 5(1) and (2) of the PAJA.
26. We furthermore respectfully request that SAHRA furnish adequate reasons in writing for the said administrative action, with full disclosure of all written communications, information and details of other discussions (whether written or not) that it had entertained in order to come to the decision to issue the permit on 3 June 2013.
27. Our client's rights remain reserved in all respects, including to seek urgent relief in the High Court pending completion of this appeal, or review proceedings that may follow.
28. We look forward to hearing from you and thank for your assistance in anticipation.

Yours faithfully  
VORSTER & MARX ATTORNEYS



Per:  
JH VORSTER

**Annexures included.**