THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable
Case No: 131/2015

In the matter between:

THE SA HACKNEY PONY BREEDERS' SOCIETY	**FIRST APPELLANT**
THE SA STUD BOOK AND ANIMAL IMPROVEMENT ASSOCIATION	**SECOND APPELLANT**

and

ADAM MAJIET	**RESPONDENT**

Neutral citation: *The SA Hackney Pony Breeders' Society v Majiet* (131/2015) [2016] ZASCA 108 (31 August 2016)

Coram: Cachalia, Seriti and Mocumie JJA and Fourie and Potterill AJJA

Heard: 15 August 2016

Delivered: 31 August 2016

Summary: Review: Whether cross-breed of hackney horse and hackney pony eligible for registration as hackney pony: Interpretation of breeders' society's constitution and by-laws: Application of Animal Improvement Act 62 of 1988.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Cossie AJ sitting as court of first instance):

(i) The appeal in the review is upheld with costs including the costs of two counsel;

(ii) The appeal against the costs order in the interdict application is dismissed with costs;

(iii) The costs order against the second appellant is set aside;

(iv) The order of the court a quo is set aside and the following order is substituted in its place:

'(a) The application is dismissed with costs, including the costs of two counsel;

(b) the costs in the interdict application are to be paid by the first respondent.'

JUDGMENT

Cachalia JA (Seriti and Mocumie JJA and Fourie and Potterill AJJA concurring)

[1] This is an appeal against an order of the Western Cape High Court, Cape Town (Cossie AJ), reviewing and setting aside a decision by the second respondent,

the SA Stud Book and Animal Improvement Association (the Association), to deregister an equine named 'Fire High Explosive' (FHE) and four of its progeny. The decision was made upon a recommendation of the SA Hackney Pony Breeders' Society (the Society), which is a member of the Association. Mr Adam Majiet is the owner of the equines, a member of the Society and the respondent in these proceedings. He successfully instituted the review proceedings in the court a quo after FHE was deregistered. He now opposes the appeal.

[2] The Society recommended FHE's deregistration after DNA results indicated that only one, not both, of its parents was a hackney pony. The other was a hackney horse, which is a different breed. This means, according to the Society, that FHE and its progeny are cross-breeds. The equine is therefore ineligible for registration as a hackney pony in terms of the Society's constitution and its by-laws, which require both parents of an equine to be hackney ponies. The Association accepts this requirement, hence its decision to deregister FHE upon the Society's recommendation.

[3] The Association, however, abides the decision of the court because it has no knowledge of the facts that gave rise to FHE's deregistration. But it makes clear in its answering affidavit that if the Society is correct in its assertion that the registration certificate wrongly states FHE's parentage, it is enjoined to remove the equines registered as hackney ponies in the stud book, which the Association keeps in its custody. It adopted this stance in the court a quo and has maintained it since.

[4] Mr Majiet disputes the Society's contention that its constitution and by-laws require hackney ponies to be descendant of two registered hackney ponies. He contends that they only require the equine to have the phenotypical characteristics, ie, the appearance, of a hackney pony for registration, which FHE has. The genotypical characteristics determined from DNA testing do not supersede its phenotypical characteristics. Moreover, he argues, the Society has not established a

particular DNA gene profile for a hackney pony and therefore cannot deny registration on this ground. Finally, he contends that the DNA report that was used to deregister FHE was obtained improperly and that its contents are unreliable.

[5] I turn to the facts. FHE was born on 8 March 2005 and bred by the past President of the Society, Mr Dawood Davids. He sold FHE to Mr Majiet, apparently assuring him at the time that the animal was a hackney pony. The date of the sale is unclear, but nothing turns on this.

[6] The registration certificate issued on 19 May 2010 from information Mr Davids provided to the Association indicates that FHS was registered as a hackney pony. The certificate records the equine's sire as *Retcharnis Modernaire* and its dam as *Fire Carnation.* It is common ground that both these animals are hackney ponies. A DNA number for FHE also appears on the document.

[7] In response to a query from one of the Society's members, Mr George Bell, regarding FHE's parentage and at his instance, an independent testing agency, Unistel Medical Laboratories (Pty) Ltd (Unistel) carried out DNA tests on FHE in 2011. It found that there was a perfect match between a hackney horse stallion, (which is not a hackney pony) named *Retcharnis Field's Pride*, and *Fire Carnation* as the biological parents of FHE. On the basis of this report, therefore, the Society concluded that FHE's registration certificate had incorrectly recorded *Retcharnis Modernaire* – a hackney pony – as the sire whereas in truth the sire was *Retcharnis Field's Pride*, a hackney horse.

[8] A meeting of the Society's executive committee was held on 3 October 2011 to discuss the issue. Mr Sayed Davids, Mr Dawood Davids' successor and the current President of the Society, Mr Bell and Mr Dawood Davids were present. It

bears mentioning at this stage that the two Davids and Mr Majiet are all related to each other.

[9] Mr Sayed Davids is the deponent of the Society's answering affidavit, and it is therefore on his factual averments that the case is to be decided. He explains what transpired at this meeting: Mr Bell handed a copy of a DNA parentage certificate of FHE to Mr Dawood Davids indicating that *Retcharnis Modernaire* was not the sire. Mr Dawood Davids, he explains further, looked at the document for what felt like an inordinate amount of time during which there was a hushed silence. And then, without looking up he said: 'If this is so, then this horse needs to be scrapped.'

[10] The meeting then decided that three members of the executive committee, including Mr Sayed Davids himself, would establish from Unistel whether the DNA parentage certificate was reliable. Mr Sayed Davids says that Mr Dawood Davids looked uncomfortable and left abruptly at the end of the meeting with the certificate in hand.

[11] The three members proceeded to Unistel and met with Dr Oosthuizen, who had done the DNA testing. He explained to them how the testing had been done. They left the meeting 'completely satisfied' that the results were in order. On 4 October 2011 Dr Oosthuizen confirmed his findings regarding FHE's parentage in a written note, which indicated a perfect match of *Retcharnis Field's Pride*, the hackney horse, and *Fire Carnation* as FHE's biological parents.

[12] Having satisfied themselves that Dr Oosthuizen's findings were reliable, the committee called Mr Dawood Davids to a Special Council Meeting on 22 October 2011 to explain the discrepancy between these findings and FHE's parentage, as appears from the certificate. Mr Dawood Davids did not question the findings. Instead, he sought to exonerate himself by explaining that he had not deliberately

falsified the records. His brother had worked with the equines and he (Mr Dawood Davids) had personally observed him mating the two ponies. He therefore believed that FHE's certificate had correctly stated the equine's parentage. But, he explained further, what may have happened was that the stallion – *Retcharnis Field's Pride* – had broken into *Fire Carnation's* pen and sired FHE without his knowledge. The meeting accepted the explanation and acquitted him of any deliberate wrongdoing.

[13] On 17 December 2011 the Society held another meeting at which Mr Dawood Davids, who was still the President, presided. The issue relating the equine's parentage arose again. There is a dispute between the parties as to whether this was a properly constituted Annual General Meeting (AGM). It appears that members who were present were asked to vote on a proposal by Mr Dawood Davids for FHE to be allowed to remain registered as a SA Hackney Pony. The proposal was carried by a majority of two-thirds of the members present.

[14] A few days later Mr Sayed Davids delivered a letter to Mr Dawood Davids complaining that the meeting had been improperly convened and conducted, and requested him to reconvene another AGM. The letter also invited Mr Dawood Davids to agree to the appointment of an independent person to chair an enquiry into the 'parentage dispute' of FHE. The letter went on to urge Mr Dawood Davids to deal with these matters before 6 January 2012 failing which the matter would be referred to the Registrar of Animal Improvement under the Animal Improvement Act 62 of 1998 (the Act) to consider taking appropriate steps to deal with the issues referred to in the letter.

[15] Mr Dawood Davids did not react to the letter. On 25 January 2012 a petition signed by all the other members of the executive committee, and also more than two thirds of the breeders, informing him that they intended passing a vote of no-confidence in him as President at the following meeting, was delivered to him. In response Mr Dawood Davids resigned as President of the Society. His resignation

was formally accepted on 28 February 2012 and Mr Sayed Davids was later appointed as President in his place. At the same time the Registrar directed that the relevant certificates and documents relating to FHE and its foals be forwarded to the Stud Book Office for cancellation.

[16] On 8 May 2012 the Society notified Mr Majiet of its intention to request the Association to cancel the registration certificate issued to FHE and its progeny on the following grounds:

(a) the parentage details given for FHE before registration were incorrect, as the DNA certificate confirmed;

(b) the parentage information revealed that FHE is in fact a cross-bred foal of a hackney horse and a hackney pony and not of two hackney ponies as Mr Dawood Davids had represented; and

(c) being a cross-breed, FHE did not comply with the requirements for the registration of hackney ponies.

[17] Mr Majiet was afforded the opportunity to make representations to the Society in accordance with its constitution before a final decision regarding FHE's deregistration was made. On 7 June 2012 he submitted detailed representations to the Society on why his equine should not be deregistered.

[18] In summary he explained that when he purchased FHE from Mr Dawood Davids the latter assured him of FHE's pedigree, and that he was unaware of any problems with its parentage. He also questioned the reliability of the DNA report and the process by which it had been obtained. Importantly, he argued that the mating of a hackney horse with a hackney pony 'should not automatically result in the ineligibility of its offspring as hackney ponies and automatic deregistration of such foals and any future offspring generations'. This is because, he asserted, the real test was whether the equine in question bore the phenotypical characteristics of a

hackney pony, which FHE did. The DNA results were therefore of secondary importance.

[19] Three days after he had submitted his representations to the Society, he was informed that its executive committee had decided that FHE and its foals were 'to be scrapped' under the relevant provisions of the Society's constitution. On 10 July 2012 the Society cancelled the registration of FHE and its foals as hackney ponies. And, acting on the Society's request, the Association followed suit by also deregistering the equines.

[20] On 24 December 2012, Mr Majiet instituted review proceedings in the court a quo to set aside the decision to deregister his equines. On 14 January 2013, the Society suspended him pending the outcome of the review application. He was ordered to attend an executive committee meeting of the Society the following day, when his suspension was confirmed.

[21] On 11 March 2013 Mr Majiet instituted an urgent application to interdict the Society from giving effect to the suspension. The application was settled with the suspension being lifted and costs were left over to be argued in the review. As I indicated earlier Cossie AJ upheld the review. She also ordered the Society and the Association to pay the costs of both the review and interdict applications.

Grounds of Review

[22] Mr Majiet, represented by senior counsel, advances three grounds upon which he contends that the decision to deregister FHE was unlawful. First, the relevant provisions of the Society's constitution and its by-laws do not require a hackney pony to be descendant of two fully registered hackney ponies; he submits that a foal of a registered hackney pony and a hackney horse that meets the phenotypical characteristics (the appearance) of a hackney pony is eligible for

registration; secondly, the DNA report that established that one of the parents of FHE – *Retcharnis Field's Pride* – was a hackney horse and not a hackney pony, was not reliable and therefore did not provide a proper basis for FHE's deregistration; and thirdly, the deregistration of FHE was not effected fairly. Before I consider each of these grounds it is necessary to set out the legal framework.

The Legal Framework

[23] The legal framework within which the Society is required to function, and to which its members are bound, is to be found in the Act, the Society's constitution and its bye-laws. If the Society acted outside of these parameters in causing FHE's deregistration, it would have done so unlawfully and any decision made pursuant thereto would be reviewable and fall to be set aside.

[24] The Act provides for the 'breeding, identification and utilisation of genetically superior animals to improve the production and performance of animals'. And s 11(1)*(c)* provides as follows:

'**11 Animal breeders' society**

(1) A group of persons may be registered as an animal breeders' society if-

. . .

(c) the constitution of such group of persons specifically provides-

(i) for the promoting, breeding, recording or registration, genetic improvement and use of a kind of animal or an animal of a specified breed of such kind of animal;

(ii) for the determination and the application of breed standards, and for the recommendation, in its sole discretion, to a registering authority of the recording or the registration of an animal or of a specified breed bred or imported into the Republic;

. . . .'

[25] The Association's answering affidavit, deposed to by its general manager, Mr van Rooyen, in summary, explains its role and function in the Act as follows: First,

it acts as the official registering authority of most animal breeders' societies in South Africa; secondly, it is the custodian of the stud books of the breeders' societies for whom the Association acts as registering authority. Stud books contain information about the breeder and every animal he or she has bred and submitted for recording. The information includes the name, identification, date of birth and parentage of the animal. Thirdly, it issues official registration certificates in relation to all animals registered in these stud books in terms of the constitutions of the relevant breeders' societies, as proof of the pedigree of each animal.

[26] Mr van Rooyen explains further that it is imperative for stud books to contain accurate information on each animal so that the objectives of the Act mentioned above are achieved. The Association, as the registering authority, is dependent on the receipt of this information from breeders' societies and their members. And to this end the societies must have proper procedures in their constitutions and bye-laws to ensure that the parentage details of animals provided by their members are correct so that they may be so recorded in the stud book.

[27] Mr van Rooyen emphasises that the onus for providing accurate information is thus the sole responsibility of the breeder who must ensure that the pedigree, breeding particulars and permanent identification marks of animals described in their birth notifications are correct and that all the requirements of the constitution relating to birth notifications, have been complied with. Mr Majiet did not contest any of these assertions, in my view correctly so.

[28] The regulations made under the Act also bear some importance in this case.[1] Table 7(b) of the regulations categorises the 'locally adapted and regularly introduced breeds' for cattle, goats, horses, sheep and pigs. In the list of breeds for horses, hackney horses and hackney ponies are specified as different breeds. It

[1] Regulations, GN R1682, *GG* 25732, 21 November 2003, as amended by inter alia GN R935, *GG* 32601, 2 October 2009.

follows that if a hackney horse mates with a hackney pony their offspring would be a cross-breed, which according to the Society, precludes its registration as a hackney pony.

[29] This brings me to the Society's constitution. The objects and powers of the Society as set out in the relevant parts of clause 2 include the following:

'2.1 to encourage the breeding and genetic improvement of SA Hackney Ponies in the Area;

2.2 to preserve the pure breed of the SA Hackney Ponies in the Area and to promote through all possible and available means interest in the breed;

2.3 to accumulate, preserve and develop the SA Hackney Ponies through proper selection in accordance with the acceptable description of a SA Hackney Pony and to eliminate cross-breeding;

2.4 to draft and maintain a 'Standard of Excellence' for the breed, based on visual inspection for genetic defects and conformity as it relates to functional efficacy.

2.5 to compile accurate records of studbooks and particulars of horses and to preserve and maintain the records of all SA Hackney Ponies that the Society has registered with the Association.'[2] (My translation)

[30] By-law 1, which is critical to the resolution of the present dispute, says the following regarding the importance of the Association's stud book:

[2] '2.1 Om die teelt en genetiese verbetering van S A Hackney-ponies in die Gebied aan te moedig;
2.2 om die rasegtheid van SA Hackney-ponies in die Gebied te bewaar en om deur alle moontlike en beskikbare middele belangstelling in die ras te bevorder;
2.3 om die versameling, bewaring en ontwikkeling van SA Hackney-ponies deur goeie seleksie ingevolge die aanvaarde beskrywing van 'n SA Hackney-ponie aan te moedig en om vermenging met ander rasse uit te skakel;
2.4 om 'n 'Standaard van Voortreflikheid' vir die ras, gebaseer op visuele inspeksie vir genetiese afwykings en bouvorm in soverre dit verwant is aan funksionele doeltreffendheid, op te stel en te handhaaf;
2.5 om noukeurige verslae van die stambome en besonderhede van perde saam te stel, te bewaar en in stand te hou van alle SA Hackney-ponies wat deur die Genootskap by die Vereniging in die Kuddeboek geregistreer is.'

'1. The Society shall take care that the Association keeps a record of all registered SA Hackney Ponies. The stud book will be known as the South African Hackney Pony Studbook and will consist of a Fully Registered Section. All progeny of fully registered horses of the breed are eligible for registration in this Section if the progeny meet the minimum breed standards and all the other requirements for registration.'[3] (My translation)

[31] It is appropriate at this stage to deal with Mr Majiet's first ground of review which is that it was not necessary for FHE to be descendant of two fully registered hackney ponies and that it was eligible for registration as a hackney pony by virtue of its appearance. He contends that the wording of this by-law supports his interpretation. In particular, he submits that the word 'all' ('alle') at the commencement of the second sentence suggests that all *horses* are eligible for registration if the minimum breed standards are met, especially because the constitution and the by-laws do not set such standards. In addition the use of the word 'horse' instead of pony also suggests that it is sufficient for a foal to be registered if one its parents is a hackney horse. Had the by-law aimed to limit registration only to the descendants of two fully registered hackney ponies, the contention continues, it would have used the word 'only' ('slegs') instead of 'all'. Moreover clause 2.4 of the constitution provides that the 'standard of excellence' for the breed is based on a visual inspection for genetic defects, which means that it is sufficient for the equine to have the appearance of a hackney pony in the absence of any other breed standards.

[32] There is no merit in this submission: First, the by-law, which concerns the stud book, must be read as a whole without excising the second sentence, as Mr Majiet seeks to do. It concerns only the registration of hackney ponies – not hackney horses – in a fully registered section. The second sentence makes it equally clear that the progeny of fully registered hackney ponies may be registered in the stud book. The use of the word 'all' instead of the word 'only' is in my view of no significance, and does not expand the category of breed eligible for registration

[3] '1. Die Genootskap sal toesien dat die Vereniging rekord hou van alle geregistreerde SA Hackney-ponies en dat die Kuddeboek, wat bekend sal staan as die Suid-Afrikaanse Hackney-poniekuddeboek, uit 'n Volgeregistreerde Afdeling sal bestaan. Alle afstammelinge van Volgeregistreerde perde van die ras kom in aanmerking vir registrasie in hierdie Afdeling indien hulle voldoen aan die minimum rasstandaarde en aan al die ander vereistes ten opsigte van registrasie.'

beyond hackney ponies. The word 'horse' in the second sentence, read with the definition of 'horse' in s 1 of the constitution,[4] also makes clear that this refers to a hackney pony 'registered in the stud book or eligible therefor.'

[33] Secondly, in seeking to persuade us that the constitution only requires the equine to meet the phenotypical requirement for hackney ponies, Mr Majiet again seeks to excise clause 2.4 of the constitution and read it in isolation by ignoring the other clauses quoted above. Clauses 2.1 to 2.3 show conclusively that they are concerned with the 'breeding and genetic improvement of hackney ponies', their preservation as a 'pure breed' and to eliminate 'cross breeding'. And clause 2.5 deals with the maintenance of accurate records of hackney ponies in stud books. Read together with these clauses it is clear that the 'visual inspection' for genetic defects referred to in clause 2.4 is only one consideration among others in preserving the 'pure breed' and eliminating the 'cross-breed'. And as Table 7(b) of the regulations also makes clear hackney ponies and hackney horses are different breeds. So mating between them will give rise to foals that are cross-bred and undermine the Society's constitutional objectives and s 11 of the Act, which are aimed at eliminating this phenomenon.

[34] The third reason why this submission must fail appears from Mr van Rooyen's affidavit: He says that the breeder of a hackney pony is obliged to notify the Society of the birth of the equine. The notification must be accompanied by a mating certificate confirming the date or dates of the mating of the sire and dam. In the case of multiple sire mating (where one dam could have been covered by more than one stallion as appears to have happened in this case) the notification of birth must be accompanied by verification of parentage through DNA results. This is not disputed.

[35] If Mr Majiet is correct that all that is required for an equine to be eligible for registration is to have the appearance, colours and temperament of a hackney pony – in other words look like a hackney pony – this would mean that it would not be

[4] The definition reads as follows: '"horse", a SA Hackney Pony registered in the Studbook or eligible therefor and the words "animal/animals", "stallion/stallions", "mare/mares", "foal/foals" shall have the same meaning.' (My translation)

necessary for a breeder to notify the Society of the birth and parentage of the equine, because a newly born foal would evidently not demonstrate any of the characteristics of a hackney pony at birth. All the breeder would have to do is to wait until the equine grows into adulthood and only then to register it if it exhibits the characteristics of a hackney pony. This would be completely at odds with what I have stated in the previous paragraph relating to the breeder's obligation to notify the Society of the birth of the equine. Counsel for Mr Majiet was unable to provide a coherent response for this difficulty during the hearing.

[36] I turn to Mr Majiet's second complaint, which is that the DNA report that established that one of the parents of FHE – *Retcharnis Field's Pride* – was a hackney horse and not a hackney pony, was not reliable and therefore did not provide a proper basis for FHE's deregistration. It appears from Mr van Rooyen's affidavit that DNA testing to confirm the parentage of particular animals is used frequently because of its reliability. In the Western Cape, Unistel does the testing. The Society's constitution and its by-laws make specific provision for DNA testing. By-law 2 deals with confirmation of parentage of hackney ponies:

'11.1 The Society reserves the right to at any time require a DNA test or any other proven scientific method of proof of parentage in order to determine the parentage of a registered horse or a horse eligible for registration:

(a) as a routine procedure from time to time as determined by the Association;

(b) in any matter where there is doubt;

(c) . . .

11.2 When a DNA test is done in terms of by-law 11(1)(a) the breeder shall be held responsible for all the costs of a second and further parentage control tests.

11.3 The costs of a DNA test done in terms of by-law 11(1)(b) shall be borne by the breeder or the Society as determined by the Board.

11.4 For the purposes of the parentage control of all breeding stallions DNA testing is peremptory notwithstanding anything contained above.'[5] (My translation)

[37] It is apparent from the factual background set out earlier that when confronted with the DNA certificate Mr Dawood Davids did not contest its correctness. He maintained that he believed that FHE's parentage was correctly stated but conceded that what may have happened was that the stallion – *Retcharnis Field's Pride* – had broken into *Fire Carnation's* pen and sired FHE without his knowledge. As a result he innocently conveyed incorrect information to the Society regarding FHE's parentage. Later on Mr Sayed Davids and two other members of the Society's executive committee visited Unistel to satisfy themselves that the findings were reliable. Dr Oosthuizen, who prepared the DNA report, stated its reliability to be in the order of 99.994 per cent.

[38] In his reply Mr Majiet filed an affidavit from Dr Cindy Harper, who is a Director of a genetics laboratory. She explained that best practice regarding DNA testing must be managed according to what she referred to as the 'chain of custody principle' from the time the animal is tested until the evidence bag reaches the laboratory. She does not however dispute Dr Oosthuizen's finding. In the circumstances, and applying the rule regarding evidence in application proceedings, this matter must be decided on the basis of the undisputed facts in the answering affidavits. In any event Mr van Rooyen emphasises that the onus for providing

[5] '11.1 Ten einde die ouerskap van 'n geregistreerde perd of 'n perd geskik vir registrasie te bepaal behou die Genootskap die reg om te eniger tyd 'n DNS-toets of enige ander beproefde wetenskaplike metode van bevestiging van ouerskap te vereis-
(a) as 'n roetine prosedure soos van tyd tot tyd deur die Vereniging bepaal;
(b) in enige geval van twyfel en
(c) van alle vullens waarvan geboorte kennisgewings na 30 April 2005 ingedien is.
11.2 In die geval van die DNS-toets waarna in Verordening 11.1(a) verwys word sal die teler vir alle koste van alle ouerskapkontroletoetse van die tweede toets af, verantwoordelik wees.
11.3 In die geval van die DNS-toets waarna in Verordening 11.1(b) verwys word sal die teler of die Genootskap, soos deur die Raad bepaal vir die koste van die DNS-toetse verantwoordelik wees.
11.4 Die tipering vir die doel van ouerskapkontrole van alle teelhingste is verpligtend ongeag bostaande.'

accurate information on the equine is the sole responsibility of the breeder. This is consistent with s 11.1(b) of by-law 2.

[39] So to the extent that there is any doubt regarding the reliability of Dr Oosthuizen's DNA report, which I cannot see, the onus was first on Mr Dawood Davids and thereafter on Mr Majiet to prove that the information given by Mr Dawood Davids to the Society regarding FHE's parentage was correct. Mr Davids did not dispute the DNA report when he was confronted with it or any time thereafter. Mr Majiet could have proved that FHE was not a cross-breed at the time he made representations to the Society or in the founding papers in the review application, if he had wished to. He did not. In fact his principal argument in this case is that FHE qualifies for registration as a hackney pony despite the fact that it is a cross-breed. So his complaint regarding cancellation of FHE's deregistration under by-law 21[6] is entirely without any foundation.

[40] I turn to Mr Majiet's final submission: that FHE's deregistration was not effected fairly. In the hearing before us the court invited counsel, who appeared on behalf of Mr Majiet, to point out where this case was made out in the founding papers; he was unable to do so. Mr Dawood Davids was confronted with the DNA report and was not able to challenge it. Mr Majiet was afforded an opportunity to make representations before a final decision on the deregistration was taken. He submitted a lengthy document that the Society considered before taking the final decision to deregister FHE. Counsel for Mr Majiet was therefore constrained to accept that he was given a proper hearing before the decision was taken.

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[6] By-law 21 deals with cancellation of registration. It provides:
'21.1 The Board may request the Secretary to apply to the Association for the cancellation of the registration of a SA Hackney Pony that was-
(a) wrongly registered;
(b) registered due to false or fraudulent information supplied by the owner
(c) registered after the owner failed to comply with any by-law that had to be satisfied ensuring flawless registration.
21.2 The Secretary must give 30 days' written notice to an owner of any cancellation of a registration certificate at the owner's last known address.' (My translation)

[41] What remained was an argument that the DNA report was not obtained through a fair process. There is no factual basis for this contention. It was accepted before us that Mr George Bell, one of the Society's members, procured the DNA report from Unistel, apparently because he was unhappy that FHE's impressive appearance seemed to give it an unfair advantage over other hackney ponies in competitions. That report was handed to the Society, which then acted on it, as it was obliged to. The Society did not procure the DNA report in an underhand or improper manner. There is therefore no substance in this complaint either.

[42] One must feel some sympathy for Mr Majiet who purchased an animal from Mr Dawood Davids on his assurance that it was a hackney pony. What is more, Mr Davids gave him the documentary proof, which later turned out to be incorrect. So to the extent that Mr Majiet has a legitimate complaint and possibly a cause of action against anyone, it is against Mr Davids, and not the Society. For these reasons, the review must fail.

[43] I turn to the question of costs. As the Society has been successful in the appeal against the order of the court a quo regarding the review it is entitled to its costs. The parties also accept that the court a quo erred in granting a costs order against the Association, despite it not having opposed the review. That part of the order must also be set aside.

[44] The Society also appeals against the costs order in the interdict that was settled on the basis that Mr Majiet's suspension as a member was lifted with the question of costs to be decided with the review. The Society maintains that each party should pay its own costs in the interdict because Mr Majiet had acted unreasonably in not agreeing to mediate the dispute. It is, however, the Society, not Mr Majiet, that acted unreasonably by suspending him after he had launched review proceedings, only to capitulate later by lifting his suspension. Mr Majiet is therefore entitled to the costs incurred in the interdict, but not to the costs of two counsel.

[45] In the result the following order is made:

(i) The appeal in the review is upheld with costs including the costs of two counsel;

(ii) The appeal against the costs order in the interdict application is dismissed with costs;

(iii) The costs order against the second appellant is set aside;

(iv) The order of the court a quo is set aside and the following order is substituted in its place:

‘(a) The application is dismissed with costs, including the costs of two counsel;

(b) the costs in the interdict application are to be paid by the first respondent.’

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A Cachalia

Judge of Appeal

APPEARANCES

For Appellants: A J Nelson SC (and J L van Dorsten)
Instructed by:
JLU van der Hoven c/o Van der Spuy & Partners, Cape Town
Phatshoane Henney Attorneys, Bloemfontein

For Respondent: M A Albertus SC (and V L A de la Hunt)
Instructed by:
J Ramages Attorneys c/o Ashersons Attorneys, Cape Town
Honey Attorneys, Bloemfontein