

## REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE**

**CASE NO: 1412/2023**

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE..... SIGNATURE:.....	

In the matter between:

**VOORBURG SAFARIS AND GAME BREEDERS  
(PTY) LTD**

**APPLICANT**

**And**

**THE MEC FOR THE LIMPOPO DEPARTMENT  
OF ECONOMIC DEVELOPMENT, ENVIRONMENT  
AND TOURISM**

**FIRST RESPONDENT**

**THE HEAD OF DEPARTMENT OF THE  
LIMPOPO DEPARTMENT OF ECONOMIC  
DEVELOPMENT, ENVIRONMENT AND TOURISM  
JACOBUS PETRUS MINNAAR N.O.**

**SECOND RESPONDENT**

**THIRD RESPONDENT**

<b>LAURETTE MINNAAR N.O.</b>	<b>FOURTH RESPONDENT</b>
<b>GERHARD CORNELIUS MINNAAR</b>	<b>FIFTH RESPONDENT</b>
<b>CORNELIUS JACOBUS MINNAAR N.O.</b>	<b>SIXTH RESPONDENT</b>
<b>SHELDRAKE GAME RANCH (PTY) LTD</b>	<b>SEVENTH RESPONDENT</b>
<b>GERHARD CORNELIUS MINNAAR</b>	<b>EIGHTH RESPONDENT</b>
<b>ZWARTRAND GAME RANCH (PTY) LTD</b>	<b>NINTH RESPONDENT</b>
<b>FONTAINEBLEAU LANDGOED (PTY) LTD</b>	<b>TENTH RESPONDENT</b>
<b>ESMELAU EIENDOMME (PTY) LTD</b>	<b>ELEVENTH RESPONDENT</b>

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### **JUDGEMENT**

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#### **KGANYAGO J**

- [1] This is a family dispute that had resulted in several litigations that are pending against each other. These disputes have also divided the family into two camps fighting against each other. The sixth respondent who is an elderly person and is aged 91 years. When the sixth respondent was still active had acquired the farms Fontainebleau 212 MS, Zwartrand 506 MS, Sheldrake 239 MS, Ryswyk 240 MS, Lucerne 198 MS and Voorburg 503 MS. The farms are jointly forming the territorial area known as Baobab Private Nature Reserve.
- [2] The applicant has brought an urgent application against the respondents which was struck off from the urgent roll due to lack of urgency. However, the applicant managed to secure a preferential date for the matter to be heard on an expediated date. In the application the applicant is seeking the following orders:

“2. That the applicant be exempted, insofar as it might be necessary from the obligation of first Management Act, 7 of 2003 as provided for in section 7(2)(c) of the Promotion of Administrative Justice Act, 3 of 2000;

3. That insofar as it may be necessary, the 180-day period referred to in section 7(1) of PAJA be extended as provided for in section 9(1) of PAJA and to condone the late filing of this application.

4. That the decision of the first respondent, alternatively the second respondent to issue the P3-exemption permit, annexed to the supplementary affidavit as annexure “SA1” be declared constitutionally invalid, reviewed and set aside;

5. In the alternative to paragraph 4 that the P3-exemption permit, annexed to the supplementary affidavit as annexure “SA1” be declared void.

6. That the decision of the first respondent, alternatively the second respondent to refuse the applicant’s application for a P3-exemption permit be declared constitutionally invalid, reviewed and set aside;

7. In the alternative to paragraph 4 above, and only in the event that it is found that the first respondent, alternatively the second respondent failed to take a decision concerning the applicant’s application for a P3-exemption permit, that the failure to take such a decision be declared constitutionally invalid and set aside;

8. That the first respondent, alternatively the second respondent be ordered to immediately issue the P3-exemption permit in favour of the applicant within five (5) court days from the date of the granting of the order;

9. Only in the event that the application is opposed by the first and/or second respondents, that the first respondent, jointly and severally together with any such further respondent or respondents who opposes/oppose the application, be ordered to pay the applicant’s costs, jointly and severally”.

[3] At the hearing of the application the applicant had abandoned prayer 5 to 8. The deponent of the founding affidavit of the applicant is Veroeschka Kleynhans

who is the director of the applicant and the daughter of the third respondent (Jacobus), and granddaughter of the sixth respondent (Cornelius). According to Veroeschka, the eight respondent (Gerhard) who is her uncle has since 2014 continuously caused a strife with Jacobus and Cornelius. Jacobus and Gerhard are the sons of Cornelius. That strife led to the Cornelius, Jacobus and Gerhard coming to a principle arrangement in the beginning of the year 2019 in which Gerhard would take control and possession of farms Ryswyk, Sheldrake, Lucerne, Fontainebleau and the game farming and hunting on those farms (north farms). Jacobus would take *de facto* control and possession of the farms Voorburg, Zwartrand and the game farming and hunting on those farms (south farms). A fence was to be erected in order to achieve a successful division of the farms between brothers.

- [4] On 23<sup>rd</sup> August 2019 the affected parties held a meeting where it was agreed that with regard to north farms, a long-term lease agreement would be entered into between Esmelau and Fontainebleau and operating companies of Gerhard. The north farms that would be leased are Ryskwyk, Sheldrake, Lucerne and Fontainebleau. In respect of the south farms, a long-term lease would be entered into between the Koos Minnaar trust (trust), Zwartrand and operating companies of Jacobus. The south farms that would be leased are Voorburg and Zwartrand. The trust is the owner of the farm Voorburg.
  
- [5] In giving effect to the principle arrangement reached on 23<sup>rd</sup> August 2019, on 1<sup>st</sup> March 2020 the trustees of the trust agreed to a long-term lease in respect of the farm Voorburg. Jacobus and Gerhard erected a fence which divided the north and south farms sharing the costs of the erection of the fence equally. After erection of the fence Gerhard took *de facto* control and possession of the

north farms, whilst Jacobus took *de facto* control and possession of the south farms. Their attorneys were given instructions to draft the long-term lease in accordance with the agreement reached on 23<sup>rd</sup> August 2019. An agreement of lease was drafted to be concluded between Voorburg Safaris and Game Breeders (Pty) Ltd and the Koos Minnaar trust. Gerhard raised some issues with regard to the duration of the lease agreement which resulted in the agreement never been signed. Gerhard repudiated the lease agreement in respect of the farms allocated to him in terms of the principle arrangement and commenced a flurry of litigation against Jacobus and Cornelius.

- [6] The applicant is in the business of game farming and hunting. It is necessary for the first respondent to issue it with a P3-exemption permit to allow the owner as defined in the Limpopo Environmental Management Act 7 of 2003 (LEMA) to conduct its hunting activities on the relevant property. In terms of LEMA owner includes a lessee of a lease that is renewable from time to time. On 25<sup>th</sup> July 2022 the applicant submitted an application for a P3-exemption permit to the first respondent. The first respondent acknowledged receipt of the application and in the acknowledgement letter had stated that the applicant will be notified of the outcome within 15 working days from the day the application was received.
  
- [7] The first respondent did not adhere to its time frames of informing the applicant of the outcome of its application. On 15<sup>th</sup> December 2022 Veroeschka telephonically contacted one Cendra Malivholo a representative of the first respondent. Cendra informed Veroeschka that the first respondent had taken a decision that the application of the applicant be provisionally declined, but that a meeting will be held on 17<sup>th</sup> January 2023 where a final decision will be taken,

and that the first respondent will be given an opportunity to make representations to the first respondent. During the same telephonic conversation of the 15<sup>th</sup> December 2022, Cendra informed Veroeschka that Gerhard or an entity Gerhard represented had obtained a P3-exemption permit in respect of all farms (north and south) by utilising the ID number of Cornelius.

[8] On 16<sup>th</sup> January 2023 the applicant received an email from the first respondent notifying it that the meeting scheduled for the 17<sup>th</sup> January 2023 will not take place as they have received a new complaint regarding the farms Voorburg and Zwartrand. On 31<sup>st</sup> January 2023 Voorburg's attorneys wrote a letter to the first respondent but they did not receive any response. On 7<sup>th</sup> February 2023 the applicant launched an internal appeal, and also requested to be informed of the status of the applications and the decisions taken about them if any. The first respondent was given an opportunity until the 10<sup>th</sup> February 2023, but they failed to respond to the applicant's request, and on 14<sup>th</sup> February 2023 the applicant launched their urgent review application.

[9] The grounds for the applicant's review application on the first decision are that (i) the applicant as the lessee of the farms Voorburg and Zwartrand was not given a opportunity to be heard before the first respondent entertained the submissions from Sheldrake and/or Gerhard; (ii) in terms of LEMA a P3-exemption may only be issued to an owner as defined in LEMA, and that neither Sheldrake nor Gerhard fall within that definition; (iii) on the conveyance by Cendra on 15<sup>th</sup> December 2022, it is alleged that Gerhard fraudulently applied for the P3-exemption permit unlawfully using the ID number of Cornelius. The applicant therefore submit that the first decision offends the principle of legality and Voorburg also relies on a legality challenge on the impugned first decision.

- [10] Regarding the alleged second decision concerning the cancelled meeting of the 17<sup>th</sup> January 2023, the applicant's grounds of review are that if the second decision was indeed taken to decline Voorburg's application for the issue of a P3-exemption permit in respect of the farms Voorburg and Zwartrand, it is liable to be reviewed and set aside (i) as the lessee of the farms Voorburg and Zwartrand was an entity entitled to apply validly for the P3-exemption and that Voorburg falls squarely within the definition of owner in terms of LEMA, and (ii) no rational basis existed to refuse the granting of the P3-exemption permit to Voorburg.
- [11] The applicant submit that even if from the record it does not appear that a final decision has been taken, Voorburg relies on section 6(2)(g) of PAJA on the basis of the failure to take a decision, and that it constitute an administrative action that is liable to be reviewed and set aside. Further that there has been unreasonable delay in taking a decision by the first respondent, and in that regard Voorburg relies on the provisions of section 6(3)(a) of PAJA.
- [12] The applicant has submitted that there are exceptional circumstances that justify the dispensing with the internal appeal, in that they have addressed a letter to the first respondent requesting to be informed of the procedure to lodge an internal appeal. They have never received a response from the first respondent, and further it is not known to them whether the first respondent had delegated any powers to the second respondent. Given the fact that Voorburg also relies on failure to take a decision, it is practically impossible to proceed with an internal appeal. The first respondent has been silent for over seven months, and cancelling the meeting of the 17<sup>th</sup> January 2023 at the last minute, that

resulted in the applicant losing all faith in the processes of the first respondent, and to directly approach the court.

[13] On receipt of the record from the first respondent, the applicant filed a supplementary affidavit. The applicant in the supplementary affidavit submitted that the current P3-exemption permit which is in dispute, has been issued in the name of Koos Minnaar trust, with the designated person been the Gerhard, alternatively that the permit has been issued to the Gerhard. That the P3-exemption permit has been issued in respect of all the north and south farms, and is valid from 30<sup>th</sup> March 2021 to 30<sup>th</sup> March 2024. The application for the permit was submitted by Gerhard who has signed on the application form as the owner. However, the 2018 permit was issued in the names of Cornelius in his personal capacity, even though the application was not made by Cornelius.

[14] The P3-exemption permit for Voorburg and Zwartrand for the period 22 November 2019 to 22 November 2022 was issued in the names of Veroeschka alternatively third respondent in his personal capacity. Veroeschka concede that the 22 November 2019 to 22 November 2022 P3-exemption permit was issued incorrectly as neither herself or the third respondent qualifies as a land owner. The first respondent in refusing to renew the applicant's permit, has relied on the report compiled by its representative in which it was stated that Veroeschka does not have any legal document to prove the ownership of the two farms. The north and south farms were owned by Koos Minnaar trust based on the letters of authority issued by the Master of the High Court. Based on that the first respondent did not find any reasons for renewing the P3-exemption permit unless the lease contract submitted was signed by members of the Koos Minnaar trust.



- [15] The applicant dispute that the trust is the owner of all the north and south farms, but that the trust only owns Voorburg 503 MS. The applicant has submitted that Gerhard when making the 2021 renewal application for the permit has included a resolution of the 23<sup>rd</sup> January 2012. However, the 2012 resolution was signed by only two trustees who are the fifth respondent and Cornelius and that they did not form a quorum. That even if the resolution was valid, it will be applicable only to the farm that is been owned by the trust. Further that there was a dispute between the trustees on the basis that there was a deadlock since 2019, and Gerhard was aware of that. For Gerhard to utilise the 2012 resolution for a P3-exemption permit for all the farms was plainly dishonest by him. The owners of the other farms did not authorise the fifth respondent or Gerhard in his personal capacity to submit an application of their behalf.
- [16] The applicant avers that it was only telephonically informed on 15<sup>th</sup> December 2022 that Gerhard had obtained the P3-exemption permits in respect of all the farms. The relevant facts pertaining to that application was only disclosed in the record that it had received on 3<sup>rd</sup> March 2023. It was impossible to suspect that a P3-exemption permit was granted in respect of the south farms, as the south farms have been issued with a permit that was valid until 22<sup>nd</sup> November 2022. That in the event it is considered necessary, the applicant seeks an order in terms of PAJA to extend the 180-day period contemplated in section 7(1) of PAJA. If it is necessary to grant such an extension and it is not granted, then Gerhard would be able to continue to utilise a plainly invalid and/or void P3-exemption permit until 30<sup>th</sup> March 2024.
- [17] Gerhard has deposed the answering affidavit in his personal capacity, and also on behalf of the fourth, fifth and seventh respondents and also in his capacity

as a trustee of Koos Minnaar trust and director of all the subsidiary companies. Gerhard has submitted that the applicant's application is *mala fide* and opportunistic. That the north and south farms are 11,705 ha and jointly form the territorial area of the Baobab Private Nature Reserve (the reserve), duly registered on 31<sup>st</sup> August 2018. Koos Minnaar trust is the sole shareholder of the CJ Minnaar Beherend (Pty) Ltd and also the registered owner of the farm Voorburg. Koos Minnaar trust has four trustees who are Cornelius Jacobus Minnaar, Laurette Minnaar, Jacobus Petrus Minnaar and Gerhard Cornelius Minnaar. Minnaar Beherend is the holding company of the tenth and eighth respondents and also Zwartrand Game Ranch (Pty) Ltd. The tenth respondent is the registered owner of Fontainebleau 212 MS, Zwartrand Game Ranch is the registered owner of the farm Zwartrand 506 MS, and the eleventh respondent is the registered owner of the farms Sheldrake 239 MS, Ryswyk 240 MS and Lucerne 198 MS.

- [18] Gerhard avers that the directors and shareholders of the applicant are Jacobus and his daughter Veroeschka. That this dispute emanates from the collusive unlawful endeavours by Jacobus and Cornelius to exercise full and unfettered control for their benefit of both the immovable and movable properties of Koos Minnaar trust. The applicant, Veroeschka and her husband are deriving unlawful benefits from the assets of Koos Minnaar trust as well as Zwartrand Game Ranch by conducting illegal game hunting activities on the farms Voorburg and Zwartrand, as well as the unlawful occupation of the said farms. Cornelius and Jacobus in truth make common cause with the applicant, Veroeschka and her husband apart from unlawfully occupying the farms Zwartrand and Voorburg, and also by conducting unsanctioned business from and upon the farms Voorburg and Zwartrand. Their unlawful occupation of the

farms is the subject of a litigation between the same parties that dates back to January 2022. That the issue of the legality of the occupation of the farms Voorburg and Zwartrand is key to the resolution of the current matter.

[19] Gerhard has raised a point *in limine* of lack of *locus standi* by the applicant. He had submitted that the applicant is a corporate entity formed by Jacobus and Veroeschka, and does not fall under the control of either the trust or Minnaar Beherend. That the purported business activities of the applicant have not been sanctioned by Zwartrand Game Ranch, Minnaar Beherend or the trust. The applicant is conducting all these unlawful activities under the purported authority of a fraudulent P3-exemption permit which was fraudulently procured by Veroeschka in her personal capacity. By abandoning some of its prayers in the notice of motion, makes the applicant to no longer have *locus standi* to challenge the validity of the P3-exemption permit.

[20] Gerhard has submitted that there exist a genuine and bona fide and wide-ranging factual dispute foreseen and wilfully ignored. That the applicant's attorney of record was aware of these factual disputes and the motion proceedings would be an inappropriate mechanism for dealing with this matter. Gerhard denies that the Sheldrake's P3-exemption permit has been irregularly procured. That the P3-exemption permit held by Sheldrake has been regularly obtained consistently with prior practice, and that this had occurred with the full knowledge of all the parties. When Cornelius instructed the unlawful subdivision of the reserve during August 2018, he made no reference to the status of the P3-exemption permit which existed over the entire reserve at the time, and had no quarrel with its legality. That the Sheldrake P3-exemption permit is the only permit applicable to the entire surface area of the reserve.

- [21] It is Gerhard contention that the north and south farms are owned by the trust. That Cornelius had hatched the idea of the subdivision of the reserve as Jacobus had reached retirement age at Kobus Minnaar Vervoer (Pty) Ltd where he had worked for 40 years. Gerhard concede that on the 23<sup>rd</sup> August 2019 a meeting was held at D'Arcy-Herman & Co Chartered Accountants, but denies that there was any oral agreement reached wherein he was allocated the north farms whilst Jacobus was allocated the south farms. That what was discussed at that meeting were suggestions and proposals none of which ever eventuated. Gerhard submit that he had *de facto* control and possession of the trust on behalf of the entire reserve including the south farms. That as an accountant by training he exclusively managed all trust expenses and the subsistence allowances on behalf of his parents. Neither Cornelius or Jacobus ever had any involvement in these affairs.
- [22] Gerhard concede that there are no regulations which have been published under LEMA which deals with internal appeal processes. However, an internal appeal procedure exists under NEMA and the subsidiary legislation which allows for internal appeal to be filed within a maximum period of 20 days from the appellant becoming aware of the adverse findings. The applicant knew on 11<sup>th</sup> August 2022 that no decision was taken regarding the outcome of its application, and further on 15<sup>th</sup> December 2022 that its application had been declined. The applicant was therefore supposed to have appealed that decision within 20 days. The applicant wilfully delayed launching an internal appeal until 7<sup>th</sup> February 2023, and did not sought neither condonation nor an extension of time.

- [23] Gerhard further submit that he has been issued with a series of threatened or protected species (tops) permits for the entire surface area of the reserve covering the period 30<sup>th</sup> March 2009 and the latest being valid until 2<sup>nd</sup> November 2025. The applicant was never in possession of the tops permits. Further that he (Gerhard) is in possession of hunting-outfitter permits covering the period 7<sup>th</sup> April 2005 to date which allows him to act as a hunting outfitter over the entire surface area of the reserve. The applicant does not possess the hunting-outfitter permits.
- [24] It is Gerhard contention that the 2012 trust resolution remains valid and binding, has not been revoked by the trust and all applications occurred consonant with the practice that has prevailed since the formation of the reserve in the year 2000. The trust had authorised him to apply for P3-exemption permit over the entire surface area of the reserve. Jacobus was fully alive to this practice and never raised any concern or objection.
- [25] The first and second respondents in their answering affidavit have stated that as per the letter of authority dated 15<sup>th</sup> September 2004 issued by the Master of the High Court, the six farms (north and south) are owned by Koos Minnaar trust. As per the resolution dated 23<sup>rd</sup> January 2012, Koos Minnaar trust resolved to appoint Gerhard as the person who will exercise the powers, functions and duties on behalf of the owner of the farms. Since 2012 the trust has utilized the resolution to obtain and renew the P3-exemption permit for the year 2012, 2015, 2018 and 2021. No issues were ever raised by the trust in relation to the legality and validity of the resolution.
- [26] During May 2018 the then MEC per declaration no 12/6/9 of Provincial Gazette 135 of 2018 declared the six farms as constituting a nature reserve titled

Baobab Private Nature Reserve held in ownership by Koos Minnaar trust. The applicant was formed during November 2018. The P3-exemption permit were granted to Koos Minnaar trust and not to Gerhard or Sheldrake. Gerhard when he applied for the exemption permit, he used his own ID number and not that of Cornelius, and therefore there was no fraudulent application received from Gerhard.

[27] The first and second respondents have further stated in their answering affidavit that the applicant has submitted its application for the P3-exemption permit on 25<sup>th</sup> July 2022. Thereafter the applicant received a letter of acknowledgment of receipt of the application, and that the letter stated that the applicant will be informed of the outcome of the application in writing within 15 working days from date on which the application was received. After the expiry of the 15 days, the applicant sat idly by for five months without making any follow-ups or requesting for the decision. The applicant was informed on 15<sup>th</sup> December 2022 that its application has been provisionally rejected and that a final decision would be taken on 17<sup>th</sup> January 2023. The applicant was informed on 16<sup>th</sup> January 2023 that the meeting of the 17<sup>th</sup> will no longer be taking place, but it took the applicant two weeks to launch its internal appeal against so-called failure to take a decision.

[28] The first and second respondents avers that the applicant has delayed in taking any steps to either enquire on the outcome of its application, appeal or institute an application in court. The P3-exemption permits which the applicant is seeking to review, have been renewed four times since 2012. At all material times the applicant knew of the existence of the P3-exemption permit. The applicant should have first exhausted internal remedies, and that the applicant

is well aware that section 111 of LEMA provides that a decision taken by any person other than the MEC, may be appealed to the MEC as an internal remedy.

[29] The first issue to be determined is whether the applicant was compelled to have first exhausted internal remedies provided for in LEMA before resorting to litigation in the court of law. LEMA governs the issuing of P3-exemption permits. Section 111 of LEMA provides for internal remedies to be followed in case any person is aggrieved by a decision taken by a person other than the MEC in the performance of a function or exercise of a power assigned or delegated to that person in terms of LEMA. The remedy for the aggrieved person is to appeal against that decision to the MEC, in the prescribed manner, within the prescribed period and on payment of the prescribed fee.

[30] In *Koyabe v Minister of Home Affairs*<sup>1</sup> Mokgoro J said:

“Under the common law, the existence of an internal remedy was not in itself sufficient to defer access to judicial review until it had been exhausted. However, PAJA significantly transformed the relationship between internal administrative remedies and judicial review of administrative decisions. Section 7(2) of PAJA provides:

‘(2)(a) Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

(b) Subject to paragraph (c) a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

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<sup>1</sup> 2010 (4) SA 327 (CC) at para 34

(c) A court or tribunal may in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust internal remedy if the court deems it in the interest of justice.

Thus, unless exceptional circumstances are found to exist by a court on application by the affected person, PAJA, which has a broad scope and applies to a wide range of administrative actions, requires that available internal remedies be first exhausted prior to judicial review of an administrative action'."

[31] It is now compulsory for an aggrieved party to first exhaust internal remedies in all cases, unless he/she successfully applies for exemption. The applicant had lodged an appeal to the MEC, but did not proceed with that appeal to finality before instituting legal action against the respondents. The applicant could not proceed with the appeal to finality as LEMA has no regulations. As a result of that it is not known the prescribed manner, prescribed time period and prescribed fee which an aggrieved party should comply with.

[32] Without the regulations, there will be no certainty as to what procedure to follow in case an aggrieved party wants to lodge an appeal. It cannot be left to the individual party to decide which procedure to follow, but there should be certainty. The internal remedies of LEMA as it stands is not effective, and it would have been a futile exercise for the applicant to have pursued its appeal whilst swimming in the dark. In my view, the interest of justice permits the exemption of the applicant from exhausting internal remedies provided by LEMA before instituting the proceedings against the respondents.

[33] The second issue to be determined is the applicant's *locus standi* in this application as raised by the seventh respondent and Gerhard in their answering affidavit. Before the abandonment of certain prayers by the applicant in its amended notice of motion, the seventh respondent and Gerhard have



abandoned their point *in limine* that the applicant lacks *locus standi* in this application. However, after the applicant had abandoned those prayers more especially prayers 6 and 7, the seventh respondent and Gerhard reverted back to their abandoned point *in limine* that the applicant's lacks *locus standi* in this application.

[34] The seventh respondent and Gerhard have submitted that there is no prospect of a P3-exemption permit being granted to the applicant in respect of Voorburg or Zwartrand farms. That it is clear on the papers that the applicant is not a lessee of these properties, and thus does not qualify as an owner as defined in LEMA. Further that the applicant's case on paper is not that it has any prospect of becoming the lessee of Voorburg and Zwartrand in future. Prior to the abandonment of some of the prayers, the applicant did have the necessary *locus standi* to challenge the granting of the Sheldrake P3-exemption permit on the basis that no permit could be awarded to the applicant while the Sheldrake P3-exemption was inexistence. That this matter does not raise any matters of public interest and that the applicant cannot rely on section 38(d) of the Constitution as being someone acting in the public interest. The applicant can only have the necessary *locus standi* if it qualifies as anyone acting in their own interest as intended in section 38(a) of the Constitution.

[35] The applicant has conceded that it did not have a signed lease agreement and therefore does not qualify as owner as defined in LEMA to enable it to be the holder of a P3-exemption permit. The applicant has further conceded that the 2019 exemption permit that had expired on 22<sup>nd</sup> November 2022 should not have been issued to it. In the abandoned prayer 6 the applicant wanted the first and/or second respondents' decision to refuse to issue it with the P3-exemption

permit be declared constitutionally invalid, reviewed and set aside. On prayer 7 the applicant wanted in the event it was found that first or second respondents' failure to take a decision concerning its application for a P3-exemption permit be declared constitutionally invalid and set aside. However, since the applicant does not qualify as owner in terms of LEMA there is no prospect of it succeeding with these relief, hence the abandonment.

[36] However, the applicant is still seeking that the decision of the first alternatively the second respondent to issue the P3-exemption permit to Koos Minnaar trust which permit cover the entire north and south farms be declared constitutionally invalid, reviewed and set aside. The question to be determined is whether despite the abandonment of prayers 6 and 7 and also having conceded that it does not qualify as owner in terms of LEMA, is the applicant still having *locus standi* in this application.

[37] The applicant in its founding affidavit has stated that Voorburg has *locus standi* for the relief claimed in the notice of motion based on the provisions of section 38(a) and (d) of the Constitution. Voorburg is entitled to launch the present application not only in its own interest, but also in the public interest. As an active participant in the hunting industry, Voorburg has *locus standi* in the public interest, to launch the present application based on what appears to have been a clearly irregular issuing of the P3-exemption permit to GC Minnaar, Sheldrake Game Ranch or any other entity.

[38] The farm Voorburg is being owned by Koos Minnaar trust. The applicant does not have a signed lease agreement between it and the trust. The trust did not authorise the applicant to represent it in these proceedings. The applicant is therefore not authorised to represent Voorburg in these proceedings. The

purpose of the applicant bringing this application is to enable it to participate in the hunting industry, as without the P3-exemption permit it will be hunting illegally.

[39] The applicant in bringing this application is relying on section 38(a) and (d) of the Constitution. In terms of section 38(a) and (d) anyone acting in their own interest and anyone acting in the public interest has a right to approach a competent court alleging that a right in the Bill of Rights has been infringed. Section 38 has introduced a departure from the common law in relation to standing. On plain reading of section 38, it is applicable where a party is alleging that a right in the Bill of Rights has been infringed or threatened. In other word, ordinarily section 38 challenge is based on a right in chapter 2 of the Constitution. In determining whether the applicant has *locus standi*, it must first be determined with the specific relief been sought.

[40] The current dispute is a family dispute, which the two warring parties are fighting for the control of the farms for the purposes of conducting hunting business. The applicant's interest in the whole matter is that of hunting which in my view is pure financial self-interest. This is not a case of public interest standing. In *Kruger v President of the Republic of South Africa and Others*<sup>2</sup> Skweyiya said:

"Legal practitioners must not assume that they will be allowed to bring applications to this court for a declaration of invalidity based purely on financial self-interest or in circumstances where they cannot show that it will be in the interest of the administration of justice that they can do so."

[41] The applicant does not have a signed lease agreement to qualify it as an owner in terms of LEMA. As the applicant does not qualify to be the owner, there is no

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<sup>2</sup> 2009 (1) SA 417 (CC) at 429A

prospect that a P3-exemption permit will be issued to it. In *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others*<sup>3</sup> Cameron J said:

“... an own-interest litigant may be denied standing even though the result could be that an unlawful decision stands. This is no illogical. As the Supreme Court of Appeal pointed out, standing determines solely whether this particular litigant is entitled to mount the challenge: a successful challenge to a public decision can be brought only if the “the right remedy is sought by the right person in the right proceedings.”

[42] Without a valid lease agreement the applicant will not be in a position to successfully challenge the decision of the first and second respondent to issue the P3-exemption permit to the seventh and eighth respondents. Therefore, the remedy that the applicant is seeking, is not being sought by the right person in these proceedings, and in my view, the applicant had no necessary *locus standi*.

[43] The upholding of the point *in limine* of *locus standi* had the effect of disposing of the whole matter. However, since the applicant is alleging that Gerhard had acted dishonestly in obtaining the P3-exemption permit in 2021, it will be in the interest of justice if the merits are also dealt with. The applicant is alleging that Gerhard in applying for the 2021 permit had used the 2012 resolution in support of his application despite being aware that there has been a dispute between the trustees on the basis that there is a deadlock since 2019. Further that Koos Minnaar trust only owns Voorburg farm and not the other farms. That Gerhard was not authorised by the other farms to submit the application for the P3-exemption permit on their behalf.

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<sup>3</sup> [2012] ZACC 28; 2013 (3) BCLR 251 (CC) (29 November 2012) at para 34

- [44] The resolution in dispute was taken by the trustees of Koos Minnaar trust on 23<sup>rd</sup> January 2012. In that resolution the trustees have nominated Gerhard as the person who will exercise the powers, functions and duties on behalf of the owners of the six farms which forms the north and south farms. The Koos Minnaar trust has been duly registered with the office of the Master of the High Court. In terms of the letters of authority that has been issued by the Master, the trust is the owner of the six farms. Since 2012 Gerhard has been the responsible person to obtain the P3-exemption permit on behalf of the six farms, and the permit was issued in the names of Koos Minnaar trust. According to the first and second respondents, the first permit was issued during 2012, and for the years 2015, 2018 and 2021 were renewals, and all these applications were done by Gerhard on behalf of the trust.
- [45] Veroeschka's father Jacobus is one of the trustees of Koos Minnaar trust and has been aware all along that Gerhard was responsible for obtaining P3-exemption permit on behalf of the trust for the benefit of all the six farms, and there were qualms. During May 2018 the six farms were declared the Baobab Nature Reserve with Gerhard still in charge, and was allowed to continue running the affairs of the trust authorised by the 2012 resolution. The applicant was formed during November 2018, and immediately at the beginning of January 2019 the family dispute reached its peak. In trying to resolve the family dispute the idea of dividing the farms into the north and south was hatched and that is when the once united family was divided into two with the other part living in the north with the mother, the other part in the south with the father. That process of dividing the farms was never handled to finality hence the endless litigation against each other, even though according to Veroeschka the dispute started during 2014.

[46] During all these disputes and litigation against each other, the 2012 resolution was never revoked. Despite all these family feuds, on 10<sup>th</sup> January 2022 the Master of the High Court issued the trust with another letter of authority certifying that Cornelius, Laurette, Jacobus and Gerhard are authorised to act as trustees of the Koos Minnaar trust. The current trustees did not revoke the 2012 resolution. This confirms that despite the family feuds, the running of the trust continued to run as before with Gerhard still in charge as authorised by the 2012 resolution, and none of the trustees or members of their respective families ever took issue with that.

[47] The manner in which the 2021 permit was obtained by Gerhard is the same way he did in previous years' using the 2012 resolution. As long as the 2012 resolution has not been revoked or set aside, it will remain valid and enforceable. Therefore, the allegations that the Gerhard was dishonest in obtaining the 2021 permit using the 2012 resolution are baseless. There is no reason to interfere with the decision of the first and second respondents to issue the 2021 P3-exemption permit in favour of the Koos Minnaar trust which application was done by Gerhard using the 2012 resolution. The first and second respondents have also confirmed that in applying for permit, Gerhard had used his own ID number and not that of Cornelius as alleged by the applicant.

[48] In the result the following order is made:

48.1 The applicant's application is dismissed with costs which is inclusive of costs for employment of two counsel for both first and second respondents, and seventh and eighth respondents.

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**KGANYAGO J**  
**JUDGE OF THE HIGH COURT OF SOUTH**  
**AFRICA, LIMPOPO DIVISION,**  
**POLOKWANE**

**APPEARANCES:**

<b>Counsel for the applicant</b>	<b>: Adv PG Cilliers SC</b> <b>Adv APJ Els</b>
<b>Instructed by</b>	<b>: Krone &amp; Associates Attorneys</b>
<b>Counsel for 1<sup>st</sup> and 2<sup>nd</sup></b>	<b>: Adv S Mathabathe</b> <b>Adv T Malatji</b>
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<b>Counsel for 7<sup>th</sup> and 8<sup>th</sup> respondents</b>	<b>: Adv JP Vorster SC</b> <b>Adv JG Smit</b>
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<b>Date heard</b>	<b>: 13<sup>th</sup> July 2023</b>
<b>Electronically circulated on</b>	<b>: 8<sup>th</sup> September 2023</b>