

SOUTH AFRICA / JUDGMENT

Van Zyl (EDMS) Beperk (t/a ZZ2) and Others v Minister of Agriculture Forestry and Fisheries and Others (45144/2017) [2020] ZAGPPHC 283 (24 June 2020)

[2020] ZAGPPHC 283

COURT

North Gauteng High Court, Pretoria

BEFORE

S A M Baqwa

CASE / FILE NUMBER

45144/2017

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHERS JUDGES: YES/NO
- (3) REVISED

Case No: 45144/2017

In the matter between:

Bertie Van Zyl (EDMS) BEPERK (T/A ZZ2)

First Applicant

Tomato Producers' Organisation

Second Applicant

Noordelike Uie Komitee

Third Applicant

Fresh Produce Importers' Association NPC

Fourth Applicant

and

The Minister of Agriculture Forestry and Fisheries

First Respondent

Production Control for Agriculture

Second Respondent

Leaf Services (Pty) Ltd Nejamogul Technologies Third Respondent

And Agric Services Fourth Respondent

Agency for Food Safety (Pty) Ltd

Fifth Respondent

Impumelelo Agribusiness Solutions (Pty) Ltd

Sixth Respondent

Perishable Products Export Control Board

Seventh Respondent

South African Meat Industry Company Eighth Respondent

LEAVE TO APPEAL JUDGMENT

BAQWA J

INTRODUCTION

1 This is an application for leave to appeal to the Supreme Court of Appeal, alternatively to the Full Court of the Gauteng Division, Pretoria, against the judgment and order granted by this Court on 28 February 2020.

2 Section 17 of the Superior Courts Act 10 of 2013 provides as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

- (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

3 In this matter the Applicants sought an order declaring that Section 3 (1A) (b) (ii) read with Section 3A (4) of the Agricultural Product Standards Act 119 of 1990 (“the Act”) is not in accordance with the Rule of Law and/or Section 195 (3) of the Constitution and/or that it permits the arbitrary deprivation of property contrary to the provisions of Section 25 (1) of the Constitution and to be unconstitutional and invalid.

4 Further, the Applicant sought a declaration of invalidity to be suspended for a period of 18 months to enable the First Respondent and Parliament to enact the required changes to the legislative provisions, which had been challenged, in order to render them constitutionally valid.

5 The Applicants complied with the provisions of Rule 16A as the application amounted to a constitutional challenge. They filed a Section 16A notice.

6 The Applicants also sought the review and setting aside of the Second Respondent's determination of its inspection fees in terms of Section 3 (1A) (b) (ii) of the Act in notice 1 of 2017 published in Government Gazette 40537 dated 6 January 2017.

7 The application was dismissed with costs on the basis that the imposition of fees by assignees was a decision which is appealable in terms of Section 10 of the Act. Furthermore, that the Applicants are

precluded in terms of Section 7 (2) (a) of PAJA from pursuing a review until an internal appeal has been exhausted.

8 The Applicants have raised a challenge against the reasoning and conclusions reached by this Court on the grounds cited in the application for leave to appeal.

9 I have considered the said grounds and submissions by Counsel and I am persuaded that an appeal would have a reasonable prospect of success and that the matter raises important issues of law and complex issues of fact that warrant the attention of the Supreme Court of Appeal.

THE ORDER

10 In the result, the application for leave to appeal is granted in terms of Section 17 (1) of the Superior Courts Act to the Supreme Court of Appeal, costs to be costs in the appeal.

S. A. M. BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Heard on

: 23 June 2020

Judgment

delivered

: 24 June 2020

Appearances:

For the Applicants

Adv. M.C Maritz (SC)

Adv B.C Stoop (SC)

Instructed by:

Bernhard Van der Hoven Attorneys

For the First Respondent:

Adv. C.E Puckrin (SC)

Adv. H.C Janse van Rensburg

Instructed by:

The State Attorneys

For the Second and Eighth Respondent: Adv. H Epstein SC

Adv. M Mostert

Instructed by:

Fairbridges Wertheim Becker Attorneys

For the Seventh Respondent:

Adv. L.C Kelly

Instructed by:

Mothle Jooma Sabdia Inc.

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