

Illegal Hunting with Dogs – SAPS Guidelines

Guidance to farmers or land owners by police members when to act in this regard can easily lead to civil claims when misinterpreted and should be limited to the minimum. The involvement of members from the South African Police Service in this regard should primarily be to diligently execute their duties as prescribed in the Constitution.

Legal Framework

1. Laws Relating To “Hunting”

“Hunting” is used in this document in its widest possible sense to encapsulate all actions of

persons unlawfully entering private property, presumably with the intention to steal stock or game.

2. Trespass

The first and most obvious law relating to this matter is the Trespass Act, 1959 (Act No. 6 of 1959). Section 1 of the Trespass Act - Prohibition of entry or presence upon land and entry of or presence in buildings in certain circumstances - provides as follows:

(1) Any person who without the permission-

(a) of the lawful occupier of any land or any building or part of a building; or

(b) of the owner or person in charge of any land or any building or part of a building

that is not lawfully occupied by any person,

enters or is upon such land or enters or is in such building or part of a building, shall be guilty of an offence unless he has lawful reason to enter or be upon such land or enter or be in such building or part of a building.

(1A) A person who is entitled to be on land in terms of the Extension of Security of Tenure Act, 1997, shall be deemed to have lawful reason to enter and be upon such land. (2) For the purposes of subsection (1) the expression 'lawful occupier' in relation to a building or part of a building does not include a servant of the lawful occupier of the land on which that building is situated.

It is clear that persons who have the necessary permission or who are in law entitled to be on the property, cannot be guilty of trespassing.

3. Malicious injury to property

Any person using dogs (or any other unauthorised means) to hunt the stock or game of another, also commits the common law crime of malicious injury to property. The classical definition of the crime is found in *R v Mashanga 1924 AD 11 12*, where Innes CJ said: “*All that is necessary in our law to constitute the crime is an intentional wrongful injury to the property of another.*” This crime is a two-edged sword however, as the land owner who shoots the dogs of the trespasser may him- or herself be guilty of malicious injury to property.

In *R v Pope 1953 4 All SA 113 (C)* Ogilvie Thompson J remarked as follows on 119:

In summarily shooting the dog, the appellant used force totally disproportionate to the requirements of the occasion. The argument that appellant merely acted reasonably in

defence of his property, or that he has rebutted the inference of malice which arises from his precipitate action, cannot be accepted.

This principle was also followed in *S v Moller* 1971 4 All SA 445 (T) where Margo J remarked on other avenues that the accused could have followed before he shot the complainant's dog.

In *S v Nkhumeleni* 1986 3 SA 102 (V) the court found that a dog defending its master when the master is being attacked, cannot be destroyed in self-defence, as the attack of the dog is *per se* lawful.

A land owner arresting a trespasser with some force may therefore be committing malicious injury to property if the trespasser's dog attacks him and he kills or injures the dog in self-defence.

4. Statutory provisions

4.1

The Stock Theft Act, 1959 (Act No. 57 of 1959) ("Stock Theft Act") provides for certain offences related to illegal hunting. Section 4 provides as follows: 4. Entering enclosed land or kraal, shed, stable or other walled place with intent to steal stock or produce

(1) Any person who in any manner enters any land enclosed on all sides with a sufficient fence or any kraal, shed, stable or other walled place with intent to steal any stock or produce on such land or in such kraal, shed, stable or other walled place, shall be guilty of an offence.

(2) When any person is charged with a contravention of subsection (1) the onus shall be upon him to prove that he had no intention to steal any such stock or produce unless he was found proceeding along any road or thoroughfare traversing such land.

4.2

Even though the "reverse onus" in section 4(2) may cause constitutional difficulties, any person may under section 9(1), and without a warrant, arrest any other person upon reasonable suspicion that such other person has committed an offence in terms of section 4. The Stock Theft Act also provides in section 10 that abuse of the power to arrest may land the person who performed the arrest also in hot water, as a wrongful and malicious arrest in the absence of probable (reasonable) cause is in itself an offence.

4.3

A similar situation exists under the Game Theft Act, 1991 (Act No. 105 of 1991) ("Game Theft Act"). Section 3 of the Game Theft Act provides:

(3) Entering land or dispersing or luring away game with intent to steal game

(1) Any person who-

(a) enters another person's land with intent to steal game thereon or to disperse game from that land; or

(b) without entering another person's land, intentionally disperses or lures away game from another person's land, shall be guilty of an offence.

(2) If in a prosecution for a contravention of subsection (1) it is proved that the accused wrongfully and unlawfully entered another person's land upon which there is game or that he wrongfully and unlawfully dispersed or lured away game from another person's land, it shall be presumed that he had the intent to steal

game or to disperse or lure away game from the land, as the case may be, unless the contrary is proved.

4.4

The power to arrest is also tempered by the offence of wrongful and malicious arrest contained in section 5, similar to that in the Stock Theft Act. Section 4 reads as follows:(1) Any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977), or the owner or lawful occupier of land upon which there is game may without warrant arrest any person upon reasonable suspicion that such person has stolen game, or has wrongfully and unlawfully hunted, caught or taken into possession game, or that he has contravened section 3.

4.5

There are various provincial and municipal ordinances dealing with trespassing animals. These ordinances will be applied in conjunction with the Animals Protection Act, 1962 (Act No. 71 of 1962)(“Animals Protection Act”) and, where applicable, provincial pound ordinances which provides for impoundment of animals. As different provincial and municipal legislative provisions are in force for each jurisdiction, this Information Note will focus on a uniform national guideline

4.6

The Animals Protection Act provides for offences in section 2, and more specifically for an offence related to hunting by using dogs, section 2(1)(g). The relevant portion of section 2(1) reads as follows:

Any person who provokes any animal or incites any animal to attack another animal 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 to imprisonment for a period not exceeding twelve months or to such imprisonment without the option of a fine.

(Legal Opinion provided by: Brigadier (Adv) B van der Walt: Legal Support Head Office)

It is clear that there are abundant criminal remedies available to land owners or farmers who come across illegal hunters or stray hunting dogs. Some legislation even extends powers of arrest to land owners and occupiers under certain circumstances. Farmers and land owners should be cautioned not to take the law into their own hands, as defence of their property could very well exceed the boundaries of self-defence or necessity, thereby making them criminally liable. Where hunting dogs are concerned, it is recommended that the dogs be caught where possible and transported to the nearest Society for the Prevention of Cruelty to Animals (SPCA) in order to be dealt with according to the Animals Protection Act. With regards to actions by members of the South African Police Service, it is clear that all complaints must be attended to properly and offenders charged with the applicable crime or offence. It is recommended that farmers and land owners create a reporting mechanism through their community structures at local level.