

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO. 2021/2020

In the matter between:

EZIHAGWINI STREET COMMITTEE

First Applicant

MARY WATERS HIGH SCHOOL

Second Applicant

And

MAKANA MUNICIPALITY

First Respondent

MEC, DEPARTMENT OF ECONOMIC

DEVELOPMENT ENVIRONMENTAL AFFAIRS

AND TOURISM: EASTERN CAPE

Second Respondent

MINISTER FOR ENVIRONMENTAL AFFAIRS

Third Respondent

MEC, CO OPERATIVE GOVERNMENT

AND TRADITIONAL AFFAIRS: EASTERN CAPE

Fourth Respondent

FIRST RESPONDENT'S AFFIDAVIT:

In Compliance with the Court Order herein dated 9th September 2021

I, the undersigned,

MOPPO MENE

do hereby make oath and state the following:-

1. The facts deposed to herein are, unless the context indicates otherwise within my personal knowledge and are to the best of my knowledge and belief both true and correct in all material respects.
2. To the extent that I may during the course of this affidavit advance legal submissions or introduce argument of a legal nature, I do so on the strength of advice received from the First Respondent's attorneys of record.
3. By reason of the nature of my employment, I am authorized to depose to this affidavit and to embark on this litigation for and on behalf of the First Respondent.

DEPONENT'S AUTHORITY

4. I am an adult male, and the Municipal Manager and an Accounting Officer for the First Respondent with our offices currently situated at City Hall, High Street Makhanda.

4.1. These proceedings are opposed at the instance of the first respondent.

- 4.2. Due to the facts herein being within my knowledge I am duly authorized to depose to this affidavit on behalf of the First Respondent.
- 4.3. I am also accordingly delegated to perform my duties, including reporting to the above Honourable Court regarding compliance with its Court Orders, where necessary in the performance of my duties and in specific relation to my portfolio.

COMPLIANCE WITH THE COURT ORDER

5. A Court Order was granted in this matter on the 9th September 2021, a copy of the said Court Order is attached hereto marked as Annexure "MM 1".
6. For purposes of this Affidavit, the relevant portion of the Court Order reads as follows:

6.1 *"The Respondents shall report, within six months of this court order, to court and the Applicants' attorneys by way of affidavit, delineating the steps taken to comply with the court order. Such affidavit shall also identify the Respondents' plans for the Makana Municipality waste management system in future, including a plan for creating an official dumpsite on the eastern side of Makhanda, unless the audit finds it unnecessary."*¹

¹ Paragraph 9 of the Court Order dated 9th September 2021. (Annexure MM1).

7. In compliance with the Court Order and specifically the above paragraph thereof, I report to the above Honourable Court and the Applicants through the following documentation:

7.1 Makana Local Municipality – Illegal Dumping – Court Order Report including photographs, dated November 2021 (marked as Annexure **"MM 2"**);

7.2 Makana Local Municipality – Illegal Dumping – Court Order Report including photographs dated September 2022 (marked as Annexure **"MM 3"**);

7.3 Sarah Baartman District Municipality – Request for Comments and Input on the First Draft on Sarah Baartman District Municipality (SBDM) Municipal Health Services By-Law, 2021 dated February 2021 (marked as Annexure **"MM 4"**); and

7.4 Department of Forestry, Fisheries and the Environment – Technical Assessment Report Template for Specialised Vehicles for Waste Management: Makana Local Municipality, EC, dated 31 August 2022 (Marked as Annexure **"MM 5"**).

8. In consideration of the above documentation, it is therefore my humble view that the First Respondent has taken the necessary steps under the circumstances to comply with the Court Order of the 9th September 2021 as mandated.

MOPPO MENE

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit which was sworn to before me at _____ on this _____ day of _____ 2022 after the provisions of the Regulation contained in Government Gazette No. R3619 dated 21 July 1972, as amended by Government Gazette No. 1648 dated 19 August 1977, having been complied with, and the deponent having declared that there is no objection to taking the prescribed oath, and the prescribed oath is accepted as binding on the deponent's conscience.



COMMISSIONER OF OATHS

Full Names:

Capacity:

Area:

ANNEXURE "MMI"

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA EASTERN CAPE DIVISION, GRAHAMSTOWN		
Private Bag X1011, Grahamstown 6140		
	2021 -09- 09	
LCL-LIT-004		
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA EASTERN CAPE DIVISION, GRAHAMSTOWN		

THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GRAHAMSTOWN

CASE NO: 2021/2020

BEFORE THE HONOURABLE MR. JUSTICE BROOKS

On the 9th day of September 2021

IN THE MATTER BETWEEN:

EZIHAGWINI STREET COMMITTEE

1st APPLICANT

MARY WATERS HIGH SCHOOL

2nd APPLICANT

AND

MAKANA MUNICIPALITY

1st RESPONDENT

MEC, DEPARTMENT OF ECONOMIC

2nd RESPONDENT

DEVELOPMENT ENVIRONMENTAL AFFAIRS

AND TOURISM: EASTERN CAPE

MINISTER OF ENVIRONMENTAL AFFAIRS

3rd RESPONDENT

MEC, CO OPERATIVE GOVERNMENT

4th RESPONDENT

AND TRADITIONAL AFFAIRS: EASTERN CAPE

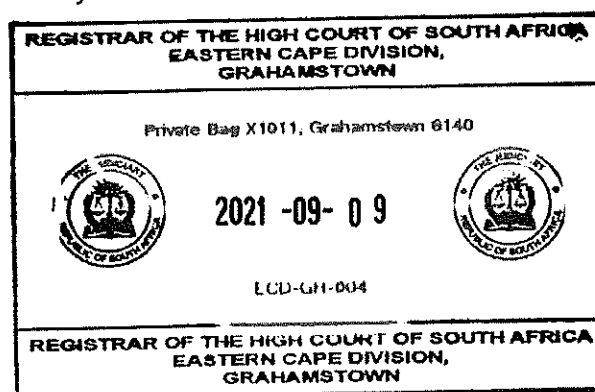
Having heard Adv. Webber, Counsel for the Applicants and Adv. Shangisa (SC) & Adv. Brauns, Counsel for 1st Respondent and having read the Notice of Motion and other documents filed of record

IT IS ORDERED (BY AGREEMENT) THAT:

1. The First Respondent Bylaws and Waste Management system be and are hereby declared unconstitutional to the extent that they fail to protect and fulfil the residents' rights to an environment that is not harmful to their health.
2. The First Respondent be and is hereby directed to clean up all the unofficial dumpsites listed in Annexure A hereto, within 14 days of the court order, and to remove the waste to the official municipal dumpsites.
3. The First Respondent be and is hereby directed to hold meetings with the

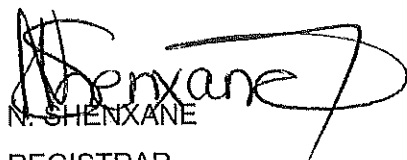
Applicants and the public to identify all other unofficial dumpsites within 30 days of the court order and to clean, clear and remove all waste at any dumpsites so identified within 120 calendar days of the court order.

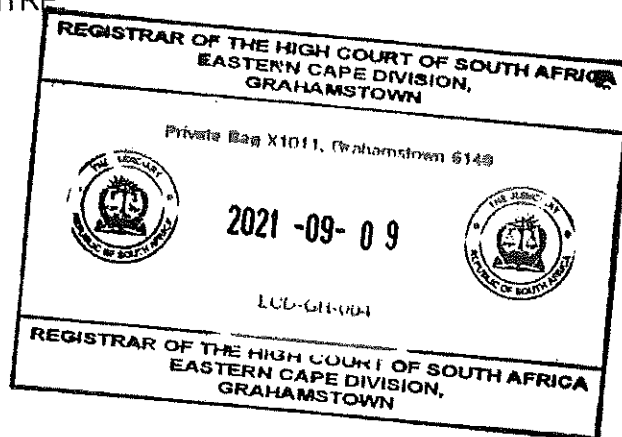
4. The First Respondent be and is hereby directed to provide three plastic refuse bags to each household per week within 14 days of the court order.
5. The First Respondent be and is hereby directed to ensure the provision of receptacles around town within 60 days of the court order.
6. The First Respondent be and is hereby directed to comply with the National Environmental Management: Waste Act 59 of 2008 (NEMWA) and all policies, regulations, and norms and standards issued pursuant to its authority.
7. The First Respondent be and is hereby directed to produce a comprehensive audit assessing the waste management needs in the Makana Municipality within three months of the date of the court order ("the Audit"). The Audit shall clearly identify the role of each Respondent in meeting the Makana Municipality waste management needs and shall determine what measures must be taken to provide the necessary waste management services and to protect the health and well-being of residents and other affected persons. The Audit is to be provided to the Applicants' attorney and the Second and Third Respondents' attorneys within three weeks of its completion.
8. The First Respondent shall ensure that the waste management needs identified by the audit will be met no later than three months after the date that the audit is completed.
9. The Respondents shall report, within six months of this court order, to court and the Applicants' attorneys by way of affidavit, delineating the steps taken to comply with the court order. Such affidavit shall also identify the Respondents plans for the Makana Municipality waste management system in the future, including a plan for creating an official dumpsite on the eastern side of Makhanda, unless the audit finds this unnecessary.



10. The First Respondent be and is hereby directed to review its bylaws and integrated management plan and amend same to ensure compliance with all applicable legislation, including NEMWA within 8 months of the date of this Court order.
11. The court shall retain jurisdiction over the matter until it is satisfied that this order has been complied with, or the First Respondent has provided a satisfactory explanation for why it cannot be complied with.
12. Any of the parties may re-enrol this matter for hearing at any stage, if necessary on duly supplemented papers, for the consideration of any further orders arising out of the order set out above.
13. The First Respondent shall pay the costs of this application.

BY ORDER OF COURT


N. SHENXANE
REGISTRAR
LEGAL RESOURCES CENTRE



1
[Handwritten signature]

Annexure A to the Notice of Motion

A – Dumpsite next to Jehovah’s Witness Church – “Ezihagweni”, Extension 6

B – Dumpsite next to DD Siwisa Primary School

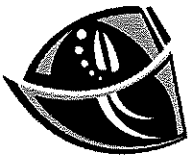
C – Erf 854 Extension 6

D – Vacant lot next to Erf 674, Sani Road, Extension 6

E – Vacant lot opposite Erf 6034, Extension 6

F – Dumpsite across road from Mary Water’s High School’s eastern border

G – Dumpsites to the east and west of TEM Mrwetyana High School



MAKANA
MUNICIPALITY | EASTERN CAPE
...a great place to be

Annexure "MM3"

Designation:

MAKANA LOCAL MUNICIPALITY

Document title:

ILLEGAL DUMPING :COURT ORDER REPORT

Issue date:

NOVEMBER 2021

Distribution:

Stakeholders

In compliance with the National Environmental Management WASTE Act, 2008 (Act 59, of 2008)
And
SECTION 24 OF THE CONSTITUTION OF SOUTH AFRICA (ACT 108, of 1996) AND Court Order.

BACKGROUND

As obligated by the waste management acts and regulations, the makana local municipality cleansing department continues or in clearing of illegal dumping sites within Municipal Jurisdictions. The programme has been initiated in response to the growing rate of illegal dumping sites within Makana Local Municipality and it was carried as part of municipal services in specific areas in response to a court order. The illegal dumping site clearing programme is a confirmation of Makana Local Municipality's commitment to preserve and protect natural resources, and aim to reach the target of removing waste that is scattered in the communities, thereby preserving our precious environment.

PURPOSE

To illustrate progress to stakeholders regarding the clearing of illegal dumping sites within makana municipal jurisdictions in response to a court order.

The following illegal dumping sites areas were cleared on numerous occasions as highlighted in the court order most identified sites were cleared more than 3 time since the court order was issued in 2021. Several outreach program to educate the communities living in close proximity to the identified sites via community engagements, door to door campaigns and schools visits. Lastly during the mayoral imbizo the executive Mayor during the IDP and budget process emphasize the importance of keep the Environment clean. In addition the municipality has form partnerships with local NGO and Environmental organization sponsored by National Art Foundation.

CONTENT

Municipal interventions

The Municipality in attempt to comply with the court order on illegal dumping developed several business plans to address the challenge of fleet to clean and maintain all illegal dumping sites. A total of 2 million rand was sourced and received to purchase waste management fleet dedicated to illegal dumping, funding was received in May 2022 and the tender was awarded in August 2022 and waiting delivery in October 2022 , in addition , the municipality received a donation of a skip container truck valued at 2.8 million to tackle illegal dumping , lastly the municipality has received 5 million rand to construct a material recovery and recycling facility in Joza to be in close proximity to the community and will be aimed to address illegal dumping. sourced external funding from Department of Economic Development and Environmental Affairs (DEDEA) in the tune.

By-laws:

The municipality in conjunction with Department Economic Development Environmental Affairs has draft the waste management by-laws and the Municipality has submitted the by-laws to province for finalization Environmental health, waste By-laws were approved by council and promulgated in June 2022 and Environmental Health Officers are implementing part of the by-laws when it come to issues of waste management.

Technical Assessment on waste management

The municipality has completed a waste management technical assessment and was submitted to Provincial DEDEA and National DEA on the 31 August 2022, the assessment is aimed at taking into account the waste management challenges faced by the municipality and opens a window of opportunity to application



- Dumping site next to Jehovah witness Church – “Ezihagwini” extension 6
- Dumping site next to DD Siwisa Primary School
- Erf 854 Extension 6
- Vacant lot next to Erf 674, Sani Road, Extension 6
- Vacant lot opposite Erf 6034, Extension 6
- Dumping site across road from Mary Water’s High School’s Eastern Border
- Dumping site in the East and West of T.E.M. Mrhwetyana High School


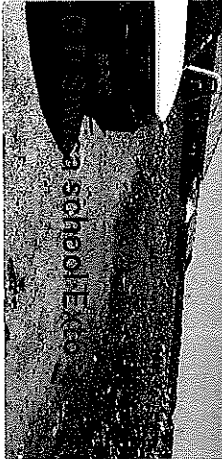
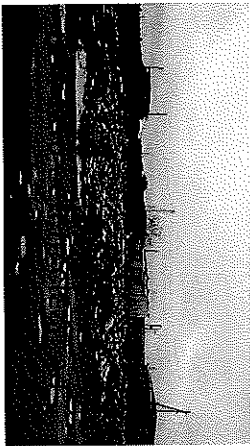
COURT ORDER ILLEGAL SITES:

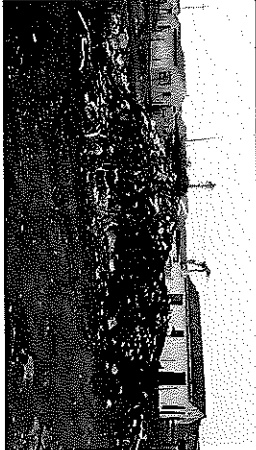
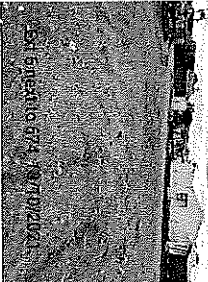
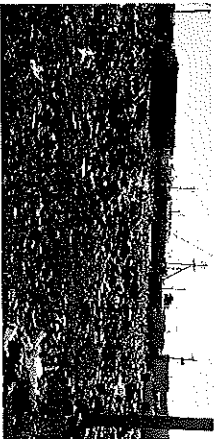
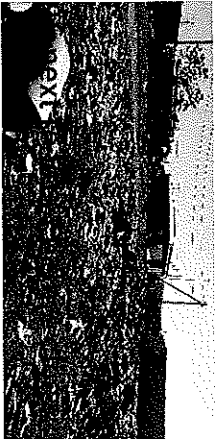
NB: ALL THE IDENTIFIED ILLEGAL DUMPING SITES WERE CLEARED ON SEVERAL OCCASION AND ADDITIONAL SITES WERE CLEARED DURING THE PERIOD UNDER REVIEW: 31 AUGUST 2021 TO 31 AUGUST 2022.

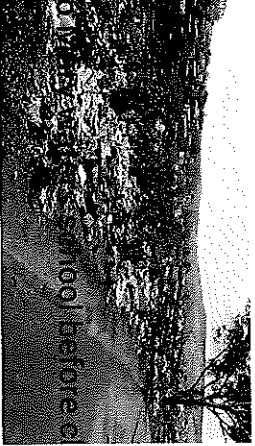
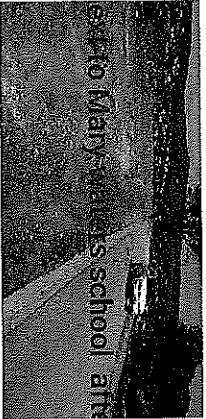
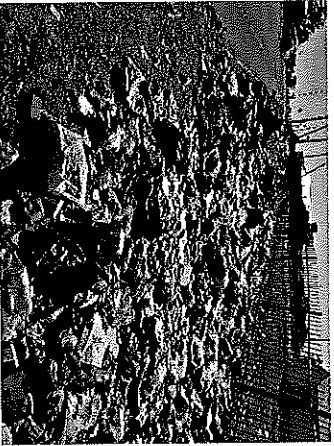
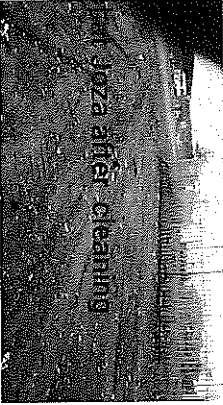
- The illegal dumping sites were cleared using Municipal Front end loader and tipper truck
- All the cleared material has been disposed to the municipal landfill site
- During the clearing at TEM Mrhwetyana East a container has been placed strategically to avoid further accumulation of the illegal dumping sites.
- For other illegal dumping sites like D.D Siwisa, Vacant lot opposite Erf 6034, Erf 854 Extension 6 clearing is still in progress
- This is due to the municipality having to clean other huge illegal dumping sites like Mfanandini and Ndancama to avoid further occurrence of environmental and social impact to the community
- All the cleared illegal dumping sites have been monitored to avoid further illegal dumping
- As part of monitoring, images have been taken 2 times a week to assess impact and progress.

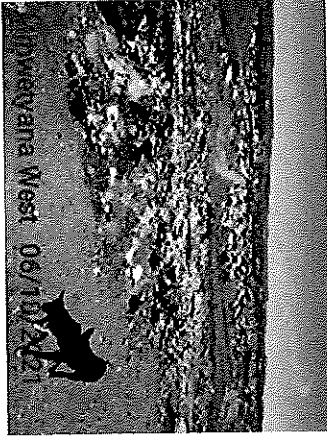

Below are the images showing the clearing of illegal dumping sites;


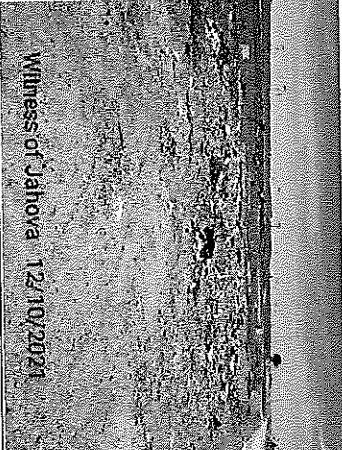
Area	Before	After
Jehovas witness Church		

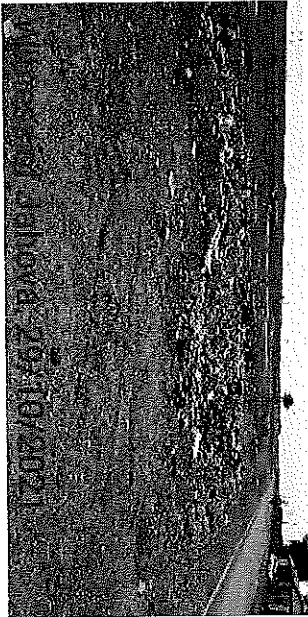
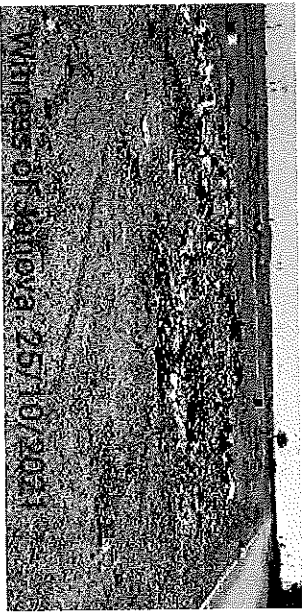
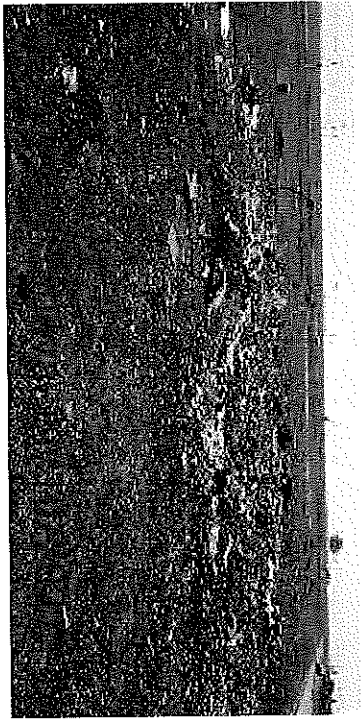
<p>Dumping site next to DD Siwisa Primary School</p>		
<p>Erf 854 Extension 6</p>		<p>In progress, the tipper truck had a mechanical breakdown while cleaning Erf , still working in progress</p>
<p>Vacant lot next to Erf 674</p>		

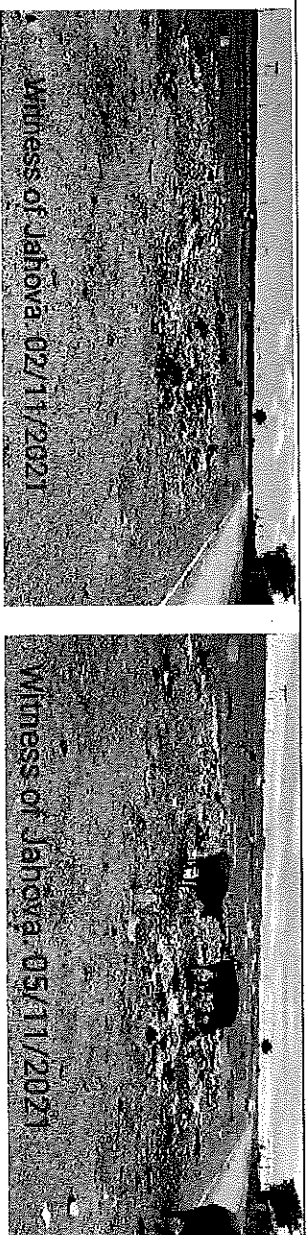
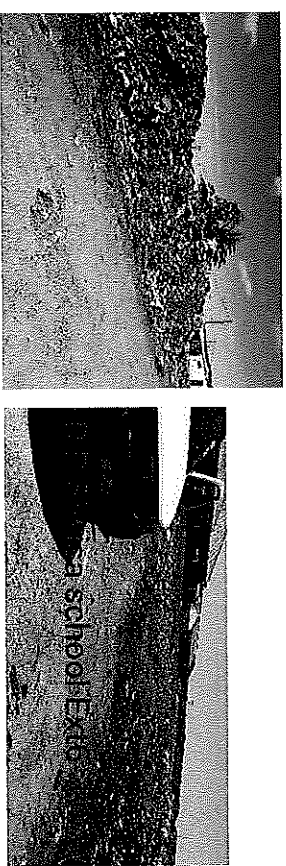

<p>Vacant lot opposite ERF 6034, Extension 6</p>		 <p>In progress, the tipper truck had a mechanical breakdown while cleaning ERF , still working in progress.</p> <p>It is anticipated that the ERF will be completed towards the end of November 2021, the front end road is in for service at the workshop.</p>
<p>Vacant lot opposite ERF 6034, Extension 6</p>	 	

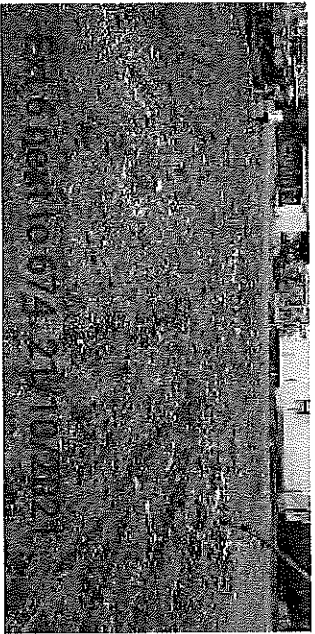
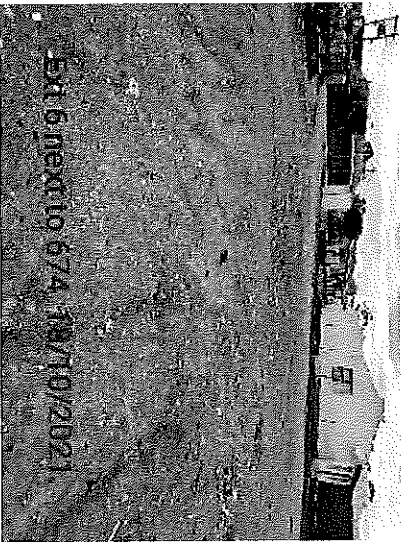
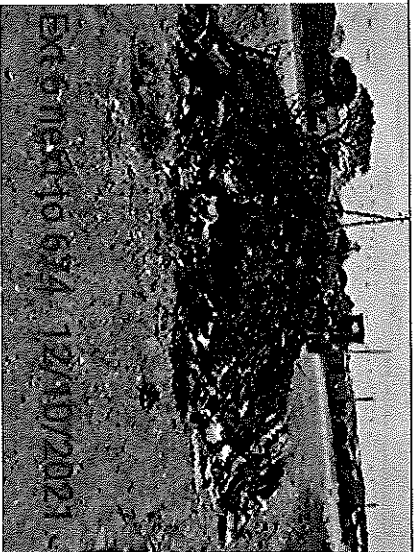
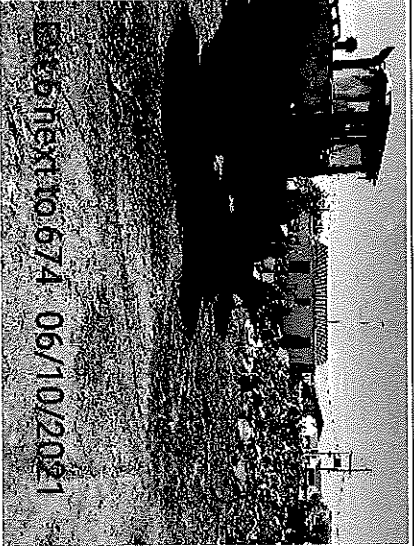
<p>Mary Water's High School's Eastern Border</p>		
<p>Mthwetyana East</p>		

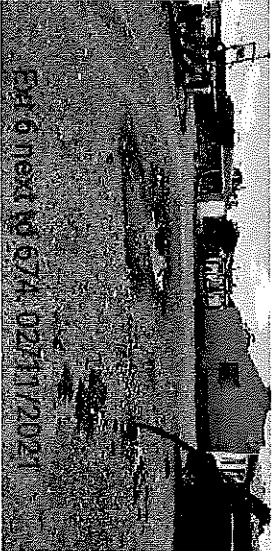


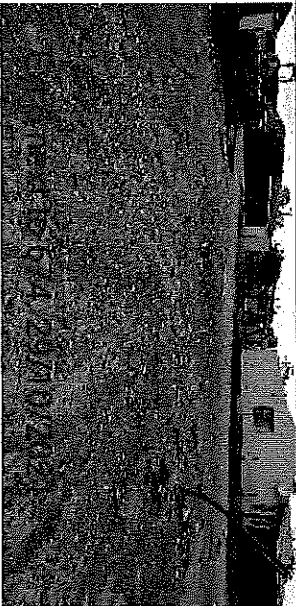
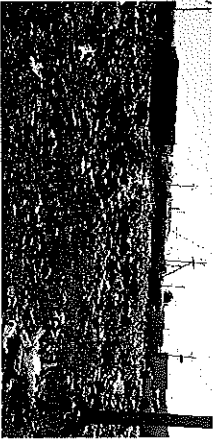
Mithwetyana West	 <p>Mithwetyana West 06/10/2021</p>	 <p>Mithwetyana West 18/10/2021</p>
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Area	Image	
Jehovas witness Church	 <p>Witness of Jehovah 06/10/2021</p>	 <p>Witness of Jehovah 12/10/2021</p>

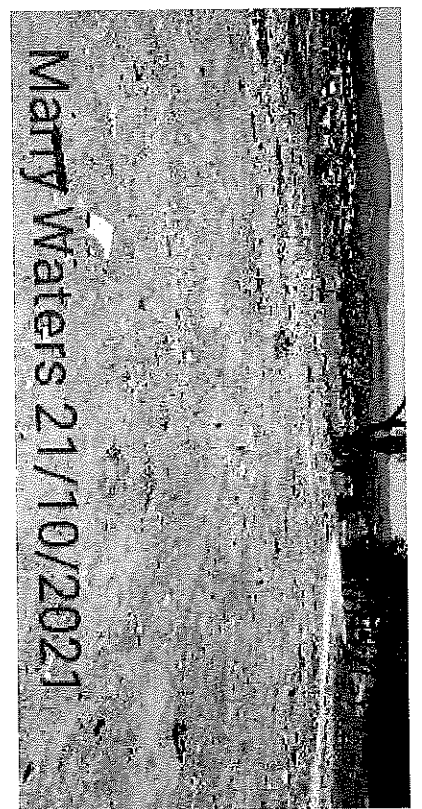
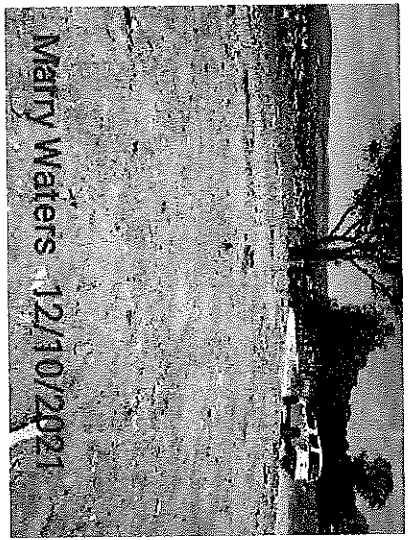
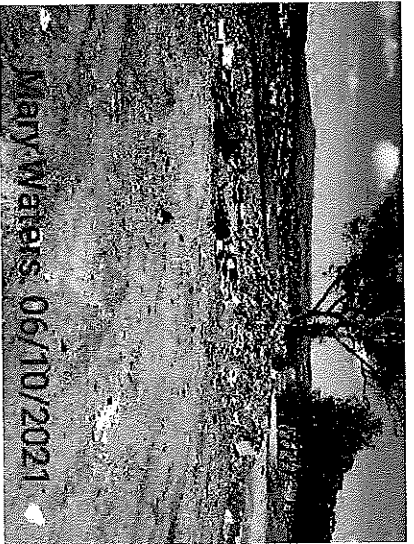






<p>Dumping site next to DD Siwisa Primary School</p>	
<p>Erf 854 Extension 6</p>	
<p>Vacant lot next to Erf 674</p>	

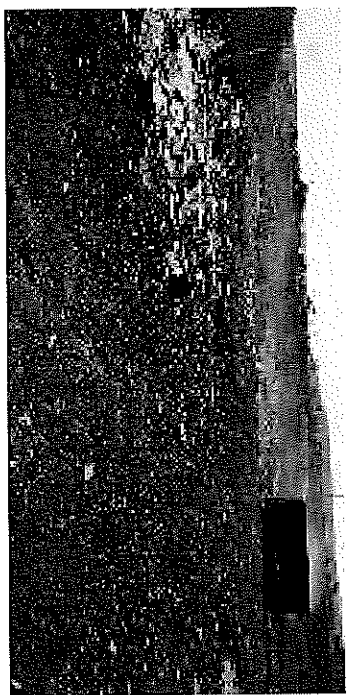
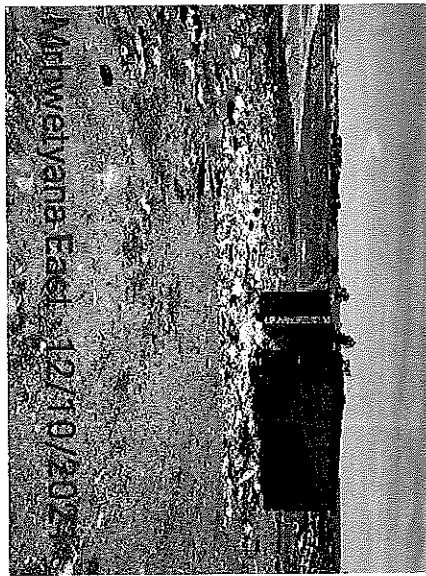
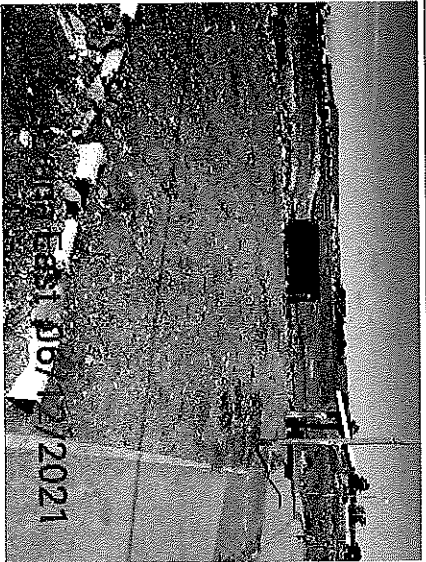


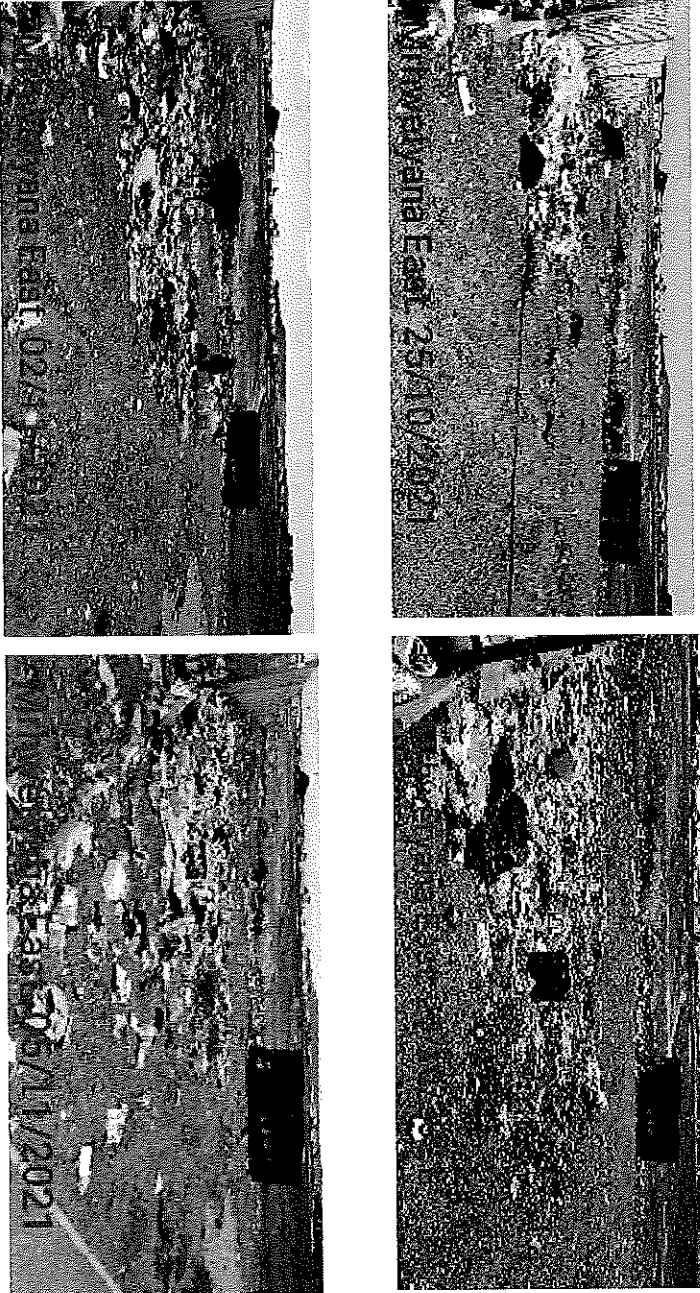
<p>Vacant lot opposite Eff 6034, Extension 6</p>	    
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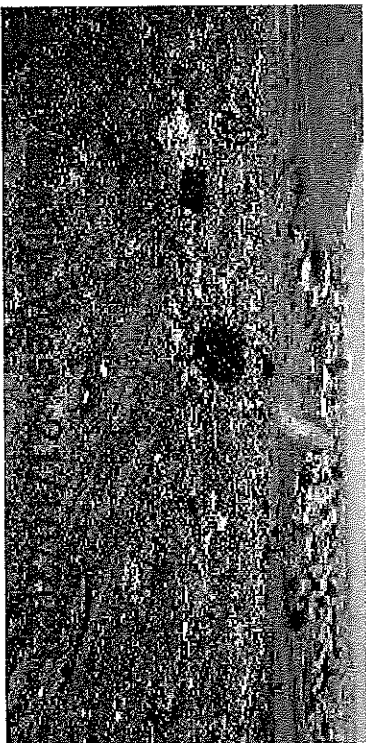
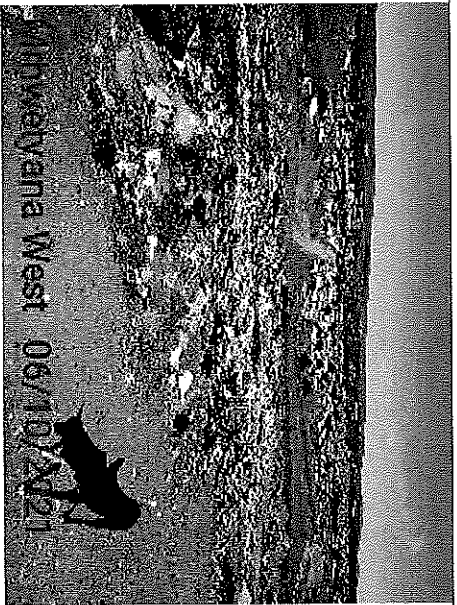
Mary Water's
High School's
Eastern Border







Mihwetyana East	   
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<p>Mrhwetyana West before and after</p>		 <p>The table contains four black and white photographs arranged in a 2x2 grid. Each photograph shows a wide, flat, open area, possibly a construction or mining site. In the foreground, there are some dark, rectangular objects that appear to be vehicles or pieces of equipment. The ground is uneven and appears to be covered in dirt or gravel. In the background, there are some low-rise structures or buildings. The sky is clear. Each photograph has a date stamp in the bottom right corner: 'Mrhwetyana East 25/10/2021' (top-left), 'Mrhwetyana East 02/8/2021' (top-right), 'Mrhwetyana East 05/11/2021' (bottom-left), and 'Mrhwetyana East 08/11/2021' (bottom-right).</p>
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	 <p>Muhweyana West. 02/10/2021</p>	 <p>Muhweyana West. 29/10/2021</p>
 <p>Muhweyana West. 02/11/2021</p>	 <p>Muhweyana West. 05/11/2021</p>	

SEE ATTACHED ADDITIONAL PHOTOGRAPHIC PICTURES OF COURT ORDER ILLEGAL DUMPING AND ADDITIONAL ILLEGAL DUMPING CLEARED. DATED 01 JANUARY 2022 UPTO 31 AUGUST 2022.

Challenges

The major challenges encountered during this programme are as follow;

- The mechanical breakdown of municipal machinery delays PROGRESS on the ground
- Dumping on the cleaned areas by the community immediately after municipality has cleaned
- Lack of by-in by the community
- There is a noticeable burning of waste in placed waste containers by the communities.
- The residents dump dead animals in the containers which cause odour pollution.
- The residents sometimes dump the waste outside the containers.