

SOUTH AFRICA / JUDGMENT

**Biyela and Another v Dhludhla Brothers
CC and Another (LCC 107/2017; 108/2017;
LCC 109/2017; LCC 110/2017; LCC
111/2017) [2023] ZALCC 9 (6 March 2023)
[2023] ZALCC 9**

COURT

Land Claims Court

BEFORE

Y S Meer

CASE / FILE NUMBER

LCC 107/2017

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD

AT RANDBURG

Before:

The Honourable Acting Judge President Meer

Heard

on: 06

March 2023

Delivered

on: 06 March 2023

Case

number: LCC 107/2017

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES / NO

(3)

REVISED: YES / NO

DATE:

06/03/2023

In

the matter between:

NONHLANHLA
ELSIE BIYELA First
Applicant
BHEKUMUZI
GIBSON BIYELA Second
Applicant
and
DHLUDHLA
BROTHERS CC First
Respondent
THE
DIRECTOR GENERAL FOR THE DEPARTMENT
OF
RURAL DEVELOPMENT AND LAND AFFAIRS Second
Respondent
Case
number: 108/2017
MBONGELENI
MTHIMKHULU Applicant
And
DHLUDHLA
BROTHERS CC First
Respondent
OF
RURAL DEVELOPMENT AND LAND AFFAIRS Second
Respondent
Case
number: LCC 109/2017
NTOMBIZINI
LINDENI MATHONSI Applicant
OF
RURAL DEVELOPMENT AND LAND AFFAIRS Second
Respondent
Case
number: LCC 110/2017
BONGINHLANHLA
ENDREW THOLUMUZI HLABISA First
Applicant
FIKILE
SYLVIA HLABISA
Second
Applicant
FAVOURITE
ZANDILE HLABISA Third
Applicant
OF
RURAL DEVELOPMENT AND LAND AFFAIRS Second
Respondent
Case
number: LCC 111/2017
GLADYS

QWASHILE MDANZA First
Applicant
REUBEN
HLALISANI DLAMINI
Second
Applicant
MAVIS
MAMKAZI MKHWANAZI Third
Applicant

JUDGMENT

MEER AJP

- [1] The Applicants seeks an order compelling the First Respondent to appoint a land surveyor in terms of an order of this Court dated 18 February 2020 which was granted by consent between the parties to this application. The 2020 order emanated from the First Respondent's non-compliance with a previous order dated 15 May 2017 also granted by consent between the parties. That order recorded the First Respondent's consent to identify, allocate and demarcate 74 hectares of land for use by the Applicants. Thereafter on 13 March 2020 the First Respondent stated it was unwilling to part with 74 hectares of land notwithstanding its consent to do so in the first and second orders.
- [2] In opposition to this application the First Respondent raises 3 points in limine and also asserts that the transfer of ownership of land would be unnecessarily hard, unreasonable, unjustified and would lead to an injustice. There is no explanation as to why there is a consent order doing exactly that. This latter argument cannot be entertained given the clear, unambiguous meaning of both the orders and the fact that the First Respondent consented to them.
- [3] The points in limine in summary are that the Applicants failed to lodge a timeous application in terms of section 16(1) of the Labour Tenants Act No. 3 of 1996, the Court has not finally determined Applicants' right to an award in land and the First Respondent has always disputed that the Applicants were labour tenants. None of these have any bearing on the court order granted by consent. The order of 18 February 2020 is not contingent upon any of the issues raised in the points in limine. It was open to the parties to enter into an agreement by consent regardless of any of the matters raised in the points in limine. The First Respondent does not explain why it entered into the consent agreement if these factors prevented such an agreement by consent. Nor is its change of mind explained.

- [4] It is trite that an order of court is binding and enforceable unless it is set aside by a court of competent jurisdiction. This can be done on appeal, review or a successful rescission application in this Court in terms of Rule 64. In *Secretary of Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021
- (9) BCLR 992 (CC) at paragraph 59 it was said an order of a court of law stands until set aside by a court of competent jurisdiction. Until that is done the court order must be obeyed even if it may be wrong. See also *Lesapo v North West Agricultural Bank and Another*
- [1999] ZACC 16; 2000 (1) SA 409; *Municipal Manager O.R Tambo District Municipality and Another v Ndabeni* 2022 (10) BCLR 1254 (CC); *Department of Transport v Tasima* 2017 (1) BCLR 1 CC.
- [5] It is disquieting that the First Respondent ignores the aforementioned trite most obvious and well established principle. Accordingly, I am inclined to agree with the Applicant that the defence of the First Respondent is frivolous and vexatious and warrants a costs order being granted against the First Respondent.
- [6] I grant the following order:
1. The Second Respondent shall appoint a land surveyor in terms of the Court order dated 18 February 2020 under consolidated case numbers LCC107/2027 to LCC111/2027. The Second Respondent shall comply within
30 days of the date of this order
 2. Once the land surveyor has been appointed the members of the First Respondent shall cooperate and facilitate and or do all things necessary to facilitate the surveying or demarcating of portions of the farm sub 3 of farm Arcadia no. 6123 situation in KwaZulu-Natal.
 3. Should the members of the First Respondent fail to comply within 30 days of the granting of this order, the sheriff and the land surveyor appointed by the Second Respondent shall carry out the surveying of the farm in order to identify the portions to be allocated for transfer to the Applicants.
 4. The First Respondent shall the costs of this application on a scale as between party and party.

Y S MEER

Acting Judge President

Land Claims Court

APPEARANCES:

For the Applicants: Adv.

T Kadungure

Instructed by: Gumede

& Jona Inc.

For the First Respondent: Adv.

J Cordier

Instructed by: Steve

Nkosi & Partners

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Prepared on 11 October 2026 · Esheria