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Opinion Editorial for Business Day

WHEN STATUTORY PROCESSES SEND OUR ECONOMY DOWN THE DRAIN

In the last two weeks, two significant investment messages were transmitted across South Africa and into the world at large. The first was a Western Cape High Court judgement interdicting a R4.5-billion investment that has been under construction for months. The second was the President's fourth annual investment conference, bringing the target he set four years ago of R1.2-trillion in investment close to the mark, with 95% (R1.14 trillion) now pledged.

But what do these two have in common? Simply put, the Cape Town development is earmarked to house, as lease space for its African operation, of one of the largest IT and data businesses in the world. These are the very types of buildings and infrastructure for which the President's campaign is attracting investment.

The "hot-of-the-bench" court ruling stops construction in its tracks till further notice, irrespective of the years of statutory applications by the developers and their professional teams, and the many associated public-participation processes that have taken place.

The merits, either for or against the judgment, is not the focus; certainly not for ourselves as the Western Cape Property Development Forum (WCPDF), an organisation that represents the full production line of property from developer to construction worker. What is instead front of mind for us, as it is to investors globally, is whether compliance with these complex, statutory application processes associated with development will ever offer any guarantee that attacks from the sideline will not still scupper investments – often mid-stream? Can South Africa honestly hope to promote itself as a safe investment destination when such derailment can occur, in spite of developments following the process?

The bulk of the investment commitments recently celebrated at the President's investment summit requires the very literal breaking of ground. To those not knowledgeable in property development and infrastructure construction processes, I therefore offer the following background

Development does not take place in a statutory void. Large-scale, complex projects trigger every rule in the legislated rulebook: water use licenses as well as environmental management, heritage, land use and building application processes. Every one of these is underpinned by reams of expert reports, each dealing with a very specific field of specialisation. And each application is also assessed by different departments across all spheres of Government.

Each of these legislative processes also activates multiple public-participation opportunities and, in turn, appeal processes. Civil society therefore has an abundance of opportunities during which to raise objections, at no cost to the individual objector or appellant, and every decision taken can be subjected to legal review.

It's embedded in our Constitutional democracy; every objector has the right to be heard, even to the level of public-participation fatigue. There are so many checks and balances in place that it is nothing

short of miraculous when a project actually gets to break ground, never mind being completed on time and on budget.

And these processes are not unique to private development. Public sector projects, whether energy security, education, health, public utility infrastructure or housing, go through the exact same process – years of applications and multiple opportunities for naysayers to veto the plans. For the good public servant tasked with project delivery, this holds the same frustration as for the private sector investor – long and cumbersome processes and no certainty of outcome. For those less interested in service delivery, it offers the perfect excuse for both lack of service delivery and accountability.

But returning to the ruling at the centre of this discussion: what do the thousands of construction workers who have been involved in a large-scale – or indeed any – project do when this is halted mid-stream and their fortnightly wages are no longer paid? How do we explain compliance, non-aligned legislated processes and the right of veto to a hungry child?

There is a level of national schizophrenia that sets in when we demand our elected leaders set vision and take strong delivery-orientated decisions, but then we run to the courts to protect our personal interests when we don't like the decision. The greater good be damned. In turn, our courts, always mindful of our country's past of silencing individuals, rightly embrace social activism, but does this always need to lead to a point of economic stagnation?

Perhaps some swinging of the pendulum is now required: at a time when investment and job creation is crucial to South Africa's survival, one cannot wonder if the reality of unemployment is understood across all of government?

The President gets it: it's about the economy. For the first time, at this year's SOPA, he acknowledged that it was not government's job to create jobs but rather that of the private sector. Government's job – and this means Parliament, its officials and the courts - is to create an enabling environment.

So, what is Parliament doing to streamline the plethora of legislation and regulation in order to facilitate investment and job creation? What legitimacy does any single legislated statutory process have if it can be vetoed at any time? What messages are our courts sending if, irrespective of the miracle of statutory approval, aggrieved parties can still stop processes beyond the closure dates of public-private participations?

Back in 2007, past-President Mbeki toyed with the idea of regulatory impact assessment. And some government departments do try to question the economic impact or hindrance of their respective rules and regulations. But "some" is not good enough – the challenge to Parliament is to roll up its sleeves and identify all statutory and regulatory obstacles that undermine investment. Our courts must start to question what the economic impact of their judgements will be, and whether these will remove - or place - food on the table of the poorest among our society.

If there is to be any hope of President Ramaphosa's investment summits bearing fruit we can actually taste as a nation, then we have to recalibrate the way we make decisions or risk the right of individuals to veto our country into economic oblivion.

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