



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

CASE NO: 2022-021530

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.
- (4) Date: 28 August 2026

Signature: _____

In the matter between:

PRODUCT CONTROL FOR AGRICULTURE NPC

Applicant

And

BERTIE VAN ZYL (PTY) LTD t/a ZZ2

1ST Respondent

TOMATO PRODUCERS' ORGANISATION

2nd Respondent

NOORDELIKE UIE KOMITEE (PTY) LTD

3rd Respondent

KORKOM POTATOES AND ONIONS

4th Respondent

LEBOMBO GROWERS (PTY) LTD

5th Respondent

CITRUS GROWERS' ASSOCIATION OF SOUTHERN AFRICA

6th Respondent

JUDGMENT

NYATHI J

Introduction

[1] The applicant seeks leave to appeal against the whole of my judgment delivered on 17 March 2025 reviewing and setting aside its fee determination published in Government Gazette 46032 of 11 March 2022 and ordering it to pay the respondents' costs, including the costs of two counsel.

[2] The application is opposed.

The applicable test

[3] Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the court is of the opinion that the appeal would have a reasonable prospect of success or that there exists some other compelling reason for the appeal to be heard.

[4] The threshold has been raised by the enactment of the Superior Courts Act. In *The Mont Chevaux Trust v Goosen*¹ the Court held that the use of the word "would" indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. The test is no longer whether another court *might* come to a different conclusion.

¹ 2014 JDR 2325 (LCC).

[5] In *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 para 17, the Supreme Court of Appeal held that an applicant for leave to appeal must convince the court on proper grounds that there is a realistic chance of success on appeal and not merely an arguable case.

[6] Similarly, in *Four-Wheel Drive Accessory Distributors CC v Rattan NO* 2019 (3) SA 451 (SCA) para 34, the Supreme Court of Appeal reiterated that there must be a sound and rational basis for concluding that there are prospects of success on appeal.

[7] It is against these principles that the grounds advanced by the applicant fall to be considered.

Abuse of process

[8] The applicant contends that this Court failed to properly consider its contention that the review application constituted an abuse of process.

[9] I do not agree. An abuse of process occurs where court procedures are employed for a purpose extraneous to the attainment of justice. In *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 734F-G, the Court held that the concept concerns the misuse of court processes for an ulterior objective.

[10] The submissions advanced in support of the abuse contention were considered. The fact that they were not dealt with extensively in the judgment does not establish a misdirection. An appeal lies against the order granted and not against every aspect of the reasoning employed.

[11] The respondents approached this Court seeking to review administrative action which they alleged was unlawful. Whatever commercial interests may have been implicated, the proceedings were directed at obtaining judicial scrutiny of public power. The applicant has not demonstrated a reasonable prospect that another court would

conclude that the respondents diverted court process from its proper purpose or otherwise abused the process of court.

Internal remedy

[12] The applicant maintains that the respondents were obliged to exhaust the internal remedy contemplated in section 10 of the Agricultural Products Standards Act before instituting review proceedings.

[13] This issue was effectively addressed by the Supreme Court of Appeal in *Bertie van Zyl (Pty) Ltd t/a ZZ2 v Minister of Agriculture, Forestry and Fisheries*,² where the Court recognised the uncertainty surrounding section 10 and held that the failure to pursue such remedy should not frustrate a review application.

[14] I remain persuaded that the SCA's reasoning applies equally to the present matter. The applicant's submissions do not demonstrate a reasonable prospect that another court would reach a different conclusion.

Unreasonable delay

[15] The applicant contends that although the review application was brought within 180 days, it was nevertheless not instituted within a reasonable time.

[16] The respondents instituted review proceedings within the period prescribed by section 7 of PAJA. As recognised in the authorities referred to in the principal judgment, a delay within 180 days may in exceptional cases be unreasonable, but such instances will be rare.

² [2021] ZASCA 101; [2021] 4 All SA 1 (SCA).

[17] No exceptional circumstances were demonstrated. Nor has the applicant identified any material misdirection in the finding reached by this Court.

Deference

[18] The applicant further submits that this Court failed properly to defer to the specialised expertise of the applicant.

[19] Courts must indeed respect specialised administrative expertise. However, deference is not a substitute for legality, rationality or procedural fairness. Once a review ground has been established, judicial deference cannot validate administrative action that does not withstand scrutiny.

[20] The applicant's reliance on deference amounts largely to a disagreement with the conclusions reached. It does not establish reasonable prospects of success on appeal.

Ultra vires finding

[21] The applicant attacks the finding that the fee determination exceeded the powers conferred by the APS Act.

[22] The judgment dealt extensively with the proper interpretation of sections 3(1A) and 3A of the Act. The applicant largely repeats submissions advanced at the hearing of the review and does not demonstrate that the interpretation adopted is clearly wrong.

[23] I remain satisfied that the impugned fee structure authorised the charging of fees beyond the services actually contemplated by the empowering provisions and was accordingly unlawful.

[24] No reasonable prospect has been shown that another court would arrive at a different interpretation.

Procedural unfairness

[25] The applicant submits that ample consultation occurred and that affected parties had a meaningful opportunity to comment.

[26] The difficulty with this submission remains that material information underpinning the proposed fee structure was not adequately disclosed to interested parties. The deficiencies identified in the judgment were not cured by the existence of meetings or opportunities to lodge representations.

[27] The applicant has not demonstrated that another court would likely conclude that the notice and comment process satisfied the requirements of procedural fairness.

Rationality and arbitrariness

[28] The applicant's principal challenge concerns the findings of irrationality regarding the weight-based charging model, product categorisation and frequency of inspections.

[29] These issues were fully considered in the judgment. The findings were reached after an examination of the evidence and in light of the guidance furnished by the Supreme Court of Appeal in the earlier *Bertie van Zyl* matter.

[30] The applicant has not identified any material factual error or legal misdirection. At best for the applicant, the grounds amount to a disagreement with the evaluative conclusions reached by the Court.

[31] That falls short of the standard required by section 17 of the Superior Courts Act.

Conditional counter-application

[32] The applicant further seeks leave to appeal against the dismissal of its conditional counter-application.

[33] The judgment found that section 172 of the Constitution did not provide the basis relied upon by the applicant.

[34] Even assuming that another court were to differ in its reasoning concerning section 172, the relief sought remained discretionary and dependent upon considerations of justice and equity.

[35] In my view the applicant has not demonstrated a reasonable prospect that the Supreme Court of Appeal would interfere with the conclusion reached.

Compelling reason

[36] The applicant also contends that compelling reasons exist for an appeal to be heard.

[37] The issues raised are important to the parties and to the agricultural sector. However, importance alone does not constitute a compelling reason within the meaning of section 17(1)(a)(ii). The legal issues are neither novel nor affected by conflicting judgments requiring resolution by an appellate court.

Conclusion

[38] Having considered the grounds of appeal individually and collectively, I am not persuaded that the applicant has established reasonable prospects that another court would come to a different conclusion. Nor has the applicant demonstrated any compelling reason warranting the grant of leave to appeal.

Order

[39] The following order is made:

1. The application for leave to appeal is dismissed.
2. The applicant is ordered to pay the costs of the application for leave to appeal, including the costs consequent upon the employment of senior counsel at party and party scale C.


J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 18 August 2026

Date of Judgment: 28 August 2026

On behalf of the Applicant: Adv. A. Bester SC

With him: Adv. M. Mostert

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 28 August 2026.