

IN THE DISTRICT COURT FOR THE DISTRICT OF KIRKWOOD.

HELD AT KIRKWOOD

CASE NO: A 513/09.

In the matter between:

The State

And

Charles Gerald Hume Melville.

PLEA AGREEMENT IN TERMS OF SECTION 105A OF THE CRIMINAL PROCEDURE ACT, NO 51 OF 1977.

LEGAL REPRESENTATION.

At all times during this plea negotiations and these proceedings the Accused have been represented by Mr. Alwyn Griebenow, an attorney from the law firm Griebenow Attorneys practicing from 157 Cape Road, Mill Park, Port Elizabeth.

AUTHORISATION.

The prosecutor who represents the Prosecuting Authority is Mr. M. L. le Roux, a prosecutor

who is duly authorised in writing by the National Director of Public Prosecutions to enter into this plea agreement on behalf of the State. The authorisation is attached as **Annexure "A"**

THE RIGHTS OF THE ACCUSED.

Prior to entering into the plea agreement, the accused was duly informed about his constitutional rights.

The accused have been fully informed regarding the rebuttable presumption that he is innocent until guilt has been proven beyond reasonable doubt as well as the right to remain silent

The accused was also fully informed of his right not to offer self incriminating testimony.

The accused is fully aware of the fact that the Court is not bound by this plea agreement.

THE CHARGES.

The Accused is charged as follows:

Count One:

That the accused is guilty of a contravention of section 24F(1)(a) of the National Environmental Management Act, 107 of 1998, read with sections 1, 24(2)(a), 24D, 24F(2) and 24F(4) of the said Act, and also read with Government Notice R. 386 in Government Gazette 28753 of 21 April 2006 (commencement on 3 July 2006, as stipulated by Government Notice R. 612 of Government Gazette 28938 of 23 June 2006) and further read with Section 250 of the Criminal Procedure Act, Act 51 of 1977.

In that during the period August 2008 to June 2010 2008 and at the farm Hitgeheim near Addo in the district of Kirkwood the accused did unlawfully commence with an activity listed in the Schedule to Government Notice R. 386, without an environmental authorisation having being granted to the accused by the competent authority listed in the said Schedule, to wit the transformation or removal or indigenous vegetation of 3 hectares or more or of any size within a critical endangered or endangered ecosystem listed in terms of section 52 of the National Environmental Biodiversity Act, Act 10 of 2004.

Count Two to Four:

Three Counts of the contravention of section 31 N (1) read with section 31 N (3), 31 L (1) (4) and (5) of the National Environmental Management Act, Act 107 of 1998. The failure to comply with a compliance notice issued in terms of the said Act.

Preamble.

The farm Hitgeheim, in the proximity of Addo in the Uitenhage Division of the Nelson Mandela Metropolitan Municipality and in the magisterial district of Kirkwood in the Eastern Cape, is owned by a company by the name of Vecto Trading 70 (Pty) Ltd. Mrs. Cheryl Melville is a director of the said company.

The development of the farm is financed by Mr. Charles Gerald Hume Melville, the accused and the husband of Mrs Cheryl Melville.

On the 19th of August 2008, the 12th of September 2008 and the 2nd of October 2008 Mr. J C S Kapp employed by the Department of Economic Development and Environmental Affairs {DEDEA} an duly appointed as a Environmental Management Inspector conducted an inspection on the farm and soon thereafter, on the 23rd of October 2008, issued a notice of intention to issue a compliance notice in terms of section 31 L of the National Environmental Management Act {NEMA} for the non-compliance of the provisions of the said Act.

Mr. Deon de Villiers a Environmental Management Inspector in the employment of the Department of Economic Development and Environmental Affairs, after having regard to representations, dated the 26th of January 2009, made by Mr. and Mrs. Melville, on the 13th of February 2009 issued a compliance notice with reference number CM/2/09, in terms of section 31 L of the National Environmental Management Act to them.

The compliance notice relates to the undertaking of a listed activity without prior authorisation from DEDEA to wit, activity twelve, that deals with “the transformation or removal or indigenous vegetation of 3 hectares or more or of any size where the transformation or removal occur within a critical endangered or endangered ecosystem listed in terms of section 52 of the National Environmental Biodiversity Act, Act 10 of 2004.”

The instructions embodied in the said compliance order *inter alia* include the immediate cease with all bush clearing activities on the farm.

The compliance notice was served on Mr. John Vosloo, the legal representative of Mr. and Mrs. Melville who acknowledge receipt on behalf of “Melville/Vecto”

On or about the 23rd to the 31st of March 2010 Mr. Charles Hume the owner of Addo Earth Movers conducted indigenous vegetation clearing activities on the farm, on instruction of Mr. Melville, the accused.

On or about the 24th to the 25th of April 2010 Mr. Charles Hume again on instruction of Mr. Melville conducted indigenous vegetation clearing activities on the farm.

On or about the 2nd of June 2010 Mr. Charles Hume again on instruction of Mr. Melville conducted indigenous vegetation clearing activities on the farm.

Count Two:

Therefore the accused on or about the 23rd to the 31st of March 2010 and at the farm Hitgeheim in the district of Kirkwood and in the Regional Division of the Eastern Cape intentionally and unlawfully failed to comply with an compliance notice [Reference number CM/2/09] issued to them by disregarding the instruction in the said notice that they should stop all bush clearing activities on the farm.

Count Three:

Therefore the accused on or about the 24th to the 25th of April 2010 and at the farm Hitgeheim in the district of Kirkwood and in the Regional Division of the Eastern Cape intentionally and unlawfully failed to comply with an compliance notice [Reference number CM/2/09] issued to them by disregarding the instruction in the said notice that they should stop all bush clearing activities on the farm.

Count Four:

Therefore the accused on or about the 2nd of June 2010 and at the farm Hitgeheim in the district of Kirkwood and in the Regional Division of the Eastern Cape intentionally and unlawfully failed to comply with an compliance notice [Reference number CM/2/09] issued to them by disregarding the instruction in the said notice that they should stop all bush clearing activities on the farm.

The Accused is familiar with the contents of the all the charges and understands all the charges against him that he is charged with and wishes to plead guilty to all of these offences as set out in Counts One to Four.

In terms of section 34H of the National Environmental Management Act, 107 of 1998 this

Honorable Court vests with the jurisdiction to deal with the matter.

THE INVESTIGATING OFFICER

The investigating officer, Constable Landman was consulted regarding this plea agreement and indicated that he has no objection to the terms of this agreement or to the proposed sentences.

THE COMPLAINANT'S ATTITUDE WITH REGARD TO THE PLEA AGREEMENT.

The complainant is the Eastern Cape Department of Economic Development and Environmental Affairs [DEDEA] as represented by Mr. D de Villiers. The Department participated actively in the plea negotiations is satisfied with the terms of the plea agreement and does not wish to make any further representations in this regard. See Annexure "B".

The Department agrees that the decision to be made by them in terms of the S24G application, as referred to in condition (v) of the conditions of suspension of the sentence on Count One, to adhere to the legal time frames as set out in Government Notice 543 dated the 18th of June 2010.

THE PLEA OF THE ACCUSED

The parties to this plea agreement have concurred that the accused plead guilty to all the counts as set out in the charge sheet.

FACTUAL SUMMARY OF THE EVENTS.

Count One to Four.

1. Section 24 of the National Environmental Management Act [NEMA] Act 107 of 1998 provides for certain listed activities that may not commence without an environmental authorisation. Such activities are listed in the Environmental Impact Assessment Regulations. Non-compliance with this provision is a criminal offence in terms of section 24F (1) of the said Act.
2. In August 2008 the accused commenced with the transformation or removal or indigenous vegetation of 3 hectares or more within a critical endangered or endangered ecosystem listed in terms of section 52 of the National Environmental Biodiversity Act, Act 10 of 2004, an activity listed in the Schedule to Government Notice R. 386, without an environmental authorisation having being granted to the accused.
3. On the 19th of August 2008, the 12th of September 2008 and the 2nd of October 2008 Mr. J C S Kapp employed by the Eastern Cape Department of Economic Development and Environmental Affairs [DEDEA] and duly appointed as a Environmental Management Inspector conducted an inspection on the farm and soon thereafter, on the 23rd of October 2008, issued a notice of intention to issue a compliance notice in terms of section 31 L of the National Environmental Management Act [NEMA] for the non-compliance of the provisions of the said Act.
4. Mr. Deon de Villiers a Environmental Management Inspector in the employment of the DEDEA, after having regard to representations, dated the 26th of January 2009 made by

Mr. and Mrs. Melville and on the 13th of February 2009, issued a compliance notice with reference number CM/2/09, in terms of section 31 L of the National Environmental Management Act to them. Mr. Melville received the said notice

5. On or about the 23rd to the 31st of March 2010 Mr. Charles Hume the owner of Addo Earth Movers conducted indigenous vegetation clearing activities on the farm by means of a bull dozer, on instruction of the accused.
6. Notwithstanding the fact that the accused was informed of the fact that he was in contravention of the compliance notice he again on the 24th to the 25th of April 2010 again conducted indigenous vegetation clearing activities on the farm by means of a bull dozer.
7. On the 2nd of June 2010 officials of DEDEA were summoned to the farm where the accused was again conducting indigenous vegetation clearing activities on the farm. Mr. Kapp from DEDEA seized the keys to the bulldozer in order to stop the illegal activity.

ADMISSIONS BY THE ACCUSED.

The accused admits that;

1. He commenced with the transformation or removal of indigenous vegetation of 3 hectares or more within a critical endangered or endangered ecosystem listed in terms of section 52 of the National Environmental Biodiversity Act, Act 10 of 2004, an activity listed in the Schedule to Government Notice R. 386, without an environmental authorisation having being granted to him.

2. Mr. Deon de Villiers an Environmental Management Inspector in the employment of the DEDEA, issued a compliance notice with reference number CM/2/09, in terms of section 31 L of the National Environmental Management Act and that he received the said notice.
3. In terms of the notice he had to stop all bush clearing activity.
4. He on three occasions as set out in counts two to four carried on with the clearing of bush in contravention of the said compliance notice.
5. He knew that his conduct was unlawful.

AGREEMENT REGARDING A JUST SENTENCE.

AGGRAVATING CIRCUMSTANCES.

1. The accused persisted with illegal conduct in respect of the entire bush clearing activities despite the illegality thereof having been brought to his attention and ordered to desist, by the relevant authorities.
2. The removal of indigenous vegetation as happened *in casu* caused irreparable damage to the environment and was done for personal financial gain.
3. The fact that the accused on three occasions intentionally transgressed the compliance order shows a tendency of civil disobedience.

MITIGATING CIRCUMSTANCES.

1. The accused has no previous convictions

2. The accused is 56 years old.
3. The accused did in terms of section 24G of the National Environmental Management Act, Act 107 of 1998 apply to the MEC concerned, for the rectification of his unlawful commencement of the said listed activity set out in count one.
4. The accused paid the amount of R275, 000-00 as an administrative fine in terms of section 24G (2) (a) of the National, Environmental Management Act for his contravention of section 24F of the said Act.
5. The accused understands that the Eastern Cape Department of Economic Development and Environmental Affairs [DEDEA] will issue terms and instructions for him to following order to rectify the damage caused by his actions. This will he will have to do at his own expense.
6. The accused undertakes to adhere to these instructions of which some has been incorporated into the conditions of the suspended sentence that forms part of this agreement.

SENTENCE ARGUEMENT.

In the light of the circumstances set out above, agreement has been reached on the following as appropriate sentences.

Count One:

Eighteen months imprisonment suspended for a period of five years on condition that the accused is not convicted of the contravention of Section 24F(1) (a) and or (b) of the National

Environmental Management Act [NEMA] Act 107 of 1998 committed during the period of suspension and on the further conditions that;

- (i) The accused at his cost and within two weeks from the date of sentence appoint an Environmental Assessment Practitioner (EAP) to compile an environmental assessment report that, as a minimum, adheres to the requirements of Section 24(4) and Section 24G of the National Environmental Management Act.
- (ii) Such report to be submitted to the Regional Manager: Environmental Affairs: Cacadu Region (Port Elizabeth) within 6 months of the appointment of the Environmental Assessment Practitioner.
- (iii) The accused at his cost and within two weeks from the date of sentence, appoint Dr E. Campbell or Mr. M. Powell or Mr. J. Vlok as the restoration ecologist to compile a restoration/rehabilitation plan according to the terms of reference attached as **Annexure "C"**.
- (iv) Such report to be submitted to the Regional Manager: Environmental Affairs: Cacadu Region (Port Elizabeth) within 6 months of the appointment of either Dr Campbell or Mr. Powell or Mr. Vlok.
- (v) Such restoration/rehabilitation plan to be implemented by the accused at his cost and in accordance with the decision to be made by DEDEA in terms of the S24G application already submitted to DEDEA, which implementation plan need to commence within one month after the decision by DEDEA was served on the accused.

Count Two to Four:

Count Two to Four are taken together for the purpose of sentence.

R30, 000-00 [Thirty Tousand] or six months imprisonment of which R10, 000 [Ten Thousand] or two months imprisonment suspended for a period of five years on condition that the accused is

not convicted of the contravention of 31 N (1) read with section 31 N (3), 31 L (1) (4) and (5) of the National Environmental Management Act, Act 107 of 1998 committed during the period of suspension.

Dated and signed on this 18th day of October 2010 at Kirkwood.

ACCUSED

C G H Melville

MR A. GRIEBENOW:

Legal Representative

M.L.LE ROUX

Prosecutor

Annexure "B":

Statement by the Complainant

I, Deon de Villiers hereby certify as follows:

1. I am employed by the Department of Economic Development and Environmental Affairs, Eastern Cape as an Environmental Management Inspector and represent the Department in this plea and sentence negotiations.

2. Mr. M.L. le Roux, the prosecutor who is dealing with the matter has discussed the contents of the plea and sentence agreement with me and in particular the contents of the sentence. The inclusion of the conditions on the first count is in line with the expectations and outcome our Department has in relation to the matter.

3. I do not wish to make further representations in the matter.

Signed at on this.....day of October 2010

.....
D. de Villiers

Annexure “C”:

Terms of Reference for the Rehabilitation Plan in the matter of the State versus C.H.G. Melville.

A restoration ecologist/botanist (or a team with restoration experience) is to undertake the following work for the Law Enforcement Division of the DEAET.

1. Undertake a site visit to the study area with a view to:
 - a. Assess the nature of the damage and degradation.
 - b. Ascertain if there are species that are still resident/living in the study site and what actions will be required to incorporate them into the rehabilitation plan.
 - c. Visit adjacent intact vegetation to compile species lists and characterise the vegetation.
 - d. Visit adjacent intact vegetation to compile a list of important plant guilds that could be useful for the rehabilitation work.
2. Capture all spatial information using GPS and incorporate data into a GIS database.
3. Draft a detailed implementation plan for the rehabilitation of the degraded area.
4. Develop a concise monitoring plan to establish the success of the restoration plan.
5. Provide on-site advice to the restoration teams prior to the rehabilitation work commencing.
6. Provide a short report following the completion of the rehabilitation and to the monitoring that has been undertaken.

The guiding principle should be one of “functionality” and “practicality”. Cognisance needs to be taken of the issue of genetics when sourcing plant material for the restoration site. The first priority should be to stabilise the soil and prevent erosion. The attainment of vegetation cover is the second priority.