# IN THE NORTH GAUTENG HIGH COURT, PRETORIA

***(REPUBLIC OF SOUTH AFRICA)***

(1) **REPORTABLE:** NO

(2) **INTEREST TO OTHER JUDGES:** NO

17/9/12 .....

**DATE** **SIGNATURE**

**CASE No. 50556/12**

In the matter between:-

| | |
|---|---|
| **SOUTH AFRICAN TYRE RECYCLING PROCESS COMPANY NPC** | First Applicant |
| **BRIDGESTONE SOUTH AFRICA (PTY) LTD** | Second Applicant |

and

| | |
|---|---|
| **MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS** | First Respondent |
| **DIRECTOR-GENERAL: DEPARTMENT OF ENVIRONMENTAL AFFAIRS** | Second Respondent |
| **RYCYCLING AND ECONOMIC DEVELOPMENT INITIATIVE OF SOUTH AFRICA NPC** | Third Respondent |

---

**JUDGMENT**

---

.../...

**Van der Byl, AJ:-**

**Introduction**

[1] In terms of the regulations published under section 24B of the Environment Conservation Act, 1989 (Act 73 of 1989), by Government Notice R.149 of 13 February 2009 ("*the regulations*") provision is made for the management of waste tyres.

[2] The regulations were promulgated on 13 February 2009 and came into operation on 30 June 2009 (Government Notice R.520 of 8 May 2009).

**The regulations relevant to this application**

[3] In terms of these regulations a tyre producer, as defined in regulation 1, is required to register with the Minister (the First Respondent), in the case of a producer operating on 30 June 2009, within 30 days as from 30 June 2009 (ie., more or less on 29 July 2009) and, in the case of a producer commencing business after 30 June 2009, at least 30 days prior to commencing business (regulation 6(1)).

[4] In relation to a tyre producer operating on 30 June 2009, regulation 6(3) provides as follows:

> *"(3) A tyre producer operating on the date of commencement of these Regulations must either-*
>
> *(a) prepare and submit to the Minister, an integrated industry waste*

.../...

*tyre management plan, within 60 days of registering in terms of subregulation (1) for approval (ie., more or less on 28 September 2009); or*

*(b) register with an existing integrated industry waste tyre management plan approved by the Minister; and*

*(c) comply with the integrated industry waste tyre management plan immediately on receiving the Minister's approval, or comply within 60 days with an existing integrated industry waste tyre management plan approved by the Minister (ie., 60 days after 23 July 2012, being before or on 21 September 2012).".*

[5] In relation to a tyre producer commencing business after 30 June 2009 regulation 6(4) provides as follows:

*"(4) A tyre producer commencing business after the commencement of these Regulations shall not begin operations without an integrated industry waste tyre management plan approved by the Minster or without providing written confirmation to the Minster of acceptance into an existing integrated industry waste tyre management plan approved by the Minister.".*

[6] In relation to a tyre producer who wishes to deregister from an integrated industry waste tyre management plan regulation 6(6) provides as follows:

*" (6) A tyre producer must inform the Minister if they deregister from an integrated industry waste tyre management plan 120 days prior to deregistering.".*

[7] The following prohibitions is provided for in regulation 6(7) which reads as follows:

*"(7) A tyre producer may not manufacture, import new, part worn, retreadable casings or vehicles fitted with tyres or, distribute or sell new, part worn or retreaded tyres, unless they can demonstrate that they*

*either-*

*(a) have an integrated industry waste tyre management plan approved by the Minister or;*

*(b) belong to an existing integrated industry waste tyre management plan approved by the Minister.".*

[8] In relation to the consideration of a waste tyre management plan, regulation 11(1) and (2) reads as follows:

*" **11.** (1) The Minister on receipt of an integrated industry waste tyre management plan -*

*(a) may require additional information to be furnished and a revised plan to be submitted within a timeframe indicated by the Minister;*

*(b) must publish the integrated industry waste tyre management plan in the Government Gazette for a period of 30 days for comment;*

*(c) must send comments received to the person responsible for producing the plan for consideration and incorporation where relevant; and*

*(d) must, after incorporation of any comments, review the revised integrated industry waste tyre management plan, approve it with or without conditions, or reject the integrated industry waste tyre management plan with reasons and with a timeframe for resubmission.*

*(2) An integrated industry waste tyre management plan that has been rejected in terms of subregulation (1)(d) must be amended and resubmitted to the Minister within the timeframe indicated by the Minister.".*

**Relevant facts of the matter**

[9] It is common cause -

(a) that the First Applicant submitted an integrated industry waste tyre management plan for approval by the First Respondent on 4 April 2011 and has, upon its rejection by the First Respondent on 15 November 2011 resubmitted. as is provided in regulation 11(2), an amended plan on 30 July 2012, the determination of which is currently still pending;

(c) that an integrated industry waste tyre management plan submitted by the Third Respondent on 22 February 2011 was approved by the First Respondent on 15 November 2011 and published as required by regulation 11(4) of the regulations on 23 July 2012;

(d) that the deadline for compliance with regulation 6(3)(c) is 21 September 2012, being 60 days as from 23 July 2012, being the date of publication of the approval of the Third Respondent's integrated industry waste tyre management plan,

[10] It would appear that the First Applicant's members (that, according to the First Applicant comprise approximately 84 per cent of formal tyre and motor vehicle industry in South Africa) and the Second Applicant have chosen not to register and comply with the approved integrated industry waste tyre management plan of the Third Respondent and to rather await the approval of the First Applicant's integrated industry waste tyre management plan.

[11] At a meeting with the Second Respondent on 23 July 2012 a concern was raised

by the First Applicant of claims that its subscribers would, pending the determination of the First Applicant's (re-submitted) integrated industry waste tyre management plan, be obliged to comply with the Third Respondent's integrated industry waste tyre management plan as from 21 September 2012, failing which they face the sanctions as provided in the regulations. The Second Respondent confirmed these concerns at the meeting.

[12] On 15 August 2012 the First Applicant addressed a letter to the First and Second Respondents seeking an undertaking that pending the determination of the First Applicant's plan by the First Respondent, the Second Respondent would not cause or threaten any tyre producer supporting the First Applicant's plan with prosecution or sanction should such tyre producers fail to comply with the Third Respondent's plan.

[13] In a letter dated 27 August 2012 the Second Respondent replied, relying on, particularly, regulation 6(7), that tyre producers who fail to comply with the Third Respondent's plan will face sanction, including the withdrawal of their tyre importers' import permits as well as the exposure to criminal prosecutions.

[14] The Applicants according launched this application three days later in which they seek an order -

(a) in Part A of the Notice of Motion, for an order, pending final determination of Part B, in terms of which the First and Second Respondents be interdicted from causing or threatening any tyre producer who intend to subscribe to the First

Applicant's integrated industry waste tyre management plan, as re-submitted, with prosecution or sanction in consequence of such tyre producer failing to cmply with the integrated industry waste tyre management plan of the Third Respondent;

(b) in Part B of the Notice of Motion, for an order declaring that pending the determination of the First Applicant's integrated industry waste tyre management plan, as re-submitted, tyre producers who intend to subscribe to the First Applicant's integrated industry waste tyre management plan, are not obliged to comply with the integrated industry waste tyre management plan of the Third Respondent.

**Evaluation**

[15] On the one hand, it is, briefly stated, the Respondents' contention that all tyre producers who does not have its own plan are, upon a proper interpretation of the regulations, indeed bound to register and comply with the Third Respondent's approved plan with effect from 21 September 2012.

[16] On the other hand, it is the Applicants' contention -

(a) that, in relation to the relief sought in Part A, relying on the decision in ***Webster v Mitchell 1948 (1) SA 1186 (W)***, ***Mariam v Minister of the Interior 1959 (1) SA 213 (T)*** and ***Beecham Group Ltd v B-M Group (Pty) Ltd 1977 (1) SA 50***

*(T)*, "*difficult questions of law*" in circumstances of urgency can be considered as to whether there is *prima facie* substance in the Applicants' contentions;, namely, that the intention contained in the regulations is not to compel a tyre producer to subscribe to an existing plan on a provisional and temporary basis, pending the Minister's determination;

(b) that, in relation to the relief sought in Part B, the Applicants have, particularly, where affidavits have been exchanged by all the parties, upon a proper interpretation of the regulations, established a clear right.

[17] In relation to the proper interpretation to be assigned to, particularly, regulation 6(3)(c) of the regulations, it is the Applicant's contention -

(a) that the regulations offers two options, namely -

(i) option A, that a tyre producer has the opportunity of submitting its own integrated industry waste tyre management plan (which the First Applicant has done);

(ii) option B, to register with an existing integrated industry waste tyre management plan (in this case, the integrated industry waste tyre management plan of the Third Respondent);

(b) that the effect of the regulation must be that compliance with an existing

integrated industry waste tyre management plan would only be required once the process pursued in terms of option A has been completed, ie., when it is evident that the Minister's rejection of the plan has become final and binding;

(c) that another interpretation would result in an absurdity which in turn would result in the regulations being unlawful, unreasonable and open to a constitutional attack;

(d) that the regulations do not intend for compulsory compliance with an existing plan in the interim pending the final determination by the Minister of a plan awaiting such determination.

[18] In so far as the interim relief sought in Part A is concerned, it is, furthermore, contended that the balance of convenience favours the Applicants and that, furthermore, should the relief claimed be dismissed, the Applicants will suffer irreparable harm in that the First Applicant will be doomed and its demise will be swift.

[19] As far as the balance of convenience and the Applicants' alleged irreparable harm are concerned, it is contended -

(a) on the one hand, that, if the relief claimed is dismissed, there will, despite the fact, *inter alia*, that the First Applicant has expended at least R11 million on its project in relation to its own plan, no longer be any *raison d'etre* for the First Applicant's existence and the First Applicant's subscribers will have to spend

millions of rand to ensure that their IT and infrastructural systems comply with the Third Respondent's plan;

(b) on the other hand, the First and Second Respondents will suffer no prejudice were the interim relief granted pending determination of Part B be granted and, as far as the Third Respondent is concerned it will not be generating any income before the end of January 2013.

[20] As is apparent from what I have summarized from the relevant facts of the matter, it would appear that in strict compliance of the regulations -

(a) all tyre producers that were operating as such on 30 June 2009 (ie., the date of commencement of the regulations) were required to register as such at the latest on 30 July 2009;

(b) a tyre producer that so wished was required to submit an integrated industry waste tyre management plan before or on 29 August 2009 (ie. that is 60 days as from the date of registration on 30 July 2009);

(c) a tyre producer was required to comply immediately with its integrated industry waste tyre management plan on approval by the Minister (which is not the case in respect of the First Applicant) or, if it has not its own approved integrated industry waste tyre management plan, as is the case with the First Applicant, to comply with an existing approved integrated industry waste tyre management

plan (in this case the plan of the Third Respondent) before on 21 September 2012 (ie., 60 days from the date of approval of the Third Respondent's plan.

[21] It would appear that the First Applicant failed to comply in all respects with these provisions in that -

(a) it submitted its integrated industry waste tyre management plan on 4 April 2011 almost nine months after 30 July 2009, being 30 days after the cut-off date for registration as provided in regulation 6(1) of the regulations;

(b) after its plan was rejected on 15 November 2011, it re-submitted its amended plan almost eight months later on 30 July 2012.

[22] In view of the provisions of the regulations it would seem that the regulations were devised in such a manner -

(a) that the registration process would be completed on the same date, ie, on 30 July 2009, being 30 days after the commencement of the regulations;

(b) that the integrated industry waste tyre management plans of tyre producers interested to implement their own plans are to be prepared and submitted on the same date, in this case 30 September 2009, being 60 days after the date of registration;

(c) that a tyre producer that at the time of the commencement of the regulations does not have its own approved integrated industry waste tyre management plan is required to register with any existed approved integrated industry waste tyre management plan and comply within 60 days with such integrated industry waste tyre management plan.

[23] It is common cause that at the commencement of the regulations on 30 June 2009 the First Applicant did not have an integrated industry waste tyre management plan and had not prepared and submitted an integrated industry waste tyre management plan before or on 30 September 2009, being 30 days after registration and 60 days after registration.

[24] As I have already indicated, the First Applicant submitted its integrated industry waste tyre management plan on 4 April 2011, almost eight moths after the timeframe determined in regulation 6(3)(a).

[25] It is apparent that the integrated industry waste tyre management plans of the First Applicant and the Third Respondent were considered on the same date when the First Applicant's plan was rejected and the Third Respondent's plan was approved on 15 November 2011.

[26] The Third Respondent's plan was published almost eight months later on 23 July 2012.

[27] The First Applicant re-submitted its amended plan in terms of regulation 11(2) eight months after its rejection and seven days after the Third Respondent's plan was published.

[28] In my view the First Applicant cannot in the circumstances rely, as it does, that it cannot be compelled to comply with the Third Respondent's approved plan in the interim pending the final determination by the Minister of a plan awaiting such determination since it -

(a) failed to prepare and submit its integrated industry waste tyre management plan within the prescribed 60 days after its registration in terms of regulation 6(1);

(b) after the rejection of its plan on 15 November 2011, re-submitted its amended integrated industry waste tyre management plans almost eight months later and seven days after the publication of the Third Respondent's plan.

[29] From the aforegoing, it is apparent that at the time the First Applicant's amended integrated industry waste tyre management plans was re-submitted the period of 60 days envisage in regulation 6(3)(c) had already commenced running.

[30] If the First Applicant's contentions are held to be correct it may give rise to an impossible situation.

[31] Should the First Applicant's plan be approved after 21 September 2012 a

distorted situation will in the application of regulation 6(3)(c) arise in that the First Applicant's subscribers will be required to immediately register with, and comply with that plan only after the expiry of a period of 60 days so that those subscribers will, as opposed to all tyre producers who registered with, and commenced complying with the Third Respondent's plan as from 21 September 2012.

[32] Should the First Applicant's plan be rejected after 21 September 2012, an equally distorted situation will arise where the Applicant's subscribers who were required to have registered with the Third Respondent's plan will some how have to register with the Third Respondent's plan after 23 July 2012, as opposed to other tyre producers who indeed registered before or on that date, and to comply with that plan on a date that cannot be determined in terms of the regulations.

[33] Furthermore, it will be unfair and discriminating to tyre producers commencing business after the commencements of the regulations who are in terms of regulation 6(4) prohibited from commencing business without a plan approved by the Minister or without providing proof of it having accepted to into an existing approved plan. The question can be asked why should the Applicant's be treated differently in that they will be entitled to do business without any plan or having registered with an existing aproved plan.

[34] In so far as the First Applicant failed to prepare and submit an integrated industry waste tyre management plan within the 60 day period envisaged in regulation 6(3)(a), option A cannot find any application to the First Applicant and it is left with

option B only, namely, to register with the approved integrated industry waste tyre management plan of the Third Respondent and to comply with that plan before or on 21 September 2012.

[35] It is in my view obvious that the First Applicant is relying on a situation which had arisen because of its delays to properly comply with the provisions of the regulations being a situation which would in all probability not have occurred had it complied with the regulations within the prescribed periods.

[36] It cannot accordingly seek a *casus omission* in the regulations if it failed to comply with the compelling provisions and, particularly, th time frames prescribed of the regulations.

[37] In my view the First Applicant now finds it in a situation for which it is, due to its delays, to be blamed itself and which it has created at its own peril.

[38] In the circumstances the Applicants' interpretation of the regulations is in my view clearly wrong and that they for this reason alone failed to show that they have a clear or even a *prima facie* right on which the relief claimed in either Part A or B of the Notice of Motion can be granted.

[39] In the result I am of the view that the interpretation to be assigned to the regulations is that any tyre producer that has no integrated industry waste tyre management plan approved by the First Respondent or does not belong to an existing

integrated industry waste tyre management plan, will as from 21 September 2012 not be entitled to manufacture, import new, part worn, retreadable casings or vehicles fitted with tyres or, distribute or sell new, part worn or retreaded tyres and will be subject to the sanctions provided in the regulations and other applicable legislative provisions.

[40] I in any event fail to see how any of the First Applicant's subscribers will be prejudiced if they are required to register and comply with the Third Respondent's plan even if they wish to do so with the First Applicant's plan if and when it is approved since they are free to deregister, with no financial implications, within 120 days notice as provided in regulation 6(6). The allegations that they will be required to spend millions of rand to ensure that their IT and infrastructural systems of the Third Respondent's plan is not substantiated and in any event denied by the Respondents.

[41] It is accordingly not necessary to consider whether or not they established the other requirements for either interim or final relief.

[42] I need to mention that various helpful and well-reasoned submissions were made by counsel appearing on both sides, not only on certain *in limine* points, but also on the interpretation of the regulations and the requirements of interim and final interdicts, but in view of my finding on the interpretation to be assigned to the regulations in the circumstances of this matter and the fact that I was dealing with this matter in the urgent court, I mean no disrespect to counsel if I do not deal with all the submissions they made save to say that I indeed considered all the submissions made. Should it, however, in due course become necessary to deal with any of those issues I will of

course do so.

[43] This brings me to the question of costs.

[44] It was not contended on either side that costs should not follow the result, including the costs of two counsel where applicable.

[45] For these reasons the application is dismissed with costs, including the costs of two counsel where applicable.

.....

**P C VAN DER BYL**
**ACTING JUDGE OF THE HIGH COURT**

**ON BEHALF OF THE APPLICANTS** — **ADV G W AMM**

**On the instructions of:** — **KNOBEL MEYBURGH ATTORNEYS**
**Ref: E Knobel/C394**
**TEL: 011 880 8074**

**c/o KLAGSBRUN DE VRIES**
**3rd Floor, Hatfield Plaza**
**1122 Burnett Street**
**Hatfield**
**PRETORIA**
**Ref: Mr de Vries**
**Tel : 012 362 2280**

**ON BEHALF OF THE FIRST AND SECOND RESPONDENTS** — **ADV SALIE JOUBERT**
**ADV P A SWANEPOEL**

**OB THE INSTRUCTIONS OF** — **THE STATE ATTORNEY**
**SALU Building**
**255 Andries Street**
**PRETORIA**
**Ref: 7237/2012/Z80**

.../...

Mr. N L Nkuna
Tel: 012 309 1554

| | |
|---|---|
| ON BEHALF OF THE THIRD RESPONDENT | ADV D A PREIS SC |
| On the instructions of | CLIFFE DEKKER HOFMEYER INC<br>Ref: R Marcus/cvdv/10092801/R025<br>021 481 6396<br><br>c/o FRIEDLAND HART SOLOMON & NICOLSON<br>4-301 & 6-101 Monument Office Park<br>79 Steenbok Avenue<br>Monument Park<br>PRETORIA<br>Ref: Gerrie Stolp<br>Tel: 012 424 0200 |
| DATE OF HEARING | 11 September 2012 |
| JUDGMENT DELIVERED ON | 17 September 2012 |