

SOUTH AFRICA / JUDGMENT

Mabaso and Others v Goble N.O. and Others (LCC219/2015) [2023] ZALCC 3 (16 February 2023)

[2023] ZALCC 3

COURT

Land Claims Court

BEFORE

M T Ncube

CASE / FILE NUMBER

LCC219/2015

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REPUBLIC

OF SOUTH AFRICA

IN THE LAND CLAIMS COURT OF SOUTH
AFRICA

HELD AT DURBAN

CASE NO: LCC219/2015

REPORTABLE:

YES

OF

INTEREST TO OTHER JUDGES: NO
REVISED.

NO

16 February 2023

In

the matter between:

THANDI

FLORAH MABASO

First Plaintiff

MONDLI

MAXWELL DLAMINI

Second Plaintiff

PRUDENCE

HLENGIWE MABASO

Third Plaintiff

and

PETER

EVERALD GOBLE N.O

First Defendant

WILLEM

WOUTER FOURIE N.O

Second Defendant

MICHAEL

ARTHER BLORE N.O

Third Defendant

CAROL

ANNE GOBLE N.O

Fourth Defendant

THE

DIRECTOR GENERAL:

RURAL

DEVELOPMENT & LAND AFFAIRS

Fifth Defendant

JUDGMENT

NCUBE J

Introduction

- [1] This matter was heard on 16 and 17 of January 2023. It was finalised on the 17th of January 2023. An ex tempore judgment was delivered and the action was dismissed with no order as to costs. On 18 January 2023, the Plaintiff's attorneys wrote to the court's registrar requesting that the ex tempore judgment delivered on 17 January 2023 be supplied to them in a written form. Hence this written judgment.

Facts

- [2] The first plaintiff, together with her three children who were cited as second, third and fourth plaintiffs at the time, instituted an action in this court to be declared labour tenants. During the course of that trial, the second to fourth plaintiffs ("children") withdrew their claim. The first plaintiff who is their mother, remained as the only plaintiff in that matter. On 24 May 2018, the first plaintiff was in terms of section 33(2A) of the Land Reform (Labour Tenants) Act, Act No 3 of 1996, ("the Act") declared a labour tenant.
- [3] The first plaintiff, now seeks relief in terms of section 16 of the Act, awarding her the portion of that part of the farm which she is or was using on 2 June 1995. Apart from this relief, the first plaintiff also seeks a declaratory order to the effect that the application in terms of section 16 of the Act, which was filed by the late Jabulani Alpheus Mabaso, dated 17 March 2000 be deemed to include the first plaintiff. The first plaintiff states in her amended statement of claim that her late brother Jabulani Alpheus Mabaso ("Jabulani") was designated by the Mabaso family to lodge an application with the fifth defendant for the acquisition of land in terms of section 16 of the Act. A copy of the section 16 application form was annexed to the amended statement of claim as annexure "D". The first plaintiff states further in her amended statement of claim that her name was "inadvertently omitted"

from the form at the time the form was completed and lodged with the fifth defendant.

- [4] The action is defended by the first to the fourth defendant on the basis that: -
- (a) the first plaintiff never lodged the application to acquire land in terms of section 16 of the Act before 31 March 2001.
 - (b) there has been no compliance with section 17 of the Act, in that the application to acquire land was never served on the defendants or their successor in title.
 - (c) In terms of section 16 of the Act, only a labour tenant may apply for an award of land and Jabulani was never declared a labour tenant.
 - (d) Annexure D having been lodged by Jabulani, is of no relevance to the first plaintiff and it does not entitle the first plaintiff to an award of land.
 - (e) Jabulani could not have lodged a claim to be a labour tenant on behalf of other people.
 - (f) Labour tenancy is a status which is person specific. One person cannot apply on behalf of another person to be declared and labour tenant and that other person to be awarded land.
 - (g) The fact that Jabulani might have been the brother of the first plaintiff is an irrelevant consideration in respect of section 16 of the Act.

The fifth defendant filed a notice to abide by the decision of the court, without filing a plea.

The Law

- [5] Chapter III of the Act deals with the “acquisition of ownership or other rights in land by labour tenants.” Section 16 provides for the right to acquire land and it states:

“16 Rights to acquire land-

- (1) subject to the provisions of this Act, a labour tenant or his or her successor may apply for an award of –
 - (a) the land which he or she is entitled to occupy or use in terms of section 3;
 - (b) the land which he or she or his or her family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or his or her family was deprived contrary to the terms of an agreement between the parties;
 - (c) rights in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm, and

(d) such servitudes of right of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which he or she enjoys or had previously enjoyed as a labour tenant, or such other compensatory land or rights in land and servitudes as he or she may accept in terms of section 18(5): provided that the right to apply to be awarded such land, rights in land and servitudes shall lapse if no application is lodged with the Director General in terms of section 17 on or before 31 March 2001.

(2)

(a)

(b)"

[6] Section 17 of the Act deals with the Notice of application and initial procedure and it states:

"17 Notice of application and initial procedure-

(1) An application for the acquisition of land and servitudes referred to in section 16 shall be lodged with the Director General.

(2) On receiving the application in terms of subsection (1) the Director-General shall-

(a) forthwith give notice of receipt of the application to the owner of the land and to the holder of any other registered right in the land in question;

(b) in the notice to the owner, draw his or her attention to the contents of this section and section 18;

(c) cause a notice of the application to be published in the gazette, and

(d) call upon the owner by written request, to furnish him or her within 30 days-

(i) with the names and addresses of the holders of all unregistered rights in the land, together with a copy of any document in which such rights are contained, or if such rights are not contained in any document, full particulars thereof;

(ii) with any documents or information in respect of the land in question and the rights in such land the Director-General may reasonably require.

(3) ...

(4) The owner of the affected land shall within one calendar month of receipt of the notice referred to in subsection (2)(a), inform the Director-General in writing-

(a) whether he or she admits or denies that the applicant is a labour tenant within the meaning of this Act, and

(b) if he or she denies that the applicant is a labour tenant, the grounds on which he or she does so.

- (5) If the owner fails to inform the Director-General within the period referred to in subsection (4) that he or she denies that the applicant is a labour tenant, the applicant shall be presumed to be a labour tenant unless the contrary is proved.
- (6) If the owner does not inform the Director-General within the period referred to in subsection (4) that he or she admits that the applicant is a labour tenant, the Director-General shall, at the request of either party, refer the application to the court.
- (7) ...
- (8) ...
- (a) ...
- (b)
- (c)”

The Evidence

[7] Case for the plaintiff comprises the testimony of Thandi Flora Mabaso (“Thandi”) who is the first plaintiff in this case and Mondli Maxwell Dlamini (“Mondli”) who is cited as the second plaintiff. The defence case comprises of the testimony of Peter Everard Goble (“Mr Goble”) who is the first defendant. Thandi testified that she was the first plaintiff. In her evidence, she referred to annexure “D” which is the application in terms of section 16 of the Act. She testified that the application was lodged by her late brother Jabulani Alpheus Mabaso, who was like a father to her. When their father passed away, they were left with Jabulani on the farm. Jabulani was also late but since

Thandi is not learned, she said, she could not say when Jabulani passed away. She testified that Jabulani lodged the application on behalf of the whole family as Jabulani was then the family head after the demise of their father. However, they had two separate mothers, but on the same yard. The application was lodged on 22 March 2000, she said.

[8] Mondli testified. Thandi is his mother, he also knew Jabulani as his uncle. In 2000, Jabulani, was residing at his (Jabulani’s) parents’ house on the same farm where Mondli and Thandi are residing. Mondli testified that Jabulani was regulating the family’s affairs. He further testified that Jabulani had livestock (cattle) on

the farm. All cattle grazed together at the place called Embejuleneni. During cross-examination by Mr De Wet, Mondli testified that he (Mondli) was not staying at Jabulani’s house but he was staying with his mother on the other side of the river. He did not know that Embejuleneni now belongs to another person, Mr Benson.

[9] The first defendant (“Mr Goble”) testified for the defence. He is the trustee of the Trust which owns the farm in question. He knew that Thandi was declared a labour tenant by the Land Claims Court. He testified that he did not recall being served with a section 16 application for acquisition of land by Jabulani and that had he been served with the same,

he would have given the same to his lawyers as he did with all the other documents he received pertaining to this matter. He denied that Jabulani was a labour tenant with cattle grazing on the farm. The Trust bought the farm in April 1995 and there were no cattle brought on the farm. All cattle brought to the farm illegally had been removed in terms of a court

order.

[10] During cross-examination by Mr Katangure, counsel for the Plaintiffs, Mr Goble denied having received section 17 Notice from the Director-General. He stated that had he received such Notice, he would have reacted to it. However, Mr Goble admitted that both Thandi and Jabulani were resident on the farm and their houses were one hundred metres away from each other.

Evaluation

[11] This is unusual case. In terms of section 16 of the Act, only the labour tenant or his or her associate may apply for an award of land which he or she is entitled to occupy or use in terms of section 3 of the Act. The definition of a labour tenant is well known and needs not to be repeated in this judgment. An “associate” of a labour tenant means:

“a family member of a labour tenant, and any other person who has been nominated in terms of section 3(4) as the successor of such labour tenant, or who has been nominated in terms of section 4(1) to provide labour in his or her stead.”

[12] In turn a “family member” is defined thus:

““family member” means a labour tenant’s grandparent, parent, spouse (including a partner in a customary union, whether or not the union is registered), or dependent.”

The starting point of exercise is that there should be a labour tenant. Without a labour tenant, there can be no “associate”, “family member” or “successor.” The main problem in this case is that Jabulani himself was never declared a labour tenant. There is evidence that Jabulani applied for an acquisition of land in terms of section 16 of the Act, but there is no evidence that he was a labour tenant or that he was declared as such. Thandi cannot be an “associate,” “family member” or “successor” if Jabulani was not a labour tenant.

Requirements

[13] For Thandi to succeed in her present claim she had to prove on a balance of probabilities that: -

- (a) she is a “labour tenant,” “associate” or “family member” of a labour tenant or a successor to a labour tenant.
- (b) that she made an application in terms of section 16 of the Act for an award of land.
- (c) that the application for an award of land was made on or before 31 March 2001.

- (d) that the application for an award of land was made to the Director General, and
- (e) that the Director General gave notice of such application to the owner of the land in question.

[14] The first requirement has been satisfied as Thandi was declared a labour tenant. However, the remaining requirements were not satisfied. There is no evidence that Thandi made an application for an award of land on or before 31 March 2001. There is no evidence that the application was made to the Director-General and that the said Director-General gave notice of that application to the owner of the affected land. Jabulani made an application in terms of section 16 but he was not a labour tenant. Even his application was not lodged with the Director-General but was lodged with “AFRA,” which is the abbreviated version of “Association for Rural Advancement.” AFRA in turn, in Annexure “D”, gave notice to the Director-General that Jabulani had lodged such an application. No Notice was given to the owner of the affected land.

Costs

[15] Parties correctly did not ask for an award of costs. The practice in this court, is not to make costs awards unless there are special circumstances justifying costs awards. It was the responsibility of the fifth defendant to give notice of Jabulani’s application to the land owner but they did not do so. For that reason, the fifth defendant could have been ordered to pay the costs. However, seeing that Jabulani himself was not a labour tenant, I wish to say no more in that regard.

Order

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

1. The action is dismissed.
2. There is no order as to costs.

M T NCUBE

Judge of the Land Claims Court of

South Africa, Randburg

Appearances

For First & Second Plaintiffs:

Adv T. Katangure

Instructed by:

Gumede & Jona Inc.

Durban

For First to Fourth Defendants:

Adv A. De Wet SC

Instructed by:

Mason Inc.

For Fifth Defendant:

Adv N. Govender

Instructed by:

The State Attorney, Durban

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Prepared on 11 October 2026 · Esheria