

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE:	no
(2)	OF INTEREST TO OTHER JUDGES:	no
(3)	REVISED:	✓
DATE		25/5/2026
SIGNATURE		

CASE NO.: 2026-047152

In the matter between:

SAKELIGA NPC

First Applicant

SUIDER-AFRIKA AGRI INISIATIEF NPC

Second Applicant

FREE STATE AGRICULTURE

Third Applicant

and

MINISTER OF AGRICULTURE

First Respondent

DIRECTOR-GENERAL DEPARTMENT OF AGRICULTURE

Second Respondent

DIRECTOR OF THE DIRECTORATE OF ANIMAL HEALTH OF THE DEPARTMENT OF AGRICULTURE

Third Respondent

MINISTER OF HEALTH

Fourth Respondent

SOUTH AFRICAN HEALTH PRODUCTS REGULATORY AUTHORITY

Fifth Respondent

DESIGN BIOLOGIX CC

Sixth Respondent

DUNEVAX (PTY) LTD	Seventh Respondent
AGRICULTURAL RESEARCH COUNCIL	Eighth Respondent
ONDERSTEPSPOORT BIOLOGICAL SOC LTD	Ninth Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Tenth Respondent
HEAD OF NATIONAL DISASTER MANAGEMENT CENTRE	Eleventh Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Twelfth Respondent

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] The applicants launched an application relating to the outbreak of the Foot-and-Mouth Disease (FMD) in the Republic of South that led to the declaration of a National Declaration of Emergency. The application commenced as an urgent application. The applicants seek relief on an interim basis pending the institution of proceedings for a declarator to be instituted within a specified period.
- [2] The interim relief sought relates to an interdict to the private procurement and self-administering of FMD vaccines.
- [3] The application is vehemently opposed by the first, second and third respondents. The sixth, seventh, tenth eleventh and twelfth respondents filed notices to abide. Initially the eighth and ninth respondents filed notices of provisional opposition and explanatory affidavits. Subsequent to the applicants filing a with prejudice tender, the eighth and ninth respondents gave notice to abide.

- [4] After the matter was enrolled for the hearing of the application, the matter stood down by agreement between the parties in an endeavour to follow a mediation process. The latter was unsuccessful, however, the applicant then made the with prejudice tender.
- [5] When the matter was called on the agreed date for hearing the application, lead counsel for the first, second and third respondents indicated that a hastily drafted scheme was to be Gazetted during that week. For that reason, the matter stood down and time limits were set for the publishing of the proposed scheme, and leave was granted to the parties to supplement their papers. Those arrangements were contained in an order of court. A new date was determined for the hearing of the application. On the new arranged date, new lead counsel for the first, second and third respondents requested a lengthy postponement of the matter. It was submitted by lead counsel that publication of the scheme had taken place, but that the said respondents required time to consider comments received on the published scheme to finalise the scheme and republish it. The applicants were unwilling to agree to the postponement. In view of the fact that the matter was of National concern, and that comments were received from the public that required consideration and inclusion in the to be Gazetted Scheme, I deemed it fit to grant a limited postponement and directed new dates for publication and the hearing of the matter. This was recorded in an order that was granted.
- [6] The matter was then heard on the new date set and argument on behalf of the parties was received. Although the eighth and ninth respondents earlier indicated their abiding by the court's decision, it was emphatically submitted during the oral submissions on their behalf that they accepted the applicants' with prejudice tender and supported it. It was submitted that the said tender was the result of the failed mediation proceedings, which then led to them indicating to abide by the court's decision.
- [7] At this point, it is to be noted that the first second and third respondents had not set out a defence in their answering affidavits, hence the belated

request for an indulgence to publish the proposed scheme referred to earlier. No other defence was pled other than that the newly Gazetted scheme constituted a defence.

- [8] The applicants' resort to this application emanated from the first, second and third respondents' adamant stance that it was in the government's realm to contain the FMD outbreak and that only government could attend to the vaccinations of the livestock affected thereby. Those respondents were hard pressed to show a basis for that contention in the Animal Diseases Act or in the Regulations promulgated thereunder. Hence the haste to Gazette a prohibition for privately administered vaccination of livestock.
- [9] The applicants contended that the government's stance was an egregious clinging to "control" the administering of vaccines to affected livestock, which highlighted the clear misconception of the legal position that was irrational, particularly in view of the fast spreading of the FMD.
- [10] Although the applicants acknowledge the role to be played by the government in controlling the spread of FMD, it required assistance in that endeavour, which the applicants were eager to provide. The applicants' intention was not to usurp that role, but to supplement it.
- [11] Further in this regard, the applicants indicated that there is an unlimited supply of suitable vaccines available for lawful import and sale to private livestock owners. The applicants do not intend to bypass the stipulated requirements for registration of the vaccines so available. They do not intend to become importers or manufacturers of said vaccines themselves. They would purchase such from role-players who have followed the ordinary and lawful route to import and manufacture the vaccines, in line with the prerequisite procedures.
- [12] On behalf of the applicants, it was submitted that the fear on the part of the respondents to allow privately administered vaccination of FMD,

would result in a lack of record-keeping and reporting, was unfounded. The applicants submitted that the legislative framework in that regard was already in place. In that regard, regulation 18 of the Animal Diseases Regulations require such recording and reporting. It was contended on behalf of the applicants that the said tender codified those requirements.

- [13] It is trite that any private person may do anything that is not prohibited by law.¹ The said respondents were required to indicate a prohibition with the force of law, such as an Act, or Regulation or any validly proclaimed control measure in terms of section 9 of the Animal Diseases Act. Section 9 does not in itself provide a prohibition. That section in subsection 1(a) provides as follows:

“The Minister may for any controlled purpose prescribe general control measures, or particular control measures in respect of particular animal diseases and parasites.”

- [14] The applicants contend that the Minister had not proclaimed any such general measure.² The said respondents did not point to any such general proclaimed measures. This omission is glaring. The only reference that the said respondents seek to rely upon is contained in an annexure “AA2” to their answering affidavit. That document is at best a proposal to the Cabinet in support of the declaration of a National Disaster. It has not found its way to a publication in the Government Gazette and it is clearly endorsed as a “secret” document. From the wording it is gleaned that it is not a “control measure” as contended for. Neither does the document proffer for any prohibition.

- [15] The said respondents attempted to contend that section 20 of the Animal Diseases Act contains a prohibition of some sort. That section relates to

¹ *Minister of Water and Sanitation et al v Lötter N.O. and two other similar cases* 2023(4) SA 434 (CC) at [36]; *cf.* SCA judgment in this matter; *Minister of Finance v Oakbay Investments (Pty) Ltd et al* 2018(3) SA 515 (GP) [54]

² See *Interpretation Act*, 35 of 1957, sec 16

“limitations on investigations, experiments and research with, and manufacture and evaluation of, certain products.” In terms, that section does not apply *in casu*. Furthermore, that section does not find application in instances where such substances are controlled under the Medicines and Related Substances Control Act, 101 of 1965. The FMD vaccines currently manufactured or imported are imported or manufactured under section 21 of that Act.

- [16] It is to be noted that a policy or a practice to not permit privately administered vaccinations does not qualify as a law.
- [17] The applicants contended that the published Animal Diseases Regulations³ do not prohibit privately administered vaccination. They further contended that those Regulations envisaged privately administered vaccinations in respect of FMD. The applicants referenced the provisions of regulation 11(1) where duties are imposed upon owners and managers regarding the health of animals and their clear obligations in that regard. They further referred to Table 2 of the Regulations. That Table only refers to controlled areas. What happens in uncontrolled areas is not stipulated, nor can it be inferred. Thus, the applicants submitted that privately administered vaccinations outside proclaimed control areas are not prohibited. The applicants further contended that the Table only refers to cattle, sheep and goats. No mention is made of pigs. Hence privately administered vaccination of pigs is not prohibited.
- [18] Following from the aforesaid, the applicants contend that there is no general prohibition to privately administered vaccinations.
- [19] In respect of the said respondents' apparent relying on the provisions of the newly Gazetted scheme, the applicants contended that the said scheme does not outright prohibit privately administered vaccinations.

³ GN R2026, *Government Gazette R10469* of 26 September 1986

At best it provided for voluntary participation in the scheme. Where such participation was voluntary, those participants were obliged to comply with the stipulated requirements. It is to be noted that, as recorded earlier, where there is no specific promulgated law against privately administered vaccinations, such privately vaccinations may be undertaken.

- [20] Furthermore, the newly Gazetted Scheme was made in terms of the provisions of regulation 10. That regulation provides in sub-regulation (1) as follows:

“The Minister may by notice in the Gazette establish a scheme in respect of any controlled purpose or for the improvement of animal health.”

- [21] The vexed new scheme so Gazetted, does not provide for “*any controlled purpose or for the improvement of animal health.*” At best it provides for voluntary participation in the Gazetted Scheme.
- [22] The appropriate regulation for any control measures, including any prohibition, would be regulation 9, as recorded earlier.
- [23] No substantive argument was provided on behalf of the said respondents to indicate clearly where such prohibition was Gazetted into law, and no convincing argument was presented on the said respondents’ behalf. Lead counsel for the said respondents was hampered in his argument in view of the lack of evidence in that regard.
- [24] The applicants only seek interim relief as foreshadowed in their tender. In that regard they are obliged to indicate a *prima facie* right, prospects of success in the intended declarator to be sought in due course, alternatively in any applicable review proceedings, reasonable apprehension of irreparable harm or actual harm suffered, and where the balance of convenience would best lie.


- [25] From the discussion earlier in respect of the absence of a lawful prohibition to privately administered vaccination of the FMD vaccine, it is apparent that the applicants have proven a *prima facie* right to interim relief. The prospects of success in respect of a declarator or review appears to be *prima facie* established. The apprehension of irreparable harm follows where the FMD is spreading rapidly outside of the proclaimed controlled areas. In my view, the applicants have shown that the balance of convenience clearly lies with them. The interim relief would not impact negatively upon the said respondents' exercising of their obligations in curtailing the FMD. To the contrary, it would assist them in the fight against FMD.
- [26] There remains the issue of costs. There is no reason why the costs should not follow the event. The applicants, in their notice of motion, sought a costs order against such party that opposes the application. Only the first, second and third respondents opposed the application. The eighth and ninth respondents did not formally oppose the application as recorded earlier. No relief was sought by them against the applicants in their explanatory affidavits. As recorded, at the first appearance, the eighth and ninth respondents indicated their intention to abide the court's decision. Despite the indication to abide by the court's decision, the eighth and ninth respondents were represented by counsel and all subsequent appearances. Such appearances were voluntarily undertaken. At the conclusion of the hearing of the application, lead counsel for the eighth and ninth respondents prayed for a cost order in favour of the eighth and ninth respondents. There is no merit in that request. The representation at the hearings of the eighth and ninth respondents were voluntary and no obligation existed upon them to be so represented. It is apparent from all the above, that the first, second and third respondents failed to indicate any substantive defence to the application and engineered delays in having the matter heard and adjudicated upon. The eventual scheme that was Gazetted did not supply any substantive defence as recorded earlier. Such conduct calls

for some sanction from the court. Nevertheless, the applicants do not seek any punitive costs order against the first, second and third respondent. In respect of the reserved costs order granted on 24 March 2026 no order stands to be made in view of what is recorded in this paragraph.

[27] At the concluding of the argument on behalf of the applicants, a proposed order in terms of the tender was presented. I intend to grant that order.

I grant the following order:

1. The order set out in the document marked XYZ appended to this judgment is granted.



C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT
PRETORIA

On behalf of Applicants:	J G C Hamman H Scholtz KVV INC
Instructed by:	
On behalf of First, Second and Third Respondents:	(Initially) J de Beer SC K Manthe (Later) T F Mathibedi SC K Manthe
Instructed by:	State Attorney. Pretoria
On behalf of Eighth and Ninth Respondents:	L J van Tonder SC M Heystek SC
Instructed by:	Kisch Africa Inc
Date of hearing:	11 May 2026
Date of Judgment:	25 May 2026

XY2

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2026 - 047152

Before the Honourable Judge Van Der Westhuizen J
On 25 May 2026

In the matter between:

SAKELIGA NPC	First Applicant
SUIDER-AFRIKA AGRI INISIATIEF NPC	Second Applicant
FREE STATE AGRICULTURE	Third Applicant
and	
MINISTER OF AGRICULTURE	First Respondent
DIRECTOR-GENERAL DEPARTMENT OF AGRICULTURE	Second Respondent
DIRECTOR OF THE DIRECTORATE OF ANIMAL HEALTH OF THE DEPARTMENT OF AGRICULTURE	Third Respondent
MINISTER OF HEALTH	Fourth Respondent
SOUTH AFRICAN HEALTH PRODUCTS REGULATORY AUTHORITY	Fifth Respondent
DESIGN BIOLOGIX CC	Sixth Respondent
DUNEVAX BIOTECH (PTY) LTD	Seventh Respondent
AGRICULTURAL RESEARCH COUNCIL	Eighth Respondent
ONDERSTEPSOORT BIOLOGICAL PRODUCTS SOC LTD	Ninth Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Tenth Respondent
HEAD OF NATIONAL DISASTER MANAGEMENT CENTRE	Eleventh Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH	Twelfth Respondent



AFRICA

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her Secretary. The date of this Order is deemed to be 25 May 2026.

DRAFT ORDER

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GATFENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

2026 -05- 25

GS PRETORIA

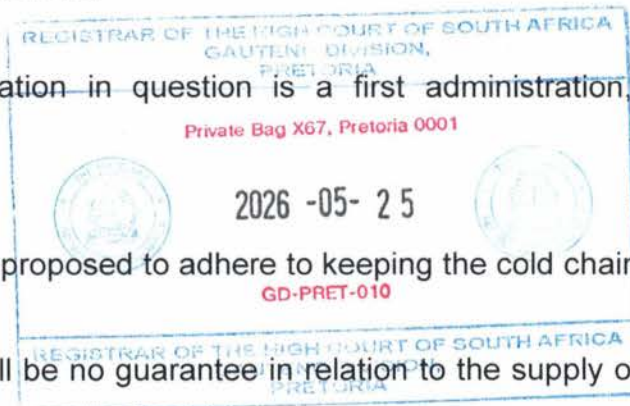
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GATFENG DIVISION,
PRETORIA

HAVING heard counsel for the parties, having read the papers filed and having considered the matter, it is ordered:

1. Pending the finalisation of proceedings for declaratory relief to the effect that there is no impediment against owners/managers of livestock administering the Foot and Mouth Disease ("FMD") vaccine to their animals, and/or that there is no such impediment outside control areas and/or in respect of certain species of livestock and/or declaring that the First Respondent had unlawfully interfered in the relationship between Design Biologics CC and Biogenesis Bago and/or proceedings reviewing and setting aside any legal impediment that may exist (or may be created) to livestock owners/managers administering vaccine to their livestock and/or to review and set aside the decision of the First to Third Respondents to interfere in the commercial relationship between Design Biologics CC and Biogenesis Bago:

- 1.1 Owners and managers of cloven-hooved livestock shall (until any regulations or control measures are issued in the future that directly amend the terms hereof) be allowed to procure and administer lawfully imported or lawfully manufactured FMD vaccines to their livestock, under the following conditions: -

- 1.1.1 At least 5 days before administering the vaccine, notify the Provincial Director: Veterinary Services or the State Veterinarian responsible for the area concerned in writing, with the following particulars contained in such notification:
- 1.1.2 The intended location and period of the vaccination;
- 1.1.3 The number of animals involved, including species, breed, gender and age;
- 1.1.4 The full particulars of the person/s intending to perform the vaccination, including their full names, ID number/s, addresses and phone numbers;
- 1.1.5 If the vaccination in question is a first administration, or a booster shot;
- 1.1.6 The methods proposed to adhere to keeping the cold chain.
- 1.2 Such notification shall be no guarantee in relation to the supply of FMD vaccine and does not necessarily entitle any owner or manager to vaccine supply from the state, although the state may at its election avail same to such an owner or manager.
- 1.3 Nothing in this order detracts from the State's ability to act with the vaccine that it has procured or will procure in the future. The State shall continue to allocate all FMD vaccine that it acquires in accordance with its strategies and priorities in its discretion.



1.4 The owners/managers of cloven hooved livestock shall after prior notification that they intend to administer FMD vaccines and within 14 days after they have administered same, present a sworn statement to the State Veterinarian for the area or the Provincial Director: Veterinary Services detailing compliance with Regulations 17(1)(c) and 18 of the Animal Diseases Regulations (and any possible amendments thereto), and without derogating from those, including written proof after administering FMD vaccine to livestock. Such affidavit shall deal with the following:

1.4.1 Full names, identity number, email address and cell phone number of the responsible owner/manager that administered the vaccine;

1.4.2 Full particulars in relation to how the cold chain was strictly preserved by the owner/manager from dispatch until vaccination in compliance with the directives of the particular vaccine brand and the temperature at which same was kept;

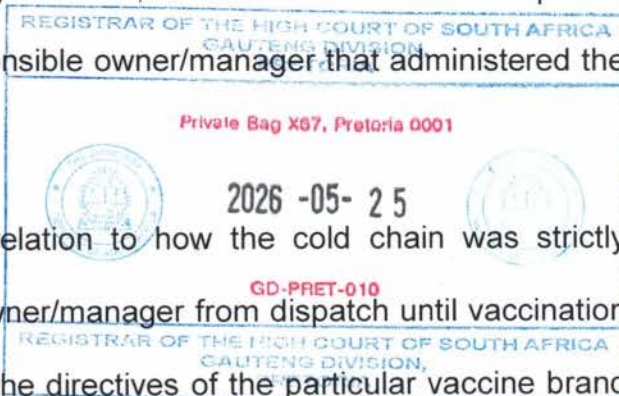
1.4.3 Details of the method of vaccination, which must correlate with instructions for particular FMD vaccine.

1.4.4 The date and dosage of vaccination;

1.4.5 The brand of vaccine used;

1.4.6 Type and breed of livestock;

1.4.7 Gender of the animal;



- 1.4.8 Age of animal; and
- 1.4.9 Full particulars pertaining to the individual animal pertaining to identification marks, brands and ear tags or any other means of identification.
- 1.5 It is recorded that nothing in this order detracts from or amends the current measures in place pertaining to the movement of livestock and reporting of suspected incidents of FMD;
- 1.6 Without making any finding in respect of alleged wrongdoing at this stage, the First to Third Respondents shall not interfere in relation to commercial relations of those who lawfully import FMD vaccines into the Republic of South Africa and international suppliers.
- 1.7 This order herein only relates to FMD vaccines lawfully manufactured or lawfully imported into the Republic of South Africa. Owners/managers of cloven-hooved livestock may procure from lawful importers, manufacturers or their lawful agents, subject to the terms hereof and continued compliance with the terms hereof and any other regulation or control measure that may be enacted and may find application. The State may avail FMD vaccine to the private sector for private administration in accordance with the terms herein, but is not obliged to do so.
- 1.8 It is recorded that nothing in this agreement constitutes permission to manufacture or import FMD vaccines, nor does it create or confer any



right *per se* on any person or entity to obtain approval for such manufacture or importation.

- 1.9 Nothing in this order deprives any owner/manager of livestock from seeking assistance from the state or a private veterinarian, at their election, through the applicable channels and protocols, as may be in place from time to time.
2. The envisaged proceedings for final relief will be instituted within 20 days from date of this order.
3. The First, Second and Third Respondents are ordered to pay the costs of the application on a party and party scale, including costs of two counsel on scale C, where so employed. The costs shall include the costs of mediation, as agreed upon between the parties.

4. No order as to costs regarding the Eighth- and Ninth respondents.

