



**IN THE HIGH COURT OF SOUTH AFRICA
JUDGMENT**

(EASTERN CAPE DIVISION, MAKHANDA)

Reportable

CASE NO.: CA 74/2024

MAGISTRATES' COURT CASE NO.: 3831/2023

In the matter between:

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

Appellant

and

AL MAWASHI (PTY) LTD

1st Respondent

**LIVESTOCK TRANSPORT AND TRADING CO.
KSC (KLTT)**

2nd Respondent

TRANSNET NATIONAL PORT AUTHORITY

3rd Respondent

**THE HARBOUR MASTER FOR THE PORT
OF EAST LONDON**

4th Respondent

JUDGMENT

Coram: NHLANGULELA AJP et ELLIS AJ

Heard: 21 MARCH 2025

Delivered: 18 November 2025

Summary: *Appeal against the costs order and an order not granting ten officials of the appellant authorisations to enter the East London Harbour, examine livestock for shipment, seize diseased livestock and investigate contraventions of cruelty against animals and, if necessary, prosecute offenders as provided in ss 2 and 8 of the Animal Protection Act 71 of 1962 (APA), read with Regulation 2 made in terms of the APA - mootness of the relief warranting determination of the appeal in the interest of justice – common history of prevention of cruelty to animals necessitating contextual and purposive interpretation of APA and Societies for the Prevention of Cruelty to Animals (SPCA Act) beyond the meaning of the language used therein - true discretion of the magistrate susceptible to interference — appeal upheld with costs.*

ORDER

On appeal arising from the judgment of the magistrates' court of East London (per Magistrate Monakali).

1. The appeal is upheld with costs, payable on Scale B as provided in Rule 67A.
2. The order granted in the Magistrates' Court is set aside, and replaced by a new order reading as follows:

‘2.1 The following officers of the National Council of Societies for the Prevention of Cruelty to Animals: Marseille Meredith, Grace de Lange, Navesh Singh, Daryl White, Bryce Marock, Matome Semanya, Denis Govender, Richmond Sibande, Lizaene Cornwall- Nyquist and Celeste Houseman are authorized in terms of s 8 (1) of the Animals Protection Act 71 of 1962 (the APA) to enter the East London Harbour, Transnet National Port Authority, Port Control, Quayside and the MVA I Messilah berthed in the Port of East London from the time that the MVA I Messilah arrives in the Port in July 2023 until it departs.
3. The aforesaid persons are authorized:
 - 3.1 In terms of s 8 (1)(a) of the APA to examine the conditions in which the sheep, goats and cattle under the control of the first and second respondents are kept, inclusive of -
 - 3.1.1. how the animals are handled to determine whether there are contraventions to s 2 (1)(a) and (e) of the APA.
 - 3.1.2 whether the animals have/will have access to adequate space, ventilation, light protection, and shelter from heat, cold or weather in order to determine whether there are contraventions of s 2 (1)(b) of the APA.
 - 3.1.3 whether conveying of the animals on the MVA I Messilah will contravene s 2 (1)(m) of the APA by constituting:
 - 3.1. 3.1 the conveying of an animal under such conditions or even such distance as to cause that animal unnecessary suffering; or

- 3.1.3.2 conditions affording inadequate shelter, light or ventilation or in which such animal is excessively exposed to heat, cold, weather, sun, rain, dust exhaust gases or noxious fumes; or 3.1.3.3 without making adequate provision for suitable food, portable water and rest for such animals in circumstances where it is necessary;
- 3.1.4 taking readings of air quality, air speed, temperature and other like measurements to determine whether there are contraventions of s 2 (1)(m) of the APA.
- 3.2 To examine any animal in order to determine its physical condition as to properly exercise the powers set out in s 5 (1) read with s 8 (1)(d) of the APA, alternatively s 5 (3) of the APA as the case may be;
- 3.3 Document the examinations of animals and conditions are for set inclusive of taking such photographic and or video footage of such conditions and animals and the equipment used in the handling, transport transporting, treating, feeding, or watering or confining of such animals
- 3.4 Scan or photograph any and all documentation required for the purpose of prosecution of offenses in terms of s 2 of the APA.
- 3.5 In terms of regulation 2 of the “Regulations relating to the Seizure of animals by an Officer of a Society for the Prevention of Cruelty to Animals” no. R468 of 14 March 1986 seize any animals and take it/ them into custody if it is reasonably necessary to prevent cruelty to or suffering of such animals;
- 3.6. In terms of s 5 (1), read with s 8 (1)(d) of the APA, alternatively, s 5 (3) of the APA, as the case may be, humanely euthanise any animal which is so diseased or severely injured or in such a physical condition that it would be cruel to keep it alive;

- 3.7. If necessary, take with them onto the aforesaid property of the South African police services (SAPS).
- 3.8. If necessary, take with them any other qualified specialist necessary for examining the conditions and or species on the vessel.
4. In order to carry out the faucet, the authorized persons are to be allowed on board the MVA 1 Messilah prior to, during, and after the loading of animals onto the vessel until the vessel departs the Harbour.
5. That the first respondent pay the costs of this application, inclusive of the costs of two counsel.’

JUDGMENT

Nhlangulela AJP (Ellis AJ concurring)

Introduction:

[1] On 14 July 2023 the district magistrate for the Magistrates’ Court of East London (per Ms Monakali) granted an order authorising four officers of the appellant to enter into MV l Messilah, the vessel of the first respondent berthed at the East London Harbour, and examine 53,000 animals (comprising sheep, goats and cattle) kept in the vessel to determine the physical condition of the animals, seize any animals as may be subjected to ill-treatment and euthanise any animal that is found diseased or in a condition that it would be cruel to keep it alive. The magistrate ordered further that each party pay its costs of the application.

[2] The appellant launched an appeal against the order granted because it was aggrieved by the costs order and the limited nature of the judgment in that the

authority was given to four officers out of ten, and that such officers were not given the power to document the examination of the animals and the condition of the equipment used to handle and convey the animals by sea, inspect and take pictures and video footage of the animals for the purpose of prosecution of offences in terms of s 2 of the APA, read with Regulation 2 of the Regulations Relating to the Seizure of Animals by the Officer of a ‘Society for the Prevention of Cruelty to Animals’, No. R. 468 of 14 March 1986.

[3] In this Court, the issues to be decided are whether the magistrate erred:

- (i) in authorising only 4 officers of the appellant to enter the vessel of the first respondent.
- (ii) in refusing to authorise documentation of the examination of animals and the condition of the equipment used to handle and convey the animals by sea, and to take photographs and video footage of such examinations and conditions for the purpose of the prosecution of offences.
- (iii) in refusing to grant costs in favour of the appellant.

Background

[6] The first and second respondents have on four previous occasions, in October 2019, March 2020, September 2020 and June 2021, loaded livestock into the vessels and exported them by sea from the East London Harbour to Kuwait. On each of those occasions, the appellant approached the magistrate on application for authorisations in terms of the APA for the purpose of monitoring the loading of animals into the vessels and inspecting the conditions under which they were kept on board the vessels. Section 8 (1) of the APA provides as follows:

‘1. Officers from a Society for the Prevention of Cruelty to Animals may, if authorized in writing under the hand of the magistrate of a district:

- (a) without a warrant and at any time with the consent of the owner or occupier, or failing such consent on obtaining an order from a magistrate, enter any premises where any animal is kept, for the purpose of examining the conditions under which it is so kept;
- (b) without a warrant arrest any person who is suspected on reasonable grounds of having committed an offence under the APA, if there is reason to believe that the ends of justice would be defeated by the delay in obtaining a warrant;
- (c) on the arrest of any person on a charge of an offence under the APA, sees any animal or thing in the possession or custody of that person at the time of the arrest and take it forthwith to a police officer, who shall deal with it in accordance with the provisions of the Criminal Procedure Act, 1997 (Act 51 of 1997);
- (d) exercise in respect of any animal the powers conferred by subsection (1) of section 5 upon a police officer and in respect of such exercises those powers, the provisions of the said section *mutatis mutandis* apply.’

[7] On each of the prior occasions, the ambit of the magistrate’s order was limited to the examination of the animals, inspection of the condition under which they were kept in the vessels and shipped to the Middle East. Although contraventions of the APA were discovered during the examinations and inspections, the nature of the orders granted inhibited the appellant from carrying out its statutory mandate to protect the animals by documenting the examinations and conducting full investigation of cruel treatment for the purposes of initiating prosecutions of the owners of the vessels; hence its desire to document the examinations and scan/photograph documentation required for the purpose of prosecution of offences in terms of s 2 of the APA, read with Regulation 2.

[8] In July 2023, upon being notified that the first and second respondents were again scheduled to export 53,000 live animals by sea, the appellant brought an urgent application against the respondents seeking a relief that would enable a larger number of its officers to conduct examinations and inspections efficiently and gather ample evidence to, if needs be, support a successful prosecution of the first respondent.

In the Magistrates' Court:

[9] The order granted by the magistrate fell short of a relief that would enable the appellants to document the examination of the animals, the condition of the vessel and the type of equipment used on board the vessel to guarantee safe keeping of the animals in that:

- (a) only 4 out of 10 officials of the appellant were authorised to enter the MVA I Messilah vessel.
- (b) A relief that the appellant sought in paragraphs 3.3 and 3.4 of the notice of motion was not granted by the magistrate. Those paragraphs read:
 - ‘3.3 Document the examinations of animals and conditions are aforesaid inclusive of taking such photographic and /or video footage of such conditions and animals and the equipment used in the handling, transporting, treating, feeding, watering or confining of such animals;
 - 3.4 Scan or photograph any and all documentation required for the purpose of prosecution of offenses in terms of Section 2 of the Animals Protection Act 71 of 1962”.
- (c) The appellant was denied the costs of the application despite substantial success on the litigated issues.

[10] In and as a result of the nature of the order that was granted by the magistrate, the appellant lost the prosecutorial powers granted to it in terms of the APA to fulfill the aims of protecting the animals against ill-treatment by men as espoused in the Societies for the Prevention of Cruelty against Animals Act 169 of 1993 (the SPCA Act). The magistrate gave the following reasons for the refusal to order authorisations sought by the appellant:

On the issue of reduction of officers from 10 to 4:

- (i) The South African Competent Authorities¹, not the officials of the appellant alone, were the efficient structure that had to ensure that the facilities and procedures for the handling of the animals complied with animal welfare prescripts and international best practice.

On the issue of documentation:

- (ii) The provisions of s 8(1)(a) of the APA do not give express authority to the appellant to document cruelty to animals and contraventions under the APA.

¹The term is defined in the Guidelines for the Exportation of Live Animals By Sea, dated 31 March 2023 (the Guidelines), as a structure in the national veterinary service in the Department of Agriculture, Land reform and Rural Development. South Africa's competencies in animal exportation are centered on a rigorous regulatory framework system to ensure compliance with both national legislation (e.g., the Animal Diseases Act, the Animals Protection Act) and international standards set by the World Organisation for Animal Health (WOAH/OIE).

On the issue of costs:

- (iii) The magistrate reasoned that since the best route that the parties should have pursued would be to settle both the merits and costs, an order that each party must pay its costs was appropriate.

In this Court:

Mootness:

[10] It was a common cause between the parties that as they were embroiled in litigation of the issues over MVA I Massilah in this Court, the vessel had already departed the Harbour on 27 July 2023 with 53,000 livestock on board and sailed to its final destination. There is a likelihood that the judgment of this Court will have no practical effect on the parties and other members of the public. In my view, therefore, the provisions of s 16 (2)(a)(i) of the Superior Courts Act 10 of 2013 find application, which read as follows:

‘When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone’

[11] It was submitted on behalf of the appellant, with reference to *MEC for Education v KwaZulu-Natal and Others v Pillay*², that this Court may nevertheless proceed to decide the merits of the appeal as the legal issues involved are of public importance in that the decision of this Court will achieve legal certainty and have practical effect on the parties and other animal exporters. I was persuaded by the submission made on behalf of the appellant that it was in the public interest that the issues herein be determined

² *MEC for Education v KwaZulu-Natal and Others v Pillay* [2007] ZACC 21, 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC), para 32.

as the appellant's powers exist to carry out a public function in the public interest, and in the furtherance of constitutionally recognised values of animal welfare as stated in *Lemthongthai v S* ³.

[12] Counsel for the respondents was opposed to the merits of the matter being determined contending that the appellant must be unsuited for the reason that the matter took off as an urgent application for a relief that warranted the order made by the magistrate that the validity of the relief was limited to a period between issuing the order on 14 July 2023 until the vessel departed from the Harbour on 27 July 2023; the effect of the magistrates' order was not of general application to all shipment of livestock and the appellant would not be prohibited permanently and definitively from ever raising issues in this appeal in another matter of shipment of livestock.

[13] In my view, a closer scrutiny of the relief sought, especially on documentation, taking of photographs and scanning, that were not granted, reveals that the parameters of lawful authorisations that the appellant may be granted in terms of s 8 (1) of the APA call for a determination of the issues arising from this appeal. The adjudication of that relief will have a practical effect on the parties' responsibilities towards the conveyance of animals on sea, and other role players in the environment of animal protection. Therefore, it is in the public interest that the Court determines the issues raised in this appeal.

³In the context of the crime of rhino poaching, in *Lemthongthai v S* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA), para 20 it was stated that: "The duty resting on us to protect and conserve our biodiversity is owed to present and future generations. In so doing, we will also be redressing past neglect. Constitutional values dictate a more critical attitude towards fellow humans, animals and environment in general..."

The merits of the appeal:

[14] It was argued on behalf of the respondents that the magistrate's decision to allow 4 officers of the appellant to enter the vessel was a correct exercise of discretion. Counsel for the appellant submitted to the contrary. It being accepted that the decision of the magistrate entailed an exercise of discretion, the issue concerning the appealability of the decision exercised by the magistrate in granting authorisations in terms of s 8 (1) of the APA must be decided. I agree with the submissions advanced by counsel for the appellant that the power conferred by the APA to issue authorisations has come to be known as an exercise of true discretion, which is described in *Trencon Construction (Pty) Ltd v International Development Corporation of South Africa Ltd and Another*⁴ at [85] – [87] as follows:

“A discretion in the true sense is found when the lower court has a wide range of equally permissible options available to it ...

In contrast, where a court has a discretion in the loose sense, it does not necessarily have a choice between equally permissible options. Instead, as described in *Knox*, discretion in the loose sense-

‘means no more than that the court is entitled to have regard to a number of disparate and incommensurable features in coming to a decision’.

...

When a lower court exercises a discretion in the true sense, it would ordinarily be inappropriate for an appellate court to interfere unless it is satisfied that this discretion was not exercised -

‘judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.’

⁴ *Trencon Construction (Pty) Ltd v International Development Corporation of South Africa Ltd and Another*⁴ 2015 (5) SA 245 (CC).

[15] It was contended on behalf of the appellant, correctly so, that the magistrates' failure to authorise documentation and taking of photographs had to do with a wrong interpretation of the provisions of s 8 (1)(a) of the APA. Counsel for the appellant submitted that the errors committed by the magistrate had much to do with applying s 8 of the APA separately from the SPCA Act, and she did so to the point of losing sight of the legislative history that the appellant was established in terms of s 2 (1) of the SPCA Act. The appellant is a body empowered to prevent animal cruelty and promote animal welfare. Section 3(f) of the SPCA Act empowers the NSPCA 'to do all the things reasonably necessary for or incidental to the achievement of the objects mentioned in paragraphs (a) to (r)'. Section 6 (1) of the SPCA Act provides that the NSPCA shall for the purposes of s 8 of the APA be a society for the prevention of cruelty to animals with the statutory power of private prosecution, which the Constitutional Court found to have been conferred upon it by section 62E of the SPCA Act, read with section 8 of the Criminal Procedure Act 51 of 1977. The SPCA Act operates within the scheme of the APA, as well as within associated legislative instruments, such as the Performing Animals Protection Act 24 of 1935, Medicine and Related Substances Control Act 9/1/01 of 1965, Veterinary and Para Veterinary Professions Act 19 of 1982, Animal Diseases Act 35 of 1984, and Abattoir Hygiene Act 121 of 1992. In the context of the statutory scheme of the prevention of cruelty to animals, the NSPCA derives the power of prosecutorial agency. These submissions are predicated on established legal principles, which are comprehensively essayed by the Constitutional Court in

the *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another*⁵ (the NPCA case).

[16] In this case, the magistrate did not fully appreciate the appellant's role in animal exportation. And she would not, for a lack of appreciation of the legal foundation for the creation of the appellant, the purpose of its existence, and together with the policing function reposed to it by legislation. In finding that the appellant has a legal duty to police, investigate and prosecute offences of cruelty against animals, the Constitutional Court in NPCA stated the role of the appellant in the following terms:

‘[59] Parallel to the development of a principle prizing animal welfare, the NSPCA (previously comprised of discrete SPCAs) increasingly came to be seen as the special guardians of this laudable norm. In *Nel [Society For the Prevention of Cruelty to Animals, Standerton v Nel and Others]* 1988 (4) SA 42 W at 47B-E], the court explained that the SPCAs have “over the years, become well established and fully recognized as the authoritative voice in the protection against injury or cruelty to animals from whatever source and under whatever circumstances, also acting against owners of the animals in question”. As a result, it would be an anomalous situation if the law required that the SPCA had to stand idly by when animal cruelty was likely to occur.

[60] The passage of the SPCA Act and the advent of the constitutional era have entrenched this position. During parliamentary debates, it was acknowledged that the NSPCA “is surely the most renowned organisation in this field [of animal welfare]”. Cameron JA emphasized in *Openshaw [National Council of Societies for the Prevention of Cruelty to Animals v Openshaw]* [2008] ZASCA 78; 2008 (5) SA 339 (SCA)] that the

⁵*National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCTI/16) [2016] ZACC 46; 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC) (8 December 2016).

NSPCA is “a public body with wide and singular responsibilities in the field”. The singularity of the NSPCA’s position is armoured by the fact that it is tasked with “preventing ill- treatment of voiceless beings”.

[61] The historical development of the protection of animal welfare, and the role of the NSPCA in upholding this mandate, illustrates why the NSPCA plays a critical role in unique role in our polity. Its long history of guarding the interests of animals reflects constitutional values. It has taken on the role of protecting animals in all our interests. For this reason, and in the context of the statutory regime that now exists, a contextual and purposive reading of the SPCA Act must be taken to include the right to prosecute. It is unusual, but not entirely novel, for a body to have powers to police, investigate and prosecute. Taking into account its historical evolution, as well as the context, nature and objectives of the legislative scheme it is situated in, the NSPCA is an unusual body. This exceptional status demands a broader understanding of its powers”

[17] As stated in *NPCA* the appellant is a creature of statute that is established in terms of s 2 (1) of the SPCA Act. The SPCA Act and the APA share a common history and a similar objective of prevention cruelty to animals. In terms of s 6 (2)(d) of the SPCA Act, the appellant is empowered to enter upon any premises to examine any animal with the object of preventing ill-treatment of it. The Constitutional Court has decreed that the appellant is entitled to police actions of cruelty to animals by investigations and, where necessary, prosecute those persons who ill-treat animals for the purposes of preventing cruelty to animals as envisaged in s 8 of the APA. For such reasons, the submission advanced on behalf of the appellant that the authorisations that a court may grant in favour of the appellant in terms of s 8 (1)(a) of the APA, include the documentation of cruelty and contraventions of the APA by an officer of the appellant upon conducting the examinations

on board the vessel of the first respondent. In this regard, the following was said in the case of *NPCA* at paras 38 and 39:

‘[38] Interpreting the SPCA Act properly requires that it be read in conjunction with the APA. The NSPCA operates in the animal welfare framework that the APA establishes. The Act has a perspicuous purpose: to promote animal welfare and prevent cruelty to animals. The Act has three central functions:

- (a) to set out an extensive list of offences that constitute animal cruelty;
- (b) to establish a broad remedial scheme of civil and criminal punishment; and
- (c) to empower societies for the protection of animals (of which the centralised NSPCA is the current instantiation).

The APA also sets out a wide range of orders that a court may make to minimise future animal suffering if an offence has been established under that Act.

[39] The SPCA Act gives effect to the society envisaged by the APA. It sets out the functions and purposes of the NSPCA, which principally have the objective of protecting animal welfare as contemplated in the APA. The NSPCA is also subject to ministerial oversight. Together, these indicate the special and central role the NSPCA plays in protecting animal welfare in our society.’

[18] The upshot of the *NPCA* case, applied to this case, is that the express terms of authorisation by documentation of examination of the animals and scanning and photographing of such documentation is the power conferred to the appellant in s 8 (1)(a) of the APA, regardless of the fact that such terms have not been expressly written therein. This approach to interpretation is stated in the *NPCA* case as follows:

“‘Expressly conferred’ under the CPA

[33] The text of a particular provision is the starting point in the interpretive process, but textual meaning is always informed by context, even where the language is clear. The use of “expressly” in legislation does not always entail a requirement that the thing be made verbally explicit. Rather, it may indicate that the meaning of a provision

must be clear and incontrovertible, being conveyed with “reasonable clearness” or “as a necessary consequence”. “Express” is “stronger than implication” but does not require the use of specific words. Therefore, the words “private prosecution” need not be explicitly used to confer the right, although it must be sufficiently clear that it has been conferred.

[34] Whether the conferral is sufficiently clear is established through a purposive and contextual reading of the empowering provision – in this case, section 6 (2)(e) of the SPCA Act. This holistic interpretive approach is generous and “gives expression to the underlying values of the Constitution” within the bounds of language and context. To determine whether section 6 (2)(e) of the SPCA Act expressly confers a right of private prosecution, we look to the specific statutory language; its textual, historical, and social context; and the constitutional values which underpin it’.

[19] To the extent that the magistrate relied on the interpretation of the words used in s 8 (1)(a) of the APA, which is an approach that was jettisoned in *Natal Joint Municipal Pension Fund v Endumeni*⁶, the ground of appeal that the magistrate erred in looking only at the words used in s 8 (1)(a) of the APA is correct.

[20] The magistrate decided that 4 officials of the appellant, together with the South African Competent Authorities, must enter the ship and examine the condition in which the livestock was kept, and conduct an inspection of the facilities to ensure that the handling of the animals complies with animal welfare prescripts and international best practice. That decision was premised on the submission advanced on behalf of the respondents that the South African Competent Authorities and the officers of the appellant provide

⁶ *Natal Joint Municipal Pension Fund v Endumeni* 2012 (4) SA 593 (SCA) at para 18; See also: *Cool Ideas 1186 CC v Hubbard and Another* (CCT 99/13) [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) in para 28; and *Independent Community Pharmacy Association v Clicks Group Limited and Others* 2023 JDR 112 (CC) at para.238; *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (6) SA 1 (CC.)

similar services, standardised for handling animals during their embarkation onto vessels, thus making an increased number of officials to examine the animals unnecessary. On the other hand, it was submitted on behalf of the appellant that the competent authorities and officials of the appellant play different roles. The competent authorities do not mirror the officials of the appellant in that the competent authorities are not saddled with a statutory responsibility of policing, investigating ill-treatment of animals and prosecuting persons who ill-treat animals. It was argued further that on a balance of probabilities, the presence of a full ten officers of the appellant was justified by reasons that the loading of tens of thousands animals had to be supervised, on the vessel having 11 decks and for a considerable number of days (3 to 4 days), and the fact that the limits to the number of officials imposed on the previous shipments made the appellant's efforts futile.

[21] The evidence shows that the Guidelines and the World Organisation for Animal Health Code (WOAH/OIE), provide for health and welfare standards⁷ for animals on voyage and disembarkation, and express the aims of the APA, which facilitate animal exportation. These instruments impose specific requirements in respect of vehicles and the vessel used for transportation of animals, the holding facilities used prior to loading as well as loading and off-loading of the animals. They provide that these facilities must comply with the APA and WOAH/OIE. The other officers charged with the duty to handle

⁷The Animal Health and Welfare Standards espoused in the local and international guidelines are: 'Exporters must adhere to strict animal welfare standards throughout the entire process (pre-journey, transport, and disembarkation), in line with the World Organisation for Animal Health (WOAH/OIE) guidelines. This includes requirements for feeding, watering, ventilation, space, and veterinary care, with recent draft regulations focusing heavily on live animal transport by sea'.

the exportation of animals are referred to in the Guidelines as the exporter, the importing country's competent authority, the animal sellers, the shipping company, the Master of the Ship, the animal handlers, and the veterinarians employed at holding facilities and on the vessel. All these authorities are accountable for the health and welfare of the animals whilst under their care and supervision during the pre-journey period, the embarkation, journey at sea and disembarkation. The officers mentioned in the Guidelines and OIE are the bodies that are created to facilitate the implementation of the APA. Therefore, the argument that they are not enforceable in law is untenable for the reason that the Guidelines apply within the legislative framework of the APA, the SPCA Act and associated legislation.

[22] The invitation that this Court may grant a declaratory relief must be declined because the Magistrates' Court had been asked to grant a mandatory interdict. The appeal turns only on such relief.

[23] On costs, the general principle is that the appeal court is not at large to interfere with the exercise of judicial discretion by a lower court, unless justificatory grounds have been found to exist entitling an appellate court to interfere⁸. In my view, the grounds for the appeal costs are also meritorious. The general rule is that the appellant, as a successful party, is entitled to the costs.

⁸See: *Griesel NO v De Kock* 2019 (5) SA 396 at para 24.

[24] In the case of *Ferreira v Levin NO and Others, Vryenhoek and Others v Powell and Others* (1996) 2 SA 621 (CC) at 624, para. 3 a proper approach for determining costs is stated in the following terms:

‘The Supreme Court has, over the years, developed a flexible approach to costs which proceeds From 2 basic principles, the first being that the award of course, unless explicitly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical accuracy, depriving successful parties of their cause can depend on circumstances such as, for example, the conduct of the parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings.’

[25] It was submitted on behalf of the appellant that since the magistrate granted a substantial order and refused only the part of the relief concerning the documentation, photographing, and video footage of the examination of the animals and inspection of the vessel, the appellant ought to have been granted full costs of the application. Further, it was contended that the fact that the Departmental officials referred to in the Guidelines were available to supervise the loading of the animals onto the vessel did not preclude the need for the involvement of 10 officers of the appellant; and that the parties had, in the past shipment of animals, settled their disputes out of court had not prevented the order being granted on urgency. A significant factor also weighing in favour of granting costs to the appellant is that there was nothing about the conduct of the appellant that could deprive him of the costs. Consequently, the magistrate erred in depriving the appellant of the costs.

Order:

[26] In the result, the following order shall issue:

1. The appeal is upheld with costs, payable on Scale B as provided in Rule 67A of the Uniform Rules of Court.
2. The order granted in the Magistrates' Court is set aside, and replaced by a new order reading as follows:

‘2.1 The following officers of the National Council of Societies for the Prevention of Cruelty to Animals: Marseille Meredith, Grace de Lange, Navesh Singh, Daryl White, Bryce Marock, Matome Semanya, Denis Govender, Richmond Sibande, Lizaene Cornwall- Nyquist and Celeste Houseman are authorized in terms of s 8 (1) of the Animals Protection Act 71 of 1962 (the APA) to enter the East London Harbour, Transnet National Port Authority, Port Control, Quayside and the MVA I Messilah berthed in the Port of East London from the time that the MVA I Messilah arrives in the Port in July 2023 until it departs.

3. The aforesaid persons are authorized:

- 3.1 In terms of s 8 (1) (a) of the APA to examine the conditions in which the sheep, goats and cattle under the control of the first and second respondents are kept, inclusive of -

3.1.1. how the animals are handled to determine whether there are contraventions to s 2 (1)(a) and (e) of the APA.

3.1.2 whether the animals have/ will have access to adequate space, ventilation, light protection, and shelter from heat, cold or weather in order to determine whether there are contraventions of s 2 (1)(b) of the APA.

3.1.3 whether conveying of the animals on the MVA I Messilah will contravene s 2 (1)(m) of the APA by constituting:

3.1. 3.1 the conveying of an animal under such conditions or even such distance as to cause that animal unnecessary suffering;
or

3.1.3.2 conditions affording inadequate shelter, light or ventilation or in which such animal is excessively exposed to heat, cold, weather, sun, rain, dust exhaust gases or noxious fumes; or

3.1.3.3 without making adequate provision for suitable food, portable water and rest for such animals in circumstances where it is necessary;

3.1.4 taking readings of air quality, air speed, temperature and other like measurements to determine whether there are contraventions of s 2 (1)(m) of the APA.

3.2 To examine any animal in order to determine its physical condition as to properly exercise the powers set out in s 5 (1) read with s 8 (1)(d) of the APA, alternatively s 5 (3) three of the APA as the case may be;

3.3 Document the examinations of animals and conditions are for set inclusive of taking such photographic and or video footage of such conditions and animals and the equipment used in the handling, transport transporting, treating, feeding, or watering or confining of such animals

3.4. Scan or photograph any and all documentation required for the purpose of prosecution of offenses in terms of as two of the APA.

3.5 In terms of regulation 2 of the “Regulations relating to the Seizure of animals by an Officer of a Society for the Prevention of Cruelty to Animals” no. R468 of 14 March 1986 seize any animals and take it /

- them into custody if it is reasonably necessary to prevent cruelty to or suffering of such animals;
- 3.6. In terms of s 5 (1), read with s 8 (1)(d) of the APA, alternatively s 5 (3) of the APA, as the case may be, humanely euthanise any animal which is so diseased or severely injured or in such a physical condition that it would be cruel to keep it alive;
 - 3.7. If necessary, take with them onto the aforesaid property the South African Police Services (SAPS).
 - 3.8. If necessary, take with them any other qualified specialist necessary for examining the conditions and or species on the vessel.
 4. In order to carry out the faucet, the authorized persons are to be allowed on board the MVA 1 Messilah prior to, during, and after the loading of animals onto the vessel until the vessel departs the Harbour.
 5. That the first respondent pay the costs of this application, inclusive of the costs of two counsel.

Z M NHLANGULELA
ACTING JUDGE PRESIDENT OF THE HIGH COURT

I concur:

L. ELLIS
ACTING JUDGE OF THE HIGH COURT

Appearing for the appellant: Adv. A. Bester SC
appearing with Adv. A. Ashton
Instructed by: Wright Inc
PRETORIA
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Appearing for the respondents: Adv. R. Liddell
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