

**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

---

**AFFIDAVIT**

---

81.  
NN

I, the undersigned

**Prince Jacobus Titus**

do hereby make oath and say as follows:

1. I am an adult male also known as Prince of the Traditional Royal House of NlInɛ, under the authority of Queen Katriena Esau the last speaker of the Nluu language. I represent my House as the representative in the Western Cape.
2. I have been appointed by the Traditional Royal House of NlInɛ to hold this position and to speak on behalf of the House on this matter in the Western Cape.
3. 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 and replying affidavits of Tauriq Jenkins which he deposed to on 30 July 2021 and 17 September 2021 and confirm the contents thereof in so far as they relate to me, and the position I hold in and the Traditional Royal House of NlInɛ
5. As I explain more fully below, both the NlInɛ 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 intangible cultural heritage;

5.2. are opposed to the Development;

5.3. have withdrawn as members the Western Cape First Nations Collective ("the FNC") which is the Eighth Respondent in this matter, and therefore the FNC is not authorised to speak on our behalf, whether in relation to the Development or any other matters.

5.4 My reasons for withdrawal from the FNC include the fact that:

5.4.1 The Traditional Royal House of NIn#e and I have come to realise that the heritage and environmental impacts caused by this development is not what we initially understood and that the development will damage the cultural and heritage value we attached to the site.

5.4.2 The economic benefits do not outweigh the cultural and heritage value of the site.

5.5 The developer and the FNC have treated myself, my mother Queen Katriena Esau, and my House with disrespect. I say this for the following reasons:

5.5.1 The developer and the FNC have used the name, image and legacy of my mother to their benefit, without her consent, where she has been published as a symbol of the development.

gc.

NN

5.5.2 The developer and Mr Arendse promised verbally in meetings with Chief Cecil Crawford Job, Deputy Chair of Traditional Royal House of NlIn#e to put our House on the Social Compact and the First Nations Collective Trust. I frequently requested for a period close to a year for a copy of the Social Compact and the First Nations Collective Trust from various people including Mr Jody Aufrichtig, Chief Zenzile Khoisan and Mr Arendse which was ignored. Eventually, Mr Arendse on May 4, 2022 sent me the copies via whatsapp.

5.5.3 I and the Traditional Royal House of NlIn#e note with great concern that there is no San / Bushman representative on the board of Trustees of the Western Cape First Nations Collective Trust. This is a great concern because myself, the Traditional Royal House of NlIn#e and my mother Queen Katriena Esau were under the impression that we are representing the San in the FNC.

5.5.4 Chief Zenzile Khoisan on behalf of the FNC as well as the developer have filed various legal papers which mention the Traditional Royal House of NlIn#e which we were not made aware of nor consulted of the contents of those papers, including the recent application of appeal and appeal to the Supreme Court of Appeal.

5.6 I and the Traditional Royal House of NlIn#e condemn the attacks against Traditional Councils and legitimate San and Khoi leaders in our name, such the Goringhaicona, Paramount Chief Aran and High Commissioner Tauriq Jenkins.

**Consultations undertaken by Rudewaan Arendse of AFMAS**

SA.  
MN

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;

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 consult my House during the preparation of that report.

8. According to his brief in the River Club First Nations Report ("the AFMAS Report"), Mr Rudewaan Arendse was subsequently commissioned by the First Respondent ("the Developer") to:

*"...engage the First Nations (the Khoi and San)<sup>2</sup>, interchangeably referred to as Indigenous people, or the Indigene, with regard to their intangible cultural heritage in terms of the River Club project site."*

SA  
MN

and

*“1. Understand the significance of the River Club site to the First Nations by identifying Indigenous intangible cultural heritage specific to the River Club.*

*2. Locate the River Club site within the Indigenous narrative of the broader TRUP cultural landscape.*

*3. Identify First Nations aspirations with regard to Indigenous cultural heritage and the River Club site.*

*4. Implement the recommendation of the TRUP First Nations report that "acknowledging, embracing, protecting and celebrating the Indigenous narrative be a heritage related design informant that informs" planning and development of the River Club site.” (Vol: 3, R: 1079)*

9. I represented the Traditional Royal House of NlInɛ 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. I was consulted by Mr Arendse in the drafting of this report and participated in the contribution of Indigenous Knowledge to the Report. However, as I now view the development, neither I nor the Traditional Royal House of NlInɛ can provide any support for the development as indicated below.

81.  
NN

## **Cultural and heritage significance of the site and TRUP area**


11. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to my Traditional Royal House of NIn#e. 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:

- 11.1. Our people died here. This place is the start of where the brutal treatment and killings of the Bushman happened over time. We were hunted like animals.
- 11.2. This is a place where our people would engage Inau and rite of passage ceremonies. For example, when a young lady becomes a woman, she would be placed in the Kraal for a day or two, and then there will be a big ceremony and celebration, in particular dance, with the Elder women who will share their wisdom with her.
- 11.3. It is a very important part of our history where the rivers come together. Every time we see it, we enjoy and celebrate it.
- 11.4. It is heart sore for us because we now see that the developer is putting our history in the grave. They are killing it. There will be nothing to show our children the place itself, where the most significant events happened.

SA.  
NN

11.5. 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.

11.6. 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.



**Jacobus Titus**

I hereby certify that the deponent has acknowledged that she:

- (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 her conscience.

Thus signed and sworn to before me, at **Mowbray** on **19th June 2022**.



**COMMISSIONER OF OATHS**

NAME: *Nobuyi Ndumise*  
CAPACITY: *Sgt*  
ADDRESS: *32 Main road*  
AREA: *Mowbray*

