

**IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)**

CASE NO. 1532/05

In the matter between:-

ELIZABETH CORNELIA FLETCHER NO	First Applicant
GEORGE CLAYTON FLETCHER NO	Second Applicant
ELIZABETH CORNELIA FLETCHER (Jnr) NO	Third Applicant

and

**THE MEC, DEPARTMENT OF AGRICULTURE
CONSERVATION, ENVIRONMENT AND TOURISM**
Respondent

APPLICATION

MMABATHO

GURA J.

DATE OF JUDGMENT	:	26 JANUARY 2006
DATE OF REASONS	:	17 FEBRUARY 2006
COUNSEL FOR APPLICANT	:	MR B. SWART
COUNSEL FOR RESPONDENT	:	MS M.N. AUGUSTINE

REASONS FOR JUDGMENT

1. All the Applicants are the trustees of D H Fletcher Trust which trades under the name Sandhurst Safaris at the farm Sandhurst in the district of Vryburg.
2. The Applicants brought an application in the following terms:-
 - “1. Calling upon the Respondent to show cause why its refusal to issue permits for the imports of two elephants for Sabi Sands Nature Reserve to Sandhursts Safari should not be reviewed and set aside;
 2. Calling upon the Respondent to dispatch within 15 (fifteen) days after receipt of this Notice of Motion to the Registrar of this Court, the record of proceedings in respect of the decision not to issue the said import permits, together with the reasons it is by law required or desire to give or make and to notify the Applicants that it has done so;
 3. Directing the Respondent to pay the costs hereof;”
3. The process in this matter was issued by the Registrar of this Court on 22 November 2005 and set down for 15 December 2005. It was served on the respondent on 22 November 2005. On the 12 December 2005 respondent filed its notice to oppose.
4. The application was argued on 26 January 2006. The court then made the following order:-
 - “- Respondent’s refusal to issue the permit is set aside.
 - Respondent is ordered to issue a permit for the import by Sandhurst of two elephants from Sabi Sands Natural Reserve.
 - Respondent is ordered to pay costs of the application
 - Reasons for judgment will be supplied upon written request”.

Here then are the reasons.

5. Ms Augustine, on behalf of the Respondent raised a point *in limine* in relation to the form of the application. Her view was that paragraph 1 and 2 of the notice of motion do not make sense in that they were not drafted in accordance with the requirements of Rule 53 of the Uniform Rules of Court. With specific reference to paragraph 2 of the prayers, she stated that there was no court order compelling Respondent to produce the record of the proceedings.
6. In my view there is nothing wrong with paragraph 1 of the Notice of Motion. It has been drafted in line with Rule 53. Paragraph 2, *stricto sensu* is not a prayer for a court order. It is merely a notice addressed to the Respondent. I agree that upon a perusal of the whole application, ie. Paragraphs 1 and 2 one may gather the impression that in paragraph 2, a court order is also being sought. In my view any reasonable lawyer cannot be confused by this. Even if paragraph 2 was not there this would not make the application defective. The point *in limine* was therefore unsuccessful.
7. On the merits of the application, Applicants have made out a good case. Their application for a permit to import elephants was refused. The reason for the refusal was a moratorium. This moratorium was contained in a certain document. Respondent refused or neglected to supply

Applicants with this document or record. For five months the Applicants kept on knocking on the door of the Respondents without success. No opposing affidavit was filed by Respondent in this matter.

SAMKELO GURA
JUDGE OF THE HIGH COURT