

SOUTH AFRICA / JUDGMENT

Mjeku N.O. & others v Kangela Citrus Farms (Pty) Ltd & another (2790/2018) [2018] ZAECGHC 110 (5 October 2018) [2018] ZAECGHC 110

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Pickering

CASE / FILE NUMBER

2790/2018

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

CASE NO.: 2790/2018

DATE: 05 OCTOBER 2018

In the matter between:

MBULELO VICTOR MJEKU N.O. : 1ST APPLICANT

XOLA RICHARDO STEFANO N.O. : 2ND APPLICANT

PATRICIA DAYILE N.O.

: 3RD APPLICANT

EVANS MALOKISA NEVONDO N.O. : 4TH APPLICANT

PHILLIP PHILILE DYONASE N.O. : 5TH APPLICANT

JABULANI JANUARY

MASANABO N.O.

: 6TH APPLICANT

and

KANGELA CITRUS

FARMS (PTY) LTD.

: 1ST RESPONDENT

(REG. NO. 030011/07)

EASTERN CAPE RURAL

DEVELOPMENT AGENCY : 2ND RESPONDENT

EX TEMPORE JUDGMENT

PICKERING J

In this matter the Applicants have sought an order interdicting and restraining the 1st and 2nd Respondents from continuing with any farming operations on the farms owned by the Applicant Trust and interdicting and restraining them from interfering with any farming operations on the said farms or interfering in any way with the operations of the Trust.

The matter was opposed allegedly by both the 1st and 2nd Respondents. Mr. Pitt, who appears for the 2nd Respondent, has conceded, however, that in fact there is no appearance to defend entered on behalf of the 1st Respondent and that accordingly he is appearing only on behalf of the 2nd Respondent. He has also conceded, despite the vehement denials which had been put forward in the answering papers on behalf of the 2nd Respondent concerning the issue of urgency, that in fact the Application is urgent. That concession is clearly correctly and fairly made. It is clear from the papers that 2nd Respondent has failed to pay for essential crop preparation and has no budget to do so. Should an order not be granted, then in fact the 2019 crop is in danger of being destroyed with catastrophic effects as submitted on behalf of the Trust. In view of Mr. Pitt's concession no more need be said.

Mr. Pitt also further and fairly conceded that the Application to strike out a large number of averments made by the Deponent to the 2nd Respondent's Affidavit had to succeed on the basis they constituted inadmissible hearsay concerning matters as to which the deponent in the affidavit could have had no personal knowledge whatsoever. The application to strike out was accordingly granted with costs of two counsel.

That then leaves only the merits of this issue. I do not intend to deal with them in any great detail. I am indebted to Mr. Buchanan S.C. and Mr Gess who have filed what they call brief heads of argument but which in fact are lengthy and very helpful and encapsulate the issues correctly. No point would be served in the circumstances where this application is urgent in again setting out those issues in this judgment. The main point taken by them is that, at the end of the day, it is common cause that the Applicant is the owner of the farms on which the farming operations are being conducted transfer having been received by it on 23 February 2009. Nowhere in the answering papers filed by the 2nd Respondent is any right or entitlement put forward on behalf of either the 1st or 2nd Respondents on the basis of which they can continue farming on the properties belonging to the Trust contrary to the wishes of the Trust as owner. There is no allegation made whatsoever that suggests that either 1st or 2nd Respondent has any right whatsoever exercisable against the Trust, which is the owner of the farms, to continue farming

operations

thereon. All that is put forward is a plethora of bare denials of applicant's allegations.

With regard to the merits the only submission put forward by Mr. Pitt related to the shareholding of 1st Respondent, the submission being that the appropriate relief would be for the Trust to seek the removal of 2nd Respondent as a shareholder in 1st Respondent. I agree, however, with Mr. Buchanan that this issue is irrelevant in the circumstances of this matter and that it is not necessary for the Court to deal with any internal disputes or shareholder conflicts where the Trust is the owner of the farms and 1st Respondent has no right to continue with the farming operations thereon.

Turning to the requirements for a final Interdict, as was submitted on behalf of the Applicants, it is common cause that the Trust is the owner of the farms. It is common cause that neither of the Respondents have a lease agreement or any other right in contract which would entitle them to conduct the farming operations. They do not claim in their answering papers that they have any such contract or agreement. It is clear therefore that the Applicant has established a clear right. As regards the interference and invasion of the Trust's rights it is clearly established that the Trust is in the fact the owner of the farms. It follows that the conduct of the Respondents in seeking to interfere with the rights of the Trustees owner is in fact interference which is ongoing and continuing. The Trust has established, quite clearly in my view, that it has a reasonable apprehension that there will be further ongoing injury to the orchards if relief is not granted. It is also quite clear in my view, as was submitted on behalf of the Applicants, that there is in fact no other satisfactory remedy in that the Trust cannot obtain adequate redress by way of an award of damages. As submitted by Mr. Buchanan the 2nd Respondent has unilaterally appointed itself to perform management functions despite this being unlawful and despite it lacking the necessary wherewithal or expertise to do so.

As was further submitted by Mr. Buchanan, if the relief which is sought in respect of paragraphs 2 and 3 of the Notice of Motion is granted that will enable the service provider, which has been identified by the Applicant, namely Lona, to redress the situation on the farms by doing all that is necessary for the preservation of the orchards and the preparation of the 2019 crop and to ensure that there is no interference with Lona in the operation of these services. Mr. Buchanan submitted that the relief sought is necessary because of what has occurred in the past. I am satisfied that he is correct in this regard. I should mention that it was raised by me in chambers with counsel prior to the hearing as to whether there was not some possibility of some agreement being reached in terms of which Lona could operate on the farms for a limited period in order to preserve the orchards with the remaining issues being postponed to a later date for determination. Unfortunately agreement could not be reached. As was submitted by Mr. Buchanan, in these circumstances if Lona is in fact to provide those services it is fundamental that they can do so with the certainty of a Court order which will protect them from any interference by the Respondents. I interpose to state it has never been suggested by the Respondents that they will provide those services or that they are now in any way in a position to provide those services. All the requirements for a final interdict have been established by the

Applicants and the Application for the relief sought must therefore be granted.

Accordingly, an Order for the relief sought in paragraph 2, interdicting and restraining the 1st and 2nd Respondents from continuing with farming operations on the farms owned by the Kangela Farming Trust, and paragraph 3, interdicting and restraining the 1st and 2nd Respondents from interfering with the farming operations on the farms or from interfering in any way with the operations of the Trust, is granted.

It is common cause that no costs should be granted against the 1st Respondent which has not opposed this Application. In the circumstances the 2nd Respondent is ordered to pay the costs occasioned by this application, such costs to include the cost of two Counsel.

JUDGE OF THE HIGH COURT

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Prepared on 10 October 2026 · Esheria