

## Court confirms right of owner of culled animals to claim compensation in terms of Animal Diseases Act

### Background

The Eastern Cape division of the High court handed down judgement in the matter of George Moerasrivier Boerdery (Pty)Ltd v the Director of Animal Health, DALRRD and the Minister of Agriculture, Land Reform and Rural Development. The case dealt with the right of an owner of livestock to compensation when livestock and products are destroyed in terms of a directive issued by the Director to destroy a large number of chickens and poultry products in accordance with governmental avian flu protocol. When the farm owner applied to the Director for compensation in terms of s 19(1) of the Animal Diseases Act, no 35 of 1984, the claim was rejected on the basis that the infected and in-contact chickens have no value and that nil compensation was therefore payable.

### Judgement

The court found that the Director's decision was not administratively fair and not in line with the intention of section 19 of the Act. The refusal to pay compensation was set aside and the claim for compensation remitted to the Director for reconsideration. The court reiterated the principle that the starting point for statutory interpretation is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to its preparation and production. Importantly the court then found that on the plain wording of section 19(2) of the Animal Diseases Act, the words "applicable compensation" is based on a fair market value of the animal or thing and that means the value is that of an animal or thing in a healthy state.

### Implications

This judgement is in line with the intention of the Legislature to compensate those who are forced to take steps in the public interest to manage an outbreak of an infectious animal disease. The judgement has just confirmed that there is an intention to compensate and the basis on which compensation must be approached, which is fair market value of a healthy animal. Internationally many countries provide for compensation. A 2021 World Organisation for Animal Health report<sup>1</sup> found that: "One of the factors that have had the most positive impact on mechanisms for the notification of animal diseases and zoonoses is economic compensation to producers following the implementation of stamping-out measures. Mainly this is

<sup>1</sup> <https://www.woah.org/app/uploads/2021/03/2006-167-176-muzio-a.pdf>

because animal owners are usually the first to detect clinical signs in their farms, and early notification helps the veterinary authorities to adopt the appropriate sanitary measures to facilitate the rapid control and eradication of these diseases.”

The judgement really does not bring about anything new, it confirms and clarifies the position as set out in the Animal Diseases Act. The clarity brought about by the judgement in terms of the fair market value on the basis of a healthy animal is to be welcomed.

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