

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE:	no
(2)	OF INTEREST TO OTHER JUDGES:	no
(3)	REVISED:	✓
25/15/2026		
DATE	SIGNATURE	[Redacted]

CASE NO.: 2026-047152

In the matter between:

**SAKELIGA NPC**

**First Applicant**

**SUIDER-AFRIKA AGRI INISIATIEF NPC**

**Second Applicant**

**FREE STATE AGRICULTURE**

**Third Applicant**

and

**MINISTER OF AGRICULTURE**

**First Respondent**

**DIRECTOR-GENERAL DEPARTMENT OF AGRICULTURE**

**Second Respondent**

**DIRECTOR OF THE DIRECTORATE OF ANIMAL HEALTH OF THE DEPARTMENT OF AGRICULTURE**

**Third Respondent**

**MINISTER OF HEALTH**

**Fourth Respondent**

**SOUTH AFRICAN HEALTH PRODUCTS REGULATORY AUTHORITY**

**Fifth Respondent**

**DESIGN BIOLOGIX CC**

**Sixth Respondent**

<b>DUNEVAX (PTY) LTD</b>	<b>Seventh Respondent</b>
<b>AGRICULTURAL RESEARCH COUNCIL</b>	<b>Eighth Respondent</b>
<b>ONDERSTEPSPOORT BIOLOGICAL SOC LTD</b>	<b>Ninth Respondent</b>
<b>MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	<b>Tenth Respondent</b>
<b>HEAD OF NATIONAL DISASTER MANAGEMENT CENTRE</b>	<b>Eleventh Respondent</b>
<b>PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA</b>	<b>Twelfth Respondent</b>

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JUDGMENT

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VAN DER WESTHUIZEN, J

- [1] The applicants launched an application relating to the outbreak of the Foot-and-Mouth Disease (FMD) in the Republic of South that led to the declaration of a National Declaration of Emergency. The application commenced as an urgent application. The applicants seek relief on an interim basis pending the institution of proceedings for a declarator to be instituted within a specified period.
- [2] The interim relief sought relates to an interdict to the private procurement and self-administering of FMD vaccines.
- [3] The application is vehemently opposed by the first, second and third respondents. The sixth, seventh, tenth eleventh and twelfth respondents filed notices to abide. Initially the eighth and ninth respondents filed notices of provisional opposition and explanatory affidavits. Subsequent to the applicants filing a with prejudice tender, the eighth and ninth respondents gave notice to abide.

- [4] After the matter was enrolled for the hearing of the application, the matter stood down by agreement between the parties in an endeavour to follow a mediation process. The latter was unsuccessful, however, the applicant then made the with prejudice tender.
- [5] When the matter was called on the agreed date for hearing the application, lead counsel for the first, second and third respondents indicated that a hastily drafted scheme was to be Gazetted during that week. For that reason, the matter stood down and time limits were set for the publishing of the proposed scheme, and leave was granted to the parties to supplement their papers. Those arrangements were contained in an order of court. A new date was determined for the hearing of the application. On the new arranged date, new lead counsel for the first, second and third respondents requested a lengthy postponement of the matter. It was submitted by lead counsel that publication of the scheme had taken place, but that the said respondents required time to consider comments received on the published scheme to finalise the scheme and republish it. The applicants were unwilling to agree to the postponement. In view of the fact that the matter was of National concern, and that comments were received from the public that required consideration and inclusion in the to be Gazetted Scheme, I deemed it fit to grant a limited postponement and directed new dates for publication and the hearing of the matter. This was recorded in an order that was granted.
- [6] The matter was then heard on the new date set and argument on behalf of the parties was received. Although the eighth and ninth respondents earlier indicated their abiding by the court's decision, it was emphatically submitted during the oral submissions on their behalf that they accepted the applicants' with prejudice tender and supported it. It was submitted that the said tender was the result of the failed mediation proceedings, which then led to them indicating to abide by the court's decision.
- [7] At this point, it is to be noted that the first second and third respondents had not set out a defence in their answering affidavits, hence the belated

request for an indulgence to publish the proposed scheme referred to earlier. No other defence was pled other than that the newly Gazetted scheme constituted a defence.

- [8] The applicants' resort to this application emanated from the first, second and third respondents' adamant stance that it was in the government's realm to contain the FMD outbreak and that only government could attend to the vaccinations of the livestock affected thereby. Those respondents were hard pressed to show a basis for that contention in the Animal Diseases Act or in the Regulations promulgated thereunder. Hence the haste to Gazette a prohibition for privately administered vaccination of livestock.
- [9] The applicants contended that the government's stance was an egregious clinging to "control" the administering of vaccines to affected livestock, which highlighted the clear misconception of the legal position that was irrational, particularly in view of the fast spreading of the FMD.
- [10] Although the applicants acknowledge the role to be played by the government in controlling the spread of FMD, it required assistance in that endeavour, which the applicants were eager to provide. The applicants' intention was not to usurp that role, but to supplement it.
- [11] Further in this regard, the applicants indicated that there is an unlimited supply of suitable vaccines available for lawful import and sale to private livestock owners. The applicants do not intend to bypass the stipulated requirements for registration of the vaccines so available. They do not intend to become importers or manufacturers of said vaccines themselves. They would purchase such from role-players who have followed the ordinary and lawful route to import and manufacture the vaccines, in line with the prerequisite procedures.
- [12] On behalf of the applicants, it was submitted that the fear on the part of the respondents to allow privately administered vaccination of FMD,

would result in a lack of record-keeping and reporting, was unfounded. The applicants submitted that the legislative framework in that regard was already in place. In that regard, regulation 18 of the Animal Diseases Regulations require such recording and reporting. It was contended on behalf of the applicants that the said tender codified those requirements.

- [13] It is trite that any private person may do anything that is not prohibited by law.<sup>1</sup> The said respondents were required to indicate a prohibition with the force of law, such as an Act, or Regulation or any validly proclaimed control measure in terms of section 9 of the Animal Diseases Act. Section 9 does not in itself provide a prohibition. That section in subsection 1(a) provides as follows:

*“The Minister may for any controlled purpose prescribe general control measures, or particular control measures in respect of particular animal diseases and parasites.”*

- [14] The applicants contend that the Minister had not proclaimed any such general measure.<sup>2</sup> The said respondents did not point to any such general proclaimed measures. This omission is glaring. The only reference that the said respondents seek to rely upon is contained in an annexure “AA2” to their answering affidavit. That document is at best a proposal to the Cabinet in support of the declaration of a National Disaster. It has not found its way to a publication in the Government Gazette and it is clearly endorsed as a “secret” document. From the wording it is gleaned that it is not a “control measure” as contended for. Neither does the document proffer for any prohibition.

- [15] The said respondents attempted to contend that section 20 of the Animal Diseases Act contains a prohibition of some sort. That section relates to

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<sup>1</sup> *Minister of Water and Sanitation et al v Lötter N.O. and two other similar cases* 2023(4) SA 434 (CC) at [36]; cf. SCA judgment in this matter; *Minister of Finance v Oakbay Investments (Pty) Ltd et al* 2018(3) SA 515 (GP) [54]

<sup>2</sup> See *Interpretation Act*, 35 of 1957, sec 16

*"limitations on investigations, experiments and research with, and manufacture and evaluation of, certain products."* In terms, that section does not apply *in casu*. Furthermore, that section does not find application in instances where such substances are controlled under the Medicines and Related Substances Control Act, 101 of 1965. The FMD vaccines currently manufactured or imported are imported or manufactured under section 21 of that Act.

- [16] It is to be noted that a policy or a practice to not permit privately administered vaccinations does not qualify as a law.
- [17] The applicants contended that the published Animal Diseases Regulations<sup>3</sup> do not prohibit privately administered vaccination. They further contended that those Regulations envisaged privately administered vaccinations in respect of FMD. The applicants referenced the provisions of regulation 11(1) where duties are imposed upon owners and managers regarding the health of animals and their clear obligations in that regard. They further referred to Table 2 of the Regulations. That Table only refers to controlled areas. What happens in uncontrolled areas is not stipulated, nor can it be inferred. Thus, the applicants submitted that privately administered vaccinations outside proclaimed control areas are not prohibited. The applicants further contended that the Table only refers to cattle, sheep and goats. No mention is made of pigs. Hence privately administered vaccination of pigs is not prohibited.
- [18] Following from the aforesaid, the applicants contend that there is no general prohibition to privately administered vaccinations.
- [19] In respect of the said respondents' apparent relying on the provisions of the newly Gazetted scheme, the applicants contended that the said scheme does not outright prohibit privately administered vaccinations.

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<sup>3</sup> GN R2026, Government Gazette R10469 of 26 September 1986

At best it provided for voluntary participation in the scheme. Where such participation was voluntary, those participants were obliged to comply with the stipulated requirements. It is to be noted that, as recorded earlier, where there is no specific promulgated law against privately administered vaccinations, such privately vaccinations may be undertaken.

- [20] Furthermore, the newly Gazetted Scheme was made in terms of the provisions of regulation 10. That regulation provides in sub-regulation (1) as follows:

*“The Minister may by notice in the Gazette establish a scheme in respect of any controlled purpose or for the improvement of animal health.”*

- [21] The vexed new scheme so Gazetted, does not provide for “*any controlled purpose or for the improvement of animal health.*” At best it provides for voluntary participation in the Gazetted Scheme.
- [22] The appropriate regulation for any control measures, including any prohibition, would be regulation 9, as recorded earlier.
- [23] No substantive argument was provided on behalf of the said respondents to indicate clearly where such prohibition was Gazetted into law, and no convincing argument was presented on the said respondents’ behalf. Lead counsel for the said respondents was hampered in his argument in view of the lack of evidence in that regard.
- [24] The applicants only seek interim relief as foreshadowed in their tender. In that regard they are obliged to indicate a *prima facie* right, prospects of success in the intended declarator to be sought in due course, alternatively in any applicable review proceedings, reasonable apprehension of irreparable harm or actual harm suffered, and where the balance of convenience would best lie.

- [25] From the discussion earlier in respect of the absence of a lawful prohibition to privately administered vaccination of the FMD vaccine, it is apparent that the applicants have proven a *prima facie* right to interim relief. The prospects of success in respect of a declarator or review appears to be *prima facie* established. The apprehension of irreparable harm follows where the FMD is spreading rapidly outside of the proclaimed controlled areas. In my view, the applicants have shown that the balance of convenience clearly lies with them. The interim relief would not impact negatively upon the said respondents' exercising of their obligations in curtailing the FMD. To the contrary, it would assist them in the fight against FMD.
- [26] There remains the issue of costs. There is no reason why the costs should not follow the event. The applicants, in their notice of motion, sought a costs order against such party that opposes the application. Only the first, second and third respondents opposed the application. The eighth and ninth respondents did not formally oppose the application as recorded earlier. No relief was sought by them against the applicants in their explanatory affidavits. As recorded, at the first appearance, the eighth and ninth respondents indicated their intention to abide the court's decision. Despite the indication to abide by the court's decision, the eighth and ninth respondents were represented by counsel and all subsequent appearances. Such appearances were voluntarily undertaken. At the conclusion of the hearing of the application, lead counsel for the eighth and ninth respondents prayed for a cost order in favour of the eighth and ninth respondents. There is no merit in that request. The representation at the hearings of the eighth and ninth respondents were voluntary and no obligation existed upon them to be so represented. It is apparent from all the above, that the first, second and third respondents failed to indicate any substantive defence to the application and engineered delays in having the matter heard and adjudicated upon. The eventual scheme that was Gazetted did not supply any substantive defence as recorded earlier. Such conduct calls


for some sanction from the court. Nevertheless, the applicants do not seek any punitive costs order against the first, second and third respondent. In respect of the reserved costs order granted on 24 March 2026 no order stands to be made in view of what is recorded in this paragraph.

[27] At the concluding of the argument on behalf of the applicants, a proposed order in terms of the tender was presented. I intend to grant that order.

I grant the following order:

1. The order set out in the document marked XYZ appended to this judgment is granted.

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C J VAN DER WESTHUIZEN  
JUDGE OF THE HIGH COURT  
PRETORIA

On behalf of Applicants:	J G C Hamman H Scholtz
Instructed by:	KWV INC
On behalf of First, Second and Third Respondents:	(Initially) J de Beer SC K Manthe (Later) T F Mathibedi SC K Manthe
Instructed by:	State Attorney. Pretoria
On behalf of Eighth and Ninth Respondents:	L J van Tonder SC M Heystek SC
Instructed by:	Kisch Africa Inc
Date of hearing:	11 May 2026
Date of Judgment:	25 May 2026