

MEDIA RELEASE - 20 June 2002

Development rights on Oudekraal property

CAPE TOWN'S environmental community is over the moon at today's High Court judgment that controversial Cape Town landowner Kasper Wiehahn does not have township development rights on his Oudekraal property adjoining Camps Bay.

"I'm absolutely overjoyed," said Cape Peninsula National Park Manager, Howard Langley. The Muslim community is also likely to welcome the decision, which confirms the historical, religious and cultural significance of the many Muslim graves and kramats (shrines) on the property. SA National Parks was one of the respondents in the Cape Town High Court action brought by Wiehahn in an attempt to confirm township development rights on Portion 7 of his Oudekraal property. But his application was today dismissed with costs by Judge Denis Davis.

The other respondents were the City of Cape Town, the provincial Minister of Local Government and Development Planning and the South African Heritage Resources Agency (formerly the National Monuments Council). Only the province did not oppose Wiehahn's application for an order confirming his township development rights.

When in 1996 Wiehahn announced details of a huge new residential development on Portion 7 of his Oudekraal property adjoining Camps Bay and Bakoven, there was a major public outcry and the biggest demonstration yet seen around a local environmental issue. Despite widespread opposition, Wiehahn applied to the then Cape Town city council to approve his plan for engineering services for the development. But the city turned down his application after obtaining legal advice that the township development rights, initially granted by the then Administrator in 1957 for 237 residential erven and three for a school and two electricity sub-stations, had lapsed.

This was because of a technical non-compliance relating to extensions granted for the submission of general plans for the township between 1958 and 1961, after the Administrator's initial approval. Although he had contrary legal opinion at the time, Wiehahn did not pursue the matter then. In April this year, he launched High Court action in which he asked for a declaratory order confirming that he did indeed have township rights.

In his judgment, Davis agreed with lawyers acting for the various respondents, who had argued that the township rights had been improperly obtained from the then Administrator and therefore invalidly registered with the Registrar of Deeds.

Judge Davis said the grant of the application for township approval on September 17 1957 had lapsed after 12 months without the submission of a general township plan. "Accordingly, the approval which was eventually granted was a nullity. The invalidity of the Administrator's actions could not be undone by the registration which appeared in the Deeds Registry, Judge Davis said. "It is permissible for all respondents to raise the invalidity of the Administrator's actions as a defence to the application which has been brought by the applicant. "The effect of the invalidity of the Administrator's actions is that the applicant cannot rely on township rights to justify the relief which it seeks from this Court."

Referring to the presence of Muslim graves and kramats on the property, Judge Davis said these were of "profound religious, cultural and historical importance to the Muslim community".

To have exercised a discretion in favour of Wiehahn - judges have discretionary power when making declaratory orders - would have been to minimise the legitimate constitutional rights which the Muslim community now enjoyed.

"In 1994, the cultural religious and ethnic diversity of the country finally was recognised as an asset of the entire South African nation. "By contrast, applicant seeks to rely on approvals granted during the 1950s and 1960s under an egregiously immoral regime and in circumstances where

law, even at that time, was not properly followed." Wiehahn was not in court to hear the judgment.

Asked about a possible appeal his attorney, Milton Koumbatis, replied: "Let us read the judgement first, then we'll see."

Judge Davis ordered Wiehahn to pay the costs of the application, including the costs of two advocates for each of the respondents who opposed the action. Judge Anton Veldhuizen concurred.

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[<back>](#)