




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

Case No: LCC40/2019

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
06/10/2021	
DATE	SIGNATURE

Heard: 19 July 2021

Judgment: 6 October 2021

In the matter between:

MABHENA LAND CLAIM COMMUNITY

Applicant

and

**THE REGIONAL LAND CLAIMS COMMISSIONER
MPUMALANGA PROVINCE**

First Respondent

**CHIEF DIRECTOR: PROVINCIAL DEPARTMENT
OF RURAL DEVELOPMENT AND LAND REFORM**

Second Respondent

**QALABOTJHA BALIMI COMMUNAL PROPERTY
ASSOCIATION**

Third Respondent

**NATIONAL GOVERNMENT OF THE REPUBLIC
OF SOUTH AFRICA**

Fourth Respondent

THE REGISTRAR OF DEEDS, PRETORIA

Fifth Respondent

JUDGMENT

BARNES AJ

INTRODUCTION

1. This application concerns the farm Watervalshoek 350 IR situated in the Gert Sibande district in the Province of Mpumalanga. The applicant seeks the following relief:
 1. Reviewing and setting aside the decision of the first respondent not to grant the applicant restitution of rights in Portions 16, 17 and 18 of the farm Watervalshoek 350 IR, currently registered in the name of the fourth respondent.
 2. Reviewing and setting aside the decision of the second respondent to purchase Portions 1 and 46 of the farm Watervalshoek 350 IR on behalf of the third respondent.

3. Reviewing and setting aside the decision of the second respondent to transfer and register Portions 1 and 46 of the farm Watervalshoek 350 IR in the name of the third respondent.
 4. An order directing the fifth respondent to deregister the transfer and registration of Portions 1 and 46 of the farm Watervalshoek 350 IR, in the name of the third respondent and transfer and register them in the name of the applicant.
 5. An order directing the first respondent to grant the applicant restitution of rights in Portions 16, 17 and 18 of the farm Watervalshoek 350 IR currently registered in the name of the fourth respondent and register them in the name of the applicant.
2. In what follows below, I shall set out the relevant facts and consider whether, in the light thereof, the relief sought by the applicant may competently be granted. I shall refer to the farm Watervalshoek 350 IR simply as “the Farm.”

THE RELEVANT FACTS

3. On 21 December 1998, Mr Buti Enoch Mabhena lodged a land claim on behalf of the applicant. The land claimed by Mr Mabhena was described on the land claim form as “*Klipspruit No 1670 or 350 and Kafferspruit No: 344, 347 or 349, formerly Heidelberg District (Standerton).*”

4. Notably, the land claimed was not described as the farm Watervalshoek 350 IR or any Portion thereof.
5. As has become notorious, and is highly regrettable, the pace of the State's investigation and processing of land claims has been exceedingly slow. In this context the screening and investigation of the applicant's land claim appears to have commenced only in 2009. It appears from the papers that during 2010 a site inspection was conducted through the offices of the first respondent and the global position system (GPS) co-ordinates of the land claimed by the applicant were plotted. During the course of this exercise, it was established that the land claimed by the applicant was in fact not the land described on the claim form quoted above, but was rather Portions 1, 16, 17, 18 and 46 of the Farm.
6. In the meantime, during 2006, Portions 1 and 46 of the Farm had been purchased by the National Government (the fourth respondent herein) and transferred to the Qalabotjha Balimi Communal Property Association (the third respondent herein). This was done in terms of section 10 of the Provision of Land and Assistance Act 126 of 1993 and the Land Redistribution for Agricultural Development Programme ("LRAD") which seeks to provide assistance to previously disadvantaged individuals who aspire to become farmers but do not own land. Portions 1 and 46 of the Farm have been occupied and farmed by the members of the third respondent since then.

7. Following the plotting of the GPS co-ordinates of the applicant's land claim and after further investigation in respect thereof, the first respondent produced a research report in respect of the applicant's land claim on 29 September 2014.
8. The research report found that the applicant's land claim complied with the section 2 of the Restitution of Land Rights Act 22 of 1994 ("the Restitution Act") and accordingly recommended that it be accepted and published in the Government Gazette in terms of section 11 of the Restitution Act.
9. The research report recorded that Portions 1 and 46 of the Farm had been transferred to the third respondent in terms of the Provision of Land and Assistance Act and the LRAD. The research report recommended that *"the Mabhena family be granted alternative redress as the property they have claimed has been transferred to the Qalabotjha Balimi Communal Property Association, which is comprised of previously disadvantaged individuals"*. This did not take account of the fact that the applicant also claimed Portions 16, 17 and 18 of the Farm which had not been transferred to the third respondent and was owned by National Government.
10. Be that as it may, on 21 November 2014, the first respondent caused the applicant's claim to be published in the Government Gazette in terms of section 11 of the Restitution Act. The claimed land was described in the notice as Portions 16, 17 and 18 of the Farm, with no reference to Portions 1 or 46

thereof.

11. The applicant took issue with this and complained to the first respondent that Portions 1 and 46 of the Farm, which formed part of its claim, had not been included in the Government Gazette notice of 21 November 2014.
12. Following this, the first respondent states that it attempted to resolve the situation and settle the applicant's land claim through negotiation and mediation. These efforts proved unsuccessful and on 28 October 2019, the first respondent took a decision to amend the Government Gazette notice of 21 November 2014 to include reference to Portions 1 and 46 of the Farm.
13. This was duly done and an amended notice of the applicant's land claim was published in the Government Gazette on 8 November 2019. The first respondent states that this was done in order to correct the erroneous omission of Portions 1 and 46 of the Farm in the first notice. The amended notice describes the applicant's land claim as comprising Portions 1, 16, 17, 18 and 46 of the Farm.
14. The first respondent states that as matters currently stand, the applicant's land claim is still under investigation by its office, pursuant to the publication of the amended notice on 8 November 2019. The first respondent has taken no decision in respect of the applicant's land claim. Nor has the applicant's land claim been referred to this Court in terms of section 14 of the Restitution Act.

ANALYSIS

15. The decision sought to be reviewed and set aside by the applicant in prayer 1 of its Notice of Motion is the decision purportedly taken by the first respondent not to grant the applicant restitution of rights in Portions 16, 17 and 18 of the Farm. It is however apparent from the facts set out above that no such decision has been taken by the first respondent. On the contrary, the first respondent has not yet taken any decision in respect of the applicant's land claim. The relief sought in prayer 1 of the applicant's notice of motion is accordingly incompetent.
16. In prayers 2 and 3 of its notice of motion, the applicant seeks to review and set aside the decisions made by the second respondent to purchase Portions 1 and 46 of the Farm and to transfer them to the third respondent. As described above, those decisions were made by the relevant state parties in terms of section 10 of the Provision of Land and Assistance Act and the LRAD. No basis has been laid in the applicant's papers to impugn the decisions made by the state to assist a disadvantaged community in terms of those instruments, save to state that Portions 1 and 46 of the Farm were under claim by the applicant. However as is apparent from what has been set out above, the land claimed by the applicant was initially incorrectly described, and the state parties contend, logically, that they had no way of knowing, in 2006, that Portions 1 and 46 of the Farm were subject to a land claim. It is however not necessary for purposes of this application to determine these questions. This

is because the first respondent's publication of the amended notice in the Government Gazette on 8 November 2019 confirms that Portions 1 and 46 of the Farm constitute part of the applicant's land claim. Until the fate of the applicant's land claim has been determined, the relief sought in prayers 2 and 3 of the applicant's notice of motion is premature and incompetent.

17. The relief sought in prayers 4 and 5 of the applicant's notice of motion is consequential upon the relief sought in prayers 1 to 3. It follows that the relief sought in prayers 4 and 5 can also not competently be granted.
18. The Court is not without sympathy for the applicant who has had to endure interminable delays in the processing and finalisation of its land claim. The applicant is however not without appropriate remedies in this regard. What the applicant cannot do is seek to review decisions which have not been taken or pre-empt decisions which may or may not be taken in the future.
19. The relief sought by the applicant is accordingly premature and incompetent and cannot be granted.
20. In the circumstances, I make the following order:
 1. The application is dismissed.
 2. There is no order as to costs.

A handwritten signature in black ink, consisting of a stylized initial 'B' followed by a series of wavy lines, all written over a horizontal line.

BARNES AJ

Acting Judge of the Land Claims
Court

Appearances:

For the applicant: Mr J Malesoena of Malesoena Attorneys

For the first respondent: Mr L Gumbi instructed by the State Attorney