



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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From: The Registrar, Supreme Court of Appeal

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NATURE'S CHOICE PROPERTIES (ALRODE) (PTY) LTD V EKURHULENI METROPOLITAN MUNICIPALITY

The Supreme Court of Appeal (SCA) today held that smoke control regulations issued under the Atmospheric Pollution Prevention Act requiring prior plans and specifications are *intra vires* and that the purpose of such regulations is to enable the municipality to determine in advance whether or not the relevant burner complies with the regulations. If the burner complies, the municipality is obliged to accept the plans. The municipality has no free discretion to reject plans and specifications.

The appeal was brought by Nature's Choice against the interdict made by the High Court at Johannesburg restraining it from utilising a coal burner at its food processing factory and against the order to remove the boiler from the property.

The High Court found for the municipality on the basis that the regulations made in terms of the Atmospheric Pollution Prevention Act were not *ultra vires* and that the coal boiler installed on the appellant's property was in contravention of the

regulations because plans and specifications for its erection had not been submitted and approved before installation.

The SCA held that as Nature's Choice had not submitted plans and specifications prior to the installation of the boiler, this entitled the municipality to either require the removal of the boiler or require Nature's Choice to remedy the situation. Having made the choice of requiring Nature's Choice to remedy the situation the municipality has no free discretion to reject plans and specifications if they comply with the relevant regulations. Allowing the municipality to interdict Nature's Choice, after having made the choice not to require the removal of the boiler, would be the enforcement of an unlawful decision.

The appeal against the interdict restraining Nature's Choice from utilising a coal boiler and the order to remove the boiler made by the High Court was upheld and the order was amended to read 'The application is dismissed with costs'.

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