

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 015445-2022

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

Judge Dippenaar

In the matter between:

CONSUMER GOODS COUNCIL OF SOUTH AFRICA

APPLICANT

AND

FOOD SAFETY AGENCY (PTY) LTD

FIRST RESPONDENT

**THE MINISTER OF THE DEPARTMENT
OF LAND REFORM AND RURAL DEVELOPMENT**

SECOND RESPONDENT

THE RED MEAT INDUSTRY FORUM

THIRD RESPONDENT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 25th of July 2023.

DIPPENAAR J:

[1] This application concerns analogue meat products. At issue is the extended return date of a rule nisi granted by Makume J on 19 August 2022. The rule nisi was granted in the following terms:

"2.1 The first respondent and/or the second respondent are interdicted from implementing the decision of seizure (issued by the first respondent on 16 August 2022) (Decision)

2.2 The first respondent and/or the second respondent are interdicted from seizing any meat analog (sic) products presented for sale in the Republic of South Africa from any (and all) of the applicant's members' points of sale, whether at facilities, retail or wholesale premises, conveyancers or otherwise based on the Decision, or otherwise, on 22 August 2022 or any other date;

2.3 That the orders in 2.1 and 2.2, operate on an interim basis pending:

2.3.1 the finalisation of an appeal against the Decision, the applicant will institute in terms of section 10 of the Agricultural Products Standards Act, 119 of 1990 read with the Regulations Regarding Appeal Procedures (GN R1260 of 2019 published in Government Gazette 42726 of 27 September 2019), which are promulgated in terms of section 15 of the APS Act; and/or

2.3.2 the finalisation of a review against the Appeal Board's decision; and / or

2.3.3 the finalisation of a review of the Decision."

[2] Costs, including the costs of counsel, were reserved.

[3] The applicant is the Consumer Goods Council of South Africa ("CGCSA"), a non-profit organization with some nine thousand members across South Africa, which provides various services that *inter alia* include product labeling, advisory, regulatory

advice and advocacy, and engagement with government departments and regulatory agencies.

[4] The first respondent, the Food Safety Agency (Pty) Ltd (“the FSA”) , is an assignee appointed in terms of section 2 of the Agricultural Product Standard Act¹ (“APS Act”) to “*exercise the powers and perform the duties that are conferred upon or assigned to the executive officer by or under the APS Act with regard to the product.*” It was designated in terms of Government Gazette 7 of 2017 to enforce the quality regulations for poultry, meat and eggs, as well as other meat and meat products, including processed meat products and is responsible for implementing the regulations regarding the classification packaging and marketing of processed meat products intended for sale in the Republic of South Africa (published in GNR 1283 of 4 October 2019) (“The Processed Meat Regulations.”)

[5] The second respondent, in her representative capacity is the Minister of the Department of Agriculture Land Reform and Rural Development (for ease of reference referred to as “the Department”). The second respondent is the Minister as defined in section 1 of the APS Act.

[6] Shortly before the initial return date of the rule nisi on 17 November 2022, the third respondent, the Red Meat Industry Forum (“RMIF”), sought and obtained leave to intervene and oppose the application.

[7] The RMIF is an incorporated voluntary association of organisations, representing various groups in the red meat industry. Its stated objectives include the enhancement of the red meat industries domestic and global competitiveness, the stimulation of demand and consumer confidence both in domestic and export markets, by creating alliances with government and influencing legislation trade and macro-economic

¹ 119 of 1990

conditions to ensure sustained viability and growth and maintenance and exploitation of the high health status and genetic potential of South African breeding herds.

[8] The application is opposed by the Department and the RMIF. The FSA did not participate in the proceedings and did not deliver any affidavits. This omission is significant, given that it was the entity which issued the decision of seizure or “communique” as described by the opposing respondents, issued on 16 August 2022, forming the genesis of the current disputes. The FSA could have given clarity on many of the issues which arose in this application.

[9] Pursuant to the granting of the order by Makume J, the CGCSA launched review proceedings in this court during November 2022, which remain pending, in which the following substantive relief is sought:

1. *The second respondent's decision, dated 22 June 2022, prohibiting meat analogue products from using naming conventions congruent to those used for processed meats, and authorising the seizure of any meat analogue products which make use of congruent, or similar naming conventions as those used by processed meat products (initial decision) be reviewed and set aside.*
2. *The first respondent's decision dated 16th August 2022, made pursuant to the initial decision, purporting to cease - without a warrant - any meat analogue products which make use of congruent, or similar naming conventions as those used by processed meat products. In terms of Section 8 of the agricultural product standards act 119 of 1990 (subsequent decision be reviewed and set aside) that application was launched during November 2022. The respondents in that application are the respondents in the present application.*

[10] The CGCSA sought confirmation of the rule nisi pending the finalisation of the pending review proceedings, with a slight attenuation of the relief originally obtained, given the developments which occurred thereafter. It contends that it is necessary to protect its members from the threatened actions of the FSA which actions, if allowed, would cause them irreparable harm. Its case was that it has established the requirements for interim interdictory relief.

[11] The Department and the RMIF (collectively referred to as “the respondents”, where appropriate) sought the discharge of the rule on the basis that the CGCSA had

failed to establish any of the requirements for an interim interdict. Their central contention was that there was no reviewable administrative action taken by the FSA.

[12] Subsequent to the hearing before Makume J, the CGCSA had lodged an appeal in terms of s 10 of the APS Act. It was advised that there was no decision to be appealed against as the letter of 16 August 2022 was a communique and not a decision and that the seizure decision had been torpedoed by the interdict. It was further informed that it was the decision of the Director General not to constitute an appeal board as it was impossible to do so. In light of those developments, the relief in paragraphs 2.3.1 and 2.3.2 of the order of Makume J effectively fell away.

[13] Prior to dealing with the merits, it is apposite to deal with two procedural issues. First, the Department sought condonation for the late delivery of its answering affidavit, which was only delivered after the hearing before Makume J on 19 August 2022. There was no opposition thereto and I am satisfied that a proper case for condonation has been made out. Such an order will be granted.

[14] Second, the CGCSA launched a striking out application to strike out the following portions of the RMIF's answering affidavit: (i) paragraphs 33.2, 33.3 and 50 to 57 on the basis that they are irrelevant; (ii) paragraphs 63 to 67.2 on the basis that they are irrelevant and argumentative; (iii) paragraphs 73 to 87 on the basis that they are irrelevant and argumentative and contain inadmissible hearsay evidence in the form of annexures RMIF6 and RMIF 7; (iv) paragraphs 94 to 108 on the basis that they are irrelevant, argumentative and contain inadmissible hearsay evidence in the form of annexure RMIF9; (v) paragraphs 109 to 116 on the basis that they are irrelevant and argumentative and (vi) paragraphs 126 and 127 on the basis that they are scandalous and defamatory.

[15] The RMIF conceded to the striking out of paragraphs 33.2, 50, 51.2, 63, 64, 66, 94 and 95 of its answering affidavit. It argued that the various academic articles dealt

with in and attached to its answering affidavit were not irrelevant or inadmissible as both the Constitutional Court and the Supreme Court of Appeal have frequently made reference to these types of documents. Various cases were cited where our courts took account of reports of an academic nature. It was further argued that to the extent that the material complained of constitutes hearsay evidence, it fell within the exception to the hearsay rule as provided for in the Law of Evidence Amendment Act of 1998. Reliance was placed on s 3(1)(c) and s 4 of that Act.

[16] Striking out applications are regulated by r 6(15). Two requirements must be satisfied before such an application can succeed. The first, that the matter sought to be struck out must be scandalous, vexatious or irrelevant. The second, that the party seeking relief would be prejudiced if the matter is not struck out². Prejudice is the decisive factor³.

[17] The overriding consideration is prejudice. That is dispositive of the application. I agree with the argument advanced by the RMIF that the CGCSA has failed to establish prejudice as the court is only seized with establishing whether it has established the requirements for an interim interdict. Prejudice in this context is limited to procedural prejudice⁴.

[18] The high water mark of the CGCSA's complaint was that the offending paragraphs have rendered the papers unnecessarily prolix and contain irrelevant matter to the relevant issues, thus obfuscating the true issues. Whilst this may be correct and there is merit in the objections raised, the relevance of the allegations in the various paragraphs fall to be considered in relation to the merits of the application. The CGCSA had the opportunity to respond to the RMIF's allegations in its answering affidavit and did so.

² Maharaj & Others v Mondag Centre of Investigative Journalism NPC & Others 2018 (1) SA 471 (SCA) para [14]; Titty's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Others 1974 (4) SA 362 (T) at 368F-G

³ Beinash v Wixley 1997 (3) SA 721 (SCA) at 732-734

⁴ S v Ndhlovu and Others 2002 (2) SACR 325 (SCA)

[19] Considering all the relevant principles, I am not persuaded that the CGCSA has established such prejudice as would warrant the striking of the offending paragraphs. It follows that the application must fail, save for the paragraphs conceded by the RMIF.

[20] Given that the RMIF had conceded the striking of certain paragraphs, it would be appropriate to direct each of the parties to be liable for their own costs. No costs order will thus be made in relation to the striking out application.

[21] The Department challenged whether the CGCSA was authorised to represent all of its members in the application, although a list of members was subsequently provided. It further challenged CGCSA's *bona fides* in bringing the application on an urgent basis and complained that it sought to extend the rule nisi for an indefinite period as the review proceedings have ground to a halt due to inaction on the part of the CGCSA.

[22] For present purposes it may be *prima facie* accepted that the CGCSA is authorised to represent its members. The urgency of the application is at this stage of academic interest only. Makume J accepted that the application was urgent and granted an order. The review proceedings remain pending and the respective parties have remedies at their disposal to ensure the expeditious disposal of those proceedings.

[23] The Department's case in sum was that the requirements for an interim interdict have not been met. It argued that the extension of the rule nisi pending the further steps it intends to take prejudices it and allows the members of the CGCSA to contravene s 11 of the APS Act and the decision of 22 June 2022, whilst its members continue plying its wares which are not regulated in terms of quality, compositional standards and marking requirements and which are using product names reserved for processed meat products. It argued that the FSA's letter of 16 August 2022 was not a decision but a communique, which does not have any force of law and is not a regulatory instrument. It

contended that the FSA only has the powers conferred by the Act and that the regulations do not apply to meat analogue products.

[24] The RMIF aligned itself with the stance adopted by the Department. In sum, its case was aimed at the averment that members of CGCSA produce and sell a number of products that attempt to mimic the taste, texture and appearance of actual meat products and seek to appropriate the names and descriptions traditionally associated with the actual meat products they try to emulate. It focused on the conduct of the members of CGCSA being a contravention of s 11 of the APS Act to use offending product names which are prescribed or reserved for processed meat products in the sale of analogue meat products.

[25] The CGCSA sought interim interdictory relief. It is well established⁵ that the principles in *Webster v Mitchell*⁶ apply. It is not necessary to repeat them. The requirements for interim interdictory relief are trite⁷. They are: (i) a *prima facie* right, although open to some doubt; (ii) an injury actually committed or reasonably apprehended; (iii) a favourable balance of convenience; and (iv) the absence of any other satisfactory remedy available to the applicant.

Has the CGCSA illustrated a prima facie right?

[26] The genesis of the application lies in a letter from the FSA, dated 16 August 2022, addressed to processors, importers and retailers of analogue meat products. In relevant part it provides:

"Dear Sir Madam

⁵ Eskom Holdings SOC Ltd v Lekwa Ratepayers Association NPC and Others and a Similar Matter 2022 (4) SA 78 (SCA) para [21]

⁶ 1948 (1) SA 1186 (W) 1189 refined in Gool v Minister of Justice 1955 (2) SA 682 (C) at 688D-E

⁷ Setlogelo v Setlogelo 1914 AD 221

RE: SEIZURE OF MEAT ANALOGUE PRODUCTS PRESENTED FOR SALE IN THE REPUBLIC OF SOUTH AFRICA

1. Our email correspondence dated 24 June 2022 has reference;
2. As of Monday 22 August 2022, the Food Safety Agency (Pty) limited will seize any meat analogue products presented for sale in the Republic of South Africa, which are using the product names prescribed for processed meat products in terms of Section 8 of the Agricultural Product Standard Act 119 of 1990 (the ACT) close at all points of sale, i.e. facilities, premises (retail and wholesale), conveyancers, etc.”

[27] The covering email of 24 June 2022 attaching the 22 June 2022 directive provides:

“Please find attached to communicate about the Department of Agriculture Land Reform and Rural Development's stance on meat analogues using the product name (is) prescribed or reserved for processed meat products. Hope you will receive the communicate in good order and you are welcome to contact this office should you need any clarification in this regard.”

[28] The communicate dated 22 June 2022 emanated from the Executive Officer for Agricultural Product Standards on behalf of the Department of Agriculture, Land Reform and Rural Development. In relevant part it provides:

“FOR ATTENTION:

ALL PROCESSES IMPORTERS AND RETAILERS OF MEAT ANALOGUES

ILLICIT USE OF THE PRODUCT NAMES IN RESPECTIVE NAMES EXCLUSIVELY PRESCRIBED FOR PROCESSED MEAT PRODUCTS

1. It has come to the Department of Agriculture Land Reform and Rural Development's (DALRRD) attention that various meat analogues are currently presented for sell on the local market using the product names prescribed for processed meat products. These product names include descriptions such as for example, “Vegan Veggie Biltong”, “Mushroom Biltong”, “Plant based Meatballs”, “Vegan Nuggets”, “Vegan BBQ Ribs”, “Plant based Bratwurst”, “Chorizo and Red Pepper Vegetarian Sausages”, “Plant-based Chicken-Style Strips, etc.
2. The classification, packing and marking of processed meat products intended for sale in the Republic of South Africa are currently regulated in terms of regulation number R1283 dated for 4 October 2019.
3. In terms of the said regulation, “**processed meat**” is defined as meat that has undergone any action that substantially altered its original state (including, but not limited to, heating, smoking, curing, fermenting, maturing, drying, marinating, (surface application), extraction or extrusion or any combination of all these processes), but excludes raw processed meat.

4. *Meat analogues must not use the product names prescribed and reserved for processed meat products since the scope of the above mentioned regulation does not include meat analogues.*
5. *The assignee designated for the inspection of processed meat products, namely the Food Safety Agency (Pty) Ltd, will in terms of Section 8 ("Seizures") of the Agricultural Product Standards Act 119 of 1990 ("the APS Act") seize any meat analogue products using the product names prescribed for product processed meat products.*
6. *In terms of Section 11 of the APS act, it is an offence to use product names that are prescribed or reserved for processed meat in the sale of meat analogues."*

[29] In a further email of 24 June 2022, the FSA addressed stakeholders, stating in relevant part the following:

- "1. The matter mentioned above in the email correspondence received from Mr. Makafola on the 24th of June 2022 has reference.*
- 2. The seizure of meat analogue products using product names prescribed for processed meat products will be delayed with 30 (thirty) business days from today 24 June 2022.*
- 3. During the upcoming 30 business days, Food Safety Agency (Pty) Ltd will conduct an extensive market survey (environmental scan) to determine how widespread the sale of meat analogue products using the names prescribed for processed meats products is this meat. Food Safety Agency (Pty) Ltd will provide the DALRRD with feedback on the outcome of the survey within the said period.*
- 4. In the meantime, inspectors of the Food Safety Agency (Pty) Ltd will proceed with the issuing of directions for meat analogue products using product names prescribed for product meat products in R1283 dated 4 October 2019. The directions issued will allow for a grace period of 30 business days to rectify the incorrect product names/descriptions used on the meat analogue products presented for sale."*

[30] The letter of 16 August 2022 formed the central focus of the founding papers. As stated, the respondents contended that the 16 August 2022 letter was simply a communique and not a decision, but represented a plan towards the decision taken on 22 June 2022. The RMIF argues that the 16 August 2022 letter did not constitute a decision and cannot be classified as administrative action which could found an application for review and thus that the CGCSA faltered at the hurdle of proving a *prima facie* case. It argued that the fact that the CGCSA has sought in the review application to make out a case for the review of the Department's 22 June 2022 decision, was

irrelevant for purposes of evaluating the CGCSA's application for interim relief here as it was not geared at affording interim relief pending a review of the 22 June 2022 instruction.

[31] Whilst the FSA referred to the 16 August 2022 letter as a communique and not as a directive, the FSA chose not to participate in the proceedings or explain its own correspondence. The interpretation of the said letter by other parties is of little assistance. Given that the relief sought in the review proceedings pertains to both, it is an issue which should be left for the review court to determine. I do not agree with the RMIF's argument that the CGCSA pinned its colours to the mast in the present application by only relying on the 16 August 2022 letter which it sought to take on review. In my view, to ignore the fact that the review proceedings launched by the CGCSA goes wider and also includes the decision of 22 June 2022, would be to adopt an overly technical and myopic approach, more so as a review of the 22 June 2022 decision was raised in the application papers. It is trite that whilst a party is constrained to make out its case in the founding papers, it may elaborate on its case in reply.

[32] It is undisputed that the FSA is obliged to act within the parameters of the authority as delegated in terms of the APS Act, subject to ministerial control and that the essence of the rule of law is that all administrative authorities must exercise their powers within the confines of the law⁸.

[33] It can further be concluded that at least on a *prima facie* basis the decisions here in issue amount to reviewable administrative action and that the review should be allowed to proceed⁹, despite the respondents' arguments to the contrary. On a *prima facie* basis, it can thus not be concluded, as the respondents contend, that the review proceedings are incompetent.

⁸ Van Zyl (Edms) Bpk t/a ZZZ and Others v Minister of Agriculture, Forestry, Fisheries and Others (45144/2017) [2020] ZAGPPHC 283 (24 June 2020) par [51]

⁹ Bertie van Zyl (Pty) Ltd v Minister of Agriculture, Forestry and Fisheries 2021 JDR 1544 (SCA) par [22]

[34] I am mindful not to pre-determine the issues which will be considered by the court hearing the review application. I intend to adopt the approach of Malan J in *Johannesburg Municipal Pension Fund*¹⁰ in considering whether the applicant has illustrated a *prima facie* right although open to some doubt. It is only necessary for the applicant to illustrate a prospect of success in the pending review application to meet that threshold.

[35] In relation to its *prima facie* right, the CGCSA's case was that both the 22 June Directive and the 16 August 2022 decision were without proper foundation, *ultra vires* and improper, rendering the proposed action pursuant thereto unlawful. It contended that the FSA has no authority over meat analogue products and it may only exercise specific powers in respect of processed meat products under s 2(3)(b)(i) of the APS Act.

[36] Its case was that processed meat regulations do not apply to meat analogue products or non-meat based products that in general appearance, presentation and intended use correspond to processed meat products (e.g. vegan or vegetarian processed products) under regulation 2 (2)(c). It contends there is no assignee in respect of meat analogue products in respect of which it is common cause that no regulations in terms of the APS Act apply to analogue meat products. Its case was that there are no prescribed or reserved names for processed meat products and no distinctive marks have been prescribed or reserved under s 5(1) of the APS Act.

[37] It argued that s 6 of the APS Act does not apply and neither the FSA or the Department relied on s 6 to justify the seizures. Before a seizure pursuant to ss 7 and 8 of the APS Act can be contemplated an analysis of the specific product is required to ascertain whether the provisions of s 6 have been contravened in a manner which constitutes an offence in terms of the APS Act. It was argued that no evidence was presented demonstrating any contravention by the creation of any false or misleading impressions regarding meat analogue products. Lastly, the CGCSA argued s 11(1)(a) of

¹⁰ *Johannesburg Municipal Pension Fund and Others v City of Johannesburg* 2005 (6) SA 273 (W) at 281-282

the APS Act does not apply, given that no distinctive marks have been created in respect of processed meat products under s 5(2) of the APS Act.

[38] In disputing that the CGCSA had illustrated a prima facie entitlement to relief, the respondents relied on a particular statutory interpretation of s 6 of the APS Act which deals with a prohibition on false and misleading descriptions of products as defined in the APS Act. It was argued that the FSA has the power to issue directives also for analogue meat products, aimed at enforcing sections 6 and 11 of the APS Act.

[39] It was common cause that the FSA is the appointed assignee in respect of processed meat products in terms of s 1 read with s 2(3) of the APS Act. It was further not disputed on the papers that there are no regulations governing meat analogue products and that the APS Act contains a prohibition on the blanket seizure of regulated products and that the requirements of ss 7 and 8 must be complied with.

[40] The interpretation of s 6 of the APS Act is central to the dispute between the parties. I am mindful that the proper interpretation of s 6 of the APS will be a central feature in the pending review proceedings.

[41] The RMIF further contended that the CGCSA was attempting to interdict the exercise of a statutory power. Relying on *OUTA*¹¹, it was argued that courts grant temporary restraining orders against the exercise of statutory power only in exceptional cases and when a strong case for such relief has been made out.

[42] I am not persuaded that this argument assists the RMIF at this stage, given that it is the very existence of the statutory powers of the FSA which is at the centre of the dispute between the parties and which forms the subject matter of the pending review application.

¹¹ National Treasury and Others v Opposition to Urban Tolling Alliance and Others 2012 (6) SA 223 (CC) paras [44]-[47]

[43] It was common cause between the parties that neither the Department nor the FSA, being the party to affect seizures, may effect any seizures in the absence of having either obtained a warrant or having complied with s 7(5) of the APS Act. It was not contended that a warrant had been obtained or that s 7(5) of the APS Act has been complied with. It is not disputed that the FSA had not applied for nor obtained warrants in order to proceed with its intended seizures.

[44] In its opposing papers, the RMIF further raised five proposed broad alternative grounds for holding that the FSA is entitled to seize meat analogue products. They are that members of the CGCSA have contravened the sausage regulations¹² and the Consumer Protection Act 68 of 2008. It was further contended that there was an alleged infringement of the constitutional rights of consumers, specifically illiterate consumers, that meat analogue products could be super allergens and that there is a lack of amino acids and vitamin B12 in meat analogue products. These matters raise self-standing issues which are not specifically germane to whether the CGCSA has illustrated any *prima facie* right to relief. Insofar as those issues are relevant to the review proceedings, they are properly to be determined in those proceedings and it is not for present purposes necessary to express any views on these issues.

[45] Considering all the facts and the issues raised, I am persuaded that there is a prospect of success and a serious issue to be tried in the review application. The central disputes between the parties pertain to the proper statutory interpretation of various of the provisions of the APS Act and other statutes and the applicability of the various authorities relied on by the respective parties.

[46] It cannot be concluded that the applicant's claim is frivolous or vexatious. I am persuaded that the CGCSA has illustrated some prospects of success in the review proceedings in due course¹³, given the statutory provisions relied on by it and the

¹² Which was later jettisoned

¹³ Eskom Holdings fn 2 above and the authorities cited therein

absence of meat analogue specific regulations and in the absence of prescription or reservation of names for processed meat.

[47] On this basis the CGCSA has illustrated, at least on a *prima facie* basis that it has the right not to have analogue meat products unilaterally seized. I conclude that the CGCSA has established a *prima facie* right to the relief sought, although open to some doubt.

An injury actually committed or reasonably apprehended

[48] Turning to the risk of irreparable harm, if the right is only *prima facie* established, the CGCSA must establish a well-grounded apprehension of irreparable harm if the interim relief is not granted and it ultimately succeeds in establishing its right.

[49] The respondents argued that the CGCSA had not illustrated any risk of irreparable harm as it had not set out any specific instance where any of its members specifically faced irreparable harm because no administrative action has been taken. It argued that such harm could only materialise when a directive is issued to a specific member. As there was no indication that the FSA sought to bypass s 8 of the APS Act, due process would be followed at all times and any specific member would be afforded 30 days to query the process and institute an internal appeal.

[50] The silence on the part of the FSA on this issue is significant and the respondents' arguments are based on inferences and conclusions, rather than on primary facts.

[51] It was further argued by the respondents that any alleged harm that may be suffered is self-created, given that the members of the CGCSA knew that their products were non-compliant.

[52] This argument does not pass muster as it places the cart before the horse and pre-determines the issues which will be determined in the review application, given that the RMIF contends for a continued contravention of the APS Act and the processed meat regulations, whereas the CGCSA adopts a conflicting approach. These issues form the very nub of the disputes between the parties which will be determined in the review.

[53] It is well established that harm must be ongoing¹⁴ and does not equate solely to financial loss but would also include an irremediable breach of rights¹⁵. Were perishable goods to be seized from all intended points, there is in my view a risk of real and irreparable financial harm. I further agree with the CGCSA that if the seizures would not be interdicted it would effectively render the pending review application moot and may prematurely pre-determine the issues relating to the naming conventions for meat analogue products.

[54] I am fortified in this view by the RMIF's argument that the CGCSA and its members could avoid seizure of their products by complying and changing the naming and packaging of their products. That of itself would render the pending review application moot. Even if all actions to be taken by the FSA are to be strictly in accordance with the APS Act, as argued by the RMIF, that does not alleviate the risk of ongoing harm which presently exists.

[55] The RMIF's sentiment is supported by the Department's argument that CGCSA has not suffered irreparable harm as it has had 10 months to ensure that its products complied with the 22 June 2022 directive and to rename their products. It further argued that whatever products the members of CGCSA had would in all probability have been sold.

¹⁴ Tshwane City v Afriforum 2016 (6) SA 279 (CC) para [55]

¹⁵ Braham v Wood 1956 (1) SA 651 (N) at 655

[56] These arguments disregard that the validity of that directive and the applicability of the statutory provisions relied on have been challenged in the pending review application.

[57] Considering all the facts, I am persuaded that the CGCSA has established the risk of irreparable harm to it and its members, were the relief sought not to be granted and if all analogue meat products were seized, is manifest and self-evident.

Balance of convenience

[58] In an application for an interim interdict, the balance of convenience is often the decisive factor, given that it is a discretionary remedy¹⁶. In considering the balance of convenience, the prejudice to the CGCSA and its members if relief is refused must be weighed against the prejudice to the respondents if it is granted. In considering such balance, the principles enunciated in *Olympic Passenger Services*¹⁷ must be applied¹⁸.

[59] In its papers, the CGCSA had set out the manifest prejudice which its members would suffer. The Department on the other hand has not set out any facts which can justify a conclusion that prejudice will be suffered were the interim relief to be granted. The Department's argument is predicated on the attempts to enforce the APS Act and the contention that CGCSA has not indicated what it has done to comply with the 22 June 2022 directive.

[60] The RMIF's arguments argument disregard that whether there is any intrusion on any party's constitutional right is the one of the very issues which must be considered in the review proceedings. It cannot presently be concluded that there would be a breach of any of the rights warranted by the Bill of Rights, were the interdict to be granted.

¹⁶ Erikson Motors (Welkom) Ltd v Protea Motors, Warrenton & Another 1973 (3) SA 685 (A)

¹⁷ Olympic Passenger Services v Ramlagan 1957 (2) SA 382 (D) 383F; Cipla Nedpro (Pty) Ltd v Aventis Pharma SA 2013 (4) SA 579 (SCA) para [40].

¹⁸ LF Bosshoff Investments (Pty) Ltd v Cape Town Municipality 1969 (2) SA 256 (C) at 267A-F

[61] Inasmuch as there may be financial prejudice to the RMIF as contended for, such prejudice would not outweigh the prejudice to be suffered by the CGCSA and its members, were interim relief granted pending the determination of the review application. Whether there is an improper use of offending product names and confusion, as contended by the RMIF, is not an issue to be determined in the present application.

[62] I conclude, applying the relevant principles, that the balance of convenience favours the granting of relief.

Does the CGCSA have an alternative suitable remedy?

[63] It was argued that it and its members could simply change the product names, desist from using offending product names and comply with the 22 June 2022 directive. That is however not a legal remedy and, as previously stated, would render the pending review application moot. Reliance was further placed on the appeal process being an internal remedy that should have been pursued. However, as already stated, CGCSA sought to pursue such remedy but was advised that no appeal board would be constituted.

[64] I am persuaded on the facts that the CGCSA and its members have no alternative remedy available pending the determination of the review application.

Conclusion and costs

[65] For these reasons, I conclude that the rule nisi granted on 19 August 2022 should be confirmed, with the slight attenuations suggested by the CGCSA. There is no reason to deviate from the normal principle that costs follow the result. Considering the issues raised, the employment of two counsel was justified. I am further persuaded that

the costs order should include the reserved costs in terms of the order of 19 August 2022.

[66] I grant the following order:

[1] Condonation is granted for the late delivery of the second respondent's answering affidavit.

[2] Paragraphs 33.2, 50, 51.2, 63, 64, 66, 94 and 95 of the third respondent's answering affidavit are struck out;

[3] Pending the final determination of the review proceedings pending under case number 47072/2022 ("the review proceedings"):

[3.1] The first and second respondents are interdicted from implementing the decision of seizure (issued by the first respondent on 16 August 2022) ("the decision");

[3.2] The first and second respondents are interdicted from seizing any meat analogue products presented for sale in the Republic of South Africa from any (and all) of the applicant's members' points of sale, whether at facilities, retail or wholesale premises, conveyancers or otherwise, based on the decision, on 22 August 2022 or any other date;

[4] The second and third respondents are directed to jointly pay the costs of the application, including the costs of two counsel, including the reserved costs.

**EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

DATE OF HEARING : 12 May 2023

DATE OF JUDGMENT : 25 July 2023

APPLICANT'S COUNSEL : Adv. H Loots SC
Adv. A Laher

APPLICANT'S ATTORNEYS : Clyde & Co.

SECOND RESPONDENT'S COUNSEL : Adv. JL Khan

SECOND RESPONDENT'S ATTORNEYS : State Attorney Johannesburg

THIRD RESPONDENT'S COUNSEL : Adv. H. Epstein SC
: Adv. M. Mostert
: Adv. T. Kgomo

THIRD RESPONDENT'S ATTORNEYS : Fairbridges Wertheim Becker
substituted on 31 May 2023 by Malatji &
Co Attorneys