



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 16 May 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Top Lay Egg Co-op Ltd & Another v Minister of Agriculture, Forestry and Fisheries & Others (400/2022) [2023] ZASCA 67 (16 May 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal from the Full Court of the Gauteng Division of the High Court, Pretoria (full court). The appeal concerned the interpretation of a letter issued by the Minister of Agriculture, Forestry and Fisheries (the Minister) by which he designated 'Agency for Food Safety' as an assignee in terms of the Agricultural Product Standards Act 119 of 1990 (the Act). After the designation, the Food Safety Agency (Pty) Ltd (the third respondent), mandated its wholly-owned subsidiary company, Agency for Food Safety and Quality (Pty) Ltd (fourth respondent) to conduct inspections and exercise its attendant powers as assignee, in respect of poultry products.

The appellants were companies conducting business in poultry products, approached the high court for a declarator and review order, first, whether the Minister in the letter, designated the third or fourth respondents as the assignee (the identity of the assignee); second, what was the scope of powers which were conferred to the assignee in terms of the letter; and third, whether the attended powers of the assignee to determine fees were not arbitrary, capricious and irrational. The high court found the contentions untenable and dismissed the application, as did the full court on appeal.

On further appeal to the SCA, the appellants raised the same three grounds of appeal. First, the appellants contended that the Minister's letter designated 'Agency for Food Safety' (fifth respondent) as the assignee. It turned out that the Minister in fact referred to 'Food Security Agency (Pty) Ltd' (the third respondent) by using its trade name in the letter. This had been clarified by correspondence exchanged between the parties well before the institution of proceeding in the high court. Second, the appellants contended that the Minister only assigned limited powers in terms of ss 3(1) and 4 of the Act and the respondents were therefore precluded from performing any powers not expressly mentioned, such as those in ss 3A, 3(1A), 7 and 8. The SCA rejected that contention and found that s 2 of the Act provided that once designated by the Minister as an executive officer and as assignee, they are directly empowered to exercise the powers listed in that section, unless expressly provided otherwise. Sections 3(1) and 4 were inseparably connected ss 3A, 3(1A), 7 and 8 of the Act. The power to conduct inspections was expressly stated in the letter. Section 2 of the Act authorised the executive officer or the assignee to conduct inspections and exercise the attendant powers in respect of the quality of

poultry products. Third, the appellants contended that the determination of inspection fees were arbitrary, capricious and irrational. Similar to the findings by both the high and full court, the SCA held that the determination of fees was an administrative action, arising out of an exercise of public power. In the absence of a regulated legal framework as to how the power should be exercised, s 4 of the Promotion of Administrative Justice Act 3 of 2000 is applicable. The determination of fees must be made in consultation with entities whose interests would be affected by the outcome of such determination. The role-players and stakeholders must be provided with an opportunity to participate, where necessary to raise their concerns in so far as their interests are affected, and allow the decision-maker to deal with their concerns. It must be a public participation process. The assignee had met with these requirements, as a result, the existing fee payable was reduced to less than half.

In the result, the SCA saw no merit in the contentions raised by the appellants and subsequently dismissed the appeal with costs including costs of two counsel where employed.

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