IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case number: 3809/2016

In the matter between:

JOHANNES JACOBUS APPELGRYN N.O. First Applicant

PATRICIA YVONNE VAN WYK N.O. Second Applicant
(in their capacities as trustees of the
TWO AA TRUST, IT NO. 599/02)

and

DOCTOR A JANKIELSOHN First Respondent

CREZCO STEEL AND HARDWARE TRADERS (PTY) LTD Second Respondent

DOCTOR WESSELS STRYDOM Third Respondent

THE FREE STATE PROVINCIAL DEPARTMENT OF ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS Fourth Respondent

SOUTH AFRICAN NATIONAL ROAD AGENCY LIMITED Fifth Respondent

ISABELLA PIETERS MARCO VERMEULEN & Sixth Respondent

ALIDA ELIZABETH VERMEULEN Seventh Respondent

GEORGE PIETER DIRK MEIRING	Eight Respondent
SUSANNAH DOROTHEA KRUGER	Ninth Respondent
SARA NEL	Tenth Respondent

CORAM:	RAMPAI, J
HEARD ON:	27 OCTOBER 2016
JUDGMENT BY:	RAMPAI, J
DELIVERED ON:	19 JANUARY 2017

[1] The matter came to court by way of motion proceedings. The applicant primarily seeks an interim interdict pending resolution of factual disputes through contrived interpleader process. Only the first respondent opposes the application. In addition to her opposition, the first respondent raises certain preliminaries and also applies to have certain parts in the founding affidavit struck out. The remaining respondents chose not to enter the fray.

[2] There are two applicants in the matter, namely: MrJJ Appelgryn N.O. and Ms P.Y van Wyk N.O. They acted in their representative capacities as trustees of an entity called Two AA Trust IT No 599/02. From now on I shall simply refer to the entity as the Trust. The Trust is the registered owner of a piece of land known as Farm Pielanshoek 944 District Bethlehem Province Free State, measuring 229, 7704 hectares.

[3] The first respondent is Dr A Jankielsohn. She is the lawful owner of a piece of land known as Farm Bruwershoop 1718 District Bethlehem Province Free State. The applicants seek direct relief against her.

[4] The second respondent is a corporate enterprise called Crezo Steel and Hardware Traders (Pty) Ltd. The enterprise is the lawful owner of a piece of land known as Farm Hulp 733 District Bethlehem Province Free State. The sole shareholder of the 2nd respondent is Ms Azetta Appelgryn, the ex-wife of the first applicant. The applicants seek no direct relief against the second respondent. The second respondent has agreed to provide interim storage or safe keeping of the animals in dispute on its property in accordance with the relief sought by the applicants.

[5] The third respondent, Dr W Strydom, is a farmer. He owns a property described as Farm Schalkie 1788 District Bethlehem, Province Free State. Besides being a landowner, he is also a veterinarian of Bethlehem Animal Hospital. No direct relief is sought against him.

[6] The fourth respondent is the Department of Economic Development, Tourism and Environmental Affairs: Free State Provincial Government. The department is the responsible authority whose duty it is to oversee all matters pertaining to any dealing with threatened or protected species. The fourth respondent has been joined in these proceedings by virtue of its public interest in the subject matter of this application. The

applicants seek a directory relief against the fourth respondent for the sake of completeness.

[7] The fifth respondent is the lawful owner of the Farm Asrivier 1437; the sixth respondent is the lawful owner of the Farm “The Glen” 791 Bethlehem RD, P:0; the seventh respondent of the Farm The Glen 791 Bethlehem RD, P:1, the eight respondent of the Farm Nonnashoek 1795 Bethlehem RD, P:0, the ninth respondent of the Farm Rosenhof 1707 Bethlehem RD, P:1, and the tenth respondent the lawful owner of the Farm Nonnashoek RD, P:0. These last six respondents were cited in this current application on account of the interest each of them may possibly have in the relief sought and also on account of the wish of the applicants to enter, with the leave of the court, the various farms owned by these various respondents for the purpose of capturing certain antelopes. To those six farmers, the first respondent’s farm must be added. The addition brings to seven the total number of farms on which the antelopes are suspected to be. In this judgment, wherever plural reference is made to the respondents, it must, be understood to mean all the respondents save for the second respondent, third respondent and fourth respondent.

[8] In the founding affidavit the trust declared its case. I summarise the material aspects thereof. The trust alleged that it owned a landed property, Pielanshoek Farm, in the district of Bethlehem. The farm is situated in the meandering Asrivier valley. In the vicinity of the farm, there is a dam, Sol Plaatjies Dam, previously known as Saulspoortdam. I guess that the sanctuary formed by the rivier mouth and the dam is a paradise for wildlife. The farms

of the seven respondents described in the preceeding paragraph are all situated in the same vicinity as Pielanshoek Farm. All of them lie to the north of N5 National Road. The farm of the second respondent and the third respondent lie to the south of the national road. The road creates a kind of a man-made barrier between the farms on either side. The seven farmers on the northern side of the road are located in the drainage area of the river before it enters the dam.

[9] From its property, Pielanshoek Farm, the trust conducts the business of game farming operations. The farm is specially fenced for the purpose. The special fence consists of 2.4 meter high field fence as well as 21 strand fence. The trust possesses a quality fence certificate issued by the 4th respondent. Of all the northern farms, the trust farm was the only one so securely fenced. The rest were not specially game-fenced.

[10] The farms owned by the respondents, are situated relatively close to the town of Bethlehem. Due to such proximity, there are no naturally occurring animals. Any such animals, if any can be found there, must have had to be introduced to those farms at one point or another. Otherwise such animals must have escaped from farms where they had been introduced.

[11] On behalf of the trust, the applicants have conducted game farming and game breeding operations since 2002. During 2008 the applicants purchased 30 antelopes at a purchase consideration of R4500 apiece. Therefore, the total purchase price was R135 000. The seller of the game was Expectra 391

(Pty) Ltd. The transaction concerned a specific species of the game known as the Red Lechwe Antelope. I shall refer to these animals simply as antelopes. Those animals or antelope species is not an endemic species to the country in general or to the Bethlehem district in particular. They do not naturally occur in the area. They are a species of antelope endemic to Zambia.

[12] By law the applicants were obliged to obtain a permit of authorisation to hold the game. They were also obliged to obtain certificate of special fencing. Such a certificate was an official confirmation that the farm on which the game was to be kept, was securely circumscribed by a suitable fence. On 23 January 2009 the required certificate of adequate fencing was officially issued in favour of the first applicant in respect of Pielanshoek Farm – see "anx fa5". With that permit and certificate in place, the antelopes were delivered to the applicants during or about Jan 2009. The delivery represented the first introduction of the antelope species into the immediate area. Over the years the animals bred and, through such breeding, multiplied. The current permit was officially issued in favour of the second applicant on 19 February 2016 – see "anx fa16".

[13] The applicants, on behalf of the trust, are entitled to hold the antelopes as the possession of the trust by virtue of the certificate of adequate fencing and the authorised species permit. Like the applicants, the second respondent and the third respondent are also entitled to possess such antelopes. They have factually acquired such exotic animals over time. By contrast, the seven respondents are not entitled to be in possession of such

antelopes. Their farms are evidently not circumscribed by suitably secured game fences. These then were the material facts according to the applicants.

[14] At the beginning of this year (2016), the applicants ascertained that some of the antelopes were missing. It was suspected that the missing antelopes might have escaped from Pielanshoek Farm by swimming across the Sol Plaatjie Dam to one of the properties in the Asriver valley, namely: Rendezvous Farm 1491, Bethlehem RD. The farm was owned by Mantonio Property (Pty) Ltd. The applicants then launched an application against the corporate owner of Portion 4 of Rendezvous Farm in order to secure the return of the antelope. On 12 May 2016 Molemela JP accordingly granted an order by consent – see "anx fa8".

[15] The applicants subsequently executed the court order on 11 July 2016. They utilized a helicopter to drive the antelopes for the purpose of capturing them. The operation led to the captured of 17 antelopes. The operation consisted of air support, ground support and veterinary support. The antelopes were then darted and removed from the Farm Rendezvous. During the course of rounding-up the antelopes, several of them were seen escaping from the Farm Rendezvous and fleeing in the direction of the nearby Asrivier Farm and Bruwershoop Farm.

[16] Following the escape, the applicants and the first respondent exchanged correspondence in connection with the antelopes. They did so through their respective attorneys, namely: Edward S Classen & Associates and Kruger & Bender Attorneys. The

material aspects of the correspondence revealed: that there were no antelopes on the Farm Asrivier; that there were at least 37 antelopes (red lechwes) on the Farm Bruwershoop; that such farm was owned by Dr A Jankielsohn; that the applicants claimed to be the owners of the antelope; that the first respondent purchased the farm in 2004; that ever since then the number of antelope on the farm increased from 3 to 37; that the antelope were not always in the first respondents possession on the farm because they had the habit of freely coming and going; that the first respondent enquired from the applicants whether the applicants' antelope had any distinct identification marks; that the first respondent had a retention right over the antelope that might be shown to belong to the applicants and that the first respondent refused to give the applicants the required consent to enter the Farm Bruwershoop for the purpose of capturing the antelopes. See "anx fa9" read with "anx fa10".

[17] The applicants explained to the first respondent why the antelopes were most likely their lawful property. They further asserted that the first respondent was not entitled to be in possession of the antelopes – see "anx fa11" dated 15 July 2016. In response to the applicants assertions, the first respondent repudiated the applicants' claim of ownership. She described it as an attempt by the applicants to lay claim to all free roaming lechwes. – see "anx fa12" dated 18 July 2016.

[18] In view of the deadlock which stemmed from the two competing claims, the applicants, addressed the third letter to first respondent and outlined the form of relief they would seek in the

contemplated court application – see “anx fa13” dated 20 July 2016. The first respondent immediately responded. She replied that the antelope were no longer on her property. She persisted with her refusal to recognise not only the applicant’s claim that they owned the antelopes but also their claim that they were entitled to possess them – see “anx fa14” dated 20 July 2016. She claimed such right.

[19] Although the first respondent expected the antelopes to return to the Farm Bruwershoop, she offered no assistance to the applicants by allowing them to round them up in order to capture and to remove them to a lawful place of safety where they could be held and protected pending the resolution of all the competing claims through a contrived interpleader process. The applicants suspected, in view of the first respondent’s stance, that the first respondent had expediently chased the antelopes off her property when she was faced with the imminent threat of litigation.

[20] The applicant stated that the second respondent had consented to act as a stakeholder in connection with the claims that might be submitted in respect of the antelopes rounded up and captured on the seven targeted farms. They stated that they required the court authorization to enter the respondents’ farms, to round the antelopes up, to capture them, to mark them and to ship them out to the second respondent’s farm. The second respondent possessed a valid certificate for adequate fencing.

[21] The antelopes that the trust purchased were not earmarked. Subsequently to their acquisition, the applicants did not brand

them with any exclusive marks of identification. Moreover, the applicants could not identify or account for the progeny of the original herd. The progeny was similarly unmarked. The applicants were one of three holders of three lawful permits in the area as regards the antelopes. The other two holders were the second respondent, and the third respondent. They contended, that since the second respondent and the third respondent did not lose any of their antelopes, the only reasonable conclusion was that those antelopes freely roaming on the other farms in the valley belonged to the applicants' trust. It was their case, therefore, that the trust as the owner, was entitled to recover the antelopes wherever they could be found. This completes my summary of the raw version of the applicants. Now I turn to first respondent's version.

[22] In her answering affidavit, the first respondent declared that she purchased the property known as the Farm Bruwershoop. She became the farm owner during 2006. She confirmed that she never farmed with the red lechwes. But she averred that when she took occupation of the farm she found red lechwes on her new farm. From time to time they came and went. She described the animals as free roaming wild antelopes. Over the years they grew in numbers. She estimated that the herd had increased in excess of 30 antelope over the years.

[23] The antelopes often freely roamed about not only on her farm but also on various farms surrounding Bruwershoop. However, their free roaming activities were more prevalent on her farm than on any other farm. She explained the reason why there was such

prevalent occurrence of the antelopes on her farm. She stated that directly adjacent to her farm, there was a marshland. Because antelopes have an intrinsic affinity for waterwells, they frequent the marshland and prefer to remain in that area for most of the time.

[24] The first respondent disputed the assertions by the first applicant that he was the first farmer who introduced the animals in the area in 2008; that all the antelopes in the area were members of the herd of antelopes owned by the applicant's trust; that the applicants were, without of proof of ownership, entitled to the relief sought; that the applicants were lawful possessors of all the free-roaming antelopes in the area; that she was not entitled to possess antelopes without the certificate of adequate fencing; that the first applicant purchased the antelopes from Expectra 391 (Pty) Ltd; that the alleged seller company was lawfully licensed to hold and to breed antelopes for commercial purposes; that any antelopes had ever escaped from the trust farm; that such animals started roaming about on the neighbouring farms; that there were any antelopes on her farm belonging to the applicant's trust; that there were no naturally occurring game of antelopes of any appreciable numbers on the farms of the various respondents owing to the close proximity of the town to such farms and that, therefore, any game, in other words antelope, currently on those farms must have been introduced to the farms or must have escaped at one point or another from a farm where they had been introduced; that the red antelopes could not be held without an official permit; that the applicants were lawful possessors of all the free-roaming antelopes in the area; that she was not entitled

to possess antelope without the certificate of adequate fencing; that one is required to have a certificate of adequate fencing when game wanders onto and from one's farm unless one allows hunting of such game and that the applicants had the right to round up, to capture, to mark and to remove all the antelopes from the farms of the respondents.

[25] The first respondent admitted the following averments made by the applicants:

that there were often antelopes on her; that she did not own such antelopes; that the trust farm, the first respondent's farm and the rest of the northern farms owned by the various respondents were situated in the same vicinity within the drainage area of the Asrivier; that the applicants had once entered her farm where they endeavoured to capture the antelopes and that she claimed she had the right to possess them.

[26] The first respondent contended that the applicant's trust was not certificated to hold more than 30 antelope; that the applicant's trust did not have a lawful certificate to hold antelope between 2012-2016; that the applicant's trust, therefore, had no right to take control of almost all the antelopes in the area and that the antelopes and their progeny observed on her farm and the neighbouring farms since 2006 could not belong to the applicants' trust. She maintained that she was a *bona fide* possessor of the free roaming red antelopes that entered her farm from time to time. Her case was and still is that she does not purport to effect any measure of control over them. She asserted that in keeping with her respect for their natural freedom, she does not fence

them in and she does not hunt them, she does not let them to be hunted, and that she does not allow any commercial exploitation of those animals. She further asserted that she had a possessory right to the antelopes as and when they are freely roaming on her farm. She allowed them to enjoy their natural freedom as wild animals. During such periodic migrations, she lawfully held the red antelopes. Consequently the applicants had no right to gather and to remove them.

[27] The antelopes that had been occurring on her farm in the Asrivier valley have to be regarded as *res nullius*. She first spotted the red antelope on her farm during 2006, two years before the applicants' trust acquired such type of antelopes. She believed that the red antelope on her farm consisted of those that had earlier escaped from the farms owned by a certain Mr M Naude and a certain Ms MD Goldblatt and their progeny. As ownerless things, they should be allowed to continue roaming freely as nature has always intended. The allegation that she chased the antelopes away from her farm was untrue. She stated that they drifted away on their own free accord in pursuit of their natural instincts.

[28] According to the first respondent, the applicants' version was very vague as regards details of the alleged escape of the red antelope from the trust property, Pielanshoek Farm. Neither the number of the escaped red antelopes nor the exact date of the alleged escape was mentioned in the founding affidavit. She denied that there were any red antelope that had escaped from

Rendevous Farm onto her property, Bruwershoop Farm on 11 July 2016.

[29] She acknowledged that there were two different herds of antelopes roaming the valley. The one wild and the other not. The red antelopes as depicted in “anx d1 to anx d5” were part of the wild ownerless animals. Some were last photographed on 17 March 2014 before the alleged escape of the unfree red antelopes from the applicants’ trust farm early in 2016. She declined to surrender possession of the red antelopes to the applicants because, among others, the applicants had failed to provide adequate proof of their alleged ownership.

[30] The first respondent asserted that the red antelopes had been safe and free on her farm since 2006. Since then they have been grazing, roaming, mating, reproducing progeny and growing in numbers. The relief proposed by the applicants would disturb the natural balance and adversely affect the ecological status of the free roaming red antelopes. The applicants should have sought a remedy by way of action proceedings and not motion proceedings in view of the factual disputes.

[31] The first respondent contended that the applicants had failed to establish that the trust has a *prima facie* right to the relief sought; that the trust would suffer irreparable harm to its right unless the interim interdict is granted; that the trust has no other satisfactory relief apart from the proposed interpleader process and that the balance of convenience favours the grant of the interim interdict. Accordingly she prayed that the application be dismissed.

That completes the summary of the raw version of the first respondent.

[32] In the replying affidavit, the applicants attacked the preliminary objections raised by the first respondent, as well as the substantive merits of her version. Her application to strike out was filed subsequent to the filing of the replying affidavit. It too was challenged during the course of argument. Let me deal with the substantive merits first.

[33] Firstly the applicants denied several allegations made by the first respondent in the answering affidavit. The deponent of the trust, in other words the first applicant, dismissed the suggestion that "anx fa4" was a dubious invoice. He replied that the first respondent was being disingenuous in her attempt to sow confusion concerning the difference between the corporate name of Expectra 391 (Pty) Ltd and Tau Steel. It was obvious *ex facie* "anx b", which formed an integral part of the first respondent's papers, that Expectra (Pty) Ltd underwent a name change on 18 June 2008. It followed, therefore, that Expectra 391 (Pty) Ltd and Tau Steel were one and the same corporate enterprise. Therefore, it could not be correct to say Expectra 391 (Pty) Ltd was a fictitious entity.

[34] Secondly the first applicant dismissed as disingenuous the first respondent's complaint that the invoice, "anx fa4", was invalid because no official registration number for value-added tax was printed thereon. The applicants contended that if the receiver of revenue wished to raise an issue in that connection, he would

undoubtedly have done so and that it was not for the first respondent to do so in these proceedings. The complaints insinuated that the trust did not really acquire the red antelopes as it claimed to have. The applicants maintained that those disingenuous complaints would not disturb their rights of ownership and other claims in and to the red antelopes which form the subject matter of this dispute.

[35] Thirdly the applicants denied the allegation that their red antelopes escaped from the trust property, Pielandshoek during the course of February 2016. They replied that it was not their case that they discovered in February 2016 that some of their red antelopes might have escaped. They replied that their case was that they were not in a position to say precise when the animals had escaped. However, they believed that they had been escaping over the years from as far back as the year 2009. They were of the opinion that the first respondent misread the founding affidavit.

[36] Fourthly the applicants denied the allegation by the first respondent that none of the red antelopes that were roaming on her farm and the various farms of the other respondents could be owned by the applicants' trust. They persisted that the chances were that, at least some of those red antelopes belonged to their trust.

[37] Fifthly the applicants denied the first respondent's allegation that the rumour they heard about the possible escape of their red antelopes was untrue. They persisted that it was so rumoured.

They explained that the rumour had it that some of their red antelopes might have escaped from their trust property by swimming across the dam to the neighbouring farms. They replied that they verified the rumour. They then removed certain red antelope from their farm. Seemingly the removal was done in bid to do some damage control. They repeated that during the court sanctioned search operation launched on Rendezvous Farm, some red antelope escaped to Bruwershoop Farm. They suspected that some of those escapes might well belong to their trust. They stated that, at all times material to the case, they had proper permits to hold the antelopes, contrary to the first respondent's allegation.

[38] Sixthly, the applicants denied the first respondent's version that all the red antelopes that frequent her farm were the progeny of the two ewes she first spotted on her farm in 2006; that those ewes were *res nullius*; that she became a *bona fide* possessor thereof as and when the herd emerged and roamed on her farm; that she required no permit or certificate of adequate fencing to hold such an alien species of antelopes; that the herd was no longer on her farm; that the applicants were not entitled to round up, capture, and remove such free roaming animals without any proof that the trust was the lawful owner thereof; that the applicants had wrongly followed motion instead of action procedure in bringing the matter to court; that interpleader procedure was not designed for simulated factual circumstances; that the proposed form of relief was untenable and that the applicants were effectively seeking the relief that was final in nature.

[39] The applicants made certain admissions. They admitted that their red antelopes were not branded or labelled with any distinct marks of identification but averred that there were other reliable ways of proving animal ownership besides physically marking them; that the trust was not permitted to hold so many red lechwes but averred that the excessive number was occasioned by purchases, sales and natural breeding; that the first respondent was not prepared to let them roundup capture and remove the red antelopes on condition they produced proof that the trust was the lawful owner; that the first respondent's concession that there may well be two herds of red antelopes roaming in the river valley of which one probably belonged to the applicants' trust was correct.

Here ends the summary of the raw reply by the applicants.

[40] The issue in the case was simply whether the applicants had established the requisites for the grant of an interim interdict.

[41] On the one hand Mr Vetten, counsel for the applicants, submitted that a proper case had been made out for the relief sought. Therefore, he called on me to reject the first respondent's grounds of resistance. He urged me to decide the issue in favour of the applicants.

[42] On the other hand, Mr Rautenbach, counsel for first respondent, differed. He submitted that the applicants had failed to make out a proper case for the grant of the relief sought. Counsel argued that the applicants failed to comply with the legal requirements for

an interim interdict. Therefore, he urged me to decide the issue in favour of the first respondent.

[43] The law in relation to wild animals needs to be restated. In the first place, I give an exposition of wild animal law from a common law perspective. The following passages randomly extracted from an article in LAWSA Volume 1 par 399 are instructive.

43.1 "Wild animals enjoying a state of natural freedom are considered as *res nullius*, that is things belonging to no-one. Because they are *res nullius*, the capture of these animals does not amount to theft. On the contrary, if the requirements are fulfilled, capture might amount to *occupatio*, a method by which ownership is acquired."

43.2 "Once a wild animal is captured, it remains the property of the captor as long as the latter retains sufficient control over it. The question as to what degree of control is sufficient is a question of fact."

43.3 "As soon as control over a wild animal is lost, it reverts to its state of natural freedom, ceases to be owned and becomes res nullius again and thus capable of being acquired by occupatio by a new owner. It is regarded as having regained its natural freedom if it is no longer in sight, or still in sight but difficult to pursue."

43.4 "It makes no difference where a wild animal is captured. A hunter becomes the owner of the animal irrespective of whether the hunter captures it on his or her own land, on another person's land or on land belonging to the state. Even if a person expressly forbids a hunter to hunt on his or

> her land, the latter still becomes the owner of the wild animals captured on the other's land. The landowner may only institute an action for damages on the ground of trespass on his or her land."

[44] From the above comments it is apparent that if a person was in possession of a wild animal, he became an owner thereof but once such an animal escaped, it became *res nullius* once again. An animal that wanders about, whose origin could not be readily ascertained, was considered to be ownerless. Once captured, irrespective of where it was captured, such wild animal became the property of the capturer provided the requirements of occupation were met. The principle applies even if the capture occurred without the permission of the landowner upon whose land the wild animal had been captured.

[45] The requirements for occupation are relatively simple. First, the capturer must exercise physical control over the captured wild animal. Second, the capturer must capture the wild animal *cum animo occupandi* - in other words he must have the intention to keep the animal for himself. So much about the legal position of wild animals at common law.

[46] In the second place, an exposition of the law in relation to wild animals from the statutory perspective is also necessary. Nowadays the animal law in relation to wild animals that can be classified as "game" is contained in the statute known as the Game Theft Act 105 of 1991. That statute is of cardinal importance to the dispute at hand.

Sec 1 defines the word ‘game’ as follows:

> “1 Definition In this Act, unless the context otherwise indicates- 'game' means all game kept or held for commercial or hunting purposes, and includes the meat, skin, carcass or any portion of the carcass of that game.”

[47] Sec 2 Act No 105 of 1991 provides as follows as regards ‘ownership of game’:

> “2 Ownership of game (1) Notwithstanding the provisions of any other law or the common law- (a) a person who keeps or holds game or on behalf of whom game is kept or held on land that is sufficiently enclosed as contemplated in subsection (2), or who keeps game in a pen or kraal or in or on a vehicle, shall not lose ownership of that game if the game escapes from such enclosed land or from such pen, kraal or vehicle; (b) the ownership of game shall not vest in any person who, contrary to the provisions of any law or on the land of another person without the consent of the owner or lawful occupier of that land, hunts, catches or takes possession of game, but it remains vested in the owner referred to in paragraph (a) or vests in the owner of the land on which it has been so hunted, caught or taken into possession, as the case may be. (2) (a) For the purposes of subsection (1) (a) land shall be deemed to be sufficiently enclosed if, according to a certificate of the Premier of the province in which the land is situated, or his assignee, it is sufficiently enclosed to confine to that land the species of game mentioned in the certificate. [Para. (a) amended by s. 4 of Act 18 of 1996.] (b) A certificate referred to in paragraph (a) shall be valid for a period of three years.”

[48] The current legal position is, therefore, that if a wild animal was once held as game, on land that is sufficiently enclosed, escapes, it does not, as would ordinarily be the position under common, become a *res nullius*. Instead, the rights of its owner are protected in terms of section 2 Game Theft Act 105/1991. The game owner's real rights of ownership are not automatically eroded and nullified by the loss of actual possession of his lawful game **Magudu Game Company (Pty) Ltd v Mathenjwa N.O. & Others** [2008] 2 ALL SA 338 (N) (23.01.2008) par 39-5.

[49] There is an important deeming provision in sec 2(2) Act No 105/1991. Land is deemed to be sufficiently enclosed if officially certificated. By mere production of such a certificate, the land concerned is presumed to be sufficiently enclosed to prevent animals held for hunting or commercial purposes from escaping. The presumption is, of course, a rebuttable one at the instance of he who disputes that the land so certificated, was sufficiently enclosed. In those circumstances, the holding of a fencing permit by the landowner becomes an all important factor. The owner of a game that has escaped from the land certified as secured, holds a 'passport' that authorizes him to search, find and recapture the game that lawfully belongs to him. **Eastern Cape Parks & Tourism Agency v Medbury (Pty) Ltd** 2016 (4) SA 457 (ECG) 461 – 4.

[50] A further material consideration is the categorisation of animals into ordinary species, alien species and invasive species under the provisions of the National Environmental Management:

Biodiversity Act 10 of 2004, 'Nemaba'. The statute regulates the position of each of these categories of animals.

[51] Sec 1 Act No 10/2004 defines alien species as follows:

> "(a) a species that is not an indigenous species; or
> (b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;"

[52] The activities of persons are restricted as regards their dealings with alien species. Sec 65 Biodiversity Act 10/2004 delineates that a person may not carry out a restricted activity involving a specimen of an alien species without a permit and that such a permit may be issued only after a prescribed assessment of risks and potential impacts and biodiversities have been carried out.

[53] In turn the words 'restricted activities' are defined in the same statute:

> *"restricted activity'-*
> *(a) In relation to a specimen of a listed threatened or protected species, means-*
> *…; and*
> *(b) in relation to a specimen of an alien species or listed invasive species, means-*
> *(i) importing into the Republic, including introducing from the sea, any specimen of an alien or listed invasive species;*

(ii) having in possession or exercising physical control over any specimen of an alien or listed invasive species;

(iii) growing breeding or in any other way propagating any specimen of an alien or listed invasive species, or causing it to multiply;

(iv) conveying, moving or otherwise translocating any specimen of an alien or listed invasive species;

(v) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of an alien or listed invasive species; or

(vi) any other prescribed activity which involves a specimen of an alien or listed invasive species;"

[54] It follows, from the aforegoing definition of the words 'restricted activity', that, as regards wild animals, a person cannot freely enjoy those classified as alien species. The mere enjoyment thereof, let alone activities such as possession or exercising physical control, is prohibited unless the claimant of enjoyment - holds a valid permit issued in terms of sec 65(1). Any contrary enjoyment or any dealing with animals so classified constitutes a restricted activity which the statute prohibits.

[55] Now I proceed to apply the law to the facts. I consider the version of the first respondent first. The high watermark of her version is encapsulated in four paragraphs of her previous answering affidavit.

55.1 The first of those relevant passagesis is par 17.3 "anx ra2" where she stated:

“”17.3 Since 2007, these Red Lechwes have bred and grazed on my property on an intermittent basis. As an ecologist, I have followed these Red Lechwes and observed their population increase with keen interest and have seen the population increased to approximately 40 animals in 2016. I humbly submit that the Red Lechwes antelope that the applicant now wishes to capture, could never have belonged to him.”

55.2 The second is par 17.4 “anx ra2” where she stated:

“I have resided on Bruwershoop with my family since I purchased the property. We do not allow any hunting- or capturing on my property of approximately 150 hectares and have also developed the property into a haven for neglected and abandoned animals.”

55.3 The third is par 25.4 “anx ra2” where she stated:

“I do not claim possession of the Lechwes due to being in possession of a fencing permit, but certainly the Fourth Respondent do not require farm owners to hold such permits when their farms are grazed upon from time to time by wild game and antelope that roam freely, such as the herd of Lechwes found on my farm from time to time.”

55.4 The fourth is par 25.5 where she stated:

“Again I am advised that section 2(1)(b) of the Game Theft Act prohibits the removal of the Lechwes from my possession on my farm by somebody who cannot adequately prove ownership of such Lechwes. I do not intend to retain these Lechwes on my farm for any economic benefit, and treat these as *res nullius,* which they undoubtedly are. The occurrence of such wild roaming game on

> farms does not require a fencing permit from the Fourth Respondent."

[56] The foundation of the first respondent's opposition is threefold. The essence of the three cornerstones of her foundation are:

- firstly, that the animals forming the focus of this application are *res nullius*;
- secondly, that she is not legally required to have any official certificate to confirm that her land is sufficiently enclosed, to confine game or any official permit in connection with her possession in relation to those animals;
- thirdly, that she is absolutely free to enjoy the animals in their wild state regardless of any statutory provisions.

[57] I am of the view that the first respondent's involvement with the lechwe, in other words the red antelopes, transverses restricted activities. One needs to look no further than the four relevant passages selectively extracted from her previous answering affidavit, "anx ra2". It is clear and obvious that her actual dealings with those animals constitute:

57.1 possessing an alien species in contravention of the statutory definition of the words restricted activity – vide par (b)(ii);

57.2 breeding and in any other way propagating a specimen of an alien species or causing it to multiply in contravention of par (b)(iii);

57.3 receiving of an alien species in contravention of par (b)(v).

[58] Two conclusions of law flow from the contraventions highlighted above. The first is that seeing that the first respondent has being acting in violation of the provisions of the statute, the Biodiversity Act, she has no *locus standi* to oppose the relief sought. This is so because she has unclean hands in the matter.

The second, and perhaps a more important conclusion than the first, is that the first respondent has no leg to stand on in order to prevent the gathering of the wild animals on her farm or any of the other respondents, since she has filed no counter application for an interdict in relation to what she terms 'wild animals' on her farm.

[59] The first respondent's repeated contention that the applicants are not entitled to capture the wild animals that freely roam on her farm in particular and the area in general is a misstatement of the law. She obviously confuses 'wild animals' with 'game' as defined in the Game Theft Act. Such contention is a distraction, as far as the issues relevant to the determination of the application are concerned.

[60] The flagship of the first respondent's grounds of opposition was said to be the failure by the applicants to prove ownership of the red antelopes in order to sustain the relief they sought. It has to be constantly kept in mind that the interdictory relief that is sought is an interim and not a final one – pending the outcome of the proposed interpleader proceedings for the adjudicative resolution of all possible disputes in connection with the competing claims

pertaining to the red antelopes. The interim relief sought is not by itself an ultimate end but rather a connective means to the ultimate end of the contest.

[61] Any contestant would be afforded adequate opportunity in due course to prove his or her claim whether such competing claim concerns the right of ownership or the right of possession or the right of retention or any other conceivable right. Now time is not yet ripe for the real and final contest. In these initial proceedings all that is sought by the applicants is to have the red antelopes secured and detained in a safe, central and neutral sanctuary until such time as all shades of competing claims can be made, considered and resolved.

[62] As regards the first requisite of an interim interdict, the test is a *prima facie* right even if such right is open to some doubt. **Webster v Mitchell** 1948 (1) SA 1186 (W); **Goold v Minister of Justice & Another** 1955 (2) SA 682 (c) at 688E-F; **Ladychin Investment (Pty) Ltd v South African National Roads Agency Ltd & Others** 2001 (3) SA 344 (N) at 353-4. I am inclined to think that the applicants passed the test.

[63] There appears to be a dispute as regards the possible source for the very first introduction of the red antelopes in the Asrivier valley. The red antelope were already roaming the area before the trust allegedly acquired red antelope, according to the first respondent. However, their trust was not such source. The contention that the trust was the first agency responsible for the very first introduction of the antelopes in the area was historically

incorrect. The contrary version of the applicants was beefed up by way of documentary evidence – “anx fa4”, but the version of the first respondent was not. The photographic evidence on which the first respondent relied had very law probative value – “anx d1 to anx d5”. Such photographs were taken years after the applicants had acquired the red antelopes. Moreover, only a handful of the red antelopes and not the entire herd thereof was depicted. In my view there was nothing suspicious or questionable about the acquisition of the antelopes by Expectra 391 (Pty) Ltd. The complaints of the first respondent were disingenuous indeed. At any rate, those two conflicting versions are not relevant now. They will be relevant during the next stage, being the interpleader hearing.

[64] Consequently I accept that the applicants trust initially owned thirty red antelope. On the strength of the available evidence, I am provisionally persuaded that it appeared that they were the first landowners who introduced the red antelope in the area, even though their *prima facie* right, which concerns the real right of ownership to the red antelope wandering in the area, may be open to some doubt.

[65] I am persuaded that the applicant’s trust is missing some of its red antelopes. Such missing animals might have escaped from Pielandshoek Farm as early as 2009 in drips and draps. Unlike domestic animals such as sheep or cattle, red antelopes are intrinsically undomesticated. They live in the wild environment. They are not gathered every night, kraaled, counted and released every morning to roam about. In the light of all these

considerations, it came as no surprise to me that the applicants were for many years, unaware of the deficit or escapes until early in 2016 when they rounded up their red antelopes. On the facts, I am persuaded that, at worst for the applicants, some of the herd of red antelopes wandering in the environment of the various farms in the valley may well be escapees from Pielandshoek.

[66] It appeared unlikely that they, a rare alien species could, therefore, be regarded as *res nullius*. This is particularly so when one bears in mind that the town of Bethlehem, where they recently occurred, is hundreds and hundreds of kilometres away from Zambia, their indigenous origin or natural habit. They probably could, therefore, not be *res nullius*. The contentions that they were possibly pre-owned before their occurrence and wandering on the farms of the respondents was more convincing than the contrary contention. They might have been lawfully owned. At least that much the first respondent conceded. The concession was a material consideration in these initial or interim proceedings.

[67] The first respondent denied, but could not seriously do so, that on 11 July 2016 some of the red antelopes spotted on Rendezvous Farm fled and escaped from there to her property, Bruwershoop. She could not deny it because she did not witness the operation to capture. The applicants' attempts to pursue the escapees were frustrated by the first respondent's objection. I have earlier demonstrated that the first respondent's objection was informed by ignorance of the law. She erroneous reckoned that she was a *bona fide* possessor of the red antelopes on her farm and thus

entitled to peacefully hold them without any disturbance. She regards the relief sought by the applicants as a disguised act of dispossession with the ultimate intention of claiming all the red antelopes currently roaming freely in the area.

[68] I am not so persuaded. The applicants have captured 17 red antelopes on Rendezvous Farm but they did not immediately claim the captured animals to be theirs. Instead they are prepared to subject those 17 animals to the proposed interpleader proceedings in order to afford all competing claimants to prove their alleged ownership claims or whatever rights they may assert. On the contrary, the first respondent is clearly opposed to the proposed resolution of the disputes. She demanded that the applicants should first prove that ownership of the red antelopes roaming on her farm vested in the trust before she could let them round up, capture and remove them. However, it was obvious that she would not have released the animals even if the applicants had produced proof of ownership. In that event, she would have attempted to keep their possession by claiming a right of retention. Her contention was flawed. She could not have a valid lien on an alien species of animals in contravention of the statute.

[69] The obstructive stance of the first respondent implicitly confirmed that she is not and has never been the lawful owner of any of those animals, not that she claimed to be. She will also have an insurmountable mountain to climb in order to prove her alleged right of possession or right of retention. Such resistant stance, however, explains her reluctance or unwillingness to participate in

the proposed contest to be overshadowed by the proposed interpleader adjudicative process. Her contention that such animals were *res nullius* and that she was their lawful possessor, albeit an intermittent and not a permanent possession, boiled down to misconception of the law.

[70] She vacillated between two extreme propositions, the one being a denial, which was far from the truth and the other being an admission, which was closer to the truth. In view of that, it has to be accepted that on her farm there are currently red antelopes which might have been pre-owned by applicant's trust prior to their arrival on her farm. If the applicants' trust was the possible owner prior to the escape from its farm, it would merely have lost its right of physical possession but not its right of ownership in the escapees. It follows, therefore, as a matter of logic, that the escapees cannot be regarded and treated as *res nullius ex lege*. This is the law and has always been the law since 1991.

[71] The first respondent has no cogent evidential material whatsoever, other than her own say-so regarding the advent of the first two and then four ewes on her farm in 2006/7. She provided no factual details as to what occurred to those few animals post 2009 and how their propagation rapidly exploded in such a phenominal manner from 2 to a herd almost 40 in less than a decade. She is an ecologist by profession. As such one would have expected her to have fairly documented the phenominal explosion of the exotic creatures that are so close to her heart. However, no meaningful information other than

photographs depicting no more than eleven red antelopes was adduced. The omission materially watered down her version.

[72] Moreover, her version as contained in the answering affidavit was not consistent with her previous version as contained in her attorney's letter "anx f10". In the annexure it was stated that she bought the property Bruwershoop in 2004; that there were 3 lechwes already on the farm; that the number had grown from 3 in 2004 to 37 as on 13 July 2016. The inconsistency is telling.

[73] I have to reiterate, for the sake of emphasis, that it was not incumbent upon the applicants at this initial stage to finally prove its right of ownership in respect of those wandering animals. They are entitled to capture the animals by virtue of the following considerations:

73.1 The undeniable or shall I rather say the admitted probability that their trust owns at least some of the animals;

73.2 The existence of the previous court order per Molemela JP that authorised the capture of the animals from the farm of one of the respondents;

73.3 The fact that if those antelopes are indeed wild animals as the first respondent contends and not game as the applicants contends – at common anyone may enter the first respondent's farm to capture such wild animals and thereby acquire ownership by way of occupatio whether

the first respondent as the landowner had consented to such entering or not.

[74] Any of the above three reasons establishes a *prima facie* right to proceed in the manner the applicants seek to proceed. In these circumstances, I am convinced that the first element of an interim interdict has been satisfied.

[75] In one moment the first respondent admitted, through her attorney, that there were red antelopes on her farm. The next moment she denied, again through her attorney, that the animals were still on her farm. There was no explanation as to how they had suddenly disappeared as quickly as they had suddenly appeared, if the animals had in fact disappeared. It was common cause that the animals wandered from farm to farm from time to time. Now if they had already drifted away from her farm, then the first respondent had nothing to lose by letting the applicants come onto her farm to see for themselves that indeed the animals were gone. Instead she denied them access and she persists with her stance to this day. Her refusal strongly suggested that she had something to hide. The applicants feared that the first respondent would conceal or dissipate the animals to frustrate their claim.

[76] In view of the escape of the red antelopes from the trust property, the first respondent's refusal to let the applicants search for their missing animals on her farm and the undisputed fact that there is a tendency by the animals to wander off – I am persuaded that the applicants have established a reasonable apprehension that

they might suffer irreparable harm unless they are granted interim interdict to protect their *prima facie* right.

[77] The basis upon which the relief sought has been structured constitutes a practically expedient and effective way of settling the contestations between or among all the parties who may have vested interest in the capture and removal of the red antelopes. It is an undisputed fact that the applicants' red antelopes were not branded or labelled. As such they had no distinct and peculiar marks whereby they could be identified as the property of the applicants' trust. It would also appear that the first respondent was aware that the red antelopes wandering on her farm were, likewise, unmarked.

[78] The applicants appreciate the reasonable possibility that such animals may or may not all be escapees from their trust farm. It must be understood, and it is very important to understand, that the applicants do not intend to capture, remove and forever keep as their own the antelopes, captured or to be captured on the farm of any respondent. They only want to be authorized to capture the red antelopes from the various farms, remove them from those farms and centralise their safekeeping on one secure farm in order to afford all interested landowners in the area the opportunity of proving their competing claims at a trial-like interpleader hearing.

[79] Besides the first respondent none of the respondents opposes the proposed method of resolving the disputes as regards the genesis or competing rights concerning the red antelopes. It

would seem fair to say that the rest of the affected farmers, unlike the first respondent, implicitly support the interim relief sought. The applicants thought out of the box, as the cliché goes. The respondents, with the exception of the first, have no reservations about it. I could find nothing wrong with such a creative and innovative thinking and adaptation of the interpleader procedure to expediently and effectively resolve some civil wranglings in that particular farming community. The proposed procedure does no violence to the spirit, object and purpose of rule 58.

[80] The first respondent's critique was baseless. Therefore, I am persuaded that the applicants have established that they had no other more adequate alternative remedy than the relief sought to effectively and expeditiously have the dispute resolved in a satisfactory way other than by way of the simulated interpleader procedure. The third element of an interim interdict is accordingly satisfied.

[81] The applicants wish to have all the captured red antelopes to be provisionally detained or held on the second respondent's property, Hulp Farm. There are already red antelopes held on that farm. The one lot came from Pielandshoek Farm whereas the other came from Rendezvous Farm. Pending the outcome of the proposed contestations, the applicants have tendered to pay the costs of the temporary safekeeping of the red antelope. To safeguard the interest of all concerned, the applicants already have a plan to have the red antelopes, captured or still to be captured from any given farm, distinctively marked in order to facilitate the ease of their identification later on. It seemed to me,

therefore, that the proposed capture, removal and centralised detention of the animals would not be detrimental to the interest of any of the affected respondents.

[82] For the reasons enumerated above, I am inclined to accept the submission that the balance of convenience favours the applicants. The stronger the applicant's right and the greater the harm appears to be the more readily the courts find that the balance of convenience favours the applicant. The converse is also true. In this instance, the converse holds no water.

[83] Consequently I have come to the conclusion that the applicants are entitled to the grant of the relief sought. Seeing that they have established all the requisites of an interim interdict, the issue must be decided in their favour.

This completes my consideration of the substantive merits. As regards this component of the application, I would dismiss the first respondent's opposition. In coming to this conclusion, I am fortified by the stance adopted by the rest of the respondents, in particular the fourth respondent, who is the guardian of wild animals in general.

This settles the third component of the application

[84] The first component of the application concerned the preliminaries raised by the first respondent. I proceed to consider those special pleas now.

[85] As regards the first point *in limine*, the first respondent contended that the matter was *lis pendens*. The gist of her contention was

that in this matter, case number 3809/16, the applicants were seeking precisely the same relief as they were seeking under case number 3420/16. During the course of argument it became an undeniable fact that the previous application 3420/16 had already been withdrawn by the time the current application under 3809/16 was launched (vide "anx ra1"). Consequently there was nothing further to be made of the first point *in limine*.

[86] As regards the second point *in limine*, the first respondent contended that the first applicant was not authorised by the trust to bring the current application. The objection was prompted by the fact that no confirmatory affidavit by the second applicant was annexed to the founding affidavit. The alleged lack of authorisation contended for by the first respondent, was shown to be without substance. It was subsequently refuted by the second respondent, the co-trustee, in her confirmatory affidavit, "anx ra3". Moreover, the applicants were not forewarned about it. The point was not properly raised by way of a preceding notice in terms of Rule 7 as it has been authoritatively held it should – **Unlawful Occupiers School Site v City of Johannesburg** 2005 (4) SA 199 (SCA). It follows, therefore, that the point was procedurally doomed from the outset.

[87] As regards the third point *in limine*, the first respondent complained about the proposed procedure as prayed for in the notice of motion through which competing claims to the red antelopes can be made. She contended that resorting to interpleader proceedings, in these prevailing circumstances, was bad in law. The contention failed to impress me. The

development of our law can be adversely hampered if the rules of procedure were rigidly applied, in a formalistic manner, to a recognised and exhaustive class of unchanging factual situations only. Law is dynamic. Because it is not static, sometimes judges have to think out of the box in applying it in order to resolve disputes expeditiously, provided no injustice will thereby be done to anyone. The facts and dispute in the instant matter are amenable to the adoption of such a flexible and creative utilization of the interpleader rule of procedure. The pragmatic advantage of the proposed procedure are in keeping with the dynamic character of our legal system. There can, therefore, be no abuse of process or rule to talk about.

[88] The first respondent's argument is also bad for another reason. It originates from an incorrect premise. Her contention is that some of the red antelopes which freely roam in the area are wild animals or *res nullius* to be legalistic. If that is so, then it is open to anyone to capture and remove such wild animals wherever they may be and irrespective of the place where the capture takes place – with or without the landowner's permission. In this instant matter, what the applicants seek to do, through an open and participative process, is to allow, by due process of law, anyone with any claim to the red antelopes to have a fair opportunity of proving such claim.

[89] The rest of the respondents do not oppose this application. They may well have so acted because they were probably advised that the forum where the real traction is to be obtained, would be the court hearing the interpleader trial proceedings. All that is sought

in the current application is to provisionally secure the game and to place such game in a secure centralised safekeeping until such time as all competing claims can be made, considered and resolved by due process of law.

[90] The first respondent does not claim to hold the red antelopes as the owner. On the contrary she persists that they are ownerless animals. As an aside, it is clear why she does not claim ownership of those animals. She is probably aware that red antelopes, as an alien species, may not be lawfully owned without a permit. Her contention that she is entitled to possess those alien animals without a permit is misguided. Indeed she possesses them because she does not only let them come to her farm and roam about. She is more involved than that. She provides sanctuary to them as she does to a great variety of other indigenous animals. She feeds them and cares for them in various other ways. But she is apparently unaware that all those admirable deeds of kindness constitute restricted activities which cannot be carried out without a permit.

[91] It may well be that some of the red antelope which may be captured on the various farms may turn out to have originated from a land whose owner holds a game fencing permit. Such landowner can, therefore, persist in asserting an ownership claim via Sec 2 Game Theft Act 105/1991. The procedure in determing factual disputes in that connection must be by way of a trial. I am persuaded, however, that the interpleader proceedings are best suited for that purpose.

[92] As regards the fourth point *in limine*, the first respondent contended that the applicants sought a mandatory order against the fourth respondent which mandamus could not, for various reasons be granted against the fourth respondent as an organ of state. Now, the fourth respondent does not oppose the application. Contrary to the first respondent's contention, the fourth respondent has a statutory duty, in any event, to oversee and to act as a guardian of wild animals as well as game and also to act as a guardian of any process involving the capture and removal of such animals.

[93] Similarly, the fourth respondent has a statutory duty to enforce the provisions of the Biodiversity Act and to prevent possession of alien species in contravention of such a statute by individuals such as the first respondent. It was, therefore, necessary for the applicants to cite the fourth respondent so that the state, through the fourth respondent could participate in this open process, if so advised. It is noteworthy to point out yet again that the fourth respondent, as an organ of state, does not object to the order sought against it. The first respondent has, therefore, no *locus standi* to champion the cause of the fourth respondent who saw it fit not to advance that cause. Therefore, the first respondent is precluded from acting as the fourth respondent's messiah, however good her intentions may be.

[94] Having considered all the points *in limine* raised by the first respondent, I have come to the ultimate conclusion that none of them was well taken. Not one of those preliminaries had any forceful substance to preclude me from entertaining the

substantive merits of the application. None of them can be sustained. I hereby dismiss each one of them with costs.

[95] There remains one more aspect – the first respondent's application to strike out. It was the second component of the application. It was opposed by the applicants. During the course of argument, I summarily dismissed such application. Subsequent to the argument, I once again had occasion to reflect on the grounds of such application and the argument presented for and against it. I abide by my decision. I am of the view that it will serve no useful purpose to elaborate further.

[96] The applicants have emerged victorious on both the preliminary front, the substantive front and the challenge to strike out somewhere between the two fronts. They are, therefore, entitled to the fruits of their success. No reason exists as to why the costs should not follow success.

[97] Accordingly I make the following order:

97.1 The applicants are granted an interim interdict and mandamus authorising them or their duly authorised agents to enter the following premises:

97.1.1 The first respondent's property described as the Farm Bruwershoop 1718 District Bethlehem RD, P:1;

97.1.2 The fifth respondent's property described as Farm Asrivier 1437 District Bethlehem RD, P:1;

97.1.3 The sixth respondent's property described as Farm The Glen 791 District Bethlehem RD, P:0;

97.1.4 The seventh respondent's property described as Farm The Glen 791 District Bethlehem RD. P:1;

97.1.5 The eighth respondent's property described as Farm Nonnashoek 1795 District Bethlehem RD P:0;

97.1.6 The ninth respondent's property described as Farm Rosenhof 1707 District Bethlehem RD, P:1;

97.1.7 The tenth respondent's property described as Farm Nonnashoek 1760 District Bethlehem RD, P:0,

97.2 The authorized purpose for the entery of each farm is to:

97.2.1 search for, to capture and to remove all the specimens of the Red Lechwe Antelope found upon such properties, and to do so without interference by the respondents, their agents or employees and there

97.2.2 to mark the antelopes so captured for identification purposes.

97.3 The respondents, the applicants or any other person who makes claim to the rights in or to the antelopes, are directed to pay the costs of the steps set out in paragraph 1 above jointly and severally.

97.4 The fourth respondent is called upon to authorise the applicants or their agents to enter the aforesaid properties and to conduct the search, to capture, to mark and to remove the animals as previously described.

97.5 The antelopes captured from any of the aforesaid farms must be removed from there to the property of the second respondent more fully described as the Farm Hulp 733, District Bethlehem for their temporary safekeeping and central detention.

97.6 The antelopes so captured, marked, removed and detained, shall be maintained at the expense of the applicants, any respondent or third party who makes claim to any rights in or to the antelopes, pending the final outcome of the interpleader proceedings as adumbrated below.

97.7 The respondents or any interested part may lay claim to the antelopes in the second respondent's possession in terms of this order, within 14 calendar days of the delivery of the antelopes to the second respondent, and in that event, the second respondent shall be obliged to initiate interpleader proceedings in accordance with the provisions of Rule 58 of

the Rules of the Conduct of Proceedings. Thereupon the applicants or the respondents, or any other third party shall be entitled to pursue their rights as claimants under the aforesaid rule.

97.8 In the event that no competing claims are lodged with the second respondent in relation to the antelopes placed in the second respondent's possession, the applicant shall be entitled to take possession thereof on such terms and conditions as the court hearing the interpleader application may deem appropriate.

97.9 The first respondent is directed to pay the cost of this application.

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M.H. RAMPAI, J

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