



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Reportable

CASE NO.: 4127/2015

In the matter between:

**THE MINISTER OF THE NATIONAL DEPARTMENT
OF RURAL DEVELOPMENT & LAND REFORM**

Applicant

and

**PHILLIP TSUPUTSE AND OTHER UNKNOWN
ILLEGAL LAND INVADERS OF APPLICANT'S
LAND**

First & Other Respondents

JUDGMENT

Heard : 23rd April 2015
Delivered : 28th April 2015

JEFFREY AJ:

- [1] This is an urgent application for the eviction of the respondents – alleged by the applicant to be illegal land invaders - from State land and certain other ancillary relief. It raises somewhat unusual and, as far as I have been able to ascertain, novel considerations *post* the Constitutional Court decisions set out below, where this

Court's area of jurisdiction extends, as it does in this matter, to the area of a magisterial district that forms part of another province. It also presents an opportunity to clarify the law in that regard in respect of this Court's jurisdiction.

- [2] When this matter came before me on 23 April 2015 I made a finding that this Court does have jurisdiction in this matter; and secondly, in accordance with the provisions of s 4(2) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, No. 19 of 1998, I authorised and directed that notice of these proceedings be served on the respondents and the Matatiele Local Municipality. I indicated that the reasons for my finding on jurisdiction would be handed down at a later date. These are my reasons.

The Provincial Boundary Dispute

- [3] The land in question is described in the founding affidavit as being situated in "...the Handenburg and Mosekuoa localities in the Ramohlakoana Administrative Area, Maluti, Matatiele."
- [4] Although the Maluti and Matatiele areas at present form part of the geographical area of the Province of the Eastern Cape, this has not always been the case. Over the years there have been

numerous legal and political tussles as to whether or not these areas should form part of the Province of the Eastern Cape or the Province of KwaZulu-Natal. Many of the well-documented socio-economic and political, dynamics and tensions of this area have been identified and analyzed by E M Mavungu 'Frontiers of prosperity and power: Explaining provincial boundary disputes in post-apartheid South Africa' 2011 Unpublished PhD Thesis, University of the Witwatersrand - <http://wiredspace.wits.ac.za/>. In recent times the Constitutional Court has had occasion to consider this troubled and contentious boundary dispute in *Matatiele Municipality v President of the Republic of South Africa (No. 1) 2006 (5) SA 47 (CC)* and *Matatiele Municipality v President of the Republic of South Africa (No. 2) 2007 (6) SA 477 (CC)*. It is unnecessary for the purposes of this judgment to traverse these decisions; suffice it to say that, as matters stand at present, and in terms of the Schedule 1A of the Constitution of the Republic of South Africa, 1996, as amended by the Constitution Thirteenth Amendment Act of 2007 and read with the Cross-Boundary Municipalities Laws Repeal and Related Matters Amendment Act, No. 24 of 2007: (a) the land in question lies within the boundaries of the Matatiele Local Municipality which in turns falls under the Alfred Nzo District Municipality; and (b) the Matatiele Local Municipality falls within the geographical boundaries of the Province of the Eastern Cape and not those of

KwaZulu-Natal.

[5] The constitutionality of the Constitution Thirteenth Amendment Act of 2007 and the Cross-Boundary Municipalities Laws Repeal and Related Matters Amendment Act, No. 24 of 2007, was considered by the Constitutional Court in *Poverty Alleviation Network and Others v President of the Republic of South Africa and Others* 2010 (6) BCLR 520 (CC). The Court said, at para [70] read with fn 68, that Matatiele was not a cross-boundary municipality but “a cross-jurisdictional enclave” with similar problems to a cross-boundary municipality relating to economic development and service delivery. The Court found, at para [76], that the impugned legislation was rationally connected to a legitimate governmental end to make the Matatiele Local Municipality economically viable and to improve its governance and the Court declined to interfere with the legislation: see also para [71].

[6] That is the current position regarding the boundary dispute.

This Court's jurisdiction

[7] Despite the Matatiele (Maluti) magisterial district falling into the Eastern Cape Province, this Court has concurrent jurisdiction with

the KwaZulu-Natal Division, Pietermaritzburg, in respect of the area of that district.

[8] This appears from the following maze of legislative enactments and notices.

[9] Although the First Schedule to the Supreme Court Act, No. 59 of 1959, was repealed by s 4(1) of the Interim Rationalization of Jurisdiction of High Courts Act, No. 41 of 2001; notwithstanding its repeal, s 4(2) provided that: "... the areas of jurisdiction of the High Courts referred to in the said First Schedule shall, subject to any alteration under section 2, remain as they were immediately before the commencement of this Act." Then followed Government Notice No. 1650 of 14 November 2003, read with Notice No 3440 of 2003 published in *Government Gazette* No. 25880 dated 23 December 2003, in terms of which the Minister of Justice and Constitutional Development acting in terms of s (2)(1) of the Interim Rationalization of Jurisdiction of High Courts Act altered, with effect from 1 January 2004, the jurisdictions of the Natal Provincial Division and the Durban and Coast Local Division – as they were then known – by including the district of Matatiele (Maluti) and by excising this district from the jurisdiction of the Transkei Division as it was then known.

[10] The Superior Courts Act, No. 10 of 2013 repealed both the Supreme Court Act 1959 and the Interim Rationalization of Jurisdiction of High Courts Act 2001, but s 50(1) provided that at the commencement of the Act, namely 23 August 2013, "... the area of jurisdiction of each of (the High Courts) becomes the area of jurisdiction or part of the area of jurisdiction, as the case may be, of the Division in question." Thus, this Court presently retains the concurrent jurisdiction that it previously had with KwaZulu-Natal Division, Pietermaritzburg, in respect of the area of the Matatiele (Maluti) magisterial district.

Possible future removal of this matter to the Eastern Cape Local Division, Mthatha

[11] Mr *Matyumza*, who appeared for the applicant, informed me that the applicant had previously instituted similar eviction proceedings against the respondents in the Eastern Cape Local Division, Mthatha, under case number 2674/2014. These proceedings were opposed by the respondents. They raised a point *in limine* that that Court did not have jurisdiction. Majiki J who heard the matter upheld the point *in limine* and dismissed the application for lack of jurisdiction. I was informed that an application for leave to appeal was brought which the learned judge dismissed on 5 March 2015.

[12] Despite the success of the respondent's point *in limine* it may transpire that the socio-economic and political, dynamics and tensions in this district still exist and may be relevant. If so, it is possible that this application would be more conveniently or more appropriately heard and determined by the Eastern Cape Local Division, Mthatha. There are also considerations of that division's proximity to the State land concerned and of that division being more readily accessible and convenient to the parties and any witnesses that may have to be called in due course. In this event, either of the parties could invoke the provisions of s 27 of the Superior Courts Act, 2013, and this Court hearing the matter may in its discretion, after consideration of all the pertinent facts and hearing the parties, order that the proceedings be removed to Eastern Cape Local Division, Mthatha.

Conclusion

[13] As I have said, this Court has jurisdiction to hear and determine this application. A copy of this judgment is to be served forthwith on the respondents.

JEFFREY AJ

Appearances:

Counsel for the applicant	:	Mr M Matyumza
Applicant's attorney	:	The State Attorney (Mthatha and Durban)
Date of hearing	:	23 April 2015
Date of judgment	:	28 April 2015