

DISCIPLINARY PROCEEDINGS

1. **IZILIMO FRESH PRODUCE MARKET AGENCY**
("Izilimo Market Agents")

2. **ONKE SOWAZI**

3. **FERDIE CLAASEN**

(Collectively and severally "the Accused")

On 08 September 2015 and at Pretoria, the first and second Accused was found guilty of the following charges:

COUNT 1 (As the First and Second Accused)

On or about 30 June 2014 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the accused made themselves guilty of improper conduct (as defined in Section 23(a) and / or (c) of the Act) read with Sections 18(2) and 19(5) and Rules 33.4, 33.5(b) and 33.6 and Annexure "C" to the Rules, in that they failed to or failed to cause their auditor to compile, prepare and deliver to the Council within the prescribed period an annual report in the form as set out in Annexure "C" to the Rules for the financial year ending on the last day of February 2014.

COUNT 2 (Against all of the Accused)

During April, May and June 2014, and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct (as defined in Section 23(a) and/or (c) of the Act) by contravening Rule 32(1) in that they failed to make payment to their principals timeously as contemplated in the aforesaid rule. Further particularity appears from annexure “A” annexed hereto.

COUNT 3 (Against all of the Accused)

On or about and during October 2014 – March 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct (as defined in Section 23 (a) and/or (c) of the Act) by contravening Section 16 of the Act in that they performed as fresh produce agents whilst the Third Accused, an employee of the First Accused as envisaged in Section 16 aforesaid, was not the holder of a valid fidelity fund certificate.

COUNT 4 (Against the First and Second accused)

During April 2015 – July 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct (as defined in Section 23(a) and/or (c) of the Act), read with Section 19(3)(c) and Rule 33.8(a) and Annexure “D” to the Rules, in that they failed, within the prescribed period, to do proper reconciliation of trust accounts for the months

ending March 2015 – June 2015, in the form as set out in Annexure “D” to the Rules, which conduct amounts to unprofessional and/or improper conduct within the meaning of Section 26 of the Act.

COUNT 5 (Against the First and Second Accused)

During June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made himself guilty of improper conduct (as defined in Section 23(a) and/or (c) of the Act) by contravening Section 19(1)(b) read together with Section 19(4) and Rules 31(6)(a) and (b) promulgated in terms of the Act, in that there were shortages in the agricultural produce stock of the First Accused not properly accounted for, and which unaccounted trust shortfall amounts to unprofessional and/or improper conduct as contemplated in Section 23 aforesaid. Further particularity appears from annexure “B” annexed hereto.

COUNT 6 (Against the First and Second Accused)

During June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct [as defined in Section 23(a) and/or (c) of the Act] read with Section 19(3)(c) by contravening Section 18 of the Act read together with Rules 21 and/or 23 and/or 27 in that they were obliged to keep full and correct accounting records of, *inter alia* all agricultural produce received, kept, sold and lawfully destroyed and failed to do so, or to do so correctly. Further particularity appears from annexure “C” annexed hereto.

COUNT 7 (Against the First and Second Accused)

During June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct [as defined in Section 23(a) and/or (c) of the Act] by contravening Rule 26 as promulgated in the Act in that they failed to issue a statement to their principals within 5 business days after the producer's fresh produce having been sold.

COUNT 8 (Against the First and Second Accused)

During June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct [as defined in Section 23(a) and/or (c) of the Act] read with Section 19(3)(c) and Rule 25(1) and Rule 25(2) promulgated in terms of the Act, in that they failed to inform the relevant principal or principals, of the extent and condition of produce, not sold within 3 business days after receipt thereof.

COUNT 9 (Against the First and Second Accused)

During June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct [as defined in Section 23(a) and/or (c) of the Act] read with Section 19(3)(c) and Rule 23(1) promulgated in terms of the Act in that they failed to correctly and properly issue sale notes after each sale transaction before the produce concerned was removed from the Accused's custody.

COUNT 10 (Against the First and Second Accused)

During June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct [as defined in Section 23(a) and/or (c) of the Act] by contravening Rule 32(4) in that they sold fresh produce on the credit of their principals without the proper prior written approval of the principal concerned. Further particularity appears from Annexure "D" annexed hereto.

The following sanction was imposed against the Accused:

1. The first and second Accused may not act as an agent subject to the following conditions:
 - 1.1 All audit reports;
 - 1.2 All outstanding interim audit reports;
 - 1.3 All outstanding monthly trust reconciliation reports;
 - 1.4 All of the bank statements of Izilimo Fresh Produce Market Agency (Pty) Ltd for both trust accounts and business accounts for the past year until 08 September 2015.
2. The fidelity fund certificates of the first and second accused are withdrawn which withdrawal is suspended for a period of 3 years subject to the following conditions:
 - 2.1 Submit all annual audit reports;
 - 2.2 Submit all interim audit reports;

- 2.3 Submit all monthly trust reconciliation reports properly on time.
3. Initiate steps to and attend Comsel 100, 200 and 300 courses within period of 6 months after date of sanction.
4. A Fine of R30 000. 00 (thirty thousand rand) is payable by the first and second accused jointly and severally, the one to pay the other to be absolved, which fine is payable to APAC.
5. The Accused be held liable to make a contribution towards APAC's costs in the amount of R50 000. 00 (fifty thousand rand) which is payable by the first and second accused jointly and severally, the one to pay and the other to be absolved.
6. The contribution towards costs and the fine shall be payable by way of 12 equal monthly instalments together with interest calculated at the prescribed rate of interest of which the first payment is to be made on/or before 01 November 2015 and thereafter on the 1st day of each following month, with the understanding that the entire outstanding amount plus interest thereon at the prescribed rate of interest for time to time shall become immediately due and payable should the Accused fail to make any payment on the due date thereof.