Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION, KIMBERLEY

CASE NO.: 661/22

Date Heard: 27 May 2022

Date Delivered: 1 June 2022

In the matter between:

SISHEN IRON ORE COMPANY (PTY) LTD Applicant

and

LAZARUS MOSALA First Respondent

THE GAMAGARA LOCAL MUNICIPALITY Second Respondent

ORDER

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1. The first respondent, and all persons occupying the Remaining Portion 2 of the Gamagara Farm 541 ("**the Property**"), are evicted.

2. The first respondent, and all persons occupying the Property, must vacate the Property, as aforesaid, within a period of 14 days from the date of this order.

3. Should the first respondent and all persons occupying the Property neglect and/or fail to vacate the Property within the aforesaid period, the Sheriff of the High Court or his lawfully appointed deputy is authorised and directed to evict them from the Property, and to demolish all structures on the Property.

4. The applicant and first respondent are to comply with the terms of the Relocation Agreement (as defined in the founding affidavit), and in addition to those terms, the applicant shall after the relocation of the first respondent as aforesaid,

4.1. inspect the gravel road providing access to Farm Sacha 468 ("**the Farm**"), and where any issues are identified by the first respondent, the applicant will, at its own costs, attend to the necessary repairs to the surface of the gravel road that provides access to the Farm to enable a normal vehicle to traverse the relevant portion or portions of such gravel road; and

4.2. at its cost, to erect a metal shed on the Farm, with a metal or other roof covering and a concrete base, and where animal feed may be stored by the first respondent.

JUDGMENT

Tlaletsi JP

[1] The applicant in these proceedings is Sishen Iron Ore Company (Pty) Ltd a private company with limited liability duly incorporated in terms of the company laws of the Republic of South Africa having its registered address at no:124 Akkerboom Road, Centurion Gate, Gauteng.

[2] The first respondent is Mr Lazarus Mosala (the respondent), an adult male residing at the Remaining Potion 2 of Gamara Farm 541, Northern Cape Province.

[3] The second respondent is the Gamagara Local Municipality, cited in these proceedings by virtue of its statutory and Constitutional duty to provide temporary accommodation to any occupiers found on the property that are not included in the Dingleton Resettlement Project. The second respondent is not opposing the proceedings.

[4] The applicant is the owner of the Remaining Portion 2 of the Gamagara Farm 541 (the Property) which is currently occupied by the respondent. The applicant launched this application on urgent basis seeking an order evicting and or relocating the respondent from the Property. The relief sought was in two parts. In terms of Part A, the applicant sought leave to serve the application including a Notice contemplated in section 4(2) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act[1] (PIE Act). Relief in terms of Part A was granted by Nxumalo J on 5 April 2022.

[5] The relief sought in Part "B" which remains for determination in these proceedings, is on the following terms:

"1. Dispensing with the forms, service and time periods prescribed in terms of the Uniform Rules of Court and directing that the matter be disposed of as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.

2. That the first respondent, and all persons occupying through him, be evicted form Remaining Portion 2 of the Gamagara Farm 541 ("the Property")

3. That the first respondent, and all persons occupying through him, must vacate the property, as aforesaid, within a period of 10 days, from the date of this order; alternatively, on another date which the Court finds to be just and equitable in the circumstances.

4. That, if the first respondent and all persons occupying through him, neglect and/or fail to vacate the Property within aforesaid period, the

[1] Act 19 of 1998.

Sheriff of the High court or his/[her] lawfully appointed deputy is authorised and directed to evict them from the Property.

5. *That the first respondent be ordered to pay the costs of this application.*

6. *Further and/or alternative relief."*

[6] A factual background is apposite. There is little, if any, that is not common cause. The property which is the subject to these proceedings was part of the property which was owned by the Doornvlei Vereeniging vir Gemeenskape Eiendom ("the Association")[2]. The respondent was a member of the Association. On 22 August 2005 the applicant and the Association concluded a written agreement in terms of which the Association sold the property to the applicant. Transfer of the property to the applicant took place on 21 December 2005.

[7] The property is zoned for the carrying of mining. The applicant as the owner of the entire property and the holder of the mining right over the property requires vacant possession thereof to pursue its mining activities. All other members of the community who resided on the property due to their membership and as beneficiaries of the Association, have vacated the property and reside at a property provided by the applicant being Siyathemba and parts of Kathu. The respondent is the only person who has not vacated the aforesaid property.

[8] On or about 16 January 2018, at Johannesburg, the applicant and the respondent duly represented by his erstwhile attorneys, Richard Spoor Inc,

[2] Communal Property Association.

entered into a written Settlement Agreement in terms whereof the parties reached an agreement in full and final settlement of the issues relating to the terms of the respondent's relocation from the Property.

[9] The relevant terms of the Settlement Agreement provided that - the applicant would secure alternative land for the respondent, which would accommodate all his livestock and suitable structures for him and his immediate family to live in; the structures would include access to water suitable for human consumption, adequate sanitation and electricity. Where the structure is located in an isolated area away from other people, security feature would be included, including burglar bars. It was further agreed that once an alternative location was identified by the applicant, and confirmed by Dr Koos Pretorius (BVet) (Dr Pretorius) or another suitably qualified expert agreed to by the parties, the applicant would ensure that the respondent and his livestock, family, and possessions are relocated to the alternative location by 28 February 2018.

[10] It was further agreed that the applicant would carry the costs of removal and the transport of goods, personal items, furniture and clothing of the respondent to the alternative location. The applicant would also be responsible for the moving insurance cover in respect of all of the respondent's items, to their full replacement value, as provided for in the agreement with the removal company. The applicant would not pay any excesses which may arise as a result of a claim. It was further agreed that the applicant's entitlements to the new land would never be worse than those

which he enjoyed in respect of the Property he was occupying. And the respondent would relinquish any rights he may have had, in respect of the Property.

[11] On or about 15 September 2021 the parties concluded a further written agreement commonly known as the Relocation Agreement. The purpose of the latter agreement was to record the terms of the respondent's relocation and his entitlements as provided for in the Settlement Agreement. The relevant provisions of the Relocation Agreement provided for the nature of the housing/dwelling that would be provided and the number of livestock that could be supported on the land to be provided to the respondent. The applicant was to erect a livestock ramp on the new or alternative land. Dr Pretorius was identified to provide advice on the suitability of the land for purposes of agriculture and livestock grazing. The respondent would together with the applicant's land manager conduct an inspection of the land to ensure compliance with the terms of the parties' agreements.

[12] It is the applicant's case that it has complied in full with the terms and conditions of the Settlement and the Relocation agreements. It has provided the suitable structure to accommodate the respondent with his immediate family up to a maximum of four members. It also provided access to water which is safe for human consumption, adequate sanitation and solar power. The batteries for the solar power are to be replaced by the applicant every three to five years as anticipated. The applicant is also tendering payment of a curtain allowance of R15 000-00 and an inconvenience allowance of

R50 000-00 to the respondent once he has vacated the property, as provided for in the Relocation Agreement.

[13] There were other benefits that the respondent would enjoy after his relocation. These included provision for reasonable additional livestock feed for a period of 24 months from the date of relocation and a guaranteed enjoyment of his new rights in the land provided to him for the duration of the agreement. According to the applicant, it has to date spent an amount of R8 625 934-77 to provide for the respondent in compliance with the parties' agreements.

[14] The relocation date was subsequently agreed to lapse on 10 January 2022. By this date, the respondent refused to be relocated. Instead, on 12 January 2022, contrary to the agreement, which was in full, and final settlement of all claims by the parties, the respondent made further demands. He demanded a shed for his livestock and repairs to the gravel road that provided access to the new property. The applicant without any obligation to do so, undertook to inspect the gravel road in the presence of Dr Pretorius and do the necessary repairs and erect a simple metal shed on the property. It undertook to provide for these services only after the respondent had relocated, failing which the offer would lapse. The respondent has however, not responded to the offer and remain in occupation of the Property.

[15] The applicant contends that this matter is urgent for the following reasons. It conducts mining activities that are of critical economic importance to the Gamagara Local Municipality, the Northern Cape Province and the country at

large. It operates the largest open cast iron mining activity in the world. Its activities are carried on in terms of a Mining Plan that has been carefully designed to enable the exploitation of the iron ore to its maximum potential and keep production costs within such parameters that will allow the applicant to sell the ore it mines profitably.

[16] The respondent's refusal to vacate the Property the applicant contends, has very serious consequences for the applicant. He occupies an area which is within 500m of the outskirt of the area which the applicant needs to blast as prescribed by the Regulations[3]. The area used by the respondent for grazing has been demarcated for dumping mining waste. It will be costly for the applicant to travel a distance of more than 4km to dump the waste at an alternative site. The entire area should be prepared for the mining operations. Delays in mining due to the respondent's refusal to vacate the Property will affect the quality of the product to be produced and will not have enough ore available in future.

[17] The applicants submitted that further delays would not place the applicant in the same position it is, unless urgent relief is granted. Furthermore, the applicant is one of the largest employers in the Northern Cape employing approximately 79% of all mining employees in the province and with a current staff complement of more than 10 000 (including contractors), 7855 of whom are employed by the applicant. It provides countless indirect jobs to local and provincially based suppliers and service providers. Some of its employees

[3] Regulation 4.16(2) of the Regulations relating to explosives in terms of the Mine Health and Safety Act, 1996.

are people who used to live in the property and agreed to relocate to Siyathemba and other parts of Kathu. These employment beneficiaries are likely to suffer should the applicant not proceed with its mining operations in the area.

[18] The applicant has been able to demonstrate that its mine contributes a significant amount to the local economy annually and provides a significant centre of socio-economic activity in the area and is also an important source of welfare for the community. For example in 2021, alone, more than R21 billion in tax reserve and minimal royalties went to supporting government and South African's; the applicants increased its capital investment in the Northern Cape by 30% to R8 billion; the applicant supported BEE suppliers with R10.3 billion of spend, of which R4.1 billion went to host community suppliers and it contributes R258 million towards building thriving communities, including its Covid-19 support. There is no doubt that the applicant plays a meaningful role in the socio-economic upliftment of the Northern Cape Province.

[19] On 6 May 2022, which was the date of hearing of Part B of this application, the respondent appeared in person. He challenged the legality of the sale of the property to the applicant by the Association as well as the Settlement and Relocation agreements. He mentioned that he was forced to sign these documents by his erstwhile attorneys against his will. This Court gave him an opportunity to obtain legal representation of his choice, alternatively to approach the Legal Aid South Africa for assistance, so that he can file opposing papers. He subsequently filed an affidavit dated 4 May 2022 in

which he confirmed his challenge to the conclusion of the Settlement Agreement and his signature on the Relocation Agreement.

[20] On 20 May 2022, the respondent again appeared in person. The Legal Aid South Africa confirmed that he applied for assistance on 6 May 2022 as directed. However, they only contacted him telephonically the previous day in the afternoon to inform him that his application had been unsuccessful. Since this was short notice, the court gave him a further opportunity to obtain legal advice and representation. The matter was postponed to 27 May 2022 for hearing.

[21] In the meantime, the applicant filed an affidavit deposed to by Mr George Ivor Butela Kahn of Richard Spoor Inc attorneys. He refuted the verbal allegations made by the respondent that he was forced to agree to the Settlement Agreement and to sign Relocation Agreement. And that he did not understand these documents which were written in the English language which is not his mother tongue. It is not necessary to repeat the details of the affidavit of Mr Kahn because of the subsequent position taken by the respondent. It suffice to mention that Mr Kahn confirms that the respondent was assisted by their firm in the negotiations conducted in accordance with International Finance Corporation Performance Standards for resettlements (also known as the IFCPS5, and further explained in the IFC Guidance Note 5) with the applicant.

[22] According to Mr Kahn, he was part of a team consisting of his well experienced senior director Mr Richard Spoor, and Dr Gwendolyn Wellman (PhD), who is an expert in the IFC PS5 and community resettlements. He mentioned that it was clear during those settlement negotiations and that the respondent was aware and accepted that he was not the owner of the Property he occupied and only gained occupation by virtue of being a member of the Association. He stated that the respondent had agreed to relocate the Property and for that reason, inter alia, Dr Koos Pretorius (BVet), a veterinarian and independent farmer was requested to assess whether the alternative land was adequate for the respondent's purposes and needs. Mr Kahn confirmed that the applicant complied with the strict requirements set by Dr Pretorius in organising a new farm for the respondent's needs. He concluded that he signed the Settlement Agreement on behalf of the respondent in January 2018 and the respondent signed his Settlement Agreement in September 2021 well aware of the circumstances applying to him. He mentioned that he was treated fairly throughout the negotiations and he made his own valuable inputs. Therefore, the respondent was surrounded by numerous parties acting in his best interests, consulting with him and advising him from time to time. Mr Kahn mentioned further that it was only when the respondent decided not to comply with the terms of the agreements, against their advice and the risk and consequences of his new stance, that they on 15 February 2022 withdrew from acting on his behalf.

[23] On 23 May 2022 the respondent filed an opposing affidavit drafted with the assistance of his new attorney Mr Alexander Mathewson of PGMO Attorneys.

In this affidavit the respondent disputes the urgency of this application on the basis that the applicant allege that he was to be relocated during January 2022 and only brought this application in April 2022.

[24] Regarding the merits of the application, the respondent mentioned that he is willing to relocate, something that he told the applicant numerous times. He only demanded compliance by the applicant with the agreement between them by providing an accommodation similar to what he is presently occupying. He mentioned that he lives in a six roomed brick and mortar structure and the applicant has only provided a zinc structure, which according to him is too small for his family of four people. Secondly, he contended, the applicant should also have put burglar bars before the windows and doors, for his safety. Thirdly, the condition of the road leading to the farm is likely to cause damage to his vehicle. It is only if these demands are met that he will relocate.

[25] At the hearing of the application on 27 May 2022, the respondent appeared in person. The Registrar made telephonic enquiries at the PGMO Attorneys. Mr Mathewson advised that he did not have instructions to appear on behalf of the respondent. The respondent elected to personally present his case. The court gave him an opportunity during the proceedings to consult with the person who accompanied him. He indeed took advantage of this opportunity.

[26] In his address to the Court the respondent reiterated that he did not refuse to relocate but wanted the applicant to comply with the demands he made. He

made further ‘requests’ namely, that he be paid an amount of R1,5 million and monthly royalties since the applicant is going to make a lot of money with its mining operations. He further had a problem with the fact that the duration of the settlement agreement was for twenty years only, and was concerned about what would happen to him thereafter if he is still alive, or to his family.

[27] The sudden change by the applicant that he is willing to relocate provided that new demands are met is significant. I am willing to accept, and indeed the respondent personally indicated to the court on previous occasions, that he did not comply with the Settlement and Relocation agreements because those were not his instructions and were forced on him. He made it clear that it is only the Association and or the government that will tell him to vacate the land. That sharply contradicts his latest position that he had always been willing to vacate.

[28] As to the urgency of the matter, I am satisfied that the applicant has succeeded in making such a case.[4] It has been demonstrated that the continued employment of its employees and job opportunities created by its mining operations, the economy of the area, the Province and the country at large, the social upliftment of the communities in the area, are at enormous risk. A hearing in due course would cause irreparable harm to the applicant. Section 34 of the Constitution guarantees the applicant the right of access to court and to have its dispute resolved expeditiously in these circumstances.

[4] Section 5 of the PIE Act.

[29] The applicant required the property in order to exercise its legitimate and lawful mining rights and has been preparing the land surrounding the property for several years in accordance with its plans to optimize the return. All that is left is the operations to begin. It cannot do so for as long as the respondent is still occupying the property. To conduct its operations around and to the exclusion of the area occupied by the respondent would not only be a contravention of the Health and safety Act and Regulations but would also be dangerous to the respondent, his family members, livestock and his belongings in general.

[30] It is clear that further delays would exacerbate the financial losses to be suffered by the applicant. Given the circumstances of the respondent, the applicant would in all likelihood not be in a position to recover such losses. Without doubt, everyone is at the risk of suffering just for one man who wants to prolong his stay with a view to extracting more personal financial benefits from the applicant.

[31] The respondent has ultimately conceded that the applicant is in fact the owner of the property and he has to vacate the land. The applicant has at enormous expense, complied with the Settlement Agreement and the subsequent Relocation Agreement. It has spent in excess of R8.6 million to provide for the respondent. Although the respondent's continued occupation makes him an "unlawful occupier" for the purposes of the PIE Act, what is at stake is strictly speaking, not his eviction from the property but his relocation as agreed in the Relocation Agreement he concluded with the applicant.

[32] The respondent was requested to place before this Court, circumstances that would persuade the Court to conclude that it would not be just and equitable to order his 'eviction' or relocation from the property.[5] The only factors which he mentioned were the nature of the dwelling structure, the provision for burglar bars for security, a shed and repairs to the gravel road.

[33] It is evident from the Settlement Agreement and annexures thereto, that the dwelling structure that was ultimately constructed complies with what was envisaged. The structure and its details are as set out in Annexure 'C' to the Relocation Agreement and was confirmed to meet the respondent's needs by Dr Pretorius. The photographs of the completed structure show that the dwelling has burglar bars inside, solar heating system, toilet, shower and basin in the bathroom. The kitchen area is fitted with a Gas Stove and a Purified Water Supply System. The entire dwelling has ceramic tiled flooring.

[34] The Settlement Agreement as well as the Relocation Agreement specifically provided that their terms were in full and final Settlement and that the respondent shall not have any further claim or action against the applicant in relation to the new land. Despite these clauses, the applicant has offered to inspect the gravel road providing access to the new land and to repair any issues identified by the respondent at its costs. It further undertook to erect a metal shed on the new land with a metal or other roof covering and a concrete base, and where animal feed may be stored by the respondent.

[5] Id s 4(7).

[35] In the circumstances, the relocation of the respondent will not render him homeless. In fact, he will be moved to a place which is better than that he currently occupies and which accommodated his preferences. In conclusion, it would therefore be just and equitable to grant the relief sought. On the contrary, failure to grant the relief sought by the applicant would cause more harm than good to the applicant, its employees, the community, the economy of the province and the country at large: just for one person.

[36] What remains is the period within which the respondent has to be relocated. He knew from the time that the settlement negotiations took place and when other members of the Association relocated that he would also be required to relocate. The inordinate delays has been caused by his reluctance or refusal to cooperate. It is not him but the applicant who has to carry the costs associated with his relocation. A period of fourteen days from the date of this order would in the circumstances be reasonable.

[37] Regarding costs, the applicant has indicated that despite the respondent's conduct throughout the period of delay and the manner in which he conducted this lititgation, it would nevertheless not persist with a cost order against him. This is a commendable gesture.

[38] In the result the following order is made:

1. The first respondent, and all persons occupying the Remaining Portion 2 of the Gamagara Farm 541 ("**the Property**"), are evicted.

2. The first respondent, and all persons occupying the Property, must vacate the Property, as aforesaid, within a period of 14 days from the date of this order.

3. Should the first respondent and all persons occupying the Property neglect and/or fail to vacate the Property within the aforesaid period, the Sheriff of the High Court or his lawfully appointed deputy is authorised and directed to evict them from the Property, and to demolish all structures on the Property.

4. The applicant and first respondent are to comply with the terms of the Relocation Agreement (as defined in the founding affidavit), and in addition to those terms, the applicant shall after the relocation of the first respondent as aforesaid,

   4.1. inspect the gravel road providing access to Farm Sacha 468 ("**the Farm**"), and where any issues are identified by the first respondent, the applicant will, at its own costs, attend to the necessary repairs to the surface of the gravel road that provides access to the Farm to enable a normal vehicle to traverse the relevant portion or portions of such gravel road; and

   4.2. at its cost, to erect a metal shed on the Farm, with a metal or other roof covering and a concrete base, and where animal feed may be stored by the first respondent.

L. P TLALETSI

JUDGE PRESIDENT

On behalf of the Applicants:	**Adv. A Pullinger**
Assisted by:	**Adv. P.J Daniell**
Instructed by:	Haarhoffs Inc.
On behalf of the Respondent:	**In Person**