

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: 12994 / 2021

In the matter between:

OBSERVATORY CIVIC ASSOCIATION

First Applicant

**GORINGHAICONA KHOI KHOIN
INDIGENOUS TRADITIONAL COUNCIL**

Second Applicant

and

**TRUSTEES FOR THE TIME BEING OF
LIESBEEK LEISURE PROPERTIES TRUST**

First Respondent

HERITAGE WESTERN CAPE

Second Respondent

CITY OF CAPE TOWN

Third Respondent

**THE DIRECTOR: DEVELOPMENT MANAGEMENT
(REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL
AFFAIRS & DEVELOPMENT PLANNING, WESTERN
CAPE PROVINCIAL GOVERNMENT**

Fourth Respondent

**THE MINISTER FOR LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS & DEVELOPMENT
PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT**

Fifth Respondent

**CHAIRPERSON OF THE MUNICIPAL PLANNING
TRIBUNAL OF THE CITY OF CAPE TOWN**

Sixth Respondent

EXECUTIVE MAYOR, CITY OF CAPE TOWN

Seventh Respondent

WESTERN CAPE FIRST NATIONS COLLECTIVE

Eight Respondent

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I, the undersigned

Khoebaha Melvin Arendse

do hereby make oath and say as follows:

1. I am an adult male, also known as Khoebaha (King) Arendse and am the Khoebaha (King) of the Kai !Korana Trans Frontier Royal House - the name that descendants of the !Korana peoples, who once lived along the Liesbeek River and in the TRUP area, use to describe themselves.
2. I was appointed by Minister Anroux Marais, Western Cape Provincial Government, Minister of Arts, Culture and Sport as a Commissioner to the Western Cape Cultural Commission.
3. I succeeded my late mother, Queen Lester Arendse "Oliphant" upon her passing and was validated by the three provinces, Northern Cape, Eastern Cape and Western Cape that constitute the Trans Frontier including its districts, regions, leaders, chiefs and principalities as King of the Kai !Korana Trans Frontier Royal House. The facts contained in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.
4. I have read the supporting affidavit of Tauriq Jenkins which he deposed on 30 July 2021 and confirm the contents thereof in so far as they relate to me, and the position I hold as Khoebaha of the Kai !Korana Trans Frontier.

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5. As I explain more fully below, both the Kai !Korana Trans Frontier Royal House and I:
- 5.1. are deeply concerned about the negative impacts that the development of the River Club site by the First Respondent ("the Development") will have on our cultural heritage;
 - 5.2. are opposed to the Development;
 - 5.3. were not consulted by Mr Rudewaan Arendse in connection with the preparation of his reported titled "River Club First Nations Report" dated November 2019 ("the AFMAS Report"); and
 - 5.4. are not members the Western Cape First Nations Collective ("the FNC") which is the Eighth Respondent in this matter, and the FNC is not authorised to speak on our behalf, whether in relation to the Development or any other matters.

Consultations undertaken by Rudewaan Arendse of AFMAS

6. I understand that Mr Rudewaan Arendse was commissioned by the Western Cape Provincial Department of Transport and Public Works to prepare a report on:
- 6.1. the significance of the Two Rivers Urban Park ("TRUP") to First Nations by identifying intangible cultural heritage ("ICH") specific to the TRUP, through Khoi and San oral history, as articulated by indigenous custodians;

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- 6.2. the collective First Nations aspirations for celebrating First Nation ICH at the TRUP; and
- 6.3. how the indigenous narrative of the First Nation's ICH can be incorporated into the spatial governance of the TRUP, by developing heritage related design informants (as informed by the indigenous narrative).
7. This report culminated in the TRUP First Nations Report ("the TRUP Report") of 25 September 2019. Mr Rudewaan Arendse did not consult my council during the preparation of that report.
8. Mr Rudewaan Arendse was subsequently commissioned by the First Respondent ("the Developer") to prepare an assessment of the impacts of the Development on intangible cultural heritage which culminated in the River Club First Nations Report ("the AFMAS Report").
9. I confirm that neither myself nor my council were notified by Mr Rudewaan Arendse of his assessment of the impacts on intangible cultural heritage of the development at the River Club site, which assessment culminated in the AFMAS Report, and consequently neither myself nor my council were consulted by Mr Arendse in relation to the AFMAS Report.
10. The Developer and/or Mr Arendse / AFMAS were well aware that both myself and my council wished our view in relation to the Development and its potential negative impacts on the environment and on our cultural heritage, to be taken into consideration by the authorities responsible for deciding

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whether or not to authorise the Development. My reasons for saying this appear below.

- 10.1. I represented the Kai !Korana Trans Frontier Royal House as an interested and affected party ("I&AP") during the provisional protection appeal proceedings, under case number 1511 2504 WD 1217E in which the Developer as an appellant and Mr Arendse participated. My name appears from the list of I&APs as is evident in the record.
- 10.2. My group has contact details which are easily traceable. AFMAS and Mr Arendse should have used this information to communicate with us and arranged for us to participate in the consultation which culminated in his AFMAS Report.
11. I confirm that neither the council nor I approve of or support the development by the First Respondent, nor are we represented by the Eighth Respondent (the Western Cape First Nations Collective also known as the "FNC").

Cultural and heritage significance of the site and TRUP area

12. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to my council and to Kai !Korana people. The site and the TRUP area is sacred to us and a significant part of our intangible cultural heritage is associated with the site and the TRUP, for the following reasons.



- 12.1. The Two Rivers, being the Black and Liesbeek Rivers, is The Black and Liesbeek Rivers and surrounding land, is the birthplace of the !Korana as a self-governing people, and consequently is an area of the greatest significance to us. It is the source of our oral history, collective memory, and customary law associated with marriage, birth, death and trade. It speaks to our very practices of customary law, associated with marriage, birth, death and treaties of trade that are irrevocable as a precinct of the greatest significance.
- 12.2. The Kai !Korana, earlier pronounced as Kei !Korana, Kai, meaning 'great' or 'many' have their origins in the Western Cape at the turn of the 15th century in pre-colonial Cape Town. The Kai !Korana are descended from the first !Xora, grandson of the Gogosoa Paramountcy that is the bloodline of the four siblings' clans of Cochoqua, Gorinhaiqua, Goringhaicona and !Korana."
- 12.3. The Last of the Gogosoa siblings that ruled during the smallpox outbreak in 1680 !Xora, was the father and first ruler of the !Korana in the Cape peninsula. The twin brothers Gonema and Odesoa were the last remnant of Gogosoa besides !Xora and direct descendants of the last ruling Gogosoa Dynasty on the Liesbeek. From this period the clans of Olifant, Taaibos, Links, Bitterbos, Hooglander and Bolanders consolidated cattle and sheep trading from the Liesbeek River in Cape Town to Piketberg in the Swartland and Hoogkraal in Pacaltsdorp in the Southern Cape. The colonial devastation prompted the last Khoebaha of Hooglanders to trek North to Prieska

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to avoid total annihilation of !Korana by the smallpox epidemic. The clans later converged in Prieska, Gordonia to mobilise for the ongoing trek Wars with Dutch Settlers.

- 12.4. The ruling clans of !Korana, include the Olifant, Links, Taaibos, Buffel, Bergenaar, Poffader, Slaparms, Towenaars, who are descendants of the grand children of Hooglander called Bostander and Hoogstander. The great trek of the !Korana inland broke many of the customary law practices of the Liesbeeck Kingship of !Korana. Many bloodline clans were forced to change their customary clan names to Settler names like Katz, Cupido, Visser and Vollenhoven, and descendants of brothers Gonema and Odesoa changed their names to January to avoid persecution after the wars. The situation was different in the North as !Korana held onto their clan names, with adjustments on the Gariep and Oranje River in Gordonia changing the Governance of !Korana negatively. On the Cape flats the lineage of Gonema was forced to accept the slave name of January to get a land agreement with the Dutch Colonizers to buy the Methodist Mission Station at Klipfontein in 1826. This agreement was made by Abraham January, the last direct descendant of Gonema. The Royal Ancestry lives in Klipfontein. Today some of the generation live in Mitchells Plain area while others still live on their Ancestral land of the Klipfontein Methodist Mission Station. Khoebaha Klaas Lucas united the former Liesbeeck descendent !Korana kraals during the Frontier Wars in 1659 against Dutch and

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other European settlers today known as the Trans Frontier Kai !Korana. The impact of the First Frontier Wars in the TRUP resulted in the loss of territorial integrity of the Cape Peninsula for the Khoena. A forced migration towards the interior (the East) occurred where it escalated over the following hundred years with AmaXhosa authorities joining in the wars of resistance. This culminated in Sir Walter Curry proclaiming the Border Control Act of 1868.

12.5. Kai !Korana Trans Frontier Royal House formed its Unity structure known as the Kai !Korana Federation of Houses, Leaders, and Principalities in the TRUP in 2020.

12.6. The importance of the site in terms of the reading of the stars forms that particular space that signals the season of particular ceremonies such as the !Dorob, that is the right of passage for young people after the age of 12 to be inducted into the heritage estate of their !Korana ancestors by commemorating the generations before them, their customs, and general way of life. It is crucial for !Korana youth to have social cohesion with cultural groups across the spectrum from the perspective of their !Korana cultural origins. Marriage ceremonies, and Inau ceremonies take place here.

12.7. The infilling of the River constitutes in !Korana custom an act of rape and genocide, since it has the potential for irreversible damage not only to the eco-system of the River but the migrating birds and other

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creatures that form part of the spiritual diaspora of the !Korana on the Liesbeeck River in the TRUP.

12.8. The construction not only disrupts the memory and flow of the River but specifically the natural setting and scenery with structures and buildings carrying activities alien to the limited precinct, that is the remnant of thousands of years of cultural, religious and spiritual practices. The construction obstructs efforts to recover !Korana culture by destroying the TRUP area.

13. We do not regard any of the conditions to the respective authorisations to be sufficient for purposes of safeguarding our intangible heritage associated with the site. In our view, the aspects of the Development which the Developer claims will give expression to, and celebrate, our intangible cultural heritage (i.e. the proposed indigenous gardens, cultural and media centre, amphitheatre, and "heritage eco-trail") do no such thing.

14. Had I or my council been meaningfully consulted by Mr Arendse in respect of the River Club development, we would have contributed important information relevant to the decision-making process (including, but not limited to, the information in this affidavit) which should have been made available to the decision-makers (whether by inclusion in the AFMAS Report or otherwise).

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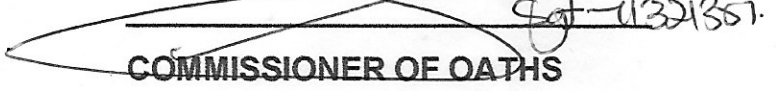


Melvin Arendse

I hereby certify that the deponent has acknowledged that he:

- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on his conscience.

Thus signed and sworn to before me, at **Mowbray** on the **25th** of **May 2022**.



COMMISSIONER OF OATHS

NAME: *Ndameze Ndameze*
CAPACITY: *Sgt*
ADDRESS: *32 main road S*
AREA: *Mowbray Saps*

