

Legalities of owning a tiger in SA

 By [Shan Raddiffe](#)

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Of all the wild animals one could reasonably expect to see roaming South Africa's streets, a tiger is not one of them. And yet, somewhat inexplicably, Gauteng found itself on the lookout for not one, but two tigers in two separate incidents in the space of three weeks this January.



Image source: Jirí Mkoláš from [Pexels](#)

While Sheba, an eight-year-old tigress, was euthanised after attacking a man, two dogs and a pig, the second, younger tiger was reportedly recaptured without incident. And this is not the first time tigers have caused a stir in the province. Back in 2021, news of tigers in Boksburg made headlines when teachers at a crèche spotted a white tiger watching them from its perch on a jungle gym in the neighbour's yard.

These events have left many questions surrounding the legalities of the ownership of exotic animals in South Africa - tigers in particular.

Bizcommunity contacted Lopes Attorneys for some professional insight into the matter. Lopes Attorneys is a boutique law firm that specialises animal welfare (among other things), and was named Specialist Law Firm of the Year at the African Legal Awards 2022 for its work in this sector.

Here, Rui Lopes (founder and managing director) and Michael Jenkins (paralegal) discuss the regulations, recourse and the potential reform of laws following these episodes.

■ **What are the laws pertaining to the ownership of exotic animals and specifically big cats, such as tigers, in South Africa**

Lopes and Jenkins: The legal framework surrounding the ownership of exotic animals in South Africa is heavily fragmented.

This fragmentation is not only on a national level, but also on a provincial level, which is attributable to the concurrent and exclusive competence provisions of the Constitution, which tasks provincial conservation authorities with the permitting in relation to the keeping of such species.

As such, where national legislation does not provide for ownership requirements of certain exotic species, and where the provincial legislation similarly does not provide for such requirements, the unfortunate position is that there is no legislation which then prohibits nor regulates the keeping of exotic species as pets.

For example, where one seeks to import or export a threatened or endangered species, which is listed as such under the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a variety of requirements would need to be fulfilled in order to lawfully import or export, as the case may be. These requirements depend heavily on (i) the Appendix to which the species is listed and (ii) the requirements of the domestic legislation which domesticates CITES, which is the provisions of the National Environmental Management: Biodiversity Act, 10 of 2004 (Nemba).

Although Nemba does contain provisions allowing for species to be listed as Threatened or Protected Species (TOPS), and to afford the protections/regulatory provisions associated therewith, unfortunately exotic species, such as tigers, have not been listed as TOPS.



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To this end, and as example, the importation or exportation of tiger into or out of South Africa, as the case may be, would require compliance with the provisions of CITES, and in turn the provisions under Nemba, which give effect to the importation/exportation of such species.

Tigers are listed under CITES as an appendix one species. This means that an import permit issued by the Management Authority of the State of import is required to bring the animal lawfully into the country. This may be issued only if the specimen or a derivative of it is not to be used for commercial purposes and if the import will not detriment the survival of the species. In the case of a live animal, the Scientific Authority must be satisfied that the proposed recipient is [suitably equipped to care for it](#).

However, where the species is bred and sold within South Africa, no such requirements would be present, as there is then no national legislation which specifically prohibits the keeping of this species as pets. That being said, certain provinces do require permits whilst others do not.

Some provinces, for example, do impose permitting requirements, such as the Northern Cape and the Western Cape. Whether there is compliance and enforcement with these provincial laws is another question.

Other provinces, however, such as Gauteng and the North West, do not require any permits for the keeping of tigers.

There are other pieces of legislation that any owner of a big cat such as a tiger must bear in mind. One of these is the Animals Protection Act 71 of 1962 (the APA). Section 2 of this legislation deals with offences in relation to animals. This legislation speaks to a number of offences in relation to animals such as unnecessary confinement and neglect, amongst others. This is important as tigers are complex animals to care for, and our view is that it is unlikely that most captive tigers are being cared for properly.

❑ **Do similar laws apply to the ownership of indigenous big cats such as lion and African leopard?**

As with other endemic big cats, lion and leopard are listed under TOPS as vulnerable. Accordingly, due to their listing, the conducting of any activity in relation to the species which is regarded as a Restricted Activity, would require the issuing of a permit in relation to that Restricted Activity (which would include the captivity, breeding and transportation of the species so concerned), failing which, it is considered an offence.

As such, in order for a person to lawfully possess a lion or leopard, as the case may be, the necessary permits under TOPS must be obtained and renewed. Furthermore, and similarly to the situation with the tiger, any importation or exportation of the species concerned must also comply with CITES and the provisions of Nemba in this regard.

Furthermore, it is our view that the provisions of the APA would equally apply.



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❑ **What sort of recourse does a victim of an attack of a privately-owned exotic animal have against the owner?**

There is recourse that an attack victim may seek against the owner of an exotic animal. However, there are some key aspects that need to be considered. In terms of a legal remedy for an animal attack, many people's, certainly legal professionals', first instinct would be to use the *actio de pauperie*.

The *actio de pauperie* is an action that is available to someone who has suffered damages due to the conduct of another person's domestic animal. The owner of the domestic animal will, in terms of this action, be liable for the damages caused by the animal.

However, the courts have held that the *actio de pauperie* is only applicable in the cases of domestic animals (*O'Callaghan v Chaplin* [1927]; *SAR&H v Edwards* [1930]; *Batchoo v Crick* [1941]). There is an interesting discussion and debate in relation to the applicability of this remedy in relation to wild and exotic animals. There may be argument for the fact that the conduct of the animal is not *contra naturam sui generis* (contrary to the nature of their class) in causing the damage complained of.

This does not detract from the fact that the victim may bring an ordinary delictual claim and the negligence attributable to the failure to take the adequate/appropriate steps to ensure that the animal in question was correctly enclosed.

❑ **In those instances where livestock was lost, can the owner be held liable?**

A livestock owner certainly has a claim against an owner of the exotic animal. The recourse that a livestock owner can seek is similar to delict as discussed above.

❏ ***Do you believe there could be a case where attack victims could open a suit against government for not having more stringent regulations in place to prevent these incidents?***

Yes. It may be regarded that the State is partly liable for the circumstances due to the lack of proper/adequate regulation of the state of affairs (and in some instances, the complete lack of regulation).

❏ ***Could these two recent episodes be enough of a catalyst for our lawmakers to review and reform our regulations?***

The Department of Forestry, Fisheries and the Environment has recently indicated that it intends to develop legislation that seeks to prohibit the keeping of tigers as pets. Whether the Department will follow through with this, and the time it will take for this to be completed, remains to be seen. However, the recent incidents have undoubtedly raised public awareness on the topic. It is hoped that there will be swift and appropriate redress on this critically important matter.

ABOUT SHAN RADCLIFFE

Shan Radcliffe is the editor of Bizcommunity HR, Education and Legal.

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