



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-MOT-REV-2019/00215

In the matter between:

AFRICAN MEALS CATERING CC

APPLICANT

and

MEAT BOARD OF NAMIBIA

FIRST RESPONDENT

**MINISTER OF INDUSTRIALISATION, TRADE AND
SME DEVELOPMENT**

SECOND RESPONDENT

MINISTER OF AGRICULTURE, WATER AND FORESTRY

THIRD RESPONDENT

Neutral citation: *African Meals Catering CC v Meat Board of Namibia* (HC-MD-CIV-MOT-REV-2019/00215) [2020] NAHCMD 273 (3 July 2020)

Coram: MILLER AJ

Heard: 17 June 2020

Delivered: 3 July 2020

Flynote: Administrative Law – Rule 76(2)(b) of the Rules of the High Court – Interlocutory application – Seeking an order to compel the respondents to disclose the

record of the proceedings in which a decision was taken and the reasons thereof – Decision was taken to approve a quota of 5194 kilograms of frozen chicken to be imported by the applicant from South Africa – The approved quota is less than what the applicant applied for – Court found that the decision was taken by the first respondent – Court found that the first respondent has already filed what purports to be the record of the proceedings that led to the decision in question and the reasons thereof – Found that Rule 76(2)(b) has already been complied with – Application to compel the respondents is dismissed with costs.

Summary: On 18 June 2019, the applicant brought an action for an order calling upon the first respondent, alternatively the second respondent, alternatively the third respondent, to show cause why the decision of the first respondent, alternatively the second respondent, alternatively the third respondent to only approve an importation quota of 5194 kilograms for the applicant of frozen chicken from South Africa for June 2019 should not be reviewed and corrected or set aside in terms of Rule 76(1) of the Rules of the High Court – On 29 August 2019, the applicant brought an interlocutory application seeking an order to compel the respondents to comply with Rule 76(2)(b) of the Rules of the High Court. The court found that the decision was taken by first respondent and that once it becomes apparent that the decision was taken by the first respondent, the second and third respondents will fall away – The court found that there is no need for an order compelling the first respondent to comply with Rule 76(2)(b) because the first respondent has already filed what purports to be a record of the proceedings that the applicant is seeking to be corrected or set aside and also provided reasons for the decision. Court found that there is already compliance with Rule 76(2)(b), hence the application was dismissed with costs, limited to N\$20 000.

ORDER

The interlocutory application for an order to compel the respondents to comply with Rule 76(2)(b) of the Rules of the High Court is dismissed with costs, limited to N\$20 000.

JUDGMENT

MILLER AJ:

[1] Before me is an application brought on 29 August 2019 by African Meals Catering CC, which is a close corporation, duly registered and incorporated in accordance with the Close Corporations Act 26 of 1988 as amended, seeking an order to compel the respondents to comply with Rule 76(2)(b)¹, within ten days from the date of the order and serve a copy/copies of the complete record(s) on the applicant and file with the Registrar the original record of the proceedings sought to be set aside together with the reasons for such a decision and to notify the applicant that they have done so, and that the respondents be ordered to pay the costs of this application of one instructing counsel.

[2] I proceed in terms of Practice Directive 61(9) of the High Court Practice Directions, issued under Rule 3(3) of the Rules of the High Court of Namibia, 2014.²

¹ **Rules of the High Court of Namibia, Rule 76:**

(1) All proceedings to bring under review the decision or proceedings of an inferior court, a tribunal, an administrative body or administrative official are, unless a law otherwise provides, by way of application directed and delivered by the party seeking to review such decision or proceedings to the magistrate or presiding officer of the court, the chairperson of the tribunal, the chairperson of the administrative body or the administrative official and to all other parties affected.

(2) An application referred to in subrule (1) must call on the person referred to in that subrule to -

(a) show cause why such decision or proceedings should not be reviewed and corrected or set aside; and
(b) within 15 days after receipt of the application, serve on the applicant a copy of the complete record and file with the registrar the original record of such proceedings sought to be corrected or set aside together with reasons for the decision and to notify the applicant that he or she has done so.

² **Practice Directive 61: Delivery of reserved judgments and other judicial functions**

(9) In order to assist in the prompt disposal of interlocutory applications and applications for leave to appeal, Judges are encouraged to make orders without detailed reasoned judgments, unless there is a clear need to give full reasons, especially in cases where the court order –

(a) is not potentially precedent setting;
(b) does not require the interpretation of a rule, statute or common law; and
(c) can be made in summary form.

(10) Paragraph (9) is also applicable to the following applications:

(a) application for leave to appeal;
(b) application for postponement;
(c) application to amend pleadings;

[3] African Meals Catering CC brought an application on 18 June 2019 for an order, as contained in the notice of motion, calling upon the first respondent, alternatively the second respondent, alternatively the third respondent, to show cause why:

- 1.1 The decision of the first respondent, alternatively the second respondent, alternatively the third respondent to only approve an importation quota of 5194 kilograms for the applicant of frozen chicken from South Africa for June 2019 should not be reviewed and corrected or set aside in terms of Rule 76 (1).
- 1.2 The decision of the first respondent, alternatively the second respondent, alternatively the third respondent to only approve an importation quota of 5194 kilograms for the applicant of frozen chicken from South Africa for June 2019 should not be reviewed and corrected or set aside in terms of Rule 76(1).
2. Ordering the respondent(s) who may oppose this application to pay the applicant's costs, and if more than one, that such costs be in respect of one instructing and two instructed counsel and be paid jointly and severally, the one paying the other to be absolved.
3. Granting further and/or alternative relief to the applicant.'

[4] On behalf of the first respondent, Mr Paul Johan Strydom stated in his affidavit that the application is opposed on the grounds that:

- (a) the first respondent was duly appointed to administer the import quotas;
- (b) pursuant thereto the first respondent properly issued import permits in terms of its appointment;

(d) application to vary a case management order;

(e) application for summary judgment;

(f) application for joinder;

(g) application for consolidation of actions;

(h) application for upliftment of bar, extension of time, relaxation or condonation;

(i) application for irregular proceedings; and

(j) application concerning security for costs.

- (c) in doing so, the first respondent did not infringe the applicant's constitutional rights and, to the extent that some limitation might have followed, such limitation was justified by Articles 21 or 22 of the Constitution.

[5] According to the founding affidavit of Mr Sarel Johannes Jacobus Oberholzer, the background of this matter dates from 12 March 2019 and 15 May 2019, when the applicant applied to the first respondent for permission to import 100 tons of frozen chicken thighs per month from South Africa. That is for the months of April 2019, May 2019 and June 2019. The applicant stated that it requires no less than 100 tons of frozen chicken per month in order to meet its needs. Mr Sarel Johannes Jacobus Oberholzer said that the applicant is constrained to import its monthly chicken requirements from South Africa because insufficient frozen chicken is produced in Namibia.

[6] In his founding affidavit used in support of the application, Mr Sarel Johannes Jacobus Oberholzer stated that 'the applicant is not entirely sure who is responsible for the decision making referred to above, and who actually takes the decisions referred to above. He stated that discovery will hopefully bring clarity'.

[7] On 27 September 2018, the first respondent through its legal representatives replied to a letter from the applicant. From the content of that letter it is apparent that the decision on the exact quota that was given to the applicant and has aggrieved it was made by the first respondent.³ It is also apparent from that letter that the first respondent acted with the delegated authority of the first and second respondents because that letter stated that 'our client has been duly instructed by the respective authorities, Minister of Industrialization, Trade and SME Development, and Minister of Agriculture, Water and Forestry to administer the importation of poultry products into Namibia'.

[8] In his founding affidavit Mr Sarel Johannes Jacobus Oberholzer says that the letter from the legal representatives of the applicant to the first and second respondents points out 'the unfair manner the first respondent treats the applicant, as opposed to

³ Annexure D.

other Namibian importers, with the result that the applicant must purchase frozen chicken from such other importers, costing it an additional N\$600 000 per month'.

[9] In those parts of his affidavit, Mr Sarel Johannes Jacobus Oberholzer has acknowledged the existence of a decision taken by the first respondent and expressed how that decision has negatively impacted the applicant. He also acknowledged that the applicant is aggrieved by that decision, and that the applicant wants to challenge that decision on review. The person as an entity who has to make available the record is the person who made the decision.

[10] From the affidavit of Mr Paul Johan Strydom on behalf of the first respondent, it is apparent that the first respondent does not deny making the decision in question, and claims to have acted with delegated authority to issue permits for the import of poultry products. Mr Paul Johan Strydom stated that the first respondent was appointed and authorized by the second respondent on 19 April 2013 based on its experience in managing quantitative control measures pertaining to the importation of meat products. A copy of that appointment and authority has been annexed to the affidavit. He further stated that on 23 April 2013 the third respondent approved the appointment of the first respondent to administer the import quota system. A copy of that approval has also been annexed to the affidavit.

[11] It follows that the present dispute is between the applicant and the first respondent. It is incumbent on the first respondent, being the decision maker to provide the requested document.

[12] As far as the second and the third respondents are concerned, they are cited in the alternative. Where the respondents are cited in the alternative, the necessary implications will be, once it becomes apparent that a decision was taken by one of them, then the others will fall away.

[13] The first respondent has already filed what purports to be the record of the proceedings. In the premises, there has been compliance with the relevant Rule of the High Court.

[14] In the circumstances, I dismiss the application with costs, limited to N\$20 000.

K Miller
Acting Judge

APPEARANCES:

APPLICANT: M KUTZNER
Of Engling, Stritter & Partners, Windhoek

FIRST RESPONDENT: T LOUW
Of Theunissen, Louw & Partners, Windhoek

SECOND AND THIRD
RESPONDENTS: H HARKER
Of Office of the Government Attorney, Windhoek