IN THE HIGH COURT OF SOUTH AFRICA

DURBAN AND COAST LOCAL DIVISION

Case No : 18911\04

IN THE MATTER BETWEEN

GHARAFORY ENTERPRISES CC T/A
AG'S DISTRIBUTORS — FIRST APPLICANT

MOHAMED RAFIEK AHMED GHARAFORY — SECOND APPLICANT

AHMED GHARAFORY — THIRD APPLICANT

AND

SOUTH AFRICAN REVENUE SERVICES — RESPONDENT

JUDGEMENT

NICHOLSON J

1. This is an application by the first applicant to review and set aside

    a. The decision of respondent, the South African Revenue Services, more especially its Customs and Excise Department headed by the Commissioner, conveyed to the applicants in a letter dated 16 July 2004, to hold first applicant liable for the payment of certain assessments and decisions resulting the imposition of customs duties, VAT and forfeiture amounts in the

total sum of R4, 027,029.07 in terms of section 88(2)(a) of the Customs and Excise Act, 91 of 1964 (the Act),

b. The decision of respondent in terms of section 103 of the Act to hold the second and third applicants liable for the aforesaid debt of the first applicant,

c. The decision by the Commissioner to secure the debt owing by the first applicant by ancillary attachments of property to secure the above.

2. Two points were argued in this application, the first related to the delay in bringing the application before court once the papers had been finalized and then the procedural fairness of the decisions made by the respondent. If I hold in favour of the respondent on the first point there is no need to enquire into the second.

The delay in bringing the application before court

3. The decisions that were sought to be reviewed and set aside as I have mentioned were conveyed to the applicants on 16 July 2004. The required notice in terms of section 96 of the Act was given on 27 July 2004 and the application in this matter was launched on 17 November 2004 and served on the commissioner on 8 December 2004.

4. The commissioner's answering affidavits were filed during March 2005 and the applicants replying affidavit on 20 June 2006. The applicants failed to set the matter down for hearing and the respondent set it down at the end of 2007 for hearing on 20 February 2008.

5. Mr Meyer, who appeared for the respondent, has pointed out that more than 18 months has passed since the applicants filed their replying affidavits and but for the fact that the respondent set the matter down, nothing further would have been done in the matter.

6. Mr Meyer drew the attention of the court to the decision of this court in *Mkhwanazi v Minister of Agriculture and Forestry, Kwazulu-Natal* 1990 4 SA 763 (D). In that case Hugo J dealt with the delay in a case involving a dismissal. The applicant in that case was until July 1987 in the employ of the respondent, the KwaZulu Government, as a driver of a grader.In the view of the respondent he had absented himself from his workplace for more than 30 days after 5 June 1987 without permission and was therefore deemed to have been discharged from his employment as from 6 June 1987 by virtue of the provisions of s 15(5) of the KwaZulu Public Service Act 15 of 1985.

There was an application for the reinstatement of the applicant and the payment to him of his full salary for the period of his unemployment. The application was launched on 15 March 1988. The answering affidavit by respondent was filed on 28 April 1988 and the reply on 18 October 1988. It was enrolled for hearing on 23 August 1990, more than three years after the applicant's discharge. The notice of set down was dated 29 June 1990.

8. On 22 August 1990 when Hugo J perused the papers he contacted the attorneys acting for the parties and indicated that he required argument as to whether the delays in bringing the matter to Court were not such as to render the application unfit for hearing. In response thereto an affidavit by the applicant's attorney was filed in an attempt to explain the delays. Hugo J found that the explanation by the attorney left a number of gaps which have were entirely unexplained.

9. The court considered a number of cases dealing with delays in launching review proceedings. See *Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie, en 'n Ander* 1986 (2) SA 57 (A) and the cases dealt with therein Hugo J then went on to hold at 766 E

> 'This case of course differs from those inasmuch as the delay here occurred after the application was launched and not before. The principle however seems to me to be the same. In cases such as this, the applicant could notionally be better off than in the others because here there is no real likelihood of evidence being lost. In all other respects the reasoning underlying the principle that delays may be fatal to an application must apply equally to both classes of case. See Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad 1978 (1) SA 13 (A) at 41.'

10. Hugo J then went on to determine whether the delays in all the circumstances of that case were unreasonable. He concluded that the delays in that matter were inordinate and that prima facie the applicant should be non-suited. The question of condonation was then considered. Hugo J said that respondent could have given some form of notice that it considered the delays to be excessive but he did not consider this to be imperative as the rule against undue delay is a procedural rule (Wolgroeiers case at 41G - H) and can therefore be enforced by the Courts mero motu.

11. The court then considered the question of prejudice and found that the claim for arrear wages was extremely prejudicial to the respondent. Condonation was therefore refused and the applicant non-suited on that ground alone.

12. The delays in the present matter are inordinate but none of the causes of the delays are before the court. Hugo J gave notice to the parties that he was considering dismissing the claim for that reason alone and affidavits were filed. I only received the heads of argument the day before the matter was argued. That was the first indication that I had that the question of delay was to be ventilated.

13. The respondent has not advised the applicants that such a point is to be taken and argument was addressed on the facts as they emerged from the papers as such.

14. Mr Kemp SC, who appeared for the applicants, submitted that the respondent could have set down the matter earlier if it was concerned with the delay. That is true. The least it could have done was to advise the applicants timeously that the point was to be taken at the hearing to enable the applicants to file affidavits to deal with the facts that had occasioned the delay. In the absence of affidavits from the relevant witnesses it is impossible to ascertain, let alone determine the causes of the delay.

15. It is clear from the judgment of Hugo J that the question of prejudice is of great importance. This ought also to have been spelt out in the affidavits to allow the court to properly consider the question of delay. In the absence of the full facts I am not prepared to decide that the delay is such that the applicants should be non-suited on that ground alone.

The grounds of review

16. The first applicant is in the business of importing sweets and confectionary from Brazil. After complaints from confectionary manufacturers relating to the prices at which the first applicant was selling imported sweets on 6 November 2003, as a result of information received, the Commissioner ordered a search and seizure operation to be conducted on the first applicant's premises.

'. During the raid certain documents were seized and removed from the premises. Annexed to the papers are the receipts of the records taken from the first applicant's premises and they comprise a four page list of the documents in question. Included in the said documents were emails sent by a certain Ana Rinkevicius, from a Brazilian company known as Brasexport to second applicant.

18. The confectionary in question was bought from a company known as Boavistense and Brasexport was the company through which the payments by applicants were channeled to the first mentioned. The actual cost of the confectionary, which was higher in the unlawful transactions, was reflected in the documents to Boavistense and Brasexport and the lower sum declared by the applicants, appeared in the documents presented to the Customs and Excise. What the schedules accomplish is to summarise in tabular form the various amounts obtained from the emails, the bank statements and bills of entry.

19. Subsequently the first applicant was called upon by letter dated 14 November 2003 to furnish the Commissioner with certain additional papers in order to allow him to take a decision and exercise his powers.

20. Apart from a few bank statements no documents were forthcoming from the first applicant. By letter dated 3 December 2003 the first applicant was again called on to provide the Commissioner with further documents which were also not furnished.

21. By letter dated 21 May 2004 the first applicant was advised that the *prima facie* findings of the investigation were that there had been an under declaration in respect of the goods imported. Various sections of the Act were referred to including sections 38(1), 39, 40(1), 47(1) and 47A(1) which constitute an offence in terms of section 84(1). The under declaration had been brought about by the use of false invoices. Section 84(1) provides for fines including treble the value of the goods in question. The first applicant was given the opportunity to furnish the Commissioner with evidence that would rebut the *prima facie* finding and prove that the first applicant had fully complied with the provisions of the Act.

22. The under declaration of duty and VAT was in the sum of R 2 694 741.45 and a schedule was annexed illustrating how the sum was arrived at.

23. In addition in the self-same letter the first applicant's attention was drawn to the provisions of section 102(4) which read as follows:

> 'If in any prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner or any officer is a party, the question arises whether the proper duty has been paid or whether any goods or plant have been lawfully used, imported, exported, manufactured, removed or otherwise dealt with or in, or whether any books, accounts, documents, forms or invoices required by rule to be completed and kept, exist or have been duly completed and kept or have been furnished to any officer, it shall be presumed that such duty has not been paid or that such goods or plant have not been lawfully used, imported,

> exported, manufactured, removed or otherwise dealt with or in, or that such books, accounts, documents, forms or invoices do not exist or have not been duly completed and kept or have not been so furnished, as the case may be, unless the contrary is proved.'

24. The last-mentioned sub-section is a presumption that is common in many pieces of legislation and places the onus on the other party to put evidence before the court to rebut such presumption. In the absence of any rebuttal the prima facie case hardens into proof beyond reasonable doubt in a criminal case or secures a judgment in favour of the other party in civil proceedings.

25. Stripped of the unnecessary verbiage the sub-section means that in any prosecution or in any dispute (and civil proceedings are clearly such a dispute) in which the Commissioner is a party, the question arises whether the proper duty has been paid or whether any invoices required by rule to be completed and kept, have been duly completed, it shall be presumed that such duty has not been paid or that such invoices have not been duly completed, unless the contrary is proved.

26. The same letter drew the attention of the first applicant to the forfeiture provisions of section 87 of the Act. 87(1) of the Act deals with forfeiture of goods irregularly dealt with.

'(1) Any goods imported, exported, manufactured, warehoused, removed or otherwise dealt with contrary to the provisions of this Act or in respect of which any offence under this Act has been committed (including the containers of any such goods) or any plant used contrary to the provisions of this Act in the manufacture of any goods shall be liable to forfeiture wheresoever and in possession of whomsoever found: Provided that forfeiture shall not affect liability to any other penalty or punishment which has been incurred under this Act or any other law, or liability for any unpaid duty or charge in respect of such goods.'

27. This sub-section shorn of unnecessary words is to the effect that any goods imported in respect of which any offence under the Act has been committed *shall* be liable to forfeiture. The proviso is to the effect other penalties are in addition to this forfeiture.

28. Where the goods have been sold then the remedy of the Commissioner is provided in section 88 which reads as follows:

'88. Seizure. (1) (a) An officer, magistrate or member of the police force may detain any ship, vehicle, plant, material or goods at any place for the purpose of establishing whether that ship, vehicle, plant, material or goods are liable to forfeiture under this Act.

(b) Such ship, vehicle, plant, material or goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer, magistrate or member of the police force, at the cost, risk and expense of the owner, importer, exporter, manufacturer or the person in whose possession or on whose premises they are found, as the case may be.

(bA) No person shall remove any ship, vehicle, plant, material or goods from any place where it was so detained

or from a place of security determined by an officer, magistrate or member of the police force.

(c) If such ship, vehicle, plant, material or goods are liable to forfeiture under this Act the Commissioner may seize that ship, vehicle, plant, material or goods.

(d) The Commissioner may seize any other ship, vehicle, plant, material or goods liable to forfeiture under this Act.

(2) (a) (i) If any goods liable to forfeiture under this Act cannot readily be found, the Commissioner may, notwithstanding anything to the contrary in this Act contained, demand from any person who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to the provisions of this Act or committed any offence under this Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods plus any unpaid duty thereon, as the case may be.

(ii) For the purposes of subparagraph (i) the value for duty purposes shall be calculated in terms of the provisions of this Act relating to such value whether or not the goods in question are subject to ad valorem duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.

(b) If the amount demanded is not paid within a period of fourteen days after the demand for payment was made it may be recovered in terms of the provisions of this Act as if it were a forfeiture incurred under this Act.

(c) The provisions of this Act shall, in so far as they can be applied, apply mutatis mutandis in respect of any amount paid to the Commissioner or recovered in terms of this subsection, as if such amount were the goods in question and as if such amount had been seized under subsection (1).'

29. As is apparent sub-section 88 (2) (a) (i) provides a discretion in the Commissioner where any goods liable to forfeiture cannot readily be

found, to demand from any person who imported such goods payment of an amount equal to the value for duty purposes plus any unpaid duty thereon.

30. A consideration of these provisions make it easy to understand why the said letter included a demand for the value of the goods in terms of section 88(2)(a)(i) in the sum of R 12 459 055.00. More than 40 pages of annexures provide the calculations that make up the said sums.

31. In terms of a letter dated 11 June 2004 the first applicant called upon the Commissioner to furnish it with full reasons for the 'schedules and all decisions relating thereto.' The letter referred to the Promotion of Administrative Justice Act, 3 of 2000, and mentioned section 5(1) thereof. With regard to the alleged under declaration the Commissioner was asked what statements were made by the applicants, why they were false and the documents that were relevant thereto.

32. As far as any penalty was concerned the reasons were sought for the penalty, the factors underlying such penalty and whether they were treated equally. I assume this reference to equality was intended to enquire whether the applicants had been treated the same as the other malefactors with regard to customs frauds. Copies were also sought of

minutes of any deliberations concerning the raising of the forfeiture and penalties.

33. By letter dated 2 July 2004 the first applicant's attention was drawn to the fact that no decision had been taken in terms of the letter and that the purpose of the previous letter was merely to afford the first applicant opportunity to prove compliance with the Act before a final decision was taken. In addition all the documents in the Commissioner's possession from which the conclusion of falsity was drawn were furnished to the first applicant.

34. The first applicant was afforded a further 7 days within which to file its evidence and submissions. First applicant was again warned that if it failed to comply with the aforesaid a final decision would be taken without any further notice.

35. The first applicant ignored the Commissioners request and in its reply complained that the Commissioner had not complied with the provisions of PAJA referred to.

36. On 8 July 2004 the first applicant was again referred to the Commissioner's letter of 2 July and informed that a response was due on or before 12 July. On 16 July a letter was sent demanding payment

of the outstanding duties and VAT and a forfeiture in terms of the provisions of section 88(2)(a) was also demanded. The sums included this time for unpaid duties and VAT were R2 684 686.07 and the sum in lieu of forfeiture was R1 342 343 which was exactly 50% of the amount of the duties. Although the applicants set out at some length the process of securing some explanation for the change in amount the above is the closest that comes to any sort of an explanation.

37. The reply from first applicant on 26 July 2004 reiterated the complaint about non-compliance with PAJA and advised that the High Court would be approached with a review.

38. On 29 July 2004 in order to secure the debt owing to the respondent a lien in terms of section 114 of the Act was placed over certain stock at the first applicant's premises. Mr Kemp conceded that the said liens could remain in place even if the applicants were successful in their review.

39. What then are the powers of court to review administrative acts? The tests to be applied have been laid down in the Constitution of the Republic of South Africa Act, 108 of 1996, domestic legislation (the Promotion of Administrative Justice Act 3 of 2000) ('PAJA) and a number of cases. The leading cases include *Pharmaceutical*

Manufacturers' Association of SA & others: in re Ex Parte Application of the President of the RSA & others 2000 (3) BCLR 241 (CC), *Del Porto School Governing Body v Premier Western Cape* 2002(3) SA 265 (CC) (Chaskalson CJ writing for the majority) and *Trinity Broadcasting (Ciskei) v ICA of South Africa* 2004 (3) SA 346 (SCA) (Howie P). The salient principles are the following:

a. Section 33(1) of the Constitution affords everyone the right to administrative action that is lawful, reasonable and procedurally fair. Section 33(3) demands the enactment of national legislation to give effect, inter alia, to that right.

b. Such legislation exists in the shape of PAJA. Section 6(2) confers the power to review administrative action judicially if the action itself is not rationally connected to the purpose for which it was taken; the purpose of the empowering provision; the information before the administrator; or the reasons given for it by the administrator.

c. Administrative action may also be reviewed where the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.

d. The role of the Courts has always been to ensure that the administrative process is conducted fairly and that decisions are taken in accordance with the law and consistently with the requirements of the controlling legislation. If these requirements are

met, and if the decision is one that a reasonable authority could make, Courts would not interfere with the decision.

e. The unfairness of a decision in itself has never been a ground for review. Something more is required. The unfairness has to be of such a degree that an inference can be drawn from it that the person who made the decision had erred in a respect that would provide grounds for review. That inference is not easily drawn. I interpolate to suggest that in future the court might wish to reconsider this deferential tone. It seems to me that there is no reason to require a higher standard, when challenging administrative acts, including those of government, in drawing inferences – the normal standard in civil proceedings is whether the inference is the most probable or plausible in the circumstances.

40. As has been pointed out the provisions of PAJA more especially section 6(2) confer the power to review administrative action judicially if the action itself is not rationally connected to the purpose for which it was taken; the purpose of the empowering provision; the information before the administrator; or the reasons given for it by the administrator. If the legislation in question requires forfeiture of the goods, or as a surrogate, their value, I fail to see how making the surrogate to be half of the duties and VAT payable the relevant amount. In other words nowhere does the legislation authorize a monetary forfeiture to be a percentage or fraction of the duties payable.

41. That bears no relationship, nor is it rationally connected to the value of the goods, as provided in the section. Although it is more than R10million less than the alleged value, and, for this, the applicants express their gratitude, it is still totally arbitrary and not connected to any rational purpose or methodology set out in the Act for the calculation of the forfeiture or its monetary surrogate.

42. There are a number of worrying features about the figure in question. The Act is a fiscal measure designed to gather taxes for imported goods and provides for penalties for defaulters and falsifiers of invoices. The public at large has an interest in the proper calculation of the penalties. The sudden decrease in amount due as the surrogate is open to all sorts of speculation as to how it came about.

43. The forfeiture is an extremely harsh and serious measure for the applicants and fairness requires that they appreciate how it is arrived at. If the decrease can occur in the fashion it did are applicants not entitled to be informed how that came about? Also, whether any other representations could have resulted in a further reduction.

44. The applicants also complain about procedural fairness as indicated above.

45. What is required is that a person who may be adversely affected by a decision be given an opportunity to make representations with a view to procuring a favourable result. The affected person should usually be informed of the gist or the substance of the case, which he is to answer. The affected person has no general right to receive every piece of information relevant to the decision. In this regard there are a number of authorities including *Chairman, Board on Tariffs and Trade v Brenco Inc and Others* 2001(4) SA 511 (SCA) paras 13, 14, 29, 30 and 42. *Radio Pretoria v Chairman, Independent Communications Authority of South Africa* 2003(5) SA 451 (T) para 24.6. Promotion of Administrative Justice Act, Act 3 of 2000("PAJA"), section 3.

46. Section 3 of PAJA refers to procedurally fair administrative action affecting any person.

> '3(1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.
>
> (2) (a) A fair administrative procedure depends on the circumstances of each case.
>
> (b) In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1)—
>
> (i) adequate notice of the nature and purpose of the proposed administrative action;
>
> (ii) a reasonable opportunity to make representations;

(iii) a clear statement of the administrative action;

(iv) adequate notice of any right of review or internal appeal, where applicable; and

(v) adequate notice of the right to request reasons in terms of section 5.

(3) In order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to—

(a) obtain assistance and, in serious or complex cases, legal representation;

(b) present and dispute information and arguments; and

(c) appear in person.

(4) (a) If it is reasonable and justifiable in the circumstances, an administrator may depart from any of the requirements referred to in subsection (2).

(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including—

(i) the objects of the empowering provision;

(ii) the nature and purpose of, and the need to take, the administrative action;

(iii) the likely effect of the administrative action;

(iv) the urgency of taking the administrative action or the urgency of the matter; and

(v) the need to promote an efficient administration and good governance.

(5) Where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of subsection (2), the administrator may act in accordance with that different procedure.'

47. 'Administrative action' is defined as follows and

> ' means any decision taken, or any failure to take a decision, by—
>
> (a) an organ of state, when—
>
> (i) exercising a power in terms of the Constitution or a provincial constitution; or
>
> (ii) exercising a public power or performing a public function in terms of any legislation; or'

48. It is clear from the above that the respondent in order to give effect to the right to procedurally fair administrative action, had to give the applicants adequate notice of the nature and purpose of the proposed administrative action. The proposed administrative action was the exercise of the discretion to obtain forfeiture or its surrogate in money.

49. That there was a process and scheme to apply less than the total value of the goods is clear from the huge reduction effected. This must have been the result of some reasoning process with criteria or factors which were taken into account. The answering affidavits make the terse and laconic allegation that the sum was half the duties. That is a totally improper method given the fact that it was the value of the goods that was relevant.

50. The duty to give a reasonable opportunity to make representations had to be in the context of the criteria established for either applying a full

forfeiture or any gradations on the continuum below such an amount. This was not done and is fatal to the exercise of the administrative process.

51. In the case of *Nisec (Pty) Ltd v Western Cape Provincial Tender Board and Others* 1998 3 SA 228 (C) at 234-5 Davis A.J held that 'In summary, it appears that a right to a hearing does include the provision of such information which would render the hearing meaningful in that the aggrieved party is given an opportunity to know all the ramifications of the case against him and thereby is provided with the opportunity to meet such a case.'

52. The ramifications of the case against the applicants would surely include the basis upon which the respondent determines the amount of the surrogate for forfeiture.

53. As Colman J A said in *Heatherdale Farms (Pty) Ltd and Others v Deputy Minister of Agriculture and Another* 1980 (3) SA 476 (T) at 486D--F:

> 'It is clear on the authorities that a person who is entitled to the benefit of the audi alteram partem rule need not be afforded all the facilities which are allowed to a litigant in a judicial trial. He need not be given an oral hearing, or allowed representation by an attorney or counsel; he need not be given an opportunity to cross-examine; and he is not entitled to discovery of documents. But on the other hand (and for this no authority is needed) a mere

> pretence at giving the person concerned a hearing would clearly not be compliance with the rule. . . . What would follow . . . is, firstly, that the person concerned must be given a reasonable time in which to assemble the relevant information and to prepare and put forward his representation; secondly he must be put in possession of such information as will render his right to make representations a real, and not an illusory one.'

54. Representation would only be real and not illusory if the applicants knew what criteria were applied.

55. I have also taken into consideration the dictum in *Chairman, Board on Tariffs and Trade, and Others v Brenco Inc and Others* 2001 (4) SA 511 (SCA) para [14] at 521 where Zulman JA said:

> 'There is no single set of principles for giving effect to the rules of natural justice which will apply to all investigations, enquiries and exercises of power, regardless of their nature. On the contrary, courts have recognised and restated the need for flexibility in the application of the principles of fairness in a range of different contexts. As Sachs LJ pointed out in Re Pergamon Press:
>
> "In the application of the concept of fair play, there must be real flexibility, so that very different situations may be met without producing procedures unsuitable to the object in hand. . . .
>
> It is only too easy to frame a precise set of rules which may appear impeccable on paper and which may yet unduly hamper, lengthen and, indeed, perhaps even frustrate . . . the activities of those engaged in investigating or otherwise dealing with matters that fall within their proper sphere. In each case careful regard must be had to the scope of the proceeding, the source of its jurisdiction (statutory in the present case), the way in which it normally falls to be conducted and its objective."'

56. The source of the respondent's jurisdiction was the Act and its requirements for the exercise of a discretion as to forfeiture and its surrogate. That was what the applicants needed to know about. Otherwise their representations were meaningless.

57. I am of the view that without provision of the criteria for exercising their discretion the applicants were not afforded a fair procedure.

58. Mr Kemp tendered the continuation of the lien on certain property of the first applicant in terms of section 114(1)(iv)(aa).

59. As the applicants have been substantially successful they are entitled to their costs.

60. In the premises I make the following order:

a. The decision of respondent, the South African Revenue Services, more especially its Customs and Excise Department headed by the Commissioner, conveyed to the applicants in a letter dated 16 July 2004, to hold first applicant liable for the payment of the sum R 1 342 343.00 being forfeiture in terms of section 88(2)(a) of the Customs and Excise Act, 91 of 1964 is hereby set aside,

b. The liens imposed on property of the first applicant in terms of section 114(1)(iv)(aa) of the Act shall remain in place and

continue to operate, pending the final resolution of any criminal and civil proceedings between the parties

c. The respondent is ordered to pay the applicants' costs.