



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

Case No: 60618/2022

In the matter between:

**THE CHIANINA CATTLE BREEDERS'
SOCIETY OF SOUTH AFRICA**

Applicant

and

THE REGISTRAR OF ANIMAL IMPROVEMENT

1ST RESPONDENT

**THE MINISTER OF AGRICULTURE, LAND
REFORM AND RURAL DEVELOPMENT**

2ND RESPONDENT

ADVOCATE T TSHITEREKE N.O.

3RD RESPONDENT

MR P T M MOLAPO N.O.

4TH RESPONDENT

DR L E MATJUDA N.O.

5TH RESPONDENT

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES / NO
- (3) REVISED.

DATE

SIGNATURE

JUDGMENT

HF JACOBS, AJ:

STATUTORY SETTING

[1] The Animal Improvement Act¹ (the Act) repeals and replaces the Livestock Improvement Act² and provides for the breeding, identification and utilization of genetically superior animals in order to improve the production and performance of animals in the interest of the Republic. Prior to 21 November 2003 (the date on which the Act commenced) the term “*livestock improvement*” was used and literature predating the advent of the Act must be read and interpreted accordingly. The Act regulates, inter alia, stud breeding of animals in South Africa. Stud breeding is distinguished from livestock or animal production. The latter is aimed at multiplying animals (usually for slaughter or production of animal products like meat, wool, hides, eggs etc). Stud breeding is the breeding of an animal to be retained for further breeding of animals to produce animal products, thus the statement in the preamble to the Act that it is intended to provide for “*the breeding, identification and utilization of genetically superior animals in order to improve the production and performance of animals in the interest of the Republic*”.

[2] An animal used for stud breeding is defined by the Act and includes “*an animal registered or recorded in the herd book kept by a registering authority; and ‘stud animal’, ‘thoroughbred animal’, ‘registered animal’ and ‘recoded animal’ has a corresponding meaning*”. The term “*animal*” is defined by the Act³ and only includes a kind of animal or an animal

¹ 62 of 1998

² 25 of 1977

³ ‘**animal**’ means a kind of animal or an animal of a specified breed of such kind which has in terms of section 2 been declared as an animal for the purposes of this Act

of a specific breed of such kind of animal which has been declared as such for purposes of the Act.⁴ A declaration in terms of section 2 of the Act or inclusion of animals on the declared list has a number of implications for a breeder of such animals. This application concerns animals of the Chianina breed of cattle, a horned large white bovine from Italy used for production of beef. More about the cattle presently.

[3] The Act, like the repealed Livestock Improvement Act, enacts a system whereby every breed of animal (more accurately “*a group of persons*” who breed animals of a specific kind to use the words of the Act) may apply to the Registrar of Animal Improvement⁵ (the Registrar) in terms of the Act for the registration as such. The system exists because all *species* of domesticated animals bovines (cattle), ovine (sheep), caprine (goats) and equine (horse) to name a few each comprise several different breeds. The Act concerns itself with “*breeds*” of animals. It does not provide for the

⁴ See: Section 2 of the Act

2 Application of Act

(1) This Act shall apply with reference to any kind of animal, or an animal of a specific breed of such kind of animal as the Minister may by notice in the *Gazette* declare to be an animal for the purposes of this Act.

(2) In the case of a new kind of animal or a new breed of such kind of animal to be imported into or to be bred in the Republic, the Minister shall make such declaration after considering the request, taking the international law into consideration and after considering comments received in response to an invitation by the registrar to interested persons to comment on a proposed declaration that had been published in the *Gazette* at least 30 days prior to such declaration.

(3) Different kinds of animals or breeds of such kinds of animals may be so declared in relation to different provisions of this Act: Provided that an animal or genetic material as referred to in section 17 shall only be declared upon a specific written application to the Minister by the relevant animal breeds' society/.

(4) The Minister may declare that any provision of this Act shall only apply-

- (a) In one or more specific areas of the Republic; or
- (b) To one or more specified countries

⁵ The first respondent

recognition of species of animals. The notices published by the respondents attached to the papers in these proceedings show that many breeds of animals are recognised and have been declared as animals for purposes of the Act. Cattle, for instance, include breeds of cattle kept for milk production (diary cattle) and include breeds such as Jersey, Holstein-Friesian and Ayshire. Others are kept for beef production such as Angus, Bonsmara, Beefmaster and Drakensberger. Common sense dictates that a specific breed of cattle, for example, Jersey cattle (a diary breed) are bred and kept to produce milk and display a homogenous appearance (phenotype) and must be distinguished from more muscled cattle selected and bred for beef production. The characteristics, behaviour and appearance of breeds of animals within the same species differ and for that reason the Act provides that “*a group of persons*” who breed animals of a specific kind may do so as members of and under the statutory regime that provide for an “*animal breeders’ society*”.⁶ Section 8(2) of the Act reads as follows:

“8. Registration or approval

(1)

(2) *A group of persons who desires to be registered as an animal breeder’s society shall apply to the registrar in the form determined by the registrar and in the prescribed manner, and such application shall be accompanied by the constitution of the animal breeders’ society, and the prescribed application fee.”*

⁶ See *SA Hackney Pony Breeders’ Society v Majiet* 2016 JDR 158 8 (SCA); *Registrar of Animal Improvement v Appeal Board* 2021 JDR 1130 (GP); *Endangered Wildlife Trust v Minister of Agriculture, Land Reform and Rural Development and Others* 2023 (JDR) 0750 (GP)

[4] In terms of section 8(4) of the Act the Registrar shall consider an application made in terms of sub-section (2) and may make an enquiry in connection therewith which he or she may deem necessary. If the Registrar refuses to grant an application made in terms of sub-section 8(2), he or she shall notify the applicant in writing of his or her decision and of the grounds on which it is based. If the Registrar is convinced that an application referred to in sub-section 8(2) may be granted, he or she shall register the group of persons as an animal breeders' society and issue to the animal breeders' society with a registration certificate, record the applicable prescribed particulars in the register and only in the case of a first registration give notice in the Gazette of the registration of the animal breeders' society. From that date the registration concerned is valid and the Registrar shall notify the Registrar of Companies thereof, who will as soon as possible after such date record the name of the animal breeders' society in the register of companies held in terms of the Companies Act.⁷ An animal breeders' society is a juristic person from its date of registration.⁸ Only one animal breeders' society for a specific breed of animal is allowed under the Act. Section 11(1)(b) of the Act provides so. The constitution of the group of persons (the breeders' society) must provide what is stated under section 11(1)(c)(i) to (iv). A breeders' society or a group of persons will only be registered as a breeders' society on compliance with the requirements mentioned above.

[5] Registration of an animal breeders' society (and its constitution) allows for statutory recognition for the promoting, breeding, recording or

⁷ See sub-section 8(7) of the Act

⁸ See sub-section 8(9) of the Act

registration, genetic improvement, and use of the kind of animal along the determined breed standards in its constitution that will be applied for the registration of animals and the importation of animal material of the breed concerned for the continued commitment to animal improvement.⁹ It also allows the Registrar and Minister to apply legislation across all breeds of animals.

[6] When application is made to the Registrar for the importation of animals and genetic material in terms of section 16 of the Act, the Registrar shall consider such an application on the basis of the breed standards laid down in terms of the constitution of the animal breeders' society concerned regarding the kind of animal to which such animal or genetic material intended for import, belongs.¹⁰ The animal breeders' society concerned is obliged to provide the Registrar in writing with the breed standards referred to in section 16(1)(a) of the Act as well as information relating to the occurrence of poor performances or hereditary defects of animals outside the Republic from which the genetic material originates.¹¹ If the Registrar is of the opinion that the breed standards are not consistent with the provisions of the Act or that it is undesirable for some or other reason, he or she may refer such standards to the animal breeders' society concerned with a written request to make a recommendation thereon on the grounds set out in the request. The mentioned provisions of the Act show that the animal breeders' society (and its constitution) play an important role in the application and administration of

⁹ See section 11(1)(c) of the Act. A constitution may also provide for bye-laws to apply.

¹⁰ See section 16(3)(a) of the Act

¹¹ See section 16(1)(3)(c) of the Act

the Act and regulations promulgated in terms of section 28 of the Act. It, in sum, controls the standard of the breed for which it had been registered.

[7] The applicants describe itself in its founding affidavit as a voluntary association and a juristic person with a pending application it submitted to the first respondent for registration in terms of the Act. It does not have the status of a registered breeders' society. The respondents do not challenge that evidence.

[8] During 2014 and again on 8 July 2018 and finally on 27 May 2019 the applicant applied to the Registrar for its registration as an animal breeders' society in terms of the Act. On 13 December 2022 the applicant was not registered and it then launched these proceedings. In its notice of motion it claims the following relief:

- "1. It is hereby declared that the application of the Applicant to be registered as an Animal Breeders' Society is hereby approved.*
- 2. The First Respondent is hereby ordered to, within five (5) days of this order:*
 - 2.1. register the Applicant as an Animal Breeders' Society and issue the Society with a registration certificate;*
 - 2.2. record the Applicant's prescribed particulars in the register; and*
 - 2.3. take steps to give notice in the Gazette of the registration of the Animal Breeders' Society and from the date which the registration is valid, and notify the Registrar of Companies in order to record the name of the Applicant as an animal breeders' society in the register of the companies, as provided for in terms of Section 8(7)(c) of the Act.*

3. *The First respondent is ordered to pay the Applicant's costs on an attorney and client scale. No cost order is sought against the other Respondents except in the event of opposition."*

[9] Reference to the provisions of the PAJA¹² in the founding affidavit are scant but the importance, relevance and specific sections of the PAJA are recorded in Annexure AA to that affidavit which explains the contents of paragraphs 10, 17 and 19 of the first respondent's answering affidavit and the premise of the first respondent's challenge that the applicant's application for registration constitutes administrative action and should be considered under the PAJA.

FACTUAL BACKGROUND

[10] The Chianina breed of cattle was declared an "*animal*" for purposes of both acts. During 2001, before the advent of the Act, one Mr De Jager obtained a permit from the then Registrar to import 120 Chianina embryos and the breed was recognised and functioned like any other breed of animal recognised under the applicable legislation. The draft regulations published before the advent of the Act recognised the Chianina as a breed under the rubric "*Breeds of Animals*" (Indigenous and Locally Developed Breeds) and under the heading "*Cattle*". When the Act came into operation on 21 November 2003, the Chianina breed was included in Table 7 which forms part of the regulations whereby all registered and stud animals retained their status. On 12 September 2006 the first respondent also approved the application of Mr De Jager to import 250 straws of semen and 27 embryos of Chianina cattle bulls and cows and in that year the Registrar registered two

¹² Promotion of Administrative Justice Act 3 of 2010

Chianina bulls as semen donors in terms of the Act and its regulations. The registration of those bulls as semen donors allows for those animals to produce semen (genetic material) for sale in the Republic for purposes of cattle breeding. A reading of section 16 of the Act, sub-section 16(3) in particular, shows the role a breeders' society plays in the importation of genetic material which implies that, to permit importation, the animal or breed of animal had to be declared as an animal in terms of section 2 of the Act.

[11] On 25 May 2007 the Minister of Agriculture amended the regulations under the Act and omitted any reference to the Chianina breed. A number of other breeds were also omitted. A few months later the South African Stud Book and Livestock Improvement Association advised the Registrar of a number of errors in the Regulation in respect of breeds of animals as well as errors in respect of breeders' societies and independent registering authorities. There were cattle breeds mentioned in the Regulations like Ankole breed of cattle but the cattle breeds of Tuli, Charbray, Chianina, Salers and Wagyu did not appear there, and the Brangus breed of cattle appeared twice in the tables.

[12] On 17 July 2007 the Registrar replied to the letter of the South African Stud Book and Livestock Improvement Association and informed it that he was still working on a new list of breeds to be declared and to reinstate those breeds that were inadvertently omitted from the previous publication. Two years and three months later, on 2 October 2009, the Minister amended Table 1 of the Regulations dealing with fees payable and inserted declared animals in this table without amending Table 7 as was

necessary to do according to the letter of the South African Stud Book and Livestock Improvement Association mentioned above. The amended regulations and tables, again, contained no reference to the Chianina breed of cattle but the other breeds like the Tuli and Wagyu breeds were reinstated.

[13] During 2012 the farming entity Keman Beleggings applied to the Registrar to import semen of a Chianina bull. On 11 October 2012 Keman's application was refused by the Registrar on the basis that "*the breed in question is not yet declared as a breed in terms of Article 2(1) of the Animal Improvement Act and The breed has been removed from the list of recognised breeds in South Africa on 2 October 2009*". The date of 2 October 2009 seems to refer to the date on which the Minister published the amendment to the Regulations and the tables therein contained mentioned above. The Registrar must have raised an eyebrow for, as mentioned in paragraphs 11 and 12 above, which is common cause, the Registrar has issued permits authorising imports of Chianina genetic material before. In response to the refusal of its application, Keman issued an application in this court against the Registrar for a declaratory order that the Animal Improvement Act applied to the Chianina breed of cattle. After a postponement of that application on 1 October 2013 the application served before Murphy J on 24 February 2014 who made the following order by agreement between Keman, the Registrar and the Minister:

"1. The exclusion of the Chiamina breed from table 7(b) annexed to the Regulations published in terms of Section 2 of Act 62 of 1998 as contained in Government Notice R450 dated 25 May 2007 and in

Government Notice R935 dated 2 October 2009 is hereby declared invalid and set aside.

2. *The decision of the Second Respondent to refuse the Applicant's application for an official permit to import semen and embryos of Chianina is declared invalid and set aside..."*

3. *The matter is referred to the First Respondent to consider whether the removal of the Chianina breed as an animal or breed of animals should be reversed.*

4. *The First Respondent is ordered to reach a decision within a period 6 months from 24 February 2014.*

5. *That each party is to pay its own legal costs."*

[14] The applicant contends that the agreement made an order of court by Murphy J is an order *in rem* and binding to the effect that the Chianina breed of cattle is a breed declared in terms of section 2 of the Act.

[15] Thereafter, on 24 October 2014 the applicant filed its first application for registration as a breeders' society with the Registrar. It was not possible to do so earlier, so the applicant states, by reason of the inadvertent removal of the Chianina breed from the list of declared animals under the Act, an error that had been rectified by the order of Murphy J the applicant says.

[16] Three years later, on 28 September 2017 Keman applied to the Registrar to import Chianina genetic material. On 30 October 2017 the Registrar refused to approve the import permit applied for by Keman and informed that the applicant's application to register as an animal breeders' society has failed "*because Chianina is not a recognised breed in terms of*

the Animal Improvement Act, 1998". That communication was transmitted notwithstanding the order of Murphy J. On 27 December 2017 Keman filed an appeal to the Appeal Board in terms of section 23(1) of the Act. Notwithstanding the noting of the appeal and after much correspondence an Appeal Board was appointed on 9 July 2018. On 25 September 2018 the State Attorney informed that the Registrar was not available on the appeal date and should his presence be required, a postponement will be sought.

[17] In the meantime, on 8 July 2018 the applicant applied for a second time to be registered as an animal breeders' society in terms of the Act. On 1 October 2018 while the Keman appeal was pending and the applicant's second application for registration was pending, the Registrar applied for a postponement due to the fact that he was not available to attend the appeal hearing while he was aware since 20 December 2017 of the appeal, the importance of the appeal to Keman and the Chianina cattle breed and that the Director General in the Department of Agriculture appointed members of the Appeal Board and that the Appeal Board had to come to its decision within 90 days of its appointment. Section 23 of the Act provides for an *ad hoc* appeal board.

[18] The Registrar was informed by notice of the appeal hearing on 14 September 2018. The application for postponement was dismissed and it was noted by the Appeal Board that "*.... Counsel could not tell the Appeal Board how the presence of the Registrar is going to help the hearing or the adjudication of the matter*". A week later, on 8 October 2018 the Chianina appeal board found that the Chianina breed was a breed that was listed

under the Animal Improvement Act and that the effect of the order of Murphy J was that the removed breed was automatically reinstated to the list with effect 24 February 2014, the date of the order of Murphy J. The Appeal Board also found that the Registrar misdirected himself in finding that the Chianina breed is not a registered breed. The Board referred approval of the import permit back to the Registrar in the light of the fact that the decision involves expertise and/or speciality. I pause here to mention, that by that date the Registrar has had the benefit of a High Court order in the form of a consent paper, a finding of an appeal board duly constituted under the Act on the very point he relied to not register the applicant.

[19] On 11 October 2018 the Registrar was requested to attend to the registration of the applicant without delay in view of the order of Murphy J and the decision of the Appeal Board. On 15 October 2018 Keman again addressed a letter to the Registrar in respect of its import permit. It pointed out to the Registrar his predecessor held that all the required preconditions had been met before the recognition of the Chianina breed of cattle and that impact assessment is unnecessary. On 26 November 2018 the Registrar refused Keman's import application and indicated that the applicant's application for registration as an animal breeders' society will not be considered at that stage. The relevant paragraphs of the Registrar's letter read as follows:

"7. As regards the Breeders Association wherein you the writer of the letters are serving as attorneys and are proposed as members in the association. Only M De Jager is in possession of Chianina cattle in the

country. Could you kindly indicate the circumstances in which the other members obtained the breed.

8. *As you already know the breed standards comes from the country of origin which formed the core of an association of a breed. At present an impact study assessment is currently being undertaken and it would be premature to approve breed standards at this stage.*

9. *That being the issue your application for Breeders' Association will properly be considered once an Impact Study Assessment has been completed. All the more reason for the latter since the breed in question is a foreign animal.*"

[20] When this application was issued, going by the contents of the Registrar's letter, the "impact study assessment" had been afoot for just over four years.

[21] On 17 May 2019 the Minister restored the status of the Chianina breed as a beef cattle under the heading "*Breeds of Animals: Locally and Regularly Introduced Breeds*" in the regulations published. On 27 May 2019 the applicant filed its third application for its registration of the applicant as an animal breeders' society. On 24 June 2019 the Registrar wrote to the applicant requested it to furnish a response to his letter of 26 November 2018 to enable it to come to a decision on the request. On 30 September 2019 and on 1 November 2019 the applicant addressed a letter to the Registrar and on 31 October 2019 a reminder was sent to the Registrar requesting a decision by 8 November 2019. On 6 November 2019 the Registrar informed the applicant that he "*.... is in the process of making a decision and will apply his mind to your request for the registration of the Chianina Breeders*

Association". No further response was forthcoming from the Registrar. By that time the "impact study assessment" had been underway for a year.

[22] On 25 March 2020 the applicant served a notice of appeal in terms of section 23(1) of the Act on the Registrar's office and the office of the State Attorney. On 31 March 2020 the Registrar acknowledged receipt of the notice and informed the applicant that: "..... *We will revert back to you upon end of lockdown.*" On 4 April 2022 the Minister appointed the members of the Appeal Board. The members of that Appeal Board are the third, fourth and fifth respondents in this application. From its appointment date the Appeal Board was in a position and had the authority to issue directives and see to it that the appeal be heard within the stipulated time. It did not do that. The Registrar remained in default during the appeal as I will detail below. On 10 May 2022 (5 weeks after the Appeal Board was constituted) the applicant's attorney of record addressed a letter to it and interested parties and recorded that the Appeal Board's directive is awaited and drew its attention to the provisions of section 23(10) of the Act that the Appeal Board is obliged to deliver its judgment within 90 days of its appointment which was on 4 July 2022, that the matter was unopposed and invited the Appeal Board to contact the applicants legal representatives to have the appeal finalised.

[23] On 12 May 2022 an electronic copy of the appeal documentation was sent to the 4th respondent and on 13 May 2022 a hard copy of the appeal documentation was served on the offices of the chairperson of the Appeal Board and counsel for the applicant telephoned the chairperson on 19 May 2022 when it appeared that the chairperson of the Appeal Board transmitted

a directive to the State Attorney three weeks earlier. The applicant's legal representatives were not copied with that directive. Following the telephone conversation the applicant received the directive on the same day and the applicant was directed to serve its founding papers in 20 days from receipt thereof.

[24] On 25 May 2022 the applicant informed the Appeal Board that the notice of appeal constitutes its founding papers, and that the Registrar can thus file an answer thereto forthwith and requested the chairperson of the Appeal Board to consider abridging the timelines by requiring from the Registrar to file his papers, if so advised, by 2 June 2022 whereupon the applicant would reply. The next day, 26 May 2022, the State Attorney requested that the applicant "... *serve us with your papers as per the directive*". At that stage all the parties were in possession of an electronic version of the appeal documentation, but the State Attorney had not yet come on record on behalf of the first respondent and had not served any notice of opposition in the appeal proceedings.

[25] On 30 May 2022 the applicant's attorney of record requested confirmation of the physical address of the State Attorney and served a hard copy of the notice of appeal and supporting documentation on the Registrar and on the 1st June 2022 the applicants attorney of record confirmed service of the documentation. On 9 June 2022 the appeal bundle was served on the offices of the State Attorney marked for the attention of Ms Ntloko, the designated person and a copy of the letter and email were distributed to the members of the Appeal Board and the Registrar.

[26] On 22 June 2022 an urgent email was addressed to the chairperson confirming that all relevant documents were served on all the parties on 1 June 2022 and no opposing papers were filed by 21 June 2022, a date within 20 days referred to in the directive. Included in that email was a request to provide the applicant with the address and venue and the date and time of the appeal hearing. It was pointed out to the Appeal Board that its decision was due before 2 July 2022 and that time was of the essence.

[27] On 27 June 2022 the chairperson of the Appeal Board issued the following directive:

- “1. That the parties are directed to appear before the Appeal Board on 29 June 2022 at 12:00 in Advocate Tshifhiwa Tshitereke Chambers, Group 21,81 Corner Maude and Gwen Lane, Sandown, Sandton.*
- 2. That the Appeal Board shall in the event that it deems it fit and necessary issue directives in the appeal proceedings.*
- 3. The parties in the appeal may be represented at the hearing of this appeal by an Advocate or an Attorney in terms of section 23(9) of the Animal Improvement Act, No 62 of 1998.”*

[28] On 29 June 2022 the applicant's attorney and counsel with Mr De Jager attended the appeal proceedings. There it transpired that contrary to the directive it was not arranged for the Appeal Board to sit but the third respondent would interview the parties on his own and upon a direct question Ms Ntloko of the State Attorney for the first time informed that she represented the Registrar assisted by Adv Shangisa SC. Adv Shangisa SC informed all present and submitted that the Registrar has been indisposed for quite some time and due to the passing away of the previous counsel, Adv

Dukada SC, the Registrar has not had opportunity to consult and was therefore not in a position to proceed and that the Registrar intends filing "*something as soon as possible*" and that the chairperson of the Appeal Board can issue directives after the 90 days statutory period and the parties should then agree on reasonable time periods and proposed that the Registrar file its opposing papers by 8 July 2022. It then transpired that Adv Dukada SC passed away during February 2022, five months before the sitting of the Appeal Board and before the appeal was noted. The applicant's representatives insisted that the matter be finalised and it was ready to argue the matter virtually if so required. After discussion the Registrar's legal representatives undertook to file papers by Friday 8 July 2022 but due to the statutory time constraints the date later changed to 30 June 2022 and for the applicant to file its papers by 10:00 on 1 July 2022 with the hearing on 2 July 2022. The applicant was amenable with the suggestion subject thereto that the Registrar would apply for condonation for the late filing of his opposing papers and that the matter be finalised. The chairperson then adjourned the meeting to telephonically liaise with the board members. On resumption of the meeting the chairperson informed the parties that the board members were not available to attend to the appeal hearing on the scheduled date and at the proposed time on short notice and in his opinion the Registrar should be afforded an opportunity to be heard and that the parties should agree on a reasonable time period and liaise with the Department of Agriculture to again appoint an Appeal Board to resume the appeal at a later date and that the appeal be removed from the role.

[29] On 30 June 2022 a directive was received from the chairperson of the Appeal Board. It reads as follows:

“WRITTEN RULING

INTRODUCTION

1. *The matter appeared as an appeal in terms of section 23 of the Animal Improvement Act, No 62 of 1998. I am the appointed chairperson of the Appeal Board having been appointed by the Office of the State Attorneys Office, Pretoria.*
2. *Other members of the Appeal Board are Dr L Matjuda and Mr Thapelo Molapo. The members of the Appeal Board are not present in the proceedings arising from the fact that the directive issued on 25 June 2022, did not provide for sufficient time for these members to attend the Appeal Board proceedings. An email pertaining to the proposed directive was forwarded to the Appeal Board members on 24 June 2022.*
3. *At the outset I must point out the fact that discussions on the sitting of the Appeal Board commenced when I received a telephonic call from Advocate H De Wet SC acting on behalf of the Appellant. Such discussions revolved around the possibility of the matter sitting on the week commencing, 27 June 2022 – 02 July 2022. A directive was issued as stated supra following such a telephonic conversation.*
4. *At the hearing before me the two parties are represented by senior Advocates, and both members of the Johannesburg Bar and Pretoria Bar.*
5. *At the commencement of the proceedings the parties’ legal representatives addressed me on the readiness of the matter. This aspect is of prime relevance in view of the fact I was sitting alone as an Appeal Board member. Advocate S Shangisa SC argued before me that the Office of the Registrar: Animal Improvement, was not ready to proceed with the matter and provided a number of reasons for his client unpreparedness to proceed with the matter. One of the*

reason it was argued was that the Office of the Registrar: Animal Improvement had initially briefed Advocate N Dukada SC to appear on behalf of the Office of the Registrar: Animal Improvement. Whilst on the same point it was stated that Advocate Dukada SC sadly passed away sometime in February 2022, and therefore leaving a vacuum in the Respondent legal team. I could not accede to this argument as the bereavement referred supra occurred in February 2022.

- 6. I come now to another second pertinent issue raised that as a legal team they have not had an opportunity to consult with the Registrar, Mr Joel Mamabolo, who at the present moment is incapacitated. In the circumstances, the Respondent and / or the legal team could not reasonably be expected to have foreseen the possibility that Mr Mamabolo, might be incapacitated.*
- 7. Advocate Shangisa SC furthermore pleaded with me to issue a directive to afford the Office of the Registrar: Animal Improvement, an opportunity to file its papers on / or before 08 July 2022. I intimated to counsel the challenge with the proposed date in that the Appeal Board's term of office would come to an end on 02 July 2022.*
- 8. Advocate De Wet SC addressed me on the fact that the matter has a long convoluted history dating back to the period, March 2020. The reason of such address was to drive home a point that the Appellant did everything in its powers to ensure that the appeal is heard and properly placed before the Appeal Board.*
- 9. It was furthermore argued that correspondence was addressed to the Chairperson of the Appeal Board, members of the Appeal Board, the Office of the State Attorneys and legal team acting on behalf of the Office of the Registrar: Animal Improvement to ascertain our respective positions on the future handling of the matter. Of importance to note is that the Appeal Board issued a directive which placed the parties squarely on the table to exchange the papers amongst themselves and other interested parties.*
- 10. Having heard the arguments by the parties I indicated that as the chairperson seized with the matter that I would not close the door to a*

party with an interest in the matter and a party before me that signalled its intention to participate in the appeal proceedings. The Office of the Registrar: Animal Improvement was legally represented before me and as stated supra Advocate Shangisa committed to filing opposing papers within a certain timeframe.

- 11. Advocate De Wet's unflinching position was that the Appellant was ready to proceed with the matter. I must mention the fact that I fully sympathize with Advocate De Wet's client on certain salient issues, and the fact that there has been a delay in the finalization of the matter.*
- 12. As a presiding officer I made certain propositions to the parties in the proceedings, however stated that such propositions ought to be discussed with the other two members of the Appeal Board. The following are the propositions made in the proceedings:—*
 - 12.1. That the Office of the Registrar: Animal Improvement be directed to file its opposing papers on 30 June at 10:00;*
 - 12.2. That the Appellant if so advised file its replying papers to the Registrar: Animal Improvement opposing papers on 01 July 2022.*
- 13. In order to accommodate the parties the proposal went as far as stating that depending on the availability of the members of the Appeal Board that the matter proceeds on 02 July 2022 with an understanding that a ruling on the matter would have to be issued on the same day, 02 July 2022.*
- 14. I there and then allowed the matter to stand down in order to consult with the other members of the Appeal Board on the aforesaid proposals in paras 12 and 13, and to ascertain the other members availability on 02 July 2022. The matter was adjourned for fifteen to thirty minutes in order for me to confer and have a telephonic consultation with the other members of the Appeal Board.*
- 15. However following deliberations with the other Appeal Board members it was unanimously agreed that the suggested date, 02 July 2022, for the Appeal Board to sit and adjudicate on the matter was*

relatively short for the Appeal Board to make a decision on such an important matter.

16. *Another issue pertained to the papers that are bulky and the fact that these papers will require an extensive examination by the Appeal Board before a decision is made.*
17. *A decision was taken by the Appeal Board that I ought to address the parties, and make a ruling removing the matter from the roll. Another proposal as an aside was made that the Office of the Registrar: Animal Improvement if so advised re-appoints us as members of the Appeal Board to adjudicate the matter. That with the proposed re-appointment that the parties sit and agree on reasonable timeframes for service and filing of papers amongst themselves and approach the Appeal Board with proposed dates for reconvening of the matter.*
18. *The contents of the written ruling is a subject of discussions and deliberations of the Appeal Board on 29 and 30 June 2022.*

DATED AT SANDTON ON 30 JUNE 2022”

[30] The first respondent was in default at the appeal and two of the Appeal Board members were absent and not able to attend to the appeal. The Appeal Board only existed for purposes of the appeal that had to be finalized within a stipulated time. It was not.

THE REGISTRAR'S GROUNDS OF OPPOSITION

[31] The Registrar opposes the application for the following reasons:¹³

“GROUNDS OF OPPOSITION

20. *Chianina Cattle Breeders' contention in its founding affidavit is that the delay in reaching a decision on its application was unreasonable, that the Registrar is incompetent and biased and that the Chianina Appeal Board was inefficient are unfounded for the following reasons:*

- 20.1. *Firstly, not a single Chianina Cattle was ever recorded by the Breeders on the Integrated Registration and genetic*

¹³ See paragraph 20 of the answering affidavit

Information System (“INTERGIS”); which is the system used by the Department in terms of the Act to record all animals on its database for purposes of improvement;

20.2. *Secondly, the delay in reaching a decision on the Chianina Cattle Breeders registration application is fully explained and was not unreasonable;*

20.3. *Thirdly, at the time of this application, the Registrar had submitted a request to the Director General to convene another Appeal Board in terms of the Act to deal with all appeal matters, including the applicant's;*

20.4. *Lastly, concerning the merits of the application, the Registrar is vested, in terms of the provisions of the Animal Improvement Act, with the right to exercise his own discretion when assessing an application for registration.”*

[32] I will deal with the ground of opposition mentioned in paragraph 20.1 of the answering affidavit now. In paragraphs 16 and 17 of the founding affidavit the applicant refers to the shortcomings in the INTERGIS, The South African Studbook Association brought to the attention of the Registrar during July 2007 and the remedial action that followed. In paragraph 52 of the answering affidavit the factual averments are admitted but in paragraph 20.1 it is denied as quoted above. The contents of paragraph 20.1 is denied and challenged in much detail in paragraphs 20 to 28 of the replying affidavit with the conclusionary submission that what is stated in paragraph 20.1 is “patently false”. What is stated there is factually incorrect. Whether the incorrect factual evidence is presented by an administrator in review proceedings intentionally or negligently or as a result of sheer incompetence is not decisive of the relief sought in these proceedings and I do not make any finding as to the intention of the deponent concerned. What I do find is that the statement in paragraph 20.1 of the answering affidavit is factually incorrect and does not constitute a

ground or reason not to grant the relief sought. The grounds mentioned in sub-paragraph 20.2 to 20.4 are dealt with below.

THE REGISTRAR'S ARGUMENTS

[33] The respondents advance their grounds of opposition on a number of arguments. First, they say that the applicant has failed to exhaust a domestic remedy provided for by section 23 of the Act and that the granting of the relief would amount to an usurpation by a court of law of the powers that are exclusively vested in functionaries appointed or to be appointed to consider an appeal the applicant may note against the refusal of the registration of it by a specialist administrative body owing to their expertise and special skills to be better equipped to perform the administrative action under review.

[34] Section 7(2) of PAJA reads as follows:

“7(2)(a) Subject to paragraph (c) no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

(b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

(c) A court or tribunal may, in exceptional circumstances and on application by a person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interests of justice.”

[35] The applicant exhausted every remedy it had under section 23 of the Act. The record shows how the applicant's legal representatives did their

utmost to have the appeal heard within the time frame allowed by the Act. The first respondent did nothing to have the appeal finalized. It did not file opposing papers. It did not show up at the appeal convened by the chairperson of the Board. The State Attorney and counsel were there. At first, he maintained, incorrectly so, that the Chianina breed was not recognized in terms of section 2 of the Act. The High Court consent paper indicate that to be incorrect. The first Appeal Board ruled the opposite and still the Registrar did not consider the application at all. Much later the Registrar mentioned that his office was in the process of conducting an impact study. That was said, as pointed out above, years before the appeal was heard at the end of June 2022. One must conclude that the Registrar did nothing to perform his statutory duties brought about by the applicant's application for registration. No particulars of the impact study are supplied. The allegations of the study begs questions like: Where is it undertaken? By whom? Under which enactment? What are the terms of reference of those appointed to investigate? Why has its detail not been presented in evidence before the Appeal Board during 2022 and in these proceedings?

[36] The public power the Registrar has to approve the application for registration of the applicant or to refuse it must comply with the Constitution, which is the supreme law. I find interpretative assistance in sub-sections 41(1)(c) and 195(1)(b) and (d) of the Constitution¹⁴ to conclude, as I do, that when the first respondent exercised the public power the Act provides him with, he had to do so in accordance with the duties and basic values imposed

¹⁴See *Chirwa v Transnet and Others* 2008 (4) SA 367 (CC)

by the Constitution which include the duty to provide effective, transparent, accountable and coherent administration which is also efficient, economic and effective use of the resources of the Republic impartially, fairly, equitably and without bias. The Registrar and the Appeal Board did not comply with the Constitution. In my view this application is not moot and the applicant has not failed to exhaust the internal remedies mentioned in section 7(2) of the PAJA. The first respondent and Appeal Board failed to perform their duties. Under the circumstances there was a failure to perform the administrative action. The appropriate just and equitable relief must be determined. The applicant seeks a declaratory and substitution order. The respondents oppose that claim.

SHOULD THE REGISTRAR'S DECISION BE SUBSTITUTED OR REFERRED BACK TO HIM FOR CONSIDERATION

[37] The answer to the question must be answered mindful of the following:

“To my mind, given the doctrine of separation of powers, in conducting this enquiry there are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. These may include delay, bias or the incompetence of an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a consideration of fairness to all implicated parties. It is prudent to emphasise that the exceptional circumstances enquiry requires an examination of each matter on a case-by-case basis that accounts for all relevant facts and circumstances.”¹⁵

[38] The applicant states that it has no confidence in the respondents. The delay and the history of the matter show that the applicant's apprehension of bias against it is reasonable. The long delay in the matter

¹⁵ *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* 2015 (5) SA 245 (CC) at 47-50

renders the circumstances of the case exceptional. It has been suggested in the papers of the respondents that the decision to register or not register the applicant as animal breeders' society involves specialist or scientific skills and that the respondents would be more equipped to decide on that. I do not agree. Once an animal breeders' society had been registered some scientific issues that require a particular skill might become relevant, but the registration of the society as provided for by the Act, does not. I am of the view that a court of law is in a good a position as the first respondent to decide whether the applicant should be registered as an animal breeders' society. On the facts gleaned from the papers before me I can find no reason why the applicant should not be registered. In my view it is a foregone conclusion. No factual criticism is levelled at the applicant's constitution it applies to have registered. The first respondent is correct in stating that he has a discretion to register the applicant. But the first respondent has, in my view, not performed administrative action that is lawful, reasonable and procedurally fair and neither has the Appeal Board.

[39] In the heads of argument counsel for the applicant and the first respondent referred to the Italian breed standards of the cattle concerned and make opposing submissions in that connection. The submissions must be considered in proper context. Context is everything.¹⁶ The Chianina breed of cattle is new to the country. The most successful breeds of cattle used in commercial agriculture in this country were introduced from abroad. The Holstein-Friesian (originating in the northern provinces of the Netherlands –

¹⁶ See *UJ v Auckland Theological Seminary* 2021 (6) SA 1 (CC); *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA)

Holland and Friesland) the Jersey (from the British Channel Islands) and the Ayshire (from the county of Ayr in Scotland) are used to produce the largest part of the country's dairy products. The same position prevails in the beef industry. Angus cattle (a polled cattle breed from Scotland), Brahman (from India) and the Hereford (from Herefordshire in south west England), to name a few make up the substantial portion of beef production in South Africa. Cattle breeds that fall under the division of "*Land race*" in section 1 of the Act means "*a specified breed of a kind of animal indigenous to or developed in the Republic*". In Table 7(a) published by the respondents in Government Notice 2894 of 23 December 2022 and referred to in the papers before me, the following beef cattle breeds are declared "*land race*" breeds (indigenous and locally development): Bonsmara¹⁷, Beefmaster¹⁸ and Pin²Zyl¹⁹. Those cattle breeds are all "*locally developed*" from, what counsel for the respondents referred to as a "*foreign animal*". These facts are gleaned from the annexures to the founding papers and standard textbooks and are so notorious that I take judicial notice thereof.²⁰ Some of those textbooks were authored and contributed to by the first respondent. Considered in context and on the evidence before me it is clear that Chianina cattle have been

¹⁷ Developed by Professor Jan Bonsma at Mara Research station in Limpopo Province between 1937 and 1963 with five-eighths Afrikaner blood, three-sixteenth Hereford and three-sixteenth Shorthorn

¹⁸ Developed around 1948 by the Texas stockman Mr Tom Lasater from Brahman, Hereford and Shorthorn cattle and imported into South Africa as Beefmaster cattle

¹⁹ A cross between Pinzgauer cattle from Germany and indigenous Nguni cattle

²⁰ Beef Breeding in South Africa, Editor MM Scholtz, Agricultural Research Council, Department of Agriculture, Forestry and Fisheries, 2nd Edition; Cattle Breeds of South Africa, An Index of Breeds and Overview of Industry, 1st Edition, Agriconnect; M.M. Scholtz, J.M. Bester, J.M. Mamabolo and K.A. Ramsay, Results of the national cattle survey undertaken in South Africa, with emphasis on beef; Applied Animal Husbandary and Rural Development 2008, volume 1, pages 1-9; Phipson on Evidence, 18th edition, par 3 - 17

produced in this country since at least 2011 following the permits Mr De Jager obtained to import genetic material which seems to be common cause. It is therefore possible for South African stockman to have access to the Italian breed standards and to record data from locally bred animals to adopt, amend and determine the local breed standards under local conditions. Should the performance data of the South African bred Chianina cattle prove to be unacceptable, inappropriate for commercial use locally, the Registrar (in terms of the Act) would through the proper process have the power to act as provided for in the legislation.²¹ In my view the only possible way to administer the legislation in respect of the Chianina cattle breed and to ensure that Chianina cattle are bred scientifically as contemplated by the Act in this country is through the registration of an animal breeders' society for that breed under the supervision of its breeders as the human agency of the breeders' society and the oversight and involvement of the Registrar and the Agricultural Research Council and other facilities available to commercial agriculture in South Africa. In my view the Chianina breed of cattle cannot be left to multiply as it has been for many years without the system provided for by the Act. Under the circumstances it is my opinion just and equitable to order as follows:

1. It is hereby declared that the application of The Chianina Cattle Breeders' Society of South Africa submitted to the first respondent for its registration as an animal breeders' society in terms of Act 62 of 1998 be approved;

²¹ See section 10(3) of the Act

2. The first respondent is ordered to, within 10 days from the date of this order:
 - 2.1. register the applicant as an animal breeders' society in terms of the said legislation and to issue the applicant with a registration certificate as contemplated by sub-section 8(7)(a) (ii) of Act 62 of 1998;
 - 2.2. record the applicant's prescribed particulars in the register kept in terms of sub-section 8(7)(b) and section 5(1) of Act 62 of 1998; and
 - 2.3. cause notice to be given in the Gazette of the registration of the applicant and to notify the Registrar of Companies to record the name of the applicant as an animal breeders' society in the register as provided for in terms of section 8(7) (c) of Act 62 of 1998.
3. The first respondent shall pay the applicants costs of this application.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

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 14h00 on the 16th of February 2024.

APPERANCES

Applicants' counsel: Adv H De Wet SC

Applicants' attorneys: Van Heerden's Incorporated

1st and 2nd Respondent's
counsel: Adv SL Shangisa SC
Adv L Rakgwale

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