



7<sup>th</sup> April 2017

The Minister of Environmental Affairs  
Dr Edna Molewa  
c/o Mr Claude Mogambrey Nadasen, PA to Minister: [CNadasen@environment.gov.za](mailto:CNadasen@environment.gov.za)

### **Open Letter Re: Recent Constitutional Court Judgement and its Impact on South African Environmental Issues**

Dear Dr Molewa,

The EMS is a South African based philanthropic Foundation with the purpose of achieving lasting solutions, alleviating and ending suffering, raising public awareness and providing dignity through supporting and sustaining humane solutions, interventions and research for the protection of children, the Aged and wildlife.

We would like to bring to your attention the recent Constitutional Court unanimous and landmark judgement handed down on 8<sup>th</sup> December 2016 by Justice Sisi Khampepe (with Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Madlanga J, Mhlantla J, Musi AJ and Zondo J concurring): National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/16).<sup>1</sup>

This Judgement not only elevated the welfare and protection of non-human animals to a constitutional concern, but also significantly related their welfare and protection to biodiversity and the constitutional right to have the “environment protected ... through legislative and other means” in section 24 of the Constitution.

The Constitutional Court emphasised that constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general and that this obligation was especially pertinent because of South Africa’s history.

Of particular interest is that the Constitutional Court held that:

- a. The rationale behind protecting non-human animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals.
- b. Non-human animals are sentient beings capable of suffering and experiencing pain.
- c. Non-human animals are worthy of protection.
- d. Guardianship of the interests of non-human animals reflects constitutional values and the interests of society at large.

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<sup>1</sup> <http://www.saflii.org/za/cases/ZACC/2016/46.html>



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- e. The protection of non-human animals safeguards the moral status of humans and the degeneration of human values.

It is particularly significant that the Judges concurred with and highlighted their support for the judgements of other Courts which have held that canned-lion hunting is “abhorrent and repulsive”.

In the judgement, the Constitutional Court made the following important declarations which necessarily impact directly on your department’s policies, regulations and legislation:

1. Humans and animals have a storied relationship, one that is a part of the fabric of our society, homes and lives. Animals have shifted from being “mere brutes or beasts” to “fellow beasts, fellow mortals or fellow creatures” and finally to “companions, friends and brothers.”
2. To protect these voiceless companions, individuals have time and again stepped in when animals are mistreated.
3. The desirability of preventing animal cruelty has been evident since the first South African SPCA was established in the 1870s, and was reinforced through the promulgation of the 1914 SPCA Act.<sup>[79]</sup> In 1928, the Legislature (somewhat ironically) introduced an amendment to the 1914 SPCA Act that prescribed whipping as punishment for any wilful and aggravated act of cruelty to animals. In *Masow*, the Court explained that this was an ethical decision on behalf of the Legislature to entrench the need to protect animals against cruel treatment.
4. Our courts now afford increasingly robust protection to animal welfare. The 1929 decision of *R v Smit* illustrates the emergence of this approach. The offender, convicted of an animal cruelty offence, had beaten a dog for half an hour with a pole and spade, before pelting it with stones, and finally shooting it in its kennel. The Court found that, even if the dog had legal status as the man’s property, which he was entitled to destroy, the man was compelled to do so “humanely” while causing “as little suffering as possible”. Underscoring the conclusions in *Smit* and *Masow*, the Court in *Moato* found that “[t]he object [of the APA] was plainly to prohibit one legal subject behaving so cruelly to animals that he offends the finer feelings and sensibilities of his fellow humans”. This approach was endorsed with increased fervour by Miller J in *Edmunds*, who held that cruelty was prohibited so as to “prevent degeneration of the finer human values in the sphere of treatment of animals”.
5. More recently, Cameron JA’s minority judgment in *Openshaw* recognised that animals are worthy of protection not only because of the reflection that this has on human values, but because animals “are sentient beings that are capable of suffering and of experiencing pain”. The High Court in *South African Predator Breeders Association* championed this view. A unanimous Full Bench found that canned hunting of lions is “abhorrent and repulsive” due to the animals’ suffering. On appeal, the Supreme Court of Appeal did not dispute this finding.



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6. The Supreme Court of Appeal in *Lemthongthai* explained in the context of rhino poaching, that “[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general”. The Court concluded further that this obligation was especially pertinent because of our history. Therefore, the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on animals as individuals.
7. *Lemthongthai* is also notable because it relates animal welfare to questions of biodiversity. Animal welfare is connected with the constitutional right to have the “environment protected . . . through legislative and other means”. This integrative approach correctly links the suffering of individual animals to conservation, and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts. Animal welfare and animal conservation together reflect two intertwined values.

It goes without saying that all bodies, including the Department of Environmental Affairs are obliged to act in accordance with this judgement. Accordingly, the EMS Foundation would welcome clarity from you on the following:

- a. When and how will the DEA shift and adjust its approach to conservation and animal issues in order to comply with the judgement?
- b. What processes does it intend following to modify and amend existing policies, norms and standards, guidelines, regulations and legislation, charges and penalties, etc.
- c. When will the DEA begin working with the provinces to modify and amend existing policies, regulations and legislation, charges and penalties, etc.

The EMS Foundation would welcome your earliest response to the above queries, and we look forward to working in a constructive and pro-active manner with the DEA in order to ensure compliance with the judgement of the Constitutional Court.

Yours Sincerely,

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