

IN THE COURT OF APPEAL OF LESOTHO

C OF (CIV) NO 41/2018

In the matter between:

DR. MOHLALEFI MOTEANE	1st APPELLANT
FARMERS ROCK WOOL AND	
MOHAIR	2nd APPELLANT
MAHLOENYENG TRADING	3rd APPELLANT
HIGHLAND WOOL AND	
MOHAIR	4th APPELLANT

AND

MINISTER OF AGRICULTURE	
AND FOOD SECURITY	1st RESPONDENT
MINISTER OF SMALL BUSINESS	
DEVELOPMENT COOPERATIVES	
AND MARKETING	2nd RESPONDENT
MINISTER OF LAW AND	
CONSTITUTIONAL AFFAIRS	3rd RESPONDENT
ATTORNEY GENERAL	4th RESPONDENT

CORAM:	DR K. E. MOSITO P
	DR P. MUSONDA AJA
	N. T. MTSHIYA AJA

HEARD:	18th JANUARY 2019
DELIVERED:	01st FEBRUARY 2019

SUMMARY

Mootness of the Appeal – Impugned Regulations repealed while appeal against their validity is pending – whether appeal moot

JUDGMENT

DR P MUSONDA AJA

BACKGROUND

[1] This is an appeal against the Judgement of the High Court (Mokhesi AJ) wherein, the appellants who were applicants in the court ***a quo*** sought the invalidation of:

- (i) the Marketing (Trading) Regulations No. 4 of 1974;
- (ii) the Agricultural Marketing (wool and mohair housing) Regulations No. 37 of 2018; and
- (iii) the above regulations it was argued were ultra vires the Agricultural Marketing Act of 1967 as amended.

[2] The learned Judge in the Court ***a quo*** dismissed both prayers and the appellants appealed to this court only in respect of the second prayer.

[3] **FACTS:**

The appellants who were appellants in the Court ***a quo*** are wool and mohair traders duly licensed in terms of the Agricultural Marketing (Amendment) Act 1973 and Agricultural Marketing (Trading) Regulations 1974. The first respondent, the Minister of Agriculture and Food Security Pursuant to Section 4 of the Agricultural Marketing Act 1967, promulgated the Agricultural Marketing (wool and mohair

licensing) Regulations 2018. The tenor of the Regulations included, (1) changing the licensing authority for wool and mohair, reposing the same in the minister responsible for small business development and cooperatives, (2) Introduction of schedule of fees payable in respect of different categories of licenses, (3) bestowing power on the Minister to amend or cancel the licenses provided certain conditions precedent are present, (4) amendment of Agricultural Marketing (Trading) Regulations No. 4 of 1974 and further, (5) the creation of the Regulations, (6) prohibition of export of wool and mohair unless it is prepared, brokered, traded and auctioned in Lesotho.

[4] Aggrieved by the promulgation of these Regulations by the Minister, the appellant approached the Court *a quo* to seek their invalidity. The impugned Regulations were the 1974 and the 2018 Regulations, which were alleged to be *ultra vires* the 1967 Act and therefore null and void. The appellants were unsuccessful, as the Court *a quo* held the Regulations to be valid.

[5] **CONSIDERATION OF THE APPEAL:**

During the pendency of this appeal the legislature repealed the Agricultural Marketing (wool and mohair licensing) Regulations No. 37, in terms of Regulation 12, of the Agricultural Marketing (wool and mohair licensing) (Amendment) Regulations No. 65 of 2018.

[6] Consequently when the matter came up for hearing on 18th January 2019 an appeal against the validity of the 1974 Regulations was withdrawn.

[7] Adv. Letlatsa, then raised the issue of mootness of the appeal. He valiantly argued that there was no live dispute between the parties that calls for determination. In support thereof he cited an erudite judgment by **Innes CJ** in **Geldenhuis Neethling v Beutilis**¹ wherein it was held that:

“After all, courts of law exist for settlement of concrete controversies and actual infringements of rights, not to pronounce upon abstract questions, or to advise upon differing contentions, however important.”

Canada v Jervis², where the House of Lords said:

It is an essential quality of an appeal (such as may be disposed by it) that there should exist between the parties to an appeal a matter in actual controversy which (the court) undertakes to decide as a living issue.”

[8] Adv. Selimo tried to argue the exceptionality of the general rule and cited the case of **Lesotho National Development Corporation v Maseru Business Machines (Pty) Ltd & 4 others**³ where the court said:

*“It is trite that as a general rule the courts will not decide moot cases. It is however also a fact that there are exceptions to the mootness doctrine which allow review as already shown in the case of **Legal-Aid South Africa v Mzoxolo Magidiwana 1055/13 (2014) ZASCA 141 26th September 2014**, where it was said, the relevant considerations are whether the order that the court may make will have practical effect either on the parties or others whether it is in the public interest for the court*

¹ 1918 AD 426

² 1944 1 A11 ER 469 (76) at 471 A - B

³C of A (CIV) 38/2015

to excise its discretion to resolve the issues and whether the decision will benefit the larger public or achieve legal certainty.”

[9] In the course of the argument Mr. Selimo adopted a pragmatic approach and conceded that the appeal was moot as he realised that it could not be credibly and procedurally argued otherwise. Regulations validated by the High Court were no more, so by consent the matter was agreed to be moot. The costs in the court *a quo* to be costs in the cause and the costs in this court to be borne by the appellant on attorney-client scale, as the appeal ought not to have been pursued, the impugned regulations having ceased to exist.

[10] The impugned regulations are no more. The new regulations were not subject of a hearing in the court ***a quo*** and cannot be subject of the appeal as advocate Selimo suggested initially during the oral hearing, which position as we have said earlier was changed during the course of the hearing when he realised that it could not be credibly and procedurally argued that the matter was live.

[11] In our view we cannot take this matter any further, in view of the concession.

[12] **DISPOSITION**

We order that:

(i) *The appeal is struck off from the roll*

- (ii) *Appellants to pay costs of the appeal on attorney client scale, jointly and severally, the one paying the other being absolved.*

**DR. P. MUSONDA
ACTING JUSTICE OF APPEAL**

I agree

**DR. K. E. MOSITO
PRESIDENT OF THE COURT OF APPEAL**

I agree

**N. T. MTSHIYA
ACTING JUSTICE OF APPEAL**

For the Appellants: Adv. J. Selimo

For the Respondents: Adv. L. Letlatsa