

SOUTH AFRICA / JUDGMENT

Minister of Rural Development and Land Reform and Another v Shah and Others (LCC93/2014 ; LCC180/2014) [2025] ZALCC 19 (9 May 2025) [2025] ZALCC 19

COURT

Land Claims Court

BEFORE

Ncube

CASE / FILE NUMBER

LCC93/2014 ; LCC180/2014

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IN THE LAND COURT OF SOUTH AFRICA

HELD AT RANDBURG

CASE NO: LCC93/2014

Before: Honourable Ncube J

Heard: 25 March 2025

Delivered: 09 May 2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

SIGNATURE

DATE 09/05/2025

In the matter between:

MINISTER OF RURAL DEVELOPMENT AND LAND REFORM First Applicant REGIONAL LAND CLAIMS COMMISSIONER, KWAZULU-NATAL Second Applicant and FEROZ SHAH AND 42 OTHERS 1st to 43rd Respondents and CASE NO: LCC180/2014 In the matter between: MINISTER OF RURAL DEVELOPMENT AND LAND REFORM First Applicant REGIONAL LAND CLAIMS COMMISSIONER, KWAZULU-NATAL Second Applicant and NADAR SHAH Respondent

ORDER

1. The Applicants are granted leave to appeal to the Full Court of the Land Court in Randburg on the issue of Solatium and Financial Loss.
2. There is no order as to costs

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

NCUBE J

Introduction

- [1] This is an opposed application for leave to appeal. The Applicants seek leave to appeal to either the Full Court of the Land Court or the Supreme Court of Appeal against the whole judgment and order of this Court handed down on 06 December 2024.

Test for leave to appeal

- [2] The Applicant for leave to appeal must satisfy three cumulative requirements for leave to appeal. The starting point of exercise is section 17 of the Superior Courts Act[1] which provides:

“17 Leave to appeal

- (1) Leave to appeal may only be given where the Judge or Judges concerned are of the opinion that-
- (a)
- (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal will lead to a just and prompt resolution of the real issues between the parties”
- [3] Commenting on the aspect of reasonable prospects of success in MEC Health Eastern Cape v Mkhitha[2], Scheepers AJA as he then was, expressed himself in the following terms:

‘An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless is not enough. There must be a sound rational basis to conclude that there is reasonable prospect of success on appeal’

- [4] In Smith v S[3] Plasket J said:

‘What the test of reasonable prospect of success postulates is a Dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding.’

Grounds of Appeal

[5] The Applicants has tabulated the following grounds of appeal:

1. The Learned Judge erred in awarding solatium in the amount of

R1 391 569.48 calculated in accordance with the formula prescribed by the Expropriation Act 63 of 1975.

2. The Learned Judge ought to have found that the Expropriation Act 63 of 1975 is not applicable to this case, since the property in question was not expropriated in terms of the Expropriation Act 63 of 1975.
3. In dealing with the issue of solatium the Learned Judge ought to have followed the principle expressed in *Florence v Broadcount Investments (Pty) Ltd* where the Court held that the purpose of the award of solatium is symbolic and does not attempt to provide full redress for the claimants’ emotional suffering.
4. The Learned Judge erred in awarding the amount of R11 739672.00 as just and equitable compensation for the land concerned. In awarding the said amount, the learned Judge considered market value only and failed to consider the other factors mentioned in Section 25(3) of the Constitution of the Republic of South Africa.
5. The Learned Judge ought to have considered the principle laid down in the *Florence and Jacobs and Others v Department of Land Affairs and Others* (LCC3/98) [2016] ZALCC 14(13 June 2016) namely, payments in terms of the Restitution of Land Rights Act are not meant to replicate the market value but should reflect the public interest.
6. The Learned Judge erred in accepting that the value of the land concerned is R5 500.00 per hectare. In this regard the learned Judge ought to have accepted the evidence of the Applicants’ expert witness to the effect that the value of the land concerned is R3 500.00 per hectare.
7. The learned Judge erred in awarding financial loss in the amount of R534 794.36. In this regard the learned Judge ought to have taken into account the principle laid down by the Constitutional Court in *Florence v Government of the Republic of South Africa* where the Court held that financial loss should be calculated at the time of dispossession and for the purpose of placing the claimants in the same position as they would have been in immediately after dispossession.”

[6] As it is always the case in these applications, the drafter of the grounds of appeal will always cast the net wide and in the process, repeat some of the grounds of appeal. In the present case, grounds 1,2 and 3 deal with one issue and that is the issue of solatium. Grounds 4, 5 and 6 deal with one issue which is the value of the land.

[7] Therefore, in essence, there are only three grounds of appeal which are Solatium, Value of the Land and Financial loss. I now turn to deal with each of those grounds as I have summarized them above.

i. Solatium:

Solatium is payment made as compensation for injured feelings or emotional pain and suffering. It may be difficult to measure solatium in monetary terms. In the present case, the Court calculated solatium with reference to the Expropriation Act 63 of 1975. In its earlier judgment[4], this same Court found that the Expropriation Act 63 of 1975 was not applicable in these cases. In that case, the Court awarded

solatium at R45 000 and in that case, there was evidence of hardship suffered by the victims. In the present case, no evidence of hardship suffered was presented to the Court and that should be corrected by the Appeal Court. I find therefore that the Applicants

have a reasonable prospect of success on appeal on this ground.

Similarly, there was no evidence of financial loss suffered. The Appeal Court will be required also to give guidance on how to calculate compensation for financial loss in circumstances where no such evidence has been tendered by the victims. The remaining ground therefore, is the determination of the value of the land.

ii. Value of the land

The graveman of the Applicants is that in its determination of the value of the land, this Court only considered the market value of the land and did not consider the other factors mentioned in Section 25(3) of the Constitution. There is no indication in this courts' judgment that factors mentioned in Section 25(3) of the Constitution were not considered. They were in fact considered, without being mentioned. In *R v Dhlumayo and Another*[5] Davis AJA, as he then was said:

‘.....even in a written judgment it is often impossible, without going into the facts at undue length, to refer to all the considerations that arise. Moreover, even the most careful Judge may forget, not to consider but to mention some of them. In other words, it does not necessarily follow that, because no mention is made of certain points in the Judgmentthey have not been taken into account by the trial Judge in arriving at his decision. No judgment can ever be perfect and all-embracing. It would be most unsafe invariably to conclude that everything that is not mentioned has been overlooked.’

[8] In Casu, Mr Serfontein was a hopeless witness. He did not believe in the integrity of his own investigations and he was not worthy of credence. I rejected his calculations and accepted Mr Stephenson's calculations. In any event, at first, all experts, in a joint minute,

agreed on the value of R5 500 per hectar. Mr Serfontein, after he had wrongly consulted the Regulations from the office of the Valuer General unilaterally changed his calculations from R5 500 per hectar to R3 500 per hectar. I therefore conclude that there was no misdirection in the determination of the value of the land.

Costs

[9] There is no application for leave to appeal the costs order.

Conclusion

[10] I therefore conclude that the Applicants have a reasonable prospect of success on appeal only on the point of solatium and financial loss. Those are the only two issues to be determined by the Appeal Court.

Order

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

1. The Applicants are granted leave to appeal to the Full Court of the Land Court in Randburg on the issue of Solatium and Financial Loss.
2. There is no order as to costs.

NCUBE T

Judge of the Land Court

Appearances:

For the Applicants: Adv Choudree SC Adv Nqala SC Instructed by: State Attorney Durban
For the Respondents: Mr Grobbelaar

[1] Act 10 of 2013

[2] (1221/2015)

[2016] ZASCA 176 (25 November 2016) Para17

[3] 2012(1) SACR567 (SCA) Para 7

[4] Habiba Soofie Saheb Baosha Trust and Others v Minister of Agriculture Rural Development and Land reform and Others(LCC106/2014)

[2021] ZALCC 12 (6 July 2021)

[5] 1948

(2) SA 677 (AD) at 702

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