



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another**

**CCT 1/16**

**Date of judgment: 8 December 2016**

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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.*

On 8 December 2016 at 10h00, the Constitutional Court handed down judgment in a matter concerning the power of the National Society for the Prevention of Cruelty to Animals (NSPCA) to institute private prosecutions for offences of animal cruelty. The Court considered whether the NSPCA was entitled to privately prosecute under section 7 or section 8 of the Criminal Procedure Act (CPA).

During November 2010, NSPCA inspectors attended the sacrificial slaughter of two camels and witnessed alleged cruel and inhumane treatment of the animals. The NSPCA formed the opinion that the treatment of the animals constituted offences of animal cruelty. It referred the matter to the National Prosecuting Authority (NPA) for prosecution. Upon receiving notification that the NPA would not pursue a prosecution of the alleged offences, the NSPCA sought to privately prosecute in terms of section 7(1)(a) of the CPA.

The NPA refused to issue the certificate required by the CPA to permit the private prosecution to proceed, citing that the NSPCA was not a “private person” for the purposes of the provision. The NSPCA instituted proceedings in the High Court to challenge the constitutionality of section 7(1)(a) of the CPA. It did this on the basis that the provision irrationally differentiates between juristic persons and natural persons.

The High Court concluded that whilst there is discrimination between juristic persons and natural persons under section 7, the discrimination is not unfair. It upheld the validity of the provision. The Court also briefly considered whether the NSPCA was able to prosecute under section 8 of the CPA. It found that the empowering statute of the NSPCA, the Societies for the Prevention of Cruelty to Animals Act (SPCA Act), did not confer the statutory power of private prosecution.

On appeal, the Supreme Court of Appeal came to the same conclusion as the High Court, for different reasons. It found that the differentiation in the impugned provision is rationally connected to regulating private prosecutions, and accordingly upheld the constitutional validity of section 7(1)(a). Like the High Court, the Supreme Court of Appeal also found that the NSPCA is not able to prosecute in terms of section 8 of the CPA.

The NSPCA sought leave to appeal the decision of the Supreme Court of Appeal to this Court. During oral submissions it advanced an alternative argument: that the NSPCA already has the power of private prosecution conferred upon it by virtue of section 8 of the CPA read with the SPCA Act.

In a unanimous judgment written by Khampepe J (Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Madlanga J, Mhlantla J, Musi AJ and Zondo J concurring), the Court upheld the appeal.

It first considered whether the NSPCA's power to "institute legal proceedings" included the power to privately prosecute. The Court found that the language, context and history of the SPCA Act established a sufficiently express and clear conferral of the power. It noted that the NSPCA's power to institute legal proceedings cannot be divorced from its functions, which are intrinsically connected to protecting animal welfare and preventing associated offences.

The Court held that because the NSPCA is explicitly charged with upholding a number of statutes regulating animal welfare and preventing animal cruelty, the SPCA Act must incorporate prosecutions of animal cruelty. To accept any other interpretation would render the animal protection regime toothless.

The Court found that this interpretation is reinforced by the historical development of the protection of animal welfare, the role of the NSPCA in upholding this mandate, and the increasingly robust protection that courts have afforded to animal welfare. It noted that the rationale behind protecting animal welfare has shifted from merely safeguarding the moral status of humans to recognising the intrinsic value of animals. Further, the Court highlighted the connection between intertwined values of animal welfare and animal conservation, bolstered by constitutionally enshrined environmental rights.

Ultimately, the Court held that the unique context, history and background of the NSPCA demands that the term "institute legal proceedings" in section 6(2)(e) of the SPCA Act takes on a specific and nuanced meaning which confers the power to institute private prosecutions on the NSPCA. The Court accordingly ordered a declaration to that effect. The Court held that it would not be judicious to consider the section 7 arguments, as it would not offer the NSPCA further relief.