

Will Africa's elephants help lead the way to basic rights for nonHumans?

If retired Constitutional Court Justice Edwin Cameron's legal arguments hold sway, they may well...



Regarded by Nelson Mandela as one of South Africa's finest heroes, and renowned for his unrelenting pursuit of justice for the marginalised, retired Constitutional Court Justice Edwin Cameron has entered the fray to achieve the release of three African elephants from the cramped confines of a zoo in California, USA.

Read on...

In late August 2023, Judge Cameron submitted a Letter of **Amicus Curiae** to the Supreme Court of California in support of a petition by the USA-based **Nonhuman Rights Project** for a Writ of **Habeas Corpus** in regard to the three African elephants. If granted, the petition for the elephants' release will be allowed to be brought before court to determine if their detention at the Fresno Zoo is lawful or unlawful.

Nolwazi (about 28) and her daughter Amahle (about 13) once roamed their birthplace at the Hlane National Park in eSwatini (formerly Swaziland). In 2016 however, despite a public outcry, both were captured, sedated, crated and loaded onto a cargo plane for life in Fresno Zoo in California.

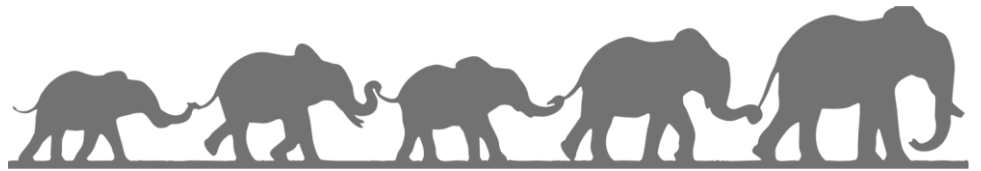
In 2022, Mabu (33) who was born in Kruger National Park joined them in order to impregnate both Nolwazi and Amahle. They are currently carrying his offspring.

Justice Cameron's Letter of Amicus Curiae focuses on whether legal **personhood** should be extended to Amahle, Nolwazi, and Mabu, thereby rendering their imprisonment at Fresno Zoo unlawful.

He wrote: "This submission seeks to provide support for the quest to secure legal acknowledgement that **Amahle, Nolwazi and Mabu**, three African elephants imprisoned at the Fresno Zoo, have the common law right to bodily liberty protected by the writ of habeas corpus; and once this right is recognized, for them to be discharged from the Fresno Zoo and placed in an appropriate sanctuary."

He continues: "The question on whom the law confers full legal personhood and rights has shifted over time. Where once South African law excluded women, enslaved humans, those with certain disabilities, and systematically subordinated Black humans, now we recognise more expansive definitions of personhood."

For the layman...



Amicus Curiae

Amicus Curiae refers to a person or group who is not a party to an action, but has a strong interest in the matter.

Habeas Corpus

A writ of **Habeas Corpus** is used to bring a prisoner or other detainee before court to determine if their imprisonment or detention is lawful.

Personhood

Legal **personhood** is not a fixed concept and has shifted over time to include, for example, women and, in South Africa, Black humans. Once personhood is conferred, the recipients acquire certain inherent legal rights, including the right to bodily liberty.

Who are Nolwazi, Amahle and Mabu?

Nolwazi, Amahle and **Mabu** are three once-wild elephants from Africa who were captured, and are now incarcerated in a zoo in California. The USA-based Nonhuman Rights Project is seeking a writ of habeas corpus which, if granted, will allow the Supreme Court in California to determine if their incarceration is lawful. If their incarceration is ruled unlawful, this will pave the way for them to be transferred to an elephant sanctuary.

Who is Cecilia?

In a landmark judgment in 2016, **Cecilia**, a 20-year-old captive chimpanzee at the Mendoza Zoo in Argentina, was declared a 'non-human legal person' with 'inherent rights' who should be transferred to a sanctuary in Brazil with immediate effect. This followed a petition for a writ of habeas corpus on the grounds that Cecilia's incarceration at the zoo was unlawful and had a detrimental impact of her health.

Justice Cameron points out that South Africa's Constitutional law shifted in 2016 and has placed intrinsic value on animals as individuals. As a consequence, common law must be developed to align with these new constitutional values, paving the way for habeas corpus to be extended to the three elephants.

See the ConCourt ruling here:

<http://www.saflii.org/za/cases/ZACC/2016/46.html>

Judge Cameron points to the argument articulated by a leading South African scholar and Wits human rights lawyer, Professor Bonita Meyersfeld who has noted that "there is a common theme between the historic discrimination against women and black people, on the one hand, and, on the other, discrimination against non-human animals, so-called speciesism.



This is not to say that women, black people and animals share the same characteristics or that their experiences of cruelty and oppression are equal or equivalent. The point of connection, rather, is the way the dominant group (men, white people, humans) exploit their dominance...

Speciesism shares, with other forms of discrimination, the imputation of certain assumed characteristics to the 'inferior' group."

Cameron then asks: "If we have rejected the legalised discrimination based on power disparities inherent in race, religion and sex, why do we not reject the legalised discrimination based on one's species?"

Moreover, he adds: "The regulation of the treatment of non-human animals allows for a degree of abuse of power and attendant cruelty which is not tolerated in respect of other historically oppressed groups. It follows in my opinion, based on the potency of these values, that developing the common law to extend legal personhood to nonhuman animals, at least to include the singular right to bodily liberty, is legally and constitutionally sound."

To read the full content of Justice Cameron's argument in his 22-page *Letter of Amicus Curiae*, please click here:

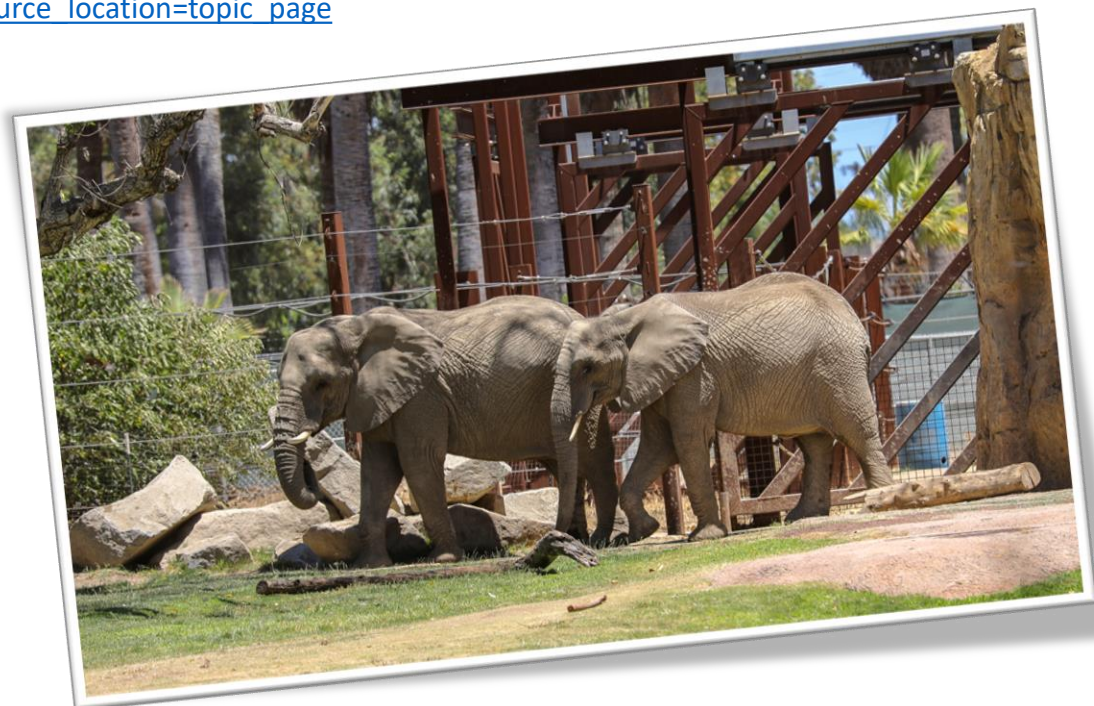
<https://www.animalvoice.org/justice-edwin-cameron>

"Though animals are capable of experiencing immense suffering, and though humans are capable of inflicting immense cruelty on them, the animals have no voice of their own. Like slaves under Roman law, they are the objects of the law, without being its subjects."

– Justice Edwin Cameron

To take part in the petition on behalf of the elephants, go to:

https://www.change.org/p/free-the-fresno-elephants-send-nolwazi-amahle-and-vusmusi-to-sanctuary?source_location=topic_page





OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA



NATIONAL ORDERS 2021

JUSTICE CAMERON HAS BEEN BESTOWED THE NATIONAL ORDER OF THE BAOBAB BY THE PRESIDENT

for his contribution to the judicial system, as well as his “tireless campaigning against the stigma of HIV and AIDS, and the rights of Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual (LGBTQIA+) communities”.

f The South African Judiciary

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Retired Judge Edwin Cameron served as a Justice of the Constitutional Court of South Africa for over a decade. He is also an author and an HIV/AIDS and LGBTIQ equality activist who has been awarded the San Francisco AIDS Foundation Excellence in Leadership Award. He received South Africa’s highest civilian honour, the Order of the Baobab (gold), in 2021.