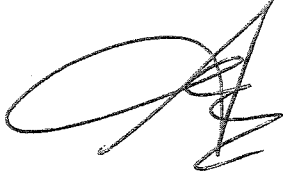


IN THE EQUALITY COURT OF SOUTH AFRICA

Held in the High Court of South Africa
(Cape of Good Hope Provincial Division)


19/10/08

Case no: EC1/05

Before the Honourable Mr Justice N C Erasmus

In the matter between

KENNETH GEORGE AND OTHERS

Applicants

and

THE MINISTER OF ENVIRONMENTAL AFFAIRS

Respondent



~~DRAFT~~ ORDER

The following order is made by agreement between the parties:

1. The inquiry to be held in terms of section 21(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 is postponed *sine die*.
2. The Respondent must approve for gazetting by 31 July 2009 the policy presented to him by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("DEAT").

- 2.1. The framework must accommodate the socio-economic rights of traditional/ subsistence fishers and ensure equitable access to marine resources for those fishers.
 - 2.2. The framework must take into account:
 - 2.2.1. the principles and objectives contained in section 2 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) (“the MLRA”); and
 - 2.2.2. international and national legal obligations;.
 - 2.3. The respondent must develop the framework in consultation with the National Joint Small Scale Fisheries Policy Task Team, (the National Task Team) which has been set up in compliance with the order of this court dated 2 May 2007.
 - 2.4. Should the task team fail to reach consensus on the contents of the framework to be submitted to the Respondent, the parties agree to submit the matter to be resolved in terms of the dispute mechanism procedures set out in Chapter 4 of the National Environmental Management Act, 1998 (Act No.107 of 1998).
3. Pending the implementation of the framework, interim relief is granted in the following terms and subject to the following conditions:

- 3.1. The applicants must identify not more than 1 000 *bona fide* traditional fishers (“the identified fishers”) who had not been allocated long-term fishing rights and who can demonstrate both historical dependence and reliance on fishing (“the criteria”) along the Cape West and south coast between Port Nolloth in the north and Arniston in the south and submit these identified persons to the Respondent or his delegated official. It is agreed that the parties will seek to ensure that the Arniston fishers be granted an improved package by 31 December 2008 as they may possibly not benefit from the species package set out in the table below.
- 3.2. The Respondent or his delegated official reserves the right to eliminate from this list of identified fishers any person who do not comply with the criteria in paragraph 3.1 and will give notice with reasons of such intention to The Trustees Of The Time Being Of The Masifundise Development Trust (“Masifundise”).
- 3.3. The identified fishers must apply for and be in possession of a valid recreational fishing permit, which shall be processed and issued by the DEAT without the payment of the fees as prescribed by the MLRA.
- 3.4. The Respondent or his delegated official shall by way of exemption, until the date specified in the paragraph below, permit the identified fishers to engage in fishing and to sell the lawfully caught catch under the authority of the recreational permit, the following species:

Species/Common Name	Fishing Arrangement	Duration
West Coast Rock Lobster	20 lobsters per person per week	15 November to 15 April 2009 (Weekdays only)
Traditional Linefish	Cumulative total of not more than 30 fish per person per day in any combination of species (Yellowtail, Snoek and Cape bream (Hottentot) but excluding Silverfish (Carpenter)	Every day of the week until 30 June 2009
White mussel	Not more than 50 white mussels per person per day	Everyday of the week until 30 September 2009

- 3.5. The Respondent undertakes to consider extending the time period for harvesting of traditional linefish beyond 30 June 2009 until finalisation of the policy.
- 3.6. The identified fishers shall not be entitled to transfer the recreational permits.
- 3.7. Should the Respondent, at any time, consider that the stock of any species identified for catch and sale by the identified fishers in terms of this order may be endangered or under undue pressure, or consider that the interim relief is not sustainable taking into account other claims on the resource, then the Respondent may:

- 3.7.1. Suspend all or any of the fishing in that fishery by the identified fishers;
 - 3.7.2. Restrict the number of identified fishers or fishing vessels in the fishery;
 - 3.7.3. Restrict the mass of fish or amount of fish which the identified fishers are permitted to catch in terms of this order.
- 3.8. DEAT shall issue permits to the identified fishers in order to give effect to the terms of this order, which shall include a composite set of permit conditions stipulating clearly the seasonal calendar for each permit, the vessel and landing site specifications and any sector specific regulations that pertains to the qualifying fishers. The conditions shall include that the qualifying fishers must:
- 3.8.1. Use suitable vessels and fishing gear determined by DEAT as being suitable;
 - 3.8.2. Engage in fishing in designated fishing zones only;
 - 3.8.3. Catch and land the fish in the landing site zones to be designated by DEAT or harvest their fish in coastal areas designated by DEAT;

- 3.8.4. Should no significant progress be made in implementing this order, the applicants may set the matter down for hearing on a date to be determined by the Registrar after consultation with the parties.

