

In the matter between:

JUDITH MARY WEBB

First Applicant

INVESTIBILITY 38 (PTY) LTD

Second Applicant

JURGENS STEPHANUS BEKKER
t/a **JURGENS BEKKER ATTORNEYS**

Third Applicant

PROXIMITY PROPERTIES 206 (PTY) LTD

Fourth Applicant

ERNEST BERNADUS NEL

Fifth Applicant

GOOD NIGHT GUEST LODGE CC
t/a **GOOD NIGHT GUEST LODGE**

Sixth Applicant

and

SOUTH AFRICAN NATIONAL ROADS
AGENCY LIMITED

Respondent

SUMMARY

KGOMO, J:

This is an application to determine whether or not the interim order granted by Halgryn AJ on 20 March 2010 should be discharged. The application was re-enrolled by the Respondent because it was of the view that it had complied with the terms of the interim order granted on the date referred to hereinabove.

The fifth and sixth applicants did not oppose the application and most probable did not want to have anything further to do with the protraction of the proceedings beyond their natural life span.

The purpose of the application was that the temporary concrete barrier on the right hand side of the far left lane of the road between Van buuren on-ramp up to a point in line with the intersection of arterial Road West & Souvenir Road be replaced with a permanent concrete barrier between the specified points on the N3 highway for purposes of safety due to the fact that the Applicants properties were located closer to the freeway as a result of broadening of the road surface.

The parties agreed on how the matter should be settled and an order was granted by this Honorable court based on their settlement agreement that:

1. The Respondent is to close the far lane of the N3 national road, northbound between Van buuren on-ramp & up to a point in line with the intersection of arterial Road West & Souvenir Road
2. Further that, it will replace the temporary concrete barriers on the right hand side of the far left lane of the road between the points referred to hereinabove.
3. And that the agreement will prevail as an interim order pending the outcome of this application
4. The application was then postponed sine die.

It is the Respondent further contention that the interim order was all about the barrier issue, and not any other issue that the Applicants were continually bringing up.

The court's view and finding is that, the respondent had discharged its obligations in respect of the concrete barrier and that, the Applicants abandoned the original cause of action and are seeking or sought to substitute it with other issues.

Further that, this does not merely amount to the introduction of a new matter, but may also be understood and should be interpreted to mean an introduction of a new cause of action. It stated further that, by all means, the applicants are at liberty to raise other matters new to the matters covered by the interim order, however, they should be raised on their own right in their own separate action or application.

It ordered that:

1. The rule nisi issued or granted by Halgyn AJ on 20 March 2010 in this Court be discharged because the respondent has satisfied the requisite therein set out;
2. The first to the fourth Applicants were ordered to pay the costs hereof on a scale as between attorney and client, which costs should include the costs of two counsels.