

CIVIL 3  
IN THE HIGH COURT OF SOUTH AFRICA  
21 APR 2022  
EASTERN CAPE DIVISION  
GRAHAMSTOWN

**IN THE HIGH COURT OF SOUTH AFRICA**  
**EASTERN CAPE DIVISION, GRAHAMSTOWN**

Case No: 1238/2022

**In the matter between:**

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

**Plaintiff**

**and**

**AL MAWASHI (PTY) LTD**

**First Defendant**

**LIVESTOCK TRANSPORT AND TRADING  
COMPANY KSC (KLTT)**

**Second Defendant**

**JOHN PAGE N.O.  
(As a Trustee of the Page Farming Trust)**

**Third Defendant**

**BRUCE PAGE N.O.  
(As a Trustee of the Page Farming Trust)**

**Fourth Defendant**

**GLEN PAGE N.O.  
(As a Trustee of the Page Farming Trust)**

**Fifth Defendant**

**GARY KLINKRADT N.O.  
(As a Trustee of the Page Farming Trust)**

**Sixth Defendant**

**DEPARTMENT OF AGRICULTURE,  
LAND REFORM AND RURAL DEVELOPMENT**

**Seventh Defendant**

**THE MINISTER OF AGRICULTURE, LAND  
REFORM AND RURAL DEVELOPMENT**

**Eighth Defendant**

**DEPARTMENT OF RURAL DEVELOPMENT  
AND AGRARIAN REFORM: VETERINARY  
SERVICES (EASTERN CAPE)**

**Ninth Defendant**

**MEC FOR RURAL DEVELOPMENT  
AND AGRARIAN REFORM**

**Tenth Defendant**

**THE RED MEAT INDUSTRY FORUM**

**Eleventh Defendant**

**RULE 16A NOTICE**

**TO THE REGISTRAR**

**TAKE NOTICE THAT** the plaintiff has instituted an action which raises constitutional issues. The following relief is sought:

The plaintiff seeks an order declaring that:

1. The practice of transporting sheep by sea to any destination which requires that the equator be crossed is unlawful and prohibited in circumstances where the animals are transported on a boat, ship or vessel:
  - 1.1. departing from South African shores; and/or
  - 1.2. where they are taken to a place beyond the borders of South Africa for a purpose which includes transporting them from that place to an ultimate destination that requires crossing the equator.

2. The defendants who oppose the relief sought herein are to pay the costs of this matter jointly and severally, such costs to include those occasioned by the employment of two counsel.
3. Further and/or alternative relief.

**IN THE ALTERNATIVE** the plaintiff seeks an order declaring that:

1. The practice of transporting sheep by sea during the months of May, June, July, August, September or October to any destination which requires that the equator be crossed is unlawful and prohibited in circumstances where the animals are transported on a boat, ship or vessel:
  - 1.1. departing from South African shores; and/or
  - 1.2. where they are taken to a place beyond the borders of South Africa for a purpose which includes transporting them from that place to an ultimate destination that requires crossing the equator.
2. The defendants who oppose the relief sought herein are to pay the costs of this matter jointly and severally, such costs to include those occasioned by the employment of two counsel.
3. Further and/or alternative relief.

**IN THE FURTHER ALTERNATIVE** the plaintiff seeks an order declaring that:

1. The practice of transporting sheep by sea during the months of May, June, July, August, September or October to any destination in the Middle East is unlawful and prohibited in circumstances where the animals are transported on a boat, ship or vessel:
  - 1.1. departing from South African shores; and/or

- 1.2. where they are taken to a place beyond the borders of South Africa for a purpose which includes transporting them from that place to a destination in the Middle East.
2. The defendants who oppose the relief sought herein are to pay the costs of this matter jointly and severally, such costs to include those occasioned by the employment of two counsel.
3. Further and/or alternative relief.

**TAKE NOTICE THAT** this matter raises the following constitutional issues in the following context:

1. The matter concerns whether the practice of live export of sheep by sea to any destination which requires that the equator be crossed is unlawful and whether it should be prohibited in terms of the Animals Protection Act 71 of 1962 ("APA").
2. The NSPCA contends that the practice is cruel for the following reasons, among others:
  - 2.1. The sheep are excessively exposed to heat; and
  - 2.2. The heat that the sheep endure on the voyage results in heat stress over a long time causing prolonged suffering;
3. This amounts to cruelty and is an offence in terms of the APA, in particular, sections 2(1)(d) and 2(1)(m) of the APA which provide that:
  - (1) Any person who-
    - (d) being the owner of any animal, deliberately or negligently keeps such animal in a dirty or parasitic condition or allows it to become infested with external parasites or fails to render or procure veterinary or other medical treatment or attention which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause, or fails to destroy or cause to be destroyed any such animal

which is so seriously injured or diseased or in such a physical condition that to prolong its life would be cruel and would cause such animal unnecessary suffering; or

- (m) conveys, carries, confines, secures, restrains or tethers any animal-
  - (i) under such conditions or in such a manner or position or for such a period of time or over such a distance as to cause that animal unnecessary suffering; or
  - (ii) in 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
  - (iii) without making adequate provision for suitable food, potable water and rest for such animal in circumstances where it is necessary; or

shall, subject to the provisions of this Act and any other law, be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months or to such imprisonment without the option of a fine.

4. The Constitutional Court found in *National Society for the Prevention of Cruelty to Animals vs. Minister of Justice and Constitutional Development and Another* 2017 (1) SACR 284 (CC) at para 58 that animal welfare is connected with the constitutional right to have the “environment protected . . . through legislative and other means” per section 24(b) of the Constitution.
5. The Supreme Court of Appeal has found in *Lemthongthai vs. S* 2015 (1) SACR 353 (SCA) at para 20 that constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general.
6. This creates the link between animal welfare and the Constitution, in particular sections 10 and 24. These are the constitutional issues that trigger the need for this notice.

**TAKE NOTICE FURTHER** that any party having an interest in the relief above concerning the stated constitutional issues raised may, with the written consent of all parties to these proceedings, given not later than 20 days after the filing of this notice, be admitted as amicus curiae, upon such terms and conditions as may be agreed upon in writing by the parties.

**TAKE NOTICE FURTHER** that written consent referred to above shall be lodged with Registrar within 5 days of it having been granted and the amicus curiae shall comply with the times agreed upon for the lodging of written argument.

**TAKE NOTICE FURTHER** that the terms and conditions agreed upon may be amended by the court.

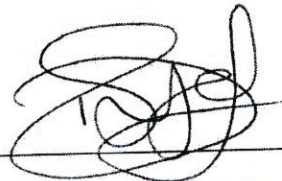
**TAKE NOTICE FURTHER** that if the interested party is unable to obtain written consent from the other parties, he or she may, within 5 days of the expiry of the periods referred to above, apply to the above honourable Court to be admitted as an amicus curiae in these proceedings. Such application shall:

- (a) Briefly describe the interest of the amicus curiae in these proceedings;
- (b) Clearly and succinctly set out the submissions which shall be advanced by the amicus curiae in the proceedings, the relevance thereof to these proceedings, and his or her reasons for believing that the submissions will assist the court and are different from the submissions of the other parties; and
- (c) Be served upon all parties to the proceedings.

**TAKE NOTICE FURTHER** that any party to the proceedings who wishes to oppose an application to be admitted as an amicus curiae shall file an answering affidavit within 5 days of service of the application.

**KINDLY PLACE A COPY OF THIS NOTICE ON THE NOTICE BOARD**

**Dated at Blairgowrie on 8 April 2022.**



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**WRIGHT ATTORNEYS INCORPORATED  
ATTORNEYS FOR THE PLAINTIFF**

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Ref: D Wright/DL/SCR-001

**C/O NEVILLE BORMAN AND BOTHA ATTORNEYS**

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Grahamstown

Tel: 046 622 7200

Ref: Wright Inc/Justin

**TO: THE REGISTRAR OF THE HIGH COURT  
GRAHAMSTOWN**