

IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)

Case No:35672/12

3/8/2012

In the matter between:

THE FEDERATION FOR SUSTAINABLE  
ENVIRONMENT

1<sup>ST</sup> APPLICANT

THE SILOBELA CONCERNED COMMUNITY

2<sup>ND</sup> APPLICANT

And

I HEREBY ADVISE THAT THIS IS NOT APPLICABLE	
(a) FILED: YES/NO	NO
(b) OF INTEREST TO OTHER JUDGES: YES/NO	NO
(c) REVISED:	
03/08/2012	
DATE	SIGNATURE

THE MINISTER OF WATER AFFAIRS

1<sup>ST</sup> RESPONDENT

THE DIRECTOR GENERAL: WATER AFFAIRS

2<sup>ND</sup> RESPONDENT

ACTING CHIEF DIRECTOR GENERAL OF WATER AFFAIRS  
MPUMALANGA

3<sup>RD</sup> RESPONDENT

DIRECTOR OF WATER AFFAIRS: MPUMALANGA 4<sup>TH</sup> RESPONDENT  
WATER SECTOR REGULATION AND USE

MEC CO-OPERATIVE GOVERNANCE AND 5<sup>TH</sup> RESPONDENT  
TRADITIONAL AFFAIRS, MPUMALANGA

ACTING EXECUTIVE MAYOR: THE GERT 6<sup>TH</sup> RESPONDENT  
SIBANDA DISTRICT MUNICIPALITY

MUNICIPAL MANAGER: THE GERT 7<sup>TH</sup> RESPONDENT  
SIBANDA DISTRICT MUNICIPALITY

THE MAYOR: THE ALBERT 8<sup>TH</sup> RESPONDENT  
LUTHULI LOCAL MUNICIPALITY

MUNICIPAL MANAGER: THE ALBERT 9<sup>TH</sup> RESPONDENT  
LUTHULI LOCAL MUNICIPALITY

KOMATI CATCHMENT AGENCY 10<sup>TH</sup> RESPONDENT

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## JUDGMENT

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MAVUNDLA, J.

[1] On the 26 July 2012 I handed down a judgment, the order of which reads as follows:

- "1 That leave to appeal to the Full Bench of this Division against the judgment and order of 10 July 2012 is granted;**
  
- 2 That costs of the application for leave to appeal be costs in the appeal;**
  
- 3 That in terms of Rule 49(11) the operation and execution of paragraphs 2 to 5 of the order granted on 10 July 2012 are suspended pending finalization of any appeal to the Full Bench, and or to the Supreme Court of Appeal, and or to the Constitutional Court;**

**4 That the sixth and seventh respondents are ordered, pending the events set out in order 3 hereof supra to comply with paragraphs 2 to 5 of the order of 10 July 2012 from date of this order.**

**5 That the sixth to ninth respondents are jointly and severally ordered to pay the costs of the Rule 49(11) application.”**

[2] After having received the Notice for application for leave to appeal against the judgment and order of 10 July 2012, and upon reading the order, it came to my attention that there was a patent error or omission in order 3 which relates to the Rule 49(11) application. The order as it stands conflicts with paragraph “[24]” and order “[4]” of the judgment thereof.

[3] The provisions of Rule 49(11) of the Uniform Rules of Court provide that:

“where an appeal has been noted or an application for leave to appeal against or rescind, correct, review or vary an order of a court has been made, the operation and execution of the order in question shall be suspended, pending the decision of such appeal or application, unless the court which gave such order, on application of a party, otherwise directs”. (My emphasis.)

[4] In paragraph “[23]” of the judgment it is pointed out that there was evidence that the order of 10 July 2012 was not being complied with in that “ some of the jojo tanks are not refilled regularly and some remain empty.”

[5] In paragraph “[24]” of the judgment it is stated, *inter alia*, that: “I must incline towards protection of the rights of the community and uplift the suspension of the operation of the order, pending finalization of an appeal and exhaustion of any possible appeal to the Supreme Court of Appeal and or the Constitutional Court”.

[6] It is trite that an order is the executive part of the judgment. The judgment contains, *inter alia*, the reasons upon which the order is informed. Where there is ambiguity or inconsistency in the order, the reasons informing the order contained in the judgment would reveal the intention of the order.

[7] On a proper reading of paragraphs “[23]”, “[24]” and order “4” of the judgment of 26 July 2012, it is clear that the intention of the order, was to suspend the incidence flowing from the noting of the

application for leave to appeal its self, so that the order should be complied with pending the finalization of any appeal.

[8] There was, however, a patent error or omission in order 3 in that the word "not" was erroneously omitted. A court may *mero motu* in terms of rule 42(1)(b) vary its order where there is an ambiguity, or patent error or omission only to that extent; vide *Firestone South Africa (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A) at 306H-307H; *West Rand Estates Ltd v New Zealand Insurance Co Ltd* 1926 AD 173 at 186-7;

[9] The error or omission in order 3 of the relevant judgment was that the word "not" was erroneously omitted and should have been typed in between the words "are suspended" so as to read "are not suspended". I am of the view that in terms of the Rule 42(1)(b) the order 3 should be corrected and varied by insertion of the word "not", as indicated herein above.

[10] In the premises I make the following order

1. **That the order delivered on 26 July 2012 in particular order 3 thereof is varied to read as follows:**


"1. That leave to appeal to the Full Bench of this Division against the judgment and order of 10 July 2012 is granted;

2. That costs of the application for leave to appeal be costs in the appeal;

3. That in terms of Rule 49(11) the operation and execution of paragraphs 2 to 5 of the order granted on 10 July 2012 are **not** suspended pending finalization of any appeal to the Full Bench, and or to the Supreme Court of Appeal, and or to the Constitutional Court;

4. That the sixth to seventh respondents are ordered, pending the event set out in order 3 hereof *supra* to comply with paragraphs 2 to 5 of the order of 10 July 2012 from date of this order.

5 That the sixth to ninth respondents are jointly and severally ordered to pay the costs of the Rule 49(11) application.”

  
N. M. MAVUNDLA  
JUDGE OF THE COURT

HEARD ON THE	: 23 / JULY / 2012
DATE OF JUDGEMENT	: 26 / July / 2012
DATE OF VARIATION	: 03 / AUGUST / 2012
1 <sup>ST</sup> & 2 <sup>ND</sup> APPLICANTS' ATT	: LEGAL RESOURCES CENTRE
1 <sup>ST</sup> & 2 <sup>ND</sup> APPLICANTS' ADV	: ADV J.R. BRICKHILL
6 <sup>TH</sup> -9 <sup>TH</sup> RESPONDET'S' ATT	: TWALA ATTORNEYS
6 <sup>TH</sup> -9 <sup>TH</sup> RESPONDET'S ADV	: ADV L.P. MKHIZE