

# COURT CASE RECORD

|                                                                          |                                                                                                                   |                            |            |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------|------------|
| <b>Case/Docket Number (CAS/MAS)</b>                                      | GRASSY PARK 306/05/2024                                                                                           | <b>Court Case Number</b>   | 1/495/24   |
| <b>Act/s</b>                                                             | Animals Protection Act 71 of 1962                                                                                 |                            |            |
| <b>Charge/s laid</b>                                                     | Section 2(1)(b)(e)(f)(r)                                                                                          |                            |            |
| <b>Charge/s that were successful</b>                                     | Section 2(1)(b)(e)(f)                                                                                             |                            |            |
| <b>Brief overview of offence/s</b>                                       | Severe embedded collar on a canine                                                                                |                            |            |
| <b>Animal/s</b>                                                          | Crossbreed – White and Black                                                                                      |                            |            |
| <b>Accused/s</b>                                                         | Mario Smith                                                                                                       |                            |            |
| <b>Address</b>                                                           | 4A Gull Road, Parkwood                                                                                            |                            |            |
| <b>ID Number/s of Accused/s</b>                                          | 7511105101082                                                                                                     |                            |            |
| <b>Court</b>                                                             | WYNBERG                                                                                                           | <b>Date heard in court</b> | 28/07/2026 |
| <b>Sentence Accompanied by judgement printout as provided by courts.</b> | Counts taken together for sentencing<br>Fine of R10 000 or 12 months imprisonment wholly suspended for five years |                            |            |
| <b>Outcome of animals</b>                                                |                                                                                                                   |                            |            |
| <b>Magistrate</b>                                                        | <b>Prosecutor</b> Nuraan Mitchell                                                                                 |                            |            |
| <b>Prosecuting SPCA</b>                                                  | Cape of Good Hope                                                                                                 |                            |            |
| <b>Inspector</b>                                                         | Mthunzi Kunene                                                                                                    |                            |            |
| <b>Vet</b>                                                               | Dr. Este Spies                                                                                                    |                            |            |
| <b>Area</b>                                                              | Parkwood                                                                                                          |                            |            |

# CASE DOCKET • SAKDOEKIER

|                                                                                                                                                                                       |                           |                                                                                                          |                              |                                                                                                     |                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------------------------------------------------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------------------------|--------------------|
| 10111 Command Centre IR No.: _____                                                                                                                                                    |                           | CR No. _____ / _____ / _____<br>MR No. _____ / _____ / _____                                             |                              | Control Register No. _____<br>Beheersregister No. _____                                             |                    |
| Station <u>LOTUS RIVER</u><br>Stasie _____                                                                                                                                            |                           | CAS No. <u>306</u> , <u>05</u> , <u>2024</u><br>MAS No. _____ / _____ / _____                            |                              | Case Register No. _____<br>Sakaregister No. _____                                                   |                    |
| Indicate with X:<br>Mark met X:                                                                                                                                                       | Case docket<br>Sakdoekier | Inquest Docket<br>GDO Dossier                                                                            | Court number<br>Hofnommer    | Court Case Number<br>Hofsaaknommer                                                                  |                    |
| Investigator <u>Sgt Justin Faro</u><br>Ondersoeker _____                                                                                                                              |                           | Tel. No. <u>076 671 0242</u>                                                                             |                              | Investigator <u>SGT JUSTIN FARO</u><br>Ondersoeker _____                                            |                    |
| Investigator <u>SGT JUSTIN FARO</u><br>Ondersoeker _____                                                                                                                              |                           | Tel. No. <u>076 671 0242</u>                                                                             |                              | Investigator _____<br>Ondersoeker _____                                                             |                    |
| Day and time of offence/incident:<br>Datum en tyd van misdryf/voorzak:                                                                                                                |                           | or Period: Between<br>of Tydperk Tussen                                                                  |                              | on<br>op                                                                                            |                    |
| _____ / _____ / _____<br>YY/JJ MM DD                                                                                                                                                  |                           | _____ / _____<br>MM JJ                                                                                   |                              | _____ / _____<br>MM JJ                                                                              |                    |
| and<br>_____ / _____<br>YY/JJ MM DD                                                                                                                                                   |                           | on<br>_____ / _____<br>YY/JJ MM DD                                                                       |                              | Day of week: SU MO TU WE TH FR SA<br>Dag van week: SO MA DI WO DO VR SA                             |                    |
| Method used/Entrance gained/Circumstances of death<br>Metode gebruik/Toegang verkry/Omstandighede van dood: <u>ANIMAL CRUELTY</u>                                                     |                           |                                                                                                          |                              |                                                                                                     |                    |
| Type of instrument used<br>Tipe instrument gebruik: <u>DOG</u>                                                                                                                        |                           | Address of offence<br>Adres van misdryf: <u>4A GULL ROAD, LOTUS RIVER</u>                                |                              |                                                                                                     |                    |
| Complainant (Initials and surname)<br>Klaser (voornamers en van): <u>MTHUNZI N. KUNENE</u>                                                                                            |                           | Cell _____                                                                                               |                              |                                                                                                     |                    |
| Email address _____                                                                                                                                                                   |                           | Tel. No. (W) _____                                                                                       |                              |                                                                                                     |                    |
| Indicate with X: Domestic Violence <input type="checkbox"/> Gang Related <input type="checkbox"/> Railway Attack <input type="checkbox"/> Police Involvement <input type="checkbox"/> |                           |                                                                                                          |                              |                                                                                                     |                    |
| Nature and description of offence<br>Aard en beskrywing van misdryf                                                                                                                   | Crime code<br>Misdad kode | Nature of property/injuries<br>Aard van eiendom/beserings                                                | Value/Damage<br>Waarde/Skade | Value recovered<br>Waarde teruggevind                                                               |                    |
| 1. <u>ACT 71 OF 1962</u><br><u>2(1)(b), 2(1)(c), 2(1)(f), 2(1)(h)</u>                                                                                                                 |                           |                                                                                                          |                              |                                                                                                     |                    |
| 2. _____                                                                                                                                                                              |                           |                                                                                                          |                              |                                                                                                     |                    |
| For further offences—See A _____ / Vir verdere misdrywe—Sien A _____                                                                                                                  |                           |                                                                                                          |                              |                                                                                                     |                    |
| <b>FINDING/RESULT OF TRIAL • BEVINDING/UITSLAG VAN VERHOOR</b>                                                                                                                        |                           |                                                                                                          |                              |                                                                                                     |                    |
| Date of conviction/Finding:<br>Datum skuldig bevind/Bevinding: _____ / _____ / _____<br>YY/JJ MM DD                                                                                   |                           | COURT DATES<br>HOFDATUMS<br><u>2024/05/31</u><br><u>2024/07/01</u><br><u>2024/07/23</u>                  |                              | REASONS FOR POSTPONEMENT<br>REDES VIR UITSTEL<br><u>1st appearance</u><br><u>Consult with State</u> |                    |
| OFFENCES CONVICTED OF AND SENTENCE: or FINDING OF MAGISTRATE<br>OORTREDINGS WAARAAN SKULDIG BEVIND EN VONNIS: of LANDDROS SE BEVINDING                                                |                           |                                                                                                          |                              |                                                                                                     |                    |
| _____                                                                                                                                                                                 |                           |                                                                                                          |                              |                                                                                                     |                    |
| _____                                                                                                                                                                                 |                           |                                                                                                          |                              |                                                                                                     |                    |
| _____                                                                                                                                                                                 |                           |                                                                                                          |                              |                                                                                                     |                    |
| _____                                                                                                                                                                                 |                           |                                                                                                          |                              |                                                                                                     |                    |
| _____                                                                                                                                                                                 |                           |                                                                                                          |                              |                                                                                                     |                    |
| Date/Datum _____                                                                                                                                                                      |                           | Prosecutor/Aanklaer _____                                                                                |                              | * FOR FURTHER REMAND DATES SEE PAGE 8                                                               |                    |
| <b>EXHIBITS • BEWYSSTUKKE</b>                                                                                                                                                         |                           |                                                                                                          |                              |                                                                                                     |                    |
| Station/Place<br>Stasie/Plek _____                                                                                                                                                    |                           | SAPS 13 No. _____<br>SAPD 13 No. _____                                                                   |                              | SAPS 43 No. _____<br>SAPD 43 No. _____                                                              |                    |
| IR No. _____<br>OR No. _____                                                                                                                                                          |                           | POSITIVE/NEGATIVE Data elimination FP forwarded<br>POSITIEF/NEGATIEF Datum uitskakeling VA versend _____ |                              |                                                                                                     |                    |
| DISPOSAL OF DOCKET<br>BESKIKKING OOR DOSSIER _____                                                                                                                                    |                           | B/F Dates<br>L/V Datums                                                                                  | Initials<br>Peraaf           | B/F Dates<br>L/V Datums                                                                             | Initials<br>Peraaf |
| Remarks<br>Opmerkings _____                                                                                                                                                           |                           |                                                                                                          |                              |                                                                                                     |                    |
| _____                                                                                                                                                                                 |                           |                                                                                                          |                              |                                                                                                     |                    |
| Date/Datum _____                                                                                                                                                                      |                           | Officer/Station Commissioner/Commander<br>Offisier/Stasiekommissaris/Befevelvoerder _____                |                              |                                                                                                     |                    |



## PREAMBLE TO STATEMENT \* AANHEF TOT VERKLARING

|                   |             |                  |     |    |      |
|-------------------|-------------|------------------|-----|----|------|
| Station<br>Stasie | GRASSY PARK | CAS no<br>MAS no | 306 | 05 | 2024 |
|-------------------|-------------|------------------|-----|----|------|

## PERSONAL PARTICULARS \* PERSOONLIKE BESONDERHEDE

|                                      |                                                                                          |                         |     |                |        |
|--------------------------------------|------------------------------------------------------------------------------------------|-------------------------|-----|----------------|--------|
| Title<br>Titel                       | M R                                                                                      | Initials<br>Voorletters | M N | Surname<br>Van | KUNENE |
| First names<br>Voornaam              | MTHUNZI NKUTHALO                                                                         |                         |     |                |        |
| Identity number<br>Identiteitsnommer | 0 0 1 0 2 0 5 3 1 7 0 8 3                                                                |                         |     |                |        |
| Passport number<br>Paspoortnommer    |                                                                                          |                         |     |                |        |
| Date of Birth<br>Geboortedatum       | 2 0 0 0 1 0 2 0                                                                          |                         |     |                |        |
| Nationality<br>Nasionaliteit         | SOUTH AFRICAN                                                                            |                         |     |                |        |
|                                      | Race<br>Ras                                                                              |                         |     |                |        |
|                                      | A Br <input checked="" type="checkbox"/> W<br>A Br <input checked="" type="checkbox"/> W |                         |     |                |        |
|                                      | Country of issue<br>Land van uitreiking                                                  |                         |     |                |        |
|                                      | Age<br>Ouderdom                                                                          |                         |     |                |        |
|                                      | Gender<br>Geslag                                                                         |                         |     |                |        |
|                                      | M F<br>M F                                                                               |                         |     |                |        |
|                                      | Citizenship<br>Burgerskap                                                                |                         |     |                |        |
|                                      | SOUTH AFRICAN (RSA)                                                                      |                         |     |                |        |

I am/am not a member of the SAPS with PERSAL no \* Ek is lid/nie lid van die SAPD met PERSAL no

## RESIDENTIAL ADDRESS \* WOONADRES

|                                                      |              |      |             |              |      |
|------------------------------------------------------|--------------|------|-------------|--------------|------|
| Street name<br>Straatnaam                            |              |      |             |              |      |
| Building/farm/plot/place<br>Gebou/plaas/plot/plek    |              |      |             |              |      |
| Suburb/Extension/Area<br>Voorstad/Uitbreiding/Gebied | N / A        |      |             |              |      |
| Town/City<br>Dorp/Stad                               |              |      |             |              |      |
| Telephone number<br>Telefoonnommer                   | Home<br>Huis | Code | No          | Work<br>Werk | Code |
| Cellphone number<br>Sellulêre foonnommer             |              |      | Fax<br>Faks | Code         | No   |

## ADDRESS--WORK/BUSINESS/INSTITUTION/ORGANISATION \* ADRES--WERK/BESIGHEID/INSTANSIE/ORGANISASIE

|                                                                                                                                |                                                                    |      |             |              |      |
|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|------|-------------|--------------|------|
| Name of Institution/Organisation<br>Naam van Instansie/Organisasie                                                             | CAPE OF GOOD HOPE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS |      |             |              |      |
| Street name<br>Straatnaam                                                                                                      | C/O FIRST ROAD & 1ST AVENUE                                        |      |             |              |      |
| Building/farm/plot/place<br>Gebou/plaas/plot/plek                                                                              | SPCA BUILDING                                                      |      |             |              |      |
| Suburb/Extension/Area<br>Voorstad/Uitbreiding/Gebied                                                                           | GRASSY PARK                                                        |      |             |              |      |
| Town/City<br>Dorp/Stad                                                                                                         | CAPE TOWN                                                          |      |             |              |      |
| Telephone number<br>Telefoonnommer                                                                                             | Home<br>Huis                                                       | Code | No          | Work<br>Werk | Code |
| Cellphone number<br>Sellulêre foonnommer                                                                                       |                                                                    |      | Fax<br>Faks | Code         | No   |
| Would you like to receive information regarding this case via sms?<br>Wil u inligting in verband met die saak ontvang per sms? |                                                                    |      |             |              |      |
| Yes <input checked="" type="checkbox"/> Ja No <input type="checkbox"/> Nee                                                     |                                                                    |      |             |              |      |

## CONTACT PERSON (IF APPLICABLE) \* KONTAK PERSOON (INDIEN VAN TOEPASSING)

|                                    |              |                         |          |                |            |
|------------------------------------|--------------|-------------------------|----------|----------------|------------|
| Title<br>Titel                     | M S          | Initials<br>Voorletters | N        | Surname<br>Van | VENTER     |
| Telephone number<br>Telefoonnommer | Home<br>Huis | Code                    | No       | Work<br>Werk   | Code       |
|                                    | 078          |                         | 801 3362 | 021            | 700 4158/9 |

16/05/2024  
Date/Datum

Signature/Handtekening

## Page 1



## SWORN AFFIDAVIT

I, the undersigned

**MTHUNZI NKUTHALO KUNENE**  
**(ID 0010205317083)**

Do hereby make oath in English and state that:

**1.**

I am an adult male Trainee Inspector employed as such by the Cape of Good Hope Society for the Prevention of Cruelty to Animals ("SPCA") at corner of 1st Avenue and First Road, Grassy Park with contact telephone number/s 021 700 4158/9 and with email address [inspectorate@spca-ct.co.za](mailto:inspectorate@spca-ct.co.za). The facts contained in this affidavit fall within my personal knowledge unless indicated otherwise or unless it appears so from the context. The facts are also, to the best of my knowledge and belief, both true and correct.

**2.**

On **Saturday, 04 May 2024**, a man named Mario Smith came to the Cape of Good Hope SPCA requesting assistance to loosen his dog from a static chain as his dog was choking. The man gave his address to be 4A Gull Road, Lotus River ("the property").

**3.**

Upon arrival at the property I was granted access by a man who introduced himself to be Mario, the owner of the dog. Mario took me to the dog on his property. I observed a white and black crossbreed dog on a short, rusted chain. The dog had no access to shelter and its movement was further restricted by building blocks that could also cause injury to the dog. Upon approaching the dog, the dog appeared reluctant to move in a way that would cause the chain it was attached to move. This was evident by the dog sitting and standing in exactly the same spot, even when barking at me. The dog kept scratching at its neck where the chain was connected. His ears were constantly pulled back and his back appeared to be hunched. A hunched back is a common sign of pain in dogs.

**4.**

Mario then held the dog for me so I could look at the affected area. The snap hook used to secure the chain around the dog's neck was causing a puncture into and through the dog's skin. The wound smelt bad, indicating to me that the wound might already be infected. Mario claimed that the dog had been like that for three (3) days. Mario told me that he just wanted my help in removing the chain and that I could then leave thereafter. I explained to Mario that the wounded dog needed to be seen to by a veterinarian, even if the chain was removed. I also pointed out to Mario that his dog didn't have adequate shelter and explained to him that he can't chain the dog like he had done. I told Mario that as soon as an animal in his care becomes injured, he must take that animal to a veterinarian to not cause suffering to such an animal.

**5.**

I then issued Mario with **Notice to Comply 11964** instructing him to, in the future, take any compromised animals in his care to a veterinarian for immediate assessment. Mario then signed **Admission Form A33644** and surrendered the dog over to the SPCA. I loaded the dog named Simba into my SPCA vehicle and took him to the Cape of Good Hope SPCA where he was examined by Dr Este Spies.

I, Mthunzi Nkuthalo Kunene, further state under oath and in English that:

**6.**

Once at the SPCA's hospital, the chain and puncturing snap hook was carefully removed from the wound on the dog's neck and he was provided with treatment. I weighed the chain to be two (2) kilograms, such a weight pulling on a wound would cause discomfort and pain to the dog. I placed the rusted chain still attached to the snap hook in **Evidence Bag FSC-568927** and sealed the bag.

**7.**

Photographs 1 to 2 in "**Photographic Evidence A**" were taken by myself using my Samsung Galaxy A23 cellular phone camera at 4A Gull Road, Lotus River on 04 May 2024. Photographs 1 to 2 in "**Photographic Evidence B**" were taken by myself using my Samsung Galaxy A23 cellular phone camera at the Cape of Good Hope SPCA in Grassy Park on 04 May 2024. The photographs contained in the albums labelled "Photographic Evidence A" and "Photographic Evidence B" have not been edited or altered in any way and are a true and accurate reflection of my findings.

**8.**

I hereby respectfully request that Mr Mario Smith with ID number 7511105101082 be charged in terms of Section 2(1)(b) of the Animals Protection Act 71 of 1962 for chaining his dog in such a manner as to cause his dog to suffer unnecessarily.

**9.**

I hereby respectfully request that Mr Mario Smith with ID number 7511105101082 be charged in terms of Section 2(1)(e) of the Animals Protection Act 71 of 1962 for failing to render or procure necessary veterinary treatment or attention to his dog despite its need of such.

**10.**

I hereby respectfully request that Mr Mario Smith with ID number 7511105101082 be charged in terms of Section 2(1)(f) of the Animals Protection Act 71 of 1962 for using on and attaching to his dog a chain and snap hook that caused injury to his dog.

**11.**

I hereby respectfully request that Mr Mario Smith with ID number 7511105101082 be charged in terms of Section 2(1)(r) of the Animals Protection Act 71 of 1962 for unreasonably or negligently failing to provide proper care for his dog.

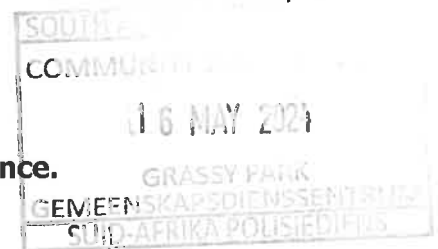
**12.**

**I know and understand the content of this declaration.**

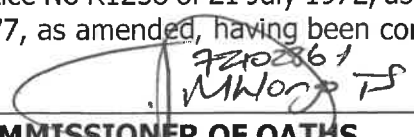
**I have no objection to taking the prescribed oath.**

**I consider the prescribed oath to be binding on my conscience.**

  
**DEPONENT**



The deponent has acknowledged that he knows and understands the contents of this affidavit/declaration, which was signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

  
**COMMISSIONER OF OATHS**

**Full names:** Mthunzi Selbourne Mhlongo

**Designation:** CS

**Business address:** Reddy Avenue



# Photographic Evidence A

Date taken: 04 May 2024

Address: 4A Gull Road, Lotus River

Taken by: Trainee Inspector Mthunzi Kunene

Taken with: Samsung Galaxy A23 Cellular Phone Camera



**Photograph 1:** Showing a white and black dog chained to a wooden pole by a short, rusted chain secured around its neck. The dog's back is hunched and its ears are pulled back, both signs of pain and distress. Note that there is no shelter provided to the dog and the ground around it is wet.



# Photographic Evidence A

Date taken: 04 May 2024

Address: 4A Gull Road, Lotus River

Taken by: Trainee Inspector Mthunzi Kunene

Taken with: Samsung Galaxy A23 Cellular Phone Camera



**Photograph 2:** Showing a close up of the dog seen in Photograph 1. Note the rusted chain is puncturing the dog's neck. The dog's back is still hunched and its ears pulled back, indicating it is in pain.



**NOTICE TO COMPLY**

|                                          |                             |
|------------------------------------------|-----------------------------|
| To: Mr / Mrs / Ms <u>Mrs SMITH</u>       | Date <u>04/05/2024</u>      |
| Address <u>411 Gull Road Lotus River</u> | ID No <u>7511105101082</u>  |
| Tel No                                   | Cell No <u>067 970 9917</u> |
| Veh Reg No                               | Trailer Reg No              |

You are hereby instructed to:

11964

In future any Animal/s on your property under your Custody or Control that is/s are Sick or Injured shall be taken to the Veterinarian for Assessment Immediately, failing to comply may lead to actions being taken for breaching the Containment or the Animals Inspection Act 71 of 1962.

This Notice to Comply has been issued in terms of the Society for the Prevention of Cruelty to Animals Act No 169 of 1993.

SIGNED & ACCEPTED BY: [Signature]

PLACE: Lotus River TIME: 10H30

REPRESENTATIVE: Chief Inspector Mkhomo SPCA: Cape SPCA

# ADMISSION, ASSESSMENT AND HISTORY RECORD

If Good Hope



|                   |                  |           |          |                          |             |                        |  |
|-------------------|------------------|-----------|----------|--------------------------|-------------|------------------------|--|
| <b>KENNEL No.</b> |                  |           |          | <b>ADMISSION</b> A 33644 |             |                        |  |
| Stray             | <u>Surrender</u> | Abandoned | Returned | Impounded                | Confiscated | Request for euthanasia |  |
| Date in           | 04/05/2024       |           | Time in  | 10H30                    |             | Date for release       |  |

| IDENTIFICATION & LOST AND FOUND    |     |    |                         | Lost & Found checked       | Yes | No | Lost & Found Date checked |
|------------------------------------|-----|----|-------------------------|----------------------------|-----|----|---------------------------|
| Microchip / Collar or ID tag found | Yes | No | Date scanned or checked | Microchip or ID tag number |     |    |                           |

| DESCRIPTION & HISTORY | Dog                        | Cat            | Other species (Specify) |                       |                 |      |         |            |
|-----------------------|----------------------------|----------------|-------------------------|-----------------------|-----------------|------|---------|------------|
|                       | Breed                      | Pitbull x      |                         | Colour and Markings   | White black     |      |         |            |
|                       | Condition                  | Embedded Glare |                         | Sex                   | Male            | Age  | 3 years |            |
|                       | Temperament                | Tame           |                         | Sterilisation details | NO              | Name | Simba   |            |
|                       | Coat                       | Short          | Tail                    | Long                  | Teeth Condition | OK   | Ears    | +10pp      |
|                       | Area found/ collected from | Lotus River    |                         |                       |                 |      | Date    | 04/05/2024 |
|                       | Reason for surrender       | Can not afford |                         |                       |                 |      |         |            |
|                       |                            |                |                         |                       |                 |      |         |            |
|                       |                            |                |                         |                       |                 |      |         |            |
|                       |                            |                |                         |                       |                 |      |         |            |

| ASSESSMENT       |        | Surrendered by | ✓         | Name                | MARIE SMITH             |
|------------------|--------|----------------|-----------|---------------------|-------------------------|
| GOOD WITH        | Yes No | Found by       |           | Residential Address | 4 GULL ROAD GRASSY PARK |
| Children         |        | Postal Address |           | Tel (H)             |                         |
| Cats             |        |                |           | Tel (W)             |                         |
| Other Dogs       |        |                |           | Cell                | 0679969917              |
| Livestock/ other |        |                |           | Email               |                         |
| DO THEY:         | Yes No | Donation R     | NOT Smith | Cash                | Card                    |
| Jump Fences      |        |                |           | Eft                 | Receipt No.             |
| Run Away         |        |                |           |                     |                         |
| COMMENTS         |        |                |           |                     |                         |

PLEASE INSIST ON A RECEIPT

Confiscated: OB No:

Case No: 200511

Inspector: Mthunzi

## STATEMENT OF SURRENDER

I do hereby certify that I DO / I DO NOT own the animal/s described above, that IT IS / IT IS NOT a stray and I DO / I DO NOT know where it comes from. I also freely surrender all interest, if, any therein to the SPCA and I request that the animal be dealt with as deemed advisable in the discretion of the SPCA. It is expressly agreed that neither the SPCA nor its officers and employees will incur any obligation to me on account of such disposition of said animal/s. I confirm that I am over the age of eighteen (18) years if age. Also see 'Conditions' on reversed side.

Hiermee verklaar ek dat ek dier/e hierbo beskryf **BESIT / NIE BESIT NIE**, dat dit 'n **RONDLOPER / NIE RONDLOPER NIE** is, en dat ek **WEET / NIE WEET** waar dit vandaan kom nie. Ek doen ook vrywillig afstand van alle belange daarin, indien enige, ten gunste van die DBV en ek versoek dat die dier hanteer word soos wat die DBV goed ag. Daar word uitdruklik ooreengekom dat nóg die DBV nóg sy amptenare, en werknemers enige verpligtinge het, teenoor my ten opsigte van die hantering van die dier/e nie. Ek bevestig dat ek bo die ouderdom van agtien (18) jaar is. Sien ook die 'Voorwaardes' op die agterblad.

Signature M. Smith

Witness for Society Mthunzi

## FOR OFFICE USE: PENDING ADOPTION

Details of first Applicant

Details of second Applicant  
Details of third Applicant

Claimed ☐ Adopted ☐ Euthanased ☐ Died ☐ Other ☐ On Date: \_\_\_\_\_



# Photographic Evidence B

Date taken: 04 May 2024

Address: Cape of Good Hope SPCA, Grassy Park

Taken by: Trainee Inspector Mthunzi Kunene

Taken with: Samsung Galaxy A23 Cellular Phone Camera



**Photograph 1:** Showing the rusted chain and snap hook puncturing the neck of the dog seen in Photographic Evidence A.



# Photographic Evidence B

Date taken: 04 May 2024

Address: Cape of Good Hope SPCA, Grassy Park

Taken by: Trainee Inspector Mthunzi Kunene

Taken with: Samsung Galaxy A23 Cellular Phone Camera



**Photograph 2:** Showing a close up of the wound seen in Photograph 1. Note the snap hook is puncturing through one side of the dog's neck and coming out the other side of the dog's neck.

## Veterinary Report

Date: Saturday, May 4th, 2024

Place: Cape of Good Hope SPCA, corner of 1<sup>st</sup> road and 1<sup>st</sup> avenue, Grassy Park, Cape Town

Patient: 3-year-old, black and white, male, intact Pit Bull cross

Admission number: A33644

Presented by: Trainee Inspector Muthunzi Kunene

### History:

A 3-year-old, black and white, male intact Pit Bull cross, was presented to the hospital by Trainee Inspector Muthunzi Kunene on May 4th, 2024, at 10:59. The reason for presentation was an embedded collar, which was already removed at the time of examination.

### Clinical Examination:

Upon examination, the patient appeared bright, alert, and responsive, however was scared and nervous during examination. The patient exhibited a healthy body condition (3/5) with no signs of emaciation or dehydration and pink mucous membranes. The dog had a fever of 40.4°C. The patient had two puncture wounds on the ventral neck, which were connected to each other. The wound and surrounding skin appeared erythematous and swollen, with a purulent discharge from the wounds. The hair and skin around the wound were soiled and dirty from the discharge.

### Assessment and Plan:

Based on the clinical examination findings the patient was placed on broad spectrum antibiotics treatment to control the infection as well as pain medication to relieve swelling and discomfort.

### Comments:

This wound was left untreated, therefore became infected and caused the dog unnecessary pain and suffering. With the appropriate wound management and treatment, the patient is expected to make a full recovery.

Please feel free to contact me should you require any further information.



Vet report compiled by: Dr. Este Spies (D18/11745)

Contact Information: 0826025088, stspies@mweb.co.za

**THE STATE versus/ DIE STAAT teen**

Mr Mario Smith  
ID number 7511105101082

(Hereinafter referred to as the accused/ Hierna die beskuldigde genoem)

**CRUELTY TO ANIMALS**

THAT the accused is guilty of the crime of contravening of Sections 2(1)(b), 2(1)(e), 2(1)(f) and 2(1)(r) read with Sections 1, 2 and 4 of the of the Animals Protection Act 71 of 1962, also read with Section 90 and 250 of the Criminal Procedure Act No 51 of 1977 (where applicable).

IN THAT in and about **May 2024** and at or near **4A Gull Road, Lotus River** in the District/Regional Division of **Wynberg**, the accused did unlawfully: -

- (b) chain an animal, to wit the white and black dog named Simba, in such a manner and in a place, which affords inadequate space and protection or shelter from heat, cold or weather.
- (e) being the owner of an animal, to wit the white and black dog named Simba, failed to render or procure veterinary or other medical treatment or attention which he was able to render or procure for such animal in need of such treatment or attention, whether through injury, or any other cause, to wit the white and black dog called Simba with a wounded neck.
- (f) use on or attach to an animal, to wit the white and black dog called Simba, any equipment or appliance (the rusted chain and hazardous snap hook) which caused injury to such animal and which was used or attached in such a manner caused such animal to be injured (the chain and snap hook punctured the dog's neck and wounded it) and suffer unnecessarily.
- (r) unreasonably and negligently cause unnecessary suffering to an animal, to wit the white and black dog called Simba, by causing the commission of the aforementioned acts (chaining, using on and attaching to) and the omission of acts (rendering veterinary attention) which caused the unnecessary suffering of the dog.



15 May 2024

**ATT: Public Prosecutor at Wynberg Magistrates Court,**

In the case of the State versus:

- Mr Mario Smith with ID number 7511105101082 (ACC 1).

The Cape of Good Hope Society for the Prevention of Cruelty to Animals (SPCA) request that the accused be charged for cruelty in terms of Sections 2(1)(b), 2(1)(e), 2(1)(f), and 2(1)(r) of the **Animals Protection Act 71 of 1962**.

Section 1: Definitions - in this Act:

*owner*, in relation to an animal, includes any person having the possession, charge, custody or control of that animal;"

The above stipulates that "owner" is defined as any person who has possession or control of an animal, who keeps an animal, who permits an animal to be kept on a property they own or which is under their control, or who has an animal in their care or custody. Therefore, any individual that exercises any form of control over any animal, is an owner.

**Particulars of Accused Liability:**

Mario Smith is established as the owner of the dog, as he brought the SPCA to his property and further identified himself as the owner of the dog during Trainee Inspector Kunene's inspection on 04 May 2024.

Mario possessed the dog in the sense that the dog was physically present on his property and under his care. Mario had charge of the dog, evidenced by his delayed actions of bringing the SPCA to his property to remove the chain from the dog. Mario's actions during Trainee Inspector Kunene's inspection, such as showing the dog to Trainee Inspector Kunene and further discussing its condition, demonstrate his exercise of custody over the dog. Mario had control over the dog, as he had the authority to make decisions regarding its care and treatment. Mario's decision to sign the dog over to the SPCA further indicates his control over the animal's disposition.

Therefore, based on the definition provided, Mario Smith qualifies as the owner of the dog.

**Particulars of Offences Committed:**

Section 2: Offences in respect of animals:

*(1) Any person who commits any of the below listed acts shall, subject to the provisions of this Act and any other law, be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding twelve months or to such imprisonment without the option of a fine.*

*(b) chains any animal in such a manner as to cause that animal unnecessary suffering or in any place which affords inadequate space, and protection or shelter from heat, cold or weather.*

Mario's manner of chaining the dog caused unnecessary suffering. Mario used a short, rusted chain and a hazardous snap hook to chain his dog in a manner and place affording inadequate space (restricting the dog's movement) and affording inadequate shelter or protection from heat, cold and all inclement weather.

*(e) being the owner of any animal, deliberately or negligently fails to render or procure veterinary or other medical treatment or attention which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause.*

Mario failed to timeously provide necessary veterinary treatment or attention to his black and white dog named Simba, despite the dog's evident need for such and despite Mario being aware of the dog needing such. During Trainee Inspector Kunene's inspection, Mario admitted to being aware that his dog had been suffering in its condition for at least three days before he went to the SPCA.

Further to this, it was the chain secured to the dog by Mario himself that caused the dog's neck to be punctured, resulting in the dog having an open wound. Lastly, the wound was observed to already be purulent (secreting pus) indicating infection meaning that the wound was left unattended and allowed to become infected. Mario had the ability to approach the SPCA sooner to render or procure veterinary treatment for his dog, yet failed to do so.

*(f) uses on or attaches to any animal any equipment or appliance which causes or will cause injury to such animal or which is loaded, used or attached in such a manner as will cause such animal to be injured or to suffer unnecessarily.*

Mario used on and attached to his dog equipment, specifically a short, rusted chain (which could exacerbate risk of injury and infection) and a broken and therefore hazardous snap hook, causing injury to his dog.

The broken snap hook used to secure the rusted chain around the dog's neck was puncturing the dog's skin, causing an open wound and indicating that the chain and snap hook caused the wound resulting to the dog's suffering.

*(r) by unreasonably or negligently doing or omitting to do any act, causes any unnecessary suffering to any animal.*

Mario chained his dog in a manner that caused injury and suffering, as described in the aforementioned offences. Mario thereafter failed to seek veterinary treatment for the dog despite its evident need. The dog's need for such treatment and attention was evident by the dog's distress (hunched back, reluctance to move, and constantly scratching its neck) as well as the infected wound on its neck.

Mario's actions or omissions directly contributed to the unnecessary suffering of the animal. By chaining the dog in a manner that caused injury and failing to seek veterinary treatment, Mario subjected the animal to unnecessary pain, distress, and harm.

### **Satisfaction of Prosecutorial Elements:**

#### Act (actus reus):

Mario Smith chained the black and white dog named Simba in a manner restricting the dog's movement and, in a place, affording inadequate shelter. Mario Smith failed to provide timely veterinary care for the dog's injuries which were caused by the manner in which he chained the dog. Mario Smith used on and attached to the black and white dog named Simba equipment (such as the short, rusted chain and snap hook) that caused injury and suffering to the dog. Mario's actions directly contributed to the unnecessary suffering of the dog.

#### Legality:

The aforementioned acts committed by Mario Smith contravene Sections 2(1)(b), 2(1)(e), 2(1)(f), and 2(1)(r) of the Animals Protection Act 71 of 1962.

#### Causation:

The aforementioned acts committed and omitted by Mario Smith were the direct causes of the dog's suffering. Therefore, Mario's conduct establishes causation in relation to the harm suffered by the dog.

#### Fault:

Mario's above described conduct indicates his fault by negligence. Mario's awareness of the dog's suffering, as indicated by his admission to Trainee Inspector Kunene on 04 May 2024 (that the dog had been in distress for three days before he went to the SPCA) suggests a level of recklessness or disregard for the dog's well-being.

We respectfully urge the state to consider the severity of these offences and to proceed with charging Mario Smith accordingly.

Please do not hesitate to contact me directly on 078 801 3362, 021 700 4153, or [insp8@spca-ct.co.za](mailto:insp8@spca-ct.co.za) for further information or clarification regarding this case.

Kind regards,



**Nicole Venter**  
**Docket Inspector**  
**Cape of Good Hope SPCA**



**CONTENTS:  
EVIDENCE SUBMITTED BY SPCA**

| REF: | DOCUMENT/ITEM REGISTER                                                                                               |  |
|------|----------------------------------------------------------------------------------------------------------------------|--|
|      |                                                                                                                      |  |
| {A}  |                                                                                                                      |  |
|      | Affidavit: Trainee Inspector Mthunzi Nkuthalo Kunene (2 Pages)                                                       |  |
|      | Photographic Evidence A: Trainee Inspector Mthunzi Nkuthalo Kunene (2 Pages)                                         |  |
|      | Notice to Comply 11964 (1 Page)                                                                                      |  |
|      | Admission Form A33644 (1 Page)                                                                                       |  |
|      | Photographic Evidence B: Trainee Inspector Mthunzi Nkuthalo Kunene (2 Pages)                                         |  |
|      | Veterinarian's Report for A33644: Dr Este Spies (1 Page)                                                             |  |
|      | Evidence Bag FSC-568927 containing rusted chain and snap hook: SAPS 13 No. 1262/2024 – Grassy Park SAPS.             |  |
|      |                                                                                                                      |  |
|      |                                                                                                                      |  |
| {B}  |                                                                                                                      |  |
|      | Counts against Mario Smith (1 Page)                                                                                  |  |
|      | Amounts (1 Page)                                                                                                     |  |
|      | Letter to the Prosecutor (3 Pages)                                                                                   |  |
|      |                                                                                                                      |  |
|      |                                                                                                                      |  |
| {C}  |                                                                                                                      |  |
|      | SAPS 5 Form: Investigation Dairy (2 Pages)                                                                           |  |
|      | SPCA Contents Page of evidence submitted (1 Page)                                                                    |  |
|      |                                                                                                                      |  |
|      |                                                                                                                      |  |
|      | Docket handed in at Grassy Park SAPS by Trainee Inspector Mthunzi Kunene and Inspector Nicole Venter on 16 May 2024. |  |
|      |                                                                                                                      |  |
|      | SAPS 13 booked in by Constable Thulani Selbourne Mhlango on 16 May 2024.                                             |  |
|      |                                                                                                                      |  |
|      | Docket registered by Sergeant Lamnie on 16 May 2024.                                                                 |  |
|      |                                                                                                                      |  |



REPUBLIC OF SOUTH AFRICA

J15 (81/801118)

## CHARGE SHEET

Make an X in the appropriate block

|                                              |                                            |                                               |
|----------------------------------------------|--------------------------------------------|-----------------------------------------------|
| Police station<br><b>GRASSY PARK</b>         | CAS/CR/MAS/MR No.<br><b>000306/05/2024</b> | Case No. <b>1/495/2024</b> Date .....         |
| District/Division<br><b>Wynberg</b>          | Place of trial<br><b>WYNBERG (WC)</b>      | Review Case No. .... Date .....               |
| Investigation officer.<br><b>JUSTIN FARO</b> |                                            | Date of first appearance<br><b>23/05/2024</b> |

Particulars of court officials must be furnished on the minutes of proceedings.

## THE STATE VERSUS

Particulars of accused

|                                                                                                                  |                                               |
|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| Name <b>MARIO SMITH</b>                                                                                          |                                               |
| Address <b>4A GULL ROAD PARKWOOD, CAPE TOWN, 8000, Western Cape</b>                                              |                                               |
| Male <input checked="" type="checkbox"/> Female <input type="checkbox"/>                                         | Nationality <b>South Africa</b> Age <b>48</b> |
| *In custody <input type="checkbox"/> On bail <input type="checkbox"/> Warned <input checked="" type="checkbox"/> | Date of arrest <b>2 0 / 0 5 / 2 0 2 4</b>     |
| Name                                                                                                             |                                               |
| Address                                                                                                          |                                               |
| Male <input type="checkbox"/> Female <input type="checkbox"/>                                                    | Nationality Age                               |
| *In custody <input type="checkbox"/> On bail <input type="checkbox"/> Warned <input type="checkbox"/>            | Date of arrest                                |

(hereinafter called the accused) charged with the offence(s) as set out in Annexure(s) to as attached.

Plea **on 23/4/26: guilty - all 3 counts**Judgment **on 23/4/26: guilty - all 3 counts**Sentence on **28/4/26: See annexure B.**Date **28/4/26** Magistrate **see** Date of appointment to the rank of Magistrate **1/2/86**

Direction with regard to revision of sentence

Direction with regard to filing of case record



URN :1762024CRM001574

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF WYNBERG**

**HELD AT WYNBERG**

Case NO 1/495/24

*Annexure*

*A*

**In the matter between:**

**THE STATE**

**And**

**MARIO SMITH**

**Accused**

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**ANNEXURE TO CHARGE SHEET**

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**COUNT 1: ANIMAL CRUELTY**

The accused is charged with contravening **Section 2(1) (b)** of the Animal Protection Act 71 of 1962 read in conjunction with Section 1, 2 (1) (q), 2 (1) (r) and Section 2(2):

In that on or about 04 May 2024 at Gull Road, Grassy Park, within the District of Wynberg, the accused did unlawfully and intentionally confine and/or secure an animal unnecessarily or in a manner that caused the animals unnecessary suffering and/or in a place that afforded inadequate space, ventilation, light, protection or shelter from heat, cold or weather to wit 1 dog.

**Penalty provision**

Section 2(1) of Act 71 of 1962 read in conjunction with the Adjustment of Fines Act 101 of 1991 prescribes the penalty for this offence as an unspecified fine (not exceeding R40 000 in accordance with the Adjustment of fines Act 101/1991) and/or imprisonment to a maximum of 12 months.

**COUNT 2: ANIMAL CRUELTY**

The accused is charged with contravening **Section 2(1) (e)** of the Animal Protection Act 71 of 1962 read in conjunction with Section 1, 2 (1) (q), 2 (1) (r) and Section 2(2):

In that on or about **04 May 2024** at Gull Road, Grassy Park, within the District of Wynberg, the accused, being the owner of the animal, deliberately or negligently failed to render veterinary or medical treatment to an animal as required, to wit 1 dog.

**Penalty provision**

Section 2(1) of Act 71 of 1962 read in conjunction with the Adjustment of Fines Act 101 of 1991 prescribes the penalty for this offence as an unspecified fine (not exceeding R40 000 in accordance with the Adjustment of fines Act 101/1991) and/or imprisonment to a maximum of 12 months.

**COUNT 3: ANIMAL CRUELTY**

The accused is charged with contravening **Section 2(1) (f)** of the Animal Protection Act 71 of 1962 read in conjunction with Section 1, 2 (1) (q), 2 (1) (r) and Section 2(2):

In that on or about **04 May 2024** at Gull Road, Grassy Park, within the District of Wynberg, the accused did unlawfully and intentionally attached and/or used equipment which caused injury to an animal and/or unnecessary suffering to wit attaching a chain to 1 dog.

**Penalty provision**

Section 2(1) of Act 71 of 1962 read in conjunction with the Adjustment of Fines Act 101 of 1991 prescribes the penalty for this offence as an unspecified fine (not exceeding R40 000 in accordance with the Adjustment of fines Act 101/1991) and/or imprisonment to a maximum of 12 months.

The State versus Mario Smith.

Case no: 1/495/24

SENTENCE:

Couns taken together for sentence.

Fined R10 000 (ten thousand rand) or twelve (12) months imprisonment that is suspended for a period of three (3) years on condition that the accused is not convicted of a contravention of section 2(a)(1)(b) or section 2(1)(e) or section 2(1)(f) of ~~the~~ Act 71 of 1962 or committed during the period of suspension.

*[Signature]*

