

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2024-146251

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 9 April 2026

E van der Schuyff
E van der Schuyff

In the interlocutory application between:

THE NATIONAL COUNCIL OF THE SOCIETY
FOR THE PREVENTION OF CRUELTY TO
ANIMALS

APPLICANT

and

THE SOUTH AFRICAN PREDATOR
ASSOCIATION

FIRST RESPONDENT

TW VAN VUUREN

SECOND RESPONDENT

PH LOOTS

THIRD RESPONDENT

MJ ERWEE

FOURTH RESPONDENT

FCDW SCHEEPERS

FIFTH RESPONDENT

MPC BAMBERGER

SIXTH RESPONDENT

JC DE KLERK

SEVENTH RESPONDENT

GC FLETCHER

EIGHTH RESPONDENT

DDV CROUS

NINTH RESPONDENT

HC GOMES

TENTH RESPONDENT

AH DU PLESSIS

ELEVENTH RESPONDENT

AND

In the interlocutory application between:

BAN ANIMAL TRADING NPC

APPLICANT

and

THE SOUTH AFRICAN PREDATOR
ASSOCIATION

FIRST RESPONDENT

TW VAN VUUREN

SECOND RESPONDENT

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NINTH RESPONDENT

HC GOMES

TENTH RESPONDENT

AH DU PLESSIS

ELEVENTH RESPONDENT

AND

In the interlocutory application between:

THE TRUSTEES FOR THE TIME BEING
OF THE EMS FOUNDATION

FIRST APPLICANT

R DESRAJ N.O.

SECOND APPLICANT

LA STEYN N.O.

THIRD APPLICANT

AJ FRANKS N.O.

FOURTH APPLICANT

T STEYN N.O.

FIFTH APPLICANT

M PICKOVER N.O.

SIXTH APPLICANT

and

THE SOUTH AFRICAN PREDATOR
ASSOCIATION

FIRST RESPONDENT

TW VAN VUUREN

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DDV CROUS

NINTH RESPONDENT

HC GOMES

TENTH RESPONDENT

AH DU PLESSIS

ELEVENTH RESPONDENT

THE MINISTER OF FORESTRY,
FISHERIES AND THE ENVIRONMENT

TWELFTH RESPONDENT

THE DIRECTOR-GENERAL
DEPARTMENT OF FORESTRY, FISHERIES
AND THE ENVIRONMENT

THIRTEENTH RESPONDENT

THE SCIENTIFIC AUTHORITY

FOURTEENTH RESPONDENT

In re:

THE SOUTH AFRICAN PREDATOR
ASSOCIATION

FIRST APPLICANT

TW VAN VUUREN

SECOND APPLICANT

PH LOOTS

THIRD APPLICANT

MJ ERWEE

FOURTH APPLICANT

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NINTH APPLICANT

HC GOMES

TENTH APPLICANT

AH DU PLESSIS

ELEVENTH APPLICANT

and

THE MINISTER OF FORESTRY,
FISHERIES AND THE ENVIRONMENT

FIRST RESPONDENT

THE DIRECTOR-GENERAL
DEPARTMENT OF FORESTRY, FISHERIES
AND THE ENVIRONMENT

SECOND RESPONDENT

THE SCIENTIFIC AUTHORITY

THIRD RESPONDENT

JUDGMENT:

Van der Schyff J

Context

- [1] This judgment concerns applications by the National Council of the Society for the Prevention of Cruelty to Animals (NSPCA), Ban Animal Trading NPC (BAT) and the

Trustees for the Time Being of the EMS Foundation (EMS) to intervene in a legal challenge brought by the South African Predator Association and ten others (collectively referred to as SAPA), against the Minister of Forestry, Fisheries and the Environment (the Minister). While the main application involves SAPA seeking to set aside the Minister's failure to establish commercial export quotas for lion bones and derived products, the immediate focus here is on determining whether the NSPCA, BAT, and EMS should be admitted as intervening respondents or *amici curiae*, respectively. Any reference to 'applicants' in this judgment is thus a reference to NSPCA, BAT and/or EMS – depending on the context within which the reference is made.

Legal principles underpinning applications for leave to intervene as a respondent and for admission as *amici curiae*

Application to intervene as a respondent

[2] The principles governing applications for leave to intervene as a respondent are rooted in the Constitution of the Republic of South Africa, 1996, relevant statutory provisions, the Uniform Rules of Court, and the common law. Intervention serves as a procedural mechanism to permit a party with a requisite legal interest in the subject matter of ongoing litigation to join the proceedings, thereby ensuring the protection of their rights and the comprehensive adjudication of the dispute. While the power to grant leave to intervene resides within the judicial discretion of the Court,¹ such discretion is not absolute and has resulted in a distinction between the concepts 'joinder of necessity' and 'joinder of convenience'.

[3] The cornerstone of intervention is the requirement that an applicant must demonstrate a 'direct and substantial interest' in the subject matter of the litigation.²

¹ *Cohen v Jacobs (Stand 675 Dowerglen (Pty) Ltd intervening)* [1998] 2 All SA 433 (W) at para [11].

² *United Watch and Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* 1972 (4) SA 409 (C) at 415E. The principle was again entrenched by the Constitutional Court in, among others, *Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others (Mukgwecho Intervening)* 2001 (3) SA 1151 (CC) at para [30], *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In re Masetlha v President of the Republic of South Africa* 2008

This concept is judicially defined as a legal interest of such nature that it could be prejudicially affected by any judgment or order the court may deliver.³ It is well-settled that the nature of the legal interest required, and the determination of when a party possesses it, cannot be defined in the abstract. It is a fact-sensitive enquiry that depends on the exigencies and circumstances of each case.⁴

- [4] In *Gory v Kolver NO and Others (Starke and Others Intervening)*⁵ the Constitutional Court elaborated on the requirements by introducing the overarching criterion of ‘the interests of justice’.⁶ The Court clarified that while a direct and substantial interest remains a necessary condition for intervention as a party, it may not, in all circumstances, constitute a sufficient ground for granting leave to intervene. The ultimate test, the Constitutional Court held, is whether, in a particular case, it is in the interest of justice to join as a party to pending litigation. It is, however, pertinent to observe that the application in *Gory v Kolver NO* was brought before the apex court and one must remain cognisant of the procedural distinctions between Rule 12 of the Uniform Rules of Court, applicable in the High Court, Rule 8 of the Constitutional Court Rules.
- [5] In exercising its discretion, this court must remain mindful of the fundamental principle of natural justice highlighted by Fagan CJ in *Amalgamated Engineering Union v Minister of Labour*,⁷ namely that it cannot and should not make an order which may prejudice the rights of parties not presently before it. This principle was repeated by Plaskett AJ, as he then was, in *Nelson Mandela Metropolitan Municipality v Greyvenouw CC*,⁸ where he held:

(5) SA 31 (CC) at para [17], and *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 8 BCLR 1053 (CC) at para [9].

³ *United Watch, supra*, at 415H; *SA Riding for the Disabled Association, supra*, at para [9].

⁴ *Cohen, supra*, at para [16].

⁵ 2007 (3) BCLR 249 (CC).

⁶ *Gory, supra*, at para [13].

⁷ 1949 (3) SA 637 (A) at 651.

⁸ 2004 (2) SA 81 (SE) at para [9].

“[W]hen, as in this matter, the applicants base their claim to intervene on a direct and substantial interest in the subject-matter of the dispute, the Court has no discretion: it must allow them to intervene because it should not proceed in the absence of parties having such legally recognised interests.”

- [6] Furthermore, as affirmed in *South African Riding for the Disabled Association*, an applicant for intervention is not required to satisfy the court at this interlocutory stage that they will ultimately succeed in the main proceedings. It is sufficient if the applicant makes allegations which, if subsequently proved, would entitle them to the relief sought. The threshold at the intervention stage is thus focused on the existence of the interest and the potential for prejudice, rather than a final determination of the merits of the underlying dispute.⁹

Application for admission as an amicus curiae

- [7] It is well-established that a court retains a broad discretion to admit an *amicus curiae* where the interests of justice so require. To succeed, an applicant must demonstrate that its submissions are relevant to the proceedings and will meaningfully assist the court in determining the issues before it.¹⁰ Crucially, such submissions must offer a new perspective or raise novel contentions that differ from those advanced by the existing parties, without merely repeating what is already on record.¹¹
- [8] In determining whether to admit an *amicus curiae*, courts commonly consider a range of non-exhaustive factors that are applied flexibly, and guided by the overarching interests of justice. In addition to the factors listed above, these include whether the proposed *amicus* possesses particular expertise or specialised knowledge, whether its participation would serve the public interest, the stage at

⁹ *South African Riding for the Disabled Association, supra*, at para [9]. The principle was also stated in *Minister of Local Government and Land Tenure v Sizwe Development: In re Sizwe Development v Flagstaff Municipality* 1991 (1) SA 677 (Tk) (*Sizwe Development*) at 679A.

¹⁰ *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (10) BCLR 1023 (CC) at para [5].

¹¹ *Ibid.*

which admission is sought, and whether the *amicus* would cause prejudice to any of the parties.¹² Any consideration must be based on fairness, equality of arms, and most importantly, what is in the interests of justice.¹³

- [9] While an *amicus* is not required to be neutral and may support a particular side,¹⁴ its role remains distinct from that of an intervener.¹⁵ A prospective party is, however, not disqualified from admission as an *amicus*.¹⁶ Subsequently, a party with a direct interest in the outcome is not, for that reason alone, disqualified from admission as an *amicus*. Furthermore, while it is ordinarily inappropriate for an *amicus* to introduce new evidence or broaden the factual scope of the litigation,¹⁷ an *amicus* may present evidence with leave of the court.¹⁸
- [10] Courts have recognised that *amici curiae* frequently play an important role in matters implicating constitutional rights or broad public interest considerations. In such cases, a more lenient approach to admission of an *amicus* has been adopted, particularly where the proposed *amicus* represents interests that might otherwise not be adequately ventilated.¹⁹

The relief sought by SAPA in the main application

- [11] When the applications were argued, the applicants all relied on the scope of the relief sought by SAPA as one of, if not the primary, ground justifying their intervention as respondents or admission as *amici*.

¹² *Institute for Security Studies in re: S v Basson* 2006 (6) SA 195 (CC) at para [15].

¹³ *Ibid.*

¹⁴ *Maughan v Zuma (Campaign for Free Expression and others as amici curiae and a related matter* [2023] 3 All SA 484 (KZP) at paras [143] and [147].

¹⁵ *Hoffmann v South African Railways* 2001 (1) SA 1 (CC) at para [63].

¹⁶ *Maughan, supra*, at para [146].

¹⁷ *Treatment Action Campaign, supra*, at para [5].

¹⁸ *Children's Institute v Presiding Officer of the Children's Court, Krugersdorp* 2013 (2) SA 620 (CC).

¹⁹ *Ibid.*

[12] SAPA stated in the amended notice of motion that it intends to apply for an order in primarily the following terms:

1. That the failure of the Minister to decide and to establish, an annual export quota for 2024 and/or the 2025 calendar year/s for trade in lion bones, bone pieces, bone products, claws, skeletons, skulls and teeth for commercial purposes, derived from captive breeding operations in the Republic be declared unlawful, invalid, and be reviewed and set aside;
2. That the Minister be ordered and directed to take all such steps necessary to decide and to establish an annual export quota for the 2024 and/or 2025 calendar year/s (and yearly thereafter) for trade in lion bones, bone pieces, bone products, claws, skeletons, skulls and teeth for commercial purposes, derived from captive breeding operations in the Republic, and thereafter to decide and to establish such annual export quota for the 2024 and/or 2025 calendar years (and yearly thereafter) and to report to the applicants on all steps taken.
3. That in determining any annual export quota the Minister is ordered to specifically consider:
 - 3.1. That there is currently a large stockpile of lion bones, bone pieces, bone products, claws, skeletons, skulls and teeth for commercial purposes derived from captive breeding operations in South Africa because quotas have not been established for a number of years;
 - 3.2. That the value of the lion bones, bone pieces, bone products, claws, skeletons, skulls and teeth for commercial purposes, derived from captive breeding in South Africa decreases over time.
4. That in the event that the Minister fails to comply with an order herein or fails to comply therewith timeously, the applicants are granted leave on these same papers, duly supplemented to approach the court for further and/or ancillary relief.

- [13] If analysed, the relief sought by SAPA is tripartite in nature. First, it seeks declaratory relief coupled with a review, aimed at the Minister's historical and ongoing failure to establish quotas for the export of lion bone derivatives. Secondly, it seeks mandatory relief in the form of a *mandamus*, directing the Minister to perform his statutory functions and to report to SAPA on the progress thereof. Thirdly, it seeks an order compelling the Minister to take into account a specific relevant consideration, namely the existing stockpile of lion bone derivatives, when exercising the discretion.
- [14] The relief sought by SAPA is aimed at compelling a decision, not a particular decision. In essence, the order requires (i) a decision to be taken, (ii) in a lawful manner, (iii) considering, among others, a specific factor, (iv) subject to supervisory oversight. It does not dictate the outcome, content or substance of the Minister's decision.
- [15] In considering the intervention and admission applications, I had regard to the fact that, properly construed, the relief sought is procedural and supervisory. It does not seek to usurp the Minister's decision-making powers regarding the substantive outcome of the quota determination. The order sought does not pre-determine a numerical value, nor does it exclude a "zero quota" determination, provided such a decision is reached lawfully and rationally. The relief sought concerns quota determination, not trade authorisation. Consequently, the relief sought does not in itself oblige the Minister to facilitate or permit the commercial trade of the derivatives in question.
- [16] Furthermore, the relief does not seek to restrict the Minister's discretion by elevating the existence of a stockpile to a determinative factor. While the Minister would be required to take the existence of the stockpile into account, the weight to be afforded to it remains within the Minister's discretion. The Minister retains a broad discretion to balance this factor against all other vital considerations, including scientific input, public consultation, conservation imperatives, and prevailing policy frameworks. Critically, one of the relevant factors the Minister will *ex lege* be obliged to consider

when setting an export quota, is the welfare of lions held in captivity.²⁰ The relief sought does not mandate the prioritisation of commercial or economic interests over the Minister's broader environmental and regulatory obligations.

Discussion

- [17] The applicants presented elaborate and voluminous arguments, much of which is irrelevant to the issues at hand. I have extracted what I consider to be relevant for the determination of the three applications.
- [18] All three applicants base their request to participate in the review proceedings on their established record of animal welfare protection and environmental conservation. The evidence confirms that they act as advocates with a committed duty to safeguard the environment, particularly regarding the welfare of captive-bred lions and tigers. The question of whether any of the applicants' rights may be adversely affected by the relief sought in the main application needs to be considered against this background in conjunction with section 24 of the Constitution and the principle of state trusteeship of South Africa's biodiversity.
- [19] Simplified, the question is whether the NSPCA and EMS have a 'direct and substantial interest' in (i) the review of the Minister's failure to set quotas for the export of lion bones and derivative products, and the subsequent *mandamus* to take all steps necessary to set, and set quotas and/ or (ii) the prayer that the Minister be compelled, when determining the quotas, to specifically consider the existence of a large stockpile of lion bones, bone pieces, bone products, claws, skeletal parts and derivatives resulting from the absence of quotas over several years, the value of which allegedly decreases over time.
- [20] If the Minister is statutorily obliged to set quotas for the export of lion bones and derivative products, as SAPA contends, that obligation exists regardless of any subjective party's view on whether such a duty ought to exist.

²⁰ *National Council of the Society for the Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* 2020 (1) SA 249 (GP). Section 2(a)(iiA) of the National Environmental Management Biodiversity Act 10 of 2004, as amended.

[21] In terms of regulation 3(1) of the *Convention on International Trade in Endangered Species (CITES) Regulations*,²¹ the Minister is the National Management Authority for CITES related activities. The specific duties of the National Management Authority, as set out in regulation 3(2), include –

‘to consult with the Scientific Authority on the issuance and acceptance of CITES documents, the nature and level of trade in CITES-listed species, the setting and management of quotas, the registration of traders and production operations, the establishment of Rescue Centres and the preparation of proposals to amend the CITES Appendices;’²²

‘to coordinate requirements and allocate annual quotas²³ to provinces.’²⁴

[22] The duties of the Provincial Management Authority include the management of the utilisation of allocated CITES quotas.²⁵

[23] EMS contends that although the Minister has the power to set an annual quota, there is no legal duty or obligation in either international or domestic law to do so. EMS submits that a purposive interpretation of Annotation A4 to Appendix II of CITES does not support the proposition that the words “will be” impose a mandatory duty. Read in the context with the rest of CITES, section 24 of the Constitution, and NEMBA, EMS submits that the provision is merely permissive. Furthermore, EMS contends that the Minister’s duty to consult with the Scientific Authority only arises if trade in captive-bred lion bones and derivative products is intended to occur. EMS emphasised that since the decision in *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs, Director-General*,

²¹ GNR. 173 of 5 March 2010, GG No. 33002.

²² Regulation 3(2)(f)

²³ The term ‘quota’ is defined in regulation 1 means ‘the prescribed number or quantity of specimens that can be harvested, exported or otherwise used over a specific period of time and is a total national quota.’

²⁴ Regulation 3(2)(k).

²⁵ Regulation 3(5)(c).

*Department of Environmental Affairs & South African Predators Association*²⁶ (the *Lion Bone* case), the legal landscape has shifted towards a phase-out of the industry.

- [24] It was accepted by Kollapen J in the *Lion Bone* case that the Minister is required to set an annual export quota,²⁷ subject to certain prescribed steps. EMS submitted, however, that the existence of the obligation itself was not specifically ventilated before Kollapen J. It is regrettable that neither the Minister nor the Director-General of the Department of Forestry, Fisheries and the Environment deemed it necessary to participate in the review proceedings. The Court would have been assisted by having the Department's stance on record regarding the existence of a statutory obligation to set annual quotas.
- [25] EMS's argument raises an issue dealt with in the well-known English Law case, *Julius v The Bishop of Oxford*,²⁸ referred to in South African judgments such as *Levy v Levy*.²⁹ This landmark decision in English law established principles for interpreting permissive statutory language, and particularly the distinction between discretionary powers and duties. In *Levy v Levy* the court cited *Julius* to emphasise that permissive language does not automatically equate to an obligation unless the context and the purpose of the legislation suggest otherwise.
- [26] In deciding EMS's application to intervene as a respondent, I need not be certain that its argument will ultimately succeed. It is sufficient that EMS has raised a triable point that is central to the review. Given EMS's commitment to eliminating the captive-bred lion bone trade and conserving wildlife, it has a direct and substantial interest in the main application. It should accordingly be allowed to intervene as a respondent.

²⁶ (86515/2017) [2019] 4 All SA 193 (GP).

²⁷ At para [23].

²⁸ (1880) 5 AC 214.

²⁹ [1991] 2 All SA 407 (A).

- [27] The NSPCA submitted that it should be joined as of a matter of necessity. It operates within the animal welfare framework established by the SPCA Act 169 of 1993 and the Animals Protection Act 71 of 1962. Its extensive powers to oversee and regulate animal welfare throughout the Republic are judicially recognised.³⁰ The NSPCA was instrumental in the *Lion Bone case*, which led to the setting aside of previous quotas. The existence of the current stockpile is directly attributable to the NSPCA's previous legal action. It follows that the NSPCA has a direct and substantial interest in an order seeking to compel the Minister to "specifically consider" the existence of that stockpile in determining any annual export quota. While such an order might not strictly speaking fetter the Minister's discretion, it would place specific emphasis on the interests of stockpile owners. The NSPCA is entitled to intervene to argue why this factor should not, at this juncture, be afforded such judicial prominence.
- [28] BAT seeks to be admitted as an *amicus*. Its primary concern is the nexus between the lion and tiger bone trade and the potential for unlawful trade in tiger bones and derivative products. While this is a factor the Minister may consider in his discretion, BAT's arguments are not directly relevant to the specific relief sought by SAPA. Having regard to the arguments to be advanced by EMS and the NSPCA, I am not persuaded that the review court would be further assisted by the admission of BAT as an *amicus*. BAT's application to be admitted as an *amicus curiae* stands to be refused.
- [29] **Costs**
- [30] The issue of costs remains within the court's discretion. Having regard to the nature of the main application, and the successful intervention of the NSPCA and EMS, I am of the view that the costs of these proceedings should follow the result of the main application.
- [31] In determining an appropriate costs order following the dismissal of BAT's application to be submitted as an *amicus*, I am mindful of the interplay between general costs principles and the unique role of an *amicus curiae*. It is well-

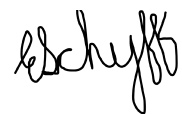
³⁰ *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* 2017 (1) SACR 284 (CC).

established that where such an application is dismissed, a court may decline to award costs against the applicant if the application was brought in good faith and was neither frivolous nor vexatious.³¹ While BAT's application may have been misguided, it was brought in good faith. In the circumstances, it is fair and just that BAT bears its own costs, and no order as to costs stands to be made against it.

ORDER

In the result, the following order is granted:

1. The National Council of the Society for the Prevention of Cruelty to Animals (NSPCA), and the Trustees for the time being of the EMS Foundation (EMS) are granted leave to intervene in the proceedings under case number 2024-146251;
2. The NSPCA is joined to the proceedings as the Fourth Respondent;
3. EMS is joined to the proceedings as the Fifth Respondent;
4. The NSPCA and EMS's founding affidavits in the respective intervention applications shall stand as their respective answering affidavits in the main application.
5. The NSPCA and EMS are granted leave to file supplemented papers within 15 days of this order;
6. Costs of the applications to intervene as respondents are costs in the cause.
7. The application of Ban Animal Trading to intervene as an *amicus curiae* is refused. Each party is to carry its own costs.



E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment

³¹ *Lekota and another v Speaker, National Assembly and another* [2014] JOL 31610 (WCC) and the caselaw referred to in para [51] thereof.

is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the NSPCA: Adv. Les Morison SC
With: Adv. Samantha Martin

Instructed by: Webber Wentzel Attorneys

For BAT: Adv. Samantha Martin
With: Adv. Courtney Jones
Instructed by: Norton Rose Fulbright South Africa Inc.

For EMS: Adv Carina du Toit
Instructed by: Cullinan & Associates

For the first respondent: Adv. Chris Woodrow SC
With: Adv. Johan Hamman
Instructed by: KWV Incorporated

Date of the hearing: 23 March 2026
Date of judgment: 9 April 2026