

# Environmental Law and Sustainability



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- Understanding what constitutes an “*emergency*” for the application of section 30A of NEMA

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## Understanding what constitutes an “emergency” for the application of section 30A of NEMA

The recent Western Cape High Court judgment in *HFB Junior Beleggings (Pty) Ltd v Minister of the Western Cape Local Government, Environmental Affairs and Development Planning and Others 2 All SA 312 (WCC)* (11 March 2026) comes at a time when the Western Cape has experienced a series of significant rainfall and flooding events, bringing renewed public and regulatory attention to the frequency and severity of climate-driven weather events and their environmental consequences. Against this backdrop of heightened environmental risk, where storm surges, coastal erosion and flooding are fresh in many people’s memories, the judgment represents a significant development in the interpretation and application of section 30A of the National Environmental Management Act 107 of 1998 (NEMA). The decision provides important guidance on the scope of “emergency situations” and, in doing so, confirms the ambit of section 30A as being a statutory mechanism available in exceptional circumstances to bypass the environmental authorisation (EA) process.

Section 30A allows a competent authority to direct that listed activities be undertaken without an EA to prevent or contain an emergency situation or mitigate its effects. However, this power is confined to an “emergency” which is defined as a situation that arises suddenly and poses an imminent and serious threat to the environment, human life or property.

### Background

The *HFB Junior Beleggings* matter concerned a coastal property owner (applicant) seeking to rely on section 30A to construct erosion protection measures outside of its property boundary and on a dune system in Wilderness, Western Cape. The applicant contended that storm events had caused significant erosion, which in turn created an imminent risk of structural collapse and therefore sought a directive permitting listed activities without first obtaining an EA. The competent authority refused the application, a decision later upheld by the Minister of the Department of Forestry, Fisheries and Environment on internal appeal and ultimately confirmed by the High Court on review.

The applicant had argued on review that both decisions adopted a narrow and flawed interpretation of “emergency”, ignoring that such situations can be progressive in nature and that the law requires proactive measures to prevent and mitigate their effects.



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## Findings

In dismissing the review, the court adopted a strict interpretation of section 30A, reasoning that an emergency must arise "*suddenly*". The court placed considerable emphasis on the elapsed time between the initial storm event that first initiated the erosion process and the lodging of the section 30A application. The fact that the applicant waited almost a year and after a second storm event before invoking the provision fundamentally undermined its claim that the risk was both sudden and imminent.

Closely linked to the court's concerns associated with the passage of time between the initial erosion event and the application, was the court's distinction between emergency situations and progressive environmental risks. The erosion of the dune system, although potentially serious, was regarded as a gradual and ongoing process rather than an acute occurrence. On this reasoning, environmental degradation that manifests incrementally does not meet the statutory threshold of an emergency. This interpretation materially confines the application of section 30A to urgent occurrences rather than cumulative or developing threats.

The court further held that an "*emergency*" cannot be relied upon where the underlying risk is, at least in part, self-created. The evidence before the court suggested that aspects of the dune instability were exacerbated by the applicant due to the unauthorised placement of structures and use of unsuitable vegetation that

interfered with natural coastal processes. In these circumstances, the court was unwilling to accept that the applicant could invoke section 30A to remedy a situation to which it had unlawfully contributed.

Another important aspect of the court's reasoning related to the availability of alternative measures. The authorities and its experts had indicated that stabilisation measures could be undertaken within the boundaries of the applicant's property, without encroaching on the dune system and without invoking section 30A. The court accepted that the existence of these alternatives weighed against the applicant's claim of urgency. Section 30A is therefore not applicable simply because a preferred mitigation measure requires authorisation, rather, it is triggered where immediate, otherwise unlawful activity is necessary to avert a genuine emergency.

The judgment also reflects a clear message regarding attempts to circumvent the environmental authorisation regime. The court was explicit in its view that the applicant was seeking to avoid the requirements of a basic assessment process, including public participation and specialist studies. By rejecting the section 30A application, the court reaffirmed that the environmental impact assessment regime remains the default mechanism for regulating potentially harmful activities, particularly in ecologically sensitive areas such as coastal dunes.



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## Key takeaways

From a critical perspective, while the judgment provides welcome clarity and reinforces the principle that section 30A should not be used as a mechanism to circumvent the environmental authorisation process, the court possibly adopted a narrow interpretation of “emergency”.

Notably, the statutory definition of emergency includes a reference to a “disaster” contemplated by the Disaster Management Act 57 of 2002 where “disaster” is specifically defined to include progressive or slow-onset events. The court’s emphasis on suddenness despite the specific inclusion of a “disaster” within the emergency definition, possibly limits the extent to which section 30A can be used to respond to environmental risks, particularly those associated with weather events, where threats often develop incrementally but culminate in significant impacts. While the reasons behind this position being adopted by the court in the present matter are understood, the judgment did not fully engage with the possibility that a progressive natural event may reach a tipping point at which an imminent disaster arises, potentially justifying emergency intervention.

Nonetheless, the implications of the judgment are clear. Developers and landowners should not assume that section 30A provides a means to expedite authorisation where environmental risks are foreseeable or self-inflicted. Any delay in invoking the provision is likely to be fatal to an emergency claim. Moreover, where impacts can be addressed through lawful means within the existing regulatory framework, reliance on section 30A will be difficult to justify.

*HFB Junior Beleggings* reinforces the position that section 30A is to be applied in exceptional circumstances. It is reserved for genuine, immediate crises and not for managing or rectifying self-created progressive environmental risks or development constraints which may be exacerbated by climate change related events.

## Alistair Young



## OUR TEAM

For more information about our Environmental Law practice and Sustainability services in South Africa, Kenya and Namibia, please contact:



**Patrick Kauta**

Managing Partner | Namibia  
T +264 833 730 100  
M +264 811 447 777  
E [patrick.kauta@cdhlegal.com](mailto:patrick.kauta@cdhlegal.com)



**Alecia Pienaar**

Counsel:  
Environmental Law  
M +27 (0)82 863 6279  
E [alecia.pienaar@cdhlegal.com](mailto:alecia.pienaar@cdhlegal.com)



**Alistair Young**

Director:  
Corporate & Commercial  
T +27 (0)11 562 1258  
E [alistair.young@cdhlegal.com](mailto:alistair.young@cdhlegal.com)



**James Ross**

Director:  
Corporate & Commercial  
T +27 (0)21 481 6424  
E [james.ross@cdhlegal.com](mailto:james.ross@cdhlegal.com)



**Lauriene Maingi**

Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E [lauriene.maingi@cdhlegal.com](mailto:lauriene.maingi@cdhlegal.com)

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**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.  
Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114  
E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**ONGWEDIVA**

Shop No. 94, Oshana Mall, Ongwediva, Namibia  
T +264 (0) 81 287 8330 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdhstellenbosch@cdhlegal.com](mailto:cdhstellenbosch@cdhlegal.com)

**WINDHOEK**

2<sup>nd</sup> Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.  
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020  
T +264 833 730 100 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

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