

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

NATIONAL COUNCIL OF SOCIETIES FOR THE PREVENTION OF CRUELTY TO ANIMALS v PETER OPENSHAW

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal (by a majority of four judges with one judge dissenting) today dismissed an appeal against a judgment of the Bloemfontein High Court brought by the National Council of Societies for the Prevention of Cruelty to Animals against Mr Peter Openshaw.

The NCSPCA applied for an interim interdict in the Bloemfontein High Court prohibiting Mr Openshaw, as manager of the Laohu Valley Reserve, from presenting live blesbok to the tiger cubs on the reserve as part of the re-wilding programme. During a documentary on the television programme 50/50, Mr Openshaw made a statement to the effect that he would be presenting a live blesbok to two tiger cubs. In terms of the Animal Protection Act it is a criminal offence to liberate any animal in such a way as to expose it to immediate attack by other animals. The court below found that the NCSPCA had failed to establish reasonable apprehension of irreparable harm and accordingly dismissed the application. It is against this judgment that the appeal was brought.

The SCA, in a judgment by Mhlantla AJA with Farlam JA, Heher JA and Hurt AJA concurring, held that a period 19 months had passed since the application had been launched and the appellant had failed to institute the principal action. It had accordingly forfeited its right to the interim relief sought. The court further held that as an interim interdict was a remedy against future infringements and was only appropriate when future injury was feared, the appellant had a duty to show a reasonable apprehension that harm, namely the presenting of live blesbok to tigers, would occur in the future. As the appellant had not been able to prove this, the appeal had to be dismissed.

In a dissenting judgment, Cameron JA was of the view that the interdict should have been granted as the respondent had contravened the relevant section and had expressly declined to give any undertaking that he would not do so again.