THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The Director Animal Health, Department of Agriculture, Land Reform and Rural Development and Another v Minister of Agriculture, Land Reform and Rural Development (039/2025) [2026] ZASCA 144 (28 October 2026)

Today the Supreme Court of Appeal (SCA) dismissed with costs, including the costs of two counsel, an appeal against a judgment by the Western Cape Division of the High Court, Cloete J, sitting as the court of first instance, (high court).

This case concerns the interpretation of s 19(2) the Animal Diseases Act 35 of 1984 (the Act), which provides for compensation for any animal or other thing that has been destroyed or otherwise disposed of pursuant to control measures. In May 2021, Highly Pathogenic Avian Influenza (avian flu) was detected on one of the farms of the respondent, Goerge Moeras Boerdery (GMB). The state veterinarian instructed GMB to apply a number of animal disease control measures. These included the destruction of all infected and in-contact birds and eggs on the premises, and their safe disposal. GMB destroyed a considerable number of birds and eggs and cleaned and disinfected the farms, at substantial cost. GMB submitted an application for compensation in terms of s 19(1) of the Act to the first appellant, the Director of the Directorate of Animal Health (the Director). The Director reasoned that avian flu has a high mortality rate; it is highly transmissible; and, as a result, there was a high probability that the infected and in-contact chickens would have died. They also could not have been used or traded. On these grounds the Director concluded that the compensation was zero (R0.00). GMB lodged an objection against this decision to the Director-General, who appointed a panel of senior officers in the Department to investigate the objection. The panel described the Director's decision as 'illogical' and 'irrational'. The objection was upheld and the Director's decision was set aside. The claim was remitted to the Director for reconsideration. The Director again held that the chickens infected with avian flu, the in-contact chickens, and the eggs had no value.

The majority of the SCA, per Unterhalter JA, addressed firstly the interpretation of the requirement of s 19(2) of a 'fair amount as compensation' (whether the Act prescribed that it should be based on fair market value) and secondly the subject of valuation (whether the valuation should be based on the condition of the animal or thing in its infected or its healthy state).

On the first issue of the interpretation of the section, the majority, in determining the power of the director, in terms of the Act, to fix a fair amount as compensation, referred to the relationship between the provisions set out in subsections 19(2)*(a)*-*(d)*. The majority held that the compensation that derives from the consideration set out in s 19(2)*(a)*, is an amount of compensation from which adjustments are made, in virtue of the considerations in s 19(2)*(b)*-*(d)*. In other words, the majority designated the amount in s 19(2)*(a)* as the foundation amount, from which the considerations in s 19(2)*(b)*-*(d)* could, where relevant, be deducted. In respect of the question of whether the foundational amount should be based on fair market value, the majority identified two approaches to the interpretation of s 19(2)*(a)* of the Act. This section makes provision for instances in which compensation has been determined by the Minister through regulations and instances where compensation has not been determined by regulations and should be determined by the Director. The majority described the interpretative approach of the Director and the Minister, who read s 19(2)*(a)* to give the Director unfettered discretion to fix any amount in accordance with any criterion deemed applicable, as a binary approach to the section. The

majority held that as a matter of syntax, such a reading is not excluded, but the text need not be read in this way. In contrast to the binary approach, the majority considered on a unitary approach, which reads s 19(2)*(a)* to require the foundational amount to be based on fair market value, both where the Minister has determined compensation through regulation as well as where the Director determines compensation in the absence of specific regulations. The majority advanced several reasons why the unitary interpretation is preferred, including grammar, the context of the section within the schema of the rest of the Act, the rule of law and consistency with the founding provisions of the Constitution, and the purpose of the Act.

Referring to the case of *Bluelilliesbush*, the majority pointed out that even though *Bluelilliesbush* concerned a voluntary scheme for the control of bovine tuberculosis and the present case involved compulsory control measures for avian flu, and the regulation 30 under which the case was decided had been repealed, the incentive to which Cameron JA referred to in *Bluelilliesbush* remained relevant. The majority underscored that 'unfettered discretion' is a contradiction in terms, and for the Director to view her powers as such as disregard fair market value in determining fair compensation, was a reviewable error. Furthermore, the majority emphasised that the present regulation 30 cannot enlarge a power that the Act confers subject to a limit. The regulation therefore leaves the director's power where s 19(2)*(a)* places it: the director fixes an amount in accordance with a criterion deemed applicable by her, and that amount must be based on a fair market value.

Regarding the second issue of the subject of valuation, the majority referred to the case of *Bluelilliesbush*, where it was posited that the subject of valuation is the fair market value of the subject before it became infected or came into contact with an infected animal. In contrast, the Director considered compensation on the premise of the infected subject. The majority pointed out that while s 19(1) clearly makes the compensation payable to an owner by reason of the control measure that was taken and resulted in the disposal of the animal or thing, the text of s 19 is ambiguous as whether the compensation is for an infected or uninfected subject. The majority found that compensation should be based on the uninfected subject, firstly because, if the infected subject is adopted, then it is difficult to conceive when fair compensation would ever be payable to an owner, and secondly because of the purpose of the Act. The majority emphasised that the Act seeks to limit the wide-ranging harms that can occur if control measures are not taken to contain animal disease. The public good thereby secured for all is a social cost borne by all. And hence fair compensation is better understood as compensation that restores the productive assets that have been lost to the owner as a result of their destruction by the imposition of control measures. Furthermore, the majority found that even on the Director's (incorrect) understanding of her power to award a fair amount of compensation, the Director failed to give any consideration to the value fairly attributable to the destruction of the chickens and eggs that were uninfected, but in-contact with infected chickens.

The SCA therefore held that both the failure to have regard to fair market value, as well as the decision to base the compensation on the infected subject were reviewable errors. The Director did not correctly understand the power she was required to exercise in terms of s 19(2) to arrive at a fair amount of compensation and the high court's finding was thus correct.

In a dissenting judgment, the minority of the SCA, per Norman JA, agreed that the high court was correct in setting aside and reviewing the decision of the director, but differed from the majority on the findings and the order proposed. The minority held that the high court committed a misdirection by including in its order the contents of paragraph 7 of the notice of motion, which was a substitution order. The order was therefore contrary to its finding that a substitution order would be an inappropriate, unjust and inequitable order to make in the present case. The minority however held that the high court correctly remitted the matter for reconsideration but misdirected itself in setting a criterion. Furthermore, the minority also pointed to discrepancies in the numbers of hens and chickens provided in the founding affidavit, and claimed that it had a bearing on the quantification of compensation.

Regarding *Bluelilliesbush*, the minority found that it was distinguishable from the present case, since it was decided on the old regulation 30, also because the culling of animals or things related to cattle and not chickens. According to the minority, the binary interpretation referred to in the majority judgment seemed to be consistent with the principles set out in *Jaga v Dönges*, referred to in *Endumeni*. This meant that two jurisdictional factors must be present before compensation in s 19(1) is activated. The minority further held that the reading of s 19(1) does not permit for a reading of a 'healthy state' as found in the majority judgment. While the Act makes a distinction between infected animals, contact animals and susceptible animals, the provisions of s 19(1) do not distinguish between the infected, in contact or susceptible animals, but focus on an animal being destroyed or disposed of pursuant to any control measure. The minority further held that members of the public and the

industry stakeholders must know what the criterion is, which would not be a static criterion but a disease-animal based criterion. Accordingly, the minority would have dismissed the appeal in so far as it relates to the review order but upheld it in relation to the remittal order. On the issue of costs, the minority would have ordered that each party is to bear its own costs on appeal because of several reasons, including that GMB brought a replacement value claim contrary to the provisions of the Act and the high court had also directed each party to bear their own costs.

As a result, the appeal was dismissed with costs, including the costs of two counsel.

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