
SOUTH AFRICA / JUDGMENT

Matlala and Others v Platinum Group Metals (RSA) (Pty) Ltd and Another (60/2018) [2018] ZALMPPHC 30 (12 July 2018)

[2018] ZALMPPHC 30

COURT

Limpopo High Court, Polokwane

BEFORE

E M Makgoba

CASE / FILE NUMBER

60/2018

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO: 60/2018

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

KGOSHIGADI
LEKWELARURI ROSETTA MATLALA 1ST
APPLICANT
MANOKO
MOSIMA
NGOEPE 2ND
APPLICANT
EARLY
DAWN TRADITIONAL AUTHORITY 3RD
APPLICANT
and
PLATINUM
GROUP METALS (RSA) (PTY) LTD 1ST
RESPONDENT
THE
REGIONAL MANAGER MINERAL
AND
ENERGY
AFFAIRS 2ND
RESPONDENT

JUDGMENT

MAKGOBA JP

[1] The Applicants brought an application against the Respondents seeking an interdict preventing the First Respondent from proceeding with the prospecting and mining activities on the Early Dawn Farm and compelling the First Respondent to negotiate and conclude a lease agreement with the Applicants.

[2] On 2 October 2013 the First Respondent was, in terms of section 17(1) of the Mineral and Petroleum Resources Development Act 28 of 2002 (“MPRDA”), granted the prospecting right over the Farm Early Dawn 361 LR situated in the Mogalakwena District, Limpopo

Province. In order to facilitate access to the Early Dawn Farm, the First Respondent concluded a lease agreement with the Early Dawn Community on 2 April 2015. The lease is for five years and the First Respondent pays R 40 000.00 per month to the Early Dawn Community.

[3] The Application is opposed by the First Respondent on the following grounds:

3.1. Although the First Applicant is the legitimate traditional leader of the Bakone Tribe, the title deed together with all the documents concluded as part of the acquisition of the Early Dawn Farm do not support her claim of entitlement to exercise authority over the Early Dawn Farm.

3.2. The Second and Third Applicants do not have any traditional standing or authority and entitlement to bring these proceedings.

3.3. The Applicants have not established any clear right, whether under the law of property or the Traditional Leadership laws to justify an interdict sought against the First Respondent.

[4] The Deeds Office search report attached to the founding affidavit records the owner of the Early Dawn Farm as the National Government

of the Republic of South Africa.

[5] During the year 1945 a group of 93 people came together and formed themselves into a community with the intention of buying the farms Early Dawn No. 996 and Millstream No. 995 from the Bourke Trust and Estate Company Limited. The agreement of purchase and sale was entered into and signed by Chief Sekgoare Matlala on 16 April 1945. The purchaser was recorded as “The Bakone Tribe of Natives under Chief Sekgoare Matlala”. The property was to be registered in the name of “the Minister for Native Affairs in the Union of South Africa in trust for the Bakone Tribe of Natives under Chief Sekgoare Matlala.” It is important to note that Chief Sekgoare Matlala was not one of the 93 purchasers.

[6] The purchase and sale agreement was subject to the reservation of mineral rights in favour of the Bourke Trust and Estate Company

Limited and to the following conditions:

6.1. That transfer shall be passed into the name of the Minister of Native Affairs in trust for the Bakone Tribe of Natives under Chief Sekgoare Matlala.

6.2. That simultaneously with transfer a Notarial Agreement shall be executed reserving to the 93 members of the said tribe who are contributing towards the purchase price the rights of exclusive use, occupation and usufruct in the said farms.

[7] Upon signature of the Purchase and Sale Agreement on 16 April 1945 a Tribal Resolution was passed whereby it was resolved:

7.1. That the exclusive right of occupation and use of the farms be and is hereby reserved for the benefit of the 93 members of the tribe and such members as may from time to time be admitted, their respective heirs, executors, administrators and assigns.

7.2. That the said members, their respective heirs, executors, administrators or assigns shall have and are hereby granted the sole

and unfettered right to administer the said property without interference and control of the said Bakone Tribe.

7.4. That the revenue that may be derived from, and the proceeds of any sale or alienation of the said property shall belong to, and be for the benefit and use of the said members, their respective heirs, executors, administrators and assigns.

[8] It is common cause that the present members of the Early Dawn Community

are the descendants of the 93 people who purchased the Early Dawn Farm. It is furthermore common cause that Chief Sekgoare Matlala is the predecessor to the First Applicant.

- [9] A careful reading of the conditions of the purchase and sale of Early Dawn Farm as well as the Tribal Resolution passed on 16 April 1945 shows that the Early Dawn Farm is a communal private property and not a communal tribal property.
- [10] The question arises as to whether the three Applicants have authority to bring the interdict proceedings against the First Respondent. It is common cause that the First Applicant is the acting traditional leader of the Bakone Tribe, Matlala area which includes the Early Dawn Farm. Whether the First Applicant exercises traditional jurisdiction or has proprietary rights over the privately owned farm of Early Dawn will be dealt with later in this judgment.
- [11] Regarding the Second Applicant it is alleged in the founding affidavit that she is the “head lady” (or headwoman) of the Early Dawn Farm and the custodian of the mineral rights. Apparently the Second Applicant was appointed or nominated as such by the First Applicant. Such an appointment is not according to customary law and the applicable legislation. This has been conceded

by the Applicants. The appointment of a headman or headwoman should be conducted in terms of section 12 of the Limpopo Traditional Leadership and Institutions Act 6 of 2005 which regulates the recognition of traditional leaders. In terms of this Act, the Royal Family identifies a suitable person and submit the name to the Premier of the Province who after due and prescribed publication in the Government Gazette recognises such a person and issue to him or her a certificate of appointment as a traditional leader. This procedure was never followed in the case of the Second Applicant. Accordingly, the Second Applicant is not a traditional leader (headwoman) and therefore does not have authority to bring these proceedings against the Respondents.

- [12] It is alleged that the Third Applicant is “a community authority duly established with a Constitution” and represents

the inhabitants of the Early Dawn Farm. Section 3 and 4 of the Limpopo Traditional Leadership and Institutions Act, 2005 regulates

the formation or establishment of a Traditional Authority or Council. The Premier of the Province also plays a part in the recognition of a traditional community and the establishment of a Traditional Council.

It is common cause that this process was not followed in respect of the establishment of the Third Applicant. There is nothing to suggest that the Third Applicant is a Traditional Council contemplated under section 3 and 4 of the Act.

[13] The processes and requirements set out in the aforementioned sections of the Limpopo Traditional Leadership and Institutions Act, 2005 regarding the appointment of traditional leaders and establishment of a Traditional Authority or Council are meant to ensure that no one can go around masquerading as a traditional leader when they have not been officially recognised as such.

No group or community can assert for itself traditional community rights that have not been officially recognised as such. And, no group of individuals can arrogate to itself the authority of a traditional Council when it has not been officially recognised as such.

[14] Accordingly, the Second and Third Applicants are, for purposes of these proceedings, eliminated from the contest.

[15] What remains now is to determine whether the First Applicant (albeit a traditional leader of Bakone Tribe) has any traditional

jurisdiction or proprietary rights over the Early Dawn Farm.

[16] It is trite that an applicant for a final interdict must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other ordinary legal remedy.

See *Setlogelo v Setlogelo* 1914 AD 221 at 227 and *Hotz and Others v University of Cape Town* [2016] 4 All SA (SCA) para 29.

In the present case the First Applicant's rights, if any, are closely tied to her standing to bring these proceedings. For this Court to find for the First Applicant it will have to find that she has the authority she asserts over the Early Dawn Farm.

[17] The First Applicant alleges that "the farm Early Dawn belongs to the Government of the Republic of South Africa and is held in trust for the Bakone Tribe". I presume that it is the South African Government that is the trustee. That being the case, the powers that the First Applicant seeks to exercise over the farm Early Dawn are powers vested in the trustee. It is not explained how the First Applicant would assume the powers of the trustee. In my view the First Applicant has failed to set out or identify any clear right, whether under the law of property or the Traditional Leadership Act referred to above.

[18] The following question remains to be answered:

Whether the Early Dawn Farm falls under the First Applicant's traditional authority jurisdiction.

[19] It appears clearly from the Purchase and Sale Agreement (Annexure "MR2" to the founding affidavit) that although the Early Dawn Farm was registered in the name of the "Minister of Native Affairs in trust for the Bakone Tribe of Natives under Chief Sekgoare Matlala" this property together with the Farm Millstream, was in fact purchased by ninety three individuals of the tribe. The then Minister of Native Affairs approved the purchase, inter alia on condition "That simultaneously with the transfer a Notarial Agreement shall be executed

reserving to the ninety three members of the said tribe who are contributing towards the purchase price, the rights of exclusive use, occupation and usufruct in the said farms.”

- [20] It appears further from Annexure “MR2” to the founding affidavit that pursuant to the conditions of such approval, the Bakone Tribe passed a resolution on 16 April 1945 to the effect that the exclusive right of occupation and use of the farms Early Dawn and Millstream was reserved for the benefit of the ninety three purchasers and their heirs, executors, Administrators and assigns, and that such purchasers were granted the sole and unfettered right to administer the farms without interference and control of the Bakone Tribe.

- [21] The Notarial Agreement requirement was later amended and replaced with an underhand agreement which accorded the ninety three

purchasers, their heirs, executors, administrators and assigns the same exclusive rights to deal with the farms, to the exclusion or interference from the Bakone Tribe, and hence the Applicants.

- [22] There is a civil case pending in this Court under case number 393/2015 wherein members of Early Dawn Community dispute the First Applicant’s authority over them and the Early Dawn Farm in particular and they want her interdicted from interfering with their affairs. In that pending matter the Early Dawn Community are disputing also the appointment and the title of the Second Applicant and want the First and Second Applicants to be interdicted from performing any of the duties that come with their titles. In essence, the disputes in the pending case go to the heart of this application, and the Applicants herein cannot establish a clear right until such time the pending disputes have been determined in their favour.

Therefore, the Applicants cannot be granted a final interdict and this application ought to be dismissed.

- [23] The First Respondent has prayed for the dismissal of the application with costs on attorney and client scale. It is argued that the manner in which the Applicants have conducted this litigation justifies a punitive costs order. That the Applicants came to Court with the full knowledge that the rights and authority that they claim over Early Dawn Farm are disputed but do not mention this very important matter that is currently pending. Furthermore it was submitted on behalf of the First Respondent that the Applicants are abusing the Court’s processes by opening another front to try and ventilate the very same issue (their rights and authority over the Early Dawn Farm) that is pending before the Court in case number 393/2015.

- [24] The principles relevant to an award of costs on an attorney and client scale are well established. Where costs are awarded, the Court exercises a discretion. This discretion is to be exercised judicially upon consideration of the facts of each case. It is a matter of fairness to both sides - *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at 1055 F-G.

[25] As regards an award of costs on the scale as between attorney and client, Tindall JA in the case *Nel v Waterberg Landbouers Ko-Operatiewe Vereniging* 1946 AD 597 at 607 said:

“The true explanation of awards of attorney and client costs not expressly authorised by Statute seems to be that, by reason of special

considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party, the Court in a particular case considers it just by means of such an order to ensure more effectively than it can do by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of the expenses caused to him by the litigation.”

See also *Swartbooi and Others v Brink and Others* 2008 (1) SA 203 (CC) at para [27].

[26] Punitive costs have been granted when a practitioner instituted proceedings in a haphazard manner, willfully ignored Court procedure or rules; presented a case in a misleading manner; and forwarded an application that was plainly misconceived and frivolous. See *Stainbank v SA Apartheid Museum at Freedom Park and Another* 2011

(10) BCLR 1058 (CC).

In casu, I am not persuaded that the conduct of the Applicants and / or their legal representatives calls for an order of costs on attorney and client scale.

[27] In the result I grant the following order:

The Application is dismissed with costs on party and party scale.

E M MAKGOBA

JUDGE PRESIDENT OF THE HIGH COURT, LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on: 26 June 2018

For Applicants: Adv. M S Schnehage

Instructed by: Smit & Maree Attorneys

For Respondents: Adv. N Luthuli

Instructed by: Cliff Dekker Hofmeyer Attorneys

c/o Kirk Twine Attorneys

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