

SOUTH AFRICA / JUDGMENT

Smit NO and Others v King Goodwill Zwelithini Kabhekuzulu and Others (10237/2009) [2009] ZAKZPHC 75 (4 December 2009) [2009] ZAKZPHC 75

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Van der Reyden

CASE / FILE NUMBER

10237/2009

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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL, PIETERMARITZBURG

CASE NO: 10237/2009

In the matter between:

STEPHANUS SMIT, N.O. 1st Applicant

ALAN DUKE ROLSTONE, N.O. 2nd Applicant

NATALIE YAEL DEMBO, N.O. 3rd Applicant

ANDREW CHARLES SHAW, N.O. 4th Applicant

CAROL BOOTH, N.O. 5th Applicant

MICHELE PICKOVER, N.O. 6th Applicant

ANDREW CHRISTOPHER STUART BUTLER, N.O. 7th Applicant

CHERYL HUNTER, N.O. 8th Applicant

and

HIS MAJESTY KING GOODWILL ZWELITHINI

KABHEKUZULU 1st Respondent

THE MINISTER OF CO-OPERATIVE

GOVERNANCE AND TRADITIONAL AFFAIRS 2nd Respondent

THE MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT, HOUSING AND TRADITIONAL
AFFAIRS, PROVINCE OF KWAZULU-NATAL 3rd Respondent
THE PREMIER OF THE PROVINCE OF
KWAZULU-NATAL 4th Respondent
THE MINISTER OF POLICE 5th Respondent

J U D G M E N T

VAN DER REYDEN J:

The Applicants' bring this application nomine officio in their capacity as duly appointed and authorised trustees of the Animal Rights Africa Trust ("the Trust").

The first respondent is HIS MAJESTY KING GOODWILL ZWELITHINI KABHEKUZULU, who is cited and sued herein in his capacity as the Zulu monarch for the Province of KwaZulu-Natal, having his official residence at Nongoma, KwaZulu-Natal. The other respondents are cited in their official capacity.

The purpose of this application is to interdict the slaughtering of a bull or any animal at the UKWESHWAMA festival a.k.a. the First Fruits Festival, scheduled to take place on 4 December 2009 at one of the first respondent's palaces in Nongoma, KwaZulu-Natal. An interim interdict is sought pending the final determination of this application in the form of a rule nisi issue calling on the respondents to show cause, if any, to this Court sitting at Pietermaritzburg why an order should not be made in the following

terms:

1. the first respondent is interdicted and restrained from causing or permitting a bull to be slaughtered or in any way ill-treated at Ukweshwama, the Festival of First Fruits;
2. the first respondent is directed to notify the fifth respondent of the dates, times and venue or venues at which Ukweshwama, the Festival of First /fruits, is to be held in December 2009;
3. the fifth respondent is directed to ensure that a representative or .representatives of the South African Police Services is present at all times during Ukweshwama, the Festival of First Fruits, to ensure compliance with the provisions of paragraph 1 of this order;
4. the first respondent is directed to pay the costs of the application, alternatively, and only in the event that one or more of the second to fifth respondents oppose this application that the further respondent or respondents opposing this application be ordered to pay the costs of this application jointly and severally with the first respondent, the one paying, the others to be absolved."

The provisions of paragraphs 1.1, 1.2 and 1.3 of this order are to operate as interim orders with immediate effect.

THE ANIMAL RIGHTS AFRICA TRUST

- represented by the applicants is a public benefit organisation operating on a non-profit basis for the general benefit of animals

and the environment. Its activities are of a philanthropic and benevolent nature, having regard to the needs, interests and well-being of animals, the environment and of the general public.

The Trust was formed during or about July 2007 to consolidate and focus the efforts of certain pre-existing organisations into a single entity for the purpose of serving the needs of animals and the environment, viz:

The Xwe African Wildlife Organisation;

South Africans for the Abolition of Vivisection;

Justice for Animals.

The objects of the Trust are, inter alia:

The promotion of non-violence towards all sentient beings, including animals.

The promotion of inclusive justice, which is:

The conscious and persistent devotion to ensuring justice for others;

A moral ideal that includes all human societies, all animals and future generations of both;

The consideration of the interests of all species, both human and non-human that all voices are heard;

Showing compassion across species.

To build a better future in a post-apartheid South Africa and other African countries through research, analysis, programmes of action and targeted interventions premised on the understanding that there are strong links between the struggles for earth, animal and human liberation and rights, and that change in South Africa cannot occur in isolation from the broader global context .

To promote the philosophy of animal rights and ethical conservation in order to show that animals, plants and other natural phenomena have an inherent value, which is independent of any value which humans attach to them.

To show that animals exist in their own right and are not, individually or collectively, whether wild or domesticated, a means to human ends.

To campaign for animals to be treated with the respect to which, as individuals, they are entitled by virtue of possessing inherent value.

In recognition that animals are suffering physically and emotionally as a result of the abuse and exploitation to which they are subjected:

Initiating projects and campaigns that will highlight specific types of animal abuse, exploitation and negligent and implement measures to end these.

Lobbying and working to influence processes of policy decision-making at all levels of government.

Undertaking investigations and research in support of the Trust's objectives.

To inform the public with regard to the specific and related consequences of institutionalised abuse and exploitation of animals

by conducting education and training programmes, and by promoting exhibits, seminars, workshops and relevant publications.

Promoting the broader objectives of the Trust by conducting outreach and advocacy programmes.

Rescuing animals from exploitative and abusive situations whenever this is possible, including direct involvement in rescue and sanctuary projects as well as providing support for in situ ethical conservation and animal care projects.

Maintaining a campaign encouraging humans to adopt a vegan (cruelty-free) lifestyle by raising public awareness and encouraging consumer action.

The Trust is associated by common objective to animal rights organisations worldwide, including People for the Ethical Treatment of Animals (PETA), an animal rights organisation with millions of supporters worldwide. The Trust itself has members who pay annual subscription fees. It also has many thousands of supporters in South Africa who make donations to it for the furtherance of its objects.

The Trust's object are laudable and fulfils a great need in our society for the promotion and acceptance of its objects.

This court, having regard to the Trust's objects and the facts at their disposal concerning the slaughtering of the bull, understands why it seeks an interdict to prevent the slaughtering of the bull.

However judicial decisions can not be based on emotions and subjective preferences for the work of organisations like the Trust.

The relief sought by the Trust can only be granted if an admissible and legally acceptable factual basis for the relief exists.

It is therefore necessary to consider the factual basis of the Applicants application. It appears to be common cause that the slaughtering of a bull is a ritual which forms part of the UKWESHWAMA festival.

In their papers the Applicants rely on the following facts:

"A major highlight of the festival is the ritual killing of a bull by members of the amabutho with their bare hands. This was the test of their courage and bravery and represented an opportunity for the warriors to prove themselves to be worthy of being in the regiment.

Legend has it that the warriors inherited the power of the bull when the animal was killed. Through their salutations to the king, this power is transferred to their leader who then uses it to protect and defend the kingdom."

The first Applicant states that although he does not have personal knowledge of the manner in which the bull is killed, never himself having witnessed the ritual being performed, it is his belief that the bull is killed by a group of approximately forty men using their bare hands. The bulls eyes, genitals and tongue are ripped out whilst it is still alive, and sand or mud is thereafter forced down its throat in an apparent attempt to suffocate it while it is trampled, kicked and beaten to death. The bull dies after being subjected to such treatment for approximately forty minutes.

The foregoing method of killing the bull has been widely reported to the extent that it has become notorious. In a letter dated 31 October 2009 sent by Maneka Gandhi, a Member of Parliament in India to the State President. Maneka Gandhi describes the fate of the bull as follows:

"As I am sure you know, during this cruel ritual, a group of men torture and kill a bull with their bare hands pulling the terrified and struggling animal to the ground, ripping out his tongue, putting dirt into his bleeding mouth, tearing out his eyes, mutilating his genitals and engaging in other cruel acts until the bull dies."

In a letter dated 4 November 2009 sent by People for the Ethical Treatment of Animals Foundation ("PETA"), an animal rights organisation based in London, to the State Present, the slaughter of the bull at "ukweshwama" is described in the following terms:

"Young men prove nothing but the depth of their cruelty when they torture and kill a bull, pulling the terrified and struggling animal to the ground, ripping out his tongue, shoving handfuls of dirt into his mouth, tearing out his eyes, and mutilating his genitals, among other cruel acts, until the bull is finally killed."

In a press release dated 7 January 2009 issued by Compassion in World Farming (South Africa) for the Africa Network for Animal Welfare, a Kenyan based animal rights organisation ("ANAW"). The following is stated:

"The mind boggles at the brutality involved in ripping out the bull's tongue, gouging out his eyes, suffocating him with soil, causing

excruciating pain to his genitals, and kicking and trampling him to this eventual death."

On 22 September 2009 at what ANAW describes as the first ever Pan-African Conference on Animal Welfare, held in Nairobi, Kenya, representatives from various organisations based in Africa and abroad signed a petition addressed to the South African Parliament, calling upon the South African Parliament:

"to halt, with immediate effect, the bare handed killing of the bull at the First Fruit Festival in KwaZulu-Natal."

A web page from a web site run by Compassion in World Farming (South Africa) records the following:

"The First Fruits Festival is a traditional Zulu ceremony whereby young men celebrate their coming of age by killing a bull with their bare hands. That's around forty boys of around fourteen years old suffocating, gorging, ripping apart a bull with nothing but their own hands. The NSPCA (Southern African National Councils of societies for the Prevention of Cruelty to Animals) has been appealing to government about this for the last ten years now, but nobody seems to want to do anything as it is culturally sensitive. President Zuma of South Africa is in fact himself Zulu. To quote the NSPCA 'incidents to which the NSPCA has objection and believes are violations of the Animals Protection Act No. 71 of 1962 include:- choking the animal by pushing sand or mud down it throat, gouging out its eyes to down the animal, twisting its testicles and tying its penis until the animal succumbs and is then jumped on, kicked and beaten until it dies, usually about forty minutes after the even began.' "

The applicants furthermore maintain that the killing of the bull at the First Fruits Festival constitutes a contravention of section 2(1)(a) of the Animal Protection Act No 71 of 1962 which provides that any person who ill-treats ..., infuriates, tortures or maims or cruelly beats, kicks, goads or terrifies any animal; shallbe guilty of an offence.

SOUTH AFRICA'S INTERNATIONAL OBLIGATIONS:

South Africa is a signatory to the Terrestrial Animal Health Code ("the code") of the World Organisation for Animal Health. South Africa is bound by the provisions of the Code.

In terms of article 7.1.2 of the Code, South Africa has committed itself to ensure "the welfare of ... animals to the greatest extent possible."

Chapter 7.5 of the Code applies to the slaughter of animals. Article 7.5.1(1) provides that all animals slaughtered outside slaughter houses (abattoirs) should be managed to ensure that their slaughter is carried out without causing undue stress to the animals. It is further provided that the principles set out in the Code apply to such animals. Article 7.1.2 of the Code recognises that the "use of animals carries with it an ethical responsibility to ensure the welfare of such animals to the greatest extent practicable", it being recognised that animal welfare is a concept to be

informed by the freedom of the animal from, inter alia, fear and distress, physical discomfort, and pain and injury. The Code prescribes in detail the methods of "stunning"

and slaughter which are acceptable, on animal welfare grounds.

The applicants argued that the methods of slaughter employed during the ukweshwama ritual fall foul of the provision of the Code.

Under the heading of CONSCIENCE AND BELIEF the Applicants contend as follows:

Section 15(1) of the Constitution provides that everyone had the right to freedom of, inter alia, conscience and belief. The applicants are persons who believe in and champion the cause of animal rights. The applicants' sincerely held belief is that animals must be protected and saved from cruelty and suffering at the hands of human beings. It is for this reason that the applicants have been appointed as trustees of the Trust, a vehicle which enable them to actively intervene in practices and behaviour which cause harm and suffering to animals. The applicants' beliefs are integral to the applicants' own sense of identity, self-worth and dignity. The applicants' regard themselves as under a moral and ethical obligation to prevent the cruel and inhumane treatment of animals. For this reason, the applicants submit that their freedom of conscience is impacted upon the ritual killing of a bull at the Ukweshwama ceremony.

The applicants conduct that their right to believe or not to believe entails the right to act or not to act according to their beliefs or non-beliefs. The slaughter of the bull, as described in this affidavit, entails an infringement of the applicants' constitutional rights to conscience and belief and the applicants are entitled to act to protect their beliefs. The applicants have the right, to manifest, in practice, their beliefs as to the moral and ethical way in which animals should be treated by man. Indeed, the applicants' beliefs, and the right to manifest those beliefs, is integral to the applicants' culture that animals and the environment fall to be treated with respect by human beings. The applicants are mindful that the first respondent regards the Ukweshwama ceremony as "a traditional function involving certain traditional rituals".

It is plain that the first respondent may endeavour to assert that the killing of the bull is a cultural practice and that the first respondent has the right to participate in the cultural life of his choice, save that he may not do so in a manner inconsistent with any provisions of the Bill of Rights. If that is so, this application concerns a clash of cultures. Just as the first respondent may seek to assert that cultural beliefs justify the ritual slaughtering of a bull at the Ukweshwama ceremony, the applicants assert that their cultural beliefs are impacted upon by that same practice which we now seek to prevent. It cannot avail the first respondent to assert that the Zulu culture sanctions, or even demands, the performance of the ritual, and that this culture must remain independent from and impervious to, the demands of other cultures. In addition there is a constitutional imperative to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights. While the need to encourage and support cultural diversity is recognised by the Constitution, so too must solidarity be recognised. A society can cohere only if all its participants accept that certain basic norms and standards are binding. The first respondent cannot assert that he is exempted by his culture from the laws of the land. Not

only would such an assertion be a flawed interpretation of the Constitution, but it would be invalidated by the statutory provision of the National and Provincial acts under which the first respondent is recognised and functions. APA represents, in this context, a codification of basic norms and standards which are binding upon all members of society, including the first respondent. The prescription of such binding upon all members of society, including the first respondent. The prescription of such norms and standards by the Legislature is, the primary way in which a multicultural society can seek to attain the unity (or solidarity) in diversity which is necessary for its success and well-being.

Another way is through tolerance, discourse and negotiation. The applicants assert that they have the right to have their views not only tolerated, but accorded respect. More than mere tolerance of sincerely held beliefs is required under our Constitution: traditions and cultures must be engaged, the tolerator taking the tolerated group seriously and engaging it in dialogue.

THE PUBLIC INTEREST:

The issue of the ritual slaughter of the bull at the Ukweshwama ceremony has attracted wide-spread condemnation. The applicants associate themselves and concur with the values and sentiments expressed.

The matter has also elicited wide-spread attention in the news media recently. The applicants contend that it is a matter properly in the public domain and that the public interest clearly requires that the Constitution and the law be upheld by an Order interdicting the slaughter of the bull at the Ukweshwama ceremony.

RESPONDENTS RESPONSE

GODFREY SIPHOSIHLE MDHLULI employed by the first respondent in the capacity as Special Advisor to the Premier of the Province of KwaZulu-Natal, states that the Applicants have delayed considerably in bringing this application. The application was launched on 20 November 2009. The purpose of this application to interdict a significant part of the religious and cultural event known as Umkhosi ukweshwama from taking place during the ceremony. The part of the ceremony that is challenged and which the applicants wish to interdict relates to the slaughter of a bull. This ceremony is an annual event that takes place at around the same time each year for significant religious and cultural reasons, and is well known to the public and has been recorded in various writings dealing with customary law. Indeed it is a ceremony that has been performed by the Zulu nation uninterruptedly since time immemorial and its notoriety could not have escaped the applicants.

The applicants represent a trust dedicated to the preservation and welfare of animals, and must have known about the event.

No steps were taken, whatsoever, to bring these proceedings well in time for respondents and community organisations with a direct and substantial interest in the practice of the customary law, religion and culture from which the ceremony derives its origins, to participate in this matter and to properly reply.

The matter is one of great public importance.

It is concerned, inter alia, with the Constitutional rights of the Zulu nation to practice their religion and culture and to observe their customs.

The respondents have been given a week to deal with these weighty matters which are of substantial importance to a substantial sector of the community. The applicants

seek to establish a principle of substantial constitutional importance on an urgent basis. The limited time is immensely prejudicial to the respondents as it has precluded them from preparing as full and proper an answer as they would have been entitled to provide under the ordinary time periods prescribed by the rules of Court.

The interim relief that is sought will moreover have a final effect. The part of the ceremony that is to be stopped cannot be performed at a later date. Its significance and purpose in the context of the ceremony is so pivotal that the ceremony loses much of its purpose without it.

If the interim relief is granted it will disrupt the entire ceremony as the festival, in terms of the custom, can only take place during a particular time and must be performed in the sequence and order in which the relevant events take place during the ceremony.

The Applicants having known about the event long ago have delayed so substantially that they have allowed the prejudice to the respondents and that will arise to the Zulu nation, who are not properly before the Court, to escalate in the meantime whilst they delayed in bringing the application, and such prejudice is irremediable in the circumstances. The ceremony is a process that started in early November. It entails the first respondent having to go into seclusion, and for large preparations to take place in the meantime. Rituals performed in preparation for the slaughter of the bull are already under way. By delaying in bringing this application, the Applicants permitted all of these arrangements to take place in the meantime.

The Zulu nation has been building up towards performing the actual rituals that form part of the ceremony and expect them to be performed. This cannot be reversed nor can it be stopped and redone at a later date. Indeed an interference at this late stage will result in such high emotions and an outpouring of anger that there is the danger of widespread unrest and civil disobedience.

RESPONDENTS FACTUAL BASIS

The entire application, is based on a conjecture by animal rights activists from various parts of the world about the manner in which the bull is slaughtered during the ceremony.

A significant feature of the Applicants' case is that none of the persons who have deposed to affidavits before this Court have witnessed the ceremony itself.

Applicants' belief and the other reports about what happens at the ceremony, that are relied upon, are itself hearsay and in some cases double hearsay, as it is based upon reports made by various persons to someone other than the applicants in most cases, and is quite unreliable.

The entire application is based upon Applicants' unsubstantial belief regarding what happens during the ritual. The belief is moreover derived from unauthenticated material based on hearsay, from authors who are cynical of the Zulu culture. The application is manifestly based upon unreliable information that the applicants have accessed from the internet.

As will appear from the direct evidence of persons who have attended the ceremony, such as myself, and the evidence of experts on Zulu customs and traditions, the applicants' belief is ill-informed and is based on a jaundiced and distorted view of the Ukweshama.

The Applicants also misconstrue the religious and cultural significance of the Umkhosi ukweshwama and the ritual of slaughtering the bull during the course of the ceremony. The ritual is not of some secondary importance to the ceremony, but instead it has primary religious and cultural significance. This can hardly be regarded as secondary to the primary purpose.

The Umkhosi ukweshwama is not a day event. It is a religious period over which those engaged in it pay penance to achieve self purification, as evidenced by the First Respondent going into seclusion. During this period rituals are performed. One of the rituals related to the slaughter of the bull. The religious period commenced in early November and continues into December. The period of self sacrifice and performance of rituals builds up to the occasion when the bull is slaughtered, followed by further rituals. The religious period culminates with an announcement that the people may feast and can reap their crops and eat the food. It is also the time when people may marry one another.

This is an auspicious occasion that is preceded by a period of self purification through abstinence and the performance of rituals.

I have on many occasions attended the ceremony and have personally witnessed the killing of the bull. I dispute the allegations regarding the killing of the bull

In his affidavit Professor Jabulani Maphalala, a historian of note sketches the background to the factual basis concerning the killing of the bull as follows:

"2.

I have read the Applicant's founding and supporting affidavits and although the description of the animal's death during the Ukweshwama ceremony does not purport to be anything more than hearsay and anecdotal, I must say at the outset that it is so disturbingly inaccurate that it bears no resemblance to the reality of Zulu custom.

3.

In essence the Applicants have sought to portray the Zulu people as barbaric, uncultured and inhuman who subject animals to the most cruel form of torture under the auspices and encouragement of their King in the name of custom and tradition.

4.

Besides being inflammatory and deeply hurtful to those who embrace Zulu culture, the Applicants' failure to educate themselves on the true nature and significance and about the actual events that take place during the Ukweshwama ceremony has resulted in the Zulu people being denigrated and portrayed in the press as a sector of society who practices are barbaric and at odds with the remainder of civilised society.

5.

This has created a perception which ignores the special relationship that the Zulu people have with their animals and suggests instead that cruelty is embraced and is inherently part of their custom, religion and culture.

6.

In an attempt to restore perspective and dispel the perception that has been created of cruel and barbaric practices being embraced in Zulu religion and culture, I propose to deal with the history and significance of the Ukweshwama ceremony shorn of all emotive prejudice and distortion.

7.

THE UKWESHWAMA CEREMONY

According to traditional law and custom, which existed long before the arrival of the Nguni people from Central Africa to KwaZulu-Natal, no individual was allowed to taste new corn or any of the fruits of the new year until sanctioned by the King. This sanction was always given in the most public, formal manner in a general celebration in the form of a feast or gathering at the Kings great town.

8.

The occasion also served as a general muster of all the military forces of the nation when old soldiers were allowed to marry and retire and new recruits were gathered to fill their places.

9.

The celebration lasted for several days and one of the first events of the ceremony is for young warriors, boys approaching puberty, to control and kill a bull which has been specifically chosen for its strength. The killing must be performed without rope, thong or weapon of any kind and with bare hands. The reason for boys of this age and maturity only to be involved, is that it is believed that they have the innocence and purity needed for the ceremony.

10.

To achieve this aim the animal is overpowered to disable it by closing its airways and thereafter its neck is broken in a specific manoeuvre that causes a quick and painless death. No bloodletting of any kind is allowed nor is dismemberment of any kind whatsoever part of the ritual slaying.

11.

The reason for this was the symbolic representation of the King in the form of the bull. From ancient times it is believed that the power of the King wanes and while in olden times the King was killed and a new King was installed, the modern practice developed of killing the King symbolically, so that his power may be regained and he would be revitalized. It follows that the bull could not be mutilated as in form he represents the King, hence the killing by bare hands. The colour of the bull is of the particular importance, it must be black. No blood must fall on it.

12.

Once the bull succumbs, the traditional doctor opens up the animal, removes the gall, mingles it with other natural herbs, plants and medicines where after it is given to the people to drink. The flesh is given to the young warriors and what remains is burnt. The men are not allowed to taste it no matter how much is left. This again is in keeping with the ritual being confined to those who have their innocence and purity that is required for the ceremony.

13.

Other cattle are then slaughtered, and the feasting, revelling and dancing begins in earnest. During the last day of the ceremony the King's subjects form a semi-circle into which the King enters and after dancing and singing his praises and in the presence of the silent gazing throng, he breaks a green calabash in pieces, thereby signifying that the new year is open. Thereafter the people leave to eat of the new fruits of the season.

14.

The killing of the bull is deeply symbolical of the great power that the King alone claims and is symbolized by the strength of the young warriors in over-coming the bull. This strength is, in tradition, assumed by the King and is symbolic of the power he wields over the Zulu nation.

15.

The ceremony also has a religious aspect since the tribal ancestors are called upon to share in the feasting and the rite is part of thanksgiving to them for the safe arrival of the harvest. The texture of a feast or ritual ceremony is more marked by the presumed presence of the divinities than by the amount of food available. It is intended to awaken in the community reverence of the very important feature in life, the food which is at the centre of their agricultural existence.

16.

The First Fruit Ceremony (which is not an accurate translation of its true purpose and meaning) is of a ritualistic nature and sacrifice plays an important role as in most agricultural societies worldwide. Apart from being mere rituals, such ceremonies take into consideration the other natural effect of food. It also alerts the community against the wrong use of food, such as the necessity to wait until it is properly ripened and prepared.

17.

In the light of the nature and purpose of this ceremony and its deep significance to the Zulu people it seems to me to be deeply misguided that some have reacted with outrage at the ceremony and it is understandable that the Zulu followers have reacted with anger at the vilification of their tradition which is so important and significant to them.

18.

I personally have witnessed the ritual killing of a bull during the Ukweshwama ceremony. The bull was put to death in the usual way by twisting and breaking its neck in the complete absence of the type of mutilation and acts of cruelty the Applicants allege. In fact I cannot imagine how a speedy death could be achieved by the nonsensical acts of pulling out its eyes, ripping out its tongue, ripping its testicles off or trying to achieve the impossible by tying its penis in a knot. Nor do I imagine that any one could realistically believe that a bull's death could be brought about by the kicks of barefoot adolescents. These acts have no place in Zulu culture and would not be tolerated for an instant.

19.

I reiterate the strongest terms that no acts of cruelty are part of the ceremony nor is barbaric and inhumane cruelty to animals a feature of Zulu culture although it appears that the Applicants suggest otherwise.

20.

Finally it is not correct that the ceremony had fallen into disuse prior to its "reintroduction" by the King. It has always been adhered to in Zulu culture to a greater or lesser extent but was elevated to its full spectacle once again after the King's new palace or "town" had been built. What has been described as a revival was in reality a call for greater participation in the observance of the ceremony by followers. It was not case of the ceremony having fallen into disuse, and reviving its practice. It was always practised."

The description given by the applicants of the manner in which the bull is killed, is a figment of an overactive imagination probably born from an overzealous storyteller intent upon telling a grand tale that would hardly be of interest to a listener if the true details are related.

Had the Applicant's approached the issue of the ceremonious slaying with more circumspection than they have it would have become readily apparent to them that at the very least the information at their disposal might be the product of someone else's fanaticism to end ceremonial slaughter no matter how it is performed. I am only too deeply aware of the

consequences of vilifying the cultural and religious beliefs of communities and the polarization it causes. The need for maturity and calm thought is particularly required before embarking on such a course of action.

A further example of the disdain the applicants have shown for Zulu tradition is displayed by their conduct in causing their attorneys to e-mail the King in person demanding that he enter into dialogue with the applicants. It surely must have occurred to the Applicants that there is a protocol to be followed in communicating with royalty (as is the case around the world) and by failing to enquire into this protocol and follow it the perception was undoubtedly created that the King's stature and position was utterly meaningless.

It would seem to me that had the Applicants possessed more understanding of other people's cultures they might have been more judicious in accepting without question the truth of the sensational and baseless press release by a Kenyan based animal rights organization. They should not have uncritically accepted the release as true and instead of finding corroboration in the mere repetition by other animal rights societies of the same story, applied their minds more objectively to the issues at hand.

From a historical perspective applications of the present are nothing new and are symptomatic of an intolerance of religious and cultural diversity. They are often an attempt to force the particular secular views and opinion held by one faction on others. The traditional African form of culture, religion and religious practices may not be embraced by many who subscribe to the mainstream cultures and religions in Western societies, and were historically often discriminated against and in some instances its followers were persecuted and punished.

History is replete with examples of societies that have destroyed each other in consequence of cultural and religious intolerance but serves also to illustrate that understanding and respect for others who hold different beliefs and the recognition of the right to observe their own cultural heritage results in harmonious co-existence where conflict could otherwise have arisen.

The Applicants proceed from the premise that they have a right to interfere with the religious and cultural practices of others that they find intolerable to their own beliefs. The Applicants are completely misguided in their contention that they have such a right. If anything, they have in the process called into question the legitimacy of the religious and cultural practice and offended the members of the Zulu nation who are now called upon to justify their beliefs and cultural practices. This is particularly harmful to the development of a democracy based upon tolerance and promoting diversity.

BALANCE OF CONVENIENCE

On behalf of the Respondents' it is argued that the balance of convenience does not favour the granting of the relief.

It is plain that the challenge raised by the Applicants is directed primarily at the ritual of slaughtering a bull as opposed to the protection of this particular bull. The Applicants therefore suffer no prejudice if they do not succeed in interdicting the particular ritual to be performed on 4 December 2009, as they can proceed with their application in any event even after this particular bull is slaughtered. Put another way the Applicant's can still obtain meaningful relief at a hearing in due course, if interim relief is refused.

The position for the members of the traditional community engaged in this ritual is fundamentally different, if they cannot perform the ritual. They would be unable to complete the ceremony to achieve self purification and salvation nor can they enter the period of feasting to celebrate their rejuvenation. The ritual cannot be performed thereafter, as the auspicious time is intrinsically related to this period over which penance and rituals are performed and should the ritual not be performed their period of penance is rendered meaningless. They would have to forego the right to engage in a practice that forms part of their religion and culture. To put it differently, the interference with the Umkhosi wokweshwama cannot be undone by a subsequent hearing in due course should the applicants succeed in their application.

It is for this reason that the prejudice to the Zulu nation is far greater than the prejudice to the Applicants. In relation to the Zulu nation, the relief is final in effect although it may appear interim in form. The balance of convenience weighs heavily in favour of the traditional community. The Applicants have only themselves to blame for this result as they have delayed for an unconscionable period of time before they brought this application, and should they have to forego their ideal in wishing to save the life of the bull, this is the result of their own inaction in not bringing this application timeously.

Furthermore the interim relief may spark unrest and civil disobedience in the province with grave harm to the public. The full extent of this cannot be predicted, but there have been hostile reactions already to the application. As against the potential harm if the Applicants should succeed, the life of the bull would be lost. The latter is prejudice that is far outweighed by the prejudice that can arise to the general public.

CONCLUSION

At the commencement of argument I made it clear to Counsel that I needed to be addressed on two issues namely urgency and the factual background against which the granting or refusal of the interim interdict has to be considered.

Had this been the ordinary run of the mill case with no serious consequences to the parties, I would have struck the matter from the roll on the basis that the urgency was created by the Applicants own delay in bringing the application timeously.

However this application is of a sensitive nature affecting the rights of both the Applicants and the Respondents.

The factual background on which the Applicants rely sketched a shockingly gruesome killing of a bull which leaves one with a feeling of revulsion.

However it is common cause that the Applicants were unable to obtain affidavits from eye witnesses to the killing of the Bull.

The only eye witness evidence is put up by the Respondents.

The Respondents version differs greatly from that of the Applicant and have shown that the killing ritual is the culmination of the Ukweshwama festival. This festival is celebrated annually and has been part of the culture of the ZULU nation for generations.

Should the killing of the bull be interdicted and adhered to by the persons responsible the symbolic transfer of power to the King of the ZULU Nation would be prevented. The King would therefore be disempowered albeit symbolically and the ZULU nation left with a powerless King.

Common sense dictates and having regard to the history of the ZULU nation, especially that of the pre and colonial eras, granting an interdict to stop the killing of the bull and ordering the Minister of Police to ensure that effect is given to the interdict might just be the proverbial match under the powder keg.

As far as the nature of the relief sought by the Applicants I am in agreement with Mr Singh on behalf of the Respondents that although the relief sought is brought as interim relief the effect of granting the relief would be final.

On that basis the Applicants are therefore required to prove their right on a balance of probabilities and not simply a prima facie right.

I am satisfied that this application also falls to be decided on the Plascon Evans principle (1084(3) SA 623 AD) and not according to Webster v Mitchell 1948(1) SA 1186(W).

Having adopted this approach I am satisfied that the Respondents' version of the UMKHOSI UKWESHWAMA festival and the fact that it has been celebrated for generations is to be preferred to that of the Applicants.

In the result there is no legal basis on which this court can grant the relief sought by the Applicant.

The obvious way to get consensus on the central issue raised in these papers, namely the slaughter of the bull and the manner in which it is done, is to approach the relevant authorities with the view of resolving the conflict between the Applicant and the representatives of the ZULU nation. Hopefully Parliament would intervene with a view to put this issue to rest.

In the result the application is dismissed with costs including the costs of two counsel.

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DATE OF JUDGMENT: 4 December 2009.

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