

SOUTH AFRICA / JUDGMENT

Chithi and Others v Minister of Agriculture, Rural Development and Land Reform and Others; In re: Mavundulu Community v Minister of Agriculture, Rural Development and Land Reform and Others (LCC125/2008) [2021] ZALCC 29 (22 November 2021)

[2021] ZALCC 29

COURT

Land Claims Court

BEFORE

MP Canca

CASE / FILE NUMBER

LCC 125/2008

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT RANDBURG

CASE

NO: LCC 125/2008

NOT REPORTABLE

NOT OF INTEREST TO OTHER

JUDGES

22/11/2021

In

the matter between:

MLULEKI
MARTIN
CHITHI FIRST
APPLICANT
DLUDLU
ATTORNEYS SECOND
APPLICANT
M C NTSHALINTSHALI
ATTORNEYS THIRD
APPLICANT
THE
MINISTER OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND
REFORM FIRST
RESPONDENT

REGIONAL LAND CLAIMS
COMMISSIONER SECOND
RESPONDENT
DJ SCHEUER FARMING
CC THIRD
RESPONDENT
LOUIS MEYER MANFRED
FAMILY TRUST FOURTH
RESPONDENT
MANFRED MARTIN
HILLERMAN FIFTH
RESPONDENT
HERMAN THEODOR
HEYER SIXTH
RESPONDENT
EVANGELICAL LUTHERAN
CHURCH NEW
HANOVER SEVENTH
RESPONDENT
HOPEWELL
TRUST EIGHTH
RESPONDENT
ROLF MATTHEW
SCHRODER NINTH
RESPONDENT
UHLMANN FAMILY
TRUST TENTH
RESPONDENT
MANFRED VICTOR
SCHRODER TWELFTH
RESPONDENT
WOERNER
TRUST THIRTEENTH
RESPONDENT
WHITE THORN
TRUST FOURTEENTH
RESPONDENT
RM MARK
FAMILY FIFTEENTH
RESPONDENT
WITTEMOUNTAIN
TRUST SIXTEENTH
RESPONDENT
MANFRED MEYER FAMILY
TRUST SEVENTEENTH
RESPONDENT
WERNER MEYER FAMILY
TRUST EIGHTEENTH
RESPONDENT
WERNER MARK
REDINGER NINETEENTH

RESPONDENT
AMBLESIDE MEATS
CC TWENTIETH
RESPONDENT
BRIAN BASIL
MITROPOULUS TWENTY-FIRST
RESPONDENT
TMJ INVESTMENT 15
CC TWENTY-SECOND
RESPONDENT
DROGEMOLLER LIFE &
SHORT-TERM
BROKERS
CC TWENTY-THIRD
RESPONDENT
ROLAND GERHARD
FRENZEL TWENTY-FOURTH
RESPONDENT
COCOHAVEN 1057
CC TWENTY-FIFTH
RESPONDENT
ROYHEATH RAMDEWU AND
REETHA
RAMDEWU TWENTY-SIXTH
RESPONDENT
UCL CO-OPERATIVE
LTD TWENTY-SEVENTH
RESPONDENT
MOOIZICHT
TRUST TWENTY-EIGHTH
RESPONDENT

IN RE:

MAVUNDULU
COMMUNITY CLAIMANTS
DEVELOPMENT AND LAND
REFORM FIRST
DEFENDANT
REGIONAL LAND CLAIMS
COMMISSIONER SECOND
DEFENDANT
DJ SCHEUER FARMING
CC THIRD
DEFENDANT
LOUIS MEYER MANFRED
FAMILY TRUST FOURTH
DEFENDANT
MANFRED MARTIN
HILLERMAN FIFTH
DEFENDANT
HERMAN THEODOR
HEYER SIXTH

DEFENDANT
EVANGELICAL LUTHERAN
CHURCH
NEW
HANOVER SEVENTH
DEFENDANT
HOPEWELL
TRUST EIGHTH
DEFENDANT
ROLF MATTHEW
SCHRODER NINTH
DEFENDANT
UHLMANN FAMILY
TRUST TENTH
DEFENDANT
MANFRED VICTOR
SCHRODER TWELFTH
DEFENDANT
WOERNER
TRUST THIRTEENTH
DEFENDANT
WHITE THORN
TRUST FOURTEENTH
DEFENDANT
RM MARK
FAMILY FIFTEENTH
DEFENDANT
WITTEMOUNTAIN
TRUST SIXTEENTH
DEFENDANT
MANFRED MEYER FAMILY
TRUST SEVENTEENTH
DEFENDANT
WERNER MEYER FAMILY
TRUST EIGHTEENTH
DEFENDANT
WERNER MARK
REDINGER NINETEENTH
DEFENDANT
AMBLESIDE MEATS
CC TWENTIETH
DEFENDANT
BRIAN BASIL
MITROPOULUS TWENTY-FIRST
DEFENDANT
TMJ INVESTMENT 15
CC TWENTY-SECOND
DEFENDANT
BROKERS
CC TWENTY-THIRD
DEFENDANT

ROLAND GERHARD
FRENZEL TWENTY-
FOURTH DEFENDANT
COCOHAVEN 1057
CC TWENTY-FIFTH
DEFENDANT
RAMDEWU TWENTY-SIXTH
DEFENDANT
UCL CO-OPERATIVE
LTD TWENTY-SEVENTH
DEFENDANT
MOOIZICHT
TRUST TWENTY-EIGHTH
DEFENDANT
Delivered on: 22 November 2021

Delivered on: 22 November 2021

JUDGMENT

CANCA AJ

INTRODUCTION

[1] I turned down an application by the Applicants to recuse myself from hearing a leave to appeal of the costs order I handed down in *Mavundulu Community v Minister of Agriculture, Rural Development and Land Reform and Others* [2020] ZALCC 25 (“main judgment”). In the main judgment, I “disallowed the fees of the Applicants in full for the entire matter” and further ordered the Applicants to “repay the relevant entity that funded them on behalf of the State, whatever fees that may already have been paid to them.”

Mavundulu Community v Minister of Agriculture, Rural Development and Land Reform and Others

[2020] ZALCC 25 (“main judgment”).

disallowed the fees of the Applicants in full for the entire matter”

repay the relevant entity that funded them on behalf of the State, whatever fees that may already have been paid to them.”

[2] In the main judgment, I awarded costs in favour of the legal representatives of the landowner respondents for the reasons set out

in that judgment. Given that the main judgment is appealed against, I do not find it necessary to repeat my reasons, in full, as to why I granted the landowners' legal representatives costs in that matter. It is one of the Applicant's contentions in this matter that I overstepped the bounds of this Court to award costs against a losing party. That, so the contention goes, only happens where there are special circumstances, which, according to the Applicants, do not exist in this case. I will elaborate on this below.

In the main judgment, I awarded costs in favour of the legal representatives of the landowner respondents for the reasons set out

in that judgment. Given that the main judgment is appealed against, I do not find it necessary to repeat my reasons, in full, as to why I granted the landowners' legal representatives costs in that matter. It is one of the Applicant's contentions in this matter that I overstepped the bounds of this Court to award costs against a losing party. That, so the contention goes, only happens where there are special circumstances, which, according to the Applicants, do not exist in this case. I will elaborate on this below.

[3]Although not relevant to this judgment, the Applicants, in heads of argument compiled and argued by Advocate T Norman with C M Nqala, persist with the unproven allegation that I was a participant in a virtual conference where Acting Judge President Meer allegedly made disparaging remarks about Mr. Chithi. That issue is dealt with comprehensively in *Chithi and Others v The Minister of Agriculture, Rural Development & Land Reform and Others* [2021] ZALCC 20 ("recusal judgment") and need not be repeated here, save that in both the recusal application as well as the current one, it is alleged that I did not personally deny having been part of that conference. This is patently untrue.

Although not relevant to this judgment, the Applicants, in heads of argument compiled and argued by Advocate T Norman with C M Nqala, persist with the unproven allegation that I was a participant in a virtual conference where Acting Judge President Meer allegedly made disparaging remarks about Mr. Chithi. That issue is dealt with comprehensively in

Chithi and Others v The Minister of Agriculture, Rural Development & Land Reform and Others

[2021] ZALCC 20 ("recusal judgment") and need not be repeated here, save that in both the recusal application as well as the current one, it is alleged that I did not personally deny having been part of that conference. This is patently untrue.

[2021] ZALCC 20

[4]In the recusal judgment, I quote the e-mail trail, from which it is evident that it reached the affected parties and their legal

representatives, including their senior counsel, Ms. Norman. In this e-mail trail, I categorically deny having been a participant in that aforementioned virtual conference. During the hearing of this application, I also quoted a letter which I asked my secretary at the time, Ms. Nosipho Makasi, on 3 July 2020, to address to the Applicants' then attorney of record, Mr. Dalinkosi

Hintsá’.

That letter, in relevant part, reads as follows:

In the recusal judgment, I quote the e-mail trail, from which it is evident that it reached the affected parties and their legal

representatives, including their senior counsel, Ms. Norman. In this e-mail trail, I categorically deny having been a participant in that aforementioned virtual conference. During the hearing of this application, I also quoted a letter which I asked my secretary at the time, Ms. Nosipho Makasi, on 3 July 2020, to address to the Applicants’ then attorney of record, Mr. Dalinkosi Hintsá’.

That letter, in relevant part, reads as follows:

“I write this letter on behalf of Acting Judge Canca.

I write this letter on behalf of Acting Judge Canca.

The Judge, unfortunately, only had sight of the letter addressed to him personally, as opposed to the one addressed to Meer AJP and her Registrar, yesterday.

The Judge does not wish to comment on the contents of your letter, save to state that he was not party to the virtual conference (or teleconference) referred to in your letter under reply.

Yours faithfully,

Ms. N Makasi”

[5] Approximately eleven paragraphs are spent in the heads of argument for this application rehashing and embellishing my alleged attendance at the virtual conference, none of which are relevant to this application.

Approximately eleven paragraphs are spent in the heads of argument for this application rehashing and embellishing my alleged attendance at the virtual conference, none of which are relevant to this application.

[6] The crux of the Applicants’ contentions, if I understood Ms. Norman correctly during argument, are the following:

The crux of the Applicants’ contentions, if I understood Ms. Norman correctly during argument, are the following:

6.1 I erred in deviating from this Court’s usual practice of not awarding costs unless special circumstances exist. I was referred to *Dukuduku Community v Regional Land Claims Commissioner KZN* 2006

(3) SA 515(LCC); and

Dukuduku Community v Regional Land Claims Commissioner KZN

2006

(3) SA 515

6.2I erred in awarding the landowners' legal representatives' costs for opposing the Applicants' recusal application when they had noloocus standito oppose it given that the landowners had no "direct and substantial interest" in that application but merely a "financial" one. Reliance for this contention was placed on a number of cases, including *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467 at 488; *ABSA Bank Ltd v Africa's Best Minerals 146 Ltd In re: Sekhukhune NO V ABSA Bank Ltd* [2015] 2 All SA 8(GJ) at

[10] and *Maloney's Eye Properties BK v Bloemfontein Board Nominees Bpk* 1995 (3) SA 249(0) at 257.

locus standi

direct and substantial interest"

financial

Texas Co (SA) Ltd v Cape Town Municipality

1926 AD 467

ABSA Bank Ltd v Africa's Best Minerals 146 Ltd In re: Sekhukhune NO V ABSA Bank Ltd

[2015] 2 All SA 8

Maloney's Eye Properties BK v Bloemfontein Board Nominees Bpk

1995 (3) SA 249

[7] With regard to the contentions set out above, the Court dealt in fair detail with those aspects of the argument in the recusal judgment. It suffices, for purposes of this judgment, to state that in the recusal judgment the Court set out the reasons why it found special

circumstances were present in that case. These were, amongst other things, that I found it egregious that senior practitioners would, without providing evidence on affidavit, persist with the allegation that I was an attendee at the virtual conference despite my categorical denial of, not only having not known that it took place, but having been part of it. I exercised my discretion to make that award as a sign of my displeasure at the fact that senior practitioners ought not to doubt the word of a Presiding Judge during the course of a hearing.

With regard to the contentions set out above, the Court dealt in fair detail with those aspects of the argument in the recusal judgment. It suffices, for purposes of this judgment, to state that in the recusal judgment the Court set out the reasons why it found special

circumstances were present in that case. These were, amongst other things, that I found it egregious that senior practitioners would, without providing evidence on affidavit, persist with the allegation that I was an attendee at the virtual conference despite my categorical denial of, not only having not known that it took place, but having been part of it. I exercised my discretion to make that award as a sign of my displeasure at the fact that senior practitioners ought not to doubt the word of a Presiding Judge during the course of a hearing.

[8] Given how strongly the Constitutional Court has expressed itself on the insidious erosion of the general respect of the Judiciary, I, took the conduct of the Applicants into account as one of the factors which formed part of the exercise of my discretion to award costs against them.

Given how strongly the Constitutional Court has expressed itself on the insidious erosion of the general respect of the Judiciary, I, took the conduct of the Applicants into account as one of the factors which formed part of the exercise of my discretion to award costs against them.

[9] Does the appeal have reasonable prospects of success? Bertelsmann J, in *The Mont Chevaux Trust (IT 2012/28) v Tina Goosen & Others* LCC 14R/2014 (unreported) held that the use of the word “would” as opposed to “might” in section 17 of the Supreme Court Act No. 10 of 2013 (“the Act”) indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.

Does the appeal have reasonable prospects of success? Bertelsmann J, in

Mont Chevaux Trust (IT 2012/28) v Tina Goosen & Others

LCC 14R/2014 (unreported) held that the use of the word “

” as opposed to “

might”

in section 17 of the Supreme Court Act No. 10 of 2013 (“the Act”) indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.

[10] Ms. Norman, whilst recognizing that section 16(2)(a)(i) of the Act provides that when a hearing of an appeal and the issues are such that the decision sought will have no practical effect or result that the appeal may be dismissed on that ground alone, placed reliance on section 16(2)(a)(ii) of the Act. This provides that, save where there are exceptional circumstances will question of whether the decision would have no practical effect or result, be determined without reference to any costs considerations.

Ms. Norman, whilst recognizing that section 16(2)(a)(i) of the Act provides that when a hearing of an appeal and the issues are such that the decision sought will have no practical effect or result that the appeal may be dismissed on that ground alone, placed reliance on section 16(2)(a)(ii) of the Act. This provides that, save where there are exceptional circumstances will question of whether the decision would have no practical effect or result, be determined without reference to any costs considerations.

[11]According to Ms. Norman, the issue of costs in this matter is “not only a sub-species of the matter currently pending before the Supreme Court of Appeal [either the recusal judgment or the appeal against the main judgment] but it is also inextricably linked to that matter and therefore any order the Court issues in this matter is not one which will not have any practical effect and/or which has been rendered moot.”

According to Ms. Norman, the issue of costs in this matter is “

not only a sub-species of the matter currently pending before the Supreme Court of Appeal [either the recusal judgment or the appeal against the main judgment] but it is also inextricably linked to that matter and therefore any order the Court issues in this matter is not one which will not have any practical effect and/or which has been rendered moot.”

[12]In concluding her submission on the point that there are “material and substantial reasons why the Supreme Court of Appeal would interfere with the exercise of a discretion by this Honourable

Court”,Ms. Norman, in addition to the contents of paragraph [11] above, argued the points set out in paragraph [6] above, which I have already dealt with.

In concluding her submission on the point that there are “

material and substantial reasons why the Supreme Court of Appeal would interfere with the exercise of a discretion by this Honourable

Court”,

Ms. Norman, in addition to the contents of paragraph [11] above, argued the points set out in paragraph [6] above, which I have already dealt with.

[13]I have carefully considered all the submissions by Ms. Norman and I am of the view that another Court would not come to a finding different from mine. This being so, there are no reasonable prospects of success on appeal. Leave to appeal is accordingly refused.

I have carefully considered all the submissions by Ms. Norman and I am of the view that another Court would not come to a finding different from mine. This being so, there are no reasonable prospects of success on appeal. Leave to appeal is accordingly refused.

[14]In the result, the following order is made:

n the result, the following order is made:

1.The application for leave to appeal is dismissed.

The application for leave to appeal is dismissed.

MP Canca

Acting Judge, Land Claims Court

APPEARANCES

For the Applicants: Advocates T V Norman S.C and C.M Nqala

Instructed by: Gordon

Zungu Attorneys, Durban.

For the Respondents: No appearances

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCC/2021/29.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/chithi-and-others-v-minister-unknown-topic-alcc-2021>

Prepared on 11 October 2026 · Esheria