

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 31/02

EX PARTE:

CHRISTOPHER LANCE MERCER

First Applicant

BEVERLEY PERVAN

Second Applicant

IN RE: THE PROBLEM ANIMAL CONTROL ORDINANCE 26 OF 1957

And

THE NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA

Decided on : 28 October 2002

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JUDGMENT

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THE COURT:

[1] The applicants were convicted in the Kuruman Magistrates' Court in September 2001 of contravening certain provisions of the Nature and Environmental Conservation Ordinance, 1974 prohibiting the harbouring of certain animals without a permit. The applicants were on several occasions denied permits to harbour the three Northern Cape lynx they held, on the basis

that these animals are earmarked as potential problem animals to farmers in the region in terms of the Problem Animal Control Ordinance, 1957 (the Ordinance).<sup>1</sup>

[2] The applicants launched proceedings in the Northern Cape High Court on two grounds. They wished to appeal against their convictions and sentences in the Magistrates' Court and furthermore sought to challenge the constitutionality of the Ordinance in its entirety. After being set down for hearing on 9 September 2002 in the High Court, the matter was postponed to 3 March 2003. The applicants now apply directly to this Court for it to hear the matter without awaiting the outcome of the appeal in the High Court.

[3] The matter raises a number of constitutional issues, including challenges to the constitutionality of the Ordinance on the grounds that it breaches the right to equality contained in section 9 of the Constitution as well as environmental rights contained in section 24. In our view, notwithstanding the delay involved in the hearing of the appeal, it would be premature for this Court to hear the matter before the High Court deals with it.

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<sup>1</sup> Both the Nature and Environmental Conservation Ordinance, 1974 and the Problem Animal Control Ordinance, 1957 were ordinances of the former province of the Cape of Good Hope.

[4] Accordingly, the application is refused.

Chaskalson CJ, Langa DCJ, Ackermann J, Goldstone J, Kriegler J, Madala J, Mokgoro J,  
Ngcobo J, O'Regan J, Sachs J and Yacoob J.