
Media Summary

The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

The applicant, Christopher Lance Mercer, was convicted in the Kuruman Magistrates' Court in September 2001 of contravening provisions of the Nature and Environmental Conservation Ordinance of 1974 (Cape) which prohibit the harbouring of certain animals without a permit. On several occasions prior to his conviction he had been denied permits to harbour three caracals at the Kalahari Raptor Centre which he ran with his partner. The refusal was premised on the fact that caracals were earmarked as potential problem animals to farmers in the region in terms of the Problem Animal Control Ordinance 26 of 1957 (Cape).

The applicant appealed to the Northern Cape High Court against both his conviction and sentence and also challenged the constitutionality of the 1974 Ordinance in its entirety. At the hearing in the High Court, Kgomo JP dismissed the appeal but set aside the sentence of a substantial fine and replaced it with a caution and a discharge, stating that the applicant was performing useful services for the community. After unsuccessfully applying to the Supreme Court of Appeal for leave to appeal against the High Court's confirmation of his conviction, the applicant applied in terms of rule 18 of the Rules of this Court for leave to appeal against the confirmation of his conviction by the High Court, and also for condonation of his failure to comply with the prescribed time periods for the lodging of appeals to this Court.

In the first instance the applicant sought an order declaring the 1957 Ordinance unconstitutional and invalid. The applicant was not convicted under this Ordinance and did not demonstrate any legally relevant relationship between the 1957 Ordinance and the 1974 Ordinance under which he was convicted. The 1957 Ordinance was not before the High Court and an appeal cannot lie to this Court from the High Court to challenge that Ordinance. The applicant also contended that the 1974 Ordinance is unconstitutional. He did not, however, seek any specific relief in this regard and did not challenge any part of the High Court's reasoning dealing with and dismissing this constitutional challenge to the 1974 Ordinance. His challenge to the 1974 Ordinance was therefore inchoate and without substance and did not disclose any prospects of success.

The applicant also sought to have the decision of the Northern Cape Nature Conservation Services denying him a permit to keep caracal set aside. The Court held this was not an appropriate matter to be raised under the guise of a criminal appeal and that the correct procedure would be to seek the review of that decision in the High Court. The applicant's final complaint was that he did not receive a fair trial because of the decision of the prosecuting authorities to charge him under the 1974 Ordinance. The Court was not persuaded on the record that the institution of the prosecution was unconstitutional, unlawful or unfair.

The Court noted that new legislation on the subject was pending. It held that the applicant's

challenge had not prospects of success and should be dismissed.