

Agriculture, Aquaculture & Fishing

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SOUTH AFRICA

Ministerial discretion in the allocation
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Ministerial discretion in the allocation of fishing rights

On 18 December 2023 the former Minister of Forestry, Fisheries and the Environment (Minister), Barbara Creecy, upheld the decision to refuse Jaffas Bay Fishing CC (Jaffas Bay) commercial sardine fishing rights. In review proceedings, the Western Cape High Court overturned Creecy's decision on the basis that it was irrational and lacked transparency. The court, however, concluded that the decision to allocate the fishing rights fell within the ambit of the Executive and remitted it to the Minister (now Dion George) for reconsideration.

Background

Jaffas Bay is a long-standing participant in South Africa's commercial fishing industry, previously holding rights in respect of anchovy and sardine (pilchard) fishing, among others. Jaffas Bay's pilchard/anchovy rights expired on 31 December 2020. After interim exemptions, new rights were allocated under the 2021/22 Fishing Rights Allocation Process. In the sardine fishery category, most Category A applicants (historic rights holders) were successful. Jaffas Bay, a Category A applicant, was, however, refused sardine fishing rights, which decision was upheld on appeal by the Minister.

In *Jaffas Bay Fishing CC v The Minister of Forestry, Fisheries and the Environment and Two Others* (7828/24) [2025] ZAWCHC (16 July 2025), Jaffas Bay sought an order effectively (i) setting aside the Minister's appeal decision as arbitrary, irrational and unlawful; and (ii) allocating it commercial sardine fishing rights in terms of the Marine Living Resources Act 18 of 1998 (MLRA).

Main application

Jaffas Bay contended that it successfully acquired anchovy fishing rights using the same information that was contained in its current application for sardine fishing rights. Given that the delegated authority, and subsequently the Minister, used the same scoring and weighing criteria for both the anchovy and sardine fishing sectors, Jaffas Bay's sardine fishing application ought to have been scored the same as its anchovy application.

Jaffas Bay also contended that the Minister identified errors in paragraphs 3.13 and 3.14 of her appeal decision and, in her answering papers, changed scores from 9/24 to 11/24, leading to an increase in the final score. However, the Minister never actually provided the actual methodology used to determine the scoring. Jaffas Bay took issue with this failure to clarify.

Jaffas Bay argued that the Minister's decision-making process was contradictory, unreasonable, and comprised of irrational scoring and evaluation methods, and contravened the MLRA.

The Minister denied that she failed to explain or provide any formula data or any information regarding the meanings or references of the scores and that spreadsheets have been published to help applicants understand the scoring methodology.



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Decision

The High Court found that the Minister did not provide clarity in addressing the error, the methodology or the formulas regarding the scoring and alteration of Jaffas Bay's scores. The court stated that the Minister should have been transparent, emphasising the need to provide cogent reasons for decisions, especially those that carry significant consequences. The court relied on *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* [2004] ZACC 15, where it was clearly stated that the Promotion of Administrative Justice Act 3 of 2000 dictates reasonable administrative action by establishing reasonableness as a ground for judicial review of administrative action. The court emphasised that administrative decision-makers are required to act reasonably or within the limit of reasonableness.

The court stated that it could not validate a process where the record does not clarify how the decision was reached. It added that it is "*not open to the respondents at this stage to introduce some formulas which were not narrated either by the delegated authority or the Minister in her impugned decision*", and set aside the Minister's appeal for lack of transparency and rationality.

However, the High Court found that it could not award Jaffas Bay the fishing rights it requested (thereby replacing the Minister's (erroneous) decision) as doing so would not only constitute an overreach of the court's powers but would also require a level of expertise that the court did not have. Furthermore, notwithstanding the irrationality of the Minister's decision, it did not mean that Jaffas Bay was automatically entitled to those rights. For these reasons, the allocation of the relevant fishing rights was referred back to the (new) Minister for reconsideration.

Conclusion

This case provides that administrative law principles are not abstract ideals, but practical safeguards, especially in sectors where livelihoods and economic sustainability hinge on regulatory decisions. It is a precedent-setting affirmation that decisions must be coherent, justified, and procedurally sound. It also affirms the importance and necessity to maintain, despite obvious temptations, a proper separation of powers.

Belinda Scriba, Luke Kleinsmidt and Caitlin Freddy



OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa, Kenya and Namibia, please contact:



André de Lange

Sector Head:
Agriculture, Aquaculture & Fishing
Director: Corporate & Commercial
T +27 (0)21 405 6165
E andre.delange@cdhlegal.com



Sammy Ndolo

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com



Patrick Kauta

Managing Partner | Namibia
T +264 833 730 100
M +264 811 447 777
E patrick.kauta@cdhlegal.com



Tessa Brewis

Director:
Corporate & Commercial
T +27 (0)21 481 6324
E tessa.brewis@cdhlegal.com



Petr Erasmus

Director:
Tax & Exchange Control
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Simone Franks

Director:
Real Estate Law
T +27 (0)21 481 6464
E simone.franks@cdhlegal.com



Allan Hannie

Director:
Corporate & Commercial
T +27 (0)21 405 6010
E allan.hannie@cdhlegal.com



Andries Le Grange

Director:
Competition Law
T +27 (0)11 562 1092
E andries.legrange@cdhlegal.com



Sentebale Makara

Director:
Dispute Resolution
T +27 (0)11 562 1181
E sentebale.makara@cdhlegal.com



Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com



Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com



Lucinde Rhoodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com



James Ross

Director:
Corporate & Commercial
T +27 (0)21 481 6424
E james.ross@cdhlegal.com



Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com



Tayyibah Suliman

Sector Head:
Technology & Communications
Director: Corporate & Commercial
T +27 (0)11 562 1667
E tayyibah.suliman@cdhlegal.com



Alistair Young

Director:
Corporate & Commercial
T +27 (0)11 562 1258
E alistair.young@cdhlegal.com



Alecia Pienaar

Counsel:
Environmental Law
M +27 (0)82 863 6279
E alecia.pienaar@cdhlegal.com



Liëtte van Schalkwyk

Senior Associate:
Dispute Resolution
T +27 (0)11 562 1686
E liette.vanschalkwyk@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

ONGWEDIVA

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.
T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

WINDHOEK

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia.
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

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