


REPUBLIC OF SOUTH AFRICA



IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT DURBAN

CASE NO: LCC105/2020

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. YES/NO
	
26 October 2022	
.....
SIGNATURE	DATE

In the matter between:

SAPPI SOUTHERN AFRICA LTD

First Applicant

SAPPI FORESTS (PTY) LTD

Second Applicant

and

**REGIONAL LAND CLAIMS COMMISSIONER
MPUMALANGA**

First Respondent

COMMISSION ON RESTITUTION OF LAND RIGHTS

Second Respondent

THE MABUZA FAMILY

Third Respondent

**NGODWANA COMMUNITY AND/OR
GROUP OF INDIVIDUALS**

Fourth Respondent

In Re

NGODWANA COMMUNITY AND/OR

Claimants

GROUP OF INDIVIDUALS

SAPPI SOUTHERN AFRICA LIMITED

First Respondent

SAPPI FORESTS (PTY) LTD

Second Respondent

JUDGMENT

NCUBE J

Introduction

[1] This is an application, in which the Applicants seek relief, declaring the First and/or Fourth Respondents' consolidation of individual claims, as a community claim on behalf of the Ngodwana Community to be invalid. The application is unopposed. The First and Second Respondents, as a result, did not file answering affidavits. The Third Respondent supports the application. The Fourth Respondent does not oppose the application as such, but the issue of costs.

Facts

[2] On 14 August 2020 the Regional Land Claims Commissioner- Mpumalanga ("First Respondent") referred a land claim to this court in terms of section 14 of the Restitution of Land Rights Act, Act 22 of 1994 ("the Act"). The said referral was in respect of several properties owned by the First Applicant in the Mpumalanga Province. Included in those properties, is the First Applicant's Ngodwana Mill, Ngodwana village which includes a school, police station, a post office and shops.

[3] The Executive Summary to the referral notes that the First Respondent received a Land Claim which was lodged by one Mr Magotweni Zephania Shongwe on behalf of the Ngodwana Community. Apart from that claim, there was

also a claim lodged by Mr (Sic) Norah N Mabuza. Apart from those two claims, the referral notes that there were other twenty-four (24) claimants who also lodged claims before the closing date of 31 December 1998. Those 24 claimants lodged claims on behalf of their families. The Executive summary notes that at a meeting held on 07 October 2012, the individual claimants decided to consolidate their claims into one Ngodwana Community Claim. The list attached to the Referral Notice and marked C1 reflects the names of 26 individual claimants. The First Respondent then referred the claim as one Ngodwana Community Claim.

Entitlement to Restitution of a Right in Land

[4] Section 2(1) of the Act makes provision for certain categories of persons to be entitled to restitution of a right in land and it provides:

“(1) A person shall be entitled to restitution of a right in land if-

- (a) he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- (b) it is a deceased estate dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- (c) he or she is the direct descendant of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who-
 - i. is a direct descendant of a person referred to in paragraph (a); and
 - ii. has lodged a claim for the restitution of a right in land; or
- (d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices;

Section 10 (1) of the Act makes provision for the lodgment of claims by either individual claimants or the representatives of a community.

Discussion

[5] The Act does not make provision for consolidation of claims. There is no provision for the consolidation of an individual claim with a community claim. The requirements and procedure for the lodgment of individual and community claims are not the same and they are irreconcilable. In *Gamevest (Pty) Ltd v Regional Land Claims Commissioner Northern Province and Mpumalanga*¹ Olivier JA expressed himself in the following terms:

"Section 10 of the Restitution Act sets out the requirements for the lodgment of a claim by community:

- 1. It must be lodge by the representative of a community which is entitled to claim restitution of a right in land. The basis on which it is contended that the person submitting the form represents such community shall be declared in full and any appropriate resolution or document supporting such contention shall accompany the form at the time of lodgment, or may with the necessary permission be lodged at a later stage.*
- 2. The claim must be lodged on the form prescribed for this purpose by the Chief Land Claims Commissioner. This document forms part of the rules regarding procedure of the Land Claims Commission promulgated in Government Notice R703 of 12 May 1995 and as amended by Government Notice R1961 of 29 November 1996.*
- 3. The claim must include a description of the land in question, the nature of the right in land of which the community was dispossessed and the nature of the right or equitable redress that is being claimed."*

[6] This court has, on several occasions held that an individual claim in terms of section 2(1)(a) or (c) cannot be transformed into a community claim made in terms of section 2(1)(d). The Regional Land Claims Commissioner is not free to do as he/she pleases, he/she must be guided by the intention of the claimant which is reflected in

¹ 2003 (1) SA 373 (SCA) Para 7

the claim form. Even the claimants are not at liberty to take a resolution to convert individual claims into a community claim. The community must have existed at the time of dispossession. That community must have lost rights in land. Those rights must have been derived from shared rules determining access to land and held in common.²

[7] In *Luhlwini Mchunu Community v Laurence Hancock*³ Meer AJP expressed herself in the following terms:

“In accordance with In re Macleantown Residents Association: Re Certain Erven and Commonage in Macleantown, “the claimants must make it clear on what basis they are bringing their claim i.e. as a community or as individuals and in each case submit the requisite particulars.”

In the same case the court held:⁴

“The claim instituted by the Applicant as Plaintiff is a community claim as envisaged in section 2(1)(d) of the Act. A community claim is distinct and separate from an individual claim under section 2(1)(a) or 2(1)(c). The latter claims are simply not alternatives to community claims and are separate causes of action thereto.”

I therefore, conclude that the First Respondent was not entitled to consolidate individual claims and present them as being community claims. This brings me to the question of costs.

Costs

[8] Mr Dodson, argued that according to paragraphs 2 of the Notice of Motion, any Respondent who opposes this application must pay the costs. The argument goes that

² See definition of “Community” in Section 1 of the Act.

³ (LCC121/2017) 20/01/2020 par 16.

⁴ Par 12

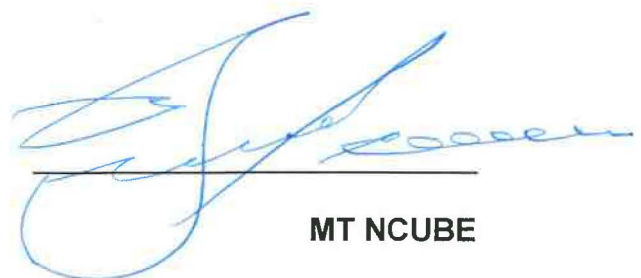
since the Fourth Respondent opposed the application and filed the answering affidavit, the Fourth Respondent brought themselves within the scope of paragraph 2 of the Notice of Motion. The Fourth Respondent did not persist with the opposition. Therefore, on the date of the hearing, the application was not opposed.

[9] The practice in this court is not to make cost orders unless there are exceptional circumstances warranting the award of costs. The filing of Notice to Oppose alone without opposition is not an exceptional circumstance and it is not a sufficient reason for this court to depart from its usual practice of not awarding costs.

Order

[10] In the result, I make the following order:

1. It is declared that the First Respondent and/or Fourth Respondent consolidation of individual claims as a community claim on behalf of the “Ngodwana Community” is invalid.
2. There is no order as to costs.



MT NCUBE
Judge of the Land Claims Court of
South Africa, Randburg

APPEARANCES

For First & Second Applicants: Adv Alan Dodson SC

Instructed by: Shepstone & Wylie
Johannesburg

For First & Second Respondents: MR S I Mathebula
STATE ATTORNEY
Pretoria

For Third Respondent: B T Ngqwangela
K Shoe

Instructed by: Morakile Attorneys
P Tabane

For Fourth Respondent: Nkosikhona Gama
Instructed by: Mthimunye Attorneys
Embalenhle
Mpumalanga

Date of hearing: 10 August 2022

Date Judgment delivered: 26 October 2022