

SOUTH AFRICA / JUDGMENT

Marthienus van Biljon v Minister of Rural Development and Land Reform and Others (LCC 173/2008) [2013] ZALCC 3 (29 January 2013)

[2013] ZALCC 3

COURT
Land Claims Court

BEFORE
Y Sidlova

CASE / FILE NUMBER
LCC 173/2008

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IN THE LAND
CLAIMS COURT OF SOUTH AFRICA
HELD IN RANDBURG

CASE NUMBER: LCC: 173/2008
Decided
on: 29 January 2013
In the matter

between: HENDRIK
CHRISTOFFELO MARTHIENUS VAN BILJON
.....Applicant
and
THE
MINISTER OF RURAL DEVELOPMENT
AND
LAND REFORM
.....First
Respondent
REGIONAL

LAND CLAIMS
COMMISSIONER:

NORTH
WEST AND GAUTENG
.....Second
Respondent
BAPO
BA MOGALE COMMUNITY
.....Third
Respondent
BAKWENA
BA MOGOPA COMMUNITY
.....Fourth
Respondent
JOHANNES
JACOBUS RATHMAN
.....Fifth
Respondent
AND
OTHER OPPISNG LAND OWNERS
Concerning
THE
FARM HARTEBEESPORT B410 JQ

JUDGMENT

SIDLOVA AJ:

Introduction

- [1] This is an interlocutory application brought in terms of Land Claims Court Rule 57(1) (c) for an order that the issues relating to a claim in terms of the Restitution of Land Rights Act¹ (the Act) in respect of portion 1288 of the farm Hartebeespoort B410 JQ owned by the applicant, should be heard separately from claims over other portions of land subject to the claim which are opposed by the respective landowners. The Minister of Rural Development and Land Reform is cited as the 1st Respondent; the Regional Land Claims Commissioner for Gauteng & the North West Province as the 2nd Respondents, the claimant communities as the 3rd & 4th Respondents and the landowners who have opposed the claim as the 5th Respondent.

Background Facts

- [2] On 14 November 2008 the Regional Land Claims Commissioner for Gauteng and the North West Province (the RLCC) referred to the Land Claims Court a claim lodged by two individuals representing the Bapo Ga Mogale and the Bakwena Ba Mogopa respectively (the claimant communities) in respect of land situated in the magisterial district of Britz in the North West Province.² The land claims were published in notices in the Government Gazette on 30th July 2004.³ The applicant is but one of hundreds of owners of portions of land

affected by these notices.⁴

Issues Raised

- [3] The applicant says in his founding affidavit that he was not served with the referral report. Indeed he is not listed as an interested party,⁵ nor is there any evidence of service of the referral report on him.⁶ The only landowners who are listed as interested parties are certain landowners (the opposing landowners) on whose behalf an objection to the claims was lodged in terms of section 11A of the Act. These landowners delivered a response to the Referral Report which concluded with a prayer that the claims should be dismissed, alternatively an order that the claimant communities are entitled only to equitable redress and not to further restoration of land.⁷
- [4] The applicant submits in his founding affidavit that he should be entitled to have the claim over his portion of land adjudicated separately from the claims of the opposing landowners because they dispute the validity of the claims, whereas he does not dispute the validity of the claim over his property. All he wants the court to decide is whether the claimant communities are entitled to restitution or whether they should receive equitable redress instead of restitution. In the event that the court decides that restitution is appropriate, he will request the Court to order the Department to acquire his property for the community by way of expropriation.
- [5] There are two questions which arise: First, whether the claim over the applicant's land has been referred to the Court by the RLCC. Secondly, if so, whether an order of separation of issues in terms of section 57(1)
- (c) is appropriate.
- [6] The manner in which these claims have been referred to this court is completely unsatisfactory. The claims affect hundreds of portions of land. There are three categories of landowners, firstly, those who have reached settlement agreements and land has been acquired from them, secondly those that are opposing the claim, and thirdly those like the applicants who are not opposing the claim but have not reached to an agreement of settlement. The Court has no information as to the status of the claims over the portions of land which do not fall into the first two categories, except for information provided by the applicant in respect of his land. It is not clear whether the referral to this Court includes the claims which fall into this third category. If it does not then the applicant is not joined as an interested party and the application for separation of issues can obviously not be granted.
- [7] If the claim over the applicant's portion of land is included in the referral, then the question arises whether separation of issues in terms of s 57(1) is appropriate relief. Generally this form of relief is appropriate where, as between the parties to the action, the matter can be handled most efficiently by determining certain issues of fact or law before others, usually because a determination of such issues may render it unnecessary to resolve the remaining issues. This is not what the applicant wants. He wants the land claim over his property to be

adjudicated separately from the claims over other properties.

- [8] A more appropriate form of relief may be separation of trials. The Land Claims Court rules do not make specific provision for separation of trials, but rule 28(2) provides that where the rules are silent on any matter, the Uniform Rules and the procedure in civil actions and applications followed by the High Court having jurisdiction in the area where the land concerned is situated, apply. Rule 10(5) of the Uniform Rules of the High Court confers the discretion on a court to order separation of trials in respect of causes of action or parties.⁸
- [9] The applicant clearly requires some form of relief, because he alleges that he is being seriously prejudiced by the existence of the land claim. He says that he cannot sell his property because no-one is interested in purchasing land which is subject to a claim. He operates a crocodile farm on the property and says he is not able to raise funding from banks to develop the business because no bank will grant a loan in respect of property subject to a land claim. He alleges that he has tried to negotiate the sale of his property for the benefit of the claimant communities with the Land Claims Commission, but has been unsuccessful. This matter was first on the unopposed roll in December 2010, but was postponed then because of queries raised by the presiding Judge. It was set down again after further attempts at negotiating a settlement failed and a supplementary affidavit was filed with the permission of the Court.
- [10] The Court is unable to assist the applicant because of the uncertainty as to whether the applicant's claim has been referred to the Court. The only party that can enlighten the Court as to the status of the claim is the Regional Land Claims Commissioner. I have accordingly decided to issue a rule nisi calling upon the Regional Land Claims Commissioner to show cause why he or she should not be ordered to either refer the claim in respect of the applicant's land to this Court or, alternatively, if it is contended that the claim has been referred to the Court under case number LCC 173/2008, why a separation of trials should not be ordered. I am of the opinion that I can make the orders referred to under the claim for alternative relief. This Court is a court of equity and must, where necessary, be constructive with regard to the relief it grants.

Order

This matter is postponed to 28th March 2013.

The Second Respondent is ordered to show cause on 28th March 2013 why it should not be ordered to refer the claim in respect of the applicant's land to this Court in terms of section 14(1) (b) of the Restitution of Land Rights Act 22 of 1994 by a date to be set by the Court.

Alternatively to paragraph 2 of this order, if the Second Respondent contends that the claim in respect of the applicant's land has already been referred to the Court under case number LCC 173/2008, the second Respondent is ordered to show cause why an order of separation of trials should not be made in terms of rule 10(5) of the Uniform Rules of Court.

All issues of costs are reserved.

Y SIDLOVA

ACTING JUDGE: LAND CLAIMS COURT

For the applicant: Advocate HS Havenga

Instructed by: P Moolman of Pieter Moolman Attorneys

1Act 22 of 1994.

2The claim was referred in terms of s 14(1) of the Act and Land Claims Court Rule 38. It is not clear whether the referral is in terms of sub-section (b) or (d) – paragraph 8 of the Referral Report refers to s 14(1)(d), whereas the certificate at page 27 of the report refers to s 14(1)(b).

3General Notices Numbers 1504 – 1507 GG 26602 of 30 July 2004.

4Copies of the notices are annexed to the Referral Report – pages 137 – 191 of the report. The portion of land owned by the applicant is listed on page 171 of the referral report.

5See Annexure JJ 1 at page 132 of the report.

6See Annexure KK 7 - pages 192 – 215 of the report.

7The RLCC states in the Referral Report that the claims against many of the portions of land have been settled and that more than 3 000 hectares of land had at that stage been transferred to the claimant communities.

8The factors relevant to the exercise of such discretion are thoroughly canvassed in *De Polo & Others v Dreyer & Others* 1990

(2) SA 290 (W).

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Prepared on 14 October 2026 · Esheria