

SOUTH AFRICA / JUDGMENT

Citrusdal Beleggings (Pty) Ltd v Minister of Water and Sanitation (17606 / 2022) [2024] ZAWCHC 180 (12 July 2024)

[2024] ZAWCHC 180

COURT

Western Cape High Court, Cape Town

BEFORE

E D Wille

CASE / FILE NUMBER

17606 / 2022

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THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NUMBER: 17606 / 2022

In the matter between:

CITRUSDAL BELEGGINGS (PTY) LTD

Applicant

and

THE MINISTER OF WATER AND SANITATION

Respondent

Coram: Wille, J

Order granted: 7 February 2023

Condonation filed: 15 May 2024

Reasons:

12 July 2024

REASONS

WILLE, J:

INTRODUCTION

- [1] Regrettably, these reasons illustrate how legal practitioners should not act. This opposed application was presented before me about six months ago. This opposed application was argued, and an order was issued the day after the argument. I discharged the rule and dismissed the application with costs.[1]
- [2] Since the granting of the order, the applicant's legal representatives have had little or no regard for the practice directions of this court. The applicant says it filed a request for written reasons for my order shortly after it was granted. The issue remains as to how the alleged request for reasons was filed and pursued.[2]
- [3] The applicant says it 'accepted' or 'understood' that I would have granted reasons for my order. These are curious statements. The applicant's legal representative is seeking to distance himself from failing to comply with the court rules and practice directives that find application. The applicant's record attorney says he emailed my registrar about obtaining reasons for my order. The applicant failed to request reasons correctly regarding the court rules, and the court file was not delivered following the applicable practice directions.[3]
- [4] As I have said, the request for reasons (such as it was) was brought to my attention two months later. After considering the request for reasons and the time delays by the applicant (with no explanation or apology), I struck down the request for reasons in terms of the court's practice directions.[4]
- [5] But wait, there is more. Then, about a month later, out of the blue, the applicant applied for reasons together with an application for condonation. This is where the applicant's stratagem becomes unseemly and is difficult (if not impossible) to understand. In the applicant's condonation application, the applicant seeks

to create the impression that it timeously delivered its request for reasons and advances that the delays were at the foot of the court and the foot of my registrar in that my registrar is obliged to give legal advice to the applicant's attorney of record.[5]

OVERVIEW

- [6] The applicant's core argument was that it believed the respondent's expropriation was unnecessary and that the expropriated areas of land which formed the subject of this dispute should have instead been made subject to a servitude in favour of the respondent. This bore some scrutiny because the deponent of the applicant's founding affidavit was also the controlling mind of another discrete close corporation, which was the landowner of a portion of the property that was also the subject of valid expropriation.[6]

- [7] This needed some analysis because about a decade ago, the applicant and this discrete close corporation were paid an enormous amount in compensation for the specific purpose of expropriation concerning the raising and strengthening of the dam wall in the area. These funds were paid over and retained without any protest or qualification.[7]
- [8] Some years after this, when the respondent wanted to commence the work on a portion of the expropriated land, the applicant refused to vacate the validly expropriated portion of the land for which a handsome payment was received. Now, by way of legal process, the applicant attempts to hold the respondent, hostage, even though the applicant retained the compensation paid by the respondent to the applicant for the expropriated portion of the land in question.[8]

THE RELIEF

- [9] In summary, the applicant sought relief to regain possession of the spoliated area forming the subject of this dispute and that the respondent be directed to restore the applicant's possession of and access to the immovable property which formed the subject of the expropriation. Further, the applicant sought relief that the respondent, including its agents, be prohibited from interfering with the applicant's farming activities or possession of the subject

immovable property. An interim arrangement was concluded by agreement pending the outcome of the application that was presented

before me.[9]

- [10] In addition, (if necessary in the alternative) the respondent requested the court to develop the common law by specifically having regard to the facts and circumstances set out in the answering affidavit in the adjudication of whether or not the order should be granted, restoring the applicant's possession of the subject immovable property.[10]

CONTEXT

- [11] In carrying out its legislative mandate, the respondent embarked on a process to raise the height of the existing dam wall on a portion of the subject property to improve the dam's safety and increase the water supply yield. This was but a portion of a national project and formed a central part of a broader recovery plan which was aimed at rebuilding the economy and assisting in reviving sectors such as the construction sector.[11]
- [12] A feasibility study was carried out concerning the dam, which showed that the sandstone foundations were fractured and that there was some doubt about the effectiveness of the pre-stressed cables installed more than five decades ago. Significantly, the study found a concrete structure deterioration over time, and the dam's stability under extreme flood pressure was inadequate.[12]

- [13] Remedial work involving major construction needed to be carried out. The feasibility study considered the implications of raising the dam wall. It found that raising the dam wall was technically feasible and economically viable. The project would involve extending the dam wall on the downstream side and raising it to a higher level.[13]
- [14] This remedial work would make the dam wall safe and increase the water supply yield. It would also assist in developing resources for poor farmers. To carry out the project, the respondent was required to acquire certain land privately owned by members of the public. Thus, the respondent invoked the provisions of specific targeted legislation to expropriate land in the public interest for the project.[14]

THE LAND EXPROPRIATED

- [15] Certain specific portions of the following properties were among the properties identified by the respondent as properties which were affected by the project and, therefore, had to be expropriated:

‘....portion of the Remainder of Andriesgrond No: 204 (A Portion Of Portion 4,) Situated At Clanwilliam Division, Western Cape Province, Cederberg Municipality, In Extent 5.6114ha, previously held by deed of transfer number T30285/1999 dated 20 April 1999....’[15]

‘....portion of the remainder of Andriesgrond No: 204, situated at Clanwilliam Division, Western Cape Province, in extent 1799.2484ha. held under Deed of Transfer T69911/1995 dated 18 September 1995....’[16]

- [16] The deponent to the applicant’s founding affidavit is the director and member of both these landowner entities. After identifying the portions of the land required for the successful completion of the project, the respondent served notices of expropriation to be served on the deponent to the answering affidavit in his representative capacity as the director and member of the two entities referenced above.[17]
- [17] The service of these notices and the reasons for acquiring the properties were not the subject of any dispute by the applicant at the time of receipt. The requisite notices set out the effect of the proposed acquisition of the properties in the following terms: (a) that the owners would be divested of their ownership rights; (b) that all lessees or other occupants would be divested, and their rights to occupy the properties would terminate upon expropriation; (c) that the land so expropriated would be released from any mortgage bonds;
- (d) that the land would remain subject to all such registered rights other than mortgage bonds ranking for the parties unless the parties had been ousted from these respective rights.[18]

CONSIDERATION

[18] What weighed heavily on me was that the two landowner entities were offered and received lucrative compensation from the respondent, which was not disputed. I say this because the applicant says that it did object to the amount of compensation, yet the papers filed by the applicant do not contain copies of these alleged objections. After the periods in the expropriation notices expired, the two entities were compensated accordingly.[19]

[19] The fact that the applicant was compensated for the expropriated land is not disputed. The applicant insinuates that a further

compensation claim is being finalized, which will be instituted as soon as possible. The payments to the applicant were made some time ago, and the applicant has

initiated no proceedings for further monetary claims against the respondent. These threatened claims may have since expired due to the effluxion of time.[20]

[20] A reading of the papers suggests that the applicant has reconciled itself with the factual position and appears to accept that the properties have been lawfully expropriated.

The belated contentious issue that the applicant now advances is that the respondent had agreed that the applicant could use the

expropriated land until dam inundation. This allegation, however, is at odds with the written communications between the

parties. On this score, the applicant was allowed to occupy the houses on the expropriated land for a further period, which was limited in duration. It was specifically recorded that the properties must be vacated by a fixed date, which has since

passed.[21]

[21] In a final throw of the dice, the applicant advanced that the respondent did not require using a portion of the properties expropriated when it said it did. What is confusing about this denial is that it emerges that the applicant does not deny (and cannot deny) that the respondent required access to the dam and that there existed a requirement for the stockpiling of the construction material to attend to the defects identified in the dam by the dam safety inspectors.[22]

[22] In addition, the respondent sent several letters requesting that the applicant vacate a portion of the expropriated properties. The applicant refused to do so. Similarly, these communications forwarded to the applicants to vacate the expropriated properties are not the subject of any dispute. In support of the applicant's refusal to vacate the expropriated properties, the applicant relies on an agreement ostensibly concluded with a discrete third party.

How this purported agreement with the discrete third party assists the applicant is similarly difficult to understand.[23]

[23] Self-evidently, it was demonstrated that the applicant refused to vacate the validly expropriated properties. There was no reason for the applicant to continue to occupy the expropriated pieces of land for which it was compensated other than simply holding the respondent hostage. By doing this, the applicant was preventing the successful completion of the project, which will serve the needs of other citizens of this country, including preventing a possible

disaster should the dam wall in its current form not withstand any flooding pressures.[24]

[24] The principles governing the remedy for spoliation are well established in our law. The two basic requirements for a spoliation remedy are (a) that the applicant had possession of the property and (b) that the respondent wrongfully dispossessed the applicant of this peaceful possession. The underlying purpose of the remedy is to restore possession to the party complaining of its dispossession, promote the rule of law, and discourage

self-help. Thus, by refusing to vacate the expropriated property, the applicant was not in possession (in the true sense) of both the property and the houses on the expropriated land. Therefore, the applicant was not in possession of the expropriated land, and a spoliation order could not have been issued against the respondent. When the respondent lawfully moved onto parts of the expropriated land, the respondent did not dispossess the applicant of any property in the applicant's possession. This notwithstanding, the applicant, in any event, remained in occupation of the houses located within the expropriated land.[25]

[25] This case was really about counter-spoliation. I say this because the expropriation notices set the date upon which the valid expropriation would become effective. Alternatively, possession by the respondent became effective when the notice was given to the applicant, and the applicant was compensated for the expropriation. Possession of the land expropriated as a matter of law had passed to the respondent.[26]

[26] Indeed, the respondent extended some limited use and enjoyment over a portion of the expropriated land to the applicant, which subsequently came to an end and was revoked. Thus, the applicant had no further right to remain in occupation of the land expropriated. By remaining in unlawful occupation of the land, the applicant committed the act of spoliation. As a matter of pure logic, the respondent lawfully counter-spoliated the applicant when the respondent proceeded onto the land of which it was the owner and possessor so that it could utilize the land for the specific purpose for which it had been expropriated.[27]

[27] It is so that counter-spoliation must occur as part of an act of spoliation. This is a fact-dependent enquiry. That being said counter-spoliation must occur immediately in response to an act of spoliation. In this case, the numerous letters written by the respondent to the applicant and the applicant's steadfast refusal to vacate the expropriated property undoubtedly amounted to a continuation of the spoliation of the respondent's property. This position in our law has recently been confirmed. The respondent acted instantaneously, taking into account the facts of this case and because of the legal expropriation process that unfolded. [28]

[28] By way of legislative intervention, all and any of the ‘possessory’ rights contended for by the applicant must, as a matter of law, have been euthanized. The respondent met all the factual and legal requirements for a counter-spoliation after the payment of compensation to the applicant, together with the legal consequences that flowed from that lawful expropriation process. To hold otherwise would violate the expropriation legislation, which was not the subject of any challenge.[29]

CONCLUSION

[29] These are then my reasons for the order being discharged with costs.

E D WILLE

(Cape Town)

- [1] This application came before me on 6 February 2024, and I granted an order on 7 February 2024.
- [2] A request for reasons was emailed to my registrar on 5 April 2024 with total disregard for the court directives.
- [3] This was eventually done some months after that.
- [4] I granted this order on 15 April 2024 after I had received the request for reasons and the court file on 8 April 2024.
- [5] It is not for my registrar to explain the court procedures to the applicant’s attorney.
- [6] Jan Disseldorp Beleggings CC (the “CC”).
- [7] The applicant and the CC were paid about R25 million so that the dam wall at “Clanwilliam” could be strengthened.
- [8] The remainder of the farm “Andriesgrond” Number 204, situated in the Cederberg Municipality Division (“Clanwilliam”).
- [9] The respondent agreed to an interim arrangement regarding access to the subject property.
- [10] This is terms of Section 173 of the Constitution of the Republic of South Africa, 1996.
- [11] This formed part of the “Infrastructure Investment Plan” approved by Cabinet on 27 May 2020.
- [12] This was not the subject of any dispute.
- [13] It was recommended that the dam wall be raised by thirteen (13) meters.

- [14] Section 64 of the National Water Act, 36 of 1998.
- [15] The registered owner is Jan Disseldorp Beleggings CC.
- [16] The registered owner of the property is Citrusdal Bellegengs (Pty) Ltd, trading as Bokwater Boerdery.
- [17] These notices concerned the Promotion of Administrative Justice Act, 3 of 2000 (“PAJA”).
- [18] The applicant complained that neighbouring landowners had yet to receive similar notices.
- [19] This compensation took place in 2014 and 2022.
- [20] Despite the payment being made as far back as 2014 and 2022, no proceedings are pending.
- [21] The date was fixed at 1 February 2020 to enable the department to use the property.
- [22] This was not disputed on the papers.
- [23] The applicant alleges that it agreed with SANRAL to remain in occupation of a portion of the expropriated property.
- [24] The possible harm that could occur was also not the subject of any dispute save for a bald denial in reply.
- [25] No factual dispossession occurred as the portion of the property moved onto was unoccupied.
- [26] In terms of Section 8 (1) of the Expropriation Act, 63 of 1975 (as amended by Act 45 of 1992).
- [27] The applicant was not entitled to any spoliation relief against the respondent.
- [28] *City of Cape Town v The South African Human Rights Commission and Others* (1337/2022; 368/2023) ZASCA 1109.
- [29] Section 8 (6) and section 22 of the Expropriation Act, 63 of 1975 (as amended by Act 45 of 1992).

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