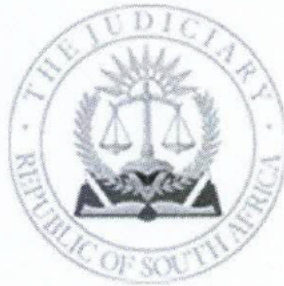


REPUBLIC OF SOUTH AFRICA



THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

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

11 January 2022
DATE


SIGNATURE

CASE NO: A218/2020

In the matter between:

TOP LAY EGG CO-OP LIMITED

1ST APPELLANT

GEORGE SCHWARTZEL

BOERDERY (PTY) LTD

2ND APPELLANT

EGGBERT EGGS (PTY) LTD

3RD APPELLANT

WW BARTLETT POULTRY FARM (PTY) LTD

4TH APPELLANT

And

MINISTER OF AGRICULTURE FORESTRY

AND FISHERIES

1ST RESPONDENT

EXECUTICE OFFICER:

AGRICULTURAL PRODUCT STANDARDS,

DEPARTMENT OF AGRICULTURE:

FOOD SAFETY & QUALITY ASSURANCE

2ND RESPONDENT

FOOD SAFETY AGENCY (PTY) LTD

(REG NO: 2013/130308/07)

3RD RESPONDENT

AGENCY FOR FOOD SAFETY & QUALITY (PTY)

LTD

4TH RESPONDENT

AGENCY FOR FOOD SAFETY

5TH RESPONDENT

FULL BENCH JUDGMENT

BOKAKO AJ

INTRODUCTION

1. The trial court on the 5th of June 2020 refused leave to appeal, however, on petition the Supreme Court of Appeal on the 26th of August 2020 granted the Appellants leave to appeal to the Full Court of this Court. This is an appeal against the judgment delivered by Justice Davis on the 6th of March 2020.
2. This appeal also pertains to the appointment by the Minister of an assignee in terms of Section 2(3)(a) of the Agricultural Product Standards Act No 119 of 1990 ("the APS Act") and in particular the powers granted to the appointed assignee. The Appellants launched an application in this Court in terms of which relief was sought inter alia in the form of declaratory orders. The relief primarily related to the powers assigned by the Minister to the Fifth Respondent in terms of the APS Act and most importantly whether the power was assigned to levy fees for the inspection of eggs. That the decision contained in the Executive Officer's publication of 16 January 2017 be set

aside alternatively that it be declared that the Minister has not designated the third or fourth respondents as assignees in terms of Section 2(3)(a) of the Act. Further that the determination of the inspection fees as published in the relevant Government Notice "be declared to constitute an illegality and consequently a nullity and that all notices issued by the fourth respondent be reviewed and set aside and/or that it be declared that such invoices constitute illegalities.

3. The other issue on appeal is centered around the interpretation of the provisions of the Agricultural Products Standards Act No 119 of 1990 ("the APS Act"). The Agricultural Products Standards Act No 119 of 1990 ("the Act") provides for the control over the sale and export of certain agricultural products and similarly for control over the sale of imported agricultural products.

FACTUAL BACKGROUND

4. The first Appellant Top lay has approximately 50 members who produce eggs which are marketed under the name of Top lay; they supply eggs country wide and supplies eggs to certain of the major role-players in the industry namely inter alia Massmart Group, Shoprite Holdings, Pick Pay and the Spar Group. Top lay markets at least 2 million eggs per month, over and above the aforesaid its members also market 7,5 million dozen eggs per month independently. This equates to 90 million eggs per month. There are also many other producers of eggs countrywide which includes the Second, Third and Fourth Appellants. The Second, Third and Fourth Appellants are corporate egg and poultry producing entities.
5. The Minister is the First Respondent, the Executive Officer is the Second Respondent, the Third Respondent is Food Safety Agency (Pty) Ltd, Agency for Food Safety and Quality (Pty) Ltd referred to as "AFSQ" is the Fourth Respondent and Agency for Food Safety is the Fifth Respondent.
6. The first respondent issued an invitation, inviting prospective assignees to submit their bids to be appointed as assignees in respect of agricultural products as set out in the Animal Products Standards Act 119 of 1990 ("APS Act"). On 18 July 2018, the assignees were invited to attend an information session to familiarize themselves with the minimum requirements set for the selection of the assignees. At that session, detailed information that should accompany the written application was presented. Eleven applications from prospective assignees were received by the 2nd Respondent.
7. The third respondent made its representations as per the public invitation. At all material times, the third respondent made it known that the Agency for Food Safety (fifth respondent) is its trading name. Together with its written application and amongst other returnable documents, the third respondent submitted a Business Plan wherein it described itself as follows: "Food Safety Agency (Pty) Ltd trading as Agency for Food Safety (AFS) ". In the same Business Plan, the third respondent again described itself as follows: Company name: Food Safety Agency (Pty) Ltd, Trading name: Agency for Food Safety.

8. On 9 December 2016, the first respondent designated the third respondent in terms of section 2(3)(a) of the APS for the application of section 3(1) and 4A concerning the inspection of regulated animal products poultry, meat, and eggs as well as any other meat and meat products for which regulations may be promulgated. The assignee is the third respondent trading as the fifth respondent (Food Safety Agency (Pty) Ltd t/a Agency for Food Safety).
9. On 19 January 2017, the second Respondent: made it known by way of a publication in the Government Gazette that the first Respondent has appointed three entities as assignees. One of these was described as being "Agency for Food Safety (Pty) Ltd". Furthermore, the second Respondent's publication read that the appointment was for purposes of the "application of sections 3(1)(a) & (b), 3A (l), 4A(l)(a), 7 and 8' of the Act.
10. On the 21st of February 2017 the Agency for Food Safety began consulting industry role players. After consultation with the industry at two workshops, one being on 20 April 2017 and the other on 4 May 2017 which were attended by the applicants, the industry's suggested that, because of the risk profile of eggs, quarterly inspections instead of monthly inspections should be conducted, such was accepted together with a proposed reduction in the fees for inspections initially proposed and published.
11. Inspection of eggs were included, the inspection of packaging and labelling to ensure that both the product and the manner in which it is described and sold comply with the quality and public safety provisions of the Act. The inspection fees included these functions without extra charges. The inspection fees were reduced from R0, 015 to R0,0006 per egg. The suggested fees charged per egg was an acceptable method of calculating and budgeting for inspection costs. These fees were consequently published in Government Gazette No 40847 dated 19 May 2017 per Notice 35 of 2017.

ISSUES TO BE DETERMINED

12. What powers were assigned to the assignee (whether the Third or Fifth Respondents), including the interpretation thereof and the effect thereof. This will need to take the following into consideration:

- 12.1 Whether the assignee (whether the Third or Fifth Respondents) had also been assigned the power to conduct inspections as provided for in Section 3A, in circumstances where this power was not explicitly assigned together with the powers in Section 3(1);

- 12.2. Whether the assignee (whether the Third or Fifth Respondents) was entitled to determine and levy fees for inspections carried out in terms of Section 3A (4), and if so, whether the fees determined and charged are rational;
- 12.3. Whether the assignee was entitled to charge fees in circumstances where no actual inspection is conducted and in respect of each egg produced/packaged, irrespective of whether each egg was inspected;
- 12.4. Whether the assignee was further and additional thereto entitled to determine the prohibition of sale, (Section 3(1)) and charge a fee therefore (Section 3(1A)(b)(ii));
13. The identity of the assignee and the effect thereof, in respect of the powers held to have been assigned;
14. Whether an internal appeal must be lodged with the Minister in terms of Section 10 of the APS Act, only if it is held that the assignee appointed, was the Fifth or Third Respondents, had the power to conduct inspections in terms of Section 3A and charge a fee for such inspection, that the assignee actually determined the fee and in fact conducted the inspections;
15. Whether the provisions of the Promotion of Administrative Justice No 3 of 2000 (PAJA) apply or not.
16. Finally, that it be declared that the Minister has not designated the power to determine fees to the third or fifth respondents. The first and second respondents opposed this application and argued that by virtue of its assignment in terms of section 2(3)(a), the assignee is appointed to perform the powers as set out in the APS Act. It was argued that on a proper interpretation of the APS Act, the assignee's powers are not limited to section 3(1) and 4A of the APS Act.

SUBMISSIONS

APPELLANTS

17. The Appellants argued that the manner of levying of fees of R0,0006 per egg produced or packaged monthly was never levied before the appointment of the assignee. Such would cause irreparable harm to the industry to such an extent

that additional fees that are charged would have to be passed on to the consumer.

18. The Appellants argument was that the manner employed by the 3rd Respondent who purports to be the assignee in determining the fees is draconian and arbitrary in that fees are levied for each egg produced or packaged whether inspected or not.
19. The Appellants contends that the Fifth Respondent is the appointed assignee and not the Third Respondent. The power to inspect and to charge fees for inspections had not been assigned as stipulated in Sections 3(1) and 4A of the APS Act and not to Section 3A; if it was held that Section 3A was designated to the assignee there appeared to be a confusion pertaining to the identity of who determined the fees. If it was the Third Respondent or a non-existent entity it constituted an illegality that the determination of the fees, if held to have been assigned and held to have been determined by the Third Respondent constituted an illegality by virtue of the fact that it was not the appointed assignee and further by virtue of the fact that such power was not assigned, even if it is the assignee.
20. It was also argued that the Fourth Respondent, not the appointed assignee, conducted inspections, purporting to act as the assignee and issued VAT invoices in its name to members of First, Second, Third and Fourth Appellants, based on R0,0006 per egg produced/packaged per month and not actually inspected. In some cases, fees were charged even if no inspections took place and it was based on the production figures obtained from the producers.
21. It was further submitted that the Third and Fourth Respondents are not organs of State and their actions are not subject to review in terms of PAJA or subject to an internal appeal in terms of Section 10 of the APS Act, and constitute illegalities. In that the conducting of the inspections by the Fourth Respondent and the issuing of invoices constitute illegalities concluding that the assignee had an unfettered discretion with regard to the determination of its fees. Therefore, the appellants contended that the determination of fees by an assignee without regulatory control amounted to exploitation.
22. Also argued that, it is apparent from the express assignment that the first Respondent assigned limited powers to the assignee in terms of the APS Act; prior to the appointment of the Fifth Respondent as the assignee on 9 December 2016.

23. They further submitted to the court that the power to conduct inspections, grading and sampling for quality control according to Section 3A was not explicitly assigned to the assignee. It was also not explicit that the power to seize a product reasonably believed to be concerned in the commission of an offence was also not articulated.
24. Further submitted that in respect of Section 8. This power was not explicitly assigned to the assignee; the appointment of the assignee did not take away any of the powers of second Respondent, who still up to today, has the power to conduct inspections in terms of Section 3A of the APS Act as well as the powers set forth in Sections 7 and 8. Full citation.
25. It was contended by the Appellants that learned Judge Davis wrongly held that the provisions of Section 3A were included in the assignment by necessary implication, such finding was wrong. Section 2(3)(a) of the APS Act clearly provides that the first Respondent may assign generally or assign certain provisions of the Act.
26. Further contended by the Appellant that the court wrongly concluded that the Third Respondent is the appointed assignee, notwithstanding the fact that the Fifth Respondent was explicitly appointed by the first Respondent, the court based its finding on the fact that the Fifth Respondent is a trading name of the Third Respondent, such averments being supported by representations made to the first Respondent in this regard. Further arguing that this has far-reaching implications and on a proper interpretation of the provisions of the APS Act and the assignment.
27. Also submitted that the court aquo wrongly found in the main judgment that despite the Fourth Respondent not being the appointed assignee, so designated, and not conducting the inspections in the name of the assignee, but in its own name, that "this does not however preclude the third Respondent from the issuing of fresh invoices for its fees, even if no inspections had been done by the subsidiary, as its contractor or agent".
28. The Appellants further contended that the Fifth Respondent was unambiguously and explicitly appointed and nobody else. It was submitted that the approach followed by the learned Judge is wrong in that he found that to enable the assignee to exercise the powers in terms of Section 3(1) he must by necessary implication have to have investigative powers or the power to inspect in terms of Section 3A of the APS Act. The decision-making power to prohibit the sale of certain products (Section 3(1)) and the sale of imported products (Section 4A) was exclusively bestowed upon the Minister. The first Respondent explicitly

assigned his own powers (Sections 3(1) and 4A) to the assignee also the first Respondent was excluded from conducting any investigations or inspections if regard is had to Section 3A, which provides for the second Respondent or the assignee to do so. The first Respondent did not assign the powers in Section 3A to the assignee, assignment of Sections 3(1) and 4, he clearly intended that the assignee should be the decision maker and nothing else, in conformity with the doctrine of the separation of powers. One need not have to have the power of inspection (Section 3A) to make a decision in terms of Sections 3(1) and 4A. The first Respondent made those decisions without the power of investigations previously. The second Respondent still has the power to inspect and he is free to report to the assignee, who stepped into the shoes of the Minister, to make decisions in terms of Sections 3(1) and 4A.

29. The assignee did not need any other powers such as inspections to make decisions to prohibit the sale of products (Section 3(1)) or the importation of products (Section 4A); further the imposing of investigative powers and decision-making powers would interfere with the fundamental principle of objective decision making by the body appointed to make the decision. This situation would be compounded by the fact that this person would be entitled to charge a fee which he would be at liberty to determine without any restriction.

30. The Applicants argued that any delegation of power must be restrictively interpreted and quoted some authority in support if this proposition made reference to *Kosiyamhura v Minister of Home Affairs 1991 (I) SA 643 WLD*, *Horseshoe v Minister of Mineral Affairs 1992 (3) SA 838(A)* and *Hershel Zetler N.O & Others v Minister of Transport and Public Works [201 ZAWCH 200]*. Further made reference to *Natal Joint Municipal Pension Fund v Endumeni Municipality Wallis J* stressed that regard should be had to the language used, the context in which the provision appears and the purpose to which it is directed; The terms of the assignment are explicit and does not leave room for an interpretation that other provisions could be read into it, as set out hereinabove. Neither did the Minister or the Second Respondent explain why only certain provisions of the APS Act were assigned and not all the Sections applicable to an assignee. If regard is had to Sections (b) and (c) it deals with separate and distinct functions and/or duties and are distinguishable from the power and functions set out in Section 3A;

The First to Fifth Respondents Contentions:

31. They argued that the basis upon which the "Third Respondent" exercised the powers were as follows:

- 31.1 The First Respondent does not have to specifically authorize or delegate the Third Respondent to implement Sections 3,4, 7 and 8 of the APS Act. The Third Respondent derives the powers to implement these Sections ex lege and that first Respondent appointed the assignee in terms of the provisions of section 2(3)(a) of the APS Act which provides as follows:
- 31.2 The Minister may, for the purposes of the application of this Act or certain provisions thereof, with regards to a particular product, designate any person, undertaking, body, institution, association or board having particular knowledge in respect of that product. Acting under the provisions of this section and although the assignment refers to Agency for Food Safety as the assignee, the Minister Designated Food Safety Agency (Pty) Ltd t/an Agency for Food Safety as the assignee. Section 2(3)(b) provides that "an assignee thus designated shall-(l) unless expressly provided otherwise and subject to the directions of the executive officer, exercise the powers and perform the duties that are conferred upon or assigned to the executive officer by or under this Act.
32. Further submitted that It was common cause between the parties that the first respondent did not expressly provide otherwise and as such, the assignee exercised the powers in terms of section 2(3)(a) and 2(3)(b) of the APS Act. Such powers include the powers which were assigned to the second Respondent.
33. Further submitting that the Appellants have to date, failed to provide any evidence that the Minister expressly excluded the powers of the assignee in terms of sections 3(1A), 3A, 4A, 7 and 8 of the APS Act or that he provided expressly otherwise as stated in section 2(3)(b) of the APS Act.
34. They submitted that if the first Respondent had intended to exclude the powers in terms of section 3(1A) and of the APS Act, he would have stated expressly that those powers are excluded. In any event, such express exclusion would have been superfluous because in order to give effect to the control provisions, the purpose of the APS Act and the intention of the legislature, the assignee would have to exercise the powers and duties set out in section 314.
35. Further arguing that a proper interpretation of section 2(3)(b)(l) is that the assignee can exercise the powers and duties that are conferred upon or assigned to the second Respondent under this Act. Further contending that the second Respondent has the power to perform the functions listed in section 3A and consequently is entitled to charge fees as set out in the Act.

36. They argued that the Appellant's basis of argument is not sustained in that the learned Judge erred in failing to have regard to the actual terms of the assignment which expressly refers to only certain provisions of the APS Act namely section 3(1) and 4A of the Act. The APS Act makes provision for control over the sale and exportation of agricultural products. For this purpose, the first Respondent is granted the powers to prohibit the sale or the exportation of products that do not meet the requirements as specified by or under the APS Act. The provisions of the Act read together with the preamble makes it clear that certain agricultural products listed in the control provisions are subject to the control of the Minister as set out above.
37. Therefore, the assignee has, in terms of section 3A, the powers to inspect, grade and sample the products as listed for purposes of quality control. The purpose of section 3A is to ensure quality control of the products before they are sent out to the market either by way of sale, import or export. A product that does not meet the requirements as set out in the control provisions will be prohibited for sale, import or export. The assignee or the second Respondent is entitled to charge fees in respect of duties performed to ensure compliance with the control provisions. This is clear from the wording of section 3(1A) (a) which provides that: "3(1A) (a) fees may be charged in respect of the powers exercised and duties performed by the second Respondent or the assignee, as the case may be to ensure compliance with this section.
38. Further contends that the fees to be charged by the assignee or the second Respondent for the duties performed to ensure compliance with section 3(1) are set out in paragraph 3(1A)(b) which states: 3(1A) (b) In the case of powers exercised and duties performed by: (i) the executive officer, the prescribed fee shall be payable; and (ii) the assignee, the fee determined by such assignee shall be payable.
39. Further submitted that Davis J was correct in holding that "section 3(1) cannot logically be disconnected from 4A in that control over products can only take place by way of powers created by section 3A, following by implication that the assignee or second Respondent should exercise the powers set out in section 3A of the APS Act, the Minister may for the purposes of the application of this Act or certain provisions thereof with regard to a particular product, designate any person, undertaking, body, institution, association or board having particular knowledge in respect of the product concerned, as an assignee in respect of that product.
40. The Respondents vehemently argued against the Appellants that it is apparent from the express assignment that the first Respondent assigned limited powers

to the assignee in terms of the APS Act. The Respondents contended that these powers were explicitly assigned to the respective assignee.

41. The Court a quo in the main judgment correctly held that the express powers conferred on the assignee are those as set out in the assignment namely Sections 3 and 4A of the APS Act.
42. The court correctly held that the provisions of Section 3A were included in the assignment, by necessary implication. This finding is with respect correct. If the first Respondent intended not to provide, he could have provided an exclusionary note or assignment or exclude other Sections of the APS Act in the assignment.

THE LAW

43. The purpose of the Act is to control the sale and export of certain agricultural products, the sale of certain imported agricultural products and other related products.
44. In terms of Section 2(3) the Minister may appoint assignees as follows:
"(a) The Minister may for the purposes of the application of this Act or certain provisions thereof, with regard to a particular product, designate any person undertaking, body, institution, association or board having particular knowledge in respect of the product concerned, as an assignee in respect of that product.
(b) An assignee thus designated shall-
unless expressly provided otherwise and subject to the directions of the executive officer, exercise the powers and perform the duties that are conferred upon or assigned to the executive officer by or under this Act, with regard to the product referred to in paragraph (a); in the case of a juristic person, notwithstanding anything to the contrary contained in any other law or in the absence of any express provision to that effect, be competent to exercise the powers and perform the duties referred to in subparagraph (I); and
(iii) unless the Minister in a particular case otherwise directs, have no recourse against the State in respect of any expenses incurred in connection with the exercising of such powers or the performance of such duties. "
45. In terms of Section 3(1A) assignees are empowered to determine and charge fees in respect of the powers exercised and duties performed in terms of Section 2 (supra). Section 3(1A) provides:
"(a) Fees may be charged in respect of the powers exercised and duties performed by the executive officer or the assignee, as the case may be, to ensure compliance with this section.
(b) In the case of powers exercised and duties performed by-

the executive officer, the prescribed fee shall be payable; and
(ii) the assignee, the fee determined by such assignee shall be payable.

46. In terms of Section 3A (1)(b)(c)(d) and (e) an assignee may: "classify grade, pack or market any quantity of a product in accordance with the prescribed requirements..." "Inspect or cause to be tested any quantity of a product"; or "subject to subsection 2(d) take such samples of a product, material, substance or other article in question as he or she may deem necessary. "
47. Section 3A (4) states "In the case of action under subsection (l) (b), (c), (d) or (e) by the relevant person referred to in subsection (l), the owner of the product in question shall pay the prescribed fees or the amount determined by the assignee, as the case may be, for such action. " The Act controls the sale, export and import of certain agricultural products. The first respondent (the Minister) may prohibit the sale of a prescribed product unless it complies with prescribed classifications and standards. In terms of s 2(1) of the Act, the Minister may designate a person in the employ of the Department of Agriculture (the Department) as the executive officer to exercise the powers and perform the duties conferred under the Act. The Minister may also, in terms of s 2(3)(a), designate a person, with regards to a particular product, for the purposes of the application of the Act. A person so designated is styled an 'assignee' in respect of that particular product.

APPLICATION OF THE LAW TO THE FACTS

48. The Act permits the executive officer and an assignee to conduct inspections aimed at ensuring that certain agricultural products meet the prescribed classifications and standards. They charge fees to do so. In the case of the executive officer the fee is prescribed. In the case of the assignee, the Act stipulates, in s 3(1A) (b)(ii), that 'the fee determined by such assignee shall be payable.' I shall refer to this provision, read with s 3A (4), which requires the owner of the product to pay the fee, as the challenged provision. Section 3(1A) permits fees to be charged in respect of the powers exercised and the duties performed by an assignee.
49. The fee that shall be payable is the fee determined by the assignee. Among the powers exercised by an assignee is the power of inspection. It follows that when the assignee exercises a power of inspection, a fee is payable by the owner of the product inspected. That fee is determined by the assignee.

50. I will then start looking at the said proposed declaratory order that the Minister had not assigned or designated the powers provided for in sections 3(1A) (a) and (b)(ii) and 3A, 7 and 8 of the Act to any of the respondents.
51. The Appellants seek an order that it be declared that sections 3(1A) (a); 3(1A) (b)(ii), 3A and 7 and 8 were not assigned by the first Respondent. A large foundation of their attack in this regard that these sections and sub-sections were not expressly listed in the first Respondent's designation but only contained in the second Respondent's publication of the notice.
52. Section 2 (3) (a) stipulates that the first Respondent may, for purposes of the application of this Act or certain provisions thereof, with regard to a particular product, designate any person, undertaking, body, institution, association or board having particular knowledge in respect of the product concerned, as an assignee in respect of that product.
- (b) An assignee thus designated shall-
 - (i) unless expressly provided otherwise and subject to the directions of the Executive Officer, exercise the powers and perform the duties that are conferred upon or assigned to the Executive Officer by or under this Act, with regard to the product referred to in paragraph (a);
 - (ii) in the case of a juristic person, notwithstanding anything to the contrary contained in any other law or in the absence of any express provision to that effect, be competent to exercise the powers and perform the duties referred to in subparagraph (i); and
 - (iii) unless the Minister in a particular case otherwise directs, have no recourse against the State in respect of any expenses incurred in connection with the exercising of such powers or performance of such duties.
 - (c) The chief executive official, chairman or other person in charge of such assignee who is not a natural person-
 - (i) shall act on behalf of that assignee in the exercise of the powers concerned and the performance of the duties concerned; and
 - (ii) may in writing delegate or transfer to an employee of that assignee any such power or duty which the assignee concerned shall or may exercise or perform by or under this Act, or in writing authorize or direct such employee to exercise such power or perform such duty.
 - (d) A power exercised or duty performed by an employee referred to in paragraph (c) (ii), shall be deemed to have been exercised or performed by the chief executive official, chairman or other person in charge, as the case may be: Provided that the chief executive official, chairman or other person in charge, as the case may be, may at any time amend or withdraw any decision made or given by such employee.

53. The essence of the rule of law is that all administrative authorities must exercise their powers within the confines of the law. As discussed earlier, the first Respondent was acting properly within his powers in terms of the Act to delegate such authority to the third Respondent. Thereafter, the third Respondent must act within the parameters of the authority as delegated in terms of the Act but subject to ministerial control.
54. The purpose of the Act is to regulate the export, import and sale of agricultural products. Such regulation necessitates the inspection of such products before they are released into the market.
55. The inspection cannot be done by the first respondent only as it does not possess the necessary capacity. Upon delegation of its authority to the assignees, the latter have to conduct inspection services, subject to payment of fees. There is nothing unlawful in the actions of the assignee, in this case the third Respondent charged fees in exchange for their services therefore such cannot be created by bringing the assignee's actions within the ambit of arbitrariness in terms of Section 25 of the Constitution as the payment is due for services rendered.
56. In the event of any arbitrariness or unfairness in fixing the fees by the assignees, the appellants were at liberty to challenge such fees by way of review proceedings. In the present case I do not find that appellants have alleged sufficient facts to justify an illegality on the part of the assignees. I have referred to section 3 (1A) (b) (ii) of the APS Act above. It provides that an assignee may charge fees for the powers exercised and the duties performed by it. Section 3 A (4) renders the payment of the fee or amount determined by the assignee mandatory. Section 15 (1) (g) of the APS Act allows the Minister to make regulations regarding the fees that have been determined by the assignee. 3 (1A) (b) (ii) of the APS Act above.
57. Appellants argued that the aforesaid provisions gave the assignee the unfettered right to determine its own fees. In contrast, they say the fees payable to the second Respondent is subject to the first Respondent's approval, therefore, there is no rational reason why the fees determined by the assignee should not be subject to some form of control.
58. This court does support the contention of the first and second Respondent in that an assignee is permitted to determine its own fees, and the producer is obliged to pay the fee. The due process was followed in determining the fee, and there is statutory control over the determination of the fees, therefore, Appellant's argument falls off in contending that the provision is not rational nor reasonable given the purpose of the APS Act.

59. The crux of the Appellant's argument is that the provision does not allow for control by the Minister or by the Executive Officer, when the fees are determined by the assignee. Therefore, in terms of section 2 (3) (b) (i) of the APS Act an assignee exercises its powers and duties subject to the directions of the Executive Officer unless expressly provided otherwise. The Minister also has power to revoke the mandate upon the assignee in terms of section 2 of the APS Act. The APS Act is thus quite explicit regarding the ambit of an assignee's powers. It can therefore not be correct as suggested by the appellants that the power exercised by assignees is unfettered or unqualified.
60. It is not in dispute that on the 19th of January 2017, the second Respondent made known for general information by way of a publication in the Government Gazette that the first Respondent appointed three entities as assignees. One of these was described as being "Agency for Food Safety (Pty) Ltd". Furthermore, the second Respondent's publication read that the appointment was for purposes of the "application of sections 3(J)(a) and (b), 3A (1), 4:4. (J)(a), 7 and 8" of the Act. On the 21st of February 2017 the fifth Respondent (Agency for Food Safety) began consulting industry role players. After consultation with the industry at two workshops, one being on 20 April 2017 and the other on 4 May 2017 which were attended by the appellants, discussion was about risk profile of eggs, quarterly instead of monthly inspections to be conducted with a proposed reduction in the fees for inspections initially proposed and published fees were reduced from R0, 015 to R0, 0006 per egg. These fees were subsequently published in Government Gazette No 40847 dated 19 May 2017 per Notice 35 of 2017.
61. We are accordingly in agreement with the court aquo findings in this respect that the relief sought by the Appellants of a declaratory order that the first Respondent had not assigned or designated the powers provided for in sections 3(1A) (a) and (b)(ii) and 3A, 7 and 8 of the Act to any of the respondents must fail.
62. in terms of section 2(3)(a), the assignee is appointed to perform the powers as set out in the APS Act. On a proper interpretation of the APS Act, the assignee's powers are not limited to section 3(1) and 4A of the APS Act.

That the decision contained in the Executive Officer's publication of 16 January 2017 be set aside alternatively that it be declared that the Minister has not designated the Third or Fourth Respondents as assignees in terms of Section 2(3)(a) of the Act.

63. The second Respondent argued that the publication of the Minister's decision on the government gazette, the appellants were non-suited because the review application was out of time and that they did not apply for an extension of the period to file a review application. The APS Act provides internal remedies and

they failed to exhaust those legal remedies before they could approach the court. Appellants argued that the court aquo was incorrect. I do not agree. Section 2 (3) (b) (l) of the APS Act specifically provides that the powers and duties of the assignee shall be exercised and performed subject to the direction of the Executive Officer. The assignee must subject its work to the direction of the Executive Officer, who is entitled (and obliged) to give direction to the assignee. It is therefore not correct to say that the assignee has unfettered discretion to do as it pleases.

64. It is not in dispute that on the 19th of January 2017, the second Respondent made known for general information by way of a publication in the Government Gazette that the Minister has appointed three entities as assignees. One of these was described as being "Agency for Food Safety (Pty) Ltd". Furthermore, the Executive Officer's publication read that the appointment was for purposes of the application of sections 3(J)(a) and (b), 3A (1), 4:4. (J)(a), 7 and 8" of the Act.

That the determination of the inspection fees as published in the relevant Government Notice "be declared to constitute an illegality and consequently a nullity".

65. The Appellant's argued that there were various inspections, that required them to pay fees which they claim were determined arbitrarily and capriciously by a person or persons not entitled to do so and moreover "illegally" on the basis of invoices issued by the Fourth Respondent and further arguing that the assignee did not have the power to determine or levy fees and secondly they attack the determination thereof as having been done arbitrarily and capriciously. It is important to note that in terms of section 15(1)(g) the "Minister may make regulations regarding the inspection fees that have been determined by (an) assignee" noting further that it is an undisputed fact that no such regulations were made subsequently the fees were determined by the assignee during the consultative and induction process subsequently publicized.
66. The third Respondent had performed inspection of eggs including the packaging and labelling thereof and, to all intents and purposes, sought to ensure that the said products complied with the prescribed standards. Further noting that section 3(1A) (b) emphasis that if the functions are performed by the executive officer, the fees shall be the "prescribed" fees and if the functions are performed by an assignee, "the fee determined by such assignee".
67. Section 3(1A) (a) which provides that fees may be charged in respect of the powers exercised and duties performed by the second Respondent or the assignee, as the case may be to ensure compliance with section 3(1). In this case the owners of the product are Appellants who are liable to pay these fees in accordance to Section 3A (4) which provides that "in the case of action under

subsection 1(b), (c), (d) or (e)" (i.e. classification, grading, packing, marking, inspection or sampling), "the owner of the product in question shall pay these fees".

68. It is then in our view that the first Respondent has designated the third Respondent to perform the functions of quality control provided for in section 3(1) and by necessary implication and in order to perform those functions, the rights and powers of inspection provided for in section 4A. It is also imperative to note that the assignee's powers are not limited to section 3(1) and 4A of the APS Act.
69. Similarly, in this case, in order to exercise the control provisions, it is necessary for the assignee to exercise the implementation provisions and to the extent necessary, to exercise the enforcement provisions. It is also entitled to charge fees for such services in terms of the Act.
70. Acknowledging that the Minister will require assistance in enforcing the provisions of the APS Act, the legislature enacted the provisions of section 2(3) which allows for an appointment of an assignee to perform the powers and duties in terms of the Act or certain provisions of the Act. The Act also states that the assignee may perform certain powers which are conferred to the second Respondent.
71. The purpose of the implementation provisions is to ensure that the first respondent is able to control the agricultural products that are being sold, imported and exported. The purpose of control is easy, to ensure that unsafe and harmful products are not sent out to the market.
72. Therefore, the third Respondent has in terms of section 3A, the powers to inspect, grade and sample the products for purposes of quality control. The purpose of section 3A is to ensure quality control of the products before they are sent out to the market either by way of sale, import or export. A product that does not meet the requirements as set out in the control provisions will be prohibited for sale, import or export.
73. Section 3A provides the following: (l) The executive officer or the assignee may, during business hours of the industry in question in the case of control in terms of section 3 (l), or at any time in the case of control in terms of sections 4(1) and 4A(1), enter any place, premises or conveyance in or upon which any product, material, substance or another article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, processed, treated, prepared, classified, graded. Further (b) in the case where no assignee has been so designated, be made in the prescribed manner and the prescribed fees shall, in respect of such application, be payable in the prescribed manner and at the

prescribed time. The fees to be charged by the assignee or the executive officer for the duties performed to ensure compliance with section 3(1) are set out in paragraph 3(1A) (b).

74. This court does agree with the finding of the court aquo in that the fees charged in respect of the control measures in section 4A set to put in subsection 4A (3) which states: (3) An application for approval referred to in subsection (1)(b)(1) shall be made in the prescribed manner and the prescribed fee shall, in respect of such application, be payable in the prescribed manner.
75. This court does find that the assimilation of section 3(1A) and 3A into the designation of the powers of quality control is the only practical interpretation of the designation itself. The third Respondent was an assignee designated to exercise quality control over eggs and poultry meat produced in or imported into the Republic. Such assignee was afforded an authority and power to perform all the functions secondary to the inspection and assessment of such products and for which it may levy fees as determined by it.

That all notices issued by the Fourth Respondent be "reviewed" and set aside and /or that it be declared that such invoices "constitute illegalities". (RELIEF UNDER THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000 ("PAJA"))

Administrative action is reviewable under PAJA. Sections 6 (1) and (2) of PAJA read as follows:

"Judicial review of administrative action

6. (1) *Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.*
- (2) *A court or tribunal has the power to judicially review an administrative action if-*
- (a) *the administrator who took it-*
- (i) *was not authorized to do so by the empowering provision;*
- (ii) *acted under a delegation of power which was not authorized by the empowering provision; or*

- (iii) *was biased or reasonably suspected of bias;*
- (b) *a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;*
- (c) *the action was procedurally unfair;*
- (d) *the action was materially influenced by an error of law;*
- (e) *the action was taken-*
 - (i) *for a reason not authorized by the empowering provision;*
 - (ii) *for an ulterior purpose or motive;*
 - (iii) *because irrelevant considerations were taken into account or relevant considerations were not considered;*
 - (iv) *because of unauthorized or unwarranted dictates of another person or body;*
 - (v) *in bad faith; or*
 - (vi) *arbitrarily or capriciously;*
- (f) *the action itself-*
 - (i) *contravenes a law or is not authorized by the empowering provision; or*
 - (ii) *is not rationally connected to-*
 - (aa) *the purpose for which it was taken;*
 - (bb) *the purpose of the empowering provision;*
 - (cc) *the information before the administrator;*
- (g) *the action concerned consists of a failure to take a decision;*
- (h) *the exercise of the power or the performance of the function authorized by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or*
- (i) *the action is otherwise unconstitutional or unlawful.”*

78. Section 7 (1) of PAJA requires the review proceedings to be instituted without unreasonable delay:

“7 (1) Any proceedings for judicial review in terms of section 6 (1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.”

76. Applicants furthermore seek to review and set aside a number of administrative actions taken by both the Minister and the Executive Officer. The appellants did not seek an order reviewing and setting aside the assignment of the assignee. They, however, sought an order reviewing and setting aside the second respondent's "decision" to publish on the government gazette, it is not a disputed fact that the Minister appointed the assignee. In addition to the above, the appellants sought an order condoning the late institution of the review proceedings in terms of section 9 of PAJA. 22.

77. The first and second respondents opposed this application and argued that by virtue of its assignment in terms of section 2(3)(a), the assignee is appointed to perform the powers as set out in the APS Act. It was argued that on a proper interpretation of the APS Act, the assignee's powers are not limited to section 3(1) and 4A of the APS Act. The court aquo found that it was clear that the Minister has designated the Third Respondent by its trading name as the relevant assignee.

78. As contended by the Respondents that the Appellant's application was launched only on 19 March 2018, which is way beyond the 180 days mentioned in PAJA. The Applicants allege that they only became aware of the "unlawful actions and illegalities and the impact thereof on 27 February 2018". Factually, insofar as the issues of fees and fee determination are concerned, this contention is simply unfounded. Furthermore, the basis on which the Applicants sought condonation was based on the alleged "confusion" as to the identity of the designated assignee and has nothing to do with the determination of fees.

In ***Gqwetha v Transkei Development Corporation Ltd and others***¹, writing for the majority, Nugent J said as follows:

¹ 2006 (2) SA 603 (SCA)

*It is important for the efficient functioning of public bodies (I include the first respondent) that a challenge to the validity of their decisions by proceedings for judicial review should be initiated without undue delay. The rationale for that longstanding rule – reiterated most recently by Brand JA in *Associated Institutions Pension Fund v Van Zyl* 2005 (2) SA 302 (SCA) at 321 – is twofold: First, the failure to bring a review within a reasonable time may cause prejudice to the respondent. Secondly, and in my view more important, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions. As pointed out by Miller JA in *Wolgroeiërs Afslaeërs (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A) at 41E–F (my translation):*

“It is desirable and important that finality should be arrived at within a reasonable time in relation to judicial and administrative decisions or acts. It can be contrary to the administration of justice and the public interest to allow such decisions or acts to be set aside after an unreasonably long period of time has elapsed – interest reipublicae ut sit finis litium. Considerations of this kind undoubtedly constitute part of the underlying reasons for the existence of this rule.” (footnote omitted)

*Underlying that latter aspect of the rationale is the inherent potential for prejudice, both to the efficient functioning of the public body, and to those who rely upon its decisions, if the validity of its decisions remains uncertain. It is for that reason in particular that proof of actual prejudice to the respondent is not a precondition for refusing to entertain review proceedings by reason of undue delay, although the extent to which prejudice has been shown is a relevant consideration that might even be decisive where the delay has been relatively slight (*Wolgroeiërs Afslaeërs*, above, at 42C).”*

79. Plaskett AJA held in ***Beweging vir Christelik-Volkseie Onderwys and others v Minister of Education and others***² that a two-stage approach should be followed. The first question to be answered is whether the delay in launching the application was unreasonable, or whether it was launched more than 180 days after internal remedies had been exhausted or the applicant had been informed of, had knowledge of or ought to have had knowledge of the administrative action under challenge. The second question, if the first is answered in the affirmative, is whether it is in the interests of justice to condone the delay.

² [2012] 2 ALL SA 462 (SCA) at par. 46

80. In considering whether condonation should be granted, the Court is obliged to disregard the merits of the review, unless the decision complained about was egregious. In ***Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality (South African Civics Organisation as amicus curiae)***³ the manner in which the granting of condonation should be considered was dealt with as follows:

“The manner in which the discretion to extend the statutory time period should be exercised, was described in Camps Bay Ratepayers’ and Residents’ Association and another v Harrison and another [2010] ZASCA 3; [2010] 2 All SA 519 (SCA) paragraph 54, in the following terms:

And the question whether the interests of justice require the grant of such extension depends on the facts and circumstances of each case: the party seeking it must furnish a full and reasonable explanation for the delay which covers the entire duration thereof and relevant factors include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants.

*Although a consideration of the prospects of success of the application for review requires an examination of its merits, this does not encompass their determination. In *Beweging vir Christelik-Volkseie Onderwys v Minister of Education* [2012] ZASCA 45; [2012] 2 All SA 462 (SCA) paragraphs 42–44, the proposition that a court is required to decide the merits before considering whether the application for review was brought out of time or after undue delay and, if so, whether or not to condone the defect, was rejected. Thereafter, in *Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd* [2013] ZASCA 148; [2013] 4 All SA 639(SCA) paragraphs 22, 26 and 43, it was decided that a court was compelled to deal with the delay rule before examining the merits of the review application, because in the absence of an extension the court had no authority to entertain the review application. The court there concluded that because an extension of the 180- day period was not justified, it followed that it was not authorised to enter into the merits of the review application. However, in *South African National Roads Agency Limited v Cape Town City* [2016] ZASCA 122; [2016] 4 All SA 332 (SCA); 2017 (1) SA 468 (SCA) paragraph 81, a submission based upon this decision, namely that the question of delay had to be dealt*

³ [2017] 1 ALL SA 677 (SCA) at paras. 11 to 13

with before the merits of the review could be entertained, was answered as follows:

"It is true that . . . this court considered it important to settle the court's jurisdiction to entertain the merits of the matter by first having regard to the question of delay. However, it cannot be read to signal a clinical excision of the merits of the impugned decision, which must be a critical factor when a court embarks on a consideration of all the circumstances of a case in order to determine whether the interests of justice dictates that the delay should be condoned. It would have to include a consideration of whether the non-compliance with statutory prescripts was egregious."

A full and proper determination of the merits of the review application was accordingly dependent upon a finding that the respondent's failure had to be condoned. As stated in Opposition to Urban Tolling Alliance (supra), paragraph 26:

"Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters. The decision has been 'validated' by the delay . . ."

It was thus impermissible for the court a quo to have entered into and decided the merits of the review application without having first decided the merits of the condonation application."

81. In ***Opposition to Urban Tolling Alliance and others v South African National Road Agency Ltd and others***⁴ it was explained that after expiry of the 180 day period, a court may only review an action if the interests of justice require an extension of time. Once the 180-day period has expired, in the absence of an extension, a court is not authorized to consider the review. Whether the decision was in fact unlawful is then of no consequence. The decision would be "validated" by the delay.⁵
82. The Applicants allege that they only became aware of the "unlawful actions and illegalities and the impact thereof on 27 February 2018. The Appellants not only did they not object to the invitation at the time, the third Respondent responded to the invitation and also applied to be appointed as assignee. Appellants and other role players in the industry were well aware of the process and the question

⁴ [2013] 4 ALL SA 639 (SCA)

⁵ *Tasima (Pty) Ltd v Department of Transport and others* [2016] 1 ALL SA 465 (SCA)

is now why appellants did not take issue with the invitation at the time. Instead, they participated in the overall process that followed the invitation.

83. In this regard, the nature of the administrative decision must be taken into account, as well as its purpose and the effect that a setting aside thereof would have on the parties affected by the decision. The prejudice to the applicant should the decision not be set aside must be weighed against the prejudice to the respondent if it were set aside.
84. This court cannot find that it would be in the interests of justice to grant an extension of time in terms of section 9 of PAJA. The prayer for an extension of time in terms of section 9 of PAJA cannot succeed.
85. Further stating that this court totally agrees with the court aquo findings in that there is no provision in the Act permitting the designated assignee to sub-delegate its obligations and duties to another legal entity. Such sub-delegation would run contrary to the common law principle of *delegatus delegare non protest*. Therefore, the fourth Respondent cannot act as assignee.
86. It is a known fact the fees were determined by the Third Respondent as assignee. Regarding the Fourth Respondent it is not in dispute that it is a separate legal entity and is not the assignee. Therefore, it had no authority to determine the fees nor collecting them. This court does support the view of the court aquo in that this does not however, preclude the Third Respondent from the issuing of fresh invoices for its fees, even if the inspections had been done by its subsidiary as its contractor or agent.
87. This court will not deliberate much on aspects of the Fourth Respondent, Davis J correctly found that the Fourth Respondent (AFSQ) was not designated to conduct the inspections in terms of Section 3A of the APS Act in its own name and issue VAT invoices. Davis J, correctly set aside the invoices issued by AFSQ, he further held, that the Third Respondent could merely re-issue the invoices generated by the Fourth Respondent afresh.
88. Further noting that the Appellants had an opportunity in challenging assignee's determination of fees. There is no doubt in that internal remedies were in place but it seems they opted not to utilize them rather they sought not to canvass such. There is no evidence before this court that suggest that the Appellants made any attempts in resolving and exhausting this administrative issue internally and neither shown any exceptional circumstances in avoiding such.

89. As correctly stated by the court aquo that stakeholder and or public participation process with the industry role players prior to the determination of the fee by the assignee took place such indicates that the fee determination was not arbitrarily or capriciously made. Therefore, the relief sought by the Appellants against the Third Respondent does not stand.
90. In reference to case law cited by the Appellants: (Natal Joint Municipal Pension Fund v Endumeni Municipality), the Appellants placed reliance on Wallis J correctly so in that the Judge emphasized that, that regard should be to the language used, the context in which the provision appears and the purpose to which it is directed; further stating that the terms of the assignment are explicit and does not leave room for an interpretation that other provisions could be read into it, as set out hereinabove.
91. This court further notes that the Endumeni judgment resulted in an integrated approach to legal interpretation that can be applied uniformly to wills, contracts, and statutes, also when the judgment by Wallis JA was delivered it stood out for two reasons from the surrounding case law which from time to time also dealt with interpretive methodology. First, the judgment self-consciously sought to bring an end to ongoing debates about the proper approach to the interpretation of legal documents. It sought to do so by providing a short-hand restatement of the law of statutory and other forms of legal interpretation. Wallis JA arrived at this restatement by explicitly contrasting two approaches to interpretation, the two-stage approach associated with the textualism prescribed by the "golden rule" and the holistic or one-stage approach associated with contextualism.
92. It is imperative to note as well that Wills J further emphasized the point that sometimes language and syntax, and sometimes context, will predominate. Endumeni does away with the idea in Coopers & Lybrand that interpretation is an exercise that occurs in stages. The starting point is the text, because as the writer Elena Ferrante expresses it: "The words, the grammar, the syntax is a chisel that shapes our thought. "But from the outset that is viewed in context, so that the process is both textual and contextual. And he further stated that "there will be some cases, though they are likely to be few, where the language admits of only one meaning, in which event no amount of reliance on context can avoid that meaning".
93. "When in Coopers & Lybrand⁶ the proper approach to interpretation was summarized as being that one should first "ascertain the literal meaning of the words" and thereafter have regard to context and background circumstances,

⁶ Coopers & Lybrand v Bryant 1995 3 SA 761 (A) (hereafter the Coopers & Lybrand case) 768 A-E.

applying extrinsic evidence of surrounding circumstances when encountering ambiguity, courts were being asked to engage in an artificial process. That is not how human beings read documents or seek to understand their meaning. Nor was it the way in which judges interpreted statutes or contracts”⁷.

94. Section 2 (3) (b) (i) of the APS Act specifically provides that the powers and duties of the assignee shall be exercised and performed subject to the direction of the Executive Officer. The assignee’s powers include the implementation of inspection procedures, and the determination of fees. The assignee must subject its work to the direction of the Executive Officer, who is entitled (and obliged) to give direction to the assignee. It is therefore not correct to say that the assignee has unfettered discretion to do as it pleases.
95. The first Respondent appointed the third Respondent in terms of the provisions of section 2(3)(a) of the APS Act which provides as follows: The Minister may for the purposes of the application of this Act or certain provisions thereof, with regards to a particular product, designate any person, undertaking, body, institution, association or board having particular knowledge in respect of that product.
96. Therefore, the first Respondent designated Food Safety Agency (Pty) Ltd t/a an Agency for Food Safety as the assignee. Section 3(1) deals with control over the sale of products.
97. This court is satisfied that all parties had a common understanding that the first respondent did not expressly provide otherwise and as such, the assignee exercised the powers in terms of section, in that 2(3)(a) and 2(3)(b) of the APS Act. Such powers include the powers which were assigned to the executive officer. Section 2(3)(b) provides that "an assignee thus designated shall-(i) unless expressly provided otherwise and subject to the directions of the executive officer, exercise the powers and perform the duties that are conferred.
98. Thus it is clear that there is no evidence to show that the Minister expressly excluded the powers of the assignee in terms of sections 3(1A), 3A, 4A, 7 and 8 of the APS Act or that he provided expressly otherwise as stated in section 2(3)(b) of the APS Act. If the Minister had intended to exclude the powers in terms of section 3(1A) and of the APS Act, he would have stated expressly that those powers are excluded. In essence the Act is not ambiguous in that the

⁷ Malcolm Wallis. B Com LLB (Natal) PhD (UKZN). SC, Judge of the Supreme Court of Appeal, Honorary Professor of Law in the University of KwaZulu-Natal, South Africa.

Executive Officer has the powers to perform the functions listed in section 3A and consequently is entitled to charge fees as set out in the Act. (l) The Minister may prohibit the export from the Republic of a prescribed product unless each quantity of that product, intended for export, has been approved by the executive officer for that purpose; to determine that a prohibition referred to in paragraph (a) shall only apply to the export of a prescribed product for a prescribed purpose, or in a prescribed form or quantity, or under such other prescribed circumstances as the Minister deems necessary.

99. Notwithstanding the provisions of subsection (3) (a), the executive officer may deviate from the standards and requirements stipulated under that subsection and issue the approval referred to in subsection (1) in respect of a quantity of a product that- is to be exported as an experiment or under such other special circumstances as may be approved by the executive officer in the case concerned; and complies with the requirements for such product in force in the country to which it is to be exported.
100. Section 4A deals with control over imported products and it provides as follows:
(1) The Minister may-prohibit the sale of a prescribed product imported into the Republic unless each quantity of such product intended for sale in the Republic complies with the provisions of section 3 (l);
101. This court is inclined in agreeing with the interpretation of the Respondents in that APS Act makes provision for control over the sale and exportation of agricultural products, for this purpose, the Minister of Agriculture is granted the powers to prohibit the sale or the exportation of products that do not meet the requirements as specified by or under the APS Act.
102. The interpretation of statutes or to be more precise, the judicial understanding of the legal rules, deals with those rules and principles which are employed to construct the correct meaning of the legislative text to be applied in legal disputes.
103. Similarly, in this case, in order to exercise the control provisions, it is necessary for the assignee to exercise the implementation provisions and to the extent necessary, to exercise the enforcement provisions. It is also entitled to charge fees for such services in terms of the Act.
104. Acknowledging that the Minister will require assistance in enforcing the provisions of the APS Act, the legislature enacted the provisions of section 2(3) which allows for an appointment of an assignee to perform the powers and duties in terms of the Act or certain provisions of the Act. The Act also states that the

assignee may perform certain powers which are conferred to the executive officer.

105. The purpose of the implementation provisions is to ensure that the first respondent is able to control the agricultural products that are being sold, imported and exported. The purpose is to ensure that unsafe and harmful products are not sent out to the market.
106. Therefore, The Third Respondent has in terms of section 3A, the powers to inspect, grade and sample the products for purposes of quality control. The purpose of section 3A is to ensure quality control of the products before they are sent out to the market either by way of sale, import or export. A product that does not meet the requirements as set out in the control provisions will be prohibited for sale, import or export.
107. The wording of section 3A makes it clear that in order for the Third Respondent to execute its functions as set out and for purposes of control, the Respondent had to inspect, grade and sample the eggs for quality purposes, by necessary implication and based on the wording and context of section 3A, the Minister assigned the powers set out in section 3A.32.
108. In ensuring compliance, the Third Respondent was entitled to charge fees in respect of duties performed to ensure compliance with the control provisions. As set out in section 3(1A) (a) which provides that fees may be charged in respect of the powers exercised and duties performed by the executive officer or the assignee.
109. The phrase to ensure compliance with this section refers to the control measures set out in section 3(1). Based on the above- provisions and taking the principles of interpretation into account, in order to determine the powers assigned to the assignee, the provisions of section 3(1) and 4A has to be read together with the provisions of section 3 of the APS Act.
110. The court aquo was correct in finding that section 3(1) and 4A cannot logically be detached from 4A. Control over products can only take place by way of powers created by section 3A".
111. The court correctly, held that the provisions of Section 3A were included in the assignment, by necessary implication. This finding is with respect correct. If the Minister intended not to provide, he could have provided an exclusionary note or assignment or exclude other Sections of the APS Act in the assignment.

CONCLUSION

112. In conclusion this court agrees with the findings of the court aquo in that the claim for a declaratory order that the Minister had not assigned the powers set forth in sections 3(1A) (a) and (b) (ii), 3A, 4A, and 7 and 8 of the Act must fail.
113. That the claim for the review and setting aside of the "decision" by the Executive Officer to publish a different designation of the Minister must fail.
114. The review and setting aside of the determination of fees must fail with an exception that the invoices issued by the Fourth Respondent should be set aside.
115. For the reasons set out above, all the relief sought under PAJA must also fail,

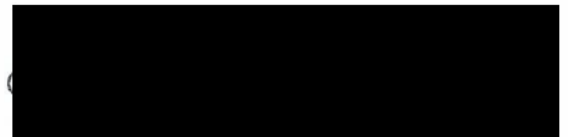
COSTS

- a. The Respondents are the successful parties and are entitled to their costs.

ORDER

- a. In the circumstances the appeal is dismissed with costs.

DATE OF JUDGMENT:



BOKAKO. TP

Acting Judge of the High Court

Gauteng Division, Pretoria



TLHAPI. V V

Judge of the High Court

Gauteng Division, Pretoria


PHAHLAMOHLAKA. K F
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: July 2021

Judgment delivered: 2022

APPEARANCES:

For the Applicants: Adv. M G Roberts SC with Adv. E Roberts
Attorney for Applicants: Moolman & Pienaar Attorneys
c/o Burden, Swart & Botha Attorneys,
Pretoria

For the 1st and 2nd Respondents: Adv. K D Mogano
Attorney for Respondents: The State Attorney, Pretoria

For the 3rd, 4th and 5th Respondents: Adv. G Naude SC with Adv. A
Thompson
Attorney for Respondents: VFV Attorneys, Pretoria