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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2025-077106

- | | |
|-----|---|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES /NO |
| (3) | REVISED: YES |

8 June 2026

DATE

SIGNATURE

In the matter between:

REDEFINE RETAIL (PTY) LTD

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Second Respondent

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Third Respondent

EKURHULENI WATER CARE COMPANY NPC

Fourth Respondent

MINISTER OF WATER AFFAIRS AND SANITATION

Fifth Respondent

**DIRECTOR-GENERAL FOR THE DEPARTMENT OF
WATER AND SANITATION**

Sixth Respondent

MEC FOR AGRICULTURE AND RURAL DEVELOPMENT, GAUTENG	Seventh Respondent
HEAD OF DEPARTMENT FOR AGRICULTURE AND RURAL DEVELOPMENT, GAUTENG	Eighth Respondent
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT	Ninth Respondent
DIRECTOR-GENERAL FOR THE DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT	Tenth Respondent
MEC FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, GAUTENG	Eleventh Respondent
HEAD OF DEPARTMENT FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, GAUTENG	Twelfth Respondent
MINISTER OF HUMAN SETTLEMENTS	Thirteenth Respondent
DIRECTOR-GENERAL FOR THE DEPARTMENT OF HUMAN SETTLEMENTS	Fourteenth Respondent
THE PREMIER FOR THE PROVINCE OF GAUTENG	Fifteenth Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 8 June 2026.

JUDGMENT

POTTERILL J

Introduction

[1] The applicant, Redefine Retail (Pty) Ltd [Redefine] is the owner of the retail mall, Centurion Mall and the property it is located on. The mall is adjacent to a man-made lake, the Centurion Lake [Lake]. The Hennops River was diverted from its natural course to develop the Lake in the 1980's. The Lake has become hazardous

due to long term and persistent pollution with a pungent smell emanating from the Lake and rendering human contact with the Lake unsafe. With this extraordinary pollution the Lake is unusable and life-threatening with soil erosion and excessive silting occurring upstream in the Hennops River to the Lake.

[2] The impacted area is not only the Lake, but two tributaries, the Sesmylspruit and the Kaalspruit/Olifantspruit that join forming the Hennops River that flows into the Lake. The Sesmylspruit is also impacted by the discharges from the Hartbeesfontein Wastewater Treatment Works.

[3] The first three respondents are the Metropolitan Municipalities of Tshwane [CoT], Johannesburg [CoJ] and Ekurhuleni [CoE]. The Kaalspruit River originates in an area south of Tembisa within the area of jurisdiction of CoE. It then flows northwards through Kaalfontein, Tembisa and Ivory Park which resorts under the jurisdiction of CoJ, to the confluence with the Hennops River. The Hennops River flows into the Lake in Centurion, that falls within CoT's administration. The severe pollution of the Kaalspruit River is through contamination by industrial waste, residential effluent from informal settlements and sand from illegal mining that is destructing the Kaalspruit wetlands.

[4] The fifth to tenth respondents in essence comprise the Departments of Water and Sanitation, Agriculture and Rural Development Gauteng, and Forestry, Fisheries and Environment. These departments have a duty to comply and enforce steps to remedy the decades of pollution of the Lake and the catchment areas of Hennops and Kaalspruit.

[5] The crux of the matter was Redefine seeking supervisory orders against CoT, CoJ and CoE and the departments to develop an action plan to address the causes of the pollution and rehabilitation of the areas impacted by the pollution.

[6] Pursuant to a case management meeting, an inspection in loco was held that led to the parties agreeing to a draft order. The only three issues not agreed upon relate to the following clauses:

Paragraph 8.3: "The Kaalspruit Climate Resilient Catchment Management Plan will be updated by the Intergovernmental Task Team events since 2023, and **the expert report submitted by Redefine.**" The respondents object to Redefine's expert report being considered including whether the Intergovernmental Task Team should consider only events since 2023.

Paragraph 15: “The Intergovernmental Task Team will provide the court, Redefine and the Respondents with a quarterly progress report.” The respondents object to the Court and Redefine receiving the reports.

Lastly the issue of costs is to be determined by the Court.

Redefine’s expert report

[7] All the parties were served with Mr Pretorius’ expert report. None of the parties submitted that he is not an expert, or that the content of his report is incorrect. I do accept that the settlement overtook the opportunity for the respondents to file their own expert report. However, the objection is in essence not against the report, but that the Court cannot tell the Task Team what to consider i.e. use Mr Pretorius’ report.

[8] On behalf of Redefine it was argued that Mr Pretorius’ report did criticize Tshwane’s past effort, but the plan carefully considered what is needed to rehabilitate the Lake. Furthermore, the order would not instruct the Task Team to implement Mr Pretorius’ report.

[9] I can see no prejudice to the respondents for the Task Team to consider the report. It was common cause between the parties that the Task Team will consider these papers and the report is part and parcel of the papers. The Court is not instructing the Task Team to adopt or implement the report. All three the municipalities complained bitterly about funding to address the pollution, if this report can be utilised as a fellow starting point it may curtail some expenses to the benefit of not only the Municipalities, but also the citizens of South Africa who has a right to unpolluted water.

Must the Court and Redefine be provided with a quarterly progress report?

[10] Structural interdicts create space for dialogue between the court, government and civil society actors. A structural interdict does not violate the doctrine of the separation of powers, but in fact preserves the doctrine. This is a remedy normally used to enforce socio-economic rights where institutional failure is widespread.

[11] The question thus is whether the municipalities and the departments have failed in their duties pertaining to pollution of the rivers and the Lake. The structural interdict must also seek to prevent future irreparable harm.

[12] The Municipalities and the Departments have a constitutional duty to ensure that everyone has a right to water and to guard against polluters. Section 24 of the Constitution entrenched this right to water and a safe environment. Under the

Constitution the National Environmental Management Act 107 of 1998 [NEMA], the National Water Act 36 of 1998 [NWA], the National Environment Act: Air Quality Act 39 of 2004 and the Water Services Act 108 of 1997 were promulgated. Furthermore, there are by-laws enacted by the Municipalities enabling them to fulfil this duty.

[13] It is common cause that South Africa is fundamentally water-scarce. The influence of global warming adds further risks. The baseline of scarcity is the environment, but the day-to-day crises are largely institutional, mismanagement and infrastructure. At the inspection in loco seeing the pollution of the rivers was appalling and harrowing. The institutional neglect was apparent. The Court did note that the CoT was putting measures in place to address the pollution. I also accept that unlawful informal settlements play a role. But, these serious issues should have been addressed and must now urgently be addressed.

[14] Although Courts are cautious to grant structural interdicts and do not do so willy-nilly¹ this matter requires temporary supervised oversight to ensure that a committed and earnest effort is put in to achieve the goal of ensuring unpolluted water, not only to the Lake, but the rivers and the water supply of South Africa. Such an order will ensure accountability, discipline and keep the Task Team on track.

[15] I see no prejudice in Redefine receiving the reports, it had to approach a Court to obtain commitment and has a right to be informed of progress.

Who must pay the costs of the application?

[16] On behalf of Redefine it was submitted that the three Municipalities must pay the costs of the application. Redefine litigated in its own name as well as the public interest in terms of the appropriate legislation to have the environment protected against pollution and ecological degradation. The application fell squarely within the *Biowatch* principle.

[17] It was substantially successful if one compares what was sought in the notice of motion and what the parties had settled on. The Municipalities and the Departments agreed to establish an Intergovernmental Task Team as sought in the application and pursuant to the inspection in loco. In a nutshell the proposed draft order establishes a comprehensive framework to develop and implement a rehabilitation plan for the Kaalspruit Catchment and all the impacted areas, including the Lake.

¹ *Mzalisi NO and Others v Ochogwu and Another* 2020 (3) SA 83 (SCA) par [13]

[18] The settlement did not include the declarations it sought regarding constitutional and statutory non-compliance, but the relief agreed upon could only follow if the municipalities and departments had breached their constitutional and statutory duties. Furthermore, with the terms of the settlement as agreed, no declaration of invalidity is required before just and equitable relief may be granted.

[19] Redefine has achieved a comprehensive framework to develop and implement a rehabilitation plan for the Kaalspruit Catchment and the impacted areas, including the Lake.

[20] It also sought the costs of the joinder application that was insisted upon by CoT and CoE.

Argument by Tshwane

[21] Much was made of the fact that the issues raised in the notice of motion remain contested, the settlement only constituted an Intergovernmental Task Team, confirming that CoT did not concede that Redefine is entitled to the relief sought.

[22] The source of the pollution of the Lake occurs upstream and therefore CoT cannot prevent the movement of the pollutants or eliminate the source of the pollution. The only steps that CoT can do is to remedy the effects of the pollution, that has been done, as was clear from the inspection in loco.

[23] As the issues remain live, Redefine is not substantially successful and it is not entitled to costs. Each party should pay their own costs.

CoJ's argument pertaining to costs

[24] Much of the argument revolved around the informal settlement at Ivory Park that is the major contributor towards pollution. CoJ settled because it considered these residents required it to fulfil its constitutional obligation to ensure that there is a safe environment for all in terms of the Constitution and NEMA.

[25] CoJ has taken steps to eliminate pollution by instituting applications for evictions for the unlawful occupiers that invade and build illegal structures.

[26] Its admission that there is pollution of Ivory Park it did not admit liability that this contributed to the water pollution at the Lake.

[27] Much reliance was placed on the fact that Redefine had not prior to this application engaged with CoJ in respect of the crisis at the Lake excepting for the correspondence dated 24 July 2019 to the DWS.

[28] CoJ's jurisdiction is limited to Kaalspruit and Ivory Park and it had no obligation in law to engage directly in the state of the Lake.

[29] It was submitted that in exercising its discretion pertaining to costs the Court should consider the fact that CoJ engaged fruitfully with the parties in this matter and refrained from blame-shifting. Each party should pay their own costs.

[30] CoJ should not be burdened with the costs of the joinder application as it did not engage in this dispute between Redefine, CoT and CoE.

Argument on costs by CoE

[31] Prior to the institution of these proceedings Redefine failed to engage with CoE prior to launching the proceedings against it. It is inexplicable why it did not do so, and by not engaging them these proceedings were an abuse of process.

[32] The settlement is a compromise and the draft order is by agreement before the Court. There is thus not a loser or a winner and Redefine should have settled that each party pay their own costs. Now Redefine must pay the costs by forcing a hearing on the costs.

[33] Redefine is clothing its commercial interests with constitutional rights.

The Departments' argument on costs

[34] It was submitted that each party should pay their own costs, but alternatively the 5th-10th respondents tendered that the costs of the application should be shared equally between these respondents.

Reasons for decision on costs

[35] Redefine in drafting its application was careful to not seek from the Court an order that could lead to the Court breaching the separation of powers principle. It sought an order that would invoke a coordinated governmental response to deal with the ecological disaster; pollution. Even though it is not a final order on the merits, the draft order agreed to has achieved this and I am satisfied that Redefine is substantially successful. When comparing the notice of motion and the draft order its main purpose has been achieved.

[36] It is trite that a successful party is entitled to its costs. Where a matter has been settled the Court must, with the material at its disposal, exercise its discretion judicially when awarding the costs.

[37] As for CoT the Court from the inspection in loco took note that the CoT has put measures in place to curb the pollution from upstream, but it has contributed in the silt trap at the Lake. The argument of CoJ that it is only responsible for a small portion, i.e. part of Tembisa and Ivory Park may be correct, but that small portion contributes majorly to the issue of pollution. The problem of the informal settlement

is complicated, but not a catch-all defence to the pollution or a reason to absolve them from costs.

[38] The arguments that CoJ and CoE were not prior to the application engaged does not absolve them from costs. It may have been different if they abided the Court's decision, but they launched fully-fledged opposition to the application. I accept the argument on behalf of Redefine that it would in any event be difficult to engage CoJ and CoE when not falling within their jurisdictions. This is confirmed by CoT expressing that it could not deal with CoJ and CoE as not falling within their parameters.

[39] The matter was only settled after the inspection in loco with Redefine having borne the full costs of the motion proceedings. The proceedings had reached the stage where the heads of argument had been filed.

[40] The gracious tender by the 5th-10th respondents that the costs be borne equally between the First, Second, Third and Fifth-Tenth Respondents, is a manner to reduce the costs to the Municipalities.

[41] The attached draft order is made an order of Court.

S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-077106

HEARD ON: 11 May 2026

FOR THE APPLICANT: ADV. D. WATSON

ADV. C. DU TOIT

INSTRUCTED BY: Werksmans Attorneys

FOR THE FIRST RESPONDENT: ADV. M.M. RIP SC

ADV. H.A. MPSHE

INSTRUCTED BY: Diale Mogashoa Attorneys

FOR THE SECOND RESPONDENT: ADV. J.M.V. MALEMA

INSTRUCTED BY: Padi Incorporated Attorneys

FOR THE THIRD RESPONDENT: ADV. G. BADELA

INSTRUCTED BY: MB Mabunda Incorporated

FOR THE 5TH-10TH RESPONDENTS: ADV. J. RUST SC

ADV. M. BOKO

INSTRUCTED BY: State Attorney, Pretoria

DATE OF JUDGMENT: 8 June 2026

“X”

8/6/2026

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2025-077106

PRETORIA, 8 June 2026

BEFORE THE HONOURABLE JUSTICE POTTERILL

In the matter between:

REDEFINE RETAIL (PTY) LTD

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

1st Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

2nd Respondent

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

3rd Respondent

EKURULENI WATER CARE COMPANY NPC

4th Respondent

MINISTER OF WATER AND SANITATION

5th Respondent

**DIRECTOR-GENERAL FOR THE DEPARTMENT OF
WATER AND SANITATION**

6th Respondent

**MEC FOR AGRICULTURE AND RURAL DEVELOPMENT,
GAUTENG**

7th Respondent

HEAD OF DEPARTMENT OF AGRICULTURE

8th Respondent

AND RURAL DEVELOPMENT, GAUTENG

**MINISTER OF FORESTRY, FISHERIES AND
THE ENVIRONMENT**

9th Respondent

**DIRECTOR-GENERAL FOR THE DEPARTMENT OF
FORESTRY, FISHERIES AND THE ENVIRONMENT**

10th Respondent

**MEC FOR CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS, GAUTENG**

11th Respondent

**HEAD OF DEPARTMENT OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS, GAUTENG**

12th Respondent

MINISTER OF HUMAN SETTLEMENTS

13th Respondent

**DIRECTOR-GENERAL FOR THE DEPARTMENT
OF HUMAN SETTLEMENTS**

14th Respondent

THE PREMIER FOR THE PROVINCE OF GAUTENG

15th Respondent

HAVING HEARD COUNSEL AND BY AGREEMENT between the parties, and the Gauteng Department for the Environment, which has agreed to be joined to these proceedings for the purposes of this order, an order is made in the following terms:

1 The First, Second, Third, Fourth, Fifth, Sixth, Ninth and Tenth Respondent and the Gauteng Department for the Environment agree that an Intergovernmental Task Team will be established to address the issues that came to the fore as a result of this application, some of which were highlighted by the inspection in loco of 10 March 2026, and that the Minister for Forestry, Fisheries and the Environment, or his delegate shall chair and co-ordinate the Intergovernmental Task Team.

2 The Fourth, Fifth, Sixth, Ninth and Tenth Respondents and the Gauteng Department for the Environment agree to participate and co-operate in the Intergovernmental Task Team.

3 The First Respondent ("City of Tshwane"), Second Respondent ("City of Johannesburg") and Third Respondent ("City of Ekurhuleni") agree to participate and co-operate in the Intergovernmental Task Team.

4 The City of Tshwane, City of Johannesburg and City of Ekurhuleni record that their ability to implement projects to rehabilitate the Centurion Lake and the Kaalspruit Catchment will depend upon the availability and raising of funding for the projects identified by this Intergovernmental Task Team.

5 The Applicant ("Redefine") reserves the right to challenge any of the Respondents on a failure to raise the necessary funding for the projects identified by this Intergovernmental Task Team.

6 The Eleventh to Fifteenth Respondents, are instructed to participate and co-operate in the Intergovernmental Task Team.

7 The parties agree that:

7.1 The impacted area consists of the Centurion Lake and two tributaries, namely the Sesmylspruit and the Kaalspruit/Olifantspruit, which join to form the headwaters of the Hennops River and flow into Centurion Lake. For the avoidance of doubt, the Kaalspruit Catchment shall be construed to include the Olifantsfontein Wastewater Treatment Works discharges, and the Sesmylspruit, which is impacted by discharges from Hartbeesfontein Wastewater Treatment Works, so that the entirety of the catchment affected by pollution is subject to this agreement

7.2 Gauteng Department of Environment has an existing Kaalspruit Climate Resilient Task Team, attached hereto as annexure A, that will be incorporated into the Intergovernmental Task Team, inclusive of the World Bank and National Treasury.

8 The parties record that:

8.1 In a joint effort to address urgent climate adaptation in this vulnerable area, the World Bank through the Cities Support Program, in partnership with the City of Tshwane, City of Johannesburg, and City of Ekurhuleni, launched the Resilient Kaalspruit Catchment Program.

8.2 The Kaalspruit Climate Resilient Catchment Management Plan prepared by Gauteng Department for Environment and dated 8 March 2023, attached hereto as annexure B, may be used as a possible point of departure for the projects that are needed to address the issues that came to the fore. All the documents filed on Caselines pertaining to this matter is to be considered.

8.3 The Kaalspruit Climate Resilient Catchment Management Plan will be updated by the Intergovernmental Task Team considering events since 2023, and the expert report submitted by Redefine.

9 The first meeting of the Intergovernmental Task Team was held on Friday 10 April 2026 at 11:00 at Environment House, situated at 4[...] S[...] B[...] Road at the corner of Soutpansberg Road, Arcadia, Pretoria.

9.1 The First to the Sixth Respondents, the Ninth to the Fifteenth Respondents and the Gauteng Department of Environment attended the meeting of 10 April 2026.

9.2 Representatives from National Treasury and the World Bank, was invited to attend the first meeting of the Intergovernmental Task Team and will be invited to attend future meetings of the Intergovernmental Task Team.

10 Each of the Respondents shall nominate a representative with the authority to make decisions there and then, to participate in the Intergovernmental Task Team.

10.1 Each nominated representative shall be accompanied by the Intergovernmental Task Team.

10.2 All parties shall act with the utmost *bona fides* and transparency in meeting and advancing the objectives of the Intergovernmental Task Team.

10.3 Each party further undertakes to support and give effect to the work of the Intergovernmental Task Team and to ensure that a duly authorised representative is present at all Intergovernmental Task Team meetings to participate meaningfully in the fulfilment of its mandate.

11 At the first meeting of the Intergovernmental Task Team, the City of Tshwane, City of Johannesburg and City of Ekurhuleni shall each provide details on:

11.1 their respective budgets for the rehabilitation of the Kaalspruit Catchment, with specific reference to the rehabilitation of the identified two tributaries, the Sesmylspruit, Kaalspruit/Olifantspruit, the Hennops River and Centurion Lake;

11.2 their respective town planning schemes, budgets and project plans for the relocation of informal settlements that contribute to the pollution of the Kaalspruit Catchment; and

11.3 their respective storm water systems and sewer lines, as well as their respective budgets and project plans for the repair and maintenance thereof.

12 The estimated time within which the necessary rehabilitation may respectively be accomplished, provided that the necessary funds are made available, shall be determined after an initial sampling exercise at all three of the relevant municipalities have been completed and the results thereof have been interpreted by the independent specialist appointed by the DFFE.

12.1 Environmental inspectors ("EMIs") from the DFFE have conducted a sampling exercise in the City of Tshwane, and the City of Ekurhuleni.

12.2 The agenda for the sampling exercise was circulated to the Applicant and to all Respondents, and the parties were welcome to accompany the EMIs in the sampling regime.

12.3 A further sampling exercise will be conducted during the week of 20 to 24 April 2026 in the City of Tshwane, the City of Johannesburg, and the City of Ekurhuleni.

13 The Intergovernmental Task Team will determine, amongst other determinations, the following:

13.1 The dates, times and sampling points of a regular sampling program, to be interpreted by an independent expert to be appointed by the DFFE.

13.2 The terms of reference for the appointment of the independent expert, and a specialist consultant team to provide, amongst other services, project management, secretarial services and the administrative duties to ensure compliance with this Court order.

13.3 The immediate, intermediate and long-term projects to be undertaken by each of the relevant municipalities respectively, as well as the time frame within which to finalise each such project.

14 The purpose of the Intergovernmental Task Team will be to work towards an environmental co-operation agreement as contemplated in section 35 of the National Environmental Management Act 107 of 1998 ("NEMA") specifically for the Kaalspruit Catchment and the impacted area.

15 The Intergovernmental Task Team will provide the Court, Redefine and the Respondents with a quarterly progress report.

16 The first report must address:

16.1 Subject to paragraph 4 above, the mechanisms being investigated to ensure that funding is available or has been obtained to complete the projects and/or intervention identified as necessary to rehabilitate the impacted area within the Kaalspruit Catchment, including but not limited to:

16.1.1 which respondent is investigating a specific funding mechanism;
and

16.1.2 the timelines of the investigation.

16.2 The timelines agreed upon by this Task Team to follow the process set out in section 35 of NEMA.

16.3 The results of all sampling exercises conducted in the City of Tshwane, the City of Johannesburg and the City of Ekurhuleni, and the methodology employed.

16.4 The immediate, intermediate and long-term projects that are being investigated by the Task Team and to which of the relevant municipalities the project is applicable and the estimated timing of each of the projects.

17 The First, Second, Third and Fifth to Tenth Respondents are to share the costs equally. The costs of two counsel are granted on respectively scale Band C. The costs of the joinder application are to be borne by the First and Third Respondents. The costs include the preparation and qualifying fees of Redefine's expert witness, Mr Pretorius.

[42]

**BY ORDER
THE REGISTRAR
GAUTENG DIVISION, PRETORIA**

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