

SOUTH AFRICA / JUDGMENT

Mamadini No v Mosena and Others (LCC 110/2008) [2011] ZALCC 6 (1 January 2011)

[2011] ZALCC 6

COURT

Land Claims Court

BEFORE

Loots, Gildenhuys

CASE / FILE NUMBER

LCC 110/2008

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD

AT RANDBURG

CASE

NO: LCC 110/2008

In

the matter between:

KGOSHI

M L MAMADINI N.O.A

.....PPLICANT

(IN

HIS CAPACITY AS ACTING CHIEF OF

THE

BABIRWA TRIBE AND ON BEHALF OF THE

BABIRWA

TRIBAL AUTHORITY)

and

ML

MOSENA

.....1st

RESPONDENT

THE

MEC DEPARTMENT OF AGRICULTURE

LIMPOPO

PROVINCIAL GOVERNMENT2nd

RESPONDENT

THE

REGIONAL LAND CLAIMS

COMMISSIONER,
LIMPOPO PROVINCE3rd
RESPONDENT
THE
MINISTER OF AGRICULTURE AND
LAND
AFFAIRS
.....4th
RESPONDENT

JUDGMENT

LOOTS AJ

- [1] The applicant, in his capacity as Acting Chief of the Babirwa Tribe and on behalf of the Babirwa Tribal Authority, came before the court on an unopposed basis claiming orders in the following terms:

Setting aside the lease agreement concluded between the First and Second Respondent during March 2008 in respect of the farms known as DE GRACHT 272 MR PORTION 1 AND 3 in extent 899.2318 ha in the District CAPRICORN, LIMPOPO PROVINCE (the land), in terms of the provisions of section 6(3) of the Act;

That the Second Respondent be precluded from selling, exchanging, donating, leasing, subdividing, rezoning or developing the farms known as DE GRACHT 272 MR PORTION 1 AND 3 in extent 899.2318 ha in the District CAPRICORN, LIMPOPO PROVINCE, in terms of the provisions of section 6(3) of the Act, pending the finalization of the Babirwa Tribe's land claim instituted under claim number KRP5089.

That the application that served in the High Court (Transvaal Provincial Division) under case number 33455/2008 be remitted back to that Court for the determination of the question of liability for the claim (of the Second Respondent in the application), in respect of pounding fees and the costs of that application;

That the First and Second Respondent pay the costs of this application, jointly and severally, the one paying the other to be absolved, in the event of the First and Second Respondents opposing this application.

Paragraph 3 of the founding affidavit states that the above relief is claimed in terms of section 6(3) of the Restitution of Land Rights Act, Act 22 of 1994 (the Act). No relief is sought against the Third and Fourth Respondents.

- [2] The notice of Motion and supporting documents were served on all the respondents. The First, Second and Third Respondents delivered notice of intention to participate and were served with notices in terms of rule 25(3), calling upon them to file their answering affidavits or responses. This they failed to do and notices of bar were subsequently delivered. No

answering affidavits or responses of any kind were filed in response to the notices of bar. The Applicant accordingly set the matter down for hearing on the unopposed motion roll of this court.

- [4] The orders claimed in terms of paragraphs 1 and 2 of the notice of motion are both claimed in terms of section 6(3) of the Act, which provides:

“Where the regional land claims commissioner having jurisdiction or an interested party has reason to believe that the sale, exchange, donation, lease, subdivision, rezoning or development of land which may be the subject of any order of the Court, or in respect of which a person or community is entitled to claim restitution of a right in land, will defeat the achievement of the objects of this Act, he or she may-

- (a) after a claim has been lodged in respect of such land; and

after the owner of the land has been notified of such claim and referred to the provisions of this subsection,

on reasonable notice to interested parties, apply to the Court for an interdict prohibiting the sale, exchange, donation, lease, subdivision, rezoning or development of the land, and the Court may, subject to such terms and conditions and for such period as it may determine, grant such an interdict or make any other order it deems fit.”

- [3] It has been held¹ that the following six requirements must be satisfied before an interdict can be granted in terms of section 6(3) of the Act:

- (i) The Applicant must be an interested party;
- (ii) The Applicant must have reason to believe that the development sought to be interdicted would defeat the achievements of the object of the Act;

The claim must have been lodged in respect of the land concerned;

The owner of the land must have been notified of the land claim and of the provisions of section 6(3);

Reasonable notice must have been given to all interested parties; and

The Court must exercise a judicial discretion in deciding whether or not it should grant the interdict in the circumstances of the case.

- [4] The Court is not satisfied that the fourth requirement set out above has been satisfied in that it is not alleged in the founding affidavit that the owner of the land (the Department of Agriculture of the Limpopo Provincial Government) had been notified of the land claim and of the provisions of section 6(3) of the Act, nor is a copy of such notice annexed to the founding affidavit.
- [5] In paragraph 6.2 of the founding affidavit it is alleged that the Second Respondent (the MEC of the Department of Agriculture of the Limpopo Provincial Government) had knowledge of the claim and in paragraph 6.3 reference is made to a letter addressed by the Second

Respondent to the First Respondent dated 24th June 2008 which indicates that the Second Respondent had knowledge of the Babirwa Tribe's land claim. Unfortunately that is not sufficient to satisfy the requirement of section 6(3)(b) of the Act, which provides that an application in terms of that section can be made only after the owner has been notified of the claim and referred to the provisions of section 6(3) of the Act.

- [6] Section 11 of the Act provides that immediately after publishing notice of a land claim in the Gazette, the Regional Land Claims Commissioner must give written notice of the publication of the notice. The Court cannot assume that such notice was given. It is incumbent upon a party who claims relief in terms of a statute to satisfy the court that the requirements of the legislation have been complied with.² The Applicant may be able to do this by way of a supplementary affidavit.
- [5] The following order is accordingly made:
- (a) The application is postponed sine die.
 - (b) The Applicants Attorneys may not debit their client with fees in respect of the costs of today's proceedings.

CE LOOTS

ACTING JUDGE OF THE LAND CLAIMS COURT

I agree

A GILDENHUYS

JUDGE OF THE LAND CLAIMS COURT

For the Applicant

Marinus van Jaarsveld Attorneys

¹See Singh & Others v North Central and South Central Local Councils and Others

[1999] 1 All SA 350 (LCC) at 353 f—I. See also Ga-Magashula Community Trust v Marsfontein and Others 2001

(2) SA 945 para [43].

²In Secretary for Finance v Esselmann 1998 (1) SA 594 (SWA) at 598B—C it was held that a party must set out the facts which entitle it to invoke a particular statutory provision.

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