



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 27708/2021

- 1. REPORTABLE: NO
- 2. OF INTEREST TO OTHER JUDGES: NO
- 3. REVISED: NO

DATE: 11 December 2023

In the matter between:

Excellent Meat International Trading (PTY) LTD

Applicant

And

Minister of Agriculture, Land Reform and Rural
Development

1 st Respondent

National Executive Officer: Department of
Agriculture, Land Reform and Rural Development

2nd Respondent

Director: Directorate of Animal Health:
Department of Agriculture, Land Reform and
Rural Development

3rd Respondent

Director: Directorate of Veterinary Public Health:
Department of Agriculture, Land Reform and
Rural Development

4th Respondent

Director: Directorate of Inspection Services:
Department of Agriculture, Land Reform and
Rural Development

5th Respondent

JUDGMENT

BOTHA AJ

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Introduction

The Applicant applied for an order in the following terms:

That a declaratory order be issued in terms whereof it be declared that:

- 1.1 The first to fifth respondents are obliged to monitor all imported unprocessed or raw meat in accordance with the provisions of the Procedure Manual: Microbiological Monitoring of Imported Meat, 21 October 2011, read with the Procedure Manual,

Inspection Procedure for Imported Meat, 23 April 2008, until such time as the aforesaid Procedure Manual is replaced;

- 1.2 The collection and handling of samples for the bacteriological testing of imported unprocessed or raw meat by anyone other than State Veterinarians, meat inspectors, environmental health inspectors, and animal health technicians who have received the relevant training in meat examination, employed by the Department of Agriculture, Land Reform and Rural Development, Directorate Veterinary Public Health/Animal Quarantine and Inspection Services/ Animal Health, and authorised in terms of the Meat Safety Act, 40 of 2000 (as amended) (MSA), constitutes a contravention of the Procedure Manual: Microbiological Monitoring of Imported Meat, 21 October 2011, and is irregular and unlawful;
- 1.3 The first to fifth respondents are not entitled to reject consignments of imported or raw meat products premised on the results of tests conducted of organisms not declared to be “organisms of concern” in terms of the Procedure Manual: Microbiological Monitoring of Imported Meat, 21 October 2011;
- 1.4 The first to fifth respondents are not entitled to reject consignments of imported or raw meat products premised on labelling requirements not specifically provided for in the Meat Safety Act, read with the applicable regulations;
- 1.5 The first to fifth respondents are obliged to comply with the provisions of sec 18(1) of the Meat safety Act, read with the applicable regulations, when receiving and processing an appeal against a certificate of rejection as contemplated in the *Procedure Manual: Microbiological Monitoring of Imported Meat, 21 October 2011; and*
- 1.6 The second to fifth respondents are not permitted to consider and adjudicate an appeal in terms of sec 18(1) of the Meat safety Act;
- 2 Directing the first to fifth respondents to conduct sampling and microbiological testing of, and to monitor all imported unprocessed or raw meat in accordance with the provisions of the Procedure Manual: Microbiological Monitoring of Imported Meat, 21 October 2011, read with the Procedure Manual: Inspection Procedure for Imported Meat, 23 April 2008, until such time as the aforesaid Procedure Manual(s) are

replaced;

- 3 An order interdicting the second to fifth respondents from utilising anyone other than State Veterinarians, meat inspectors, environmental health officers and animal health technicians (who have received the relevant training in meat examination) to conduct the collection and handling of samples for the bacteriological testing of imported unprocessed or raw meat;
- 4 An order interdicting the second to fifth respondents from adjudicating an appeal as contemplated in sec 18 of the Meat Safety Act, including an appeal against a decision to reject a consignment of frozen meat products in terms of a certificate of rejection;
- 5 Directing the second to fifth respondents to correctly reflect an importer's right to appeal against a certificate of rejection to the first respondent or the MEC of the province in question, as the case may be, in terms of sec 18(1) of the Meat safety Act(read with the applicable regulations) on a certificate of rejection as contemplated in form (a) of the Procedure Manual: Microbiological Monitoring of Imported Meat.21 October 2011, including by stating that " an appeal must be lodged within thirty (30) days of being informed of the decision, and the prescribed fee contemplated in sec 18(2) of the Meat Safety Act, read with the applicable regulations, stands to be paid upon submission of an appeal (if any);
- 6 *The cost of this application including the cost of two counsel where so employed.*

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The Parties

2.1 The applicant is a private company and an importer of frozen meat products and to that end has to obtain a permit or permits from the respondents to import such frozen meat products from other countries into the Republic of South Africa.

2.2 The 1st respondent is the Minister of Agriculture, Land reform and Rural

Development;

2.3 The 2nd respondent is the National Executive Officer: Department of Agriculture, Land Reform and Rural Development;

2.4 The 3rd respondent is the Director: Directorate of Animal Health: Department of Agriculture, Land Reform and Rural Development;

2.5 The 4th respondent is the Director: Directorate of Veterinary Public Health, Department of Agriculture, Land Reform and Rural Development;

2.6 The 5th respondent is the Director: Directorate of Inspection Services, Department of Agriculture, Land Reform and Rural Development.

The 1st to fifth respondents are collectively called “ DALRRD”

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The relevant legal framework

3.1 The Meat Safety Act 40 of 2000 (MSA)

3.2 Red Meat Regulations (GN 1072 of 17 September 2004)

3.3 Poultry Regulations (GN 153 of 24 February 2006)

3.4 Ostrich Regulations (GN 54 of 2 February 2007)

3.5 Animal Diseases Act 35 of 1984

3.6 Promotion of Administration Justice Act 3 of 2000 (PAJA)

3.7 Consumer Protection Act 68 of 2008

3.8 Superior Courts Act 10 of 2013

3.9 Procedure Manual: Microbiological Monitoring of Imported Meat, issued by the Director: Veterinary Public Health on 21 October 2011

3.10 Procedure Manual: Inspection Procedure for Imported Meat, 19 May 2008

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Background

4.1 The applicant is an importer of frozen meat products and to that end permits have to be obtained from the DALRRD in order to import the frozen meat products into the RSA. It speaks for itself that certain conditions are to be contained in each permit which will have to be adhered to by the importer.

4.2 The applicant seeks declaratory and interdictory relief against the DALRRD for the alleged disregard of its own policy with regards to the microbiological monitoring of the imported meat products.

4.3 The relevant policy is the Procedure Manual: Microbiological Monitoring of Imported Meat that has been in use since November 2011.

4.4 However, since 2019 the DALRRD started disregarding the prescribes of the manual in 4.3 above and, as a result, consignments of frozen meat and/or unprocessed raw meat were rejected. Reasons given for the rejection included:

4.4.1 Tests were conducted to establish the presence of “organisms of concern” that are not listed or published or identified as such by the said Procedure Manual;

4.4.2 The rejection of four consignments of beef livers imported from France by DALRRD officials citing product labelling requirements that are non-existent in the Procedure Manual, the relevant Acts and/or the regulations thereunder;

- 4.4.3 Samples taken of meat products for testing purposes by unauthorised and untrained officials of the DALRRD in clear contravention of the Procedure Manual and the Meat Safety Act (MSA);
- 4.4.4 The appeals lodged by the applicant against rejections were attended to by officials of the DALRRD themselves after labelling the appeals as “requests for reconsideration”. The MSA in sec 18 thereof, clearly states that only the Minister (1st respondent) or the MEC of the particular province may adjudicate an appeal against a certificate of rejection .
- 4.5 It is common cause between the parties that, for purposes of this application, there were four (4) rejections by the DALRRD of consignments of the applicant to wit:
- 4.5.1 Rejection of the February 2020 consignment of poultry drumsticks. The reason being the testing for “organisms of concern” although not identified or listed in the Procedure Manual;
- 4.5.2 The rejection of the January 2021 consignment of frozen beef hearts, pursuant to the sampling and testing of the product by un authorised personnel of the DALRRD;
- 4.5.3 The rejection of the December 2020 consignment of frozen chicken feet, also pursuant to sampling and testing by unauthorised persons ;
- 4.5.4 The rejection of the November 2020 consignment of frozen beef livers due to “incorrect labelling”

4.6 The applicant lodged appeals in respect of all the rejection notices, only for the appeals to be called "reconsiderations" and to be adjudicated by the DALRRD themselves.

4.7 There are no factual disputes between the parties and therefore the rule in the well known case of *Plascon -Evans* is not applicable

See: *Plascon-Evans v Van Riebeeck Paints* 1984(3) SA 623 (A)

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Does the Procedure Manual: Microbiological Monitoring of Imported Meat, issued on 21 October 2011 constitute binding policy?

5.1 The importation of meat products from other countries are subject to the granting of an importation permit by the National Executive Officer (2nd respondent).

5.2 The importer has to abide by the conditions set out in such permits.

5.3 The authority to grant such a permit is derived from sec 13(1) of the MSA.

5.4 Sec 22(1) of the MSA states that the Minister (1st respondent) may make regulations regarding: " (f) the taking of samples for purposes of this Act, and the testing, examination and analysis of such samples;

(g).....

(h) matters pertaining to the importation of meat, and..."

5.5 The DALRRD publishes procedure manuals in respect of the procedure and other matters arising from the MSA and its regulations.

5.6 These manuals are published on its website in the public domain, and also brought under the attention of Meat Importers. The procedure manual in the instant case was published on the DALRRD's website under the Animal Health's branch: Import/Export Policy unit section.

5.7 The Manual covers a wide spectrum of topics and relevant here:-

- (i) Organisms of concern;
- (ii) Sampling apparatus and materials to be used when collecting samples;
- (iii) Provision as to who may collect such samples and when such samples must be analysed;
- (iv) The approval of laboratories for conducting tests; and
- (v) Certificates of rejection and recordal of appeals.

5.8 When consideration is given to the Procedure Manual: Microbiological Monitoring of Imported Meat. 21 October 2011 the following is stated and is unavailable:-

A. PURPOSE OF THIS PROCEDURE MANUAL.

“ To lay down the necessary actions to be taken by officials during sampling and microbiological testing of imported unprocessed/raw meat* to ensure compliance with import requirements as stipulated in the relevant import permits and in legislation below.

(* As defined in the Meat Safety Act 40 of 2000)

B. SCOPE

This procedure manual must be implemented at all inspection sites i.e. City Deep, OR Tambo International Airport, Durban, Cape Town, Port Elizabeth and at any other site approved by the Director Veterinary Public Health.

5.9 The respondents in their answering affidavit, par 118 states that the Procedure Manual is a mere “guideline” and not binding policy.

5.10 I do not agree. I am of the view that the Procedure Manual is binding policy and it has to be adhered to by the respondents and their officials.

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Legitimate expectation

The aspect of legitimate expectation does not warrant lengthy discussion.

6.1 This doctrine originated in England and was accepted in our law in

Administrator Transvaal and Others v Traub and Others 1989 (4) SA 731 (A)

6.2 This doctrine was followed in a plethora of cases and the Constitutional Court held as a result that there is a “duty to act fairly”

See: MEC for Education, Gauteng Province v Governing Body, Rivonia Primary School 2013 (6) SA 582 (CC).

6.3 In the instant case the DALRRD admits that the Procedure Manual was published in the public domain, sent and published to various meat importers associations. The manual came into effect from 4 November 2011 and was consistently and without exception used and applied by the DALRRD officials.

6.4 There can be no doubt that the actions by the DALRRD is “administrative actions” Sec 3(1) of PAJA states that administrative action which materially and adversely affects the rights or, a legitimate expectation of any person must be procedurally fair.

- 6.5 The applicant, as an importer of frozen raw, unprocessed meat, has a legitimate expectation that, when engaging with its business of importing meat, must know what the legal requirements are that has to be met and adhered to , to lawfully conducts its business. Conversely, that the applicant can expect that the Statutory Bodies regulating its enterprise will consistently apply the laws and regulations pertaining to the import business. Over and above the certainty in the mind of the importer of what is legally expected from him, he also have a legitimate expectation to be treated fairly and that the laws and regulations will be applied consistently as published.
- 6.6 There is no doubt in my mind that the DALRRD had an obligation to comply with the regulations and the Act and to act accordingly as dictated by the Procedure Manual.

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Appeals

- 7.1 By admission the DALRRD concedes that no appeal from the applicant was adjudicated by the Minister or the relevant MEC. The DALRRD rebranded appeals from the applicant as “reconsiderations” and was considered amongst themselves by the likes of a Dr Molefe and a Mr Brown.
- 7.2 Sec 18 (1) of the MSA provides for the appeal procedure. The section states clearly that any person who feels aggrieved by a decision of the National Executive Officer (2nd respondent)... may appeal to the Minister or the MEC of the province.
- 7.3 The MSA and its regulations do not provide for a “reconsideration process”. In the instant the DALRRD played the role of judge and jury of their own decisions.
- 7.4 The DALRRD put forward in their answering affidavit that the process of “reconsideration” was offered to the Association of Meat Importers (AMIE) as an additional measure of regulation which is “tantamount to trade usage” Mr Paul

Matthew, the CEO of AMIE, denied this under oath. He deposed that the term “trade usage” was used only once by the DALRRD and that was in December 2019 with regard to the re-testing of meat samples in a laboratory.

7.5 I, therefor am satisfied that not one of the applicants appeals were adjudicated in accordance with the legal prescriptions as provided for in Sec 18 of the MSA.

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The Collection and Handling of Samples for purposes of Bacteriological testing

8.1 The applicant alleges that people, not authorised by the Procedure Manual, took samples that had to undergo bacteriological tests.

8.2 This is admitted by the DALRRD but attempted to justify it by saying that that the workers received “hands on training” to collect samples and that they do that under supervision of authorised inspectors.

8.3 This was negated by the applicant by annexing correspondence that proves that a certain Siyabongi Ntuli, an untrained general worker of the DALRRD took samples for testing.

8.4 Be that as it may, the explanation of the respondents does pass muster. Part G of the Procedure Manual states in no uncertain terms who may collect and handle samples for purposes of bacteriological testing. Par 1 reads:” Only State Veterinarians , meat inspectors, environmental health officers and animal health technicians who have received the relevant training in meat examination and are employed by the Department of Agriculture, Forestry and Fisheries, Directorate Veterinary Public Health/Animal Quarantine and Inspection Services/Animal Health and authorised in terms of the above legislation may collect and handle samples for the bacteriological testing of imported meat”

8.5 It is clear that the DALRRD disregarded this provision blatantly.

Relief sought

9.1 In terms of the Notice of Motion the applicant seeks a declaratory order and interdictory relief.

9.2 The applicant does not seek a review or the setting aside of the administrative actions of the DALRRD in the past regarding the rejections of the imported consignments. There is no practical benefit for the applicant by reason that it became moot, the meat has expired. I pause to mention that it was proven by the applicant the actions of the DALRRD caused severely financial losses to the applicant.

9.4 I am of the view that a declaratory order can be made in the instant case. If not in terms of PAJA or the principle of legitimate expectation, then in terms of Sec 21 (1) (c) of the Superior Courts Act 10 of 2013

9.5 The requisites for a final interdict are

(i) Clear right;

(ii) Injury actually committed or reasonable apprehended; and

(iii) the absence of a satisfactory remedy

9.5.1 I have no doubt that there is sufficient evidence to satisfy the first two requirements. What is troublesome is the third requirement.

9.5.2 In *Fourie v Uys* 1957 (2) SA 125 (C) Herbstein J held: "The court will not, in general, grant an interdict where the applicant can obtain adequate redress by

an award of damages. Where a party can obtain ample compensation by action, the court will not grant the unusual relief of interdict”

See also: Cresta Machines (EDMS) BPK v Die Afdeling Speuroffisier SA Polisie, Noord-Transvaal 1970(4) SA 350 (T)

9.5.3 The applicant has the appeal process in terms of sec 18 of the MSA to his disposal (if properly done according to the MSA Act) furthermore, the applicant can get proper redress by instituting action for damages against the DALRRD. This is trite and deserves no further discussion. Therefor I am not inclined to grant interdictory relief.

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Costs

The applicant asks for a punitive cost order- attorney and client scale. Costs are in the discretion of the court. Since I already indicated that I am not inclined to grant interdictory relief which means that the applicant is only partial successful no cost order will be granted and each party has to pay its own costs.

I make the following order:-

It is declared that:

- 1) The first to fifth respondents are obliged to monitor all imported or raw meat in accordance with the provisions of the Procedure Manual: Microbiological Monitoring of Imported Meat. 21 October 2011, read with the Procedure Manual: Inspection Procedure for Imported Meat, 23 April 2008, until such time as the aforesaid Procedure manual(s) is replaced;

- 2) The collection and handling of samples for the bacteriological testing of imported unprocessed or raw meat by anyone other than State Veterinarians, meat inspectors, environmental health officers, and animal health technicians who have received the relevant training in meat examination, employed by the Department of Agriculture, Land Reform and Rural Development, Directorate Veterinary Public Health/ Quarantine and Inspection services/ Animal Health, and authorised in terms of the Meat Safety Act, 40 of 2000 (as amended) , constitutes a contravention of the Procedure Manual: Microbiological Monitoring of Imported Meat, 21 October 2011, and is irregular and unlawful;
- 3) The first to fifth respondents are not entitled to reject consignments of imported unprocessed or raw meat premised on the results of tests conducted on organisms not declared to be "organisms of concern" in terms of the Procedure Manual: Microbiological Monitoring of Imported Meat, 21 October 2011;
- 4) The first to fifth respondents are not entitled to reject consignments of imported unprocessed or raw meat products premised on labelling requirements not specifically provided for in the Meat Safety Act, read with the applicable Regulations;
- 5) The first to fifth respondents are obliged to comply with the provisions of section 18(1) of the Meat Safety Act, read with the applicable regulations, when receiving and processing an appeal against a certificate of rejection as contemplated in the Procedure Manual: Microbiological Monitoring of Imported Meat 21 October 2011; and
- 6) The second to fifth respondents are not permitted to consider and adjudicate an appeal in terms of Sec 18(1) of the Meat Safety Act
- 7) No order as to costs


GB BOTHA

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 19 October 2023

Judgment delivered: 11 December 2023

Attorneys for applicant: Friedland Hart

Solomon & Nicolson

Counsel for applicant:

Adv PA Swanepoel SC

Adv X Boonzaaier

Attorneys for respondent: State Attorney

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Adv M v d Westhuizen