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**IN THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL LOCAL DIVISION,
HELD AT DURBAN**

CASE NO. :

In the matter between:

KOOBENDRAN SAMIE

Applicant

and

SECONA FREIGHT LOGISTICS CC.

First Respondent

**CATO MANOR INDIAN CEMETERY AND
CREMATORIUM ASSOCIATION**

Second Respondent

ETHEKWINI MUNICIPALITY

Third Respondent

**HEAD OF DEPARTMENT: ECONOMIC
DEVELOPMENT, TOURISM AND ENVIRONMENTAL
AFFAIRS: KWAZULU-NATAL**

Fourth Respondent

**MEC FOR ECONOMIC DEVELOPMENT,
TOURISM AND ENVIRONMENTAL AFFAIRS:
KWAZULU-NATAL**

Fifth Respondent

**CHIEF DIRECTOR: KWAZULU-NATAL
DEPARTMENT OF WATER AND SANITATION**

Sixth Respondent

MINISTER FOR WATER AND SANITATION

Seventh Respondent

AMAFA AKWAZULU-NATALI

Eighth Respondent

**SOUTH AFRICAN HERITAGE RESOURCES
AGENCY**

Ninth Respondent

NOTICE OF MOTION

TAKE NOTICE that KOOBENDRAN SAMIE (hereinafter called the applicant) intends to make application to this court for an order:

1.

THAT the applicant's non-compliance with the Uniform Rules of this Court is hereby condoned.

2.

THAT the first and second respondents are forthwith interdicted and restrained from commencing any new, and continuing any existing activities on Erf 329 Cato Manor, located at 21 Wenlock Road, Cato Manor, eThekweni Municipal area (hereinafter referred to as the 'site'), such activities including but not limited to:

- 2.1. the storage, handling and repairs of freight containers;
- 2.2. the storage, handling and dispensing of any fuels and other hazardous substances;
- 2.3. the operation of machinery and the storage, parking and driving of trucks and other vehicles;
- 2.4. any development, excavations, infilling or dumping of any material, including waste;
- 2.5. removal of any vegetation;
- 2.6. alterations, modifications and/or damage to existing buildings and artefacts;

- 2.7. advertising and hosting of any signage;
- 2.8. conducting any other industrial or business activity, and
- 2.9. any other activity which is contrary to the existing land use zoning of the site, and which violates the sanctity of the site as a historic burial ground and crematorium, and which has caused, continues to cause, and will cause damage to the environment, inclusive of the heritage, cultural and historical value of the site;

3.

THAT the first and second respondents are directed jointly and severally to remove all freight containers, trucks, machinery, stored chemicals, solid waste and any other associated movable item or thing from the said site, and complete such removal within specific and immediate timeframes;

4.

THAT any agreement between the first and second respondent concerned with and giving effect to the development, use and occupation of the site, be declared unlawful and set aside;

5.

THAT any permit(s) or authorization(s), approving or giving effect to the development, use or occupation of the site, and demolition or alteration of the buildings on site, or removal or destruction of any grave, tombstone, archaeological or heritage artefact on site, be declared unlawful and set aside;

6.

THAT the first respondent is interdicted and restrained from entering and occupying the said site for the purposes of commencing, conducting and continuing any of its business operations and activities;

7.

THAT the first and second respondents are directed, upon cessation of the activities and removal of the aforementioned things, to thereafter fence off and secure the boundaries of the said site within specific and immediate timeframes to ensure that the site is protected from unauthorised entry, invasion and/or further destruction and abuse;

8.

THAT the first and second respondents are directed, after securing the site, to thereafter, within specific and reasonable timeframes, employ the services of relevant professionals and specialists to investigate, evaluate and assess the damage caused to:

- 8.1. the floodplain areas and associated ecology;
- 8.2. the historic graves, burial grounds and tombstones;
- 8.3. the historic crematorium and other buildings; and
- 8.4. any other heritage, archaeological or cultural artefacts
, on and associated with the site;

9.

THAT the first and second respondents are directed, after evaluating and assessing the damage caused to the site, to thereafter, within specific and reasonable timeframes, compile and submit to the third, fourth, sixth, eighth and ninth respondents, a rehabilitation and restoration plan for the damage caused to the environment, including heritage, cultural and historical resources. Such plan to *inter alia* include:

- 9.1. the details and extent of damage caused to resources on the site,
- 9.2. details of rehabilitation and restoration methods and interventions,
- 9.3. an implementation plan or program with timeframes, and
- 9.4. a conservation plan or program (for the long term conservation of resources on and associated with the site);

10.

THAT the third, fourth, sixth, eighth and ninth respondents are thereafter directed, on receipt of the rehabilitation plan, to review and approve the said plan within specified reasonable timeframes;

11.

THAT the first and second respondents are directed to, after approval of the rehabilitation and restoration plan, within specific and reasonable timeframes, commence with rehabilitation of the site, buildings, graves, burial grounds and heritage artefacts, and complete all the above before a specified reasonable date;

12.

THAT the respondents are directed to, at all stages in the implementation of this order, consult, engage and involve the applicant, members of the Indian community, other interested and affected stakeholders, and families of the deceased persons buried on site; and are further directed jointly and severally, to establish a monitoring committee comprising the aforementioned parties, to be chaired by an independent party, to monitor the implementation of this order and the rehabilitation and conservation of the site and its resources, and the long term conservation and protection of the site as a heritage site;

13.

THAT the eighth and ninth respondents are directed to declare the site a national and/or provincial heritage site in terms of s27 of the National Heritage Resources Act 25 of 1999;

14.

THAT the second, eighth and ninth respondents are directed jointly and severally to *inter alia* in terms of s36 of the National Heritage Resources Act 25 of 1999, to conserve and care for the site, inclusive of the graves and burial grounds, as well as record and identify the graves, and conserve and care for the buildings, structures and resources on site;

15.

THAT the second respondent disclose to the applicant, all historical and current information and records in its possession, relating to the site and its resources, and

the management thereof, including details of individuals buried and cremated at the site, within specific and reasonable timeframes;

16.

THAT the third, fourth, sixth, eighth and ninth respondents disclose to the applicant, all information, permits and authorisations relating to the site and buildings or structures thereon including the occupation and use of the site, within specific and reasonable timeframes;

17.

THAT the respondents are severally liable for all costs associated with complying with this order;

18.

THAT, in the event there is non-compliance with the order of this Court:

- 18.1. the Sheriff is authorised to enter on the property and remove all freight containers, trucks, machinery, and any other associated movable item or thing from the site;
- 18.2. the third to ninth respondents are jointly and severally directed to, within specified and immediate timeframes, implement this order with respect to the:
 - a) fencing off and securing the boundaries of the site from unauthorised access and invasion;
 - b) assessment of damage to the site and its resources;
 - c) rehabilitation and remediation of the damage caused to the site and its resources; and

d) protection and conservation of the site and its resources;

19.

Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **KOOBENDRAN SAMIE**, will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed the address as set out hereunder as the address at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required:

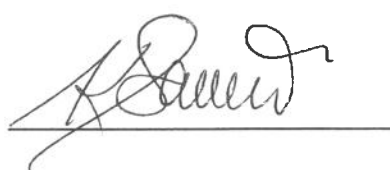
- a) to notify the applicant in writing on or before the _____ and
- b) within fifteen days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further
- c) to appoint in such notification an address referred to in rule 6(5) (b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the

08 January 2018 at 09:30 (time).

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED at DURBAN this 6th day of November 2017.



KOOBENDRAN SAMIE

Room 200, City Engineers Building
166 KE Masinga Road
Durban, 4001

Tel: 083-583-1852
E-mail: Kuben.Samie@gmail.com

Postal Address:
PO Box 53141,
Yellowwood Park, 4011

TO: THE REGISTRAR OF THE HIGH COURT
DURBAN

AND TO: SECONA FREIGHT LOGISTICS CC.

First Respondent

Place of Business:

21 Wenlock Road (off Vusi Mzimela Road),

Cato Manor, Durban

Registered address:

Suite 7, Dicks Centre,

13 Arbee Drive,

Tongaat, 4400

AND TO: CATO MANOR INDIAN CEMETERY AND CREMATORIUM
ASSOCIATION

Second Respondent

Care of: Rosanne Pillai & Associates

2/4 Garbgreen Close

Greenbury Medical Centre

Greenbury, Phoenix

4068

AND TO: ETHEKWINI MUNICIPALITY

Third Respondent

City Hall

263 Pixley KaSeme Street

Durban, 4001

AND TO: HEAD OF DEPARTMENT: ECONOMIC DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS: KWAZULU-NATAL

Fourth Respondent

Care of: The State Attorney

6th Floor, MetLife Building,

391 Anton Lembede Street,

Durban, 4000

AND TO: MEC FOR ECONOMIC DEVELOPMENT, TOURISM AND
ENVIRONMENTAL AFFAIRS: KWAZULU-NATAL

Fifth Respondent

Care of: The State Attorney

6th Floor, MetLife Building,

391 Anton Lembede Street,

Durban, 4000

AND TO: CHIEF DIRECTOR (KWAZULU-NATAL): DEPARTMENT OF WATER
AND SANITATION

Sixth Respondent

Care of: The State Attorney

6th Floor, MetLife Building,

391 Anton Lembede Street,

Durban, 4000

AND TO: MINISTER FOR WATER AND SANITATION

Seventh Respondent

Care of: The State Attorney

6th Floor, MetLife Building,

391 Anton Lembede Street,

Durban, 4000

AND TO: HERITAGE KWAZULU-NATAL (AMAFA)

Eighth Respondent

195 Langalibalele Street,

Pietermaritzburg,

3201

AND TO: SOUTH AFRICAN HERITAGE RESOURCES AGENCY

Ninth Respondent

111 Harrington Street

Cape Town

8001