

SOUTH AFRICA / JUDGMENT

Chabalala and Another v Mabunda Traditional Council and Others (2060/2024) [2025] ZALMPPHC 58 (25 March 2025)

[2025] ZALMPPHC 58

COURT

Limpopo High Court, Polokwane

BEFORE

Bresler AJ

CASE / FILE NUMBER

2060/2024

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NUMBER: 2060/2024

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED.

DATE

25 MARCH 2025

In

the matter between:

YUSTO FAMANDA
CHABALALA
1ST
APPLICANT
SIYANDHANI
TRADITIONAL COUNCIL
2ND
APPLICANT
-and-
THE MABUNDA
TRADITIONAL COUNCIL
1ST
RESPONDENT
PHENI CYPRIAN NGOBE
2ND
RESPONDENT
HASANI BOOI
MAKHUBELE
3RD
RESPONDENT
BOOI MAHLAULE
4TH
RESPONDENT
GIDEON FRIDAY
SIBUYI
5TH
RESPONDENT
OTHER ILLEGAL
OCCUPANTS OF THE SIYANDHANI TRADITIONAL COMMUNITY LAND
6TH
RESPONDENT
Delivered
:
25 March 2025
This judgment was
handed down electronically by circulation to the parties'
legal representatives by e-mail. The
date and time for hand
down of the judgment is deemed to be 25 March 2025 at 10:00
am.
Date heard
:
4 November 2024
Coram
:
Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Applicants apply for interdictory relief against the Respondents in the following terms:

1.1 Interdicted and prohibiting the First and / or Second Respondents from allocating plots and / or stands in the traditional land placed under the jurisdiction of the Siyandhani Traditional Community;

1.2 Interdicting and prohibiting the First and / or Second Respondents from collecting a special levy (traditional authority levy) from the residents of the Siyandhani Traditional Community, which residents reside under the territorial jurisdiction of the Applicants.

1.3 Interdicting and prohibiting the Third and / or Fourth Respondents from allocating plots of land and / or stands on behalf of the First and / or Second Respondents;

1.4 Interdicting the Fifth Respondent, or any other unlawful occupier of the land belonging to the Siyandhani Traditional Community who have been allocated such land by the First, Second, Third and / or Fourth Respondents from utilising the land and to:

1.4.1 Stop building their structures on the land;

1.4.2 Demolish any such structures that they have already built on the land;

1.4.3 Stop conducting their business activities on the land; and

1.4.4 To not trespass on the land and / or use the land without obtaining permission from the Applicant.

1.5 Costs against any Respondent opposing the proceedings.

[2] The application was initially enrolled for hearing on the urgent roll on 26 March 2024. On this day, the matter came before the Honourable Judge Muller. It appears from the court file that the matter struck from the roll with costs. The Rule 30 application was dismissed with costs.

[3] The Application is opposed by the First and Second Respondents. The First and Second Respondents also launched a Counter Application for the following relief:

3.1 Declaring that the enrolment of the main application is irregular and setting same aside;

3.2 Dismissing the main application with costs on attorney and client scale; alternatively

3.3 Striking the main application from the roll with costs on attorney and client scale.

- [4] The Counter Application was premised on the submission that the initial order granted by the Honourable Muller J stated that the main application was dismissed (as opposed to struck from the roll). The First and Second Respondents therefore submitted that the alleged revised order was irregularly obtained.
- [5] At the hearing of the Application, the First and Second Respondents argued, in line with the Counter Application, that the Application was irregularly enrolled as it was previously dismissed by the Honourable Muller J and on the 26th of March 2024. As it was dismissed, it cannot be revived by mere enrolment. This Court however indicated that the order was clearly varied by the Honourable Judge Muller personally as the variation of the order (providing that the application was only struck from the roll with costs) is accompanied by his signature.
- [6] This Court consequently dismissed the first objection raised in the Counter Application with costs, including costs in respect of two counsels, where so employed, on Scale B. Reasons were given in court ex tempore.
- [7] Hereafter the First and Second Respondent raised the objection that the Notice of Set Down fails to comply with the provisions of Rule 6(5) in that a new Notice of Motion with new time frames had to be delivered.
- [8] This Court, likewise, dismissed this objection and reasons were provided ex tempore in Court.
- [9] This resulted in the First and Second Respondent applying for a postponement from the bar on the basis that they wish to ask for written reasons to launch an application for Leave to Appeal. Once again, this Court refused the postponement inter alia on the basis that reasons were given ex tempore, there is no obligation to provide written reasons under the circumstances, and that no substantial application for postponement was before the Court. Their right to apply for leave to appeal is, after all, not infringed if the application proceeds on the merits.
- [10] Consequential upon the refusal of the postponement, counsel for the Respondents indicated that he has no instructions to attend to the arguing of the merits of the matter.
- [11] It is apposite to note at this point that it is a generally accepted notion that any counsel that is briefed to attend to a postponement, must prepare himself / herself to address the Court on the merits as well should the postponement not be granted. Insofar as the matter before Court was in the form of an application, as opposed to a trial where potential prejudice can ensue if a witness is not called, this Court directed that the matter proceeds on the merits.

[12] When judgment was reserved in this matter, a further opportunity was provided to the First and Second Respondents to deliver supplementary heads by no later than the 18th of November 2024. To the best of my knowledge, the First and Second Respondents did not avail themselves of this opportunity. I do not think that the delivery of Heads of Argument would have taken the matter further.

Factual synopsis:

[13] The Applicants' case is briefly the following:

13.1 Following representations, the Kgatla Commission recommended to the Premier, Limpopo Province that the claim of the Siyandhani Traditional Community be upheld. This resulted in the Second Respondent being recognised as a traditional community, and the First Respondent as their traditional leader with effect from the 2nd of September 2020 as contemplated in the Limpopo Traditional Leadership and Institutions Act, Act 6 of 2005 (the 'LTLIA').

13.2 The territorial area allocated of the Siyandhani Community comprises Siyandhani Block 19, Jim Nghalume and Mapuve Block 19 (the 'territorial area').

13.3 The First and Second Respondent refused to accept the recognition and denomination of territorial areas by the Premier, which resulted in legal proceedings ensuing between the parties that includes a review of the said decision.

13.4 Notwithstanding the recognition and allocation of territorial areas being common cause between the parties, the Third Respondent and certain other individuals started allocating sites to members of the Siyandhani Community.

13.5 As stated herein before, numerous court proceedings ensued between the parties, some of which are still pending before court. This Court is however not called upon, or in a position, to determine the outcome of these pending proceedings.

13.6 During the course of February 2024, it transpired that the First and Second Respondent and / or persons acting on their alleged authority, were still actively demarcating stands and allocating same to members of the community without the approval or consent of the First and Second Applicant.

[14] An answering affidavit was delivered on behalf of the First and Second Respondents. Their defence to the interdictory relief claimed, briefly encompasses the following:

14.1 The decision of the Premier, Limpopo to recognise the community is being challenged. These legal proceedings are still pending and has not yet been finalised;

14.2 The First Applicant has been, for a considerable period, a headman under the auspices of the First Respondent and was responsible for managing the affairs of all inhabitants of Siyandhani Village;

14.3 The territorial area forming the subject of the dispute, are existing villages populated by individuals who owe allegiance to the First and Second Respondent;

14.4 These villages forms part of the Farm Greater Giyani which is held by the Minister on behalf of the First Respondent;

[15] It is clearly common cause between the parties that:

15.1 The First Respondent was formally recognised as the Traditional Leader for the Siyandani Traditional Community.

15.2 The Second Respondent was formally recognised as a Traditional Community; and

15.3 The areas Siyandhani Blok 19, Jim Nghalume and Mapuve Block 19 (the territorial areas) was formally awarded to the Siyandhani Traditional Community under leadership of the First Applicant.

15.4 Neither of these decisions has been set aside to date hereof.

Issues

that require determination:

[16] Having regard to the papers filed on record and the brief submissions by Counsel for the Applicants, it is evident that this Court is called upon to determine if the Applicants are entitled to the interdictory relief envisioned in the Notice of Motion and referred to herein before.

The Applicable Legal Principles:

[17] The Traditional and Khoi-San Leadership Act, Act 3 of 2019[1] (the ‘TKLA’) defines a traditional community as follows:

‘traditional community’ means a traditional community recognized as such in terms of Section 3.

[18] A traditional council is defined as follows[2]:

‘traditional council’ means a traditional council contemplated in section 16 and includes a traditional sub-council.

[19] The TKLA defines a traditional leader as follows[3]:

‘traditional leader’ means a person who has been recognized as a king or queen, principal traditional leader, senior traditional leader or headman or headwoman in terms of section 8 and includes regents, acting traditional leaders and deputy traditional leaders.

[20] It is not in dispute that the First and Second Applicants were recognized as contemplated in Section 3 of the TKLA as respectively a traditional community and a traditional leader.

[21] Section 1(1) of the TKLA defines ‘area of jurisdiction’ as follows:

‘... means the area of jurisdiction defined for a kingship or queenship council, principal traditional council, traditional council and traditional sub-council’.

[22] Section 1 of the LTLIA defines ‘area of jurisdiction’ as:

‘...means the area of jurisdiction designated for a traditional community and traditional council that have been recognized in terms of this Act’.

[23] Again, the allocation and demarcation of the territorial area designated for the Second Applicant is not in dispute.

[24] The Applicants apply for final interdictory relief. Unlike an interim interdict, that does not involve a final determination of rights of the parties, a final interdict affects such a final determination of rights.[4] It is trite law that to succeed with final interdictory relief, the Applicant must show:

24.1 A clear right;

24.2 An act of interference; and

24.3 No other remedy.

[25] As to a clear right, the existence of the right is a matter of substantive law. Whether the right is clearly established is a matter of evidence. To establish a clear right, the Applicant must prove on a balance of probabilities the right which he seeks to protect.[5] In casu the clear right of the Applicants stands undisputed. It is common cause between the parties that the area was designated for the use of the Second Applicant.

[26] Having regard to the Opposing affidavit of the First and Second Respondents, they concede that there has been an interference in the clear right that the First and Second Applicant holds. Their justification for the interference is premised on the basis that the decision of the Premier, Limpopo is incorrect and that they are in fact entitled to govern this area.

[27] What the Respondents fail to appreciate is that administrative action remains valid until reviewed and set aside by a Court of law. This has not yet been done. And until such time as this administrative decision has been reviewed and set aside, they must abide by the current status quo.

[28] The Applicants have therefore shown that there is an unjustified and unquestionable infringement in the clear rights that they hold in respect of the designated territorial area.

[29] It is trite law that a final interdict is a drastic remedy and in the court’s discretion. The court will consequently not grant final interdictory relief if the applicant can obtain adequate redress in some other form of relief. The Applicant is therefore obliged to allege, and prove, on a balance of probabilities that he has no other alternative legal remedy.[6] The courts will in general not grant an interdict when the applicant can obtain adequate redress by an award of damages.[7] In the matter of *Lubbe v Die Administrateur, Oranje-Vrystaat*[8] the judge refers (at 115) to the fact that:

‘...daar is geen gevaar dat applikant enige skade wat hom mag toekom, nie teen die respondent sal kan verhaal nie’.

[30] In casu, this Court is satisfied that the Applicants holds no alternative remedy that would yield the same, or a similar result. Quite often, territorial disputes in communities result in public uproar and innocent parties falling victim to unnecessary violence during the chaos. Interdictory relief is therefore necessitated in these circumstances in so far as the members of the community

requires certainty as to their rights and obligations. This is the only appropriate relief under the prevailing circumstances.

[31] The Applicants are therefore entitled to interdictory relief.

[32] This Court is however concerned as the to prayer pertaining to the demolition of existing structures. It might very well be that unknown third parties were not made aware of these proceedings,

resulting in potential patrimonial losses being suffered by such individuals. To avoid any unfairness towards these individuals,

this Court is inclined to grant interim relief in respect of the demolition of the structures only, coupled with ancillary relief. This will ensure that notice of the intended demolition is received by the appropriate recipients and that justice is served by providing them with a reasonable opportunity to present reasons to the above Honourable Court as to why final relief should not be granted in due course.

Costs:

[33] The Applicants are substantially successful in the relief as prayed for in the Notice of Motion. As such, there is no reason to deprive them of their costs.

[34] Having regard to the complexity of the matter and the importance of the case to the Applicants, costs of two counsel (where so employed) should be allowed on Scale B.

Order:

[35] In the result the following order is made:

35.1 The First Respondent and / or the Second Respondent is interdicted and / or prohibited from allocating plots and / or land and / or stands in the traditional land placed under the jurisdiction of the Siyandhani Traditional Community (Siyandhani Blok 19, Jim Nghalume and Mapuve Block 19) through the services of the Third and / or Fourth Respondents or any other agent;

35.2 The First Respondent and / or Second Respondent is interdicted and prohibited from collecting special levy (traditional authority levies) from residents of the Siyandhani Traditional Community, which residents reside under the territorial jurisdiction of the Applicants;

35.3 The Third and / or Fourth Respondents are interdicted and / or prohibited from allocating plots and / or land and / or stands on behalf of the First and / or Second Respondents in the traditional land under the territorial jurisdiction of the Applicants being Siyandhani Blok 19, Jim Nghalume and Mapuve Block 19;

35.4 The Sixth Respondent and / or any unlawful occupier of land belonging to the Siyandhani Traditional Community (Siyandhani Blok 19, Jim Nghalume and Mapuve Block 19) and who have been allocated such land by the First, Second, Third or Fourth Respondent are interdicted from utilising the land and to:

35.4.1 Stop building structures on the land;

35.4.2 Stop conducting their business activities on the land; and

35.4.3 Not to trespass on the land and / or use the land without obtaining permission from the Applicants;

35.5 The Sixth Respondent and / or any unlawful occupier of land belonging to the Siyandhani Traditional Community (Siyandhani Blok 19, Jim Nghalume and Mapuve Block 19) and who have been allocated such land by the First, Second, Third or Fourth Respondent are ordered and directed to demolish any such structures that they have already built on the land within a period of 60 (sixty) days from the date of granting of a final order;

35.6 Prayer 35.5 shall serve as a rule nisi with the return date being _____ at 10:00, on or before which date any individual contemplated as part of the Sixth Respondent shall be entitled to submit reasons why the demolition order should not be made final.

35.7 The Applicants are directed to serve a copy of this order on every person comprising the Sixth Respondent:

35.7.1 by means of either delivering a copy by hand to the occupant; and / or

35.7.2 affixing a copy to the said unlawful structure,

And thereafter to produce an affidavit on or before the return date by the person that attended to such service on behalf of the First and Second Applicant.

35.7 The First and Second Applicant are furthermore directed to publish a copy of this order once in a local newspaper circulating in the jurisdictional area designated to the Second Applicant.

35.8 The First and Second Respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of the application, inclusive of the costs of the dismissal of the Counter Application, on a scale as between party and party, including the costs of two counsel (where so employed) on Scale B.

M BRESLER AJ

ACTING JUDGE OF THE HIGH COURT,

APPEARANCES:

FOR THE APPLICANTS : Adv T Malatji Adv M Rasesemola INSTRUCTED BY : GA Maluleke
Attorneys Giyani gamaluleke@gmail.com FOR THE FIRST AND SECOND RESPONDENT : Adv DD
Mtebule INSTRUCTED BY : Mohlaba & Moshoana Inc Nkowankowa A mohlaba1@mweb.co.za

- [1] Section 1
 - [2] Section 1
 - [3] Section 1
 - [4] Fourie v Olivier en 'n ander 1971 (3) SA 274 (T)
 - [5] Nienaber v Stucky 1946 AD 1049 at 1053 – 4
 - [6] Prinsloo v Luipaardsvlei Estates and Gold Mining Co Ltd 1933 WLD 6 at 24 – 5
 - [7] Rivas v The Premier (Transvaal) Diamond Mining Co Ltd 1929 WLD 1
 - [8] 1968 (1) SA 111 (O)
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