THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Reportable/**Not Reportable**
Case no: 295/2023

In the matter between:

MEC FOR AGRICULTURE, ENVIRONMENTAL AFFAIRS, RURAL DEVELOPMENT AND LAND REFORM (NORTHERN CAPE) — First Applicant

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT — Second Applicant

and

HENDRIK (WICUS) DIEDERICKS — Respondent

NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS — *Amicus Curiae*

Neutral citation: *MEC for Agriculture, Environmental Affairs, Rural Development and Land Reform (Northern Cape) and Another v Diedericks (National Society for the Prevention of Cruelty to Animals intervening as Amicus Curiae)* (295/2023) 3 July 2026.

Coram: Tlaletsi JP *et* Lever J.
Heard: 29 April 2026.
Delivered: 3 July 2026.

Summary: Application for Leave to Appeal – Section 17(1)(*a*)(i) and (ii) of the Superior Courts Act 10 of 2013 – Whether the envisaged appeal has reasonable prospects of success – Whether there is some other compelling reason why the appeal should be heard – None established – Leave to appeal is refused.

ORDER

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1. The application for leave to appeal is dismissed with costs.

JUDGMENT

Tlaletsi JP

[1] This is an opposed application for leave to appeal to the Supreme Court of Appeal (SCA) against the whole of the Judgment and order, including all the orders for costs of the above Full Bench handed down on 31 October 2025.[1]

[2] The National Society for the Prevention of Cruelty to Animals ("the NSPCA") was not a party to the proceedings before the Full Bench. It joined the proceedings as *amicus curiae* only in this application for leave to appeal. However, its application to lead further evidence was unsuccessful. Reasons for the refusal to allow the NSPCA's application to lead further evidence were given at the hearing of the application for leave to appeal. Its submissions are therefore based on the existing record and the points of law it wishes to raise.

[3] The order appealed against is on the following terms:

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[1] The impugned judgment is *Diedericks v MEC for Agriculture, Environmental Affairs, Rural Development and Land Reform, Northern Cape and Another* 2026 (1) SA 574 (NCK).

1. "The administrative action taken by the first respondent ('the MEC') – which constitutes a decision to refuse to grant permits to the applicant to export rhino horn as embodied in her letter to him on the 21 April 2023 – is reviewed and set aside on the basis that it contravenes the principle of legality in section 1(c) of the Constitution and/or various provisions of section 6(2) of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA').

2. It is declared that:
   2.1 The exemption contained in Article VII(5) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is part of South African domestic law.
   2.2 In circumstances where the Management Authority is satisfied that the rhino horn comes from a white rhinoceros *Ceratotherium simum simum* that was bred in captivity for conservation purposes:
      2.2.1 The Management Authority shall, upon application, issue a permit/certificate to that effect;
      2.2.2 A certificate shall be accepted in lieu of any permits and certificates required under the provision of Article III, IV or V of CITES;
      2.2.3 An import permit from the State of Import is not a requirement for the export of rhino horn from South Africa by a person who has been issued with a permit/certificate.

3. The MEC is directed to take a decision on whether to issue the applicant with a certificate within 7 days of this order and to notify the applicant and his attorney of the decision and in the event that the decision is to *refuse* to grant a permit/certificate to the applicant, the MEC must simultaneously provide her reasons as contemplated by section 5 of PAJA and a record as contemplated by rule 53.

4. The respondents are to pay the costs of this review application, jointly and severally, the one paying the other to be absolved. Such costs are to be paid on scale "C".

5. The wasted costs occasioned by the postponement of this matter in December 2024 are to be paid by the respondents, jointly and severally, the one paying the other to be absolved. Such costs are to be paid on scale "C".

6. The application in relation to the misjoinder/non-joinder of Ms Pfab is dismissed and the costs of such application are to be costs in the cause. Such costs are also to be paid on scale "C"."

[4] The Superior Courts Act[2] ("SC Act") regulates the applications for leave to appeal in the Superior Courts. Section 17(1) provides that:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[5] The SCA considered s 17(1)(*a*) in *MEC for Health: Eastern Cape v Mkitha*[3] and held that:

"Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(*a*) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

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[2] 10 of 2013.

[3] (1221/2015) [2016] ZASCA 176 (25 November 2016) paras 16-17.

[6] It is apparent from the foregoing that s 17(1)(*a*) of the SC Act prescribes the threshold for leave to appeal. It provides two alternative bases upon which leave may be granted, namely where the court is satisfied either that "the appeal would have a reasonable prospect of success" or that "there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration". The use of the disjunctive "or" makes it clear that these requirements are alternative and not cumulative. Accordingly, an applicant need not establish both grounds. It suffices if either is present, although reliance may be placed on both where appropriate.[4] In the present matter, the applicants rely on both reasonable prospects of success and, in the alternative, the existence of some other compelling reason why the appeal should be heard.

[7] Where the applicant demonstrates either that the appeal would have a reasonable prospect of success or that there is a compelling reason for the appeal to be heard, leave to appeal should be granted. On the other hand, s 17(1)(*b*) and (*c*) constitutes contingent jurisdictional requirements, which are triggered only where the nature of the decision sought to be appealed so requires.[5] Section 17(1)(*b*) operates in conjunction with s 16(2)(*a*), which permits the dismissal of an appeal where the decision sought would have no practical effect or result. Section 17(1)(*c*), in turn, applies only where the decision sought to be appealed does not dispose of all the issues in the case, thereby requiring consideration of whether an appeal would lead to a just and prompt resolution of the real issues between the parties. In *Smartpurse Solutions (Pty) Ltd (applicant for leave) v FirstRand Bank, In re: FirstRand Bank Ltd v Smart purse Solutions (Pty) Ltd*[6], the court, having found that the applicant had based its application for leave solely on the contention that the envisaged appeal had reasonable prospects of success, held as follows:

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[4] *Smartpurse Solutions (Pty) Ltd (applicant for leave) v FirstRand Bank, In re: FirstRand Bank Ltd v Smart purse Solutions (Pty) Ltd* [2025] 1 All SA 552 (GJ) para 7.

[5] See for example *Firefly Investments 288 (Pty) Ltd v City of Johannesburg Metropolitan Municipality and Another* 2026 JDR 1386 (GJ) para 52; *Shelving Man (Pty) Ltd v Dawood* 2015 JDR 1417 (KZD) para 5.

[6] *Supra* fn 4 para 11.

"If the applicant demonstrates that the appeal would have a reasonable prospect of success (and the requirements in section 17(1)(b) and (c) are also met), the court must grant the leave that is sought. The exercise of the power to grant leave is then not in the court's discretion."[7] (Footnote omitted.)

[8] In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*[8], the applicant for leave to appeal advanced the grounds that the contemplated appeal enjoyed reasonable prospects of success and that other compelling reasons existed for it to be heard. The application was thus premised on both s 17(1)(*a*)(i) and (ii) of the SC Act. The SCA made the following instructive observations:

"In order to be granted leave to appeal in terms of s 17(1)*(a)*(i) and s 17(1)*(a)*(ii) of the Superior Courts Act an applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive. Caratco must satisfy this court that it has met this threshold."

[9] In *Ramakatsa and Others v African National Congress and Another*[9], the SCA further made the following insightful observations:

"Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco,* concerning the provisions of s 17(1)*(a)*(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court

[7] *See* also para 9.
[8] 2020 (5) SA 35 (SCA) para 2.
[9] (724/2019) [2021] ZASCA 31 (31 March 2021); [2021] JOL 49993 (SCA) para 10.

correctly added that 'but here too the merits remain vitally important and are often decisive'. I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist."

[10] It appears from the foregoing that an applicant for leave to appeal must satisfy this Court that the envisaged appeal enjoys a reasonable prospect of success or that there exists some other compelling reason why the appeal should be heard. To succeed, the applicant must show on proper grounds that the prospects of success are realistic and not remote. Something more than a mere possibility of success, or that the case is arguable on appeal, or that it is not hopeless, is required. There must, in other words, be a sound and rational basis for concluding that reasonable prospects of success exist.[10] Alternatively, an applicant may succeed by demonstrating compelling reasons why the appeal should be heard in the interests of justice. Such compelling reasons may include an important question of law or a discrete issue of public importance with implications for future disputes.

[11] The applicants have raised several grounds in support of the application for leave to appeal. At this stage, it is important to identify the real issues that the Full Bench had to decide. In essence, the Full Bench had to address a question of private international law concerning how and to what extent the provisions of the Convention on the International Trade in Endangered Species of Wild

[10] See also *S v Smith* 2012 (1) SACR 567 (SCA) para 7.

Fauna and Flora ("CITES") were incorporated into South African law. It is common cause that South Africa ratified this treaty in 1975.

[12] It is therefore important that the grounds of appeal be considered in light of the issues the Full Bench had to decide. I mention this aspect because a substantial number of the intended grounds of appeal go far beyond the issues that were for determination. Of further importance to note, is that the second applicant had placed a version in her answering affidavit as to how CITES was domesticated into our law. The Minister said that CITES was incorporated into domestic law in the 1970s and 1980s by "reference" in various provincial ordinances. However, the respondent's case is that CITES was incorporated via the National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA). There is therefore a difference of opinion between the parties on this fundamental issue which stood for determination.

[13] In summary, the starting point is the Constitution[11], which is the basic and supreme law of the Republic. Section 231 provides that:

> "(1) The negotiating and signing of all international agreements is the responsibility of the national executive.
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> (2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).
>
> (3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.
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> (4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

[11] The Constitution of the Republic of South Africa, 1996.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect."

[14] The Full Bench found that s 2 of NEMBA[12] sets out the objectives of this Act, which includes giving effect to ratified international agreements that relate to biodiversity and that are binding on the Republic. Section 5 of NEMBA[13] also provides for the application of international agreements. It states that NEMBA gives effect to ratified international agreements affecting biodiversity to which South Africa is a party and which bind the Republic. These provisions make it clear that Parliament incorporates CITES into South African law. Section 97 of NEMBA provides guidance on how CITES is operationalised.

[15] With this background of the obligatory statutory framework on which organ of state is responsible for negotiating and signing international agreements, and how they are ratified and ultimately become law in the Republic, I proceed to consider the grounds of the application for leave to appeal. Where possible, grounds that relate to the same issue will be grouped together.

[16] The applicants contend that the Court erred in holding that, by reading ss 2, 5 and 97 of NEMBA, Parliament incorporated CITES into South African law.[14]

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[12] **2. Objectives of Act**

The objectives of this Act are-

(a) within the framework of the National Environmental Management Act, to provide for-

(i) the management and conservation of biological diversity within the Republic and of the components of such biological diversity;

(iA) the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;

(ii) the use of indigenous biological resources in a sustainable manner;

(iiA) the consideration of the well-being of animals in the management, conservation and sustainable use thereof; and

(iii) the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources;

(b) to give effect to ratified international agreements relating to biodiversity which are binding on the Republic;

(c) to provide for co-operative governance in biodiversity management and conservation; and

(d) to provide for a South African National Biodiversity Institute to assist in achieving the objectives of this Act.

[13] **Application of international agreements**

This Act gives effect to ratified international agreements affecting biodiversity to which South Africa is a party, and which bind the Republic.

[14] *Diedericks v MEC for Agriculture, Environmental Affairs, Rural Development and Land Reform, Northern Cape and Another* (*Supra* fn 1) para 92.

They argued that this finding is irreconcilable with the requirement of s 231(4) of the Constitution in that the provisions of CITES: (a) are not embodied in the text of NEMBA; (b) are not included as a schedule to NEMBA; and (c) were not brought into effect by means of a proclamation or notice in the Government Gazette.

[17] As noted above, in the impugned judgment we found that the whole of CITES was incorporated into South African law through the promulgation of NEMBA. We provided reasons for this finding. We found that although CITES was ratified in 1975, it, together with other conventions, was not incorporated into our domestic law. After the new constitutional order, steps were taken to correct this situation.

[18] There is no doubt that NEMBA was enacted as national legislation to incorporate previously ratified international environmental law treaties and conventions concerned with biodiversity, i.e., CITES of 1975 and the Convention on Biological Diversity of 1992. As shown above, s 5 of NEMBA specifically states that it gives effect to ratified international agreements affecting biodiversity to which South Africa is a party and which bind the Republic. This is the same wording as s 2(*b*) of NEMBA's objectives. Section 51(*c*) of Chapter 4 of NEMBA also provides that the purpose of the Chapter is to give effect to the Republic's obligations under international agreements regulating international trade in specimens of endangered species. This is a reference to CITES. Section 57(1) prohibits the carrying out of a restricted activity involving a specimen of a listed threatened or protected species without a permit issued in terms of Chapter 7. Chapter 7 provides that its purpose is to regulate the issuance of permits, and s 88 sets out the procedure for permit applications.

[19] With these specific provisions, it is neither necessary nor required that the provisions of CITES be embodied in the text of NEMBA; nor that they be included as a schedule to NEMBA; nor that they be brought into effect by proclamation or notice in the Government Gazette.

[20] The Full Bench further found that the incorporation of the whole of CITES meant that Articles VII(4) and (5) of CITES were also domesticated as part of our law. During the argument in the Main application, Ms Ellis SC, appearing on behalf of the applicants, submitted that CITES was incorporated by the Minister through the 2010 Regulations issued under NEMBA. She submitted that, with this domestication, the entire CITES was not incorporated. This submission is clearly inconsistent with the case made in the answering affidavit, which stated that CITES was incorporated by "reference" in various ordinances in the 1970s and 1980s. What was incorporated through the 2010 Regulations, she argued, was the provision for South Africa's adoption of stricter domestic measures regarding the conditions for trade, taking, possession or transport of species or specimens of species included in Appendices I, II and III of CITES.

[21] Section 97(1)(*b*)(iv) of NEMBA provides that the Minister may make regulations relating to "the facilitation of the implementation and enforcement of an international agreement regulating international trade in specimens of species to which the agreement applies and which is binding on the Republic". It is apparent from s 97(1)(*b*)(iv) that the regulations promulgated by the Minister are intended only to facilitate the implementation and enforcement of an international agreement that has already been incorporated.

[22] The Minister does not have the power to incorporate into our domestic law any treaty or convention. That role is reserved for Parliament.[15] Section 231(4) of the Constitution specifically decrees that any international agreement becomes law in the Republic when it is enacted into law by national legislation.[16] Even if CITES had self-executing provisions, they would require approval by Parliament before they become law in the Republic. A proviso is that such self-executing provisions should not be inconsistent with the Constitution or an Act of Parliament.

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[15] *Minister of Finance v Afribusiness NPC* 2022 (4) SA 362 (CC) para 103:
"Ordinarily, the purpose served by regulations is to make an Act of Parliament work. The Act itself sets the norm or provides the framework on the subject-matter legislated upon. Regulations provide the sort of detail that is best left by Parliament to a functionary, usually the Minister responsible for the administration of the Act, to look beyond the framework and – in minute detail – to ascertain what is necessary to achieve the object of the Act or to make the Act work."

[16] *Glenister v President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) paras 98-100.

[23] Although Ms Ellis persisted with her later argument that CITES was incorporated by the Minister through the 2010 Regulations, Mr Morrison SC, appearing for the *Amicus,* correctly conceded that the Minister could not have incorporated CITES through those Regulations, as there is no specific authority from Parliament authorising the Minister to incorporate the treaty. This concession is well founded. There is no reasonable possibility that the SCA would find otherwise.

[24] When South Africa ratified CITES, it made no reservations. Consequently, the entire CITES regime is binding on South Africa. The applicants presented no evidence to support the claim that South Africa adopted stricter domestic measures. The 2010 Regulations cannot be regarded as strict domestic measures. They were never intended to be such measures. Stricter measures can be adopted only after the convention has been incorporated.

[25] Conference of the Parties to CITES Resolution 4.22[17] provides that, should a state party adopt stricter domestic measures under Article XIV of CITES, it must inform the Secretariat of the existence, adoption or amendment of such measures. In addition, the state party must provide the Secretariat with a copy of its laws, regulations, decrees, and other documents that establish such measures. The Secretariat is thereafter required to attach copies of the information regarding the stricter measures submitted by the state party to a notice to all state parties for notification. This requirement has not been met by South Africa, as it has not adopted the alleged stricter measures, and the Secretariat has not circulated any information containing South Africa's stricter measures to the other parties. Ms Ellis could also not refer us to any provision purporting to be a stricter measure.

[26] The applicants contend that the Court erred in finding that the respondent, by selling rhino horn, does not seek to make a commercial profit. It is common

[17] See Resolution 4.22 of the Fourth Meeting of the Conference of the Parties titled Proof of Foreign Law https://cites.org/sites/default/files/documents/COP/20/resolution/E-Res-04-22.pdf.

cause that the registration certificate (Annexure FA7) for the respondent's Rockwood operations clearly states that it is a captive breeding operation for non-commercial purposes. The purpose of selling the rhino horn is to plough the proceeds back into its operations. The applicants tendered no evidence to challenge the respondent's averments in this regard. Applying the Plascon-Evans[18] rule, the respondent's version must be accepted.

[27] Ms Ellis appears to argue that the application for leave to appeal is based on the premise that international trade in rhino horn is strictly prohibited, and that, as a result, the order granted is incompetent. That is not the correct position. The trade is regulated, not totally prohibited. In a Non-Detrimental Finding issued by the South African Scientific Authority, it is recognised that funds are needed to conserve the white rhino species and that increased revenue generated from the sale of rhino in regulated circumstances will benefit rhino conservation. This is what the respondent seeks to do. His evidence is that Rockwood, his private rhino conservancy, has approximately 350 (three hundred and fifty) rhinos roaming 33 000 (thirty-three thousand) acres. Maintaining and protecting them costs him approximately R20 million per annum. It is a costly operation to run. He needs money to sustain it. This evidence was not challenged by the applicants.

[28] The respondent presented the Deloitte report as evidence of the domestic implementation of Article VII, paragraph 5, of CITES in South Africa. The report was one of the subjects of the applicants' unsuccessful application to strike out.[19] In the ruling on that application, the invitation to the applicants to address the Deloitte report before the hearing on the merits of the review application was not accepted. The Deloitte report, therefore, remained uncontroverted evidence of multiple instances in which a specimen was exported from South Africa under the source code classification "C".

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[18] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.
[19] The judgment on the application to strike is *MEC for Agriculture, Environmental Affairs, Rural Development and Land Reform (Northern Cape) and Another v Diedericks* (295/2023) [2025] ZANCHC 4 (24 January 2025).

[29] The applicants further contend that the Full Bench erred in finding that CITES draws a distinction between "wild" animals and animals "bred in captivity". It is unclear what this ground is intended to convey. CITES itself draws this distinction. In relation to Appendix 1 animals, CITES regulates trade in specimens from wild animals under Article III and in specimens from captive-bred animals under Article VII. There is therefore no merit in this contention.

[30] The applicants further contend that the Full Bench erred in finding that CITES applies different rules of trade to "wild" specimens as opposed to those "bred in captivity". Again, what the applicants fail to recognise is that CITES itself makes this distinction. In relation to Appendix I animals, CITES regulates trade in specimens from wild animals under Article III, and trade in specimens from captive-bred animals under Article VII. CITES distinguishes between captive breeding operations for commercial purposes under Article VII(4) and those bred for non-commercial or conservation purposes under Article VII(5). CITES uses "source codes" to assist with the correct classification. These source codes are fully explained in clauses 2 to 7 of "A Guide to the Application of the CITES source codes".[20]

[31] The source codes were created to ensure that all states parties to CITES correctly identify and thereafter disclose to the Secretariat and other states parties the origin of the traded specimen. The specimen's origin determines which rules regulate trade in relation to that specimen.

[32] Trade in rhino horn from a wild animal is regulated by Article III, and its source code is "W". Trade regulations are very strict, as set out in Article III(2) and (3). Trade in rhino horn from a rhino bred for commercial purposes in a captive breeding operation is classified under source code "D". Trade in these specimens is regulated by Article VII(4), which has considerably fewer trade restrictions. However, source code "C" refers to trade in rhino horn taken from a rhino bred in a captive breeding operation for a non-commercial purpose,

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[20] The guide is an official user manual posted on CITES website www.cites.org .It is published by the CITES Secretariat for all states parties.

such as at the Rockwood conservancy. It is regulated by Article VII(5), which has less restrictive trade requirements. As shown above in the Deloitte report, source code "C" has been used multiple times in South Africa.

[33] On behalf of the *Amicus*, Mr Morrison submitted that conservation and welfare issues are intertwined. He referred us to s 2(*a*)(iiA) of NEMBA, which provides, as one of the objectives of the Act, "the consideration of the well-being of animals in the management, conservation and sustainable use thereof". He submitted that the Full Bench failed to take this aspect into account when it considered how CITES was incorporated into South African domestic law. As a result, he contended, leave to appeal should be granted, not necessarily on the basis of reasonable prospects of success, but because this is a public interest issue that qualifies as a compelling reason for leave to appeal. He argued that it should be left to the SCA to decide whether welfare considerations were relevant.

[34] I fail to see the relevance of welfare considerations or the treatment of animals in determining whether, when and how an international treaty was incorporated into South African domestic law. Welfare considerations must be taken into account by the MEC when issuing licences or permits for captive operations. The NSPCA is also entitled to visit and monitor these operations and to take appropriate action when they do not meet the required standard or contravene legislative prescripts. This contention is not compelling and does not warrant the attention of the SCA.

[35] The applicants contend that the Full Bench erred in ordering them to pay the costs arising from the December 2024 postponement, when a ruling on the application to strike out was reserved. Three days had been allocated for the hearing. Paragraphs 61 to 64 of the judgment on the application to strike addressed this point. Reasons were given for how the Full Bench exercised its discretion. This ground would not have a reasonable prospect of success on appeal.

[36] In conclusion, I am not persuaded that the appeal has a reasonable prospect of success and/or that there are compelling reasons for the Supreme Court of Appeal to hear it. The application for leave to appeal should be dismissed. Costs should follow the result.

[37] In these circumstances, the following order is made:

1. The application for leave to appeal is dismissed with costs.

[redacted]

LP TLALETSI
JUDGE PRESIDENT
NORTHERN CAPE DIVISION

I agree,

[redacted]

LG LEVER
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicants:	Adv Isabelle Ellis SC (with Adv Rasivhetshele)
Instructed by:	The State Attorney
For the Respondent:	Adv K Hopkins SC
Instructed by:	PGMO Attorneys, Kimberley
For the *Amicus Curiae*:	Adv L Morrison SC (with Adv S Martin (Ms))
Instructed by:	Gittins Attorneys, Johannesburg.