



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **National Society for the Prevention of Cruelty to Animals v Minister of Agriculture, Forestry and Fisheries and Others**

**Case CCT 120/12**

**Date of hearing: 19 March 2013**

**Date of judgment: 11 July 2013**

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#### **MEDIA SUMMARY**

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

Today, the Constitutional Court handed down a judgment confirming an order of the North Gauteng High Court, Pretoria (High Court) declaring sections 2 and 3 of the Performing Animals Protection Act (Act) unconstitutional insofar as they assign the function of issuing licences for the training, exhibition or use of animals to Magistrates.

The National Society for the Prevention of Cruelty to Animals (NSPCA) applied to the High Court for an order declaring the impugned sections unconstitutional to the extent that they require a Magistrate to issue animal training and exhibition licences. It contended that the function of issuing animal training and exhibition licences is an administrative function that should not be performed by members of the Judiciary and that assigning it to Magistrates offends the principle of the separation of powers. It also argued that Magistrates do not have the expertise required to perform this function.

The High Court upheld the NSPCA's contention and declared the impugned sections unconstitutional. The High Court also made an order suspending the order of constitutional invalidity pending confirmation by the Constitutional Court. The High Court gave the Minister of Agriculture, Forestry and Fisheries (Minister) six months within which to cure the defect. The Court established a temporary committee, comprising of two representatives of the NSPCA, two representatives appointed by the Minister and a representative appointed by the South African Veterinary Council, to perform the licensing function pending confirmation of the decision by the Constitutional Court.

The NSPCA applied to this Court for confirmation of the High Court order. The Minister elected to abide the decision of the Court. The Licensed Animal Trainers Association, admitted as an intervening party, opposed the confirmation of the High Court order. The Commercial Producers Association and the South African Association of Stills Producers were admitted as *amici curiae*. The *amici* also opposed the confirmation of the declaration of invalidity.

Zondo J, writing for a unanimous Court, pointed out that there may be cases where the performance of administrative functions by a Magistrate may be justified and held that in such a case there would be no breach of the principle of the separation of powers. However, the Court held that the performance by a Magistrate of administrative duties which were unrelated to his or her judicial functions in circumstances where there is no justification for the performance of such a function by a member of the Judiciary does offend the separation of powers. Zondo J found that there was no justification for assigning the function of issuing animal training and exhibition licences to Magistrates. Accordingly, he held that the performance of this function by Magistrates offends the doctrine of the separation of powers. He confirmed the order of constitutional invalidity and suspended the operation of the order of constitutional invalidity for a period of 18 months to afford Parliament the opportunity to cure the defect in the Act.