




**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
24-11-2020	
	

BEFORE: CANCA AJ

CASE NO: LCC 122/2009 & LCC129/2012

In the matter between:

STL CHRISTO FRANTZ

1ST APPLICANT

SARON LANDCLAIMS FORUM/24 RIVERS MSTA

2ND APPLICANT

and

SANLUCAR DE HOEK (PTY) LTD

1ST RESPONDENT

BLUE FALCON 140 RF (PTY) LTD

2ND RESPONDENT

**THE REGIONAL LAND CLAIMS COMMISSIONER:
WESTERN CAPE**

3RD RESPONDENT

**THE MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM**

4TH RESPONDENT

Judgment delivered on 24 November 2020

LEAVE TO APPEAL JUDGMENT

CANCA AJ

INTRODUCTION

[1] Apart from filing a "Notice", Mr. Christo Frantz ("Frantz") and (lodged the following four "appeal" documents on behalf of myself and The Saron Land Claims Forum / Twenty - Four Rivers Traditional Authority ("the Forum"), after I handed down my judgment on 15 June 2020:

- 1(a) Notice to Request a Fair Trial dated 23 June 2020;
- 2(b) Raising a Constitutional Issue dated 3 July 2020;
- 3(c) Notice of Appeal dated 3 July 2020;
- 4(d) Applicants' Heads of Argument dated 10 July 2020.

All these documents are lodged under the same case numbers, namely, LCC 122/2000 and LCC 129/2012.

[2] The Respondents oppose the relief claimed by Frantz and the Forum. It would appear from their papers that the Notice to request a fair trial was not served on them and that they only became aware of same after being alerted by my Registrar who, on my instructions, sought to ascertain whether or not they intended to oppose the application or not. They only received the Notice during mid-October 2020 from the Court's Registrar and sent their supplementary Heads of Argument towards the

end of that month. This explains the delay in me finalizing this judgment. However, in the light of the view I have formed of this matter, I do not deem it necessary for me to deal with the various arguments and points *in limine* raised by counsel for the respondents. They largely coincide with my views on the matter.

[3] It is convenient that I deal with each of the issues raised in [1] above in the manner listed.

DISCUSSION

[4] *Notice to request a fair trial – 23 June 2020*

The contents of this Notice are set out as follows:

“1st Appellants intends to appeal against the whole Judgment and order of Judge Canca in abovementioned case and requests hereby a free, fair and just trial from the Court by ensuring that:

- 1. The hearing to be informal.*
- 2. That the Court eliminates trial by ambush.*
- 3. That the Court [Presiding Judge(s)] is broad based representative.*
- 4. That the court only allow the truth in the hearing that the views of the Respondents are “logical Constant, empirical Adequacy and experiential Relevant” and thereby applying the customary laws (or bundle of laws) of the community of Saron (24 Rivers).*
- 5. That the Respondents Councils have the prerequisite documentary proof of their mandates to represent the respondents.*
- 6. A speedily hearing of the appeal.”*

[5] Rule 69 (1) and (2) of this Courts' Rules are clear and unambiguous and read as follows:

"69. APPEALS TO THE SUPREME COURT OF APPEAL AND CONSTITUTIONAL COURT

(1) A party that wishes to appeal against an order of the Court must apply to the Court for leave to appeal—

(a) orally at the time when the order is made by the Court, in which event that party must at the same time deal with the matters referred to in subrule (2); or

(b) by notice of application for leave to appeal delivered within 15 days—

(i) after the order was made; or

(ii) after full reasons for the order were given, if the reasons were given on a later date.

(2) The notice referred to in subrule (1) (b) must specify—

(a) the findings of fact and law appealed against;

(b) whether the whole or part only of the order is appealed against, and if part only, which part;

(c) the grounds on which leave to appeal is sought; and

(d) the court to which leave to appeal is sought."

As I read the Notice, it states that the whole of the judgment is appealed against. And, given that the particulars required in terms of Rule 69 (2)(a) and (d) are absent, results in the Notice not being a proper notice for leave to appeal.

[6] The basis of the intended appeal (as it appears from the Notice) seems to be that the trial was not fair, but it not stated in which respects the trial fell short of the six aspects mentioned in the Notice.

[7] In the light of the above, I am of the view that the appeal should be struck from the Roll, firstly, because the Notice records an intention to appeal, instead of asking for leave to appeal, and secondly, the Notice does not state the Court to which the appeal is to be brought.

RAISING A CONSTITUTIONAL ISSUE: 3 July 2020

[8] In support of this request, the applicants pray that:

“TAKE FURTHER NOTICE THAT THE APPLICANTS SEEK AN ORDER;

DECLARING prayers:

- 1. That the respondents' conduct by omitting to prove that the function set out in art 4(L) of Act 41/2003 is inconsistent with the constitution is unconstitutional and invalid.*
- 2. That the 1st respondent's access to a fair as envisaged in art 34 of the constitution is unconstitutional and invalid.*
- 3. That the suppression of evidence of the legal representative is unconstitutional and invalid.*
- 4. That the adjudication on a constitutional matter in art 167.4(a), which may only be decided by the Constitutional Court is unconstitutional and invalid.”*

[9] This notice does not state that it is a Notice for leave to appeal nor does it state to which Court such an appeal is sought. In any event, I did not decide any Constitutional issue. I gave effect to the Restitution Act, which provides that the claimant community would be represented by the Section 10 Committee. Moreover,

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this Court has no jurisdiction to grant leave to appeal to the Constitutional Court, if that is what Frantz wants. Generally speaking, leave to appeal to the Constitutional Court must be granted by the Constitutional Court. The Land Claims Court can only grant leave to appeal to the Supreme Court of Appeal. See Section 37(1) and (2) of the Restitution Act.

[10] This request, in respect of a constitutional issue, is for the reasons mentioned above also struck from the Roll.

[11] Also, none of the grounds now raised by Mr. Frantz were raised when the application was argued. These grounds are raised for the first time and cannot be entertained by this Court at this late stage.

[12] In the light of all of the above, I find as follows:

1. This matter is struck from the Roll.
2. Mr. Frantz is to pay the costs of the Respondents.

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MP Canca
Acting Judge, Land Claims Court

Appearances:

Mr. Frantz represented himself and Second Applicants.
For the First and Second Respondent: Adv. C.G van der Walt
Instructed by: Cox and Partners, Vryheid.
For the Third and Fourth Respondents: Adv. M. Combrink
Instructed by: The State Attorney, Cape town.