




IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LCC 116/2021

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
1/12/2021 DATE	 SIGNATURE

In the matter between:

JOYCE KHANYISILE MHLABA

APPLICANT

and

THE REGISTRAR OF DEEDS PIETERMARITZBURG

1ST RESPONDENT

THE DEPARTMENT OF AGRICULTURE, LAND
REFORM & RURAL DEVELOPMENT: KWAZULU
NATAL

2ND RESPONDENT

THE DIRECTOR GENERAL: AGRICULTURE, LAND
REFORM & RURAL DEVELOPMENT: KWAZULU
NATAL

3RD RESPONDENT

THE REGIONAL LAND CLAIMS COMMISSIONER
(KWAZULU-NATAL)

4TH RESPONDENT

THE COMMISSION ON RESTITUTION OF LAND RIGHTS

5TH RESPONDENT

SAMSON NKABINDE	6TH RESPONDENT
PHILANI NKABINDE	7TH RESPONDENT
NHLANHLA NKABINDE	8TH RESPONDENT
APISLO NKABINDE	9TH RESPONDENT
MUZI NKABINDE	10TH RESPONDENT
SIPHO NKABINDE	11TH RESPONDENT
SIBONISO NKABINDE	12TH RESPONDENT
NELI NKABINDE	13TH RESPONDENT
THAMI NKABINDE	14TH RESPONDENT
NGCINILE NKABINDE	15TH RESPONDENT
SHEBE DHLAMINI	16TH RESPONDENT
MFIKISENI DHLAMINI	17TH RESPONDENT
SIFISO DHLAMINI	18TH RESPONDENT
MZAMO DHLAMINI	19TH RESPONDENT
XOLANI DHLAMINI	20TH RESPONDENT
MPUME DHLAMINI	21ST RESPONDENT
MBONGELENI SKHAKHANI	22ND RESPONDENT
MONDLI NDLODLO	23RD RESPONDENT
BUYI MASONDO	24TH RESPONDENT
SANELE NKOSI	25TH RESPONDENT
SANDILE NKOSI	26TH RESPONDENT
THABISILE DHLAMINI	27TH RESPONDENT
NONJABULO MASONDO	28TH RESPONDENT

JUDGMENT

Flatela AJ

Introduction

[1] The Applicant seeks an interim interdict against the Registrar of Deeds and various Respondents for an order in the following terms:

1. Interdicting the transfer of the remainder of the farm Sweethome No 796 and the farm Bedrog No. 18052, registration division HG Province of KwaZulu Natal ("the property") to the occupiers of the farm Emzamo or any other person, pending the outcome of the Applicant's and the Mncube family's land claim application made to the Fourth Respondent, alternatively pending the outcome of a review application concerning the decision to award the property to any other occupant instead of the Applicant and the Mncube family;
2. Interdicting the Respondents, whether individually or collectively, from evicting the Applicant and/or her livestock from the property pending the outcome of the Applicant's and the Mncube family's land claim applications, alternatively pending the outcome of a review application concerning the decision to award the property to any other occupant instead of the Applicant and the Mncube family;
3. Compelling the Second to Fifth Respondent, as the case may be, to disclose all relevant information concerning how the property was awarded to occupiers of Emzamo and/or any interested party;
4. Further and/or alternate relief; and
5. Costs against the Second to Fifth Respondent.

Background

- [2] The Applicant is Mrs Mahlaba, a 70-year-old woman, cattle farmer residing in Kwa Grace village, KwaZulu-Natal. Mrs Mahlaba alleges that her family occupied the remainder of the farm Sweethome No 796 and the farm Bedrog No 18052-registration division HG province KwaZulu Natal ("the property"). Her family lived on the property prior to the apartheid era until they were dispossessed of their land in 1965. The Mncube family also lived in the property. Mrs Mahlaba's family graves are in the property and there is still evidence of the existence of structures that were built.
- [3] Mrs Mahlaba alleges that her family were cattle farmers who lived in the property and they enjoyed grazing rights in the property. They were dispossessed of their land and the Malan family took occupation of the property as owners of the property.
- [4] In 1989, her late father-in-law entered into a rental agreement with the Malan family for grazing land for the cattle. He paid Mr Malan rental for the grazing land. The cattle have been grazing on the property since 1989 to date.
- [5] Her late husband, who took over farming activities, sadly passed away in 2014. Mrs Mahlaba continued with farming activities.
- [6] During 2008, Mr Malan subdivided the property and created a new farm called Emzamo farm. This portion was given to farm dwellers of the Sweethome property who were living on that property at the time.
- [7] On 23 October 2013, Henry Thomas Malan sold the property to the National Government of the Republic of South Africa and left the farm.

- [8] The farm was transferred to the Second Respondent in 2014. The Second Respondent sent Mr Themba Dhlamini, Mr Blessing Bukhusini Gini and Ms Lindiwe Dhlamini to the farm as caretakers. Mr Gini and Mr Dhlamini later left, leaving Ms Dhlamini as caretaker on the farm. At the time that the National Government of the Republic of South Africa purchased the property, Mrs Mhlaba's family cattle were still grazing in the farm.
- [9] Mrs Mahlaba entered into a joint working agreement with Ms Dhlamini and an agreement was reached between them, wherein Ms Dhlamini would attend to the property and livestock whilst Mrs Mahlaba ensures that the livestock receive relevant vaccination. Mrs Mahlaba is also responsible for buying food for the livestock and attends to the payment of herdsman.
- [10] On 13 November 2014, Mr Mncube lodged a family claim on behalf of the Mahlaba and Mncube family. The receipt of the lodgement of the claim was acknowledged by the Regional Land Claims Commissioner. Mr Mncube was given reference number R/4/150/238/35675.
- [11] Additional information was required viz:
- 11.1 A copy of any written notice received at the time of dispossession such as notice of expropriation or trek pass. A copy of any documents that proves the existence of any other registered right i.e., permission to occupy ("PTO") or quitrent right.
- 11.2 Mrs Mahlaba alleges that to the best of her knowledge the required documents were submitted to the Regional Land Claims Commissioner ("RLCC") of KwaZulu-Natal.
- [12] Mrs Mahlaba alleges that to the best of her knowledge, the information that was required was submitted to the offices of the RLCC.

- [13] In June 2020, the occupiers of the farm Emzamo attempted to occupy Bedrog farm and seize it from the Applicant. Since then, the occupiers of Emzamo farm have damaged the property by cutting the fence and they further removed the cattle from the property. On several occasions, the Applicant requested that the South African Police Service assist them by returning the cattle to the farm. Mrs Mahlaba is of the view that the beneficiaries of Emzamo believed that the farm currently belongs to them. Mrs Mahlaba is in the dark regarding the Emzamo land claim.
- [14] On 25 June 2020, the Applicant addressed a letter of complaint to the office of the Second Respondent regarding the conduct of the occupiers of Emzamo farm. In this complaint, she enclosed a copy of acknowledgment of the land claim. She also gave a historical background regarding her family's occupation of the land.
- [15] A meeting was held on 2 November 2020 in the offices of the Second Respondent concerning the issue but the Applicant was not allowed to participate in the meeting.
- [16] Following the meeting, Mrs Mahlaba was told by the officials of the Fourth Respondent to remove her livestock from the property.
- [17] She instructed her attorneys to address the issue, and advised that she has been in undisturbed possession of the property for years, enjoying rights in the land. Furthermore, Ms Dhlamini consented her to occupying the land.
- [18] In response to the letter, Mr Lukhele, a government official, advised that the property is in the process of being transferred to the farm dwellers and was advised to look for alternative land where the Department will make alternative land available to them for which they can apply.

- [19] Furthermore on 17 November 2020, a letter was received from one Mr Malibongwe Kubheka, a legal administration officer in the office of the fourth respondent, in response to the Applicant's request for a roundtable meeting to resolve the issue. The letter read as follows: -

"19.1 Working against the instructions of the district director on the above-mentioned farm will have serious trepidations. Challenging the authority of the District Director will have dire consequences.

19.2 Consequently we can have a meeting and discuss your concerns on this matter. Further provide us with proof of ownership of that land to support that Ms Lindiwe Dlamini is the rightful and legitimate owner of such land. Sub-leasing state land is a punishable offence.

19.3 Our meeting shall be conducted without prejudice. Be mindful that of the fact that such farm is still the property of the state. Kindly suggest the three dates in which to choose, and kindly notify our office about your availability in order to convene such meetings.

- [20] The Applicant sent an application in terms of Promotion of Administrative Justice Act 3 of 2000 regarding the status of the land claim. Her application was ignored by the officials of the Fourth Respondent.

- [21] The Applicant then brought this application to interdict the transfer of the property to the Emzamo farm pending the finalization of her application.

Locus Standi

- [22] It is common cause that a land claim was lodged in November 2014 in respect of properties following an enactment of the Restitution of Land Rights Amendment Act 15 of 2014 ("Amendment Act"), which re-opened the lodgement of land claims to claimants who missed the deadline for the lodgement of claims of 31 December 1998.

- [23] The enactment of Amendment Act was challenged in *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others*¹ ("LAMOSA 1") in the Constitutional Court on the basis that the National Council of Provinces ("NCOP") and the provincial legislatures failed to facilitate public involvement as envisaged by section 72(1)(a) of the Constitution of the Republic of South Africa, 1996 (the "Constitution") in passing the Bill that preceded the Amendment Act. The Court held that the National Council of Provinces' public participation process was unreasonable and therefore constitutionally invalid. The Court declared the Amendment Act invalid prospectively from 28 July 2016.
- [24] Despite the declaration of the invalidity of the Amendment Act, the rights of the land claimants who already lodged their claims were protected by the Court. The Court granted the following order regarding the lodged claims:
1. *It is declared that Parliament failed to satisfy its obligation to facilitate public involvement in accordance with section 72(1)(a) of the Constitution.*
 2. *The Restitution of Land Rights Amendment Act 15 of 2014 is declared invalid.*
 3. *The declaration of invalidity in paragraph 2 takes effect from the date of this judgment.*
 4. *Pending the re-enactment by Parliament of an Act re-opening the period of lodgement of land claims envisaged in section 25(7) of the Constitution, the Commission on Restitution of Land Rights, represented in these proceedings by the Chief Land Claims Commissioner (Commission), is interdicted from processing in any manner whatsoever land claims lodged from 1 July 2014.*
 5. *The interdict in paragraph 4 does not apply to the receipt and acknowledgement of receipt of land claims in terms of section 6(1)(a) of the Restitution of Land Rights Act 22 of 1994.*

¹ 2016 (5) SA 635 (CC).

6. *Should the processing, including referral to the Land Claims Court, of all land claims lodged by 31 December 1998 be finalised before the re-enactment of the Act referred to in paragraph 4 above, the Commission may process land claims lodged from 1 July 2014.*

7. *In the event that Parliament does not re-enact the Act envisaged in paragraph 4 within 24 months from the date of this order, the Chief Land Claims Commissioner must, and any other party to this application or person with a direct and substantial interest in this order may, apply to this Court within two months after that period has elapsed for an appropriate order on the processing of land claims lodged from 1 July 2014.*

8. *The National Council of Provinces must pay the applicants' costs, including costs of two counsel."*

[25] Following the judgement in *LAMOSHA 1*, this Court convened a special sitting of four judges in *In Re Amaqamu Community Claim (Land Access Movement South Africa and Others as Amici Curiae)* 2017 (3) SA 409 (LCC) to consider the implications of *LAMOSHA 1* judgment. The Court held that:

"1. No new claim lodged between 1 July 2014 and 28 July 2016 can be adjudicated upon or considered in any manner whatsoever by this Court in any proceedings for the restitution of rights in land in respect of old claims lodged before 31 December 1998;

2. New claimants who contest old claims lodged before 31 December 1998 may be admitted as interested parties solely to the extent that their participation may contribute to the establishment or rejection of the aforementioned old claims or in respect of any other issue the presiding judge may allow to be addressed in the interest of justice."

[26] Parliament failed to enact the Act within 24 months as ordered by the Constitutional Court. Two months before the lapse of the period granted, the Speaker of the National Assembly approached the Constitutional Court seeking an extension of the 24-month period in *Speaker of the National Assembly and*

*Another v Land Access Movement of South Africa and Others ("LAMOSA 2").*²

The Court refused to extend the period. The following order was granted:

- "1. The application by the applicants for an extension is dismissed.*
- 2. The counter-application by the first to sixth respondents is upheld to the following extent, subject to the Parliament of the Republic of South Africa legislating otherwise:*
 - (a) The Commission on Restitution of Land Rights (Commission) is prohibited from processing in any way any claims lodged in terms of section 10 of the Restitution of Land Rights Act 22 of 1994 (Restitution Act) between 1 July 2014 and 28 July 2016 (interdicted claims) until the earlier of the dates when—*
 - (i) it has settled or referred to the Land Claims Court all claims lodged on or before 31 December 1998 (old claims) by way of a referral of the claim in terms of section 14; or*
 - (ii) the Land Claims Court, upon application by any interested party, grants permission to the Commission to begin processing interdicted claims, whether in respect of the whole or part of the Republic of South Africa and whether in respect of part or all of the process for administering an interdicted claim.*
 - (b) Until the date referred to in paragraph (a), no interdicted claims may be adjudicated upon or considered in any manner whatsoever by the Land Claims Court in any proceedings for the restitution of rights in land in respect of old claims, provided that interdicted claimants may be admitted as interested parties before the Land Claims Court solely to the extent that their participation may contribute to the establishment or rejection of the old claims or in respect of any other issue that the presiding judge may allow to be addressed in the interests of justice.*

² 2019 (6) SA 568 (CC).

- (c) *Notwithstanding the provisions of section 11(5) and 11(5A) of the Restitution Act, no interdicted claimant shall be entitled to any relief having the effect of—*
 - (i) *altering or varying—*
 - (a) *the relief granted to any claimant in terms of section 35 of the Restitution Act in respect of a finalised old claim;*
 - (b) *the terms of an agreement concluded in terms of section 42D of the Restitution Act; or*
 - (c) *an award in terms of section 42E(1)(a) or (b) of the Restitution Act,**unless the Land Claims Court in exceptional circumstances orders otherwise; and / or*
 - (ii) *awarding to such interdicted claimant land or a right in land that is subject to a pending claim for restoration by an old claimant.*
- (d) *The Chief Land Claims Commissioner must file a report with the Land Claims Court, to be dealt with as the Judge President of that Court may deem fit, at six-monthly intervals from the date of this order, setting out—*
 - (i) *the number of outstanding old claims in each of the regions on the basis of which the Commission's administration is structured;*
 - (ii) *the anticipated date of completion in each region of the processing of the old claims, including short-term targets for the number of old claims to be processed;*
 - (iii) *the nature of any constraints, whether budgetary or otherwise, faced by the Commission in meeting its anticipated completion date;*
 - (iv) *the solutions that have been implemented or are under consideration for addressing the constraints; and*
 - (v) *such further matters as the Land Claims Court may direct; until all old claims have been processed."*

Assessment

- [27] The Applicant alleges that her family and Mncube family lived in the property for many years enjoying rights in land and grazing rights. They were dispossessed of their property and the Malan family occupied the farm as landowners.
- [28] The Applicant's family had grazing rights on the properties since 1989. They paid rent for their cattle which grazed on the property.
- [29] In a letter written by Mr Malan regarding the portion of land that was given to the farm dwellers, Mr Malan states that in 2008, he subdivided the Sweethome property and registered it as Emzamo Farm. The purpose of this particular subdivision was to offer the portion of the farm to the farm dwellers who worked for the previous owner, Mr Wayne Mills, from whom Malan bought the properties. Mr Malan identified these families as the Dlodlo family, the Nkabinde Family, and the Masondo and Dhlamini family. He offered the Department that piece of land to be registered in a trust for those families. He further stated that there were no farm dwellers in Bedrog farm.
- [30] In 2014, the Department bought the portions and the remaining extent of the farm Bedrog and Sweethome from Mr Malan. The properties are currently registered in the name of the National Government of South Africa. At the time of the sale, Mrs Mahlaba enjoyed grazing rights in Bedrog farm.
- [31] In November 2014 the land claim on behalf of the Mahlaba and Mncube family was lodged and its receipt was acknowledged.
- [32] The officials of the Department sent caretakers to the properties. Mrs Mahlaba developed a joint working relationship with them.

- [33] Recently, Mrs Mahlaba and Ms Dhlamini have endured harassment from the occupants of the Farm Emzamo who believe that they are now the owners of the properties. The Applicant has been threatened with eviction by farm dwellers. During the hearing, the attorney for Mrs Mahlaba advised that Mrs Mahlaba's cattle are being poisoned and Mrs Mahlaba suspects that the farm dwellers are behind the poisoning as they had previously cut the fence as well as removed the cattle from the grazing land. The beneficiaries of Emzamo farm are now leasing the land to a certain maize farmer who also threatened to assault Ms Dhlamini, the caretaker on Bedrog farm.
- [34] Having lodged the land claim in 2014, Mrs Mahlaba tried to engage government officials regarding the status of the properties and her land claim in the light of the threats of being evicted. Mrs Mahlaba was advised that no one will be evicted until the transfer of properties to the beneficiaries of Emzamo farm is finalised.
- [35] Furthermore, one Mr Malibongwe Kubheka, who is employed as a legal administrator office, has also threatened Mrs Mahlaba for "*challenging the authority of the District Director*" as "*it will have dire consequences*" and he demanded proof of ownership from Mrs Mahlaba.
- [36] On 22 November 2021, through her attorneys, Mrs Mahlaba made an application in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA") to access information regarding the issue but to no avail.
- [37] On 2 February 2021, she filed an internal appeal with the Fourth Respondent regarding its failure to respond to the PAIA application.
- [38] The organs of state are not free to act as they please. The Respondents are bound to "protect, respect, promote and fulfil the rights contained in the Bill of Rights".³

³ Section 7(2) of the Constitution.

- [39] Madlanga J in LAMOSA 1 stated that:
"The right to restitution of land is sourced from the Constitution itself.⁴ The Amendment Act gives effect to this right. As I state in the introduction, the subject to which the right relates touches nerves that continue to be raw after many decades of dispossession. The importance of the right to restitution, therefore, cannot be overstated. Restitution of land rights equals restoration of dignity."
- [40] Mrs Mahlaba has been treated with utter contempt by the Respondents and her right to access to information and the right to fair administrative action have been undermined at every turn.
- [41] During argument when this application was moved for the first time, I requested counsel to file heads of arguments to address the Court on whether this court has jurisdiction to entertain this matter in the light of LAMOSA 2 judgement.
- [42] The Applicant submitted that she is not seeking that her claim be adjudicated upon now. She seeks to interdict temporarily the claims relating to the Emzamo farm. Pending the outcome of the Applicant's and the Mncube family's land claim, alternatively pending the outcome of a review application concerning the decision to award the property to any other occupant instead of the Applicant and the Mncube family.
- [43] The Applicant has no knowledge about whether the property to be transferred to the Emzamo beneficiaries is as a result of Restitution of Land Rights Act 22 of 1994 or through another land reform program. The relief sought is a precursor to ascertain if she is able to be joined as an interested party in the event the Emzamo beneficiaries are old claimants.

⁴ Section 25(7) of the Constitution.

- [44] On the question of whether the new claims must be left in its entirety, the Court noted that as long as the new claims have not been invalidated, their existence cannot be denied. The Court noted that:

*"This leaves the question whether new claimants should be ignored in their entirety in the adjudication of old claims. The parties were ad idem that new claimants who intend to advance claims that, if they could be dealt with by this Court, would compete with or overlap land claimed under old claims presently being adjudicated by this Court, do have an interest in the outcome of such litigation. The interests may be tenuous and the potential assertion thereof unclear, but as long as the lodging of the new claims is not invalidated, its existence cannot be denied. Courts must take cognisance of those whose interests may be affected by its judgments. In the light of the fact that this court is unable to consider the validity or otherwise of the new claims, the potential participation of new claimants in existing proceedings relating to old claims must of necessity be restricted to the question whether the old claim can be validly contested by a new claimant. In practice this Court will therefore only be able to admit new claimants to participate in the proceedings before it who contest the old claimants' right to restitution of the land that is the subject matter of the old claim. New claimants will only be allowed to challenge the right of the old claimants to restitution of all or part of the land concerned. Essentially such claimant will therefore fulfil the role of an amicus curiae to assist the Court in determining the question whether the old claimant has established a case or not. Should the new claimant recognise the right to restitution of the old claimant while intending to advance a claim over the same land by the enforcement of the new claim, such claimant's interest may be too tenuous to admit his or her participation in the proceedings."*⁵

⁵ In *Ro Amaqamu Community Claim (Land Access Movement South Africa and Others as Amici Curiae)* 2017 (3) SA 409 (LCC) at para 55.

- [45] The Applicant has an interest in the land that must be protected. I am of the view that the Applicant has proved that she has an interest in the land in question.

Requirements of an Interim Interdict

- [46] This court in *Singh and Others v North Central and South Central Local Councils and Others*⁶ neatly summarised the requirements of the interim interdict as envisaged by section 6(3) of the Restitution Act as follows:

- "1. The applicant must be an interested party.
2. He/she must have reasons to believe that the development sought to be interdicted will defeat the achievement of the objects of the Act.
3. A claim must have been lodged in respect of the land concerned.
4. The owner of the land must have been notified of the claim and the provisions of section 6(3).
5. Reasonable notice must have been given to all interested parties.
6. The Court must exercise a judicial discretion and decide and decide whether it should grant an interdict or any other form of relief in the particular circumstances of the case. This requirement follows from the use of the word "may". In exercising its discretion, the court would need to consider those factors listed in section 33 of the Act which are relevant."

- [47] The Applicant has an interest in the matter. The land claim on behalf of the Applicant's family was lodged in 2014 before the Amendment Act was declared invalid. She avers that her family lived in the property for many years before they were dispossessed of their land in 1965. She further avers that her family enjoyed grazing rights since 1989.

- [48] The Applicant has reasons to believe that the transfer of property sought to be interdicted will defeat the objects of the Act in that:

⁶ [1998] ZALCC 21 at para 108.

48.1 If the properties are transferred to the Respondents who are beneficiaries of Emzamo Farm without recognising the Applicant's interest in the land, it will be difficult to reverse the situation as the beneficiaries are already cementing themselves as owners, thereby treating the Applicant with contempt by unlawfully removing her cattle from the farm and constantly harassing her to leave the farm.

46.2 The Respondents are subletting the properties to other people and are chasing the Applicant away from the property.

46.3 The occupants are subletting land and are mining the gravel stones.

[49] The owner is the National Government of South Africa. The Department of Agriculture, Land Reform & Rural Development is the department in charge of the properties. The office of the Regional Land Claims Commission: KwaZulu-Natal is at the centre of this issue.


[50] Reasonable notice was given to all interested parties.

[51] In the circumstances, I now make the following order:

1. A rule nisi is issued to the Respondents to show cause on 15 December 2021 why the following order should not be made an order of Court –

1.1 Interdicting the transfer of the remainder of the farm Sweethome No 796 and the farm Bedrog No. 18052, registration division HG Province of KwaZulu-Natal ("the property") to the occupiers of the farm Emzamo or any other person, pending the outcome of the Applicant's and the Mncube family's land claim application made to the Fourth Respondent, alternatively pending the outcome of a review application concerning the decision to award the property to any other occupant instead of the Applicant and the Mncube family;

- 1.2 Interdicting the Respondents, whether individually or collectively, from evicting the Applicant and/or her livestock from the property pending the outcome of the Applicant's and the Mncube family's land claim application, alternatively pending the outcome of a review application concerning the decision to award the property to any other occupant instead of the Applicant and the Mncube family; and
- 1.3 Compelling the Second to Fifth Respondent, as the case may be, to disclose all relevant information concerning how the property was awarded to the occupiers of Emzamo and/or any interested party.

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

Flatela L

Acting Judge

Land Claims Court

APPEARANCES

For the Applicant : Adv Y Abass

Instructed by : Igsaan Sadien Attorneys , Cape Town

Respondents : No Appearance

Date of Hearing : 15 September 2021

Date of Judgement : 1 December 2021