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Circulate to Judges:	NO
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Circulate to Regional Magistrates	NO

23 May 2025



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

CASE NUMBER: 2025-066073

In the matter between:-

**THE NATIONAL COUNCIL OF THE SOCIETY
FOR THE PREVENTION OF CRUELTY TO
ANIMALS (NSPCA)**

Applicant

and

DAYBREAK FOODS PTY LTD

1st Respondent

**PUBLIC INVESTMENT CORPORATION SOC
LIMITED (PIC)**

2nd Respondent

This Order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court and is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her Secretary/Registrar. The date of this Order is deemed to be 23 May 2025.

JUDGMENT

FMM REID J**Introduction**

[1] This is the return date for a *rule nisi* issued on 8 May 2025, on which date the *rule nisi* was extended to 16 May 2025. On 16 May 2025 a directive was issued, in which the parties were requested to address this Court on the following issues:

- 1.1. An action plan for cooperation between the applicant and respondents, if possible.
- 1.2. The specific period for the interdict to take effect, with the provision that the applicant may return to court on the same papers if needed.
- 1.3. Adherence to safety and health protocols by the inspectors of the applicant.

[2] Both parties submitted comprehensive arguments on the above points.

Factual background

[3] On 8 May 2025 the matter was heard as an urgent application, and the *rule nisi* order was issued on an urgent basis. The

urgency was necessitated by the collapse of the 1st respondent's responsibility to appropriately care for the chickens in their possession and under their control. The two main issues were the inhumane culling of the breeder birds (by wringing their necks) and the fact that the chickens were left without any food, and/or left without specific food as needed.

- [4] The second respondent duly acted on the urgent *rule nisi* and funding in the amount of R74,000,000.00 (Seventy Four Million Rand) was made available to the 1st respondent to salvage the situation and ensure that the chickens are properly taken care of and culled in a humane manner.
- [5] In the answering affidavit it was admitted by the 1st respondent (Daybreak) that the company in a state of disrepair due to financial mismanagement. It was denied that any inhumane treatment of chickens occurred. Daybreak stated that the injuries witnessed on the chickens, were probably due to the chickens pecking at each other's wounds (which may have been caused by the chickens' spurs) which is a natural reaction of the chicken. They further stated that the financial

collapse led to employees not being paid, which in turn, led to casual workers being employed to take care of the chickens. There was neither the time nor the money to train the casual workers in every facet in a poultry production facility. Should any inhumane culling have taken place, it might have been due to inexperience or lack of training of the casual workers. This being said, so the argument goes, has now been resolved with the receipt of the funds and the trained full-time employees have returned to work. The availability of the funds also addresses the chicken food shortage.

[6] When the matter was argued on 16 May 2025, the following relevant factual allegations were common cause:

- 6.1. The management of the 1st respondent has collapsed and there was financial mismanagement of the available funds.
- 6.2. The employees went on a strike and people were employed on a temporary basis.
- 6.3. Due to time constraints, the temporary employees were not properly trained in the correct manner of culling the birds.

- 6.4. There was no food to feed the birds, as there were no funds available.

- [7] There are several factual disputes that are not relevant to the determination of this application. Due to the irrelevant nature thereof, I do not give any further consideration thereto.

Analysis

- [8] A *rule nisi* is nothing other than an interim interdict with a return date for the respondent to prove its rights. See **Zulu and Others v Ethekwini Municipality and Others** 2014 (4) SA 590 (CC). On the return date, the *rule nisi* is either confirmed, and thus becomes a final interdict, or discharged, in terms of which the interim interdict is dismissed.
- [9] The legal position that a *rule nisi* operates as an interim interdict has also been confirmed in the Constitutional Court in **National Director of Public Prosecutions and Another v Mohamed NO and Others** 2003 (4) SA 1 (CC).
- [10] The requirements of a final interdict have been established in our law to be:

- 10.1. A clear right;
- 10.2. An injury actually committed or reasonably apprehended; and
- 10.3. No other satisfactory remedy.

[11] I will briefly discuss each requirement individually.

[12] Clear right:

- 12.1. The National Council of the Society for the Prevention of Cruelty to Animals ("NSPCA") has a statutory mandate which is contained in the **Animal Protection Act 71** of 1962 (the "Animal Protection Act") and other acts that protect animals. The Animal Protection Act appointed the NSPCA as the legislated body responsible for the implementation and enforcement of animal protection. The NSPCA has as its overall aim the protection and welfare of all animals.
- 12.2. I am satisfied that the NSPCA has a clear right to the relief sought, being confirmation of the *rule nisi* to ensure that

the animals at the 1st respondent's premises are treated humanely.

[13] An injury actually committed or reasonably apprehended:

13.1. Attached to the founding affidavit were numerous photographs and video footage of the mistreatment of the chickens. The photos displayed, amongst other attachments, chickens with their intestines exposed, severely underfed chickens and heaps of dead chickens.

13.2. The applicant argues that the mistreatment of the chickens, as displayed in the photographs, may be a real risk to human health. Hygienic protocols are not followed.

13.3. I am satisfied that the applicant has proven an injury actually committed or reasonably apprehended.

[14] No other satisfactory remedy:

14.1. In the founding affidavit the applicant sets out steps taken to resolve the issue. These steps include discussions with the 1st respondent's directors, where

they were able to get hold of the directors. The applicant also called on the media to raise awareness of the issues at the 1st respondent.

14.2. I am satisfied that the applicant has proven that there is no other satisfactory remedy available than approaching the court.

[15] The applicant thus complies with all 3 the requirements for a final interdict.

Legal position:

[16] In **Hotz and Others v University of Cape Town** 2017 (2) SA 485 (SCA) the Supreme Court of Appeal found that, on establishment of the above 3 requirements, the court has little to no discretion to grant the interdict. The relevant part in the **Hotz** matter reads as follows:

“[29] The law in regard to the grant of a final interdict is settled. An applicant for such an order must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other ordinary remedy. Once the applicant has established the three requisite elements for the grant of an interdict, the scope, if any, for refusing relief is limited. There is no general discretion to refuse relief. That is a logical corollary of the court holding that the applicant has suffered an injury or has a reasonable

apprehension of injury and that there is no similar protection against that injury by way of another ordinary remedy. In those circumstances, were the court to withhold an interdict, that would deny the injured party a remedy for their injury, a result inconsistent with the constitutionally protected right of access to courts for the resolution of disputes, and potentially infringe the rights of security of the person enjoyed by students, staff and other persons on the campus.”

[17] Having found that the applicant complies with the requirements for a final interdict, the applicant is entitled to such.

[18] After careful consideration of merits in this matter, I am satisfied that the applicant has made out a case for final relief.

Finding

[19] It follows that the *rule nisi* is to be confirmed.

[20] However, the final interdict will read somewhat different than the *rule nisi*. This is done in the interest of justice and to not over-reach this Court's powers.

Costs

[21] The general principle is that the successful party is entitled to be refunded for the costs occurred in the litigation.

[22] I find no reason why the general principle should not be applicable.

[23] The 1st and 2nd respondents are to pay the costs of the applicant.

Order

I therefore issue the following order:

- (i) The *rule nisi* as issued on 8 May is confirmed, with the amendments as set out as follows.
- (ii) The first respondent is to immediately:
 - a. cease inhumane culling methods, including but not limited to the inhumane ringing of the breeder birds' necks.
 - b. Feed all birds throughout its operations adequate and appropriate specific food (such as commercial poultry pellets for the breeder birds in this matter) until such time as the birds have been humanely processed.
- (iii) Until such time as the applicant is satisfied, *alternatively* until such time that the parties agree that there is sufficient, adequate and specie-appropriate nutritional feed at the

farms and affiliated facilities of the first respondent, so that the birds on the farms are not compromised and neglected:

- a. The first respondent is ordered to cease the breeding of and shall not place any Day-Old Chicks on any of its farms or affiliated facilities and shall make adequate provision for the hatchlings currently in its care.
 - b. No hatchlings may be placed at Daybreak Foods farms/s, affiliated facility or contract grower.
- (iv) Should it be found that the first respondent has relapsed into neglect of the birds at their farms, and should the applicant inspect the first respondent's farms and should there once again, be insufficient feed for the birds - Orders (i) and (ii) will automatically become operative again.
- (v) Subject to the adherence of the respondent's biosecurity measures, the applicant and its agents and/or representatives are authorised to access the first respondent's farms on production of authorisation by the applicant and identification, to conduct the inspections/actions contemplated in this Order.

- (vi) The first respondent is directed provide a timeline and explanation on how it plans to humanely resolve this animal welfare crisis, and to prevent further suffering, to the applicant within 5 working days of this Order.
- (vii) The first and second respondents are ordered to pay the costs of the application, jointly and severally, one paying the other to be absolved, on Scale B. The costs include costs of senior counsel and two counsel, where so instructed.



FMM REID
JUDGE OF THE HIGH COURT
SOUTH GAUTENG, JOHANNESBURG

DATE OF HEARING:	10 MAY 2025
DATE OF DIRECTIVES:	16 MAY 2025
DATE OF JUDGMENT:	23 MAY 2025

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