CIV/APN/76/94

IN THE HIGH COURT OF LESOTHO

In the matter between:

LESOTHO POULTRY CO-OPERATIVE SOCIETY LTD	1ST APPLICANT
BEREA POULTRY CO-OPERATIVE SOCIETY LTD	2ND APPLICANT

AND

THE MINISTER OF AGRICULTURE	1ST RESPONDENT
THE ATTORNEY-GENERAL	2ND RESPONDENT
THE PRINCIPAL SECRETARY - AGRICULTURE	3RD RESPONDENT
THE SENIOR MARKETING OFFICER - MOTSAMAI	4TH RESPONDENT
THE MARKETING OFFICER - MARATHANE	5TH RESPONDENT

JUDGMENT

Delivered on the 25th April, 1994 by the Honourable Mr. Justice W.C.M. Maqutu, Acting Judge.

Applicant brought an application **ex parte** for:

"1. The granting of a Rule Nisi calling the Respondents to show cause, if any, on a date to be determined by this Honourable Court why:

(a) The 1st Respondent and any of his officers shall not be directed to issue to the Applicants, forthwith, permits in terms of

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the Egg Control Regulations (Legal Notice Number 35 of 1969) authorising the Applicants to import eggs into Lesotho.

(b) The 1st Respondent and any of his officers shall not be restrained from desisting, except in accordance with the law, not arbitrarily but bona fide and in accordance with the spirit and true intention of the said Regulations, to issue such permits to the Applicants at any future time.

(c) The Respondents shall not show cause why they have elected to allow egg producers to act contrary to the law by selling their produce to any persons or bodies other than the 1st Applicant and the District Poultry Co-operative Societies and, upon the Respondents failing so to do, why they shall not be directed to cause to be put to a stop, forthwith, such practice.

(d) The Respondents shall not be interdicted from issuing permits of any kind to any person or body of persons authorising them to purchase eggs directly from egg

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producers except for good cause and after consultation with the 1st Applicant.

(e) The 3rd, 4th and 5th Respondents shall not be committed to prison for contempt of Court.

(f) The Respondents shall not be directed to pay the costs of this Application jointly and severally.

2. An order directing that prayer 1(a) operate as an interim interdict having immediate effect."

On the 16th March the Court after hearing Mr. Sello for Applicant ordered:

"(a) That Respondents be served with the application.

(b) That Respondents file opposing papers including affidavits if any by Friday 18th March 1994.

(c) Application will be heard on the 22nd March 1994 at 2.30 p.m."

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On the 22nd March, 1994 when Mr. Mohapi for the Respondents applied for a postponement the Court found itself obliged to order:

> "The Rule Nisi is granted in terms of the Notice of Motion. Prayer 1(a) to operate with immediate effect pending the finalisation of this application on the following condition (only) applicants are authorised to order 12000 dozens of eggs each. Rule is returnable on the 31st March 1994 for hearing."

This matter was eventually argued on the 12th April, 1994.

At the hearing both parties were not giving any quarter in the manner they argued this matter. It was clear there was bad blood between Applicant and the Respondents.

This case is part of a series of cases that now have a long history. It is only a part of what is a continuing titanic struggle. There have been a series of applications and this application is just one of them.

Indeed it would not be speculative to infer that more applications may be coming. I was invited by both parties to deal with previous applications in CIV/APN/433/93 as if they were part of it. The parties mistakenly believed that my determination of CIV/APN/433/93 with which I was seized would settle their on-going dispute once and for all. They were wrong because this application is the sequel of CIV/APN/433/93.

Applicant has annexed the judgment of the High Court in CIV/APN/165/91 in the case between applicant and the Minister of Agriculture, the Attorney-General and the Registrar of Co-operatives. In it the Registrar of Co-operatives, an official of the Ministry of Agriculture, used Ministerial powers over co-operative to try and change the leadership of Applicant. Kheola J. (as he then was) observed that although Section 10(1) of the Co-operative Societies (Protection) Act No.10 of 1966 empowered the Minister to specify what was to be discussed at the special general meeting convened by the Minister. What was done in the name of the Minister was questionable because:-

> "He is not empowered to direct what is going to happen at such a meeting as he has done by ordering that elections of the Executive

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Committee shall take place."

The same thing happened with the Leribe Poultry co-operative (an affiliate of Applicant). There too the Registrar of Co-operatives and the Minister collided with a poultry co-operative and they acted in the same manner. The Court of Appeal in C of A (CIV) No.13 of 1991 per Ackermann J.A held:

> «No permissible construction of Section 10 of the Act can authorise the Minister to compel a society to elect a new committee."

This is the back-ground which Applicant in its Replying Affidavit has put forward for this Court's consideration. All this history in Respondent's view is irrelevant. Having regard to the fact that this struggle between Applicant and the Ministry of Agriculture has become a festering sore plaguing this Court, I do not agree.

It is clear that public servants and any Ministry want to be free to execute what is considered as government policy without any hindrance. Voluntary organisations such as co-operatives have their own policies and leadership. Therefore they rarely see eye to

eye with government. In whatever involves a voluntary organisation, in order to succeed, requires lengthy consultation and eventual concurrence of view, something very irritating to administrators who are in a hurry to impose solutions. Sometimes voluntary organisations are right and public servants are wrong at others the reverse is true. In that situation tempers rise and an antipathy such as the one we have in this case becomes inevitable.

There is an incoming government which has inherited this conflict between officials of the Ministry of Agriculture and the Applicant. It is not beyond human nature for the officials of the Ministry of Agriculture to discredit Applicant just as Applicant is capable of doing the same. The proceedings before this Court are a clear example. Applicant is showing the Ministry of Agriculture in the worst possible light. The Ministry of Agriculture is also doing the same. This Court is now dealing with matters of administration bordering on politics. This is something courts should not do. This Court is now invited to exercise administrative discretion of officials of the Ministry of Agriculture because they are seen as acting *mala fide*. The Court is therefore obliged not to deal with this matter in a piece-meal fashion but to face this problem and get to its root even if it has to go outside its strict functions as commonly understood.

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Mr. Mohapi for Respondents asked that paragraphs 4, 5. 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Replying Affidavit be struck out on the grounds that they contain historical matters and allegations that are vexatious argumentative, irrelevant, superfluous, misleading and confused. I ruled that this preliminary objection be argued along with the merits as they are inextricably linked. They were so argued. It is clear that the entire history of this application and the affidavits filed are full matter that is vexatious, misleading, argumentative and irrelevant. It is therefore impossible to single out what is desirable and undesirable from the affidavits without hampering the litigants from fully and freely ventilating their grievance. This is how the matter was argued, both parties were permitted a latitude not normally allowed litigants. The Court trusted in its ability to sift grain from chaff and to determine what is relevant from what is not. This task was vexatious to the Court but nevertheless it had a job to do.

As already stated this application is based on CIV/APN/433/93 and was in fact an attempt to enforce it. Only portions of the Court's judgment were annexed. It was clear therefore to the Court that Applicant had not understood the Court's judgment or had understood it selectively. At pages 41 and 42 of the judgment in

CIV/APN/433/93 I had said:

> "The Court has its own function and its own area where it is by law expected to exercise discretion. The Court is not supposed or expected to take responsibility for the importation and export of eggs. The legislature provided for that .... Even if the law permitted the court to shoulder these responsibilities (which it does not) the court would be most reluctant to do so."

The Court in CIV/APN/433/93 specifically refused to authorise the granting of egg importation permits save the one already granted as an interim measure and left the Respondents with their usual discretionary power, to issue permits. That is why the Court confirmed prayer (b) of the *Rule Nisi* "in so far as it means permits should always be granted and refused according to law". The word "refuse" was introduced by the Court in the interim order.

Applicant in this application has also asked for an order that I should commit 3rd, 4th and 5th Respondents in prison for contempt of court. The Principal Secretary Agriculture was not a party to CIV/APN/433/93. Consequently I cannot even consider committing him to prison. He is not the Ministry of Agriculture. In CIV/APN/433/93 the fourth and fifth Respondents are not cited by name. They have been deponents to the Marketing Officer's affidavits in the past. Mr. Mohapi for the

Attorney-General demonstrated that even he did not understand the Court Order. That being the case those Respondents could not understand the Court Order. He gave the impression that whatever was done was done on his advice. There was no wilfulness for whatever these two Respondents did which did not conform with the order of Court in CIV/APN/433/93. The Applicant had not understood the Court Order or had at best understood it selectively, therefore Applicant was the last person to demand that others should be punished for a mistake he himself had made. Applicant's Counsel conceded that in the circumstances the prayer of contempt of court ought not to be pursued.

This has been an on-going battle between the Ministry of Agriculture and the Lesotho Poultry co-operative Association and its affiliates. In this duel the public interest has been a casualty over a long period. In this contest the courts have been used as a battle ground. This is quite acceptable up to a point, because individual and vested rights have to be protected. This problem unfortunately (if squarely faced) seems to be a problem of administration of the country. Enforcement of existing laws is the duty of government, I have in the past stated that courts are not expected to usurp governmental functions or to tell government how to govern. Government

is not answerable to the courts, it is in a democratic country answerable to Parliament and ultimately to the electorate.

Before me is the problem of the interpretation of the Agricultural Marketing Act No.26 of 1967 and the subsidiary or delegated legislation made by the Minister of Agriculture under it. The Minister exercising the powers conferred on him by Section 4 of the Agricultural Marketing Act of 1967 made the Agricultural Marketing (Egg Control) Regulations of 1969. Not long thereafter the Minister again made Agricultural marketing (Egg Trading) Regulations of 1973. In making these sets of regulations the Minister claims he was exercising the powers conferred by Section 4 of the Agricultural Marketing Act of 1967. I requested both Counsel to address on whether or not the 1973 Egg Trading Regulations were properly made by virtue of powers conferred by Section 4 of the Agricultural Marketing Act of 1967.

In the case of Perishable Products Control Board v Molteno Bros 1943 AD 265 the long title of an act was considered to ascertain its scope and to throw light on its construction. This case also involved agricultural products, but in that case what was involved was fruit while in this case eggs are involved. The case dealt with

the question of *ultra vires* by way of exception in action proceedings. The case I am dealing with has been brought by way of application. In this case affidavits constitute both pleadings and evidence. The query on Ministerial powers in respect of egg trading is being raised by the Court itself but not by the parties themselves. I first raised this question in CIV/APN/433/93 of which this case is a sequel. Feetham J.A at page 273 of the Perishable Products Control Board case said:-

> „It is necessary, I think, to look at the terms of the 'long' title of the Act for the purpose of ascertaining its scope, and throwing light on its construction. The long title is, in the case of modern Acts,now fully recognised as forming part of the Act."

In Lesotho Football Association v Lesotho Sports Council C of A (CIV) No.22 of 1991 (unreported) the Court used the „long" title or „preamble" as an aid to construction in order to determine the powers of the Lesotho Sports Council under Order No.41 of 1970.

I was driven to look at the „long" title because I could not find anywhere in Section 4 (even when read along

with Sections 3 and 6 of Agricultural Marketing Act of 1967) where a Minister is authorised to create a monopoly of the type that he created in favour of the Lesotho Poultry Co-operative Society as he did by Regulations 3 and 4 of Egg Trading Regulations of 1973. I am mindful of the words of Innes C.J in Law Union and Rock Insurance Co. Ltd. v Carmichael's Executors 1917 Ad 593 where he agrees with an old English judge that a preamble is:

> "a key to open the minds of the makers of the Act and the mischiefs which they intend to redress. But a key cannot be used if the meaning of the enacting clauses is clear and plain."

The "long" title of the Agricultural Marketing Act No.26 of 1967 reads as follows:

> "To control and improve the production, preparation, processing and marketing of agricultural products and the marketing of agricultural supplies... and to provide for incidental and connected matters."

It seems to me that creating a monopoly in favour of the Lesotho Poultry Co-operative Society could not be done in terms of the Ministerial powers under the Act. It was argued for Applicant that the Court could not *mero motu* raise this point. I do not agree. In CIV/APN/433/93 I

raised this point as a query but did not decide it. The many applications that seem to be going to come before this Court compelled me to deal directly with the legality of these regulations.

What is really being considered is whether the Minister can abdicate his powers of control altogether as he has done to the Lesotho Poultry Co-operative Society. Can he or is he authorised to make Regulations of this kind? Section 4 of the Agricultural Marketing Act of 1967 gives the Minister the power to make regulations to control and improve the preparation processing and marketing of a product. It also gives him powers of regulation of dealing, purchasing or selling products through licensing and prohibiting the unlicensed to trade or purchase products. It also empowers the Ministers to deal with questions of quality and to regulate quantities that are marketed. The Minister's regulations cannot go beyond this. Parliament or the legislature alone specifies the extent of ministerial power. If he exceeds the limits set, he is acting ***ultra vires***.

The case of Lesotho Football Association v Lesotho Sports Council C of A (CIV) No.22 of 1991 to which Mr. Mohapi and Mr. Sello referred me goes into the meaning of "control". Browde J.A said he would give the word

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control:-

> "a meaning which would give the respondent Council the right to regulate the affairs of appellant rather than put an end to its activities."

Creating a monopoly is to put an end to the trading activities of other people or bodies that are engaged in trade. The view I have taken is that creating a monopoly calls for specific legislation.

The policy behind giving the control of egg production and marketing into the hands of the poultry farmers themselves who had been formed into a co-operative was not a bad policy. The problem is only that Ministers cannot be permitted to usurp the powers of the legislature. If the legislature has delegated to them powers to make subsidiary laws they cannot and should not go beyond the scope of their powers.

To show the dangers of a Minister usurping the powers of the legislature, I will briefly go over other agricultural bodies that market produce that were properly set up by the legislature. It will be observed that although there was the Agricultural Marketing Act of 1967 there was need to establish by an Act of the legislature

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a Produce Marketing Corporation as a body for marketing grain, vegetables and other agricultural products. Hence the Produce Marketing Corporation Act 1973 was enacted. For Livestock products also in 1973 there was established the Livestock Marketing Corporation in terms of the Livestock Marketing Corporation Act of 1973. These were two agricultural bodies were established by the legislature therefore their legal status is on a firm foundation.

It is not for the courts to advise government on policy nevertheless a short historical commentary is called for. While the legislature has to legislate as it sees fit and Ministers to respect its powers, events of 1973 in the regulation of agricultural and livestock products are interesting. In 1973 the Livestock Marketing Corporation and the Produce Marketing Corporation were given marketing monopolies over certain products by statute. At about the same time the Minister of Agriculture gave the Lesotho Poultry Co-operative Society a monopoly over the marketing of eggs. The Produce Marketing Corporation and the Livestock Marketing Corporation were so mismanaged that they became bankrupt. These two statutory Corporations were under the direction of the Ministry of Agriculture. The Lesotho Poultry Co-operative Society is still in existence. It has cash flow

problems which in CIV/APN/433/93 have been partially shown to be the fault of the officials of the Ministry of Agriculture.

Eventually when problems became unsurmountable the Livestock Marketing Corporation and the Produce Marketing Corporation were taken over by the Lesotho Government in terms of the Produce Marketing Corporation and the Livestock Corporation Repeal Act 1981. Their assets and liabilities are now the responsibility of the Government of Lesotho. Because of the bankruptcy of these two agricultural marketing Corporations, the Ministry of Agriculture officials do not hold the moral high ground in efficiency. It is therefore clear that it does not follow that State runs enterprises are necessarily the best instruments of government policy. There is presently a strongly held view that privatisation is the key. That is a matter for government to determine from time to time and, when it has decided on the course to follow, to ask for appropriate legislation to effect that policy from Parliament or the legislature.

Nevertheless I feel obliged to deal with The Produce Marketing Corporation Act 1973 and The Livestock Marketing Corporation Act 1973 because they were procedurally and legally correct. Delegated subsidiary legislative powers

given to the Minister would have been correct had the powers been given.

Examining the two corporations it emerges that their provisions and scope are in many respects similar to those of the Agricultural marketing (Egg Trading) Regulations of 1973 save for the fact that they do not deal with egg trading and marketing. The Produce Marketing Corporation is also in terms of Section 5(2) of the Produce Marketing Corporation Act of 1973 given a monopoly in respect of products to which it applies because it has "The exclusive right to import, export and to market products". Section 5(2) of the Livestock Marketing Corporation Act of 1973 also gives the Corporation in similar terms in respect of the livestock products. In all these Acts the Minister is empowered to exercise the monopoly powers concurrently with these corporations. In them the legislature left little doubt that these corporations are an arm of the Minister in the execution of policy. They were also not creatures of subsidiary legislation in their creation. There was no question of an illegal ministerial seizure of the powers of the legislature.

The mistake that has happened in respect of the Agricultural Marketing (Egg Trading) Regulations 1973 was that they were made without statutory authority to make

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such subsidiary legislation. A Minister cannot create a monopoly except with the permission of the Legislature or Parliament as happened in respect of the Egg Trading Regulations of 1973. Yet the surprising thing is that the Produce Marketing Corporation of 1973 which is a statute in its own right was enacted the same year as both the Livestock Marketing Corporation Act of 1973 and the Agricultural Marketing (Egg Trading) Regulations of 1973. It is significant that the statute creating the Produce Marketing Corporation has protected ministerial policy making powers. Although both Produce Marketing Corporation Act, 1973 and the Livestock Marketing Corporation Act 1973 were subsequently repealed, this does not alter the fact that their legal status came from an Act of the legislature.

When it was felt that the Livestock Marketing Corporation (before its abolition by repeal) was not fulfilling the objectives that government had set, a legislative adjustment was made. To make matters worse when the Government of the day found the legal requirement of prior consultation with the corporation before giving policy directions was irksome, it had that abolished by Act No.3 of 1978. Absence of a hearing is always frowned upon but in that case it was done by the legislature of the day. It got the legislature to adjust the law to suit

what it considered to be the exigencies of the situation. The government of the day did not break the law as has been the situation up to now. It had the law adjusted.

If the Minister had been given powers to make subsidiary legislation in the case of Egg Trading Regulations 1973 he ought to have made the needed adjustments. I have already held that the Agricultural Marketing Act of 1967 does not give him such powers. In CIV/APN/433/93 I pointed out that if the Egg Trading Regulations had been properly made, and they were not achieving the object for which they had been made, they ought to be changed or adjusted. I was critical of the fact that the Ministry of Agriculture, (assuming it had been given powers to make subsidiary legislation), that this should not have been done to enable him to be able to respond to problems rapidly. I found it regrettable that the Ministry of Agriculture's officials were claiming the Regulations were not working as they were intended to, but they were not advising the Minister to take remedial action. Instead they were actively breaking the Regulations or acquiescing in their breach by the public.

Concerning the use of the right to issue permits in breach of Applicant's monopoly in matters concerning eggs in CIV/APN/433/93 of which this application is a sequel I

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said:

> "In this case the right to a hearing when actions prejudicial to the economic interests of applicant is even greater."

In making this finding, I was following what Ogilvie-Thompson said in N.S. Maseribane v J.R.L. Kotsokoane 1978 LLR 451 at 456 where he said the ***audi alteram partem*** rule applies where:

> "the decision in issue concerns the property or liberty of an individual... unless on a construction of a Statute under consideration the court holds that the principles of natural justice do not apply."

While it is clear that the Marketing Officer could not ignore Applicant's failure to absorb eggs as the Regulations provided, Applicant was obliged to be heard as a matter of urgency before Spar and O.K. Bazaars were given permits to purchase eggs from producers. I am rather puzzled by the fact that Applicant owed producers money for eggs that had been sent to Applicant months before. If that is so the producers were obliged to demand cash as a matter of sheer survival.

It is clear that there are many eggs in the country.

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The system of egg marketing has broken down partly because of Respondents' acts as I found in CIV/APN/433/93 and I find it impossible to accept that Applicant is not also to blame. Should eggs have to be imported from South Africa by Applicant merely because the Respondents are not prepared to rebuilt egg marketing in Lesotho by taking appropriate remedial action? In CIV/APN/433/93 I refused Applicant's application which as framed would have given applicant the right to import eggs from the Republic of South Africa at will. My view of the situation has not changed.

The complaint of Applicant is that traders suddenly came in big trucks at the instigation of the Ministry of Agriculture. Applicant further alleges that the Ministry of Agriculture wanted to prove the point that Applicant could not absorb and market eggs as Applicant was intended to do in terms of the Agricultural marketing (Egg Trading) Regulations of 1973. Applicant's allegations are virtually impossible to prove satisfactorily by direct evidence. The Court is expected to infer that the whole incident was staged managed by the Ministry of Agriculture. Be that as it may, Applicant could not absorb the eggs for cash. Furthermore there were truck loads of eggs whose presence demonstrated there were plenty of eggs in the country. In terms of the Regulation

4(2) Agricultural Marketing (Egg Control) Regulations, 1969 the Principal Secretary of Agriculture and his officials had a discretion to refuse to grant the permit to import eggs because of the available egg supplies in Lesotho. It would not be overstating their powers to say they were obliged to refuse to give permits to import eggs in the circumstances.

If Applicant is correct to say a trap was set by the Ministry of Agriculture of proving there were eggs in the country, applicant walked straight into it by choosing such a time to apply for a permit to import eggs. Applicant could be said to have held the view that because permits for purchasing eggs have been issued direct to traders and thereby deprived them of eggs, the Ministry was duty bound to issue them with permits. There is a lot to say in favour of this argument. After all it is has been clear for some time that the Ministry of Agriculture had stopped seeing to it that producers and traders who did not follow the Agricultural Marketing (Egg Trading) Regulations of 1973 were not prosecuted. Indeed this Court had on several occasions restrained the Ministry of Agriculture from issuing permits to producers to sell to whoever they pleased. See CIV/APN/221/93, CIV/APN/256/93 and CIV/APN/433/93. What was now happening in this application was that permits were issued direct to traders

to acquire eggs direct from producers.

I have already said it is impossible to prove that egg producers colluded with the Ministry of Agriculture to expose the fact that the monopoly of Applicant (the Lesotho Poultry Co-operative Society) was a mistake. It was argued for Applicant that the Agricultural Marketing (Egg Trading) Regulations 1973 were designed for small producers not major producers and that the Lesotho Poultry Co-operative Society was not meant for major producers that had made egg production into big business. I could not follow this argument. If indeed the Lesotho Poultry Co-operative Society as a national instrument of egg production and marketing was no more relevant to the current reality why should this reality not be demonstrated so that remedial action can be taken. If indeed these major egg producers did decide to assail Applicant's egg marketing monopoly, there is nothing wrong with this.

I have already held that the Ministry of Agriculture was wrong to issue permits to traders to acquire eggs direct from producers without consulting Applicant. Even if there was a crisis, (an emergency meeting in which consultation with applicant was made could have taken place) if Respondents had been minded to call it. As long

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as the Egg-Trading Regulations of 1973 were still in place, the Ministry of Agriculture was obliged to follow them in view of the fact that they were not prepared to change or modify the regulations to remedy the mounting problems. That is in my view of what the Rule of Law is about. Existing laws cannot be flouted by Government itself.

I am not puzzled but rather disappointed that Applicant and the Ministry of Agriculture failed over the years to establish a working relationship. Resorting to courts in which Applicant always succeeded in the disputes that followed only embittered the officials of the Ministry of Agriculture. The Minister had by mistake delegated his powers of regulation of egg marketing to Applicant. Surely the Egg Trading Regulations (even if they had been validly made) could not work without close co-operation between the Ministry of Agriculture and the Lesotho Poultry Co-operative Society. This was overlooked in the dust of conflict, hence this protracted war.

The Ministers of Agriculture over the years failed to use the powers of rapid response (they purported to have) when they created the egg monopoly. I have already said those regulations were ***ultra - vires*** of the Minister in terms of the Act.

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The policy of co-operation and the involvement of egg producers in the marketing of their produce was an excellent policy initiative. What is inexcusable is the failure of the Ministers over the years to co-operate with the representative of egg-producers that they themselves had identified. This Court found itself a battle ground in this administrative scuffle until it had to scrutinise the law to find out if it should really be having this endless stream of litigation before it.

If I have held the Agricultural Marketing (Egg Trading) Regulations of 1973 **ultra vires** as I have done, I am obliged to refuse this application. I nevertheless confirm the interim order which I was obliged to make on the 22nd March, 1993 when Respondents asked for a postponement. I was in those circumstances obliged to see that Applicants do not suffer any prejudice on account of that postponement.

There remains the question of costs. I asked to be addressed on it during the hearing.

I have come to the conclusion that Respondents ought not to get any costs on the usual principle that costs follow the event. The Court itself asked to be addressed on whether or not the Egg Trading Regulations 1973 are

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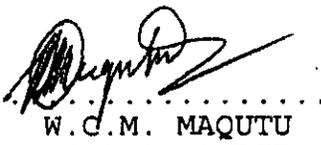
ultra vires. They did not give Applicant a hearing before they issued permits to traders to buy eggs direct from egg producers. This was what this Court had said they are obliged to do. Finally, the long drawn out legal contest is the result of the Respondents' failure to make the required legal adjustments when problems made such a step necessary.

Taking all factors into account the appropriate order is that this application is dismissed. Each party should bear its own costs.

Delivered at Maseru This 25th Day of April, 1994.



W.C.M. MAQUTU
ACTING JUDGE

For the Applicant : Mr. K. Sello
For the Respondents : Mr. T. Mohapi