

COURT OF FIRST INSTANCE IN CRIMINAL, JUVENILE, FELONY AND MISDEMEANOR MATTERS NO. 3

LEDESMA, DIEGO ALBERTO CHAMBER 1 - ANIMAL PROTECTION ACT. ABUSE OR ACTS OF CRUELTY

Number: IPP 149744/2022-0

CUIJ: IPP J-01-00149744-4/2022-0

Proceeding No: 1802321/2022

Buenos Aires, July 6, 2022.-AP

FILE AND HEARING:

The court is to decide on the present **case number 149744/2022-0, entitled “LEDESMA, DIEGO ALBERTO CHAMBER 1 - ANIMAL PROTECTION ACT. ABUSE OR ACTS OF CRUELTY”**, on the docket in this Criminal, Felony and Misdemeanor Court No. 3, under my responsibility, with Dr. Maria Macarena Elizalde as secretary, concerning the petition made by the Public Prosecutor, Dr. Carlos Fel Rolero Santurián, regarding the specimen from the puma species (*puma concolor*), named “LOLA LIMON”.-

WHEREAS:

This case started based on the event that took place on October 4, 2019, at approximately 11:30 a.m., when police officers of Commune 9A of the Police of the City of Buenos Aires and of the Environmental Crimes Investigations Division of the Argentine Federal Police, with inspectors from the Directorate General of Environmental Oversight (DGCONTA) and the Environmental Protection Agency (APRA) of the Government of the City of Buenos Aires, went to the home located at Calle Monte 6973 of this city, where they verified the presence of an approximately six-(6)-month-old cub of the species *puma concolor*, which was tied up in the garden in front of the house. It was determined that the animal was in the possession of the owner of the property, identified as Diego Alberto Ledesma (National Identity Document 30.139.892), and without prejudice to the actions by the governmental agencies, the animal was transferred to the headquarters of Temaiken [Ecological Park], for its safekeeping and subsequently, on December 10, 2019, the animal entered the grounds of this city’s Interactive Ecopark.-

Said action was ordered by the Public Attorney’s Office in the provisions set forth in article 2, paragraph 1 and in article 3, paragraph 7 of Law 14.346.-

Later, on November 5, 2019, the Prosecutor’s Office filed the proceedings in the terms set forth in art. 202 (currently art. 214) of the Criminal Procedure Code of the Autonomous City of Buenos after

confirming that the puma was in good health and properly cared for, and on the understanding that no evidence was observed that could confirm any illegal conduct and/or unlawful mode as set forth in law 14.346, notwithstanding the continuity of administrative proceedings for the unlawful or illegal ownership of the species.-

The case came to this court by virtue of the fact that the Public Prosecutor, Dr. Carlos Fel Rolero Santurián, in charge of the Specialized Prosecutor's Unit in Environmental Affairs (UFEMA) of the Office of the Attorney General of this city, requested that the sentient being of the species *puma concolor* be declared a subject of rights. The animal is young, approximately 3 years and 6 months old, female and is named "LOLA LIMON", and the Public Prosecutor requests that she be granted her complete freedom, free of any measure or legal restriction, with definitive legal custody granted to the Interactive Ecopark of the Autonomous City of Buenos Aires.-

The Public Prosecutor based his petition on the fact that an extended period has elapsed since the animal's rescue and, as has been confirmed by the Public Prosecutor's Office during the visual inspection, currently "LOLA LIMON" is in sufficient physical condition to undergo the first step of treatment, which involves the possibility of the animal being returned to its natural environment from which it was illegally extracted.-

Accompanying the petition was note number NO-2022-21391919-GCABA-UGETUPEEI dated June 10 of the current year, addressed to the UFEMA by the Head of the Strategic Management and Transformation Unit of the Special Projects Unit of the Interactive Ecopark of the Government of the City of Buenos Aires.-

This note emphasizes that Decree No. 413-GCABA-AJG/20 modified the objectives of the Special Projects Unit (UPE) of the Interactive Ecopark of the Autonomous City of Buenos Aires, which now includes the goals of "*planning, coordinating and executing the transformation of the former "Eduardo Ladislao Holmberg" Zoo of the City of Buenos Aires into an Interactive Ecopark, focused on education, environmental awareness and the conservation of biodiversity; encouraging the transfer and integration of scientific-*

technological knowledge with similar institutions and relevant parties with regard to its competence”, among others.-

Furthermore, the Public Prosecutor indicates that Resolution No. 69-GCABA-UPEEI/19 approved the “*Reproductive Management Program for Endangered Species*” in said Unit, which is aimed at conserving the species that are under some degree of threat, whether they are notable for their heritage value or as an umbrella species, or as a species which can help raise visibility or tackle associated environmental problems, with the purpose of ensuring the long-term viability of their populations, in particular highlighting the indigenous species of the neotropical realm.-

At the same time, the Public Prosecutor highlights that as of Annex I of said Resolution, it is confirmed that the Reproductive Biotechnology Area for Wildlife Conservation and the Genetic Resource Bank is included in said Program, where they carry out ongoing work on the development and application of reproductive biotechnologies for wildlife conservation.-

Concerning this point, the Public Prosecutor highlighted that one of the lines of work aims to develop and transfer applied reproductive biotechnologies to the conservation of South American species of felines. Said biotechnologies include the transfer of embryos of wild felines, with one possibility to use specimens of the Puma species (*puma concolor*) as an experimental model.-

In that framework, the Public Prosecutor requested analyzing the possibility of granting custody of the specimen of the Puma species (*puma concolor*) that was rescued in this case, named “LOLA LIMON”, identified with microchip number 981020000239978, to the Special Projects Unit (UPE) of the Interactive Ecopark of the Autonomous City of Buenos Aires with the goal of improving the specimen’s well-being as well as the feasibility of including it in the conservation program lines carried out by said Unit, among others.-

In light of the foregoing, I am in a position to decide on the matter.-

DECISION:

The proceedings confirm that “LOLA LIMON” is a female specimen of the species *puma concolor*, approximate 3 years and 6 months old, identified

with microchip number 981020000239978, which is currently in the Interactive Ecopark of the Autonomous City of Buenos Aires.-

As such, the animal is part of Argentine wildlife, whose protection, conservation, reproduction, re-population and rational use is of public interest, in accordance with Argentine law 22.421.-

However, given that we are involved in a criminal case, which was filed by the Public Prosecutor's office, in which an individual animal from a protected species of wildlife was rescued, I must make a decision on the destination assigned to it (art. 23 of the Criminal Code and 246 of the Criminal Procedure Code of the Autonomous City of Buenos Aires).-

Therefore, an interpretation of the legal status of animals, in this case the puma "LOLA LIMON", must be conducted that enhances the safeguards of her rights and allows the case to be decided under this viewpoint.-

First of all, I should note that the Civil and Commercial Code of Argentina grants animals the character of movable goods, without distinguishing them from other objects of a different nature, therefore, in the legal field of Private Law it is not possible to find a satisfactory answer to the question.-

That said, the Argentine Constitution, in its article 41, provides that "*All inhabitants enjoy the right to a healthy, balanced environment, one that is suitable for human development and one that ensures that productive activities satisfy current needs without compromising those of future generations; and all inhabitants have the duty to preserve it. As a priority, all environmental damage must entail the duty to mend said damage, as established by the law. The authorities shall protect this right, to the right to the rational use of natural resources, to the preservation of natural and cultural heritage and biological diversity, and to environmental information and education. The Nation is entrusted with dictating the laws that contain the minimum budgets of protection, and the provinces are entrusted with necessary laws to complement those dictated by the nation, without these affecting local jurisdictions (...)*".-

In addition, in 1977 the Universal Declaration of Animal Rights was approved by the United Nations (UN) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).-

Its 1st article states that “*All animals are born with an equal claim on life and the same rights to existence*”; while article 2 stipulates that all animals are entitled to the right to respect, attention, care and protection from humankind.-

In turn, Argentine law 14.346 grants animals the possibility to be classified as “victims” of acts of cruelty.-

In the local sphere, article 26 of the Constitution of the Autonomous City of Buenos Aires stipulates that “*The environment is a shared heritage. Every person has the right to enjoy a healthy environment, as well as the obligation to preserve and defend it on behalf of present and future generations*”; while article 27 establishes that the City must “*Implement a process of permanent, participatory territorial environmental regulations that promotes: (...) The protection of urban wildlife and the respect for their life that ensures their health, prevents cruelty and controls their reproduction with ethical methods*”.-

For its part, jurisprudence has highlighted the special status granted to animals. Along these lines, Chamber II of the Federal Criminal Appeal Court, held that “*based on a dynamic, non-static legal interpretation, animals must be recognized as the subject of rights, therefore non-human subjects (animals) are holders of rights, as such it is necessary to protect them in the corresponding area of competence (Zaffaroni, E. Raúl et. al., “Derecho Penal, Parte General”, Ediar, Buenos Aires, 2002, p. 493; and Zaffaroni, E. Raúl, “La Pachamama y el humano”, Ediciones Colihue, Buenos Aires, 2011, p. 54 and ss.)*” (in re case no. CCC 68831/2014, entitled “Orangutan Sandra concerning the appeal for reversal concerning habeas corpus”, resolved on 12/18/2014, in the opinion expressed by Dr. Alejandro W. Slokar and Dr. Ángela E. Ledesma).-

Along the same lines, the Court of the Administrative Litigation, Taxation and Consumer Affairs Court No. 4 recognized the orangutan Sandra as a subject of rights, as part of the obligation to respect her life and dignity as a “sentient being” (case file A2174-2015/0, entitled “Association of civil servants and attorneys for animal rights and others versus the Government of the City of Buenos Aires concerning refuge”, resolved on 10/21/2015).-

Furthermore, these arguments have been upheld by my esteemed colleague, Dr. Rocío López Di Muro, in the case “Robledo, Leandro et al. concerning art. 239”, Case no. 246.466/2021 (JPCyF No. 4; resolved on 12-22-21).-

Additionally, Chamber III of the Criminal, Juvenile Criminal, Felony and Misdemeanor Court of Appeals held that “... *Animal Law involves not only the law -and its different branches-, but also requires a proactive approach from the States in terms of environmental policy. The protection of animals extends from their consideration as subjects of rights and, therefore, the recognition of fundamental rights related to animals -many of which coincide with those recognized for human beings-, to their identification as an essential part of our biodiversity and sustainable development” (in re IPP 2582/2021-0, entitled “DIRECTOR OF THE BIRD WORLD WEBSITE, NN CASE 128 - KEEPING ANIMALS IN UNSUITABLE LOCATIONS”, resolved on 09/06/2021).-*

Under such conditions, I understand that it is appropriate to declare the non-human animal named "LOLA LIMON", a female specimen of the species *puma concolor*, approximately 3 years and 6 months old, identified with microchip number 981020000239978, who is currently in the Interactive Ecopark of this Autonomous City of Buenos Aires, to be a subject of rights.

In addition to the foregoing, the animal be granted its total freedom, free of any legal measure or restriction, in particular since this criminal proceeding was filed by the holder of the action.-

In light of the foregoing, the ruling regarding the Public Prosecutor’s petition, concerning granting definitive custody of the animal to the Special Projects Unit of the Interactive Ecopark of the Autonomous City of Buenos Aires, must still be decided.-

In this regard, I must point out that the Interactive Ecopark is regulated by local law 5752 and was created as a result of the transformation of this city’s "Eduardo Ladislao Holmberg" Zoo, with the purpose of contributing to the conservation of biodiversity, promoting environmental education, encouraging innovation for sustainable development, raising awareness among the general population and allowing for personal recreation through the interactive experience with the elements of nature (articles 1 and 2).

Its objectives, established in article 3, include, among others, rehabilitating and reinserting rescued wildlife, which has been recovered from illegal trade, ownership or trafficking, or which suffers from disorders of anthropogenic origin, through the creation of a Wildlife Rescue Center (paragraph e).-

Likewise, regulatory decree number 082/17, in article 3, paragraph e) of Annex II, created the Wildlife Rescue Center, which will function within the Special Projects Unit (UPE) Interactive Ecopark of the Autonomous City of Buenos Aires or any agency that may replace it in the future, and shall include Marine and Continental Wildlife, with the purpose of housing, rehabilitating and reinserting wild animals back into their natural habitat which have left their habitat due to natural and/or anthropogenic causes.-

Therefore, I understand that this petition should be accepted and that definitive custody of "LOLA LIMON" should be given to said entity, where the animal has been in safekeeping since December 10, 2019, as the entity works with the purpose of conservation of South American feline species, as such the animal can be used as an experimental model of specimens of the *puma concolor* species, in line with the purposes pursued by the previously detailed regulations in the constitutional and legal sphere.-

Based on these considerations, as was indicated by the Executive Directorate of the Strategic Management and Transformation Unit, Special Projects Unit, Interactive Ecopark of the Government of the City of Buenos Aires, I shall grant definitive custody of "LOLA LIMON" to the aforementioned Unit.-

In view of the foregoing, **I DECIDE:**

I.- TO DECLARE THE non-human animal named "**LOLA LIMON**", female, approximately 3 years 6 months old, of the species *puma concolor*, identified with microchip number 981020000239978, which is currently in the Interactive Ecopark of the Autonomous City of Buenos Aires, **TO BE A SUBJECT OF RIGHTS**, providing for its total freedom, free of any legal measure or restriction;

II.- TO GRANT definitive custody of the specimen identified in point I of this decision to the Special Projects Unit (UPE) of the Interactive Ecopark of the Autonomous City of Buenos Aires.-

Let this decision be registered, notified and forwarded to the Public Prosecutor's Office.-

This document serves as delivery notification.-

In my presence:

This decision was notified and forwarded on the same date. Confirmed.-

[emblem] **Judicial Power**
City of Buenos Aires

COURT NO. 3|EXP:149744/2022-0 CUIJ J-01-00149744-4/2022-0|ACT 1802321/2022

DIGITALLY SIGNED

07/06/2022 8:26 p.m.



Carla Cavaliere
JUDGE
COURT OF FIRST
INSTANCE IN CRIMINAL,
JUVENILE, FELONY AND
MISDEMEANOR
MATTERS NO. 3