



IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

Case No: LCC174/2018

- (1) Not reportable.
(2) Not of interest to other judges.

17/03/2021

DATE

SIGNATURE

In the application for leave to appeal between:

LOSKOP LANDGOED BOERDERY

First Applicant

Registration Number: 2016/456707/07

W.A. PIETERS

Second Applicant

RIAAN PIETERS

Third Applicant

and

PETRUS MOELESO

First Respondent

DAVID M MOFOKENG

Second Respondent

MAKI MOELESO

Third Respondent

NINI MABE

Fourth Respondent

In re:

PETRUS MOELESO

First Applicant

DAVID M MOFOKENG

Second Applicant

MAKI MOELESO

Third Applicant

NINI MABE

Fourth Applicant

and

LOSKOP LANDGOED BOERDERY

First Respondent

Registration Number: 2016/456707/07

W.A. PIETERS

Second Respondent

RIAAN PIETERS

Third Respondent

JUDGMENT ON LEAVE TO APPEAL

Yacoob J:

1. The applicants seek leave to appeal against my judgment in this matter in which I found that the reduction of grazing rights of occupiers without a court order was, in the circumstances of this case, unlawful, and ordered that alternate grazing be provided to the occupiers.
2. The application for leave was filed late. An application for condonation was filed simultaneously and is not opposed. I see no reason not to condone the late filing of the application for leave.
3. I do not propose to canvass every ground of appeal in this judgment. Suffice it to say that I have considered the application for leave, and have considered the original judgment in light of that application.
4. On most of the grounds raised by the applicants, I am not satisfied that another court would come to a different conclusion on the issue of whether a court order was necessary before grazing was reduced. To state the reasons would amount to a restatement of the original judgment.

5. The applicants contend that this court's order in paragraph one would interfere with the proceedings they have instituted in the magistrate's court. I cannot see how that is the case, as this court has only found that the applicant's conduct is unlawful to the extent that it was unilateral and without a court order. This does not prevent them from obtaining a court order and proceeding in terms of it.
6. The applicants also rely on on the case of *Mthethwa and Others v Bester and Others*¹ to argue that there are conflicting judgments on the issue and therefore that it is necessary to have a final decision from a higher court on the issue. In *Mthethwa* it was found that no court order was required to move cattle to alternative grazing land, which had smaller capacity, in order to save the land from overgrazing. In my view the facts in this case make *Mthethwa* at least somewhat distinguishable. The findings were based on the moving of cattle to alternative land, rather than a simple deprivation. Although there were allegations of reduction of land made available for grazing, in *Mthethwa* there was alternative land made available for the grazing that was taken away. That is not the case in this matter.
7. However I must accept that there is sufficient similarity between the two to cause confusion, and that therefore a definitive ruling should be sought from the Supreme Court of Appeal.
8. I am satisfied that another court may come to a different conclusion regarding the order dealing with alternative grazing land, as there may not have been sufficient evidence on which to base the order. In addition, there is the possibility that it would

¹ (LCC112/2011) [2018] ZALCC 39 (20 April 2018)

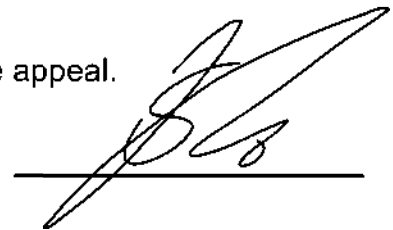
conflict with the pending magistrate's court proceedings, as it does not provide only for temporary provision of grazing.

9. The applicants concede that paragraph 3 of the order, granting the occupiers leave to institute action proceedings to determine their alleged right to receive winter fodder, is not final in effect and therefore not appealable.

10. Since I am granting leave to appeal both the substantive components of the order, it follows that the applicants also have the right to appeal the costs order.

11. I therefore make the following order:

1. The applicants' late filing of the application for leave is condoned.
2. Leave is granted to appeal against paragraphs 1, 2 and 4 of the order made in the judgment in this matter dated 2 December 2020.
3. Costs of the application for leave are costs in the appeal.

A handwritten signature in black ink, appearing to be 'Yacoob J', written over a horizontal line.

YACOOB J

LAND CLAIMS COURT OF SOUTH AFRICA

Appearances

Counsel for the applicants : JS Stone

Instructed by : Niemann Grobbelar Attorneys

Counsel for the respondents : G Shakoane SC

Instructed by : Finger Attorneys

Date of hearing : 17 March 2021

Date of judgment : 17 March 2021