IN THE KWAZULU-NATAL HIGH COURT, DURBAN

REPUBLIC OF SOUTH AFRICA

Case No: 12667/2012

In the matter between:

KLOOF CONSERVANCY	**Applicant**
and	
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	**First Respondent**
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS	**Second Respondent**
MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES	**Third Respondent**
MINISTER FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	**Fourth Respondent**
PROVINCIAL GOVERNMENT OF KWAZULU-NATAL	**Fifth Respondent**
MEC FOR AGRICULTURE, ENVIRONMENTAL AFFAIRS AND RURAL DEVELOPMENT, PROVINCE OF KWAZULU-NATAL	**Sixth Respondent**
eTHEKWINI MUNICIPALITY	**Seventh Respondent**
KZN EZEMVELO WILDLIFE	**Eighth Respondent**

And in the matter of a review application pursuant to the publication by the second respondent on 19th July 2013 of certain notices in connection with Chapter 5 of NEMBA

REPLYING AFFIDAVIT

I, the undersigned, **PAOLO ANDREA CANDOTTI**, make oath and say that:

1.

I am the deponent to the founding affidavit in the review application, as well as the applicant's affidavits in the main application. I am duly authorised hereto.

2.

Save as may otherwise be stated herein, or as may appear from the context, the facts herein deposed to are within my personal knowledge and belief and are true and correct.

3.

I have read the answering affidavits deposed to by **MS BOSHOFF** and **DR PRESTON.** I reply thereto as set out below.

4.

In doing so, I am mindful of the fact that mere repetition – which characterises the respondents' affidavits in the main application as well as this application – is

unhelpful. So is unnecessary volume. I therefore follow a similar structure to that followed in the applicant's second replying affidavit in the main application:

4.1. At the outset I set out the essence of the applicant's position in reply;

4.2. I thereafter deal as briefly as possible with the contents of the answering affidavits, and only insofar as it is strictly necessary for me to do so.

5.

This Court is already aware – from the replying affidavit in the main application – that before embarking on the review application, the applicant endeavoured to avoid the necessity of doing so by pointing out to the respondents that the amendment of NEMBA on 24 July 2013 left the second respondent – on the second respondent's own version – without a case as to why comprehensive regulations and species lists could not be published under Chapter 5 of NEMBA.

6.

The applicant's letter "SRA3" dated 6 August 2013 (page 3150) expressly proposed that the main application be postponed *sine die* and the second respondent publish comprehensive regulations and species lists under Chapter 5 by 30 April 2014. The

purpose was to avoid what would otherwise have been the necessity of bringing the review application.

7.

The second respondent's reply dated 16 August 2013 ("SRA4" at page 3153) informed the applicant that it was the second respondent's intention to implement the interim regulations and species lists *"as soon as they become enforceable"* (page 3154, paragraph 3.2), and that the second respondent expressly declined to commit the second respondent to *"a fixed date by which the [interim] list and regulations will, if necessary, be supplemented"*.

8.

In the circumstances, it was plain that the second respondent stood by the interim regulations and species lists, and declined to give any assurance that comprehensive regulations and species lists would be promulgated. It was therefore necessary to bring the review application.

9.

The second respondent has now changed its stance. In the answering affidavits delivered in December 2013, the second respondent says that:

9.1. The second respondent has *"already initiated"* the revision of the interim regulations and anticipates that revised regulations and lists will be published in the Gazette for implementation by *"the earliest possible date"* (**MS BOSHOFF**, review application, page 138, paragraphs 16 and 17);

9.2. The relief sought by the applicant in the review application is therefore *"redundant"* (**DR PRESTON**, review application, page 228, paragraph 58 and subsequent paragraphs).

10.

The result is that the applicant has been put to substantial wasted time and costs in preparing and bringing an application that the second respondent now says is *"redundant"* because the second respondent has no intention of putting the interim regulations and species lists into force. This is a complete about-face from the second respondent's stated position on 16 August. The only thing that has changed since 16 August is the second respondent's mind.

11.

In the circumstances, the applicant submits that – regardless of the outcome of the review application – the second respondent should be ordered to pay the costs of the review application on the scale as between attorney and own client.

12.

In addition, the second respondent's position is now that the second respondent is allegedly doing in all haste what the applicant has been asking the second respondent to do since February 2012 (annexure "FA16" at page 659), and for which the applicant launched this application on 3 December 2012.

13.

The applicant will show in argument that NEMBA made perfectly adequate provision for - and peremptorily required - the publication of comprehensive lists and regulations by 31 August 2006. There is therefore no merit in the respondents' contention that they could not have published lists and regulations under Chapter 5 before NEMBA was amended on 24 July 2013. Even if there were, NEMBA should then have been amended long before 24 July 2013 - it is unacceptable and unreasonable for the second respondent to have taken nearly 9 years (NEMBA came into force in 2004) to have procured NEMBA's amendment.

14.

In addition, the second respondent has in any event had ample time since 24 July 2013 to publish comprehensive regulations and species lists. Comprehensive regulations and species lists were published for public comment - which was received and allegedly considered - in early 2009. The second respondent therefore does not start the process afresh. Dr Preston says the species lists compiled by the task team in 2005 formed the basis of the 2009 draft and will form the basis of the new draft. Insofar as the regulations themselves are concerned, the second respondent has the benefit of comprehensive drafts from the task team in 2005/2006, the 2007 drafts published for public comment, the 2009 drafts published for public comment, and the 2013 interim regulations. Given these effective springboards, and the lapse of six months already since 24 July 2013, the new comprehensive lists and regulations should long since have been published for public comment, public comment should already have been considered, and the completed comprehensive regulations and lists should now be ready for final publication and immediate implementation, even allowing for internal processes the second respondent says must take place.

15.

Yet there has been no publication, even for public comment, and there is and can be no explanation for the delay. S70(1)(a) remains binding on the Minister, and the matter is escalating in urgency, as more and more emerging and established species proliferate unregulated across South Africa The absence of regulation is impacting

critically, and exponentially, on South Africa's biodiversity which is now in more urgent need of protection than it has ever been.

16.

I respectfully observe that despite all the second respondent's assurances, the fact remains that more than 7 years has elapsed since the cut-off date of 31 August 2006 prescribed by Section 70(1)(a) of NEMBA. To date no species lists or regulations under Chapter 5 have ever been put into force. This untenable position justifies – by itself – the grant of the relief set out in the draft consolidated order prayed, annexure "X" to the notice of motion in the review application. The relief sought in the consolidated draft order prayed is now subject to a further extension of time, to which the applicant has agreed, viz. that the species lists and regulations be published and put into effect by 30 June 2014, rather than the date of 30 April 2014 originally sought by the applicant.

17.

This extension to 30 June 2014 has come about as follows. On or about 19 December 2013 I was telephoned by **DR PRESTON** who requested a meeting with me on 23 December 2013. I agreed. The meeting was expressly held without prejudice and I am therefore not at liberty to reveal what occurred at the meeting. Suffice it to state that pursuant to the meeting the applicant agreed that the applicant would extend the date of 30 April 2014 to 30 June 2014. This was an undertaking given without

prejudice by the applicant, but the applicant regards itself – in the exercise of fairness and reasonableness to which the applicant is committed – as bound by the undertaking. I further record that one of the factors taken into account by the applicant in agreeing to the (final) extension to 30 June is that in November 2013 the matter was set down for hearing (by direction of the Deputy Judge President with the consent of the parties) on 25 April 2014. It is not practical or realistic for the Court on 25 April 2014 to make an Order that the respondents must put into effect by 30 April 2014. But I believe the papers make it clear that compliance by the respondents with their duties can wait no longer. 30 June 2014 is a reasonable, practical and attainable date for compliance.

18.

AD MS BOSHOFF'S AFFIDAVIT

The contents of **MS BOSHOFF'S** affidavit are largely repetition of what she has previously alleged. It is not necessary for me to burden the papers further by replying thereto. In addition, the contents of her affidavit are either untenable or relate to matters of law. They will be dealt with in argument.

19.

In general, the applicant respectfully submits that the contents of both **MS BOSHOFF'S** as well as **DR PRESTON'S** affidavits evince that the second

respondent either does not appreciate or does not accept the necessity for - and the provisions of - Chapter 5 of NEMBA. Both scenarios are a matter for concern. It follows that the second respondent either does not appreciate or does not accept the principle of legality. This is also a matter for concern. These matters will be dealt with in argument.

20.

There is one aspect of **MS BOSHOFF'S** affidavit that cannot be left for argument. In paragraph 157 **MS BOSHOFF** says that the applicant embarked *"in a process of litigation despite the request by the DEA in February 2013, for a meeting with the applicant in order to address the applicants' concerns"* (sic) (**MS BOSHOFF** review application, page 196, paragraph 157).

21.

This is simply not correct. It is therefore necessary for me to set out the true facts.

22.

On 8 January 2013 (after the main application was launched) the State Attorney sent the applicant's attorneys an email recording that the DEA *"have expressed the desire for me to set up a meeting with you and your client to explore the possibility of resolving this matter without recourse to litigation. They have suggested 17 January 2013 as a possible date."* The State Attorney requested the applicant's attorneys to provide the State Attorney with dates when the applicant and the applicant's attorneys

would be available. I do not put up a copy of this email because it was stated to be sent without prejudice, but given that the second respondent now seeks to make an issue of the matter, it is necessary to set out the correct facts.

23.

The applicant's attorneys replied by letter dated 9 January 2013, agreeing to the meeting and suggesting that it be held on 17 January 2013. In turn, the State Attorney replied to the effect that the State Attorney would be consulting with the respondents on 17 January 2013 and that the State Attorney would contact the applicant's attorney while the respondents' officials were present on 17 January 2013, to arrange a meeting at a mutually convenient time and date.

24.

No further communication has ever been received from the State Attorney concerning another meeting.

25.

The applicant has at all times been ready and willing to meet with the respondents. I demonstrate this by my willingness to meet with **DR PRESTON** when he telephoned

me on or about 19 December 2013 and asked for a meeting on 23 December 2013, to which I agreed. I further refer to the applicant's entirely reasonable proposals set out in the applicant's attorneys' letter dated 6 August 2013 – "SRA3" at page 3150. The core of these proposals was rebuffed, although it now turns out that its rejection was entirely unjustified.

26.

In the circumstances, it is incorrect for the second respondent to allege that the litigation is unreasonable.

27.

AD DR PRESTON'S AFFIDAVIT

In general, **DR PRESTON'S** affidavit is no less repetitive, and no more helpful, than **MS BOSHOFF'S** affidavit. I have already observed the applicant's position in relation to the contents of **DR PRESTON'S** affidavit generally.

28.

It seems that **DR PRESTON** has permitted himself the indulgence of purporting to *"answer"* the allegations contained in my (second) replying affidavit. The second

respondent has never requested this Court's permission to do so, and the second respondent has no right to respond to the applicant's replying affidavit without obtaining the Court's leave to do so.

29.

I am advised that the fact that the second respondent purported to take this Court's procedure into its own hands by responding to the applicant's second replying affidavit, does not give the applicant the right – without also asking this Court's permission to do so – to respond to **DR PRESTON'S** impermissible and inappropriate rejoinder.

30.

That being said, there is one aspect of **DR PRESTON'S** impromptu rejoinder that cannot be left unchallenged. This relates to Yale University's Environmental Performance Index, annexure "SRA0" at page 3139. I am advised that in relation to the EPI the second respondent would in all likelihood have obtained the permission of this Court to respond, because the EPI had not previously been raised before it was mentioned in the replying affidavit.

31.

The applicant and I take exception to **DR PRESTON'S** imputation of possible dishonesty on the part of the applicant in relation to the EPI. The applicant says that it is generally true of **DR PRESTON'S** affidavit that he uses very strong words to convey very weak arguments, and this is true, no less, of his allegations concerning the applicant's reference to the EPI.

32.

DR PRESTON commences his approach to the EPI by summarily rejecting Yale's ranking of South Africa as 128th out of 132 countries, as *"absurd"*. Yet no reason is advanced, and none presents itself, why Yale University – one of the world's leading educational institutions – would lapse into absurdity.

33.

DR PRESTON's attack on the contents of the EPI is restricted to a few (tentative) reasons why South African's ranking has been *"brought down"* in the 2012 EPI report. **DR PRESTON** speaks relatively. South Africa's position was only *"brought down"* in the 2012 EPI report in the sense that in 2012 South Africa was ranked 128th out of 132. South Africa's previous ranking in Yale's EPI report was 124th ("SRA0" at page 3142), hardly something to be proud of. **DR PRESTON'S** explanation of why South Africa was *"brought down"* in this way, is remarkable. He addresses just

4 of the 10 policy categories on which the EPI is based. Of these 4, he apparently concedes the *"climate change"* ranking of 114th, and restricts his comment on another policy category (environmental burden of disease) to an aspect of high child mortality, suggesting that *"how far child mortality in the South African context is a measure of environmental health, is debateable"*. His defence to the eco-system effects of air and water is speculative, to say the least.

34.

Having set out this baseless defence to his accusation that South Africa's ranking is *"absurd"*, **DR PRESTON** goes on to accuse the applicant and myself of possible dishonesty in raising it in the first place, given what **DR PRESTON** says is South Africa's level of investment in fighting IAS.

35.

DR PRESTON'S accusations are entirely without foundation. I show this below.

36.

The EPI was introduced by the applicant in the context of the necessity of obtaining effective relief against the Government. The EPI was introduced to demonstrate the Government's general environmental performance failings. It was introduced by

expressly explaining that the EPI ranks countries on performance indicators tracked across several policy categories.

37.

The EPI makes it clear that there are 10 policy categories taken into account by Yale University for the purpose of assessing the extent to which two objectives have been met by governments : environmental health and ecosystem vitality.

38.

In order to assess the attainment of these 2 objectives, 22 indicators are taken into account across the 10 policy categories. One of the policy categories is *"biodiversity and habitat"* to which it is common cause in these proceedings that IAS are central. The specific performance indicators taken into account by Yale under the policy category head *"biodiversity and habitat"*, are Critical Habitat Protection, Biome Protection and Marine Protected Areas.

39.

I do not annex the full 2012 EPI because it is voluminous and much of its content is irrelevant to the issues in dispute. Its relevance is to show the general performance deficit on the part of the South African government in relation to environmental matters, justifying the granting of the relief sought in this matter, to ensure that the

relief is, insofar possible, effective relief. However, lest it be thought that the applicant does not wish to deal with the details thereof, I set out below for the convenience of this Court the actual terms of the EPI under the head *"Biodiversity and Habitat"* :

> *"4.6* *Biodiversity and Habitat*
> ***Policy Focus***
> *Human activities have altered the world's terrestrial, freshwater and marine eco-systems throughout history, but in the last 50 years the extent and pace of these changes has intensified, resulting in what the Millennium Ecosystem Assessment calls 'a substantial and largely irreversible loss in the diversity of life on Earth' (Millennium Ecosystem Assessment, 2005). The sheer number of species at risk of extinction (16 306 species of plants and animals listed as threatened globally) clearly reflects the threat. Biodiversity – plants, animals, micro-organisms and the ecological processes that interconnect them – forms the planet's natural productivity.* ***Protecting biodiversity ensures that a wide range of 'ecosystem services' like flood control and soil renewal, the production of commodities such as food and new medicines, and finally, spiritually and aesthetic fulfilment, will remain available for current and future generations.***
>
> *Conventional management approaches have focused on individual resources, such as timber or fish production, rather than on ecosystems as a whole. Metrics to measure performance have similarly been limited to simple output quantities (e.g. metric tons of fish caught).* ***Recently policy goals have shifted away from this sectoral approach to managing ecosystems, and moved towards an 'ecosystem approach' that focuses on maintaining the health and integrity of entire eco-systems. (emphasis added)***

40.

It is common cause that it is the Government's own position that IAS are central to biodiversity and habitat issues, and that they impact fundamentally on the provision of ecosystem services. They also impact fundamentally on human health and wellbeing, including psychological, spiritual and aesthetic issues, as set out in "FA16" (pages 659 to 671) to the founding affidavit. Finally, the applicant expressly pointed in its founding papers to the "*Ecosystem Approach"* noted in the EPI. It is therefore incorrect to suggest that IAS are irrelevant to the EPI. It is in any event groundless to suggest that a reference to the EPI in litigation in which government (mal)performance is a core issue, may somehow be dishonest.

41.

In fairness, I should not neglect to quote from the EPI what the EPI has to say about high levels of endemism, such as are encountered in South Africa in relation to indigenous plants, and which may have had the effect of lowering South Africa's ranking in the EPI :

> *"Critical Habitat Protection : Comparable indicators of species conservation by country can be difficult to develop. This is partly due to the fact that for countries with larger natural endowments (e.g. more endemic species), there are greater conservation burdens. Moreover, species are assessed as threatened on the basis of their global conservation status. Even if a country takes extensive measures to protect a species in its own territory, it might still rank poorly on an index that looks at the number of endangered species within its borders.*

> *Thus, a country with few species, threatened or otherwise, could receive a high score, while a country with many endemics and threatened species that is working hard to conserve them could be penalised because a neighbouring country is doing little by way of biodiversity conservation."*

42.

The applicant has been at pains to point out throughout this application (and the correspondence that preceded it) that the applicant acknowledges the necessity and merits of the considerable work done by Working for Water *("WfW").* **DR PRESTON** apparently overlooks this acknowledgment, while failing to grasp what is otherwise common cause : WfW is an IAP clearing agency - not a law enforcement agency - and WfW cannot make up for the second respondent's dereliction of duty in failing to publish regulations and species lists under NEMBA. Instead, **DR PRESTON** apparently misunderstands references to the Minister's undeniable dereliction of duty as an attack on WfW and his own work within the DEA.

43.

The applicant submits that it is evident that **DR PRESTON** – in his unwarranted attack on the applicant's honesty – has lost sight of his objectivity.

44.

I am advised that an allegation of dishonesty against a litigant in the conduct of the case is a very serious matter, and that such an allegation must be well-grounded. **DR PRESTON'S** imputation of dishonesty against the applicant has no foundation at all. It is startlingly inappropriate. I am advised that it justifies an award of costs on the scale as between attorney and own client against the second respondent.

45.

DR PRESTON'S loss of sight of his objectivity is demonstrated not only by the aspersion of dishonesty that he endeavours to cast on the applicant, but by the supercilious tone of his affidavit generally. He dismisses the applicant's demands as grossly unreasonable (**DR PRESTON**, review application, page 201, paragraph 8). In truth, the applicant's demand is that the second respondent comply with the Constitution and Chapter 5 of NEMBA, as the second respondent was required to do by law by no later than 31 August 2006, but has never done. The demand is eminently reasonable.

46.

DR PRESTON characterises this litigation as *"frivolous"*, and the applicant's argument that the State is intent on litigating the matter to finality, as *"ludicrous"*

(**DR PRESTON**, review application, page 205, paragraph 18). As I have shown above, **DR PRESTON'S** allegations are devoid of merit.

47.

DR PRESTON not only accuses the applicant of possible dishonesty in relation to the EPI (page 207, paragraph 21), but also says that it is *"spurious"* to even mention the EPI in litigation of this nature. This charge too, is devoid of merit.

48.

DR PRESTON goes so far as to say that alleged intransigence on the part of the second respondent is *"absurd"*, when the correct position is that it is clearly demonstrated that the second respondent is intransigent in the second respondent's near 10 year muddle in the discharge of the second respondent's express duties under Chapter 5 of NEMBA(2004).

49.

The applicant respectfully submits that all of the aforegoing considerations arising out of **MS BOSHOFF'S** and **DR PRESTON'S** affidavits merit an award of costs on the attorney and own client scale against the second respondent.

50.

Save as aforesaid, I am advised that it is not necessary to burden these papers by traversing the affidavit of **DR PRESTON**. The applicant respectfully records that **DR PRESTON'S** approach to IAS is not only incorrect, but also unfortunate – the fact that something may be difficult does not make it impossible. The fact that protection of the environment and biodiversity may impinge upon economic interests or leisure activities does not detract from the necessity of protecting the environment and biodiversity. The Ecosystem Approach espoused by WEHAB and the Ethekwini Municipality, and noted by Yale in the EPI, appears to be lost on Dr Preston, who dismisses the applicant's stance (which is based on the precepts and provisions of the Constitution and NEMBA), as *"fundamentalist"* and unattainable. Most importantly, the Constitution and NEMBA do not share Dr Preston's pessimism, and it is to these institutions that the second respondent is answerable.

51.

The applicant, and several of its members, have in fact rendered their own properties, and properties on which the applicant has worked, reasonably free of IAPs. There is nothing special about the applicant and its members. If they can do it on their properties so can everyone else. WfW is not required to do it for them. It is the landowner's responsibility. This is the position in law under NEMBA.

52.

The applicant believes that it is necessary to deal with certain specific allegations in **DR PRESTON's** affidavit.

53.

DR PRESTON concedes that there are *"inadequacies in the enforcement of NEMBA"* (**DR PRESTON**, review application, page 210, paragraph 27). The correct position is that there currently cannot be any IAS law enforcement under Chapter 5 of NEMBA because NEMBA is structured in such a way that for Chapter 5 to be rendered effective, it is first necessary to publish and bring into effect the requisite species lists and regulations. The correct position is that there is therefore no IAS law enforcement under NEMBA, while law enforcement under CARA is either inadequate (in certain areas) or totally lacking (in others). This is the position of **LESLEY HENDERSON**, and it is not seriously disputed by **DR PRESTON**. The reason that he cannot dispute it is because it is correct.

54.

DR PRESTON correctly likens the IAS position to that of a *"malignant cancer"* (**DR PRESTON**, review application, page 213, paragraph 32). In this and other parts of his affidavit **DR PRESTON** confuses the requirements for a successful IAS clearing agency (WfW), with the requirements for a successful IAS law-enforcement

agency (EMIs under Chapter 5 of NEMBA). WfW has no legal power to compel the removal of IAS. It is necessarily dependent on the co-operation of landowners. Law enforcement operates along entirely different lines. It is not – and has never been – a requirement for law enforcement that a person subject to the law must be persuaded of the law's necessity or its merits before that person is required to comply. All landowners in South Africa are subject to the law. They either comply with the law of their own volition (in which case they co-operate), or they do not. If they do not comply, the law must be applied against them. This entails issuing them with directives under Chapter 5 of NEMBA and, in the event of non-compliance, prosecuting them in accordance with the law for the offence/s that they commit. **DR PRESTON** apparently fails – or refuses – to understand these simple, elementary propositions.

55.

DR PRESTON also misconceives the legal relationship between a landowner and the State. EMIs are not *"doctors"* administering treatment to *"patients"*. Their duties and powers are set out in NEMA and NEMBA. In particular, they implement the provisions of Chapter 5 of NEMBA which require landowners to take steps to control and eradicate listed invasive species that occur on their property. It is untenable – as well as wasteful and inefficient of government resources - that an EMI who has entered a landowner's property for the purpose of combating IAS, should turn a blind eye to known IAS on that property merely on the ground that government is at that

stage prioritising other IAS also on that property. This is more especially so given the uncontested views of **MORAN** *et al* (page 3166 at 3167) that there is nothing static about the invasiveness of a species.

56.

Significantly, **DR PRESTON** is unable to advance any serious grounds on which to refute paragraph 135 of my (second) replying affidavit, and those contents thereof that **LESLEY HENDERSON** expressly agreed with. In particular, **DR PRESTON** does not deny that it is necessary to address invasive species that emanate from urban areas. Instead he advances the view that it is *"impossible for landowners to know which of the approximately 377 listed invasive (IAPs) occur on their land"* (**DR PRESTON**, review application, page 225, paragraph 53). The applicant has never suggested that landowners should be familiar with all 377 listed invasive species. It is the duty of EMIs to be acquainted with listed invasive species, and to issue directives to landowners that they control or eradicate those species. The EMIs will necessarily explain to landowners by way of directives what IAS are on their property.

57.

No less concerning is **DR PRESTON'S** stance that *"landowners may use rate-payer and other structures to refuse to clear Monterey pine from their properties, and I do*

not think that we would have the capacity to then go on to their land – even if at their risk – and clear these massive trees next to their houses and other structures" (**DR PRESTON**, review application, pages 225 to 226, paragraph 53). There are 2 fundamental problems inherent in this stance :

57.1. The first problem is that the possibility that a person or persons may defy the law, does not afford the second respondent a defence to an order that the second respondent comply with extant provisions of NEMBA (Section 70(1)(a)) and publish the requisite lists and regulations within a stated time period (which elapsed more than 7 years ago);

57.2. The second problem is that this passage demonstrates **DR PRESTON'S** fundamental misunderstanding of what the applicant seeks, and what it takes to apply the law. No-one has suggested that if landowners do not comply with the law, **DR PRESTON** and his teams in WfW must go on to their properties and clear them of IAS. All that the applicant suggests is that the species lists and regulations be published and put into effect so that the precepts and provisions of Chapter 5 may be given effect to, and the law may take its ordinary course. This entails the issuing of directives and, in the event of non-compliance, prosecution under NEMBA. This is simply what NEMBA provides for, and what the second respondent has contrived to defeat for seven and a half years now.

58.

The applicant is especially concerned about **DR PRESTON'S** statement (**DR PRESTON**, review application, page 226, paragraph 53) that *"if landowners were forced to comply with the law, they could then demand that all public land should be cleared"* (which is precisely what NEMBA requires) but *"we do not have the resources to do so"*. Plainly, government has no intention of complying with s76 of NEMBA. There is objective reason to believe that government will do everything in its power to delay indefinitely compliance by government departments with Section 76 of NEMBA. This, in itself, is sufficient justification to grant the relief sought by the applicant.

59.

Save as may be consistent with the aforegoing, and with the contents of the founding affidavit, the applicant's affidavits in the main application, and **LESLEY HENDERSON'S** affidavit, I deny the remaining allegations in **DR PRESTON'S** affidavit.

60.

In the circumstances, the applicant respectfully persists in seeking an order in terms of the consolidated order prayed, annexure "X" to the notice of motion in the review application, save that in paragraphs 3 and 5 the date of 30 April 2014 be deleted and replaced by the date 30 June 2014.

PAOLO ANDREA CANDOTTI

I CERTIFY THAT the Deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn to at on this day of 2014 under compliance with the Regulations contained in Government Notice No R1258 dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS

lvw/mdcs/Kloof Conservancy review application – replying aff