



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 1001/2023

In the matter between:
**WILLEM JOHANNES BOSHOFF
BOSHOFF AFRIKANERS CC
(Registration Number: 2011/014290/23)**

**First Applicant
Second Applicant**

and

**AFRIKANERS CATTLE BREEDERS SOCIETY
OF SOUTH AFRICA**

Respondent

CORAM: M E MAHLANGU, AJ

JUDGMENT BY: M E MAHLANGU, AJ

HEARD ON: 11 MAY 2023

DELIVERED ON: 18 MAY 2023

Introduction

- [1] The applicants lodged an urgent application on 24 February 2023 to interdict the respondent from conducting a hearing or inquiry into the alleged falsifying of data and/or data manipulation in respect of the applicant's registration and data capturing of the applicant's heard book that was scheduled to be held on 3 March 2023.
- [2] The respondent delivered a notice of intention to oppose. Subsequent thereto the application was postponed to 11 May 2023. The urgency of the matter was no longer applicable.

Point in limine

- [3] The respondent raised a lack of *locus standi* point *in limine* against the first applicant. The respondent submitted that, the first applicant is not the member of the respondent. The disciplinary issues were not instituted against the first applicant as the first applicant has no relation with the respondent. The respondent further submitted that the first applicant's rights would not be affected by any order to be granted by the court as he does not have legal interest in this matter.
- [4] Mr Kleyn on behalf of the applicant submitted that, the first applicant is the sole member of the second applicant and therefore has the member's interest to protect.
- [5] **Henri Viljoen (Pty) Ltd v Awerbuch Brothers 1953 (2) SA 151 (O), Horwitz AJP** interpreted the term 'direct and substantial interest' as meaning legal interest. I am therefore of a view that the first applicant has direct and substantial interest in this matter

as a member of the second applicant. The first applicant therefore has *locus standi* in this matter.

Background facts

- [6] The respondent is an entity consisting of a group of persons promoting the breeding, the recording or registration, the genetic improvement, and the use of Afrikaner Cattle. The second applicant is the member of the respondent. The first applicant is the sole member of the second applicant and the registered member of the respondent. The breeding, identification and utilisation of genetically superior animals are regulated by the provisions of the Animal Improvement Act, 62 of 1998 (the Act).
- [7] The Registrar, designated by the Minister of the Department of Agriculture, Land Reform and Rural Development (the Department), in terms of section 3(1) of the Act, is responsible to keep a national register containing information on *inter alia* animal breeders' societies, breeders and stud book animals. The Registrar is the only person who has authority to release the data information contained in the Integrated Registration and Genetic Information System (INTERGIS).
- [8] The data information is captured on the INTERGIS. INTERGIS is a computer platform whose username and password are protected. It is the only national database in the Animal Improvement Schemes concerned with the integration of the pedigrees and performance of data animals, a system which falls solely under the direction and control of the Registrar. The Minister has contracted the Agriculture Research Council (ARC)

on behalf of the designated Registrar to host the INTERGIS. The Registrar is the only person who has the authority to grant a third party to access the confidential data information contained on INTERGRIS.

Discussion

- [9] The main issue in this matter is whether or not the respondent is entitled in terms of the Act and its constitution to obtain the information which is stored on INTERGIS without obtaining the permission from the Registrar.
- [10] Section 5(3) of the Act specifically provides that the Registrar shall furnish any person, at his or her request and payment of a prescribed fee, with a copy of any particulars recorded in the recorded in the register or a certificate in respect thereof.
- [11] It is the respondent's contention that, section 11(2)(b)(i) of the Act confers upon it a statutory duty to verify the electronic data stored on INTERGIS that is submitted by its members. The applicants contends that, section 11(2)(b)(ii) of the Act is subject to compliance with the requirements determined by the Registrar. The applicant further submitted that the respondent does not have an unfettered right to access electronic data stored on INTERGIS, only the Registrar has access to it.
- [12] Section 11(2)(b)(i) and (ii) of the Act provides that:

“(b) the constitution of such registering authority provides that-

- (i) *before any information with reference to an individual animal is accepted and the animal is registered or recorded, such information shall be subjected to verification in respect of the correctness of parentage, the interbirth cycle of the dam, the ownership of the parents at the time of serving and the birth of the animal;*
- (ii) *the manner of verification of all registration particulars, the manner in which records are kept, the contents of the records shall comply with the requirements determined by the registrar, in consultation with all other registering authorities.”*

[13] In terms of paragraph 5.6 of the respondent's constitution, the respondent may access the data of any of its members subject to the conditions imposed by the owner(s) of the INTERGIS in terms of which such data is captured. It is my view that, paragraph 5.6 prohibits the respondent from accessing the electronic data from INTERGIS. The Registrar is the only designated person to have access to the data information stored on INTERGIS. The respondent had to obtain permission from the Registrar or a right to access the second applicant's data from the Registrar before accessing it on INTERGIS.

[14] It is my view that the respondent obtained the data from INTERGIS contrary to the provisions of section 5(3) and section 11(2)(b)(ii) of the Act and paragraph 5.6 of its constitution. The ARC is the sole organisation contracted by the Department to host the INTERGIS.

[15] In **Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews 2009(4) SA 529 O'Reagan ADCJ** stated that:

“..... In interpreting an arbitration agreement, it should ordinarily be accepted that when parties submit to arbitration, they submit to a process they intend should be fair. Fairness is one of the core values of our constitutional order: the requirement of fairness is imposed on administrative decision- makers by s33 of the Constitution; The arbitration agreement should thus be interpreted, unless its terms expressly suggest otherwise, on the basis that the parties intended the arbitration proceedings to be concluded fairly.”

[16] According to the respondent's constitution, the disciplinary proceedings had to be fairly conducted.

[17] For all the reasons set out above, I am of a view that the respondent did not follow the correct procedure in obtaining the data of the second applicant from INTERGIS.

Order

[18] In the result I make the following order:

1. That the point *in limine* raised by the respondent is dismissed with no order as to costs;

2. That the respondent is prohibited from conducting a hearing or inquiry into the alleged falsifying of data and/or data manipulation in respect of the applicant's registration and data capturing of the applicant's herd book until such time the respondent has obtained permission from the Registrar to access the data information of the second applicant from INTERGIS.

3. The respondent to pay costs of this application on a party and party scale.

E. MAHLANGU AJ

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