

Is Thandi Modise guilty of “neglect” or “negligence”?

Thandi Modise is facing charges for Animal Cruelty that date back to 2014. It didn't stop her from keeping her previous post in the National Council of Provinces, and she was then promoted after the last elections to be Speaker of the National Assembly.

Ramaphosa has played along with some senior officials who have served their country with distinction. Pravin Gordhan comes to mind, under a cloud created by the Public Protector. Modise has been charged by the National Society for the Prevention of Animals (NSPCA). But the fact that the case against her is being litigated by Gerry Nel of Afriforum says a lot.

When a sheep was slaughtered last year on a Capetown beach to cleanse it from the sins of racism, there was this same clash of cultures. Some citizens wanted to appease their ancestral spirits by slaughtering a sheep. While others objected to this act as cruelty to animals and lack of hygiene in a public space.

Thandi Modise is in a tight spot, and her attorneys asked for a remand in June to have more time to prepare her defence. The case will now be heard in late October.

There is no question that animals suffered and died on an unprecedented scale. But sad as that is, and it is very sad, the question of Thandi Modise's own culpability is a thorny one. And it smacks of a revenging offensive by her white neighbours. Afriforum's involvement suggests that this is some kind of publicity stunt, related to the question of land redistribution to blacks. It almost looks like they are setting her up as a bad example of what happens when farm land falls into the hands of blacks. The book *Animal Farm* comes to mind, but this is in very bad taste.

Most repugnant of all is the bias of the NSPCA, which lines up along the same racial fault lines. In my hometown, the SPCA is quite frankly a white-owned nonprofit organization, run by whites for white pets and hobby horses. Some of their pets are probably better fed and pampered than many children of dirt poor households. Again, Afriforum's involvement in this case looks more like scoring points with its constituency than it looks like Justice.

Worse yet is the strange structure of the NSPCA. It is now a state enterprise, constituted under its own Act of Parliament. However, only the national umbrella body reports to the Minister of Agriculture, for its small training centre in Alberton. Each and every local SPCA is a nonprofit organization in its own right. My personal experience - as something of an expert on NGOs - is that these local SPCAs get away with murder... because they are actually registered as nonprofits, but they are treated as government officials. Thus they tend to abuse their power, and the Minister of Agriculture can do little about that, because of the boundary between the NSPCA and the local SPCAs.

In my opinion, based on first-hand experience, this is a dysfunctional structure. The NSPCA will not take action against local SPCAs for its excesses, because they are “autonomous”. But when you look closely, those local entities are non-compliant. In this no-man's land they become totally arrogant.

The Animal Protection Act says that the “owner” is ultimately responsible. Agreed that Thandi Modise herself was not overloading beasts of burden like donkeys, or breeding dogs or cocks for the fighting ring, or goading animals to do tillage that were underfed and underwatered. Those are clearly “intentional” crimes of cruelty. Not only is there action involved, but there is *intent* – to cause animals to suffer.

But when farm animals go hungry? They are entirely dependent on farmers for feed. They are not grazers or browsers, although wild pigs can root around with their noses to find grubs and tubers. They do not know how to hunt for themselves any more than most of us know how to grow our own food.

But the Animal Protection Act holds owners responsible. However, it is sprinkled with a number of key adverbs (read: provisos) like “wilfully”, “deliberately” and “unnecessarily”. You also find little phrases like “without reasonable cause” and “which he is able to render” and “unnecessary suffering” sprinkled in.

So was the very evident and recorded Neglect really a crime committed by Modise?

Can she not argue that she paid salaries to staff to run her farm, and that she subsidized its operations whenever the sale of bacon was not enough to pay for the pigfeed? Would that get her off the hook?

Not according to Afriforum which has taken over this case under private prosecution. Gerry Nel will argue that when the list of offenses states: “overloads, overdrives, overrides, ill-treats, neglects, infuriates, tortures or maims or cruelly beats, kicks, goads or terrifies any animal” – that the Act does not make any mention of Intent. So the owner has to answer for any actions that cause animals to suffer.

Well my contention is that there is bad neglect, and that there is good neglect. In other words, culpable neglect and non-culpable neglect. Just like homicide. Not everyone who kills someone means to do it, intentionally. Sometimes it happens accidentally, just as some people are also licensed to kill (soldiers, spies, etc.) So we condemn some and we praise others.

Does the buck really stop with Thandi Modise?

According to Merriam-Webster’s Dictionary of Law, *neglect* means ‘a disregard of duty resulting from carelessness, indifference, or willfulness; especially: a failure to provide a child under one’s care with proper food, clothing, shelter, supervision, medical care, or emotional stability.’

According to the same dictionary, *negligence*, when used in a legal sense means ‘failure to exercise the degree of care expected of a person of ordinary prudence in like circumstances in protecting others from a foreseeable and unreasonable risk of harm in a particular situation.’

Now this is where I want to split hairs...

Neglect is the action of failing to care for someone to whom you owe a specific duty of care, such as a parents' duty to provide a habitable environment for their child.

Negligence is a failure to meet any legal duty that you have to others, such as the duty to operate

your automobile with reasonable care. In order for negligence to occur, it must be proven that if not for the negligence, the loss, injury, or damage would not have occurred.

Whereas, while *neglect* is related to the concept of *negligence*, its rather limited use in the law sets it apart from that much broader doctrine. Generally speaking, *neglect* means omitting or failing to do something that is required. *Neglect* is often related to timeliness: examples include the failure of a taxpayer to file a timely income tax return and the failure of an attorney to meet a deadline for filing an appeal. In determining whether to rule against a party, courts consider the reason for the *neglect*, which can range from unavoidable accidents and hindrances to the less acceptable extreme of carelessness and indifference to duty.

This logic might help Thandi Modise get off the hook? Surely no one would accuse such an esteemed public servant of indifference or carelessness? No one can accuse her of “wilful neglect”!

For five years she has had this sword of Damocles hanging over her. Finally her case will come to court in October. Like the old Roman games, I am standing as a spectator with my thumbs held up. In other words, she may have fallen, but I am saying to the other gladiators, let her go. She has performed with distinction and does not deserve to be bloodied this way.

David Mabuza keeps saying “I have never been charged for any crime”. That somehow gets him off the hook. Unless you read that as intimidation? A hitman has recently fingered Supra Mahumapelo for ordering a killing, just as Mabuza has been fingered in the past, by another hitman. But no charges have ever been laid. Does that mean that their integrity is intact?

Integrity is not defined as *never having had any charges laid against you*. Many gangsters and tax dodgers can make that same claim. Integrity is much bigger than that, and even someone like Thandi Modise – who has been charged with a crime, although not yet convicted – can still be esteemed as a person whose integrity is intact. Because the guys riding their horses in this Fox Hunt are out for revenge more than Justice. This is what you get with the NSPCA, which is totally anachronistic. Is the Minister of Agriculture really allowing the NSPCA to go after the Speaker of the National Assembly? Can't the Minister of Justice tell the Minister of Agriculture to close this ill-conceived state enterprise called the NSPCA before it does irreparable harm? SAA and ESKOM are embarrassing enough, without this too!