

SOUTH AFRICA / JUDGMENT

# Mangangeni Emmaus Westmead Returners Community Trust and Others v Minister of Rural Development and Land Reform and Others (16270/09) [2010] ZAKZDHC 67 (30 November 2010)

[2010] ZAKZDHC 67

## COURT

Kwazulu-Natal High Court, Durban

## BEFORE

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## CASE / FILE NUMBER

16270/09

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IN THE KWAZULU-NATAL HIGH COURT, DURBAN,

REPUBLIC OF SOUTH AFRICA

CASE NO: 16270/09

Reportable

In the matter between

MANGANGENI EMMAUS WESTMEAD RETURNERS

COMMUNITY TRUST .....First Applicant

MUNTOZWAYO SOLOMON PHEWA .....Second Applicant

BOBO ANTANASIUS MGOBHOZI .....Third Applicant

THEMBI ANNACLETHAH MBILI .....Fourth Applicant

HENRY SANDILE HLENGWA .....Fifth Applicant

SIZAKELE PAULINA MOLEFE .....Sixth Applicant

And

MINISTER OF RURAL DEVELOPMENT AND

LAND REFORM .....First Respondent

KWAZULU NATAL REGIONAL LAND CLAIMS

COMMISSIONER .....Second Respondent

ITHALA BANK .....Third Respondent

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## JUDGMENT

30 November 2010

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## Introduction

[1] Following the settlement of the restitution claim in terms of the Restitution of Land Rights Act Number 22 of 1994, this application has been brought to have an order issued in the following terms:

That the transfer of Funds Agreement concluded by the respondents is invalid, of no force and effect and not binding on the applicants.

Alternatively

That the Transfer of Funds Agreement has lapsed and is no longer of any force and effect.

That it is in the interest of the first applicant and its members that the first applicant takes control and management of its funds held by the third respondent. That the third respondent makes the following payments to the first applicant from the account of the first applicant opened by the third respondent at its bank:

From account number 79211670 payment of R5 925 624, 91 plus any interest earned from 1 October 2009 to date of payment; From account number 79212157 payment of R397 428, 39 plus any interest earned from 1 October 2009 to date of payment less any

disbursements paid from 1 October 2009 to date of payment.

That all payments in terms of paragraph 3 above be made at the first applicant's attorneys within three days of this order. That the third respondent shall pay interest at 15, 5% p.a. from the date of this order to date of payment if payment is not made within three days. That on the date of making payment in terms of paragraph 3 above the third respondent delivers at the first applicant's attorneys a full account of all funds received by it and interest earned from all the funds it invested on behalf of the first applicant. That the first and second respondents pay costs of this application. That the third respondent pays costs of this application only if it opposes this application. Further and alternative relief.

[2] The respondents opposed this application essentially on the bases that:

The applicants have no locus standi; This court has no jurisdiction and

The funds of the first applicant fall to be controlled and managed by the respondents in terms of the Public Finance Management Act 1 of 1999 and the Transfer of Funds Agreements concluded by the respondents.

#### Factual background

- [3] On 14 August 1995 a group of people calling themselves the Mangangeni Emmaus Westmead Returners Committee, represented by their chairman, Mr Muhle Wilfred Phewa, lodged a land claim in terms of the Restitution of Land Rights Act No 22 of 1994, ("the Act"). The claim was over certain portions of the farm Zeekoegat No 973 owned by the Marianhill Mission Institute and other three farms being Salt River, Stockille and Richmond in Pinetown. The claim over the Zeekoegat was gazette on 25 April 1997 while the claim over the three farms has not been gazette, even though the claimants are expecting payments in relation thereto.
- [4] The second respondent agreed to settle the claims on the family basis and hence the 250 claimants representing 250 families. The first respondent prepared a written agreement which it was to conclude with representatives of the claimants in terms of section 42D of the Act, the terms of which, inter alia, were that:

The first respondent was to pay restitution award in the sum of R6 770 500, 00 to the Emmaus Claimants; A portion of the restitution award was to be used to pay Marianhill Mission Institute for the land to be purchased by the Emmaus

Claimants in terms of the sale agreement to be concluded; The Emmaus Claimants were to form a trust, to represent 250 claimants; The first respondent was to pay the balance of the restitution award, after payment of the purchase price for the land, to the Trust to be formed.

- [5] The proposals were acceptable to the claimants and were agreed upon in principle. They were to be incorporated in the settlement agreement in term of section 42D of the Act. The first applicant was then formed in conformity with the draft agreement.
- [6] In December 2001 the second respondent made recommendations to the first respondent pertaining to the settlement of the claims. It had taken the position that the funds needed to be managed by the respondents so as to ensure that all claimants would benefit equally. The respondents felt they had to ensure the proper completion of the housing projects and to that end, they engaged the eThekweni Municipality to assist as they had done in another claim involving the Burlington community.
- [7] The first applicant, being a legal entity, felt that its position was different from that of the Burlington Residents Association, which was not a legal entity. It further felt that the eThekweni Municipality was not better suited for its project which involved both housing and commercial or industrial development.

- [8] On 19 January 2002 a ceremony was held for the signing of settlement agreements by a number of claimant groupings, including the applicants, but the applicants refused to sign the agreement pertaining to their claim. On that occasion the first respondent issued a certificate for the Emmaus Claimants. Between the parties there is therefore a live dispute on how the funds being the award from the restitution claim have to be managed. Notwithstanding the first applicant taking issue with those recommendations, the first respondent approved them and the signing of the settlement agreement on 22 January 2002. The recommendations were that:

The land to be purchased be transferred to the Durban Metropolitan Municipality, now the eThekweni Municipality; The balance of the restitution award, after payment of the purchase price for the land, in the sum of R5 545 500, 00 be paid to the said Municipality.

- [9] At a meeting held by the second respondent with representatives of the claimants on 26 February 2003 the Director General of the first respondent indicated that he wanted to have a system put in place which would ensure that the individual claimants benefitted from the settlement of the claim. At this stage already, the officials of the first respondent were concerned about how the first applicant was being run in terms, inter alia, of:

The election of its office bearers; The tenure of office of such office bearers; The frequency of the holding of the annual general meetings; The need of the first applicant to open an office that was run daily with its concomitant expenses; The efficacy of the accounting system put in place; The ability of the first applicant to successfully manage the development programme and finances constituted by a payment of the

award, all of which had to benefit the individual claimants; Compliance by the first applicant with the provisions of section 38 of the Public Finance Management Act; The actual number of beneficiaries as the applicants mention 700 and not the approved 250 families; The type of development programme envisaged by the applicants which seeks to include industrial and commercial centres as opposed to the prioritisation of residential houses.

- [10] The position taken by the first applicant was that the first and second respondents had no cause for concern in relation to the identified issues. It questioned the applicability of the Public Finance Management Act, maintaining that compensation paid to claimants in terms of restitution did not constitute funds for purposes of section 38 of the Public Finance Management Act. The first applicant believed that there was nothing preventing the first and second respondents from paying the restitution award to the first applicant as agreed to in the meeting they all had on 16 October 2003. The second respondent had even undertaken to have the business plan done within about three and a half months. Yet it had not done as promised.
- [11] The applicants aver that the payment of the restitution award is governed by the settlement agreement entered into between the Trust and the Department of the first respondent. They contend that all reasons proffered by the first and second respondents have nothing to do with the settlement agreement, which these respondents are in breach of. They seek to

utilize the proceeds of the award in the purchase of 174 hectares of very prime land situated along the N3 free way near Marianhill tollgate, which area is surrounded by developed areas, including a township and an industrial area. The applicants envisage a big project that will cost hundreds of millions of rand, with a number of investors having shown interest. Negotiations with the eThekweni Municipality were also ongoing for the development programme.

- [12] The first applicant is operated from its office in Pinetown on a full time basis even though virtually with no financial resources other than monthly payments made by the third respondent for rent, telephone and an allowance of R500 00 per month. These payments are the proceeds of the award. The first applicant averred that it has suffered huge financial loss and continues to do so as long as its funds, which it would have invested at a high interest rate, are kept in an investment of the third respondent at the interest rate of 3% to 6%.
- [13] In June 2003 the second applicant received a transfer of funds agreement from the second respondent, which he signed and returned to the second respondent. However the agreement was not simultaneously signed by any official of either the first or second respondent. The agreement made provision for the payment of the restitution award in the sum of R6 261 879, 00 to the first applicant within 30 days of the signature. No such payments were made within the stipulated 30 days. In July 2004 the first applicant then represented by the Legal Aid Board, demanded payment of the restitution award but the second respondent refused to pay stating that there was no agreement because the transfer of funds agreement had not been signed by the first and second respondents. The parties are in dispute over certain issues pertaining to the agreement. Clause 1.2 of the award of rights in land of this agreement reads:

*“1.2.1 The State agrees to restore the Land to the Claimants, as mandated by the Restitution of Land Rights Act 22 of 1994 (as amended) and part of the broader land reform objectives of the State and in the manner set out herein;*

1.2.2 The Claimants agree that the sum of R1 333 885, 00 (one million three hundred and thirty three thousand eight hundred and eighty five rand) shall be deducted from the sum of money referred to in clause 1.1.4 and shall be utilized by the State to purchase the Land referred to in clause 1.6 from the registered owner;

1.2.4 The parties agree that the Land shall be transferred from its current registered owner directly to the Trust

1.2.5 The Trust shall enter into an agreement with the Department that will stipulate the terms and conditions pertaining to the Transfer of Funds to the Trust in terms of the concept plan. This agreement amongst other things shall outline the State's and the Trust's continuing obligations to set up controls, risk management systems ensuring that the benefits of this agreement reach the individual claimants.”

- [14] In May and June 2005 and in February 2006 the three respondents concluded and signed a transfer of funds agreement in terms of which the first respondent paid the restitution award and the discretionary grant in the total amount of R6 188 333,75 into the third respondent's account at ABSA Bank. The third respondent then opened two accounts in its bank for the first applicant. The applicants were not a party in the opening of the bank accounts.

#### Submissions by parties

##### Locus Standi

- [15] The respondents submitted that the applicants do not have locus standi to bring this application on the basis that the applicants ought to have convened a general meeting from which they would have been authorized to bring this application. They relied mainly on clause 6.2 of the Trust Deed which provides that:

*“The Trustees are hereby vested with the general power to do all such things as may be necessary or conducive to achieve the objects of the Trust, subject to the terms, conditions and limitations set forth in the Trust Deed: directions contained in resolutions passed and the provisions of the Act”*

- [16] They contend that clause 3.5 of the Trust Deed defines “member” as the beneficiaries of the Trust in this case the 250 families who instituted restitution claims against the respondents and that clause 7.1 provides that the first members of the Trust are the 250 heads of the Mangangeni Emmaus households. They refer to minutes of a meeting held by people who called themselves the community of Emmaus held on 17 January 2010, where they complained about the failure of the board members of the Trust, for the last five years, to give the community a report back. The respondents say that at the time these proceedings were instituted the applicants had no consultation or directions received from the community. They contend that in regard to this aspect, there is a dispute of facts which is not capable of a resolution without the matter being referred to oral evidence.

- [17] The applicants on the other hand rely on clause 6.4 of the Trust Deed to say that it was not necessary for them to convene a general meeting for authorisation to institute the present application. To the extent relevant clause 6.4 reads:

*“The Trustee shall have all such powers and authorities as they may require, and without underogating from the generality of the foregoing, the Trust shall have the following restricted powers, which shall be subject to the authority conferred by resolution of a General Meeting, passed by the majority indicated below:*

6.4.1.1 .....

6.4.1.2 .....” (sic)

##### Jurisdiction

- [18] The respondents contend that the monies which constitute the subject matter of these proceedings have not been paid out to the beneficiaries, the 250 claimants, as the monies are still with the third respondent. Therefore to that extent, the claims have been settled but have not been finalised. They will be finalised, the submission goes, once each of the 250 households has received a pro rata portion of the R6.7 million. The submission is that this application falls within the jurisdiction of the Land Claims Court which has an exclusive jurisdiction than any other court.
- [19] Further, in terms of section 42 D (1) (e) of the Act the first respondent has the power to agree with the parties as to the manner in which the rights awarded to the claimants are to be held or the compensation is to be paid or held or such other terms and conditions as the Minister considers appropriate. It is averred that as the funds were taken from the public purse, they remain public funds until they have been paid over to the respective beneficiaries, because the first and second respondents are still liable to pay those monies to such beneficiaries. The funds were approved by the National Treasury and the department of the first and second respondents transferred R5.4 million from the budget vote as restitution capital award funds. The Director-General of the Department of Land Affairs was therefore accountable to the public for the funds, notwithstanding their transfer.
- [20] The applicants contend that the restitution claim has been settled and finalised and that the funds held by the third respondent were transferred for the benefit of the first applicant and now belong to it. Reliance was placed on section 6 (2) (e) of the Act to say that the section applied only to claims that have not been finalised. To the extent relevant section 6 (2) (e) reads:

*“(2) The Commission may, at a meeting or through the Chief Land Claims Commission or any other person designated by any such commissioner-*

(a).....

- (e) generally, do anything necessarily connected with or reasonably incidental to the expeditious finalization of claims.”

- [21] The applicants submitted that the orders they seek have nothing to do with the finalization of the claims and that their case is not based on the Act. They say that the respondents are also not relying on the Act in defending their control and management of the first applicant's funds.

Submissions on the merits.

- [22] According to the applicants the transfer of funds agreement is a violation of the settlement agreement entered into by the first applicant and the first respondent, in terms of which the restitution award and the discretionary grant are payable to the first applicant. The first applicant contends that the third respondent is equally culpable as are the first and second respondents in concluding an unconstitutional and invalid transfer of funds agreement.

[23] While the applicants do not admit the validity of the transfer of funds agreement, they submit that this agreement has lapsed and that the respondents can no longer continue to control and manage the funds on the basis of this agreement. In terms of the agreement the roles and functions of the respondents regarding the management and control of the funds was limited to a period of twenty four months from the date of signing the agreement, being 8 February 2006. They contend that a very cumbersome and problematic process has been set to access the funds held by the third respondent in that:

The applicants are required to convene a meeting and to pass a resolution to purchase or appoint a service provider; The applicants must obtain at least three quotations from different service providers; The resolution and the quotations must be forwarded to the second respondent for approval, which approval takes weeks or months and sometime is not given at all; Upon approval, the second respondent then instructs the third respondent to pay the service provider.

[24] The meeting that the second and fifth applicants held with the second respondent's Ms Sosibo on 4 April 2007 is used by the applicants as an example of the problematic relationship there is bound to be with the respondents if the existing system is to be sustained longer to develop the project at hand. In the period of more than 30 months after the meeting and of all things approved only the monthly payment of petty cash and the purchase of the computer and the printer had been done. With the exception of one telephone call from one employee of the second respondent, there has never been any further meeting or communication with the applicants regarding the matters agreed upon with Ms Sosibo who approved the attention to be given as a matter of urgency to the following matters:

Payment to the first applicant of petty cash in the sum of R1000,00 for the first month and thereafter R500,00 per month; Payment of R500,00 per month for stationary; Payment of honorariums for the trustees; Payment of salaries for persons managing the office; Purchase of a computer, printer, fax/scanner and a photocopier.

[25] The applicants consider the transfer of funds agreement as prejudicial to them as it denies the first applicant full benefits derived from its funds currently held by the third respondent. By investing the fund with ABSA Bank the third respondent passes only a portion of the benefits derived from the investment and has not given an account of all interest earned. The applicants contend that the interest, if properly invested would be enough to run the affairs of the first applicant in carrying out the housing and industrial development without using the capital funds. They hope that the housing and industrial development will create short term and permanent job opportunities for many people.

[26] The first applicant is in the process of negotiating a land development agreement with eThekweni Municipality for the building of houses and providing bulk services to the land for industrial and commercial development. EThekweni Municipality has then requested the applicants and the second respondent to furnish it with a signed copy of the settlement agreement which the second respondent is unable to produce. It is common cause that the

parties are working towards producing a signed copy. The applicants say that they have already engaged the services of various professionals, including engineers, environmentalists and town planners for the development.

- [27] The applicants denied that the Public Finance Management Act applied to them, indicating that section 3 (1) thereof reads:

*“This Act, to the extent indicated in the Act, applies to-*

Departments; Constitutional Institutions; and Parliament and provincial legislatures.

- [28] The right to manage and control the assets of a trust, applicants contend, vests in the trustees in terms of the Trust Property Control Act No 57 of 1998, the Trust Deed and the common law. They say that it is clear from the Trust Property Control Act that the right to manage and control assets of the trust vests exclusively on the trustees who are accountable to the Master for their administration of the trust assets. The applicants relied also on the Trust Deed in support of their version in contending that the Trustees shall have all such powers and authority as they may require and are given the general powers as are listed in Clauses 6.4.2.1 and 6.4.2.2 which read:

*“6.4.2.1 to develop, hold and manage on behalf of and for the benefit of the Members, the Property and other assets of the Trust whether in the nature of land, building, real rights, money or other tangible or intangible assets of whatsoever nature;*

6.4.2.2 to establish a Trust Fund, including separate parts of such Trust Fund, with distinct objects and purpose, in implementation of the terms of the Trust Deed. The Trustees are hereby vested with a complete and absolute discretion as to the manner in which they shall deal with, appropriate and apply the assets constituting the Trust Fund for the benefit of the members;.....”

- [29] In respect of any challenge made by any members to the decisions taken by the Trust, reliance was placed on clause 30, the terms of which are that:

*“Save as hereinbefore otherwise stipulated, where discretions are vested in the Trustees hereunder, such discretion shall be complete and absolute, and any decision made by them pursuant to such discretion shall be complete and absolute, and any decision made by them pursuant to such discretionary powers shall not be challengeable by any Member or any other person affected thereby, provided the Trustees conform to the Objects of the Trust, and to the other terms, conditions and principles of this Trust Deed.”*

- [30] The common law actio rei vindicatio as an action available to an owner of movable property was relied upon by the applicants to recover the funds from the third respondent. The submission is that the third respondent no longer has any ius possidendi over the funds of the Trust. The applicants pray for the order foreshadowed in the notice of motion to be granted to them with costs.

- [31] The respondents dispute the submission that the transfer of funds agreement is a violation of the settlement agreement as the latter has not been signed. They also deny that investing the funds with the third respondent was unconstitutional and invalid. They contend that the transfer of the funds into an attorney's account, as sought by the applicants, was not even consistent with the agreement upon which the applicants seek to rely.
- [32] The respondents blame the applicants for contributing to delays in meeting time frames due to their obstructive attitude. They aver that the first applicant is not in a position to handle these funds and yet the first applicant is asking for the funds to be transferred to an attorney's firm. Further, they say that there are no adequate measures which the applicants have put in place to ensure that the funds will be kept safely for the benefit of all claimants in the same manner as the funds are currently safe with the third respondent and the Auditor – General will audit the account. It was denied that the second respondent approved the payment for all the office requirements listed by the applicants who have failed to state what they use the furniture for and why they need more money.
- [33] The respondents say that the third respondent is a development bank that has agreed to ensure that the funds are utilized for the benefit of all claimants. They aver that they have taken all the precautionary measures to protect the financial interests of all beneficiaries. In the circumstances, they submit, that the award monies should remain with the third respondent until such time that the applicants have demonstrated their ability to utilize the funds for the benefit of all beneficiaries. They contend that the administrative decision of the first and second respondents to deposit the money with the third respondent has not been reviewed and set aside and that therefore the decision should continue to produce legally valid consequences.
- [34] The respondents submit that the law has created a specialized court, the Land Claims Court to deal with the restitution of property disputes, so that only compelling public and other interests would justify bypassing that Court and none has been shown to exist in this case.

#### Evaluation

- [35] The first two grounds on the basis of which the respondents opposed this application took the form of points raised in limine. Yet their resolution was dependent on the facts of this matter. It is now the opportune time to resolve these points as each is capable of disposing of this application.

#### The locus standi

- [36] The submission is that the applicants, who have not called for a general meeting of members of the Trust, have had no mandate to lodge this application. The applicants referred to various clauses of the Trust Deed to resist the challenge. When the terms of clauses 6.4 and 30 of the Trust Deed are considered, the merits of the challenge to the applicants' locus standi are shown to be wanting. Clause 6.4 gives Trustees such powers and authority as they may require in the execution of their duties. Clause 30 gives the first

applicant complete and absolute discretion to make decisions on matters to which the powers of Trustees are not limited.

- [37] Further, clause 6.2 of the Trust Deed states that the Trustees are vested with the general power to do all such things as may be necessary or conducive to achieve the objects of the Trust, subject to the terms, conditions and limitations set forth in the Trust Deed. It was up to the respondents to refer court to such terms, conditions and limitations set forth in the Trust Deed as limited the powers of the applicants to bring this application. They did not. Nor was I able to find one such limitation. The institution of legal proceedings, such as the present application, has therefore not been shown by the respondents to fall within those matters in respect of which the Trustees' powers have been curbed. Accordingly, this ground falls to be dismissed.
- [38] In a nutshell, the submission by the respondents is that the Land Claims Court has exclusive jurisdiction to all matters dealing with the restitution of property disputes and that as monies which constitute the subject matter of this dispute have not been paid out to the 250 household beneficiaries, this court's jurisdiction is excluded. The respondents concede that the claims have been settled but contend that they have not been finalised. On the other hand, the applicants claim that ownership to the funds rests with the first applicant and rely on the common law *actio rei vindicatio*, in particular against the third respondent and against the first and second respondents as well.
- [39] There is no doubt between the parties that the Land Claims Court has exclusive jurisdiction to all matters dealing with the restitution of property disputes. Section 1 of the Act defines "court" to mean the Land Claims Court established by section 22 of the Act. The issue at hand is whether this court is seized with a matter involving a restitution of property dispute in which case this court has no jurisdiction or it is a matter of an owner asserting its right over funds belonging to it, in which incident, the matter is properly before this court.
- [40] In my view, the probe should turn on the powers of the first respondent in respect of a claim which has been settled but the funds have not been paid over to the beneficiaries as demonstrated in the factual background. Section 42 D of the Act outlines the powers of the Minister in case of certain agreements and to the extent relevant it reads:

*"If the Minister is satisfied that a claimant is entitled to restitution of a right in land in terms of section 2, and that the claim for such restitution was lodged not later than 31 December 1998, he or she may enter into an agreement with the parties who are interested in the claim providing for one or more of the following:*

- ..... the payment of compensation to such claimant;
- (e) the manner in which the rights awarded are to be held or the compensation is to be paid or held, or
  - (f) such other terms and conditions as the Minister considers appropriate."

[41] There are thus three essential conditions that are a precursor to the first applicant becoming entitled to the funds coming from the restitution award flowing from section 42 D, namely:

the lodgment of the claim not later than 31 December 1998; the Minister being satisfied that a claimant is entitled to restitution of a right in land in terms of section 2 of the Act; the Minister deciding to, and entering into an agreement with interested parties, so as to provide, in that agreement, for compliance with certain conditions.

[42] In this matter, the first two essentialia have been met and the Minister deemed it appropriate that an agreement as envisaged in section 42 D of the Act be entered into between her and the first applicant. A document purporting to be such agreement was prepared for the parties to sign on 19 January 2002, together with other claimant groups. The second applicant chose not to sign the agreement, on the basis that it contained provisions that the first applicant was not agreeable to. It took the second applicant more than a year to finally agree to sign the agreement. When the second applicant signed the agreement, it was not simultaneously signed either by the first respondent or

her delegated official. I have to accept the uncontested evidence of the respondents that the agreement was never signed by the first respondent.

[43] Therefore, one of the essential conditions to be fulfilled jointly by the first applicant and the first respondent, so as to accord ownership of the award funds to the first applicant, has not yet been met. As the facts show it, the agreement produced for signature, which was signed by the second applicant has even been lost. It follows that the last part of the duties of the Minister flowing from the powers given to her has not been executed. This part is critical in that it contains a safeguarding measure in section 42 D (1) (e) and (f) for the protection of monies that have their origin from public funds, as the bulk of it comes from the budget vote as restitution capital award fund.

[44] When the first respondent finally exercises the remaining powers, he or she will be acting in terms of section 42 D of the Act. The restitution of rights is a measure by means of which the State seeks to correct the social and political imbalance created by a past discriminatory State governance. The Minister's role in overseeing the restitution process, through its final stages, is thus very critical. It has to be borne in mind that the determination of the scope of public power and the duties attached to it require an analysis not only of the statutory provisions confirming the power but also the social, political and economic context within which the power was to be exercised, see *Rail Commuter Action Group & Others v Transnet Ltd t/a Metrorail & Others* 2005 (2) 359 (CC). Clearly therefore, a stage has not yet been reached when it can lawfully be said that the Restitution of Land Rights Act is no longer applicable in this matter. Therefore the Land Claims Court still retains exclusive jurisdiction for this application. No compelling public and other interests has been shown to exists in this matter justify this court to bypass the Land Claims Court, see in this regard, *Concerned Land Claimants Organisation of Port Elizabeth v Port Elizabeth Land and Community Restoration Association and Others* [2006] ZACC 14; 2007 (2) Sa 531 (CC). The second ground

raised by the respondents must therefore be upheld.

[45] Accordingly the following order will issue:

The application is dismissed. The applicants to pay the costs hereof, for which they are jointly and severally held liable.

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Cele AJ.

DATE OF HEARING : 29 OCTOBER 2010

DATE OF JUDGMENT : 30 NOVEMBER 2010

APPEARANCES

FOR APPLICANT : Adv S K D MADLALA

Instructed by : M E MBHELE & CO

FOR RESPONDENT : Adv T V NORMAN

Instructed by : STATE ATTORNEY

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