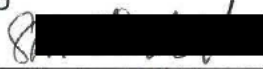


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 24/125547

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
14/1/2025	
DATE	SIGNATURE

In the matter between:

**THE SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS TSHWANE**

Applicant

and

**NATIONAL COUNCIL OF SOCIETIES
FOR THE PREVENTION OF CRUELTY
TO ANIMALS**

First Respondent

**THE BOARD MEMBERS OF THE
NATIONAL COUNCIL OF SOCIETIES
FOR THE PREVENTION OF CRUELTY
TO ANIMALS**

Second Respondent

**JACQUES PEACOCK
IN HIS CAPACITY AS THE LEGAL
OFFICER OF THE NSPCA AND
CHAIRPERSON OF THE SOCIETY OF
PREVENTION OF CRUELTY TO ANIMALS
TSHWANE**

Third Respondent

JUDGMENT

WENTZEL AJ

Introduction

- [1] This is an application brought by the Society for the Prevention of Cruelty to Animals, Tshwane (*“the Tshwane SPCA, NPC”*), a non-profit company (*“NPC”*) registered in terms of section 13 of the Companies Act 71 of 2008 (*“the Companies Act”*) and is a registered Society in terms of Section 8 of the Societies for the Prevention of Cruelty to Animals Act 169 of 1993 (*“the SPCA Act”*). For completeness, I point out that the applicant is also a non-profit organisation (*“NPO”*) registered with the Department of Social Development and a Public Benefit Organisation (*“PBO”*) registered with the South African Revenue Services (*“SARS”*).
- [2] Jeanine Niemann-Greatorex (*“Niemann-Greatorex”*), Sonal Valla (*“Valla”*) and Dandre Smit (*“Smit”*) are the erstwhile directors of the Tshwane SPCA, NPC. Very few of the SPCA Societies are both NPC’s and a Society. As a Society, the Tshwane SPCA has a Management Committee (as determined by the Rules and Regulations of the National Council for Societies for the Prevention of Cruelty to Animals (*“NSPCA”*)). For convenience, I will refer to the Tshwane SPCA as the *“Tshwane Society”* when I refer to it as a Society registered in terms of section 8 of the SPCA Act.
- [3] The directors of the Tshwane SPCA, NPC have instituted the current application in the name of the Tshwane SPCA, NPC and not in the name of the Tshwane Society. In so doing, they have taken advantage of the fact that the Tshwane SPCA is both an NPC and a Society. The reasons for this will become apparent below. Suffice at this stage to say that the Board of the NSPCA have exercised their powers in terms of section 11(1) of the SPCA Act to take over control of the

Management Committee of the Tshwane SPCA who would not have permitted the Tshwane Society to institute the current action against the NSPCA.

- [4] At this juncture, I pause to mention that Niemann-Greatorex is the deponent to the founding affidavit. The contents of the founding affidavit are in turn supported and confirmed by Smit (who deposed to a self-standing affidavit) and Valla.
- [5] The First Respondent is NSPCA, a NPO and a statutory body that is established in terms of the SPCA Act.
- [6] The second respondents are the Board members of the NSPCA.
- [7] The third respondent is Jacques Peacock ("*Peacock*"), the Public Relations & Legal Relations Manager of the NSPCA, who is the Chairperson of the Management Committee of the Tshwane Society.
- [8] The fourth respondent is Marcelle Meredith ("*Meredith*"), the Chief Executive Officer ("*CEO*") of the NSPCA.
- [9] The fifth respondent is Annette Rademeyer ("*Rademeyer*"), the Chairperson of the Board of the NSPCA.
- [10] The answering affidavit has been deposed to by Este Kotze ("*Kotze*"), the Vice Chairperson of the Board of the NSPCA. Although the applicant sought to dismiss the contents of the answering affidavit as hearsay on the basis that Kotze did not have personal knowledge of the facts relating to the application, Meredith subsequently deposed to a confirmatory affidavit. It was explained that she was not able to depose to the answering affidavit as she had been hospitalised when the answering affidavit had been finalised.

The relief sought

- [11] The applicants seek an Order by way of urgency that:
 - a. *"The First, Second and Third Respondents be interdicted against denying the Applicant's Directors herein contained (as well as persons nominated and/or appointed by them to assist in the finalization of the financial statements and audit) access to the Applicants premises."*

- b. *"The First, Second and Third Respondents be directed to restore the Applicant's physical possession of the files, source documents, computers, laptops and electronic running systems and any other documents owned by the Applicant for the purposes of completing the outstanding financial audit and statements."*
- c. *"The First, Second and Third Respondents be directed to allow the directors of the Applicant to continue with their oversight roles as Directors of the Applicant."*
- d. *"The First, Second and Third Respondents be directed to restore the official email addresses, access and functionality of the Applicants Directors."*
- e. *"All the correspondence concerning the operations and day to day management of the Applicant and the minutes of the meetings held by the First, Second and Third Respondents or the Representatives of the First, second and Third Respondents, be transmitted to the official emails of the Directors of the Applicant within 5 working days."*
- f. *"The First, Second and third Respondents be directed to engage meaningfully and within reasonable time, with the Directors of the Applicant in order to resolve the prevailing deadlock in the finalization of the 2022/2023 and 2023/2024 financial statements and auditing of such."*
- g. *"Until there has been a meaningful engagement to resolve the deadlock as indicated above as well as a ruling from this Honourable Court that the First, Second and Third Respondents have the authority to dissolve the Applicant that the First, Second and Third Respondent be interdicted from ordering the dissolution of the Applicant in terms of Section 12 of the Societies For the Prevention Of Cruelty To Animals Act 169 of 1993."*
- h. *"The First Respondent pay costs of the application alternatively the second, third, fourth and fifth Respondents in their personal capacities, de bonis prop[r]iis jointly and severally to pay the costs of the application on an attorney and client scale."*

The Legislative Framework

[12] The Tshwane SPCA is an NPC regulated in terms of the Companies Act. It is also a Society governed by the SPCA Act.

[13] As a company, the directors of the Tshwane SPCA, NPC, have a statutory obligation to exercise their fiduciary duties and oversight functions in terms of section 76 of the Companies Act. The erstwhile directors of the Tshwane SPCA, NPC, allege that since the NSPCA has taken over control of the Management Committee of the Tshwane Society, they have been unable to perform their statutory duties and functions required in terms of section 76 of the Companies Act.

[14] Section 76 of the Companies Act provides in relevant part:

"76 Standards of directors conduct

(2) A director of a company must-

(a) not use the position of director, or any information obtained while acting in the capacity of a director-

(i) to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or

(ii) to knowingly cause harm to the company or a subsidiary of the company; and

(b) communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director-

(i) reasonably believes that the information is-

(aa) immaterial to the company; or

(bb) generally available to the public, or known to the other directors; or

(ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality.

(3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director-

(a) in good faith and for a proper purpose;

(b) in the best interests of the company; and

(c) with the degree of care, skill and diligence that may reasonably be expected of a person-

(i) carrying out the same functions in relation to the company as those carried out by that director; and

(ii) having the general knowledge, skill and experience of that director."

[15] The relevant definitions to the SPCA Act are set out in section 1 and are as stated below:

'Association' means the SPCA National Council of Southern Africa which was incorporated under the Companies Act, 1973 (Act 61 of 1973), as an association not for gain;

'board' means the board established by section 2 (3)";

'constitution' means the constitution of the Council referred to in section 4";

'Council' means the National Council of Societies for the Prevention of Cruelty to Animals mentioned in section 2 (1);

'director' means a director of the board nominated or elected or deemed to be elected in terms of section 2 (3);

rules' means the rules made by the board under section 7;
'society' means a society registered or deemed to be registered in terms of section 8;
'special resolution' means a resolution reduced to writing and passed by a majority of at least two-thirds of the societies present at a general meeting of the societies convened in terms of the constitution;
'this Act' includes the rules and the constitution.

[16] The establishment of the Council and Board of the NSPCA is set out in section 2 of the SPCA Act. It provides:-

"2 Establishment of Council and board and abolition of Association

- (1) There is hereby established a juristic person to be known as the National Council of Societies for the Prevention of Cruelty to Animals (in Afrikaans Nasionale Raad van Dierebeskermings verenigings).
- (2) At the commencement of this Act the Association shall cease to exist.
- (3) With a view to the achievement of the objects of the Council its affairs shall be managed and controlled by a board consisting of-
 - (a) directors elected in accordance with the constitution; and
 - (b) a director nominated by the Minister.
- (4) The directors of the Association at the commencement of this Act shall be deemed to have been elected in terms of subsection (3) (a)."

[17] The Objects of the SPCA Act are set out in section 3 which make it clear that First Respondent has a statutory duty:

- "(a) to determine, control and co-ordinate the policies and standards of societies, in order to promote uniformity;
- (b) to promote co-operation among societies;
 - (c) to prevent the ill-treatment of animals by promoting their good treatment by man;
 - (d) to promote the interests of societies;
 - (e) to take cognizance of the application of laws affecting animals and societies and to make representations in connection therewith to the appropriate authority;
 - (f) to do all things reasonably necessary for or incidental to the achievement of the objects mentioned in paragraphs (a) to (e)."

[18] The Constitution of the Council is regulated by section 4 which reads:

"4 Constitution of Council

- (1) The board shall frame a constitution for the Council, which shall provide for-
 - (a) amendment thereof;
 - (b) the representation of societies on the board;
 - (c) the quorum for meetings of the board;
 - (d) the voting rights of societies;
 - (e) meetings of societies;
 - (f) alteration in the composition of the board;

- (g) other matters the regulation of which is necessary for the proper functioning of the Council and the board.
- (2) Any amendment of the constitution shall be approved by a special resolution.
- (3) (a) The constitution and each amendment thereof shall be published in the Gazette.
 - (b) An amendment of the constitution shall come into operation on a date 60 days after it was published in the Gazette.
 - (c) The board shall, within 30 days after publication in terms of paragraph (a), furnish each society with a copy of such constitution or amendment thereof.
- (4) (a) Copies of the constitution shall be obtainable from the board on payment of the amount determined by the board.
 - (b) The amount so determined shall be a reasonable amount, regard being had to the costs to the board of such a copy."

[19] The functions, powers and duties of the Council and the Board are set out in section 6 and include the power to:

- a. appoint suitably qualified persons as inspectors and other employees of the Council, as well as agents and representatives, to assist it;
- b. confer or impose upon an inspector so appointed such functions, powers and duties as the board may deem necessary, including the powers-
 - i. to enter upon any premises or conveyance of a society;
 - ii. to examine or test or cause to be examined or tested any animal, material, substance or other article on such premises or conveyance;
 - iii. to take samples of any such material, substance or other article;
 - iv. to examine and make copies of or extracts from any book or document of a society;
 - v. to give written instructions to societies regarding the execution of the board's requirements in terms of this Act;
 - vi. to seize any such animal or the whole or any part or quantity of such material, substance or other article, or any such book or document that relates to, or is on reasonable grounds believed by him to relate to, or may afford proof of, the failure of a society to perform its duties or to pursue its objects;

- c. appoint committees consisting of directors or directors and other persons or other persons only and delegate to any such committee such of its powers or assign to it such of its duties as it may deem fit. However, The board shall not be divested of any power or duty delegated or assigned to a committee and may rescind or vary any decision of a committee.
- d. do everything which in its opinion is conducive to the performance of its functions or the achievement of the objects of the Council or is calculated directly to enhance the value of, or render profitable, the property or rights of the Council.

[20] Section 7 of the SPCA Act provides that the Board of the NSPCA may, by special resolution, make Rules as to, *inter alia*, the course of conduct to be followed by Societies, such as the Tshwane Society, which Rules must be voted on and accepted at an Annual General Meeting ("AGM") of the NSPCA. It stipulates:

"7 Rules by board

- (1) The board may by special resolution make rules as to-
 - (a) the course of conduct to be followed by societies;
 - (b) requirements to be complied with in connection with the advertising of societies, including requirements relating to name-plates, signboards, lectures, interviews, publications in the lay press, printing on letterheads, and the use of any other name, mark or depiction in conjunction with a restricted name;
 - (c) the minimum standards for facilities and services used or provided by a society;
 - (d) the manner in which and the time at which an application for registration in terms of section 8 is to be made, and the application fee which is payable;
 - (e) any matter the regulation of which the board considers necessary or expedient for the achievement or promotion of the objects of the Council or for the exercise of the powers or the performance of the functions and duties of the board.
- (2) A rule made in terms of subsection (1) or any amendment or the repeal thereof shall come into operation on a date 30 days after the board has given notice thereof in the Gazette.
- (3) The board shall furnish every society and every inspector, employee and other officer of the board with a copy of each rule made by it and of each amendment or repeal of a rule, within 30 days after notice thereof has been given in terms of subsection (2)."

[21] The functions, powers and duties of a society are regulated by section 9 which reads:

"9 Functions, powers and duties of society

- (1) A society shall for the purposes of section 8 of the Animals Protection Act be a society for the prevention of cruelty to animals.
- (2) A society-
 - (a) shall act in accordance with the course of conduct prescribed by the rules;
 - (b) shall at all times be the holder of a valid authority under the Fund-raising Act, 1978 (Act 107 of 1978), when it collects contributions in the Republic for the achievement of its objects;
 - (c) shall cause proper records, statements and accounts to be kept of all its financial affairs and transactions, assets and liabilities in respect of each financial year;
 - (d) shall at the end of each financial year cause such records, statements and accounts to be audited and certified by a person registered as a public accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991);
 - (e) shall on or before the last day of July in each year submit to the board a report on its financial affairs of, and activities during, the preceding financial year, accompanied by a copy of its relevant audited and certified records, statements and accounts;
 - (f) shall furnish an inspector appointed under section 6 (2) (c) with any information or document at its disposal to assist the board in any investigation conducted by the board;
 - (g) shall permit any representative appointed by the board to accompany any inspector or other officer of the society in the performance of his duties for or on behalf of the society;
 - (h) shall pay timeously its contributions due to the board in terms of this Act;
 - (i) shall co-operate with or permit the board to institute legal proceedings where the society is capable of instituting such proceedings under this Act, the Animals Protection Act or the associated Acts;
 - (j) shall only adopt or apply such memorandum, articles of association, constitution or other founding documents as may previously have been approved by the board in writing in its discretion, or make amendments thereto which have, subject to subsection (3), been so approved;
 - (k) shall use a restricted name only in accordance with the provisions of the rules;
 - (l) may defend legal proceedings instituted against it and institute legal proceedings connected with its functions, including, but not limited to, such proceedings in an appropriate court of law to prohibit the commission by any person of a particular kind of cruelty to animals.
- (3) The board shall not refuse to approve in terms of subsection (2) (j) an amendment which a society proposes to make so as to provide for its internal conditions or affairs and which is not in conflict with the objects of the society or the Council."

[22] Of particular relevance to the current application are the powers conferred on the NSPCA in terms of section 11 which provides:

"11 Failure by society

- (1) If a society fails to perform any of its duties in terms of this Act and does not remedy such failure within a period of 30 days after the board has, subject to subsection (2), by written notice to such society, addressed by registered post or delivered to its controlling body, called upon it to cease or remedy such failure, the board may, by a decision of at least two-thirds of the directors and subject to the provisions of subsection (3)-
 - (a) designate a representative or representatives of the board as a member or members on such society's controlling body and order that the society replace

- a corresponding number of members of its controlling body by the representative or representatives so designated;
- (b) terminate the membership of, or remove from office, any member, director, committee member, employee or other officer of such society as such, or institute or direct such society to institute disciplinary steps against him, if the board is of the opinion that such member, director, committee member, employee or other officer is responsible for or is the cause of the failure; or
- (c) cancel the registration of such society.
- (2) If during any calendar year the board has already issued two or more notices in terms of subsection (1) to a society, the board shall not be obliged to issue a further such notice calling upon such society to cease or remedy a further failure referred to in subsection (1) and may exercise its rights and powers in terms of subsection (1) without affording such society the opportunity to cease or remedy such failure.
- (3) Subject to the provisions of subsection (4), the board shall afford any society allegedly failing to perform its duties in terms of this Act or any member, director, committee member, employee or other officer of such society the opportunity to appear before the board or any committee or subcommittee established by the board for that purpose, or to make written representations to the board or such committee or subcommittee, if such society, member, director, committee member, employee or other officer requests to be allowed to do so before the board acts in terms of subsection (1) (a), (b) or (c).
- (4) If a society or any other person fails to submit a request in terms of subsection (3) within a period of 30 days after a relevant written notice in terms of subsection (1), the society shall be deemed to have refused to cease or remedy the failure.
- (5) After the board has exercised its rights and powers in terms of subsection (1) (a) it may-
 - (a) revoke the designation of a representative or representatives in terms of the said subsection;
 - (b) replace any of the said representatives by representatives or members of the society concerned determined by the board in its discretion; or
 - (c) cancel the registration of such society.
- (6) The board may in its discretion, by the institution of legal proceedings against a society, enforce specific performance by it of its duties in terms of this Act.
- (7) The provisions of subsection (6) shall not derogate from the rights and powers of the board in terms of the other provisions of this section and may be applied in addition to the exercise of such rights and powers."

[23] Section 12 allows the NSPCA to dissolve societies and reads:

"12 Dissolution of society

- (1) If the registration of a society is cancelled or a society is for any reason wound up or dissolved or unable to carry on its activities or to achieve its objects, or for any reason any irresolvable deadlock develops in its controlling body, the board may in its discretion-
 - (a) constitute and register another society or designate any other existing society or organization to take over the functions of, and, in particular, to serve the territory and community formerly served by, that society; and
 - (b) transfer to, and vest in, the other society or organization referred to in paragraph (a) all the assets, liabilities, rights and duties of that society or burden it therewith, without the rights of third parties being prejudiced thereby; or

- (c) assume control of that society by the appointment of representatives of the board as directors, committee members, employees or other officers of such society until the board has taken steps in terms of paragraph (a).
- (2) If the board has not taken any steps in terms of subsection (1) (a) within six months after becoming entitled to do so, or if during such period such society has not resolved the deadlock in question or overcome its inability to perform its functions or achieve its objects, such society shall be wound up in accordance with its memorandum, articles of association, constitution or other founding deed, or any other applicable law, whichever may be applicable."

[24] It is thus apparent that aside from the wide powers conferred upon the Board of the NSPCA under section 6, should the Society fail to perform its duties required in terms of section 9, the Board of the NSPCA may designate representatives to a society's controlling body under section 11(1) of the Act should it fail to comply with a written notice to remedy its failure within 30 days. However, should two such notices have been issued to the society in a particular calendar year, the Board of the NSPCA may act in terms of section 11(1) without affording the Society the opportunity to remedy its failure. Should the Board act in terms of section 11(1), the affected party/parties may appear before the Board or make written representations to the Board before it acts in terms of section 11(1) (a), (b) or (c).

[25] Moreover, NSPCA and its Board are empowered in terms of section 11 (4) of the SPCA Act after having taken over the control body of the Tshwane NPSCA, to cancel the registration of the Tshwane SPCA as a Society. In addition, in terms of section 12 of the SPCA Act, should the Society become irreconcilably deadlocked in its controlling body and be unable to perform its duties for a period of six months, it becomes mandatory to wind up the society. It is thus crucial to resolve any deadlock to avoid the winding up of the Society.

[26] The Rules of the NSPCA promulgated in terms of the NSPCA Act relevant to the current proceedings are as set out below.

[27] Rule 2.7(a) stipulates that:

"A Society shall be established and governed by a memorandum, articles of association, constitution or other founding document according to the Non-Profit Organisations Act and requiring a minimum of five members."

[28] Rule 12.11 provides that:

"In the event that any member, committee member, director, employee or other officer of the NSPCA or any Society acts in breach of any provision of the Act and Rules, then the procedures set out in Section 11 of the Act, as they apply to Societies, shall apply mutatis mutandis, and shall permit the expulsion of such person as a member of the NSPCA, any Society or the organisation as a whole."

[29] Rule 2.14 confers wide powers on the NSPCA to control the functioning of the Management Committee. It reads:

"A. Whenever it becomes apparent to the Board that the management committee of a Society has ceased to function (henceforth referred to as "the Society in question") and the Board is of the opinion that the Society cannot function adequately until a new management committee can be elected by the members of the Society in due course and in terms of that Society's constitution, then— A.1 the Board may by notice appoint an interim committee ("the interim committee") comprised of the same number of members required in terms of the Society in question's constitution and which shall consist of persons selected by the Board from-

(i) that Society; and/or

(ii) members of the Board; and/or

(iii) members of any other Society; and/or

(iv) members of staff of the NSPCA and/or of any other Society; A.2 the interim committee so appointed shall have all such powers and duties as are granted to the management committee of the Society in question under that Society's constitution to its management committee;

A.3 The Board shall fix the term of office of the Interim Committee. B. Whenever the Board exercises the powers referred to in sub-rule (1), it must report the fact and the circumstances to the next ensuing general meeting of the NSPCA.

C. Any member of a Society that is aggrieved by a decision of the Board to appoint an interim committee shall notify the Board in writing of his or her dissatisfaction and the reasons therefore. In the event that the Board fails to address the member's grievances to the members satisfaction within 15 days of receipt of that member's written notice, then the member's grievances shall be referred to arbitration to be conducted under the aegis of the Arbitration Foundation of Southern Africa ("AFSA") and in terms of AFSA's Expedited Rules of Arbitration. (Board Notice 140- 28 Nov 2014)"

[30] Rule 3.3 deals with legacies and provides:

"Societies shall, together with their audited financial statements, submit to the Council a certificate signed by their auditor confirming the sum of all bequests/legacies and other testamentary dispositions, as well as any trust or similar entity of which the Society is a beneficiary (income or capital) upon the death of any person associated therewith, that was received by them. A certificate signed by the auditor must be submitted, whether or not any of the above was received. This certificate shall be accompanied by copies of the Last Wills and Testaments/testamentary trust documents which constitute the basis for the above (Board Notice 11—02 Feb 2015)(Board Notice 372- 02 Dec 2022"

- [31] Rule 3.5 requires that audited financial statements be submitted by Societies and stipulates that:

*"Audited Financial Statements as per the SPCA Act 169 of 1993 Clause 9 (2)
(c) — Income Statements must be detailed and include as separate items:
(1) Membership Fees
(2) Legacies, bequests and Testamentary Dispositions
(3) Income from Trusts
(4) Pound Income
(5) Municipal Services Income
(6) The expenditure must be detailed and include Salaries and Wages/Employee Costs as separate items. (Board Notice 11- 02 Feb 2018/
(Board Notice 567- 23 Feb 2024"*

Chronology of material events

- [32] On 25 August 2023, the Deputy CEO of the NSPCA, Kotze addressed a letter to Valla (the then Chairperson), Jason Blockley ("*Blockley*") (the then Vice Chairperson), Smit (the Treasurer), Elizabeth Storbeck ("*Storbeck*") (the Secretary), Niemann-Greatorex (then a Committee member) and Lize Pienaar ("*Pienaar*") (a Committee member) of the Tshwane Society calling upon such persons to remedy their failure to provide the NSPCA with its audited financial statements for the 2022-2023 financial year within 30 days ("*the first 30-day notice demand*").

- [33] Section 9(2)(e) of the SPCA Act requires that:

"9(2) A Society-

(e) shall on or before the last day of July each year submit to the board a report on its financial affairs of, and activities during the preceding financial year, accompanied by a copy of its relevant audited and certified records, statements and accounts. (emphasis added)

[34] In the first 30-day notice demand, the Tshwane Society was also called upon to produce:

- a. the Auditors Letter Subscription Form
- b. a copy of any Wills and Testament (if applicable)
- c. the Information Request Form
- d. a document detailing its areas of operation
- e. a declaration of Inspectors Support Fund Contribution.

[35] The Tshwane Society was also called upon to submit a written Just Cause application as required in terms of Article 1(1) of the NSPCA's Constitution read with Article 8(1).

[36] In terms of with Article 1(1) of the Constitution of the NSPCA, the term "*in good standing*" is defined as follows:

*"Article 1(1) of the Constitution of the National Council of SPCAs: "**in good standing**" means that the Society has paid all contributions in terms of the Act, the rules of the Council, the Society's own constitution and this Constitution and it is not in breach of any of its obligations in terms of the Act without just cause."*

[37] The effect of not being a Society "*in good standing*" is set out in Article 8(1) of the Constitution, namely:

"Article 8(1) of the Constitution of the National Council of SPCAs

8(1) Every Member in good standing wishing to be represented at a general meeting of the Council shall lodge with the Council a duly completed delegate form not less than 96 (ninety-six) hours (unless otherwise specified in the notice of meeting)] before the meeting. The prescribed delegate form, annexed as "A" hereto, shall be signed by at least two members of the management committee of the Society concerned, by special resolution which must be attached to the delegate form."

[38] The result of a Society not being of good standing is thus that the Society will not be represented at the Annual General Meeting ("AGM") of the NSPCA, unless, after submission of the written Just Cause Application by the Society to the

Board-appointed Management Committee for consideration and decision, "Just Cause" is granted as stipulated in Article 1(1) of the Constitution.

[39] As it was alleged that the Tshwane Society was not in good standing, Kotze invited the Society to "submit a written Just Cause Application within 30 days of the date of this letter, incorporating representations showing good, lawful and sufficient cause as to why your society should be granted "Just Cause" for the breach of its obligations in terms of the Act." (see paragraph 3.4 of the first 30-day notice letter).

[40] Niemann-Greatorex responded to the first 30-day demand via email on 12 September 2023 stating:

"Our sincere apology regarding our financial [feedback], as you are aware, Erna Smit and Dewaldt Wahlstrom were dismissed in March 2023. Erna and Dewaldt left [without] a hand over or giving us access to the necessary documentation. We also then changed over to new auditors. Because they were newly appointed they had a few queries from the previous year that they needed to verify. This is time consuming as we need to find the relevant information, that Erna never kept proper records of. At this point we are sending you the required information we currently have ready for you. Unfortunately the final financial statement will take an undetermined period still. We are working very closely with all the relevant parties to get this resolved as soon as possible. Feed back to you will be a priority."

[41] On 30 October 2023, Tercia Woest ("Woest") of the NSPCA Society Liason Unit indicated that the Board did not accept the response as the outstanding documents had still not been forthcoming. On the same date, Niemann-Greatorex responded indicating that:

"We sincerely apologise for only sending an update on our financials now. Kopano Incorporated recently gave our financials over to a new auditor, John Wright to assist us, as the person that helped us during the year had left the company. Our main problem with the financial issues that we are experiencing currently is that the previous financial manager and general manager were not fully committed to their duties. We had to take action against both of them and

the outcome was dismissal. We are dedicated to get this problem resolved as soon as possible, this is just as much a frustration to us, as it is for you. Our staff and Kopano Incorporated work very closely together to prevent any issues that could be the reason for future delays in place."

- [42] This explanation was rejected by Kotze in her letter dated 11 December 2023 on the basis that:

"3.1. The reasons for the delay are unacceptable as the staff should have presented the finances to the management committee on a monthly basis; and

3.2. The society failed to provide any date of when the outstanding year-end reports, records and statements as required in terms of the SPCA Act 169 of 1993 can be expected."

- [43] Valla, the then Chairperson of the Tshwane Society responded on 21 December 2023 explaining that:

"Tshwane SPCA Committee has had a huge setback with the resignation of our previous Treasurer (Francois du Plessis), and consequent resignation of our auditors (Logista), in September 2022. This was further complicated by our finance manager (Erna Smit) refusing to provide the committee with the relevant management reports after her dismissal. The manager is no longer in the employment of Tshwane SPCA and left without providing her replacement with any handover or giving any staff member access to the banking details.

Having to employ TCM Financial Services to assist with our finance and securing the services of Kopano (auditors), we were faced with enormous challenge of sorting out the financials as we struggled to get basic information from the previous auditors. With the new auditors there is additional testing, verification and scrutiny done by the auditors with the first audit taking place of any new client. Additional verifications are done on the opening balances (work done by Logista in the past). The previous auditors have not been helpful with providing our new auditors with information and guidance on the Tshwane SPCA prior audits/balances.

We should have the Annual Financial Statements available by the end of January 2024. In the meantime we have provided the draft AFS.

As per the requirements for the year-end reports we take full responsibility for the oversight of not submitting them within the required specified time. After the AGM I took a leave of absence due to personal reasons. During this time we had several board members resign and with the lack of capacity and support, this put severe pressure on the acting chair, Jeanine Niemann.

Although, all monies due to Council regarding the legacies and ISF were timeously paid there was an oversight to submit the relevant documents. For this kindly accept our deepest apology.

The Declaration of the ISF and the legacy schedule as well as the copies of Wills and Testaments, have been compiled and is submitted as part of this response. The Information request was sent through during the response of the 30-day letter, but we have reattached it again nevertheless.

As per Annexure A, the Areas of operation forms part of the Information request document. If this is an additional form that we need to submit kindly provide the form so that we can address the response.

Once again, please accept our sincere apology with the turn of events, some of which were beyond our control.

Tshwane SPCA Committee members would like to request to appear before the Council board in terms of section 11(3) to make an oral representation in mitigation of the failure."

- [44] On 29 January 2024, Smit addressed an email to Niemann-Greatorex, copying the Chairperson, indicating that the auditors wished to qualify their audit for the 2023 financial year and queried what the consequence would be. The qualification was said to be based on:

"Moving on from previous auditor/accountants.

Previous financial manager not doing proper hand over and training person to replace her.

Unresolved queries/transactions from prior financial years.”

[45] Woest responded on 29 January 2024 stating:

“Kindly note that we are unable based on the limited information received to indicate what the consequences will be.

A qualified audit normally results in a 30-Day Letter and the society being in bad standing but it may also not it depends on the reasons for the qualification. Once you provide us with the Audit Report, we will be able to ask questions of clarity to determine the consequences of a qualified audit.”

[46] On 3 February 2024, Valla resigned as a Committee member of the Tshwane SPCA. He later also tendered his resignation as a director of the Tshwane SPCA, NPC.

[47] During March 2024, Niemann-Greatorex assumed the position of Chairperson of the Board of the Tshwane SPCA, NPC.

[48] On 20 May 2024, Smit tendered his resignation as a director of the Tshwane SPCA, NC and as a member of the Board. Hereafter, Niemann-Greatorex also later tendered her resignation as the two other directors had resigned. However, in her replying affidavit, Niemann-Greatorex insisted that they all remained directors of the Tshwane SPCA, NPC as their resignations were never accepted. This obviously has implications for their locus standi to authorise the company to institute the current proceedings. Niemann-Greatorex points out that they did not need to attend the AGM to be re-appointed as directors; instead they are registered as directors with the CIPC.

[49] On 30 May 2024 a further 30-day notice demand was sent to the Management Committee of the Tshwane Society, and in particular to Niemann-Greatorex (Chairperson), Heidi Hertz (Vice- Chairperson), Smit (Treasurer), Lara van der Berg (Secretary) and Robert Dalton (“Dalton”) (Marketing) on behalf of the NSPCA Board Appointed Section 11 Committee. This notice was sent following

an inspection of the premises between 22-23 April 2024 at which it was alleged several contraventions of the Rules were found, including, *inter alia*, not timeously dealing with complaints, the paddock was littered with cow dung and no bedding was supplied to the cows at night, the failure to sterilise adopted animals, pre and post home inspections were not carried out and general administration required attention.

[50] During June 2024, the first respondent appointed designated members to the Tshwane SPCA Management Committee, assuming control over the affairs and day to day management of the Society. Ever since the designation of the NSPCA, the Board and Meredith's representatives to the Management Committee, the directors of the Tshwane SPCA, NPC, have been denied access to the premises, stripped of their email access and prevented from performing their oversight functions as directors of the Tshwane SPCA. Smit was removed as Treasurer, effectively making it impossible for him to compile and complete the required financial statements. Niemann-Greatorex was also removed as the Chairperson of the Management Committee and placed in the Fundraising and Events Portfolio, thus preventing her, as one of the directors of the Tshwane SPCA, NPC, from participating in management decisions. By excluding the two directors from key positions, the NSPCA has effectively denied the Tshwane SPCA, NPC the protection afforded to it under the Companies Act.

[51] Niemann-Greatorex alleges that arbitrarily decided to remove her as Chairperson of the Management Committee and to appoint Peacock in her stead. It was contended on her behalf that the removal of the Chairperson must be substantially and procedurally fair in the sense that there must be reasonable cause for her removal and an opportunity afforded to her to make representations. Niemann-Greatorex alleges that there was no basis for her removal as Chairperson and she was not afforded an opportunity to make representations prior to her removal. The NSPCA disputes this and, with reference to the minutes of the meeting held on 10 August 2024 referred to below, claim that Niemann-Greatorex to another portfolio was by consent.

[52] On 10 August 2024 the AGM of the Tshwane Society was held but was not quorate. In the minutes of the meeting, which was chaired by Niemann-

Greatorex, it was recorded that Meredith had interrupted the meeting, indicating that it should be stood down for half an hour as a sufficient number of members were not present and thus a quorum was not possible. This request was acceded to, after which the meeting proceeded, with the consent of Meredith, despite “*not being a quorum*”.

[53] In this regard, it was recorded in the Minutes as follows:

“3. Confirmation of a Quorum

3.1. After standing down for half an hour as per the requirements set out in the NSPCA Operations manual, Mrs. Jeanine Niemann confirms that a quorum is not present and directs the question to Mrs. Marcel Meredith whether we can continue to which the response was a yes.”

[54] Niemann-Greatorex confirmed that she was the final remaining Board member of the previous Board, both Valla and Smit having resigned. It was recorded in the minutes that:

“She confirmed that Heidi Hertz (legal) has resigned, Dandre Smit (Treasurer) has resigned and Sonal Valla (previous chairperson) has resigned. Mrs. Marcel Meredith responded that she still requires a signed resignation from Mr. Smit and Mrs. Valla.”

[55] Niemann-Greatorex explained the presence of the new committee members. This was recorded in the minutes as follows:

“2.5. Mrs. Jeanine Niemann takes a moment to provide clarity on some of the committee members and to introduce them to the members of the public. She states that they are members of the National Council of SPCAs who were invited on the committee to assist Tshwane SPCA to be compliant again.

2.6. Mrs Marcel Meredith interrupts Mrs. Niemann to state that they were not invited, but rather that they serve on the committee as part of a Section 6 sanction.”

[56] Meredith continued with her obstructionist approach when Niemann-Greatorex sought to confirm the minutes of the previous AGM:

“5. Adoption of the previous AGM minutes

5.1. Mrs. Jeanine Niemann presents the previous AGM meeting minutes on the projector and states that this took place on 22 July 2023, at the Waltloo branch.

5.2. Mrs. Niemann starts the process of reading the minutes, but is interrupted by Mrs. Marcel Meredith to state that no members are present to adopt the minutes other than Mrs. Niemann.

5.3. Mrs. Meredith lays the argument that the previous minutes are incomplete to which Mrs. Niemann responds that the meeting was rudely interrupted by ex disgruntled employees and other members of the public. Mrs. Niemann continued to explain that the committee at the time requested the guidance from NSPCA regarding this meeting and the response was that it should not be held a second time.

...”

[57] Meredith also interrupted Niemann-Greatorex's presentation of the Chairperson's report. In this respect it was recorded:

“7.1. Mrs. Marcel Meredith raises the question as to who wrote the report where to Mrs. Niemann responded that the report was written by Mrs. Valla. Mrs. Meredith then raised the concern that Mrs. Niemann could only be reporting on one month as she was not the elected Chairperson for the period of the report.

...”

[58] The Audited Financial Statements were dealt with at the meeting during which Niemann-Greatorex sought to explain the difficulties being experienced in finalising the financial statements. What transpired in this respect is recorded in the minutes as follows:

"8. Financial Report

- 8.1. Mrs. Jeanine Niemann states that the financial report is not yet available due to auditors still being busy with these reports.*
- 8.2. The 2022/2023 reports were provided by a company called Logista, but following the previous AGM held in 2023, a decision was made by Mr. Dandre-Smit Treasurer at the time) to change to a company called Kopano.*
- 8.3. Mrs. Jeanine Niemann states that work was left incomplete by Logista which is causing a major delay in the process for the new financial statements to be made available.*
- 8.4. Mrs. Niemann states that when she started as Chairperson in March 2024, she noticed that the reports are incomplete with information that wasn't captured and that she requested Stabilis from Kopano to assist in getting these ready for financial reporting.*
- 8.5. Mrs. Niemann further explain[s] that they have recently received the City of Tshwane ledge[r]s in order to complete the audit for statements to be made available. Mrs. Nadine Ferreira interrupts to state that far more was outstanding than just the City of Tshwane ledge[r]s, but that she has already tasked Annelize Adams to gather this information.*
- 8.6. Mrs. Niemann states that once the information referred to above has been sent through, Kopano will be able to finalize the statements. She also further explains that they do not have opening balances for 2023/2024 due to the incomplete report of 2022/2023.*
- 8.7. Mrs. Niemann states that draft statements are available should the members of the public want to look at it, but she is interrupted by Mrs. Meredith to state that draft financial reports [cannot] be sent out to members of the public. She further states that only audited financial statements can be made available.*

- 8.8. *Mrs. Meredith states that she will be speaking on behalf of Mrs. Niemann and states that once the financial statements are available, that all members present at the meeting will receive a copy.*
- 8.9. *Mr. Rob Dalton raises the question of Mr. Dandre Smith's resignation and if it has been sent already. Mrs. Meredith answers that it was received via email, but that his physical signature is still required. Mrs. Ferreira comments that the same is applicable for the resignation of Sonnal Valla.*
- 8.10. *Mrs. Niemann explains that herself, Mr. Smith and Mrs Valla are currently the three registered Directors of the Tshwane SPCA Non Profit Company (NPC). She then further explains that it was the recommendation from NSPCA to have the NPC deregistered and solely trade under the Non Profit Organization (NPO). Mrs. Ferreira comments to state that although there was benefit to an NPC in the past, that there is no benefit of it currently. Mr. Jacques Peacock also then explains how an NPC requires three directors and how an NPO requires five members. He also states that an NPO aligns with the SPCA Act.*
- 8.11. *Mrs. Niemann's final comment on the financial reports are that they cannot be adopted and approved at this stage due to not being available.*
- 8.12. *A member that arrived late questions why financial statements aren't available. Mrs. Niemann explains what was discussed above to him. He raises a second question regarding the change in auditors to which Mrs. Niemann explains that it was a decision made by the previous board. He then further questions why 2022/2023 was not completed and if this is not in contravention with the NSPCA rules. Mrs. Meredith answers to state that it is indeed against the rules and explains why the several members of the NSPCA are present and what their roles are in terms of the Tshwane SPCA committee. She further explains that not only are the financial statements not available, but that the organization is not according to constitution. She further assures the members that the*

NSPCA will bring in forensic auditors if they do not receive the audited financial statements.

- 8.13. *The member introduces himself as Francois du Plessis, a previous director of Tshwane SPCA as well as chairperson of a previous committee. He explains that he's at a loss for words due to previously having dealt with NSPCA before. He states that he received 30 Day Letters for the smallest things.*
- 8.14. *Mr. Du Plessis questions an estate received end of 2022 and what the money was used for. Mrs. Niemann answers that the money was invested. He follows up to ask if the money is still there to which Mrs. Niemann answered that some of the money was allocated to certain assets that needed to be purchased. Vehicles were purchased, solar was installed to get rid of exorbitant rates, further a camera system was installed to counter the large amount of break ins and more at the Waltloo branch. The cameras installed are state of the art black screen cameras which is monitored off site. Jeanine confirms that the crime rate at the Waltloo branch has been significantly lower since the cameras were installed. Mrs. Niemann also explains that the Tshwane SPCA taps into this investment on a monthly basis due to a lot of long term donors not donating anymore. She also further motivates that a forensic audit will take place as per Mrs. Meredith's previous statement.*
- 8.15. *Mr. Du Plessis questions the members present to which it is explained that it is predominantly staff and volunteers present. It is again confirmed that this is not a quorum.*
- 8.16. *Mr. Du Plessis asks when the NSPCA joined the committee of Tshwane SPCA to which Mrs. Meredith answers that they joined 5 weeks ago. He further questions why it took the NSPCA this long to intervene. Mrs. Meredith responds by stating that the NSPCA did indeed follow the 30 Day Letter procedure, but that the NSPCA gave leniency due to the fact that the committee were all new members. She further states that she*

accepts criticism on behalf of the NSPCA for the situation Tshwane SPCA finds itself in due to the NSPCA's leniency.

8.17. *A member of the public raises a question whether the financials for the year before last were not a problem to which Mrs. Meredith states that they were not and that it is the 2022/2023 reports as well as the 2023/2024 reports outstanding.*

8.18. *Mr. Du Plessis raises a follow up question as to whether NSPCA was not serving on the committee before the 2022/2023 report was originally due to which Mrs. Meredith answers that they were indeed serving on the committee, but stood down.*

8.19. *Mr. Du Plessis further questioned why Tshwane SPCA changed auditors when NSPCA didn't have an issue with the statement provided by Logista. Mrs. Niemann answers that the decision was made based on the recommendation of the NSPCA, specifically made by Mrs Janet Naude. Mrs. Meredith interrupts by stating that this information is not correct and that Kapano was brought forward by a previous committee member, Jason Brockley.*

8.20. *Mrs. Nadine Ferreira points out that the previous minutes stated that Logista was used due to a preferential rate that was given to the previous director of the Tshwane SPCA, but once he resigned, the rates became exorbitant. Mr. Du Plessis comments to say that this statement is false and that Logista provided the services at cost.*

[59] Auditors for the following financial year could not be appointed due to the lack of a quorum. It was later recorded in the minutes:

"12.6. Mrs. Meredith reverts back to finances and addresses the lack of inspectors at Tshwane SPCA being directly linked to financial statements that are not available.

12.7. *Mr. du Plessis states here that he strongly recommends a forensic audit take place despite the financial statements being made available to the NSPCA to which Mrs. Niemann agrees."*

[60] Meredith then sought to have amendments to the Constitution ratified and adopted:

"12. Amendments to constitution

12.1. *Mrs. Marcel Meredith nominates herself to speak on behalf of Mrs. Jeanine Niemann regarding amendments to the constitution. She states that amendments brought forward to be constituted is merely a formality to be explained as it has already been accepted by the societies, department of social services and SARS.*

12.2. *Mr. Francois Du Plessis raises a question regarding the act and comments being made that the current NSPCA act is outdated. Mr. Jacques Peacock corrects him in stating that he must be referring to the Animal Protection Act.*

12.3. *Mr. Du Plessis accepts this correction and asks where the NSPCA stands on this statement to which Mrs. Meredith answers that the NSPCA feels that the legislation is excellent, but admits that some clauses are outdated and needs to be removed. She further praises NSPCA to potentially have the 5th best legislation in the world. She further boasts that it is not the legislation, but rather the inspectorate and what they are capable of....*

..."

[61] Francois du Plessis raised a question regarding the dictatorial style adopted by the NSPCA, which Meredith refused to deal with:

"14.4. Mr. Francois Du Plessis comments and states that his take on the discussion is simply that the other member would like a more unified animal welfare sector. He further states to Mrs. Meredith that the NSPCA acts like they have the monopoly on animal welfare. Mrs. Meredith states

that this is not the NSPCA and that each SPCA is autonomous and can work with whoever they would like. The member of the public comments and states that this is incorrect. The member refers to a questionnaire that was sent to all societies nationwide to participate in where a notice was sent to them by the NSPCA prohibiting their participation as an SPCA.

14.5. *Mrs. Meredith states that this is the Tshwane SPCA AGM and states that she refuses to answer questions relating to the practice of the NSPCA and that these questions should be raised at the NSPCA AGM instead. She further instructs Mr. Jacques Peacock to not answer any questions from the member.*

14.6. *Mrs. Meredith motions for closing despite continuous questions arising from members of the public. Continuous questions regarding training of inspectors arise from this dispute and Mrs. Meredith opted to leave the room."*

[62] In addition to the SPCA Act and the Rules with which Tshwane Society must comply, the Tshwane Society has adopted a constitution ("*Constitution*") which is binding on all members of the Tshwane Society, including the members of its Management Committee, as its governance structure.

[63] Although Niemann-Greatorex denied signing the Constitution, a comparison of her signature of the founding affidavit and that appearing on the Constitution indicates that the probabilities are that she personally signed the Tshwane SPCA's Constitution on 13 August 2024.

[64] In any event, Clause 19.2 of the Tshwane Society's Constitution provides:

"Although the members of the Management Committee shall be required to acknowledge in writing that they are familiar with the provisions of this Constitution, that they are bound thereto and shall abide therewith, the fact that they have not done so, will not have any effect on the validity of this Constitution or its binding nature on the members of the society".

[65] Of import is that in terms of the Constitution as amended, it is provided that there be five persons elected to the Management Committee of the Tshwane SPCA. In terms of clause 4.4 of the Constitution, it is stipulated that:

"All classes of natural members, except junior members, shall be entitled to attend, speak and vote at general meetings of the Society, and shall be eligible for election as officers or members of the Management Committee, provided that they are in good standing with the Society, are not under suspension in terms of clause 4.8 below, and subject to the provisions of clause 4.5 below and clause 4.6 below."

[66] Clause 4.8 in turn provides:

"The Management Committee may expel or suspend any member who has, in its opinion, been guilty of conduct prejudicial to the objects, interests or reputation of the Society. Taking Into account the audi a/teram partem prindple in Common Law, such person must be advised of such intended expulsion or suspension, and must be granted a hearing from the Management Committee, to draw attention to such facts as he may deem relevant to his position. If the Management Committee adheres to its decision thereafter, the matter shall be placed on the Agenda of the next general meeting of the Society, pending which the expulsion or suspension shall remain effective, and the member concerned is debarred from alleging any prejudice in regard thereto."

[67] Moreover, clause 4.9 states:

"Should there be any domestic dispute or disagreement within the Sodety which cannot be reconciled by the Management Committee then a minimum of 3 members may request that the matter shall be submitted to the NSPCA for arbitration. The decision of the National Council shall be binding."

[68] Clause 4.12 provides:

"It is a condition of membership that members are deemed to be aware of and to be bound to this Constitution, the Rules promulgated in terms of section 7 of the Societies for the Prevention of Cruelty to Animals Act, No 169 of 1993 and any amendments thereto."

[69] The required quorum is dealt with in clause 8 which reads:

"At any general meeting 15 members or 254a of the membership, whichever is the lesser, shall be a quorum. If within half an hour aRer the time appointed for the meeting a quorum is not present, the members present may by majority decision agree to proceed with the meeting or stand adjourned in

order to call a new meeting. This should be reflected in the minutes accordingly."

[70] Clause 9.6 stipulates that:

"Save where otherwise provided, all decisions shall require a simple majority vote. In the event of an equality of votes the Chairperson or in his absence the person presiding at the meeting shall have a casting vote in addition to his deliberative vote."

[71] Clause 10 is important as it deals with the powers of the Management Committee. It sets out that:

"10.1 The control of the affairs of the Society and of all matters relating thereto shall vest in a Management Committee which shall consist of: 10.1. Not less than 5 (five) and not more than ten (10) members who shall be elected at the annual general meeting;

10.2. Persons wishing to make themselves available for election to the Management Committee must submit their names In writing to the Secretary, to arrive no later than 7 (seven) dear days before the date set for the Annual General Meeting. Each submission must be accompanied by a one page curriculum vitae/motivation which shall be made available for the members to read at the annual general meeting.

10.3. Any member in good standing and not engaged in any activity contrary to the Statement of Policy shall be eligible for re-election to the Management Committee if proposed and seconded by persons who have been members for a minimum of twelve (12) months.

10.4. The quorum for any meeting of the Management Cornrnittee shall be 60%. The names of all persons present at meetings of the Management Committee shall be recorded in the minutes.

10.5. At each Annual General Meeting all members who have completed 2 (two) years notice shall retire. Retiring members shall be eligible for re-election should they so desire.

10.6. The Management Committee shall meet at least ten (10) times during each calendar year on specified dates at intervals of not more than three months, to be fixed by the Management Committee. Minutes shall be taken at every meeting to record the Management Committee's decisions. The minutes of each meeting shall be given to Management Committee members two weeks before the next meeting.

10.7. Any elected member of the Management Committee who without satisfactory reason is absent from three consecutive meetings of the Commitee, shall ipso facto cease to be a member thereof. Leave of

absence may be granted on request to any member thereof by the Management Committee for a period not exceeding three months.

- 10.8. The Management Committee may by co-option fill any casual vacancy among those of its members holding office in terms of the above and any such co-opted member shall retire from office at the next general meeting but shall be eligible for re-election.*
- 10.9 Every year, as soon as practicable after election, the Management Committee shall from among themselves select a Chairperson, Vice-Chairperson, Treasurer and Secretary. All office bearers shall hold office until the next Annual General Meeting unless removed by a two thirds majority of those voting at a meeting of the Management Committee.*
- 10.10. If at any meeting the Chairperson or Vice-Chairperson are not present at the time of holding the meeting the members of the Management Committee present shall elect one of their number to act as Chairman for the duration of such meeting.*
- 10.11. The Secretary shall give to each member of the Management Committee not less than seven days notice in writing of all ordinary meetings of the Management Committee. These meetings shall be held at a public/neutral venue which shall include SPCA premises.*
- 10.12. The Management Committee shall be empowered to appoint such sub-committees as it may consider necessary for the effective carrying out of its functions and may determine the powers and duties of such sub-committees.*
- 10.13. The Management Committee or any sub-committee appointed by it may meet and adjourn as thought proper. Questions arising at any Management Committee meeting shall be determined by a majority of the votes of the members present and in the case of an equality of votes, the matter shall stand over to the next committee meeting for consideration and if the votes are again equal the matter shall be deemed not approved.*
- 10.14. The office of the Chairperson may not be held by the same person for more than four (4) consecutive years, unless approved in writing by the NSPCA Board following written application for an extension.*
- 10.15. All committee members elected or co-opted onto a committee of a Society must sign the Code of Conduct for committee members to be found in the Operations Manual. This includes members of any sub-committees and volunteers engaged at a Society or representing a Society.*

...

[72] Extensive powers are conferred upon the Management Committee under clause 11. These include *"to do all such other acts as may be necessary or desirable in the attainment of the objects of the Society."*

[73] Clause 12 deals with the necessity for the Management Committee to produce audited financial statements and provides in relevant part that:

"12.4. The auditor appointed at the annual general meeting shall have access at all times to the books and accounts of the Society and shall certify the financial statement based thereon.

12.5. In all respects accounting records shall comply with the relevant provisions of the Non-Profit Organisations Act No 71 of 1997 and the SPCA Act No 169 of 1993.

12.6. The Management Committee shall ensure that the audited Financial Statements are submitted to the NSPCA by no later than the last day of July each year.

12.7. The Management Committee shall cause proper records to be kept of all activities as required by the NSPCA, and cause such records to be submitted to the NSPCA by no later than the last day of July each year or on any other day as specified by the said body in accordance with their required format.

12.8, In the event that a member of the Management Committee of any SPCA is removed or replaced in terms of Section 11 of the Societies for the Prevention of Cruelty to Animals Act No 169 of 1993, then the Board shall also simultaneously be authorised to remove and replace the individual/s as signatories on any banking account or investment of any kind, which is held with any institution in the name of the Society."

[74] In terms of the Constitution, the Management Committee is given full control over all legal proceedings and provides:

"All legal proceedings instituted or defended by or brought against the Society shall be in the name of the Society as represented by an authorised delegate in terms of a Management Committee resolution in general or specific terms, and the domicilium chandi et executandi of the Society shall be the address of the Society as registered in terms of the Non-Profit Organisations Act No 71 of 1997."

[75] The current proceedings, however, have been brought in the name of the Tshwane SPCA, NPC and not the Society and there has been no Management Committee resolution authorising the current proceedings.

[76] Of crucial importance is that the Constitution empowers the Management Committee to dissolve the Tshwane SPCA and transfer its assets to the NSPCA. Clause 16 reads in relevant part:

“16.1. Following written notice to the NSPCA, the Society may be dissolved If at least two-thirds of the members present and voting at a general meeting of members convened for the purpose of considering such matter are in favour of dissolution. Not less than twenty one (21) days' notice shall be given of such meeting and the notice convening shall clearly state that the question of dissolution of the SPCA and disposal of its assets shall be considered. If there is no quorum at such a general meeting, the meeting shall stand adjourned for not less than one (1) week and the members attending such adjourned meeting shall constitute a quorum.

16.2. If, upon winding up or dissolution of the Society and after satisfaction of all its debts and liabilities, there remain any assets whatsoever, then such assets shall not be paid to or distributed among the members of the Society but shall be paid or transferred to the NATIONAL COUNCIL OF SPCAs to be used for the welfare of animals where most needed.

16.3. The transfer of any assets to the NATIONAL COUNCIL OF SPCAs shall be on condition that the said Council is registered in terms of the Non-Profit Organisations Act No 71 of 1997, and within the Republic of South Africa, which has been approved in terms of section 30 of the Income Tax Act No 58 of 1962.”

[77] This gives some credence to the applicant's contention that the placement of designated members on the Management Committee of the Tshwane SPCA has been designed to enable the NSPCA to gain control over the R9 million donation made to the Tshwane SPCA dealt with below.

[78] Clause 19 makes it clear that the Constitution is binding on all members of the Tshwane SPCA including all the members of the Management Committee. It provides:

“19.1. Any version of this Constitution, once signed, shall remain binding on all its members, including the members of its Management Committee, and it shall only be required to be signed again in the event that it is amended.

19.2. Although the members of the Management Committee shall be required to acknowledge in writing that they are familiar with the provisions of this Constitution, that they are bound thereto and shall abide therewith, the fact that they have not done so, shall not have

any effect on the validity of this Constitution or its binding nature on the members of the Society.” (emphasis added)

[79] Amendments to the Tshwane SPCA Constitution may only be allowed if approved by the NSPCA by two-thirds of the members present entitled to vote at either a Special or General Meeting of the NSPCA (See clause 17).

[80] Having “*purportedly*” secured the wide powers set out above under the Constitution, on 20 August 2024, Neumann-Greatorex received correspondence from Peacock (Public Relations & Legal Liaison Manager of the NSPCA), informing her that committee members need to notify him in advance in order to access the Tshwane Society’s premises. I use the word “*purportedly*” advisedly as the applicant contends that the Constitution was not validly accepted as the AGM was not quorate. It was also not accepted and signed at the AGM but was only signed on 13 August 2024 when the minutes of the AGM were signed. The Constitution itself states that it becomes binding once signed.

[81] On 23 August 2024 the terms of the first 30-day notice demand to produce the Audited Financial Statements and to submit a Just Cause application was repeated. This was addressed to the Management Committee and in particular, the imposed committee members, Peacock, Grace de Lange, Nadine Ferreira (“Ferreira”), the Manager of the Finance Unit, NSPCA, Lebo Sentle, Nazareth Appalsamy, Jeanette Naude (“Naude”) and Meredith. It was also sent to Niemann-Greatorex and Dalton (as committee members). In so acting, the NSPCA members essentially sent a notice to themselves in their capacity as members of the Management Committee of the Tshwane Society.

[82] On 13 September 2024, Wright of Kapona sent an email to Smit and Ferreira, titled “*2023 Audit Information and Way Forward*”, requesting access to the premises and books and records of the Society. In this email Wright states:

“I would like to follow up on the request for information regarding the samples. Dandre, I understand you are still awaiting feedback from the NSPCA regarding access and clearance.

Nadine, could you please provide an indication of when Dandre and Melanie might receive access? I would like to set a timeline for attending to the SPCA

audit. I've discussed the situation with the partner, and we need to make a decision on how to proceed. If we can get clarity on when Dandre will be able to assist, I can consider placing the audit on hold. If not, we may have to disclaim the 2023 audit opinion due to the lack of necessary support. While this outcome is not preferred, it's important to make a decision, as we cannot prolong the audit further without a plan.

Additionally, we must consider the 2024 audit, which under the Companies Act must be completed by the end of September 2024, in line with the six-month post-year-end requirement. While this deadline seems unrealistic, I want to highlight the legislative requirement.

I look forward to your responses and any input you may have."

[83] Ferreira responded by denying the requested access and stating:

"Melanie will not be receiving access. The committee needs to discuss Dandre's access as he was not voted onto the committee at the AGM in August.

However, as explained to Dandre, he needs to go through what you require and send that to me so that we can get the information from the SPCA offices.

I am awaiting the information required from him."

[84] Wright responded on the same date stating:

"Thank you for your response. I understand that Dandre was not voted onto the committee. Could you please provide clarity on when the committee will discuss his access?

While I am not involved in the current matter, I believe granting Dandre access could help expedite the process. I would appreciate any clear information on the next steps so we can work towards finalizing the audit."

[85] Ferreira's response was as follows:

"The committee consists mostly of NSPCA staff members and we are all snowed under. Dandre has sent his mails to the committee and they will revert.

However, Dandre has the testing list from you and I have advised that he can request the information to be pulled from the Society in the meantime, so I'm not sure why this has not been done as yet."

[86] Smit then responded to Ferreira, copying Wright indicating that:

"Please see attached the list of documentation that you can provide to John.

I do not access to supply the information on the revenue.

I will let you know what information I [cannot] supply regarding the expenses.

I am assisting in this matter to not delay the audit 2023 even though I have requested formal resolution by the committee."

[87] On 16 September 2024, Ferreira responded to Smit and Wright, pointing out that:

"Aside from the bank statements, I am not sure how we are supposed to provide backing documents for the income or debits to income — these items were processed by the bookkeepers at the time (I want to say Stabilius or Logista), so they should have the information or backing paperwork for these transactions that were processed.

I will get Annelize onto the vetmaster prints this week."

[88] On 19 September 2024, Smit sent an email to Ferreira stating:

"Please see attached the RFI excel documentation. I have indicated the line items in yellow that I will not have in my [possession]. I was only appointed as Treasurer after September 2022. The line items marked in yellow will have to be provided by Logista/Francois du Plessis (the previous Treasurer)... (illegible)

I will try to provide the remaining items and notify yourself and Annelize if there is anything else that I require your assistance with to finalise the 2023 audit.

Were the Vet Master reports provided to John?

Please let me know if you have any questions in this regard."

[89] On 19 September 2024, Ferreira, sent an email to Smit and Wright recording that:

“Annelize has been copied in on your mail and can action what you have highlighted and then just let me know what was not found, then we can take it from there.

Annelize, please see the items in yellow and let me have them and then advise what you could not action. Please also send the vet master reports for the year April 2022 to March 2023 — I'm not sure if the system will go back that far but let me know please.”

[90] The applicant describes the respondents' conduct as a hostile takeover, a coup d'etat and allege that they are acting mala fide and for ulterior motives. In my view, the above email trail demonstrates that since assuming control of the Tshwane SPCA, the NSPCA has frustrated the attempts made by Smit to ensure that Wright was able to finalise the Audited Financial Statements for the 2023 financial Year. In so acting, the NSPCA has rendered it impossible for Smit to ensure that the Tshwane SPCA NPC complies with its obligations under the Companies Act and the Tshwane Society from complying with its obligations under the SPCA Act and the Rules. I thus agree that the NSPCA has acted in bad faith in continuing to rely on the failure by Smit to produce these financial statements as a basis for assuming control over the affairs of the Tshwane Society in terms of section 11(1).

[91] The Tshwane SPCA is obliged to produce audited Financial Statements on an annual basis, both in terms of Section 9 of the SPCA and in terms of section 30 of the Companies Act, which requires a company to prepare annual financial statements-within six months after the end of its financial year. The financial year of the Tshwane SPCA, NPC, elapsed in July 2024; this notwithstanding neither the 2024 nor the 2022/2023 financial statements have been finalised.

[92] The applicant argues that it will not be possible to produce the required audit unless the court orders the respondents and their delegated representatives to grant the Directors of the Tshwane SPCA, NPC access to the premises. Without

the audited statements, the Applicant argues that it will not be able to account to its donors regarding the use of the funds donated.

[93] The applicant, moreover, contends that since the hostile takeover, the clinic has been poorly managed, causing the resident veterinarian to resign. This is confirmed from the notes of the exit interview conducted with the veterinarian. The applicant stresses that the closure of the clinic is contrary to the Tshwane SPCA's statutory objective to prevent the ill-treatment of animals by promoting their good treatment by man and has prevented the Society from earning fees for treating out-patient animals. It would seem, however, that the veterinarian has been persuaded to remain in the service of the Tshwane SPCA on a month-to-month basis to allow the Tshwane SPCA is able to employ a new veterinarian.

[94] The applicant fears that the NSPCA and its Board may exercise their powers to deregister the Tshwane SPCA in terms of section 11(4) of the SPCA Act or exercise its powers of dissolution in terms of section 12 of the Act in the event that the deadlock between the Tshwane SPCA and NSPCA and its Board is not resolved within a period of six months, which would expire at the end of February 2025.

[95] The applicant contends that the NSPCA will rely on the following grounds to justify their actions, including *inter alia* that:

- a. The Applicant's Directors have failed to conclude the required audits despite numerous demands
- b. There is an endless deadlock between the Tshwane SPCA and the respondent
- c. That the Applicant's Directors mismanaged or alternatively misused the funds of the Applicant, which is denied.
- d. That the Applicant's directors are the cause of the financial woes of the applicant

[96] Allegations of misappropriation of funds by the erstwhile directors of the applicant have been circulated on social media. In one of these posts it was stated:

"The Tshwane SPCA, one of the oldest and historically largest SPCAs in South Africa, is on the brink of collapse. The National Council- of SPCAs has been forced to take over the management of the SPCA, as the Society was unconstitutional, and with Audited Financial Statements being withheld for two years. Despite countless assurances that the Tshwane SPCA was "getting their house in order", the Society is relying on a legacy investment to fund the operations of the SPCA, which is fast running out. The NSPCA warned the management of the Tshwane SPCA as early as November 2021 that the SPCA's finances are on a downward spiral. Instead, the now defunct "Board of Directors" of the Tshwane SPCA, bought brand new vehicles, installed security cameras purportedly worth over R600,000 and a solar power system for over one-million Rand.

The NSPCA had to pay all expenses for August 2024 from its coffers, which is not sustainable, as individuals who have resigned from the committee are still signatories on the bank accounts and have not been replaced.

The Society is on its knees and a desperate attempt is being made to resuscitate the dwindling organisation.

The NSPCA is always criticized for "taking over" SPCAs, but it is a double-edged sword, as the NSPCA is also criticized for not stepping in sooner, as will be in this situation.

The Society, operating two sites in Waltloo and Centurion, currently expends around R700,000 to R800,000 per month to cover operational costs, with only approximately R200,000 cashflow received from services rendered, donations, and fundraising. The SPCA also takes in any stray animals, despite not being remunerated for this service by the City of Tshwane.

Unless there is a serious turnaround in the financial position of the SPCA, and sustained support from the community, the Tshwane SPCA's future looks grim.

The NSPCA is expecting to receive Audited Financial Statements on 09 September, although a further delay is expected, as some information is still

outstanding, which was not provided to the auditors by those in control at the time,

The animals of the City of Tshwane cannot afford to not have the protection of an SPCA. Despite many other animal welfare organisations operating in the area, the City is too vast to place the burden on other organisations, with the SPCA never refusing admission of any animal and having an authorised inspectorate.

...”

[97] These allegations have been denied by Smit, Valla and Niemann-Greatorex. In his supporting affidavit, Smit alleges that the true motive behind the takeover of the Tshwane SPCA is the R8 million donation made to the Tshwane SPCA shortly before the takeover. This view is supported by Niemann-Greatorex in her replying affidavit. There may well be merit in this contention and on my reading of the papers, I too suspected that the real reason for the takeover had more to do with the control over the donated funds than it was about the alleged mismanagement of the donated funds.

[98] However, I am unable, on the papers before me, to determine whether indeed there has been a misappropriation of the donated funds by the erstwhile directors as alleged. I do, however, point out that despite their accusations, the respondents failed to produce any evidence of the alleged misappropriation of funds and/or mismanagement by the erstwhile directors. A forensic audit of the applicant was suggested by Meredith and agreed to by Niemann-Greatorex as per the minutes of the AGM held on 10 August 2024. It is advisable that such an audit be conducted to ensure that the Tshwane SPCA and its donors are protected. This would assuage any *bona fide* fears regarding the alleged mismanagement of the applicant by the erstwhile directors.

[99] The applicant seeks costs *de boniis propriis* on the attorney and client scale against the second, third, fourth and fifth respondents on the grounds that they have compromised the Applicant and the animals which rely on the Applicant for health and safety. They also allege that the respondents' conduct has been vexatious, malicious and reckless by imposing delegated representatives who

have no skill or capacity to run the Applicant which has caused the veterinary surgeon to resign and have precluded the required audits of the Applicant from being conducted.

[100] In order to dispel any suggestion of mala fides or ulterior motives, the deponent to the answering affidavit, Hester Elizabeth Kotze ("Kotze") the Deputy CEO of the NSPCA states:

"I pause to mention that the First Respondent's decision to appoint its representatives to the management committee of the Applicant was done to aid the struggling Applicant, who was at this stage operating unconstitutionally and in contravention of the Rules, not only in terms of its management committee but still without legally mandated Audited Financial Statements. Although this aspect will be expanded upon later herein, I iterate that the decision, by the First Respondent as custodian and statutory body of the societies for the prevention of cruelty to animals in South Africa, was solely premised on assisting the Applicant and mitigating its potential risk of failure."

[101] I do not buy this explanation; it also fails entirely to deal with the allegation made by the applicant that its directors have been denied access to the premises and have frustrated Smit's attempts to finalise the applicant's financial statements.

[102] The justification provided by Kotze for reassigning the applicants' directors' email addresses is equally unconvincing: In this respect the Kotze says:

"At all material times prior to the Directors of the Applicant asserting their rights as Directors, the Respondents were placed under the impression, by Jeanine Niemann, that Dandre Smit and Sonal Valla had resigned, and no longer had any involvement with the Applicant. This was further supported by Mr Smit and Ms Valla not attending, firstly, the management committee meetings of the Applicant, and secondly, the 2024 AGM, at which they ought to have stood for re-election in order to be Directors and/or Committee Members."

[103] Rule 2.21 of the Rules requires that:

"All office bearers should have an e-mail address reflecting the designation in which they act on behalf of the Society..."

[104] Kotze thus argues at paragraph 5.17 that:

"Thus, the email addresses were reassigned as per Rule 2.21 above. It is important to note and confirm Ms Jeanine Niemann had all times, and continues to have, access to such email domain.

In light of the above, I respectfully submit that the directors of the Applicant were not deprived of the email addresses previously used by them with any mala fide, malicious or vexatious intent."

[105] As indicated above, Niemann-Greatorex points out that none of their resignations were accepted and they remain reflected as directors of the Tshwane SPCA, NPC. In addition, apart from Niemann-Greatorex, none of the other directors were retained as members of the Management Committee of the Tshwane Society. I am satisfied that conduct of the NSPCA in denying the erstwhile directors of the Tshwane SPCA, NPC access to the premises and the denial of their email access was not justified and was done with the *mala fide* purpose of precluding their exercising any oversight over the affairs of the Tshwane NSPCA and/or control over the sizable donation made to the Tshwane SPCA. The respondents actions in this regard followed the takeover of the management and control of the Tshwane Society by the NSPCA and can be regarded as part and parcel of this process.

[106] I will now deal with the arguments raised by the respondents and the basis upon which they challenge the relief sought in these proceedings.

Urgency

[107] The respondents deny that the matter warranted a hearing by way of urgency. The applicant maintains that the application is urgent, despite the hostile takeover having occurred in June 2024. The excuse proffered for not bring the

matter before the court earlier is that the attorney they engaged during July 2024 advised them that the matter was not urgent in view of the unilateral powers that the NSPCA has to either de-register the Tshwane SPCA or dissolve it; their new attorney only came on record on 21 October 2024 and advised that the applicants had grounds of urgency. The applicants argue that they should not be punished for having received the wrong advice. I am not sure that this is a valid excuse—particularly where allegations of mala fide and ulterior motives are made. I would have thought that should a hostile takeover have been genuinely feared, steps ought properly to have been expeditiously taken by the erstwhile directors in order to protect the Tshwane SPCA, NPC. in the exercise of their fiduciary duties.

[108] Counsel for the respondents further disputed the urgency on the basis that despite signing the resolution on 6 September 2024 to proceed with the application, the application was not brought until 1 November 2024; once launched, the applicant placed totally unreasonable time constraints on the respondents to respond to the application. This is a valid complaint and the fact that hereafter an extension was provided to the respondents to file its answering affidavit does not detract from this. The courts frown on litigants who themselves take time to draft their papers but use urgency as a basis to deny their opponents the same courtesy.

[109] Although I accept that the matter did not meet the level of urgency required by Sutherland DJP in the Practice Directive issued by him in the Johannesburg Division, I was nevertheless prepared to hear the matter as I deemed the matter to be sufficiently urgent to warrant an earlier hearing than would have been available in the ordinary course. In coming to this decision, I had regard to the fact that since receiving the 30-day notice demands, the erstwhile directors have been at pains to explain the difficulties experienced by them in finalising the financial statements of the applicant had have taken reasonable steps to comply with the demand made to produce the 2023 Audited Financial Statements. The applicant's first attorney made several attempts to resolve the deadlock surrounding the 2023 financial statements, which efforts continued up until September 2024.

[110] Despite these efforts, on 3 October 2024, the NSPCA's attorney addressed a letter to the applicant's prior attorney, stating that they acted for both the NSPCA and the Tshwane SPCA. It was recorded that the applicant's erstwhile attorney purported to act for the directors "for the time being" of the Tshwane SPCA, NPC. It was pointed out that despite the designation of the Tshwane SPCA as a non-profit company, it was still subject to the Rules of the NSPCA as provided for in section 9(2)(a) of the SPCA Act. The NSPCA's attorney then stated:

- "6. *Due to the failure of the Tshwane SPCA and Tshwane SPCA NPC to comply with the Act and the associated Rules, the NSPCA elected to enforce the provisions of section 6 of the Act and take effective control of the Tshwane SPCA and Tshwane SPCA NPC.*
7. *On or about 12 June 2024 the NSPCA placed Marcelle Meredith and Nadine Ferreira on the Tshwane SPCA's Management Committee, and thereafter, has intermittently placed an additional 6 (five) members onto the Tshwane SPCA's Management Committee.*
6. *Notwithstanding the above, your clients remain as directors of the Tshwane SPCA NPC on the Companies and Intellectual Property Commission's ("CIPC") records. This is not a true reflection of the current management or effective control of the Tshwane SPCA NPC. It is our instructions that Mr Dandy Smit and Ms Sona Valla have, prior to this time, been absent from the Tshwane SPCA and Tshwane SPCA NPC for a prolonged period of time and had previously indicated their intention to resign, alternatively, abandoned their positions. This information provided by the admission of your other client Mrs Jeanine Niemann-Greatorex in meetings of the Management Committee of the Tshwane SPCA, which such statement was recorded, in such meeting.*
10. *As previously stated, the NSPCA has, in accordance with section 6 of the Act taken effective control of the Tshwane SPCA NPC, as such, your clients' status as directors with CIPC is simply by virtue of their failure and/refusal to amend the CIPC records to correctly reflect the current status quo.*

11. *In accordance with the Act, our clients have been tasked with ensuring that the Tshwane SPCA and Tshwane SPCA NPC are compliant with the Act. This compliance includes inter alia ensuring that the audited financial statements are produced.*
12. *Notwithstanding the above, it is our instruction that your clients were the instructing party in relation to the current audits as the auditors were instructed to proceed with the audits whilst your clients still held effective control of the SPCA Tshwane and SPCA Tshwane NPC.*
13. *Further to the above, it is our instruction that the audits currently underway are for the periods of 2022/2023 and 2023/2024. During this time, your clients held effective control of the SPCA Tshwane and SPCA Tshwane NPC. Therefore, the allegation that our clients are not keeping your clients "in the loop" or providing your clients with information in relation to the audit are nonsensical. Your clients, by virtue of their positions, have access to the financial information from the period in which they had effective control of the Tshwane SPCA and Tshwane SPCA NPC.*
14. *As such, your clients are responsible for ensuring the successful completion of the audits. We implore your clients to meaningfully engage and cooperate with the auditors in order to finalise the audits and keep our clients apprised of any developments or outcomes in relation to the audits.*
15. *Any request for financial information by your clients must be addressed by Mr Dandre Smit to the current Finance Administrator, Ms Annelize Adams with Ms Veronica van der Merwe and Nadine Ferreira in copy. Any requests for information by third parties will not be indulged.*
16. *Notwithstanding the fact that your clients are responsible for the historical audits, our clients in terms of the powers granted to the NSPCA in terms of the Act, the NSPCA have taken over the effective control of the Tshwane SPCA NPC.*

17. *By your own admission, your clients "will not resign from their positions until such time as the finances, including but not limited to, the annual financial statements have been finalised to the satisfaction of the Directors". Your client's failure to resign as directors and to change the signatories on the bank accounts negatively impacts the continued day-to-day functions of the Tshwane SPCA and is prejudicial to the future of the Tshwane SPCA.*
18. *Therefore, notwithstanding that the audits are the responsibility of your clients, we have been instructed to demand, as we hereby do, that, within 7 (seven) days of receipt of this letter, your clients:*
 - 18.1. *resign as directors of the Tshwane SPCA NPC with immediate effect;*
 - 18.2 *do all such things as may be necessary to assist in appointing the new Management Committee members of the Tshwane SPCA as the directors of the Tshwane SPCA NPC in anticipation of the upcoming resignations; and*
 - 18.3. *immediately do all things as may be necessary to change the signatories of any and all bank accounts to our clients.*
19. *Should your clients adhere to our clients' demands, our clients will accept responsibility for the audits and will accept a qualified audit.*
20. *Should your clients fail to adhere to the above demands within 7 (seven) days of receipt of this letter, our clients reserve their right to exercise any and all remedies that are available to them whether under law or otherwise, including, inter alia:*
 - 20.1 *an application for a declaratory order; and/or*
 - 20.2. *an application to declare your clients delinquent directors.*
21. *Further to the above, we would be remiss should we not bring to your clients' attention that should they not resign prior to the finalisation of the*

audit, they will be required to sign off on such audit regardless of whether-the audit is qualified or not

22. *In closing, it is our hope that the personal objectives of the parties can be put aside for the purposes of ensuring the compliance of the entities is brought up to date, which in turn will safeguard the continuation and longevity of the Tshwane SPCA as a valued and much-needed organisation within the community.*

23. *All our client's rights remain reserved in toto."*

[111] The non-conciliatory stance taken by the NSPCA's attorney in this letter further served to heighten the urgency. This is particularly so as in their capacity as directors of the NSPCA they have statutory duties which they cannot avoid by simply resigning their positions as directors. These duties to ensure that its financial statements are prepared and audited. Their failure to comply with these duties carry stringent sanctions.

Points in limine

[112] Apart from contesting urgency, the respondents raised a number of points *in limine* which are of a technical nature, and I suspect were designed to avoid having to deal with the crux of the matter.

- a. The first *in limine* point raised is described as one of "*locus standi and misjoinder*." This point, as I understand it, is that the citing the Board Members of the NSPCA, Peacock in his capacity as Legal Officer of the NSPCA and Chairperson of the Society and Meredith and Rademeyer creates confusion and "*raises concerns about locus standi and potential misjoinder, as it must be clear if such parties are being sued in their professional roles or personally.*" It was argued that "*this dual citation can lead to procedural confusion and potential misjoinder.*"
- b. There is no merit in this point *in limine*: The parties are cited individually as they have an interest in the proceedings, particularly as costs *de bonis*

propriis are sought against them. Indeed, in these circumstances, it is both proper and appropriate that they be joined to the proceedings.

- c. The second point *in limine* raised is that, although the application is brought in the name of the Tshwane SPCA, in truth the application is brought on behalf of the directors of the Tshwane SPCA, NPC. It is argued that the directors "*for the time being*" *seemingly, and for the most part, aim to protect their individual roles or rights (such as fiduciary duties, directorial disputes, or breaches) in terms of the prayers so sought.*" Thus, so the argument goes, "*the true Applicants before the court*" ought to have been "*the Directors for the time being of the Tshwane SPCA NPC*", listed by name *nomine officio*, and that, in fact, the Tshwane SPCA, NPC ought to have been cited as a Respondent, "*as far as it has an interest in the relief sought and as far as this honourable Court's order may have an effect on it.*"

[113] The respondents argue that:

"This substantial error in law may not only misleading in this Application but may paint a grim picture about the cohesiveness of the First Respondent and its members nationwide, all whilst the actual dispute lies with the First-, Second-, Third-, Fourth-, and/or Fifth Respondents and the Directors for the time being of the (current)Applicant.

It is respectfully submitted, and as will be ventilated more fully hereinbelow, that

(i) the individuals who purport to be the Directors of the Applicant (as per "NPC1") do not have the authority to bring this present application on behalf of the Applicant in its current form; (ii) the disputes and correlative relief sought seek to protect the interests of mostly the Directors for the time being of the Applicant, and not the Applicant itself - which Applicant is currently under the safe management and custodianship of the First Respondent; and (iii) the Directors for the time being of the Applicant in its current form, not only fail to meet the requirements of an interdict, but cannot seek to meet such requirements on behalf of "THE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS TSHWANE NPC", as such right is purportedly their right to their directorship and pursuant "oversight duties".

[114] Although there may be some merit to this argument in that the relief claimed is relief sought by them *qua* directors of the Tshwane SPCA, NPC to allow them access to the premises to enable them to fulfil their fiduciary duties and ensure that the Tshwane SPCA, NPC produce the required financial statements, it is made plain that the application is brought in the name of the Tshwane SPCA, NPC which is represented by Niemann-Greatorex and the other directors of Applicant.

[115] Directors have the *locus standi* to sue on behalf of a company under Section 165(2)(b) of the Companies Act 71 of 2008. This is when the director is acting to protect the company's legal interests and the company fails to act enabling, *inter alia*, a director or shareholder to bring a derivative action on behalf of the company.

[116] Section 165 deals with derivative actions and provides:

"165 Derivative actions

- (1) Any right at common law of a person other than a company to bring or prosecute any legal proceedings on behalf of that company is abolished, and the rights in this section are in substitution for any such abolished right.*
- (2) A person may serve a demand upon a company to commence or continue legal proceedings, or take related steps, to protect the legal interests of the company if the person-*
 - (a) is a shareholder or a person entitled to be registered as a shareholder, of the company or of a related company;*
 - (b) is a director or prescribed officer of the company or of a related company;*
 - (c) is a registered trade union that represents employees of the company, or another representative of employees of the company; or*
 - (d) has been granted leave of the court to do so, which may be granted only if the court is satisfied that it is necessary or expedient to do so to protect a legal right of that other person."*

[117] Blackman II, Commentary on the Companies Act 2008, p7-33 states that:

"In exceptional circumstances, a person with standing under s 165(2) may apply to a court for leave to bring proceedings in the name and on behalf of the company without making a demand or without affording the company time to respond to the demand in accordance with s 165(4). The court may grant such leave only if it is satisfied that the delay required for the completion of the procedures in terms of s 165(3)–(5) above may result in irreparable harm to the company or substantial prejudice to the interests of the applicant or another person; that there is a reasonable probability that the company may not act to prevent that harm or

prejudice or to protect the company's interests; and that the requirements of 165(5)(b) are satisfied (namely, that the applicant is acting in good faith, the proposed or continuing proceedings involve the trial of a serious question of material consequence to the company, and it is in the best interests of the company that the applicant be granted leave to commence or continue the proposed proceedings) (s 165(6))."

[118] In this case, the application has been brought in the name of the Tshwane SPCA NPC, duly represented by its erstwhile directors. Although the directors seek to protect their interests as directors Tshwane NPC, they remain directors and are empowered by way of resolution to institute the proceedings in the name of the company. I do not see their interests being divergent to those of the Tshwane NPC whose interests will be protected by having its financial statements audited.

The merits

[119] Similar technical arguments are raised by the respondents in dealing with the merits of the dispute.

[120] The respondents point out that Rule 2.7 of the Rules, as well as Clause 10.1 of the Applicant's Constitution, require that the Society's Management Committee must have a minimum of five members.

[121] From the minutes of the Applicant's AGM held on or about 22 July 2023, it is evident that the Applicant's management committee at the time of the meeting only had one elected member being, Valla, with the rest of the members of the management committee being co-opted from the Applicant's other members. These co-opted management committee members, so the argument goes, needed to be formally elected to the management committee by the Applicant's membership. The "*membership agreed to abstain regarding a vote of no confidence in the [then] current Committee on the basis of the absence of a strategic plan reflecting their plan of action*" until such time as a Special General Meeting could be held. The Respondents do not have any record of a subsequent Special General Meeting being held.

[122]The respondents argue that this is in contravention of Clause 10.9 of the Applicant's Constitution which states:

"The Management Committee may by co-option fill any casual vacancy among those of its members holding office in terms of the above and any such co-opted members shall retire from office at the next general meeting but shall be eligible for re-election."

[123]The respondents point out that on or about 14 February 2024, Niemann-Greatorex caused an email to be sent to the NSPCA in which the Applicant extended an invitation to a member of the NSPCA's financial department, Naude, to join the Board of the Tshwane NSPCA as the position of the Vice-Chair was vacant at the time. On or about 19 February 2024, Naude, responded to such request on behalf of the NSPCA, declining the invitation, and seeking clarification as to why the request was made for a financial person to be appointed notwithstanding that Smit was serving as the Treasurer of the Tshwane SPCA.

[124]The respondents explain that *"in light of the above, and further due to the egregious contraventions by the Tshwane SPCA of the SPCA Act"* set out in the answering affidavit, the NSPCA elected to appoint members of the NSPCA to the Management Committee of the Tshwane SPCA by utilising the authority granted to it by Section 6 of the SPCA Act.

[125]The applicant's counsel argued that the amended Constitution relied upon by the NSPCA which was signed by Niemann-Greatorex was invalid as the AGM was not properly constituted: In particular, the other members present at the AGM were delegates of the NSPCA and thus there was no quorum present. Accordingly, the hostile takeover was executed at a meeting which was not quorate and thus any decisions taken were invalid. It is moreover contended that Meridith hijacked the AGM to achieve her purposes.

[126]The court takes cognizance of the fact that the Niemann-Greatorex was not truthful in her denial that she had signed the Constitution presented at the AGM. The other directors stated that they had not seen the Constitution as they were not present at the AGM. The adoption of the Constitution did not take place at the AGM. The AGM took place on 10 August 2024; the Constitution was only

signed on 13 August 2024, after the meeting. This is the same date that the minutes of the AGM were signed.

[127] The applicant's counsel pointed out that the applicant was registered in terms of the SPCA Act. Section 4 of this Act makes provision for the Constitution of the NSPCA and requires that any amendments be approved by Special Resolution by the NSPCA and be published in the Government Gazette. This was not done and thus, it was argued that the Amended Constitution relied upon by the respondents was not valid. This is not a valid counter-argument as section 4 of the Act deals with the Constitution of the NSPCA; the Constitution relied upon presented at the AGM of 10 August 2024 was that of the Tshwane SPCA which is regulated in terms of section 9 of the Act.

[128] The applicant's counsel stressed that the NSPCA purported to exercise its powers to take over control of the Tshwane SPCA in terms of section 6 of the Act. Counsel argued that the NSPCA and the Board did not have the power to take over the applicant in terms of section 6 of the Act; the power to take over the applicant is set out in section 11(1). Accordingly, in so far as the NSPCA purported to exercise powers under section 6 of the SPCA Act, the takeover was not lawful.

[129] I am not sure where these arguments disputing the validity of the takeover take the applicant as no relief is sought to set aside the NSPCA's decision to take over control of the Tshwane SPCA.

[130] The respondents' counsel, however, stressed that on or about 25 August 2023, the NSPCA caused a 30-day notice demand to be sent to the Management Committee of the Tshwane SPCA in terms of Section 11(1) of the SPCA Act due to the Society's non-compliance with Section 9(2)(e) of the SPCA Act. This related to the Tshwane SPCA's failure to provide, *inter alia*, its Audited Financial Statements for the 2022/23 financial year, by the last day of July 2023.

[131] Kotze states at paragraphs 5.32.1-2 and 5.33 of the answering affidavit that:

5.32.1.1 On or about 12 September 2023, the Applicant's Jeanine Niemann responded by email to this 30-day letter by

providing reasons for the Applicant's non-compliance with Section 9(2)(e) of the SPCA Act. ...

5.32.1.2 On or about 30 October 2023, the First Respondent rejected the Applicant's reasons (as provided on 12 September 2023) for its failure to comply with Section 9(2)(e) of the SPCA Act. In this rejection letter, the Applicant was "provided with an opportunity to make written representations or requests to address the Section 11 committee within a period of 10 days from the date of this notice, regarding their alleged failure to cease or remedy the contravention." The Applicant was further warned that its failure to request to appear before or make written representations to the Section 11 Committee, within the period of 10 days, will be deemed as a waiver by the Applicant of their right to be heard and the board will then consider actions in terms of Section 11(1) of the SPCA Act. ...

5.33 On or about 30 October 2023, the Applicant's Jeanine Niemann wrote to the First Respondent apologising for the Applicant's late update on the submissions of its financials, and added "[o]ur main problem with the financial issues that we are experiencing currently is that the previous financial manager and general manager was not fully committed to their duties. We had to take action against both of them and the outcome was dismissal. We are dedicated to get this problem resolved as soon as possible, this is just as much an frustration to us, as it is for you.[sic]". ...

[132] Kotze goes on to explain that:

5.34 On or about 11 December 2023, the First Respondent caused a further clarity- seeking letter to be sent to the Applicant. This clarity-

seeking letter afforded the Applicant with a further 10-day period by which to respond to the First Respondent. ...

5.35 Subsequently, on or about 21 December 2023, the Applicant's Sonal Valla, acting in her capacity, at the time, as the Chairperson of the management committee of the Applicant responded to the First Respondent's letter of 11 December 2023. In the aforementioned letter, Ms Sonal Valla cited the reasons for the delay as:

5.35.1 A setback due to the resignation of the previous treasurer (Francois du Plessis);

5.35.2 Resignation of the auditors (Logista) in September 2022 (which is incorrect as the minutes of the meeting dated 22 July 2023 (Annexure "M3" as above) specifically states "their services were accordingly terminated as part of cost-cutting measures");

5.35.3 The finance manager Ms Erna Smit refusing to provide the committee with the relevant management reports after her dismissal;

5.35.4 The challenges faced in obtaining basic information or information relating to previous audits and balances from the previous auditors (Logista); and

5.35.5 Additional testing, verification and scrutiny by the new auditors.

5.36 Since the Second Respondent cannot summarily conclude a process in terms of Section 11 without it reaching some sort of resolution (whether compliance by the society or alternative action in terms of Section 11), this 30-letter process was not concluded by 31 December 2023, as such was carried over into the 2024 calendar year and still

remains incomplete and open, as the Applicant's Audited Financial Statements for the 2022/23 financial year are yet to be received.

5.37 *On or about 30 May 2024, the First Respondent sent another 30-day letter to the Applicant which highlights the Applicant's continued non-compliance and further that a 30-day letter has been dispatched to the Applicant within 2024. Which, taking into account the 30-day letter carried over from the 2023 calendar year, means that this would be the second 30-day letter in the 2024 calendar year and would therefore fulfil the requirements of Section 11(2) of the SPCA Act, although as previously mentioned the First Respondents representatives were appointed in terms of Section 6 of the SPCA Act and not Section 11.*

...

5.38 *On or about 23 August 2024, the First Respondent caused yet another 30-day letter to be sent to the Applicant whose management committee by then already included the First Respondent's representatives. Therefore, any allegations that the actions of the First Respondent are contrary to their obligations, done with ulterior motives or are ma/a fide are completely unfounded. This letter shows the First Respondent even holds its own representatives accountable in terms of the SPCA Act. ...*

[133] Kotze further states at paragraph 5.39 to that:

"5.39 From paragraph 7 of the minutes of the AGM of 22 July 2023 ..., it is evident that the Applicant's management committee, under the guidance of Mr Dandre Smit as the Treasurer at the time, were aware of the requirements for the 2022/2023 audit to be completed by 31 July 2023. It was further stated that this audit was underway at the time of such AGM.

5.40 *On or about 29 January 2024, prior to the First Respondent placing*

its members on the management committee, Mr Dandre Smit addressed a letter to the First Respondent requesting an indication of the consequences of a 2023 qualified audit. Mr Dandre Smit specifically stated, "We are at a crossroads [where] we are running out of time to resolve the matter and not obtaining assistance from the prior auditor/accountants in resolving the issues."

5.41 In paragraph 8.4. of the minutes of the AGM dated 10 August 2024 ..., Jeanine Nieman (acting as Chairperson of the Applicant) stated that when she assumed office as Chairperson in March 2024, she noticed that the reports were incomplete with information that was not captured and that she requested Stabilis from Kopano to assist in getting these ready for financial reporting.

5.40.1 This is not completely true.

5.41.2 A 30-day notice in terms of section 11(1) of the Act was sent to the management committee of the Tshwane SPCA on or about 25 August 2023 ... which detailed the Tshwane SPCA's non-compliance in terms of section 9(2)(e) of the Act.

5.41.3 Ms Jeanine Niemann herself was involved in the preparation of responses to be sent to the First Respondent shown by her response to the 10-day letter dated 30 October 2023 as set out above in paragraph 5.33.

5.41.4 I therefore respectfully submit that Ms Jeanine Nieman was certainly aware of same prior to her taking over as Chairperson in March 2024.

5.42 During or about June 2024, when the First Respondent initially appointed members to the management committee of the Society,

the Applicant's outstanding audit had not been completed despite there being a period of approximately one year between the AGM and the First Respondent placing members on the Applicant's management committee. This audit has still not been completed.

5.43 *In the period between 13 September 2024 to 19 September 2024, the Applicant's Dandre Smit was in communication with the First Respondent's Nadine Ferreira in relation to documents requested by a representative of the auditor, Mr John Wright. ... As can be seen from these emails, the request for information has, where possible, been addressed. Whilst access to the premises was being considered, the representatives of the First Respondent were in no way refusing to provide information and in fact provided information that was available to the First Respondent."*

[134] These contentions are dealt with in the replying affidavit. I repeat my concerns about the respondents relying on the failure by the applicant to provide its financial statements as a basis for acting in the manner in which it has when it has by its actions rendered it impossible for the applicant to render its financial statements.

[135] Niemann-Greatorex stresses in her replying affidavit that the respondents have sought to explain their hostile takeover of the applicant as "assistance". It is pointed out that the respondents only sought to achieve this takeover after the applicant had received a donation of R9 million. Niemann-Greatorex maintains that it has only been since receipt of the donation the NSPCA have accused the directors of the Tshwane NSCPA of misappropriating the funds of the legacy and have attempted to remove the directors as signatories of the applicant's bank account. This is supported by Smit in his supporting affidavit in which he provides a valid explanation for his not being able to finalise the 2023 financial statements.

[136] Moreover, it was argued on behalf of the applicant that in terms of section 11(2) of the Act, a 30-day notice demand is only valid for a calendar year. In any event, a reasonable explanation regarding the change of auditors was provided

regarding the delay in furnishing the Audited Financial Statements of the applicant and the explanation provided ought to have been accepted. This appears to be correct in terms of the legislation.

[137] It was further argued by the applicant's counsel that to constitute a valid takeover, it was necessary that there be two or more 30-day notice demands be sent within a calendar year and two or more notices were not issued during the 2024 calendar year; unless two or more notices were sent, it was not permissible for the NSPCA to act without notice as contemplated in section 11 (2). It was further argued that it was not permissible for the NSPCA to carry over the first 2023 30-day notice demand to 2024. Moreover, it was contended that as the second 30-day notice demand was sent after the NSPCA had already taken over the operations of the Tshwane SPCA, it could not be relied upon to take over the affairs of the Tshwane SPCA under section 11.

[138] This is a valid argument. In terms of section 11(2) of the SPCA Act, two 30-day notice demands need to be issued "*during a calendar year*" The notice issued on 30 October 2023 could not be carried over to the 2024 calendar year and relied upon by the NSPCA, together with the further 30-day notice demand sent on 30 May 2024 following the inspection of the premises during April 2024, to act as contemplated in section 11(2) of the SPCA Act to summarily designate members of the Tshwane SPCA's controlling body (Management Committee).

[139] The notice sent on 23 August 2024 did not qualify as a second demand during the 2024 calendar year as it was sent after the NSPCA had assumed control of the Tshwane NSPCA. and therefore, the previous 30-day notice demand issued on 30 October 2023, could not be relied upon by the NSPCA to act as contemplated in section 11(2) of the SPCA Act.

[140] Again, I do not see how this argument advances the applicant's case as no relief is sought to review and set aside the decision taken by the NSPCA to take over the affairs of the Tshwane SPCA.

[141] Section 11(2) requires that the NSPCA afford the Tshwane SPCA an opportunity to remedy its failure to produce Audited Financial Statements. The applicant's counsel argues that in sending the notice dated 23 August 2024, the first

respondent sought to justify its conduct in executing a coup by misrepresenting that the applicant remained non-compliant with its obligation to produce audited financial statements. In issuing this letter, the applicant's counsel argues that the respondents have in essence made demands on the Tshwane SPCA which they purport to represent, in order to manufacture a ground to take over the affairs of the Tshwane NSPCA.

[142] I agree that the 23 August 2024 demand is in essence a demand to the Tshwane SPCA made by representatives of the NSPCA who are in control of the affairs of the Tshwane NSPCA and thus constituted a demand made by persons wearing their NSPCA hats to themselves wearing their different hats, knowing that the demand could not be fulfilled by the Smit or Niemann-Greatorex, to whom the demand was also sent, as they are outnumbered on the Management Committee of the Tshwane Society. It is apparent from the chronology outlined above that the erstwhile directors have been precluded by the takeover from complying with the demand to produce the required audited financial statements. Indeed, the NSPCA's attorney threatened to apply for an order declaring the erstwhile directors to be delinquent should they not resign within 7 days of receipt of his letter dated 3 October 2024 and remove their names as signatories on the Tshwane SPCA's bank accounts.

[143] In the circumstances, I am satisfied that the applicant has made out a sufficient case for the relief sought, subject to certain amendments which I deem appropriate.

[144] Regarding costs, I do not find myself with sufficient information to find conclusively that second, third, fourth or fifth respondents acted *mala fide* and thus am not prepared to make an Order that they bear the costs *de boniis propriis*. I also do not believe that it is appropriate that I grant attorney and client costs against the respondents.

[145] In addition, although the applicant's counsel argued that the second, third, fourth and fifth respondents did not file an answering affidavit as the respondent's attorney purported to act on behalf of the first respondent and not the individuals, I do not think it would be appropriate on the papers before me to order these

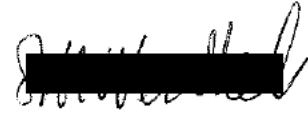
respondents to pay the costs of the application jointly and severally with the first respondent.

Order

[146] I thus make an Order in the following terms:

- a. The First, Second and Third Respondents are directed to forthwith allow the Applicant's Directors (as well as persons nominated and/or appointed by them to assist in the finalization of the financial statements and audit) access to the Applicants premises.
- b. The First, Second and Third Respondents are directed to restore the Applicant's physical possession of the files, source documents, computers, laptops and electronic running systems and any other documents owned by the Applicant for the purposes of completing the outstanding financial audit and statements.
- c. The First, Second and Third Respondents are directed to allow the directors of the Applicant to continue with their oversight roles as Directors of the Applicant.
- d. The First, Second and Third Respondents are directed to restore the official email addresses, access and functionality of the Applicant's Directors.
- e. All the correspondence concerning the operations and day to day management of the Applicant and the minutes of the meetings held by the First, Second and Third Respondents or the Representatives of the First, Second and Third Respondents after the directors of the Applicant were precluded from having access to the premises and/or were denied email access shall be transmitted to the official emails of the Directors of the Applicant within 5 working days of this Order.
- f. The First, Second and third Respondents are directed to engage meaningfully with the Directors of the Applicant in order to facilitate the finalization of the 2022/2023 and 2023/2024 financial statements and the provision of audited financial statements by no later than 30 April 2024.

- g. Pending the outcome of the aforementioned meaningful engagement and the provision of the required audited financial statements of the applicant by no later than 30 April 2024, the First, Second and Third Respondent are interdicted from ordering the dissolution of the Applicant in terms of Section 12 of the Societies for the Prevention of Cruelty to Animals Act 169 of 1993.
- h. Directing the First Respondent to pay the costs of the application.

A handwritten signature in black ink, appearing to read 'S.M. Wentzel', is written over a solid black rectangular redaction box.

**S.M. WENTZEL AJ.
JUDGE OF THE HIGH COURT
JOHANNESBURG**

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White Inc.