IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 2025/248918

Date of hearing: 14 January 2026

Date of judgment: 26 January 2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/~~NO~~
(2) OF INTEREST TO OTHERS JUDGES: YES/~~NO~~
(3) ~~REVISED~~

26/1/26 .... [redacted]
DATE SIGNATURE

In the application between:

CROPLIFE SOUTH AFRICA NPC **Applicant**

and

THE MINISTER OF AGRICULTURE **First Respondent**

THE REGISTRAR OF FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES **Second Respondent**

JUDGMENT

SWANEPOEL J:

INTRODUCTION

[1] This dispute has its origin in two sets of regulations that have been promulgated under the Fertilizers, Farm Feeds and Agricultural Remedies Act, 36 of 1947 ("the Act"). They are, firstly, the Pest Control Operator Regulations, 2011[1]("the PCO Regulations") and, secondly, the Regulations relating to Agricultural Remedy[2], ("the AR Regulations").

[2] The Act defines a pest control officer ("PCO") as a person who in the course of his trade or occupation administers agricultural remedies for the purpose for which they are intended. Section 3 of the Act provides for the registration of PCO's by the second respondent ("the Registrar"). The PCO Regulations flesh out the requirements for registration of a PCO it regulates the qualifications and skills required, and the manner in which PCO's must execute their duties.

[3] An agricultural remedy is defined in the Act as:

> "any substance or biology remedy, or any mixture or combination or remedy intended or offered to be used-

(a) for the destruction, control, repelling attraction or prevention of any undesired microbe, alga, nematode fungus, insect, plant, vertebrate, invertebrate or any product thereof....

(b) as plantgrower regulator, defoliant, dessicant or legume inoculant."

[4] Of importance is that the PCO Regulations define a PCO who acts "for reward" as:

> "...a person [who] has been hired to do pest control for monetary consideration, and it excludes an employee who performs pest control for his employer in the employer's property (not for hire). **Provided that any employee who handles restricted-use agricultural remedies without the direct supervision of a registered pest control operator must be registered as a pest control operator.**" (my emphasis)

[5] The PCO Regulations do not define what is meant by "restricted-use agricultural remedies. The result is that agricultural remedies have in the past been administered, inter alia, by persons for their employer, on the employer's property, without the direct supervision of a PCO.

[6] The AR Regulations created a new category of restricted agricultural remedy, which are defined as:

> "...an agricultural remedy which the Registrar, out of concern for its human health or environmental risks, has set out additional information to be shown on the label concerning essential conditions in respect of the display, distribution or limitations on the use of, or qualifications of

persons who may use the agricultural remedy, and such remedy shall comply with the criteria as set out in Annexure A;"

[7] The respondents take the view that the classes "restricted-use remedy" under the PCO Regulations and "restricted agricultural remedy" under the AR Regulations are the same. If this were so, the result would be that if a farmer who wishes to administer a restricted agricultural remedy listed in Annexure A, a registered PCO would have to be physically present in order to supervise the employees who administer the remedy.

[8] The applicant says that there is widespread confusion in the agricultural industry as to whether the AR Regulations are subordinated to the PCO Regulations or not. The applicant seeks the following relief:

[8.1] That it be declared that the class "restricted agricultural remedy" in Annexure A to the AR Regulations is not included in the class "restricted-use agricultural remedy" under the PCO Regulations, and that the class "restricted agricultural remedy" is not subject to regulatory control under the PCO Regulations;

alternatively,

[8.2] that the inclusion of "restricted agricultural remedy" into the class of "restricted-use agricultural remedy" be declared unconstitutional and invalid, and that its inclusion be suspended for a period of twelve months to allow the first respondent an opportunity to amend the Regulations.

[9] The respondents have not delivered an answering affidavit, choosing instead to take the following points of law in terms of rule 6 (5) (d) (iii) (I summarize):

[9.1] That the matter is not urgent, alternatively, that any urgency is self-created;

[9.2] That there is no existing, future or contingent right or obligation to be determined;

[9.3] That the applicant's alternative prayer constitutes a constitutional challenge to the Regulations under the principle of legality, whilst the promulgation of the Regulations are "administrative action" as defined in the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA") and any challenge to the Regulations should have been brought under the provisions of PAJA.

[10] The respondents, wisely, did not pursue the second point of attack in argument, namely that there is no dispute to be determined. As will be shown later in this judgment, there is most definitely a live dispute between the parties; one that has been the subject of much negotiation between them. The respondents also did not in argument pursue their contention that the Minister of Higher Education, Science and Innovation

should have been joined as a party. I do not believe that there was any merit to the contention that the Minister has a direct and substantial legal interest in these proceedings, nor did the respondents say why they so contend.

[11] Before I deal with the facts of the matter, I must point out that in the respondents' heads of argument, in the event that the points of law were decided against them, they sought an opportunity to file an answering affidavit. As stated out in Erasmus[3], when a point of law is decided against a respondent, the Court is in the invidious position that it either has to refuse leave to file an answering affidavit, and decide the matter on the applicant's papers, or to allow a postponement of the matter for it to be reheard at a later time. Neither option is attractive.

[12] In *Standard Bank of South Africa Ltd v RTS Techniques and Planning (Pty) Ltd and Others*[4] De Villiers J (in a minority judgment) said that a Court would be reluctant to refuse the respondents leave to file answering affidavits. A Court has to consider whether the respondents are bona fide, whether their explanation for not filing an answering affidavit is sufficient, and whether the prejudice to the applicant in a further delay may be cured by a costs order. The majority of the Court, relying on *Bader and Another v Weston and Another*[5] held that a respondent may not simply assume that his preliminary point would be successful. He must be prepared for the possibility of his point failing.

[13] The respondents have argued that they had insufficient time to prepare an answering affidavit, due to the application being served shortly before Christmas. The application is not voluminous. The founding affidavit itself is 21 pages long. The issues are crisp and could have been dealt with speedily. I do not accept that simply because it is the festive season a party cannot prepare affidavits. I do not consider the respondent's explanation for failing to file an answering affidavit to be persuasive.

[14] I also consider that there is some urgency to the matter, as I will explain hereunder. Should a postponement be granted the determination of the application would either be delayed for months until the matter is heard on the opposed roll, or another urgent court would be faced with reading the papers in a matter of weeks. For those reasons I declined to postpone the matter for the filing of an answering affidavit. The result is that the matter must be decided on the facts set out by the applicant.[6]

FACTUAL MATRIX

[15] The applicant is an industry representative. It represents grower's associations, as well as manufacturers, suppliers and distributors of agricultural remedies. It also assists with skills development in the crop protection industry. The deponent to the founding affidavit is its chief executive officer.

[16] The applicant contends that on a proper interpretation of the Regulations, the term "restricted-use agricultural remedy", which appears

in the PCO Regulations but is not defined, is not the same as "restricted agricultural remedy" as defined by the AR Regulations. I will deal hereunder with the applicant's reasons for this contention. It says, however, that the matter is not clear, and that there is widespread confusion within the industry whether the PCO Regulations apply to the use of "restricted agricultural remedies" under the AR Regulations.

[17] There have been widespread discussions between industry players and the Department of Agriculture on this issue, and on 11 October 2024 the first respondent published new draft Regulations in order to remedy the problems arising from the AR Regulations. The new Regulations have not yet been promulgated, and have themselves been the subject of discussion between the industry and Government.

[18] The applicant says that if the AR Regulations are to be applied subject to the PCO Regulations, it would mean that some farmers would have to employ the services of multiple PCO's when a restricted agricultural remedy is applied to different parts of the farm. That, the applicant says, would be a devastating outcome for the farming industry. Firstly, it says, there are insufficient numbers of PCO's available to service the industry, and while a large number of people have now applied for registration as PCO's the Registrar has made it plain that he is unable to process these applications timeously. There is currently a backlog of more than 2000 applications.

[19] Furthermore, the applicant says, another problem is that many applications do not meet the requirements of the PCO Regulations. The educational requirements for registration as provided for in regulation 2 (2) (c) (i) are also unclear and out of date. For instance, it is no longer possible to acquire an NQF 4 qualification that would allow a farmworker to become a registered PCO, as the particular qualification is no longer available.

[20] The PCO Regulations require an aspirant PCO to undergo a 6-month internship under a registered PCO[7], but there are insufficient PCO's to supervise the internships.

[21] The result of all of these problems is that if the AR Regulations are applied subordinated to the POC Regulations, then the effect on manufacturers, suppliers and distributors of agricultural remedies, and on end-users, would be profound. Those in the production chain are uncertain to whom they may sell these products, and the end-users are uncertain as to how these products must be applied. It is against this backdrop that the application has been brought.

URGENCY

[22] The applicant says that farmers are unable to procure products that they require for the protection of their crops. In a letter by Grain SA the writer says that the restrictions brought about by the AR Regulations pose a risk to crop health in South Africa, which threatens production, food security and sustainable farm operations. The Citrus Growers'

Association of South Africa says that a specific agricultural strip is essential for the protection of orchards. These strips are restricted under the AR Regulations which means that the industry would be forced to seek other less effective remedies. The AR Regulations would also impose serious challenges on growers, and many would be unable to comply with the AR Regulations. The South African Pecan Nut Producers NPC says that the restrictions imposed by the AR Regulations require the use of other less effective chemicals. Many pecan nut growers have experienced delays in their applications to be registered as PCO's. The result is that they have been unable to apply various agricultural remedies. The Pineapple Marketing Association complained that the inadequate control of nematodes, due to the unavailability of restricted agricultural remedies, could have devastating results for crops and might cause a total crop failure. These industry concerns are echoed by Hortgro, a growers' association.

[23] The respondents have argued that these complaints are not supported by affidavit, and that the letters constitute hearsay evidence. The respondents say that the letters must be ignored. An urgent court is entitled to consider hearsay evidence in appropriate cases.[8] In this case the averments made in the letters are supported by the applicant, a major and knowledgeable player in the industry. I accept the averments made in the letters.

[24] The concerns raised in the letters and in the founding affidavit clearly show that the matter is urgent. Was urgency self-created as the

respondent contends? It is so that the applicant delayed the launching of the application for many more than two years. It is also clear that the applicant made many attempts at resolving the matter with the Registrar. Evidently, the Registrar was aware of the implications of implementing the AR Regulations and applying them in conjunction with the PCO Regulations. For that reason new Regulations were drafted, and these became the subject of further discussions. It was only when the Registrar refused to seek self-review of the AR Regulations in cooperation with the applicant in early December 2025 that it became clear that only an urgent application would resolve the problem.

[25] The question is whether the delay was unreasonable. Given the fact that the wheels of government turn slowly, and that the applicant had been brought under the misapprehension that the defects in the AR Regulations were to be addressed, I do not believe that the delay was unreasonable. In my view the applicant's attempts at resolving the matter amicably should not be held against it. What is abundantly clear and foremost in my mind, is that the AR Regulations, if they were to be subordinated to the PCO Regulations, would pose a clear danger to the farming industry. For that reason the application is urgent.

INTERPRETATION

[26] The relief sought in main, as I have said above, is that the Regulations be so interpreted that it be declared that the phrase "restricted-use agricultural remedy" under the PCO Regulations does not

equal "restricted agricultural remedies" under the AR Regulations, and that the use the latter is not subject to the PCO Regulations.

[27] The interpretation of documents, including statutes, was definitively dealt with in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[9] where the Court said[10]:

> "Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax,; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all of these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document."

[28] The first point to make, is that legislation must be so interpreted as to be consistent with the Constitution. Any interpretation that is inconsistent with the Constitution must be rejected.[11] Where a legislative provision is reasonably capable of a meaning that accords with the Constitution, such a meaning must be preserved.

[29] A further principle to bear in mind where a specific interpretation would result in irrationality, such an interpretation must be rejected. In *Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa and Others*[12] the Court said[13]:

> "It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement."

[30] And further:[14]

> "[89]… What the Constitution requires is that public power vested in the executive and other functionaries be exercised in an objectively rational manner…
>
> [90] Rationality in this sense is a minimum threshold requirement applicable to the exercise of all public power by members of the Executive and other functionaries. Action that fails to pass this threshold is inconsistent with the requirements of our Constitution and therefore unlawful."

[31] In *Investigating Directorate (supra)*[15] said, furthermore:

> "…the Legislature is under a duty to pass legislation that is reasonably clear and precise, enabling citizens and officials to understand what is expected of them."

[32] At present the Regulations cause widespread uncertainty as to their meaning. For that reason alone the Regulations do not achieve the standard referred to in *Investigating Directorate (supra)*. The respondents contended that the Regulations may be 'harmoniously' interpreted. Upon enquiry as to the interpretation that the respondents place on the Regulations, the respondents' counsel argued that the AR Regulations should be interpreted as being subordinate to the PCO Regulations, and that the twin concepts of "restricted-use agricultural remedy" and "restricted agricultural remedy" are the same, and should be so interpreted.

[33] In my view, if the Regulations were to be so interpreted, they would be inconsonant with the Constitution for lack of rationality. That would mean that a sizable part of the farming industry would be unable to obtain and apply agricultural remedies that are crucial to their crops. That would undermine the commercial interests of actors in the industry, and also, in a wider sense, food and job security. Such an interpretation would certainly not be businesslike. I accept that the purposes of the Regulations are laudable, as the respondents have argued, and that their promulgation was not mala fide. However, as was held in *Pharmaceutical* (*supra*), bona fides in the exercise of power is required, but that is not all that is required. The exercise of power must also be rational.

[34] The further question is whether the Regulations can be interpreted as the applicant suggests. The first point to be made is that the two concepts are not identical. One assumes that the author of the

Regulations meant exactly what he/she said. If the intention was that the two different phrases are one and the same, then why are different words used in the respective Regulations? Furthermore, if it was the intention that the new class of chemicals created in the AR Regulations are subordinated to the PCO Regulations, one would have expected the Regulations to say so.

[35] Consequently, I find that the class restricted-use agricultural remedy and the class restricted agricultural remedy are different classes. I also find that the AR Regulations are not subordinated to the PCO Regulations.

REVIEW

[36] That is really the end of the matter. However, it is necessary to deal with the alternative claim for a declaration that the regulatory regime is unconstitutional and invalid. The applicants have sought relief on the basis of legality, which is a constitutional principle inherent in the rule of law which is a founding value of the Constitution. Section 33 of the Constitution enshrines the right to lawful, reasonable and procedurally fair administrative action. The Constitution[16] requires national legislation to be enacted to give effect to these rights. The legislature has enacted PAJA, in terms of which administrative action may be reviewed. For that reason the respondents have argued, based on the principle of subsidiarity, that the applicant was obliged to approach the Court in terms of PAJA and was not entitled to invoke section 33 directly.

[37] Subsidiarity is the principle that constitutional issues should, in principle, be adjudicated according to legislation, rather than by directly invoking a constitutional provision. This principle was expressed in *S v Mhlungu*[17], *Naptosa and Others v Minister of Education, Western Cape and Others*[18] and later endorsed by the Constitutional Court in *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae*[19] and in *SANDU v Minister of Defence*[20].

[38] In *New Clicks (supra)* Ngcobo J held that the implementation of legislation (in that case Regulations concerning the prices of medication) was administrative action in terms of PAJA[21]. The learned Judge also said the following:[22]

> "Where, as here, the Constitution requires Parliament to enact legislation to give effect to the constitutional rights guaranteed in the Constitution, and Parliament enacts such legislation, it will ordinarily be impermissible for a litigant to found a cause of action directly on the Constitution without alleging that the statute in question is deficient in the remedies that it provides. Legislation enacted by Parliament to give effect to a constitutional right ought not to be ignored."

[39] Unfortunately the courts' approach to this issue has not always been uniform. In *Albutt v Centre for the Study of Violence and Reconciliation and Others*[23] the Court held that it was unnecessary to resort to PAJA where the legality principle was capable of resolving a

dispute. Prof. Cora Hoexter[24] has criticized *Albutt* on the basis that it undermined the separation of powers.

[40] In *Malema and Another v Chairman, National Council of Provinces and Another*[25] the Court held that the respondent's rulings were reviewable under the principle of legality, and that it was, consequently, unnecessary to determine whether PAJA was applicable. The Constitutional Court criticized the court below for its enquiry into whether PAJA was applicable to the matter. In *Valuline CC v Minister of Labour*[26] the Court held that it was irrelevant whether the conduct complained of amounted to administrative action, and thus fell under PAJA. That approach was also criticized by Murcott and Van der Westhuizen[27].

[41] The Constitutional court revisited the application of the subsidiarity principle in *Minister of Defence and Military Veterans v Motau and Others*[28]. Khampepe J said as follows:

> "Does the Minister's decision amount to administrative or executive action? Answering this question is important. If it amounts to administrative action, it is subject to a higher level of scrutiny in terms of PAJA. If it is executive action, it is subject to the less exacting constraints imposed by the principle of legality."[29]

[42] In a footnote[30] the Court said:

> "The correct order of enquiry is to consider first, whether PAJA applies, and only if it does not, what is demanded by general constitutional principles such as the rule of law."

[43] The Court restated of the approach taken in *SANDU (supra)*, that a party asserting a constitutional right should first base its claim on legislation enacted to regulate the right, and not the Constitution.

[44] A year or so later the Supreme Court of Appeal reiterated the principle of subsidiarity in *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd*[31] when the Court, referring to *National Director of Public Prosecutions & Others v Freedom under Law*[32] said:

> "In my view, the proper place for the principle of legality in our law is to act as a safety-net or a measure of last resort when the law allows no other avenues to challenge the unlawful exercise of public power. It cannot be the first port of call or an alternative path to review, when PAJA applies."

[45] Finally, in *My Vote Counts NPC v Speaker of the National Assembly and Others*[33] embraced the principle of subsidiarity, albeit within the context of an application for information that was brought under section 32 of the Constitution and not under the Promotion of Access to Information Act, 2 of 2000 which had been enacted to give effect to section 32.

[46] There are substantial reasons why the principle of subsidiarity should be respected. As pointed out by Van der Walt[34], if one were to ignore legislation, choosing rather to directly apply the Constitution, it "*would be to fail to recognize the important task conferred upon the*

Legislature by the Constitution to respect, protect, promote and fulfill the rights in the Bill of Rights."

[47] In my view a principled approach to the matter would require a Court to determine, firstly, whether the conduct complained of is administrative action under PAJA. If it is, PAJA must be applied. Only if it is not, may the catch-net of legality be applied. For those reasons I do not agree with the applicant, who says that whether a review is brought under PAJA or under legality is of no consequence.

[48] It has already been established in *New Clicks* (*supra)* that the implementation of legislation is administrative action. For that reason the application to review the Regulations should have been brought under PAJA and not in terms of the legality principle.

[49] As far as costs are concerned, there is no reason why the applicant as the successful party should not be awarded costs.

[50] I make the following order:

[50.1] It is declared that:

[50.1.1] the class of "restricted agricultural remedy" in Annexure "A" of the Regulations relating to Agricultural Remedy published in GN 3812 on 25 August 2023 ("the AR Regulations") is not included in the class of "restricted-use agricultural remedy"

referred to in the Pest Control Operator Regulations published in GNR 98 on 18 February 2011 ("the PCO Regulations") and;

[50.1.2] the class of "restricted agricultural remedy" in Annexure "A" of the AR Regulations is not subject to the regulatory control of the PCO Regulations.

[50.2] The respondents shall pay the applicant's costs on Scale C, including the costs of two counsel where so employed.

[redacted]

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Counsel for the applicant:	Adv. K Hopkins SC Adv. Adv. V Heideman
Instructed by:	Winstanley Inc
Counsel for the respondent:	Adv. E Muller
Instructed by:	The State Attorney
Hearing on:	14 January 2026
Judgment on:	26 January 2026

[1] GNR 98 of 18 February 2011 published in Government Gazette No. 34020
[2] Regulations relating to Agricultural Remedy, GN 3812 of 25 August 2023
[3] Erasmus, Superior Court Practice, 2nd Ed R 6-27
[4] Standard Bank of South Africa Ltd and Others v RTS Techniques and Planning (Pty) Ltd 1992 (2) SA 532 (T) at 534 A
[5] Bader and Another v Weston and Another 1967 (1) SA 134 (C)
[6] Boxer Superstores Mthatha v Mbenya 2007 (5) SA 450 (SCA) at 452 F-G
[7] Regulation 2 (2) (d) (iv)
[8] Galp v Tansley NO 1966 (4) SA 555 (C) at 558 H;
[9] Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)
[10] At para [18]
[11] Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit 2001 (1) SA 545 (CC) at para [21]
[12] Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa and Others 2000 (2) SA 674 (CC)
[13] At para [85]
[14] At para [89] to [90]
[15] At para [24]; See also Affordable Medicines Trust and Others v Minister of Health and Another 2006 (3) SA 247 (CC) at para [108]
[16] Section 33 (3)
[17] S v Mhlungu 1995 (3) SA 867 (CC)
[18] Naptosa and Others v Minister of Educatio,n Western Cape and others 2001 (2) SA 112 (C)
[19] Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae 2006 (2) SA 311 (CC)
[20] SANDU v Minister of Defence and Others 2007 (5) SA 400 (CC) at para 51
[21] At para [480]
[22] At para [437]
[23] Albutt v Centre for the Study of Violence and Reconciliation and Others 2010 (3) SA 293 (CC)
[24] Cora Hoexter, South African Administrative Law at a Crossroads: The PAJA and the Principle of Legality, adminlawblog.org/2017/04/28
[25] Malema and Another v Chairman National Council of Provinces an Another 2015 (4) SA 145 (WCC) at para [47]
[26] Valuline CC v Minister of Labour 2013 (4) SA 326 (KZP)
[27] Murcott M, Van der Westhuizen W, The Ebb and Flow of the Application of the Principle of Subsidiarity- Critical Reflections on Mutau and My Vote Counts, (2015) 7 CCR 43
[28] Minister of Defence and Military Veterans v Motau and Others 2014 (5) SA 69 (CC)
[29] At para [27]
[30] Footnote 28
[31] State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd 2017 (2) SA 63 SCA; (641/25) [2016] ZASCA 143 at para [38]
[32] National Director of Public Prosecutions & Others v Freedom Under Law 2014 (4) SA 298 (SCA)
[33] My Vote Counts NPC v Speaker of the National Assembly and Others 2016 (1) SA 132 (CC) at paras [179] to [180]
[34] Van der Walt AJ, Normative Pluralism and Anarchy: Reflections on the 2007 Term (2008) 1 Constitutional Court Review 77