IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No:17469/2024

In the matter between:

PLATINUM MILE INV. 442 (PTY) LTD	**First Applicant**
THE TRUSTEES OF THE ARMSTRONG FLORA TRUST (IT977/2006)	**Second Applicant**

v

THE CHIEF DIRECTOR, THE DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT	**First Respondent**
THE DIRECTOR-GENERAL OF THE DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT	**Second Respondent**
THE MINISTER OF THE DEPARTMENT OF FORESTRY FISHERIES AND THE ENVIRONMENT	**Third Respondent**

ESKOM HOLDINGS SOC LTD **Fourth Respondent**

THE NATIONAL TRANSMISSION COMPANY OF SOUTH AFRICA **Fifth Respondent**

JUDGMENT DELIVERED ELECTRONICALLY:
THURSDAY, 20 MARCH 2025

NZIWENI, J

Introduction

[1] This litigation involves the granting of interim interdict against the organs of State. The instant dispute was triggered by an [alleged fortuitous] discovery by the First Applicant's director, about a meeting arranged by the Fourth Respondent. The said meeting was directly related to the erection of transmission lines.

[2] This application is part of a review application that is composed of two parts, A and B. Part A is the exclusive focus of this Court. In Part A, the Applicant seeks that, pending the finalisation of the review application in Part B, the Fourth Respondent ("ESKOM") and/ or the Fifth Respondent ("the National Transmission Company of South Africa") be immediately prohibited from taking any further step in the process of expropriation underway or envisaged by it over the following properties:

- Portion 7 of the Farm Geelhoutboom No 217, George RD; and
- Portion 46 of Farm Geelhoutboom No 217, George RD.

[3] I find the history of this matter to be illuminating. The essence of the relief in these proceedings entails, inter *alia*, the suspension of the processes that require the Applicants to consent to grant a limitation of their property rights by consenting to the granting of a land servitude.

[4] The heart of the challenge is the Public Participation Process ("PPP"). The Applicants contend that there were shortcomings of the PPP, as they were never given notices of the PPP as prescribed by law. As such, the PPP was *inter alia* flawed, and unlawful. Most of the factual background to these proceedings is not in dispute and I turn, therefore, to that factual background.

Background

[5] Since 2015 ESKOM has intended to build two new transmission powerlines in the Southern Cape. An initial process of environmental investigation started in 2015. The plan included –

- the short line: the construction of a transmission powerline from Mossel Bay (Gourikwa substation) to George (Blanco substation). The original DEA reference was 14/12/16//3/3/2/**921**
- the long line: the construction of a powerline from George (Blanco substation) to Beaufort West (Droërivier substation). The original DEA reference was 14/12/16//3/3/2/**922**.

[6] On or about 2 December 2016 ESKOM was informed that the process under EA reference 14/12/16/3/3/2/**921** and EA reference 14/12/16/3/3/2/**922** for the proposed transmission lines had lapsed.

[7] In January 2017 ESKOM resubmitted new applications for the authorization of two proposed transmission lines, under DEA reference 14/12/16/3/3/**994** and under DEA reference 14/12/16/3/3/**995**. A second round started in 2017, and it was expressly stated that the process had to be repeated with the relevant regulations listed in 2017, at the instance of ESKOM.

[8] On 13 November 2017, the Competent Authority issued Environmental Authority/ies (EA/s) that granted ESKOM an EA with reference 14/12/16/3/3/**994** (Gourikwa/Blanco EA). According to Mr Grunewald (ESKOM's consultant), he needs to secure servitude with the Applicants over their properties only regarding the construction of the transmission line with DEA reference 14/12/16/3/3/2/994. He further states that the servitude required over the properties in question does not relate to the DEA reference 14/12/16/3/3/2/995.

[9] On 14 November 2017, the Competent Authority granted ESKOM an EA with reference 14/12/16/3/3/**995** (Blanco/Droërivier EA).

[10] The 2017 EAs permitted ESKOM to erect overhead transmission lines for the Droërivier/Blanco route and the Gourikwa/Blanco route. The Applicants' properties are on the list of farms over which the Gourikwa/Blanco route transmission line would run.

[11] On 30 August 2022, the Competent Authority approved applications for amendment of the transmission line [EAs] that extended the validity periods to 10 years.

[12] The First Applicant asserts that it only became aware of the granting of the EAs on 26 March 2024. The founding affidavit reveals that the Second Applicant became aware of the existence of the EAs by the end of June 2024. The second Applicant became aware of the intended project as a result of attempts by Mr Grunewald to negotiate with the First Applicant.

[13] In July 2024, Mr Grunewald wanted to arrange an appointment for a visit to the First Applicant's farm to determine its value.

[14] On 11 July 2024, the First Applicant's attorney was contacted by Mr Grunewald to discuss ESKOM'S termination of the expropriation process. By letter dated 12 July 2024, the First Applicant's attorney requested ESKOM to stop all expropriation

processes until the final determination of the review application. ESKOM failed to respond to the letter of 12 July 2024.

[15] Thus, the Applicants contend that the shortcomings invalidated the granting of the respective EAs granted by the Competent Authority. As a result of the failure to respond, the Applicants launched this application to obtain the interdictory relief that is sought in Part A [to suspend its process of expropriation], pending the outcome of Part B. Consequently, the Applicants seek to halt the negotiations between them [as affected landowners] and the Fourth Respondent ("ESKOM") pending the hearing in Part B.

The Parties

[16] The First Applicant is the registered owner of Portion 7 of Farm Geelhoutboom and the Second Applicant is the owner of Portion 46 of Farm Geelhoutboom No 217 ("the properties in question"). The Second Applicant is the registered owner of Portions 46 of Farm Geelhoutboom, George RD.

[17] The First Respondent is the Chief Director of the Department of Forestry, Fisheries and the Environment ("the competent authority"); the Second Respondent is the Director-General of the Department of Forestry, Fisheries and the Environment ("the DG"); the Third Respondent is the Minister of Forestry, Fisheries and the Environment [joined as an interested party]; the Fourth Respondent is Eskom

Holdings SOC LTD, ("ESKOM") and the Fifth Respondent is the National Transmission Company of South Africa.

Applicants' submissions

[18] According to the Applicants, despite the fact that they are affected landowners in the area which is intended to be a subject of an overhead transmission line, they never got notices of the environmental investigations that began in 2015 and recommenced in 2017. It is further asserted that this is the fact despite that a letter was written to the First Applicant. According to the counsel on behalf of the Applicant, Mr Du Toit SC, the letter that was written to the First Applicant was not in accordance with the law. Mr Du Toit SC further submitted that as far as the second Applicant is concerned, it is an uncontroverted fact that the Second Applicant was never given the notice of the investigations at issue in this matter.

The Respondents' submissions

[19] Mr Govender, the project manager from Envirolutions denied that no notices of the two applications for environmental authorization were sent to the First Applicant. According to him, in terms of their draft report dated May 2015, a registered letter was sent to the first Applicant's postal address. He also stated in his affidavit that the deponent to the founding affidavit was also sent a notification dated 4 August 2015.

[20] Furthermore, the Respondents deny that the project that Mr Grunewald is involved in has anything to do with expropriation. Thus, the Respondents contend that Mr Grunewald has no mandate to consider expropriation.

[21] According to Mr Grunewald, his task only entailed contact with the landowners affected by the proposed route(s), in order to discuss the right to register a servitude of electrical power transmission over the property within the approved power line route. According to the Respondents, the provisions of the Expropriation Act, Act 73 of 1975 have not been triggered.

[22] It is the contention of the Respondents that Mr Roets, the Chief Executive Officer of the First Applicant, refused to engage Mr Grunewald during his visits. According to Mr Grunewald Mr Roets is encouraging other interested parties to be obstructive.

[23] Over and above these Respondents' assertions, an important submission advanced by Jaga SC, on behalf of the Respondents is that this Court is being required to grant a relief that is ill-founded and unnecessary. In these circumstances, it is argued on the Respondents' behalf that the interdictory relief is premature. It is argued by the Respondents that the Applicants have not satisfied the three requirements for an interim interdict.

[24] Therefore, the Respondents' opposition to the interim relief proceeded principally on four related but distinct strands. The first strand is, no case made out for the existence of a *prima facie* right to the relief sought in Part B.

The second strand of the respondents' argument can be described in the following way: no well-grounded apprehension of irreparable harm exists. As the Applicants have failed to produce any evidence in support of the allegation that the laying of overhead transmission lines over 'extremely valuable farming properties' will cause harm to the farm or the farming operations.

The third strand that I should mention is, that the balance of convenience does not favour the Applicants, because the transmission lines have been in the pipeline for many years, and the grant of such an interdict this late would undermine the efforts to build much needed electricity capacity in the region and the country. Thus, the Respondents argue that the Applicants have delayed unreasonably in launching this application.

[25] Lastly, it is argued on behalf of the Respondents that the Applicants have another satisfactory remedy. Mr Jaga SC, Respondents' counsel, developed these submissions in the course of his argument. He submitted that the Applicants ought to have instituted and can still propose an expedited review process that would not be opposed.

The issue

[26] In my view, this application is inextricably tied to the application in Part B. It may be convenient at this stage to briefly state the issue involved in Part B. Without that context, the relief sought makes no sense. This is so because the issue before me would be best understood against the background issue in Part B.

[27] It is a striking feature of this case that the central question generally presented by this particular review in Part B is whether the Envirolution Consulting, acting on the instruction of the Fourth Respondent ("ESKOM") complied with the legal prescripts imposed by the National Environmental Management Act, Act 107 of 1998 ("NEMA") and the Environmental Impact Assessment Regulations, 2014 ("the EIA Regulations") of giving notice to the First Applicant and the Second Applicant, to have enabled them to sign up as Affected and/or Interested Parties (I& Aps) and make appropriate comments and submissions during the investigations undertaken for the erection of the transmission lines which resulted in the authorization granted by National Department of Environmental Affairs ("DEA") on 13 and 14 November 2017 by the First Respondent. I wish to emphasise at the outset that this question is not for this Court to decide.

[28] Viewed in the light of the above issue, the issue in this particular application is whether the Applicants satisfied the requirements of the interdictory relief. Of course, this begs the question as to what is it that the Applicants seek to stay.

The interim interdict

[29] In this part of the application, this Court is expected to decide whether the Applicants satisfy the requirements of an interim interdict that would restrain the Respondents from continuing with the process that Mr Grunewald was undertaking ("the negotiation phase"). As I have indicated, the Respondents oppose this application.

[30] The law regarding the requirements of interim interdicts is reasonably well settled. As such, the line of authorities hardly needs citation. It is thus firmly established that an applicant who seeks an interim interdict needs to address four factors which are:

(a) a *prima facie* right, even if it is open to some doubt;

(b) injury actually committed or reasonably apprehended;

(c) the balance of convenience; and

(d) the absence of similar protection by any other remedy.

Prima facie right

[31] As evident by its wording, ordinarily, the threshold to satisfy this requirement is not high. Moreso, in light of the fact that the relief sought by the applicant will not have the effect of a final decision. Consequently, generally speaking an applicant is not required to establish a real right or a strong *prima facie* right, rather the applicant must show a *prima facie* right, even if it is open to some doubt. As far as interim

interdict is concerned, customarily, less emphasis is placed on the strength of the right.

[32] However, the case of *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18, 2012 (6) SA 223 (CC), 2012 (11) BCLR 1148 (CC) at paragraphs 44-47 provides an obvious contrast to the approach and test to be applied to interim interdicts against the exercise of power within the domain of government pending review and is very instructive. The Constitutional Court stated the following:

> "[44] The common law annotation to the Setlogelo test is that courts grant temporary restraining orders against the exercise of statutory power only in exceptional cases and when a strong case for that relief has been made out. Beyond the common law, separation of powers is an even more vital tenet of our constitutional democracy. This means that the Constitution requires courts to ensure that all branches of Government act within the law. However, courts in turn must refrain from entering the exclusive terrain of the Executive and the Legislative branches of Government unless the intrusion is mandated by the Constitution itself.
>
> [45] It seems to me that it is unnecessary to fashion a new test for the grant of an interim interdict. The *Setlogelo* test, as adapted by case law, continues to be a handy and ready guide to the bench and practitioners alike in the grant of interdicts in busy Magistrates' Courts and High Courts. However, now the test must be applied cognisant of the normative scheme and democratic principles that underpin our Constitution. This means that when a court considers whether to grant an interim interdict it must do so in a way that promotes the objects, spirit and purport of the Constitution.
>
> [46] Two ready examples come to mind. If the right asserted in a claim for an interim interdict is sourced from the Constitution it would be redundant to enquire whether that right exists. Similarly, when a court weighs up where the balance of convenience rests,

it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought.

[47] The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into the exclusive terrain of another branch of Government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm. A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant's case may be granted only in the clearest of cases and after a careful consideration of separation of powers harm. It is neither prudent nor necessary to define "clearest of cases". However, one important consideration would be whether the harm apprehended by the claimant amounts to a breach of one or more fundamental rights warranted by the Bill of Rights. This is not such a case".

[33] In the present case, of course, as the Applicants have been at pains to point out, that there is a duty to notify the owner about anything related to his or her property rights. It is as well to remind oneself at this stage that the court is concerned with an application for an interim interdict that aims to guard the applicant's rights.

[34] If regard is had to the facts of this case, it becomes clear that the Applicants have established more than a *prima facie* right. This is so because the project in question involves their respective properties. The Applicants' property rights appear strong. To this end, this gives them the right to approach a court to protect their rights. Thus, they have every right to challenge the legitimacy of the project that has the potential of affecting their property rights.

[35] The question as to whether the notices were effected, or whether a correct communication tool was used, or whether the Applicants ought to have known about the PPP, or whether to an extent there was compliance with the PPP and whether there was a genuine, adequate opportunity to participate, is not for this Court to decide. The broader context is irrelevant to the narrow issue before me. As such, I need not delve that deep into the merits of this matter as far as this requirement is concerned. Therefore, the owners' property right to demand notification appears, *prima facie*, to be unassailable. Particularly, given the fact that they require determination of their allegations of noncompliance.

[36] A property owner, as an affected party has a right to be timeously informed regarding applications in terms of NEMA, that may have an environmental impact on his or her property. What is more, the purpose of a notice regarding PPP, can never be overstated as it provides affected parties or interested parties with the opportunity to make submissions prior to a decision and possible environmental impact on their properties. A notice is also a tool to make sure that affected parties are not sidelined.

[37] In terms of Section (2)(4)(f) of NEMA, the participation of all interested and affected parties in environmental governance must be promoted and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation. Section 24(1A) (c) of NEMA demands from an applicant for EA to strictly comply with any regulated procedure related to public consultation and information gathering through the PPP.

[38] Accordingly, the Applicants have succeeded in establishing the first requirement.

Injury actually committed or reasonably apprehended

[39] The Applicants claim that they will suffer irreparable injury if the negotiation process is not halted pending the hearing of the review application. According to the Applicants, there is a risk that their properties may be appropriated if the negotiation phase is not halted. During the hearing of the application, counsel for the Applicants, Mr Du Toit SC, submitted that the process employed by ESKOM, including the negotiations undertaken by Mr Grunewald, have undertones of expropriation to the properties in question. Mr Du Toit SC, argued that the Applicants are using the threat of expropriation in a loose sense. According to him [Mr Du Toit], the threat of expropriation is an obvious alternative, in the sense that if the Applicants, during the negotiation phase, do not agree to voluntarily grant ESKOM the right of servitude, then the obvious step is expropriation.

[40] It is argued on Applicant's behalf that expropriation is not a figment of the Applicant's imagination as being the end point of the process, so, the argument continued that the threat of expropriation is real if a landowner and Mr Grunewald, during the negotiations, do not agree on a figure for the rights to get permission for the construction of the powerlines [the right for servitude]. According to Mr Du Toit, if the negotiations fail, ESKOM reserves the rights in terms of section 9 (1) (a) of the Expropriation Act, Act 63 of 1975. According to the Applicants, the

negotiations undertaken by Mr Grunewald, have far-reaching implications for the landowners who did not receive notifications upfront.

[41] To buttress this contention, Mr Du Toit emphasised the provisions of Regulation 2 of the Electricity Regulation Act, Act 4 of 2006 ("the Act").

[42] Regulation 2 states the following:

"2. Procedure to be followed by the licensee. -
(I) Any licensee who requires the State to expropriate land on its behalf, or any right in over or in respect of land as contemplated in section 27(I) of the Act, must after having complied with sub regulations (3) and (4), apply in writing to the Minister of Public Works to do so in the manner prescribed in sub regulations (2) and (6).
(2) The application contemplated in sub regulation (I) must contain the following:
(a) A full description of the land or right in, over or in respect of land to be expropriated on behalf of the licensee;
(b) the reasons and motivation why the licensee reasonably requires the said land or right in, over or in respect of land with a full description of the facilities for or in connection with which the said land or right in, over or in respect of land is so required by the licensee;
(c) full reasons why the said facilities will enhance the electricity infrastructure in the national interest;
(d) a full motivation why the requested expropriation will be in the public interest as contemplated by section 25(2) of the Constitution;
(e) the full name and address of the owner;

(f) **the history of negotiation between the licensee, the owner** and holders of unregistered rights in the said land for the acquisition of the land or the right in, over or in respect of land as well as the reasons why the licensee is unable to acquire such land or right in land by agreement with the said owner and holders of unregistered rights in the said land; . . ."

[43] The Applicants assert that the irreparable injury that may arise from the terms of the above-mentioned statutes is meaningful. The process contemplated in Regulation 2 (f) of the Act signifies that the negotiations phase between ESKOM and the landowner plays a role in the expropriation process. According to the Applicants, in light of the fact that they [the Applicants] allege that they did not receive any notice of the project, if the interdict is not granted there is no way it can be said that there is no right that has been infringed. Particularly, with the looming threat of expropriation.

[44] As mentioned previously, that here the nature of the harm involves property rights. In this matter, the Respondents assert that notices were issued. However, the mere fact that the Respondents are of the view that they complied with the requirements of the PPP indicates that they believe that the process undertaken by ESKOM is beyond reproach. Thus, the Respondents call into question the Applicants' assertion that they did not receive notices. As such there is a likelihood that ESKOM may continue with the negotiation process despite the fact that there is an impeding review.

[45] I am well aware that the interdict sought might result in some delay or additional cost. However, the fact that the Applicants seek a prohibitory interdict that would enjoin Grunewald [ESKOM] from undertaking certain actions while the litigation is ongoing, may prevent a more burdensome injustice. Should an interdict not be

granted the process that the property owners seek to halt may proceed without a court interrogating its legitimacy.

[46] It is, of course, the case that the Respondents deny that what Mr Grunewald is doing would ultimately lead to expropriation. Regulation 2 and the evidence do not support the Respondents' proposition. Surely, if the exercise that was undertaken by Mr Grunewald is not significant in the bigger scheme of things, then there is no harm in staying in the negotiation.

- In view of the fact that the Applicants contend that they were not made aware of the PPP, the interdict would preserve the status *quo* pending the review application. It would also effectively restrain the Respondents from dealing with their properties, pending the litigation.

[47] In addition, if the negotiation phase is not stayed, that would create significant uncertainty for the Applicants. Were that to happen and the negotiations continued, they [the Applicants] would be forced to be part of the negotiations that would inevitably lead to the process contemplated in Regulation 2 of the Act. Therefore, it may ultimately give rise to irreparable harm [expropriation].

[48] The Applicants allege that they were not part of the PPP. If the negotiations continue and they [the negotiations] lead to the application of regulation 2 before the finalization of the review; in the circumstances, the harm to Applicants cannot be said to be speculative. This would lead to irreversible harm. As for the failure

to participate in PPP, that cannot be remedied by the award of damages. The applicant has shown also that there is a valid question to be adjudicated in Part B.

[49] I am satisfied that the Applicants have shown the existence of a well-grounded apprehension. In the context of this case, if indeed the Applicants were not to be afforded an opportunity to partake in PPP, I am satisfied that the Applicants have demonstrated that if the interdict is not granted, they would suffer irreparable harm. In the circumstances, the irreparable injury is clear and as such it is reasonably apprehended.

The balance of convenience

[50] In *National Treasury and Others v Opposition to Urban Tolling Alliance*, supra, in page 1165, at para 55, the following is stated:

> "A court must be satisfied that the balance of convenience favours the granting of a temporary interdict. It must first weigh the harm to be endured by an applicant if interim relief is not granted as against the harm a respondent will bear, if the interdict is granted. Thus, a court must assess all relevant factors carefully in order to decide where the balance of convenience rests."

[51] Keeping with the above extract, in the determination of this requirement, it is necessary for this Court to conduct a balancing act to determine as to who among the parties is going to suffer more damage if this Court is inclined or disinclined to grant the interdict. The Applicants fear that the organs of State intend to limit their property rights without due process. The potential harm claimed by the Applicants,

involves a constitutional right. Thus, the interest that the Applicants seek to protect is significant.

[52] Property rights are guaranteed in the Constitution. And if there is a likelihood that a constitutional right is going to be impacted, it is imperative that the process involved should be transparent, and fully complainant with the law. In other words, it should be beyond reproach. If the credibility of the process is challenged it is critical that the allegations of irregularity should be investigated.

[53] The Applicants argue that the balance of convenience favour the granting of the interdict. I have already made a finding that there are prospects of reasonable harm. ESKOM is responsible for the country's electricity supply.

[54] The harm claimed by the Applicants involves a constitutional right. Property rights are guaranteed in the Constitution. And if there is a likelihood that a constitutional right is going to be impacted, and if the credibility of the process is challenged it is critical that the allegations of irregularity should be investigated.

[55] The Applicants argue that the balance of convenience favours the granting of the interdict. I have already made a finding that there are prospects of reasonable harm. ESKOM is responsible for the country's electricity supply. It is well

documented that the national electricity grid is at risk. Because of that, the country has been subjected to bouts of loadshedding.

[56] It is right to say that the projects involving ESKOM play a significant role in the economy of the country. In *Eskom Holdings Soc Ltd and Another v Sonae Arauco (Pty) Ltd*, (1018/2023) [2024] ZASCA 177 (18 December 2024), the SCA stated the following [in an obiter dictum] at paragraphs 38-42:

> [38] . . . The essence of loadshedding is the balancing of insufficient generation capacity and excessive customer demand, by rapidly reducing power supply, in other words, by implementing scheduled and planned power interruptions to avoid the collapse of the national grid.
>
> [39] The consequences of a national blackout would self-evidently be catastrophic. Without electricity, essential services, including water supply, health, travel, internet and banking services, among others, will be interrupted. While one can only speculate about how long it would take to restore electricity supply after a national blackout, there is no reason to doubt Eskom's estimate that it could take up to two weeks. This is undoubtedly a serious risk that the country can ill afford. It is for this reason that the Act and the Codes published in terms thereof provide a regulatory framework to enable Eskom to protect the national grid through scheduled, fair and responsible load reduction.
> [40] Section 21(1) of the Act 'empowers and obliges a licensee to exercise the powers and perform the duties set out in such licence…'. In terms of s 35(2) of the Act, NERSA may make guidelines and publish codes of conduct and practice regulating 'the relationship between licensees and customers and end users' and 'relating to the operation, use and maintenance of transmission and distribution power systems'.
>
> [41] NERSA has published two codes to regulate the implementation of loadshedding, namely, the 2019 Code and the South African Grid Code System

> Operation Code (the Grid Code) (collectively referred to as the Codes). These Codes form part of license conditions and oblige licensees, including Eskom, to adhere to their prescripts.
>
> [42] In terms of the Grid Code, Eskom, as the 'Systems Operator', is mandated to take prompt remedial action 'to relieve any abnormal condition that may jeopardise reliable operation' and to 'shed customer load to maintain system integrity'.

[57] In that context, it is also significant to note that there is no evidence before this Court to prove that if this Court grants a stay of the negotiations would put the public at risk. I also bear in mind that this project has been in the pipeline since 2015, and at one point it lapsed. The above-cited dictum demonstrates that ESKOM, has got alternative ways to avert the threat of catastrophe. The relevant project demonstrates how ESKOM is working tirelessly to avoid a more severe future crisis.

[58] In considering the balance of convenience between the parties, the Applicants, unlike ESKOM, do not have the benefit of alternative methods of mitigating the harshness of the potential harm. Thus, the balance of convenience weighs strongly in the Applicants' favour. Thus, when viewing the matter as a whole, it is my view that the balance of convenience favours the grant of interim relief.

The absence of similar protection by any other remedy

[59] From the aforegoing, there is doubt as to the availability of a satisfactory alternative remedy. The harm to the potential harm to the Applicants cannot be

quantified in monetary terms. It would thus be fair to grant the interdict. The Respondents suggested that hearing of Part B should be expedited, in my mind that would be a simplistic approach to a complicated issue.

[60] In the result, I make the following order;

1. Pending the finalization of the Review Application [Part B], the Fourth and the Fifth Respondent are prohibited from taking any step in the process of expropriation underway or envisaged by it over the following properties:

   1.1 Portion 7 of the Farm Geelhoutboom No 217, George RD; and

   1.2 Portion 46 of Farm Geelhoutboom No 217, George RD.

2. Costs of this Application are to be paid by the Fourth and Fifth Respondents, jointly and severally, the one paying the other absolved. The Respondents are to pay the costs of this application on scale C.

CN NZIWENI

JUDGE OF THE HIGH COURT

APPEARANCES

Counsel for the Applicants	Adv J Du Toit George Chambers
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	A Vosloo
Counsel for the 4th and 5th Respondents	Adv R Jaga (SC) Cape Bar
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