LEGAL BATTLE WITH AL MAWASHI

The Al Shuwaikh livestock vessel arrived at the Port of East London on 18 September 2019 and loading commenced on 01 October 2019 until 04 October 2019. The monitoring of the loading from the feedlot in Berlin in the Eastern Cape and at the Port of East London was conducted under warrant. Three cases in terms of the Animals Protection Act No. 71 of 1962 were registered, and one for assault.

In February 2020 with another live export anticipated, Afriforum, the NSPCA’s new legal team comprising of Advocates Gerrie Nel and Phyllis Vorster, Andrew Leask, and attorneys Matthew Klein, and Justin Powers launched an urgent application in the Grahamstown High Court and this was heard on 28 February 2020. Due to procedural oversights, the case was struck off the roll, with costs; the merits of the case were unfortunately not argued. On 18 March 2020 the NSPCA obtained a restrictive warrant from the East London Magistrates Court to monitor the loading of the Al Messilah livestock vessel, another one of Al Mawashi’s vessels. A warrant was also obtained to monitor the loading from the feedlot in Berlin. The loading commenced on 19 March 2020 and ended on 20 March 2021. A docket was compiled for the feedlot for contraventions of the Animals Protection Act 71 of 1962.

With another impending live export scheduled for June 2020, on 15 May 2020 the NSPCA informed Al Mawashi legal representative, Mr Henry van Breda of its’ newly appointed legal team, Schindler’s Attorneys.

HIGH COURT IN GRAHAMSTOWN - June 2020

The NSPCA with their new legal team aims to launch two applications Part A and Part B. At the outset, it is important to distinguish between what we refer to as Part A and Part B in this matter. Part A was an interdict to stop Al Mawashi from continuing with shipments for the export of live sheep, pending the outcome of the trial to determine whether heat stress over the equator is experienced and if so, whether this amounts animal cruelty, which is Part B of this matter.

The first application in this matter, Part A, was launched in June 2020. The relief that was sought was an interim interim interdict, to stop the shipment of sheep. The ship had secretly arrived, the NSPCA launched an application to stop it from loading the sheep and leaving South Africa, until the interim interdict (Part A) had been argued and decided upon by the court.

The interim interdict was granted by Judge Jaji, with costs, and ordered that the ship could not leave pending the outcome of argument of Part A, which was to be heard in few weeks from this order.

The opposition then launched an application for the reconsideration of the interim order and that was also dismissed by Judge Bloem, with costs.

After the above, the NSPCA then approached the court for an order to attach the ship, pending the placing of funds in trust for the costs awarded as above. Judge Beshe granted the order and the ship was duly attached. The opposition then eventually put-up security in their attorney’s trust account so that the ship could be released from its attachment. The costs of this application were to be argued together with Part A.

Part A was then argued before Acting Judge Dukada, who made an order that allowed the shipment to go, subject to certain conditions (the costs of which were to be determined in Part B). The court order was simply the draft order which the Red Meat Industry Forum (RMIF) suggested be made an order of court without discussions with the parties. AJ Dukada also found against the NSPCA in the costs argument for the attachment of the ship, stating that he would not have originally granted the order and as such, the NSPCA should not be entitled to its costs.

The NSPCA applied for leave to appeal the Part A order and AJ Dukada denied leave to appeal.

The NSPCA also applied for leave to appeal the order associated with the costs of the attachment of the ship, and Judge Roberson granted leave to appeal.

Looking at the next part, being Part B, it became clear that this would need to be run on trial and not by way of application as the opposition and AJ Dukada had raised a dispute of fact, being the existence and effectiveness of a ventilation system which they had allegedly installed – which the NSPCA was not aware of until their papers had been filed.

The NSPCA subsequently applied for leave to move Part B from an application to a trial. The matter was argued before Judge Mjali. Once the outcome was received, the NSPCA could then proceed with Part B.

On 25 August 2020, Judge Dukada handed down an order, allowing the Kuwaiti exporters, Al Mawashi and KLTT, to export no more than 56,000 sheep over the equator on the Al Messilah vessel in the hottest month of the year. Furthermore, Judge Dukada ordered that the Department of Agriculture, Land Reform and Rural Development must monitor the loading process and provide reports to the Court – this is the same Department that the NSPCA has laid animal cruelty charges against in previous shipments.

Loading commenced - On 30 August 2020 and ended on 1 September 2020. Numerous contraventions of the Animals Protection Act, as well as violations of the OIE Standards, were recorded. Two Criminal dockets were laid by the NSPCA, another for hostage of staff members.

SUPREME COURT OF APPEAL

The NSPCA took the application for leave to appeal the outcome of Part A to the Supreme Court of Appeal (SCA) and the SCA denied the leave to appeal.

CONSTITUTIONAL COURT

The NSPCA took the outcome of Part A to the Constitutional Court, to ask for leave to appeal.

June 2021 - EAST LONDON MAGISTRATES COURT

The NSPCA approached the East London Magistrates Court for a warrant for the inspection of the sheep at the harbour and on the ship, as well as the ship itself. The matter was argued and the Magistrate granted certain parts of the relief sought but still failed to allow photographs/videos to be taken. The Magistrate used her judicial discretion in making such an order, Chief Magistrate L. Monakali handed down judgment on Thursday 17 June 2021 and granted a tightly restricted Court Order to the NSPCA.

The Al Messilah vessel arrived on the 20th of June 2021 and the loading of the vessel was monitored by the NSPCA in terms of the court order from 21st to 23rd June 2021.

**SUMMARY**

1. In summary, the following matters are pending:
2. The outcome of the application for leave to amend (move Part B to a trial);
3. The Constitutional Court outcome of the application for leave to appeal.
4. Part A; - NSPCA Unsuccessful- Judgement by Judge Mjali- 15 July 2021.
5. 30th of July 2021 – NSPCA files leave to appeal High Court Grahamstown – Awaiting Outcome.

The National Council of SPCAs remains steadfast in our policy statement around live export of animals by sea and agree that no country has the capacity or capability to ensure or guarantee animal welfare on livestock vessels therefore we urge our South African authorities to implement the banning of live exports by sea the same as other enlightened Governments.

We value the continued support of the public in assisting us to advocate in our endeavours for a South African end to live animal exports by sea north of the equator.