

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION WESTERN
CAPE

(HELD AT WORCESTER)

CASE NUMBER: WSH 147 /2017

In the matter between:

THE STATE

and

**GROENRIVIER EIENDOMME PTY LTD (ACCUSED 1)
AS REPRESENTED BY JACOBUS WYNAND PIETERSE A DIRECTOR OF
THE SAID CORPORATE BODY.**

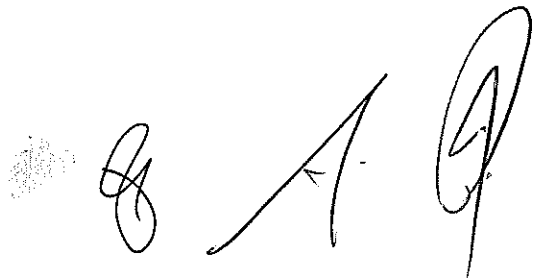
**JACOBUS WYNAND PIETERSE (ACCUSED 2)
AS A DIRECTOR OF THE SAID CORPORATE BODY IN HIS PERSONAL
CAPACITY.**

**PLEA AND SENTENCE AGREEMENT IN TERMS OF SECTION 105A OF ACT
51 OF 1977**

PREAMBLE

WHEREAS at all times relevant to these charges, the said accused number 1
was a corporate body as envisaged by section 332 of Act 51 of 1977,

AND WHEREAS at all times relevant to these charges the said accused number 2
was a director of the said corporate body as envisaged by subsections (2) of
section 332 of Act 51 of 1977,



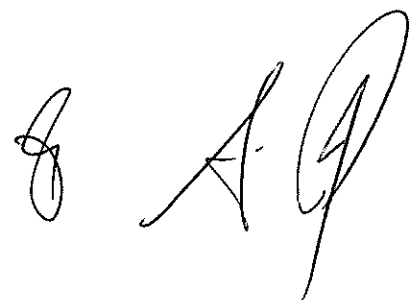
AND WHEREAS Groenrivier Eiendomme PTY LTD is a registered company in terms of the Laws of the Republic of South Africa, duly registered with registration number T45682/2008,

AND WHEREAS the said accused number 1 by its director or servant, the said accused number 2 and/or any of its other servants unknown to the prosecution, in the exercise of his/their powers or in the performance of his/their duties as such director and servant or in furthering or endeavouring to further the interests of the said corporate body the said accused committed the following offences:

COUNT: 1

The accused are charged with contravening section 49A (1)(e) of the National Environmental Management Act, Act 107 of 1998 read with section 1; 28; 34 (with reference to schedule 3); 34H and 49B of the said act and further read with section 250 of the Criminal Procedure Act, Act 51 of 1977.

In that the accused on or about the 4th of September 2014 at or near farm 390 portion 4, Driefontein Rawsonville, in the District of Worcester, Regional Division of the Cape, unlawfully and intentionally or negligently committed any act or omission which caused significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment by clearing approximately 45.3810 hectares of endangered vegetation on the abovementioned farm, which caused significant degradation of the environment by destroying a large portion of a highly sensitive ecological ecosystem which consisted of endangered virgin Breëde Alluvium Fynbos.

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COUNT: 2

The accused are charged with contravening section 49A (1)(a) of the National Environmental Management Act, Act 107 of 1998 and further read with section 1; 24 (2) (a) or (b); 24D; 24F (1)(a); 34 (with reference to schedule 3); 34H and 49B of the said act also read with **Activity 11** of **Listing Notice 1**, listed or specified in terms of section 24 (2) (a) or (b) and published in terms of section 24D of the National Environmental Management Act, Act 107 of 1998 and published in the Government Gazette under Government Notice R543 of 18 June 2010 and further read with section 250 of the Criminal Procedure Act, Act 51 of 1977.

In that the accused on or about the 4th of September 2014 at or near farm 390 portion 4, Driefontein Rawsonville, in the District of Worcester, Regional Division of the Cape, unlawfully and intentionally commenced with an activity described within Activity 11 of Listing Notice 1, listed in terms of section 24(2)(a) without an environmental authorisation having being granted to the accused by the competent authority, to wit by constructing a concrete bridge within a watercourse being the Breëde River.

THE STATE WITHDRAWS COUNT 1 PLUS FIRST ALTERNATIVE; COUNT 2 PLUS FIRST AND SECOND ALTERNATIVE COUNTS AGAINST ACCUSED 2. ACCUSED 1 IS HEREINAFTER REFERRED TO AS "THE ACCUSED".

PARTIES

1. The Regional Court Prosecutor (**Mr A Theron**) has been duly authorised (as per annexure "A" hereto) by the National Director of Public Prosecutions, as required by section 105A of Act 51 of 1977, to negotiate and enter into an agreement with the accused. (**Authorisation Dated: 17 August 2010**)



2. The prosecutor is duly authorised to conduct proceedings in court on behalf of the State in connection with this agreement, after it has been duly entered into.
3. The accused, as represented by its attorney (**Mr J Erasmus**), enter into this agreement in respect of a plea of guilty by the accused to the offence of which it may be convicted, as well as a just sentence to be imposed by this Honourable Court.
4. The accused has been informed of its rights referred to in section 105A (2) (a) of Act 51 of 1977.
It has the right:
 - 4.1. to be presumed innocent until proven guilty beyond reasonable doubt;
 - 4.2. to remain silent and not to testify during the proceedings; and
 - 4.3. not to be compelled to give self-incriminating evidence;
 - 4.4. that it is not obliged to enter into this agreement, but that if it does so, the contents thereof will be made known to the Court which may convict and sentence it in terms of the agreement or may refuse to accept the agreement, in which case the agreement will be null and void and the State will not be able to

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use or present such agreement against it as evidence in a criminal trial.

4.5. The accused has been informed that this agreement cannot bind the Court, and the Court may exercise its discretion to make a specific order or conduct a specific enquiry, in which event the accused will be entitled to follow any direction(s) given by the Court.

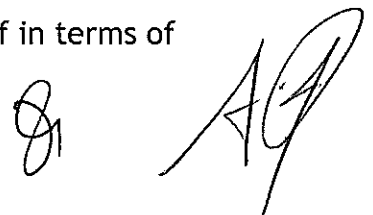
5. The accused admits guilt in respect of the charges mentioned above and pleads guilty thereto on the basis set out below.

6. The prosecutor has duly complied with the requirements of Section 105 A(1)(b) of Act 51 of 1977 in the following respects:

6.1. The investigating officer, **W/O M L CARSTENS**, has been consulted by the prosecutor. He is satisfied with the terms of the agreement and the sentence.

6.2. Due regard has been given to the circumstances prescribed in section 105A(b)(ii) of Act 51 of 1977.

6.3. The complainant, **Mr J Liebenberg**, has been afforded the opportunity to make representations to the prosecutor regarding the content of the agreement and the inclusion of conditions relating to compensation or service in lieu thereof in terms of



section 105A(b)(iii) of Act 51 of 1977. He does not wish to make representations regarding the plea and sentence agreement and is satisfied that the matter is going to be finalised. (See statement as per annexure "B")

7. The prosecutor is prepared to accept such a plea of guilty.

NOW THEREFORE the prosecutor and the accused agree as follows in respect of the plea of guilty and a just sentence:

A. Plea of guilty and admissions

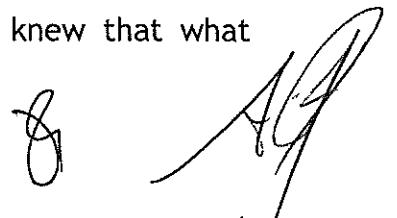
The accused pleads guilty to all the charges as mentioned above and make the following admissions:

1. The accused admits that it is a registered company with registration number T45682/2008, duly incorporated and registered in terms of the laws of the Republic of South Africa.
2. The accused admits that the Regional Court of the Western Cape seated at Worcester has the required jurisdiction to deal with this case.
3. The accused admits that Mr Jacobus Wynand Pieterse will appear before the court as the authorised representative of the corporate body.
4. The accused admits that Mr Jacobus Wynand Pieterse has the required authorisation to submit this plea of guilty. **(Attached as annexure "C")**
5. The accused admits that it understands all the allegations against it.
6. The accused admits that it was in no way unduly influenced or threatened to plead guilty nor were any promises made to it should it plead guilty, other than the terms of this agreement.

7. Mr Jacous Wynand Pieterse, as the director and representative of the said corporate body, admits that he is in his sound and sober senses at the time of entering into this agreement.

COUNT: 1

1. The accused admits that it is guilty of contravening section 49A (1)(e) of the National Environmental Management Act, Act 107 of 1998 read with section 1; 28; 34 (with reference to schedule 3); 34H and 49B of the said act and further read with section 250 of the Criminal Procedure Act, Act 51 of 1977.
2. The accused admits that it is the owner of Driefontein Farm Rawsonville.
3. The accused admits that the incident occurred on or about the 4th of September 2014 at Driefontein Farm Rawsonville, within the Regional Division of the Cape.
4. The accused admits that it cleared 45.3810 hectares of endangered vegetation on the farm Driefontein Rawsonville.
5. The accused admits that the endangered vegetation consisted of a large portion of a highly sensitive ecological ecosystem which consisted of endangered virgin Breëde Alluvium Fynbos.
6. The accused admits that by clearing the above mentioned land it caused significant degradation to the environment.
7. The accused admits that it did not have any permission or authorisation from the Department of Environmental affairs and Development Planning to clear abovementioned vegetation.
8. The accused admits that at all relevant times it knew that what

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it was doing was wrong and punishable by a court of law.

COUNT: 2

1. The accused admits that it is guilty of contravening section 49A (1)(a) of the National Environmental Management Act, Act 107 of 1998 and further read with section 1; 24 (2) (a) or (b); 24D; 24F (1)(a); 34 (with reference to schedule 3); 34H and 49B of the said act also read with Activity 11 of Listing Notice 1, listed or specified in terms of section 24 (2) (a) or (b) and published in terms of section 24D of the National Environmental Management Act, Act 107 of 1998 and published in the Government Gazette under Government Notice R543 of 18 June 2010 and further read with section 250 of the Criminal Procedure Act, Act 51 of 1977.
2. The accused admits that it is the owner of Driefontein Farm Rawsonville.
3. The accused admits that the incident occurred on or about the 4th of September 2014 at Driefontein Farm Rawsonville, within the Regional Division of the Cape.
4. The accused admits that it constructed a concrete bridge across the Brëederiver on above mentioned farm.
5. The accused admits that the Brëederiver is a watercourse as defined in the National Water Act, Act 36 of 1998.
6. The accused admits that by constructing a concrete bridge across or within a watercourse it activated an activity described within Activity 11 of Listing Notice 1, listed in terms of section 24(2) (a) of the National Environmental Management Act, Act 107 of 1998.

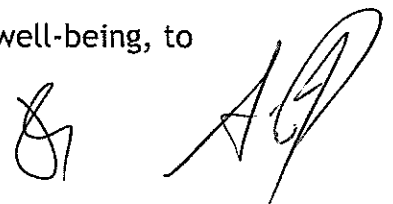
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7. The accused admits that it constructed the bridge without an environmental authorisation having being granted to it by the competent authority.
8. The accused admits that it had no right, permission or authority to have acted as explained above.
9. The accused admits that at all relevant times it knew that what it was doing was wrong and punishable by a court of law.

NOW THEREFORE the accused agrees with the State that it is guilty on both charges mentioned above.

B. The substantial and other relevant facts

1. The gravity of the offences, the interests of the community and all the relevant circumstances of the accused have been taken into account and duly considered by all parties concerned.
2. **The general aggravating factors are as follows:**
 - a. Both charges are of an environmental nature which is seen in a very serious light.
 - b. Both of these offences are very difficult to police and normally only comes to light when somebody complains to the authorities.
 - c. Section 24 of the Constitution of South Africa provides for the rights of current and future generations to have the environment protected, to have an environment that is not harmful to our health or well-being, to

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- prevent ecological degradation and pollution and to secure ecologically sustainable development.
- d. By clearing the approximate 45.3810 hectares of virgin land many endangered plant species were destroyed thus causing significant degradation to the environment.
- e. By constructing a bridge in a river (water course) has an direct impact on the flow of the water.
- f. Water is a scarce and unevenly distributed national resource in South Africa.
- g. It is a natural resource and all citizens have a right and responsibility to make sure everybody, including the animals, has clean and sustainable water.
- h. The Western Cape is currently going through a severe drought and thus must every water resource be guarded with extreme care.

2. The under mentioned mitigating circumstances are taken into account:

- a) The accused has pleaded guilty and has shown remorse by doing so.
- b) The accused is a first offender.
- c) Immediately after the accused received the summons he instructed legal and environmental specialists to advise him in dealing with above mentioned case.
- d) It showed that the accused's intention, from the beginning, was to co-operate with the authorities and rectify the situation as soon as possible.

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- e) The accused has and still is contributing to the economic and social development of the Breëde River community through its farming operations.
- f) The accused provides employment to several people.
- g) By pleading guilty the accused drastically curtailed criminal proceedings. Had the accused pleaded not guilty, the trial could have run for several days.
- h) The accused has fully co-operated with the prosecuting authority in this matter and has offered full assistance to the authorities, which is in the interest of the society and law enforcement agencies.
- i) The accused will in two months' time, after finalisation of this case, bring a Section 24G (Act 107/1998) application to the relevant authority.
- j) The accused cleared the above mentioned section of land to try and prevent veld fires.
- k) The accused owns farms on either side of the Brëede River. The bridge was therefore built for the purpose of moving vehicles, tractors and other farm implements from one farm to the other. Otherwise they had to take a 30 km detour which would have increased cost.

C. The just sentence agreed upon.

IT IS AGREED that the following is a just sentence in the circumstances of the charges mentioned above:



Count: 1

Sentence: Two Hundred Thousand Rand (R200 000-00) wholly suspended for (5) years on condition that the accused is not convicted of an offence of contravening Section 49A (1) (e) of the National Environmental Management Act, Act 107 of 1998 committed during the period of suspension.

And that the accused file an application in terms of section 24G of Act 107/1998 (National Environmental Management Act) with the Department of Environmental Affairs and Development Planning Western Cape Government on or before the 1st of September 2017.

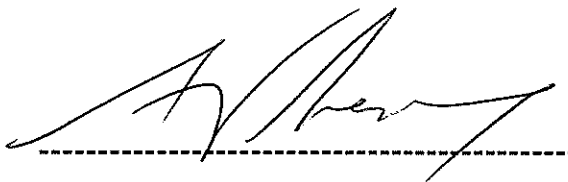
Count: 2

Sentence: Two Hundred Thousand Rand (R200 000-00) wholly suspended for (5) years on condition that the accused is not convicted of an offence of contravening Section 49A (1) (a) of the National Environmental Management Act, Act 107 of 1998 committed during the period of suspension.

And that the accused file an application in terms of section 24G of Act 107/1998 (National Environmental Management Act) with the Department of Environmental Affairs and Development Planning Western Cape Government on or before the 1st of September 2017.

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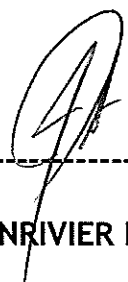
SIGNED AT WORCESTER ON THE 22nd of JUNE 2017.



REGIONAL COURT PROSECUTOR:

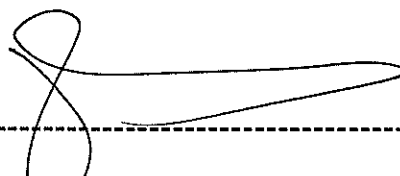
ANDRE THERON

ACCUSED:



GROENRIVIER EIENDOMME PTY LTD
AS REPRESENTED BY JACOBUS WYNAND
PIETERSE

ATTORNEY:



JOHN ERASMUS



STREEKHOF
DIE KAAP TE WORCESTER
2017 -06- 22
THE CAPE AT WORCESTER
REGIONAL COURT



The National Prosecuting Authority of South Africa
Igungu Jikelele Lasekhutshis' Bo Mzantsi Afrika
Die Nasionale vervolgingsgesag van Suid-Afrika

AUTHORISATION IN TERMS OF SECTION 105A(1)(a) OF CRIMINAL PROCEDURE ACT, 1977 (ACT No. 51 OF 1977)

I, **Menzi Simelane**, National Director of Public Prosecutions, hereby in terms of section 105A (1)(a) of the Criminal Procedure Act, 1977, authorise:-

**ANDRE THERON,
ADVANCED REGIONAL COURT PROSECUTOR**

to negotiate and to enter into plea and sentence agreements in respect of all matters within the area of jurisdiction of the

**REGIONAL AND DISTRICT COURTS, LAINGSBURG, MONTAGU,
ROBERTSON, CERES AND WORCESTER**

This authorisation is subject to the Policy Directives Issued in terms of section 105A (11) of the Criminal Procedure Act, 1977, read with section 179(5)(b) of the Constitution.

GIVEN AT.....*Pretoria*.....ON THIS.....*17th*.....DAY OF.....*August*.....2010.

**ADV M. SIMELANE
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**



AFFIDAVIT

I, the undersigned,

JASON SAM LIEBENBERG,

hereby declare under oath and state that:

1.

I am an adult male with identity number 8607245168087. I am currently employed as a Specialised Environmental Officer: Criminal Investigations, in the Directorate Environmental Law Enforcement within the Sub-directorate: Criminal Investigations at the Department of Environmental Affairs and Development Planning ("the Department"), Western Cape Government situated at 1 Dorp Street, Cape Town, 8001.

2.

I am responsible for investigating incidents of non-compliance with environmental legislation in the Western Cape and enforcing compliance, where appropriate. I am designated as an Environmental Management Inspector (Grade 2) in terms of section 31C (1) (a) (i) of the National Environmental Management Act 107 of 1998 ("NEMA"). I am further duly authorised to depose to this affidavit and I'm also the investigating officer in **RAWSONVILLE CAS NO 208/1/2016**.

3.

The purpose of this affidavit is to confirm the prosecutor, Mr Andre Theron employed by the National Prosecuting Authority (Worcester Regional Court) has consulted with me in respect of entering into a plea and sentence agreement with Groenrivier Eiendomme (Pty) Ltd.



4.


The Department has no objection to the plea and sentence agreement on condition that the conditions attached to plea and sentence agreement satisfies the recommendations made by the Department which include a section 24G Application for the rectification of the unlawful conduct undertaken (*ex post facto* authorisation) by Groenrivier Eiendomme (Pty) Ltd.

5.

The Department also requests that the National Prosecuting Authority discuss the content of the final plea and sentence agreement with the Department before signature by the parties to the agreement, to ensure that the interests of the environment is protected as contemplated by section 24 of the Constitution, 1996.

The contents of this affidavit are true and correct to the best of my knowledge and belief. I am aware that should it be presented as evidence and any fact appears therein which I know to be false or do not believe to be true, I can be prosecuted.

I have read this affidavit before signing it.
I know and understand the contents of this affidavit.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.



SIGNATURE OF DEPONENT

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to/affirmed before me and the deponent's signature/mark/thumbprint was placed thereon in my presence -

at Cape Town on 14-06-2017 at 11:50



SIGNATURE OF COMMISSIONER OF OATHS

Fahd Said  (Grade 2)

FULL FIRST NAMES AND SIGNATURE

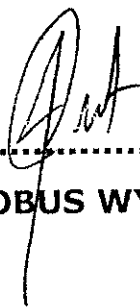
**RESOLUSIE SOOS GENEEM DEUR DIE DIREKTEUR VAN GROENRIVIER
EIENDOMME (PTY) LTD
REGISTRASIENOMMER: 2002/007786/07
GEHOU TE RAWSONVILLE OP 15 MEI 2017.**

Hiermee word besluit dat:

1. Die Maatskappy 'n pleit- en vonnissooreenkoms sluit met die Staat in die saak Die Staat teen Groenrivier Eiendomme (Pty) Ltd en 1 ander onder saaknommer RV656/2016 ingevolge waarvan die Maatskappy skuldig pleit op aanklagtes 1 en 2 soos vervat in die klagstaat;
2. Jakobus Wynand Pieterse as direkteur gemagtig word om enige handeling namens die Maatskappy te verrig om uitvoering te gee aan bogemelde.

GEDATEER te Rawsonville op hierdie 18de dag van Mei 2017.

GESERTIFISEER 'n WARE UITTREKSEL



.....
JAKOBUS WYNAND PIETERSE (DIREKTEUR)