



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 5750/2024

In the matter between:

JACOBUS NICOLAAS VAN COLLER

t/a JN VAN COLLER BOERDERY

APPLICANT

and

**THE MEMBER OF THE EXECUTIVE COUNCIL
FOR ECONOMIC, SMALL BUSINESS DEVELOPMENT,
TOURISM AND ENVIRONMENTAL AFFAIRS,
FREE STATE PROVINCE**

FIRST RESPONDENT

**THE FREE STATE DEPARTMENT OF ECONOMIC,
SMALL BUSINESS DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS**

SECOND RESPONDENT

Neutral citation: *Jacobus Nicolaas van Coller t/a JN van Coller Boerdery v The Member of the Execetuiue Council for Economic, Small Business Development, Tourism and Environmental Affairs, Freee State and Another* (5750/2024) [2025] ZAFSHC 191 (26 June 2025)

Coram: Mhlambi J et Ntanga AJ

Heard: 5 May 2025

Delivered: 26 June 2025

Summary: Civil procedure – review application to set aside an administrative decision – application for rectification in terms of s 24G of National Environmental Management Act 107 of 1998 (NEMA) – determination of applicant in terms of s 24G of NEMA.

ORDER

1 The dismissal of the applicant's appeal to the first respondent against the imposition of an administrative fine of R1 000 000 (one million rand) for the applicant's non-compliance with the provisions of the National Environmental Management Act 107 of 1998 by the second respondent, on recommendation of the Department's Fitness Committee is reviewed and set aside.

2 The first and second respondents are ordered to reconsider the applicant's appeal for determination of appropriate fine to be imposed on the applicant as a category 1 offender in terms of s 24G of the National Environmental Management Act 107 of 1998.

3 The first and second respondents to pay costs on a party and party scale, including costs of counsel on scale C.

JUDGMENT

Ntanga AJ (Mhlambi J concurring)

Introduction

[1] The applicant launched an application to this court for review of an administrative decision. This emanates from an appeal by the applicant to the first respondent against imposition of an administrative fine of R1 000 000 (one million rand) for the applicant's non-compliance with the provisions of the National Environmental Management Act 107 of 1998 (NEMA).

[2] The applicant is a farmer and conducts farming activities by way of a feedlot on a portion of the farm known as remaining extent of Rooidam 256 and trades personally as Van Coller Boedery. The property where farming activities are conducted is owned by Van Coller Family Trust.

[3] In the notice of motion, the applicant sought an order for the following relief:

- '1. Reviewing and setting aside the dismissal of the Applicant's appeal to the First Respondent against the imposition of an administrative fine of R1000 000.00 (One Million Rand) for the Applicant's non-compliance with the provisions of the National Environmental Management Act 107 of 1998 by the Second Respondent, on the recommendation of the Department's Fitness Committee.
2. Replacing the decision of the Respondents' decision with a finding that the appeal is upheld against the amount of the fine and that the administrative fine imposed be replaced with a fine of R40 000.00.'

The applicant's case

[4] In the founding affidavit, the applicant avers that he commenced with establishment of a feedlot for cattle on a portion of land on the farm, which was previously utilised for cultivation. He did this due to the need for more specialised farming practices and to be able to sustain an economically viable farming operation. At the time, he did not realise that his conduct triggered the provisions of NEMA as constituting a listed activity that requires prior authorisation. The applicant averred that the initial transgression and failure to obtain authorisation for engaging in a listed activity and commencing with the establishment of the feedlot was done by him in his personal capacity.

[5] The applicant was then advised that a Basic Assessment Report and authorisation from the Department of Environmental Affairs (the Department) would be required in order to be compliant with the provisions of NEMA and regulations promulgated in terms of NEMA. He then engaged and instructed Milnex CC to act as his environmental consultants and assist him with the application in terms of s 24G to ensure that the activities are authorised. His application was prepared by Mr Andile Nxumalo, a qualified environmental assessment practitioner, using a proforma application form provided by the Department. This application was filed with the Department to rectify the applicant's failure to comply with the prescribed process entailed in NEMA.

[6] It is averred that Milnex CC was further instructed to proceed with the necessary water use license applications, and it was decided that all future operations would be undertaken and concluded by Vancol CC. The necessary applications for future development and farming operations would be made in the name of Vancol CC.

[7] Subsequently, the applicant was informed that an administrative fine in the sum of R1 000 000 was imposed and the reasons for imposing the fine were provided. He proceeded to file an appeal to the first respondent as contemplated in the appeal regulations.

The respondent's case

[8] The respondents averred that the applicant in these proceedings was not the applicant when application for rectification in terms of s 24G of NEMA was launched and that the applicant was Vancol BK. It was argued that the applicant was indicated as the director/owner of Vancol BK in the application in terms of s 24G. It was further argued that the fact that applicant indicated himself as appellant in the appeal did not detract from the fact that he was not the applicant in the s 24G application. The respondents further averred that no trading name was indicated in the s 24G application, instead, full particulars of Vancol BK were provided.

[9] The respondents denied the applicant's version that the fine was imposed on him for farming activities which he engaged in. They further argued that, due to the doctrine of separation of powers, this court does not have requisite jurisdiction to replace/amend/vary the fine imposed. The respondents also averred that any future operations and/or applications do not have a bearing on the adjudication of the current review application as, according to the respondents, the s 24G application was brought by Vancol CC.

Legal framework and analysis

[10] Section 33 of the Constitution¹ provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. In compliance with the obligations set out in s 33 of the Constitution, enabling legislation in the form of Promotion of Administrative Justice Act 3 of 2000 (PAJA) was enacted. Section 3 of PAJA provides for what is a procedurally fair administrative action affecting any person. It is required that the administrator, subject to subsection 4, must give a person referred to in subsection 1:

(a) adequate notice of the nature and purpose of the proposed administrative action;

¹ The Constitution of the Republic of South Africa, 1996.

- (b) a reasonable opportunity to make representations;
- (c) a clear statement of the administrative action;
- (d) adequate notice of any right of review or internal appeal, where applicable; and
- (e) adequate notice of the right to request reasons in terms of s 5.

[11] The court is authorised, in terms of PAJA, to judicially review an administrative decision for reasons set out in s 6 of the Act. In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* ("Bato Star"),² the Court stated that:

'The cause of action for the judicial review of administrative action now ordinarily arose from the Promotion of Administrative Justice Act, not from the common law as in the past. The authority of the Promotion of Administrative Justice Act to ground such causes of action rested squarely on the Constitution. As the Promotion of Administrative Justice Act gave effect to section 33 of the Constitution, matters relating to the interpretation and application of Administrative Justice Act would be constitutional matters.'

[12] The Constitutional Court, in *Bato Star*, followed the decision of *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex Parte President of the Republic of South Africa and Others*,³ where the Court held that under the new constitutional order the control of public power is always a constitutional matter. There were not two systems of law regulating administrative action — the common law and the Constitution — but only one system of law grounded in the Constitution.

[13] The courts' power to review administrative action no longer flowed directly from the common law but from PAJA and the Constitution itself. The *grundnorm* of administrative law was now to be found in the first place, not in the doctrine of *ultra vires*, nor in the doctrine of parliamentary sovereignty, nor in the common law itself, but in the principles of the Constitution. The common law informed the provisions of PAJA and the Constitution and derived its force from the latter. The extent to which the common law remained relevant to administrative review would have to be developed on a case-by-case basis as the courts interpreted and applied the provisions of the Constitution.⁴

² In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) para 25.

³ *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex Parte President of the Republic of South Africa and Others* [2000] ZACC 1; 2000 (2) SA 674; 2000 (3) BCLR 241 (CC) para 44.

⁴ *Ibid.*

[14] The test for a judicial review is that of a reasonable man test, that is, whether a reasonable decision maker would have reached a similar decision. Should the finding be that a reasonable decision maker would not have reached that decision, then it becomes reviewable. It has been held that the court's task is to ensure that the decision taken by the administrative organ falls within the constitutional framework of reasonableness.

[15] In *Power Road Taxi Developers (Pty) Ltd v MEC for Local Government and Housing, Free State Province and Others (Power Road Taxi Developers)*,⁵ the court stated that:

'The essence of this review is procedural fairness. The general rule of common law requires that an individual who has an interest in a matter is entitled to be notified about an administrative matter that affects him if tabled before an administrative organ for consideration and decision. The underlying purpose of such a notice is to afford such a person an opportunity of protecting his interests. The *audi alteram partem* rule demands that he is entitled to be heard before a decision is taken by an administrator on the matter that directly affects him.'

[16] Section 24G of NEMA provides that:

'On application by a person who –

has commenced with a listed or specified activity without an environmental authorisation of section 24F(1);

has commenced, undertaken or conducted waste management activity without waste management licence in terms of section 20(b) of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

is in control of, or successor in title to, land on which a person –

(i) has commenced with a listed or specified activity without environmental authorisation in in contravention of section 24F(1) ...

(4) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed R10 million, and which must be determined by the competent authority, before the Minister, Minister responsible for mineral resources or MEC concerned may act in terms of subsection (2)(a) or (b)...

⁵ *Power Road Taxi Developers (Pty) Ltd v MEC for Local Government and Housing, Free State Province and Others* [2007] ZAFHSHC 9 para 9.

[17] In *Power Road Taxi Developers*, the court followed the decision of *DE Lange v Smuts NO and Others*,⁶ where the Constitutional Court stated that:

'When contemplating the essential purpose of the protection afforded through the notion of procedural fairness, my sight is arrested by this fact: at heart, fair procedure is designed to prevent arbitrariness in the outcome of the decision. The time-honoured principles that no-one shall be the judge in his or her own matter and that the other side should be heard aim toward eliminating the proscribed arbitrariness in a way that gives content to the rule of law. They reach deep down into the adjudicating process, attempting to remove bias and ignorance from it. Everyone is entitled to an impartial Judge, not because this guarantees a correct decision, but because the human arbiter, not being omniscient, should not be presented with a point of view that his or her position inherently loads. Everyone has the right to state his or her own case, not because his or her version is right, and must be accepted, but because, in evaluating the cogency of any argument, the arbiter, still a fallible human being, must be informed about the points view of both parties in order to stand any real chance of coming up with an objectively justifiable conclusion that is anything more than chance. Absent these central and core notions, any procedure that touches in an enduring and far-reaching manner on a vital human interest, like personal freedom violation. When the clear basis for committing a person is coercive rather than punitive, warning lights begin to flash.'

[18] In *Van Huyssen and Others NNO v Minister of Environmental Affairs and Tourism and Others*,⁷ which was followed in *DE Lange v Smuts NO and Others*, the Court stated that:

'It follows from what I have said that even if s 24(b) is to be regarded as merely codifying the previous law on the point, a party entitled to procedural fairness under the paragraph is entitled in appropriate cases to more than just the application of the *audi alteram partem* and the *nemo iudex in sua causa* rules. What he is entitled to is, in my view, what Lord Morris of Borth-Y-Gest described as "the principles and procedures . . . which, in (the) particular situation or set of circumstances, are right and just and fair".'

[19] In *Shidiack v Union Government (Minister of the Interior)*,⁸ which was followed in *Power Road Taxi Developers*, the Court stated that:

⁶ *DE Lange v Smuts NO and Others* [1998] ZACC 6; 1998 (3) SA 785 (CC); 1998 (7) BCLR 779 para 131.

⁷ *Van Huyssen and Others NNO v Minister of Environmental Affairs and Tourism and Others* 1996 (1) SA 283 (C) at 305B-D.

⁸ *Shidiack v Union Government* 1912 (AD) 642 at 651.

'The decision of the Minister being essential, it becomes necessary to consider the circumstances under which the Courts can properly question his decision. Now it is settled law that where a matter is left to the discretion or determination of a public officer, and where his discretion has been *bona fide* exercised or his judgment *bona fide* expressed, the Court will not interfere with the result. Not being a judicial functionary no appeal or review in the ordinary sense would lie; and if he has duly and honestly applied himself to the question which has been left to his discretion, it is impossible for a Court of Law either to make him change his mind or to substitute its conclusion for his own.'

[20] It is common cause that an application was submitted to the respondent for rectification in terms of s 24G of NEMA. What is in dispute is whether the application was submitted by the applicant in his personal capacity or whether it was submitted by a juristic person in the form of Vancol CC. This court is called upon to make examination of the application submitted to the respondent in terms of s 24G of NEMA. Subsequently, a determination has to be made whether, based on the information contained in the application form and any annexures thereto, the applicant was Mr Van Coller in his personal capacity, or if it was Vancol CC. This will then give a direction on whether a correct tariff in imposing a penalty was implemented. This court must make a determination of whether, based on the information submitted to the respondent, a reasonable decision maker would have concluded in the manner that the respondent did when concluding that the applicant for rectification was Vancol CC. It is only then that a decision can be taken by this court on whether the respondent's decision is reviewable or not.

[21] I have hereinabove referred to the provisions of s 24G and it is equally important to briefly make reference to the regulations relating to the procedure to be followed and criteria to be considered when determining an appropriate fine in terms of s 24G (the Regulations). The purpose of the Regulations is to provide for the procedure to be followed and criteria to be considered in the determination of a fine pursuant to an application submitted in terms of s 24G of NEMA.⁹

⁹ Regulations relating to the procedure to be followed and criteria to be considered when determining an appropriate fine in terms of section 24G, GN R698, GG 40994, 20 July 2017.

[22] The following factors, taken from s 4 of the Regulations, are to be taken in consideration when determining quantum of the fine:

'Factors to be taken into account -

4. (1) . . .

(a) information submitted by an applicant in terms of section 24G(1)(b) (vii)-(vii);

(b) the completed application form, including Section C of Annexure A, Part 1 of which is to be completed by the applicant's environmental assessment practitioner;

. . .

(f) whether the applicant is a firm or natural person . . .

(g) any other representations made by the applicant in terms of Annexure A Section C in respect of the quantum of the fine.

(2) If the fine committee requires any further information, in addition to that received in accordance with sub regulation (1) above, in order properly to determine the proposed quantum of the fine, it may request the competent authority to direct the applicant, within a specified period, to provide such further information and/or to undertake such further studies as the fine committee deems necessary.

(3) For the purposes of sub regulation (1)(e) and in Part 2 of Section C in Annexure A the fine committee and the competent authority must take into account whether or not –

(a) any of the directors of the applicant firm are, or were, at the relevant time, directors of a firm to whom sub regulation (1)(e) applies.

(b) an applicant who is a natural person is, or was, at the time a director of a firm to whom sub regulation (1)(e) applies; and

(4) When calculating the proposed quantum of the fine, or the fine, as the case may be, the fine committee and the competent authority must use the fine calculator approved by the Minister.'

[23] In the instant case, an application was submitted to the respondent in the prescribed form for rectification as contemplated in terms of s 24G of NEMA. In the application form, which is attached to the founding affidavit, in the block where it is required of the applicant to indicate by marking with an 'X' in the appropriate box, instead, there is a shading on 'yes' next to a question whether the applicant is an individual. In the next block where details and name of the project applicant are required, the name of Mr Jacobus Nicolaas Van Coller and his identity number are indicated. This form is not signed by the applicant.

[24] The record which forms the basis of the respondents' decision attached the application form which was considered for the decision. This form is signed by Mr Van Coller in the designated signature block. There is a difference between the two forms, that is, the one attached in the founding affidavit and the one attached to the record. In the form attached to the record, next to company or close corporation, the name of Vancol BK is indicated. This is below the block where details of Mr Van Coller appear as project applicant. Similarly, to the form attached in the founding affidavit, there is a shading on 'yes' next to the line where it is stated that the applicant is an individual. There is also an indication of 'Director/Owner' where details of position in the company are required. In the designated signature block on the last page of the form, the name of Mr Van Coller is written next to applicant and the form is signed by Mr Van Coller.

[25] The respondents argued that Vancol CC is indicated as applicant and Mr Van Coller is indicated as the Director/Owner. According to the respondents, this is a clear indication that a close corporation is the applicant. Hence the decision to conclude that the applicant is a firm not an individual. This is notwithstanding indication of Mr Van Coller as the applicant in the top part of the form as well as shading on 'yes' next to the question whether the applicant is an individual. There is no doubt that there is conflicting information as to who is the applicant in the rectification application in terms of s 24G of NEMA.

[26] The applicant argued that any issue or dispute on the part of the respondents regarding who the applicant was or who it regarded as the applicant was never communicated to the applicant or his environmental assessment practitioner who was his consultant. On the face of possible confusion as to who the applicant was, the respondents ought to have afforded the applicant opportunity to make representations before making a decision. In *Administrator, Transvaal and Others v Traub and Others*,¹⁰ the Court stated that:

'The right which is generally referred to by means of the maxim *audi alteram partem* has been discussed and analysed in a number of recent judgments of this Court . . . The maxim expresses a principle of natural justice which is part of our law. The classic formulations of the principle state

¹⁰ *Administrator, Transvaal and Others v Traub and Others* [1989] 4 All SA 924 (A); 1989 (4) SA 731 (A); (1989) 10 ILJ 823 (A) at 827B-D; see also *South African Roads Board v Johannesburg City Council* [1991] ZASCA 63; 1991 (4) SA 1 (AD); [1991] 4 All SA 722 (AD) (*South African Roads Board*) at 10G-I.

that, when a statute empowers a public official or body to give a decision prejudicially affecting an individual in his liberty or property or existing rights, the latter has a right to be heard before the decision is taken . . . unless the statute expressly or by implication indicates the contrary.'

[27] In *South African Roads Board v Johannesburg City Council*,¹¹ the Court stated that:

'It seems to me that such a departure from formal classification as a criterion not only would be in accordance with modern trends in administrative law but also would provide a more rational foundation for the application of the rules of natural justice in this area. For the audi principle applies where the authority exercising the power is obliged to consider the particular circumstances of the individual affected. Its application has a two-fold effect. It satisfies the individual's desire to be heard before he is adversely affected; and it provides an opportunity for the repository of the power to acquire information which may be pertinent to the just and proper exercise of the power.'

[28] In *Muller and Others v Chairman, Minister's Council, House of Representatives, and Others*,¹² the court stated that:

'It has been emphasised by the Appellate Division in the case of *Attorney-General, Eastern Cape v Blom and Others* 1988 (4) SA 645 (A) and in the *Zenzile* case *supra* at 404-G that the fact that a hearing might in particular circumstances have to be circumscribed, even very appreciably so, is no reason to say that no right to a hearing exists. Moreover, in *Traub's* case *supra* it was said (at 750D-E) that in exceptional cases a hearing can be given even after the prejudicial decision has been taken. I therefore agree with *Wade's* comment *supra* that "in principle the arguments for a fair hearing are unanswerable". In my view the interests of fairness demand a hearing before an officer is suspended.'

[29] The respondents argued that there exists no duty to direct an applicant in a s 24G application to provide further representations. However, the respondents submitted that applicant in terms of s 24G applications may be directed to provide representations. It was further argued that the duty is on the applicant in a s 24G application to provide a completed document, furnishing all relevant information. I cannot agree with the stand taken by the respondents. The Constitution guarantees a right to administrative action that is lawful, reasonable and procedurally fair. Organs of state are prohibited from making

¹¹ *South African Roads Board* at 13A-C.

¹² *Muller and Others v Chairman, Minister's Council, House of Representatives, and Others* [1992] 3 All SA 373 (C); 1992 (2) SA 508 (C) at 523G-I.

arbitrary decisions inimical to the rights guaranteed by the Constitution, unless when acting within the scope of limitation of the rights.

[30] In my view, and considering conflicting versions on who the applicant was, the respondents ought to have invited the applicant to make representations before taking a decision that would prejudice the applicant. The respondents missed an opportunity to acquire information which was pertinent to the just and proper exercise of their power. The failure by the respondents to afford the applicant opportunity to make representations is irrational and unreasonable.¹³ Whilst NEMA does not expressly require a hearing for the applicant, I do not think that the intention of the legislature was to deny applicant a hearing prior to taking a decision which may prejudice the applicant. The failure to afford applicant opportunity to be heard goes to the heart of procedural fairness and validity of the decision taken. The decision taken by the respondents when concluding that the applicant is not an individual is procedurally unfair.

[31] The applicant argued that, as a result of the failure to administer fair administrative action together with the amount of the fine that would have been imposed if the applicant was treated as an individual, there is no need for deference to the decision-maker and the court is entitled to replace the fine imposed with the correct fine of R40 000. This was opposed by the respondents who argued that, due to the doctrine of separation of powers, the court does not have the requisite jurisdiction to replace, amend or vary the imposed fine. The respondents referred to the decision of *Intertrade Two (Pty) Ltd v MEC for Roads and Public Works, Eastern Cape and Another* where the Court stated that:¹⁴

'These constitutional principles mean that courts, when considering the validity of administrative action, must be wary of intruding, even with the best of motives, without justification into the terrain that is reserved for the administrative branch of government. These restraints on the powers of the courts are universal in democratic societies such as ours and necessarily mean that there are limits on the powers of the courts to repair damage that has been caused by a breakdown in the administrative process. This case is an ironic example of that: if the Provincial Government had done a better job of administering the tender process there might have been more information available to this court, it might well have been concluded that exceptional circumstances were

¹³ *Ntshontsho v Municipality of Umtata* [1998] JOL 2206 (TK).

¹⁴ *Intertrade Two (Pty) Ltd v MEC for Roads and Public Works, Eastern Cape and Another* [2007] ZAECHC 149; [2008] 1 All SA 142 (CK); 2007 (6) SA 442 (CK) para 46.

present and it might then have been possible to have taken a decision to award the tenders to the appellant.'

[32] The respondents further argued that remittal is still the most prudent and proper course. The trite principle is that courts are cautioned from assuming duties reserved for administrative authority. This can only be done when exceptional circumstances exist. In the present case, I do not agree that exceptional circumstances exist for this court to replace the fine imposed by the respondents and substitute it with a fine proposed by the applicant. There is no evidence supporting how the proposed amount of R40 000 is computed. The respondents are better placed to determine appropriate fine as they have competent expertise that this court does not possess. I agree with the respondents that remittal will be a prudent and proper course.

[33] After considering the evidence, submission by both parties and applicable legal authorities, I am satisfied that the applicant has made out a case to justify the review and setting aside of the respondents' decision.

Costs

[34] Concerning the costs of this matter, I see no reason to depart from the general rule that the successful party should be awarded costs. The respondents should therefore pay the applicant's costs.

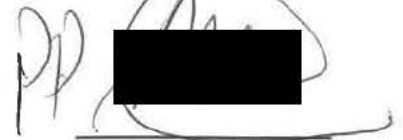
Order

[35] In the circumstances, the following order is made:

1 The dismissal of the applicant's appeal to the first respondent against the imposition of an administrative fine of R1 000 000 (one million rand) for the applicant's non-compliance with the provisions of the National Environmental Management Act 107 of 1998 by the second respondent, on recommendation of the Department's Fitness Committee is reviewed and set aside.

2 The first and second respondents are ordered to reconsider the applicant's appeal for determination of appropriate fine to be imposed on the applicant as a category 1 offender in terms of s 24G of the National Environmental Management Act 107 of 1998.

3 First and Second Respondents to pay costs on a party and party scale, including costs of counsel on scale C.



NTANGA AJ

I concur and it is so ordered.



MHLAMBI J

Appearances

For the plaintiff: GJ Scheepers SC
Instructed by: Jappie Van Zyl Attorneys, Potchefstroom
c/o Honey Attorneys, Bloemfontein

For the respondents: D De Kock
Instructed by: State Attorney, Bloemfontein.