

SOUTH AFRICA / JUDGMENT

## Mkhize and Another v SA Green Farming CC and Another (LCC166/2018) [2025] ZALCC 16 (8 April 2025)

[2025] ZALCC 16

COURT

Land Claims Court

BEFORE

Ncube

CASE / FILE NUMBER

LCC166/2018

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IN THE LAND COURT OF SOUTH AFRICA

HELD AT RANDBURG

CASE NO: LCC166/2018

Before: Honourable Ncube J

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED: YES/NO

In the matter between:

MZONGAFI MKHIZE

First Plaintiff

CABANGANI GLADYS MKHIZE

Second Plaintiff

and

SA GREEN FARMING CC

First Defendant

DIRECTOR GENERAL OF THE DEPARTMENT

OF RURAL DEVELOPMENT AND LAND REFORM Second Defendant

Heard: 20 March 2025

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via email. The date and time for hand-down of the judgment is deemed to be 11h00 on 08 April 2025

## ORDER

1. The Application for Leave to Appeal is dismissed.
2. There is no order as to costs.

## JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

NCUBE J

### Introduction

- [1] This is opposed application for leave to appeal. The First Defendant who was unsuccessful in the original trial seeks leave to appeal to the Supreme Court of Appeal ("the SCA") against the whole judgment and order of this court delivered on 04 October
2024. The First Defendant has listed six (6) grounds on which leave to appeal is based. I shall return to those grounds later in this judgment.

### Requirements For Leave to Appeal

- [2] Leave to appeal may be granted only in those instances where there is a reasonable prospect of success on appeal or where there is some other compelling reason why the appeal should be heard. The starting point of exercise is section 17(1) of the Superior Court Act[1], which provides:

*"17(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.

- [3] In MEC Health Eastern Cape v Mkhitha[2] Schepers AJA as he then was, said:

*"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 a reasonable prospect of success on appeal"*

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

*“what the test of reasonable prospects 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] With that legal background, I turn now to look at the First Defendant’s grounds of appeal. On the first ground, the First Defendant contends that the court ignored the payslips showing how much was deducted from Mr Mkhize’s wages for housing, rations, grazing and dripping fees. The First Defendant contends that the value of the mentioned items, compared to Mr Mkhize’s basic wages, established that Mr Mkhize was paid predominantly, in cash for the services he rendered and not predominantly in the right to reside, graze cattle and cropping. This ground does not hold water. It was not for the court to speculate and assume, based on the value of rations, dipping fees etc that Mr Mkhize was paid predominantly in cash. Evidence led on behalf of Mr Mkhize established that he fell within paragraphs (a) (b) and (c) of the definition of labour tenant. The onus was then on the First Defendant to lead expert evidence most probably, evidence of a valuer who could compare the value of the right to reside, graze cattle and

crop against the value of the rations, dipping fees, housing and say which value is predominant to the other. The First Defendant failed to do that.

[6] On the second ground, the First Defendant contends that the court erred in finding that since Mr Mkhize alternated, with his father and later with his brother in working in the kitchen, therefore a general labour tenancy system, was applicable at Kincairn farm. There was no such finding made. Mrs Morris, who testified on behalf of the First Defendant, testified that labour tenancy was still practised at Kincairn farm in 1995. That piece of evidence contradicted the evidence of Dr Whelan and Mr Clowes who both testified that labour tenancy at Kincairn farm had stopped in early 1960’s to the 1970’s. Mrs Morris knew better since her own husband Mr Michael Morris operated the farm until 1973. From 1974 to 1994, Mrs Morris herself was operating the farm. There is no third ground but there is the fourth ground which I now deal with.

[7] On the fourth ground, the First Defendant contends that the court erred in finding that since there was no stipulation in the contract of employment which said the employee will be paid predominantly in cash and not predominantly in the right to occupy and use the land, the contract was not a farmworker contract. The First Defendant says we must look at the substance and not the form of the employment contract. This is not correct and it is not what the Act says in the definition of a farm worker. It is the statute which enjoins us to look

at the form and not the substance. The Act defines the farm-worker in the following terms :

*“farmworker”- means a person who is employed on a farm in terms of a contract of employment which provides that---*

- (a) in return for the labour which he/she provides to the owner or lessee of the farm he or she shall be paid predominantly in cash or in some other form or remuneration, and not predominantly in the right to occupy and use land; and
- (b) he or she is obliged to perform his or her services personally.”

There was no provision in Mr Mkhize’s contract of employment that he would be paid predominantly in cash. Mr Mkhize was not obliged to perform his services personally, which is the reason why he could sometimes alternate with his father and later with his brother.

- [8] On the fifth ground the First Defendant laments the fact that the court overlooked the evidence that Mr Mkhize could not send another person to work in his place and that he was obliged to perform his services personally. The evidence showed that Mr Mkhize could alternate with his father working in the kitchen. Later Mr Mkhize alternated with his brother so, he was not obliged to perform his services personally. I mentioned in paragraph 49 of my judgment that although the Act refers to the period of 02 June 1995, but we must look at the whole period the person was providing labour as it was held in the Ngcobo judgment referred to in foot-note 11 of my original judgment.
- [9] The sixth ground is concerned with the delay in the institution of the action by Mr Mkhize. The First Defendant says the delay was unreasonable. As mentioned at paragraph 60 of my judgment, there is no time limit in terms of section 33(2A) within which a person must institute an action to be declared a labour tenant.
- [10] I come to the conclusion that there are no reasonable prospects of success on appeal and there are no compelling reasons why the appeal should be heard.

Order

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

Judge of the Land Court

Appearances:

For the Applicant : Adv A De Wet SC

Instructed by: McCarthy & Associates Attorney

2 Patterson Road

Howick

Tel: 033 266 6170

For the Respondent : Adv B Mbili

Instructed by: MB Gumede and Associates

410B Salmon Grove Chambers

407 Anton Lembede Street

Durban

Heard: 20 March 2025

Delivered on: 8 April 2025

[1] Act 10 of 2013

[2] (1221/2015)

[2016] ZASCA 176 (25 November 2016) Para 17

[3] 2012(1) SACR 567 (SCA) para 7

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Prepared on 9 October 2026 · Esheria