



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

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

SIGNATURE

DATE: 14 June 2022

CASE NO: LCC36/2019

In the matter between:

BHUTI ZEPHANIA MOKOENA

First Plaintiff

PAUL SAMEUL MOKOENA

Second Plaintiff

NOMASONTO SINNAH MOKOENA

Third Plaintiff

BETTY JOANA MOKOENA

Fourth Plaintiff

OTHER DESCENDANTS OF MOKOENA FAMILY

Fifth Plaintiff

and

LAMBRECHTS FAMILIE TESTAMENTERE TRUST

First Defendant

CORNELIUS GABRIEL VOLSCHENK

Second Defendant

THE DIRECTOR-GENERAL OF THE DEPARTMENT

OF RURAL DEVELOPMENT AND LAND REFORM

Third Defendant

THE MINISTER OF THE DEPARTMENT
OF RURAL DEVELOPMENT AND LAND REFORM

Fourth Defendant

JUDGMENT

Cowen J

1. The plaintiffs have approached this court in action proceedings for relief in terms of the Land Reform (Labour Tenants) Act 3 of 1996 (the Labour Tenants Act). The relief is sought in respect of property known as Portion 3 of Farm Morgenster 204 IS, Hendrina, Mpumalanga Province (the property).
2. The plaintiffs are Mr Bhuti Zephania Mokoena, Mr Paul Samuel Mokoena, Mrs Nomasonto Sinnah Mokoena, Mrs Betty Joana Mokoena and remaining descendants of the Mokoena Family. The first defendant is the Lambrechts Familie Testamentere Trust which is the owner of the property. The second defendant is Cornelius Gabriel Volschcenk, the property manager. The third defendant is the Director-General of the Department of Rural Development and Land Reform (the DG) and the fourth defendant is the Minister of the Department of Rural Development and Land Reform (the Minister).
3. The plaintiffs seek the following relief:

- “1. An order declaring them as labour tenants in terms of section 33 (2A) of the Labour Tenants Act in respect of the property.

2. An order declaring the nature and extent of the plaintiffs' land use rights and the servitudes they are entitled to on the aforesaid property to be:
 - 2.1 The right to reside in the family homestead on the property and to make reasonable extensions to that homestead;
 - 2.2 The right to maintain their homestead and to make reasonable alterations thereto;
 - 2.3 The right to graze 50 to 60 heads of large stock and 40 heads of small stock;
 - 2.4 The right to plough the land as allocated to the plaintiffs' family by successive owners of the property, approximately 6 hectares and to rotate such land use, if necessary;
 - 2.5 The right to sufficient access to water for domestic purpose including livestock and crop irrigation;
 - 2.6 The right to have servitudes registered over the property for purpose of exercising the rights described in paragraph 2.1 and 2.5 above.

3. An order against the third defendant ordering him to process the application for acquisition of land lodged by the first to fourth plaintiffs in 2001.

4. An order that personal servitudes be registered over the property in favour of the plaintiffs in the terms outlined above.
5. The third defendant be ordered to process the plaintiffs' application for acquisition of the land or the property without delay.
6. Costs of suit in the event that the claim is opposed.
7. Further and / or alternative relief."

4. The first and second defendants are both opposing the action. The third and fourth defendants are abiding the action. The action has been under case management, during the course of which a date was set for determining various special pleas raised by the first and second defendants in their pleas, being 7 June 2022.
5. In the final result, only two special pleas raised by the second defendant were argued on that day – the second defendant's first and second special pleas - both of which relate to the relief sought in prayers 2 and 4 set out above and which are related. Mr Malowa SC appeared for the plaintiffs. Mr Richard appeared for the first defendant and Ms Oschman appeared for the second defendant.
6. In short, the issues raised by the second defendant in its first and second special pleas are framed as jurisdictional issues and are these:

- 6.1. Whether the relief sought in prayers 2 and 4 constitute relief contemplated in section 16 of the Labour Tenants Act and as such can only be adjudicated during proceedings referred to this Court pursuant to section 16 and 17 of that Act.
- 6.2. Whether this Court's jurisdiction, or competence, at this stage, is limited to the grant of relief in terms of section 33(2A) in terms of which this Court determine whether a person is a labour tenant irrespective of whether that person has lodged an application in terms of section 17 of the Labour Tenants Act and whether the courts' competence extends to a determination of the rights of labour tenants or related issues.
7. Ms Oschman submitted that this Court only has the jurisdiction or competence to grant the relief sought in prayers 2 and 4 during referral proceedings, which would only ensue after the DG has referred an application made in terms of section 16 of the Labour Tenants Act to the Court in terms of section 18(7). The proceedings before this Court are not proceedings of this nature, which concern a prior question whether the plaintiffs' application allegedly lodged in terms of section 16 for an award of the property has been duly processed. These issues are the subject of prayers 3 and 5 set out above. Beyond this relief, Ms Oschman submitted that at this stage this Court is limited to granting the relief sought in prayer 1, which – if the plaintiffs succeed in proving their case – is competent in terms of section 33(2A) of the Labour Tenants Act. This Court, she submitted has no jurisdiction or competence to grant relief determining the

rights of a labour tenant to use land. Mr Richard aligned the first defendant with the submissions advanced on behalf of the second defendant.

8. Mr Malowa SC submitted that the issues raised by the second defendant are not, in nature, properly regarded as special pleas and ought to be dealt with at trial. But in any event, he submitted, the relief sought is competent, not least in terms of section 29 of the Labour Tenants Act and is incidental to a determination of the plaintiffs' status as labour tenants.

9. Section 33(2A) provides:

“At the instance of any interested person, including a person who avers that he or she is a labour tenant, irrespective as to whether or not such person has lodged an application in terms of section 17, the court may determine whether a person is a labour tenant.”

10. Section 17 of the Labour Tenants Act governs an application for the acquisition of land and servitudes referred to in section 16. Section 16, in turn, is titled “Right to acquire land” and provides:

“(1) Subject to the provisions of this Act, a labour tenant or his or her successor may apply for an award of

- (a) the land which he or she is entitled to occupy or use in terms of section 3;
- (b) the land which he or she or his family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or his or her family was deprived contrary to the terms of an agreement between the parties;
- (c) rights in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm; and
- (d) such servitudes of right of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent

with the rights which he or she enjoys or has previously enjoyed as a labour tenant, or such other compensatory land or rights in land and servitudes as he or she may accept in terms of section 18(5): Provided that the right to apply to be awarded such land, rights in land and servitudes shall lapse if no application is lodged with the Director-General in terms of section 17 on or before 31 March 2001.”

11. Section 29 is titled Jurisdiction and provides:

“The Court shall have jurisdiction in terms of this Act throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power to grant interlocutory orders and interdicts, and shall have all such powers in relation to matters falling within its jurisdiction as are possessed by a provincial division of the Supreme Court having jurisdiction in civil proceedings at the place where the affected land is situated, including the powers of such a division in relation to any contempt of the Court.”

12. In the view I take of the matter, it is not necessary for me to consider whether the issues raised were correctly raised as special pleas. This is because it cannot be that a labour tenant who seeks a determination of his or her status as a labour tenant is limited to the relief specifically contemplated by section 33 (2A). A labour tenant enjoys the rights, inter alia, set out in section 3 of the Labour Tenants Act. Section 3(1) thus provides:

“Notwithstanding the provisions of any other law, but subject to the provisions of subsection (2), a person who was a labour tenant on 2 June 1995 shall have the right with his or her family members –

- (a) To occupy and use that part of the farm in question which he or she or his or her associate was using and occupying on that date;
- (b) To occupy and use that part of the farm in question the right to occupation and use of which is restored to him or her in terms of this Act or any other law.”

13. These rights do not depend for their existence on the outcome of an application in terms of section 17 (read with section 16) of the Labour Tenants Act. And they are not the only rights of that nature that labour tenants enjoy. Thus a person able to establish at trial that they are a labour tenant, and thus entitled to the relief sought in prayer 1, may also be able to establish at trial a series of rights that may flow from that status, such as those pleaded in this case.

14. Once this is accepted, the second defendant's primary contentions cannot be accepted and the plaintiffs' entitlement to relief will be determined at trial. Discrete considerations may apply to the the relief sought in prayers 2.6 and 4 that contemplate the registration of servitudes over the property, but whether that is so is a matter that should also be dealt with during trial.

15. This Court only grants costs in special circumstances. There are none.

16. In the result, I make the following order:

- 16.1. The second defendant's first and second special pleas are dismissed.
- 16.2. There is no order as to costs.


JUDGE COWEN
Land Claims Court

Date of hearing: 7 June 2022
Date of judgment: 14 June 2022

Appearances:

For the Plaintiff

Adv Malowa SC, instructed by Matloga Attorneys

For the First Defendant

Adv C Richard, instructed by Dr T C Botha Attorneys

For the Second Defendant

Adv I Oschman, instructed by Pagel Schulenburg