

SOUTH AFRICA / JUDGMENT

Mlotshwa and Another v Gadshill and Another (LCC 2016/282) [2023] ZALCC 31 (25 August 2023) [2023] ZALCC 31

COURT

Land Claims Court

BEFORE

Spilg

CASE / FILE NUMBER

LCC 2016/282

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IN THE LAND CLAIMS

COURT OF SOUTH AFRICA

HELD AT RANDBURG

Case number: LCC

2016/282

(1) REPORTABLE: NO

(2) OF INTEREST TO

OTHER JUDGES: NO

(3) REVISED.

25 August 2023

In

the matter between:

MLOTSHWA,
HLALELENI EZZLINAH
1st
Applicant
MLOTSHWA,
ELINA BONGIWE 2nd
Applicant
and
GADSHILL
TRUST
1ST
Respondent
THE
DIRECTOR-GENERAL FOR THE DEPARTMENT
OF

RURAL DEVELOPMENT AND LAND REFORM 2ND
Respondent

JUDGMENT

SPILG, J

INTRODUCTION

1. On 14 August 2023 I issued a notice for the parties to attend a virtual pretrial conference in terms of rule 31. The relevant provisions of the notice read:

“ 3. The need to convene the conference arises from the following events:

1. On 14 February 2022 the plaintiffs’ attorneys requested that a Draft Consent Order attached to a Deed of Settlement dated 17 July 2021 between the plaintiffs and the second defendant be made an order of court.
2. On 7 March 2022 the Registrar of the court addressed a letter to the parties advising that the following matters needed to be attended to and that they were to file an amended agreement by 18 March 2022;
 - i. identifying the signatory on behalf of the second defendant;
 - ii. amending clause 2 of the agreement “so as to exclude the court proscribing how the plaintiffs must make use of the payment paid by the first defendant, particularly as non-compliance, however minor, may lead to contempt. This amendment may have an effect on clause 5”;
 - iii. stipulating that the settlement agreement is in full and final settlement of the plaintiffs’ labour tenancy claims;
 - iv. stipulating clearly that the plaintiffs acknowledge and agree that they are waiving their rights in terms of the Land Reform (Labour Tenants) Act 33 of 1996;
 - v. deleting clause 2.4 in its entirety on the grounds that the court is unable to grant an order entitling the defendants to apply for an eviction on the basis of an agreement made an order of court as it would allow for an eviction without following the procedure provided for in the said Act or any other applicable legislation;
 - vi. considering to provide for specific time frames in clauses 1.2, 2 and 3 of the agreement
3. On 9 March 2022 PGPS attorneys who represent the second defendant requesting the opportunity to approach a judge to reconsider the queries raised and more specifically “to leave the settlement untouched and rather have the order amended to suit the Judge’s concerns” and requested a pre-trial conference to resolve the matter;

4. On 14 March 2022 the Registrar informed the parties that the court did not consider it appropriate to convene a conference and engage with the parties beyond what was contained in the letter of 7 March 2022;
5. On 16 March 2022 the plaintiffs' attorney requested a period of 14 days to properly ventilate the matter amongst all the parties;
6. On 17 March 2022 the secretary of the Acting Judge President Meer advised that the requested extension was granted;
7. During the course of an audit of the status of court matters it was discovered that none of the parties had taken any further steps in the matter since 17 March 2022 when the extension was granted;
8. In response to enquiries made the attorney for the plaintiffs addressed a letter on 3 March 2023 to the secretary of the Acting Judge President attaching "the confirmation of the Settlement of Action in terms of a settlement agreement filed in court" and requested that the file be placed before the judge so that the order could be granted
9. On 30 March 2023 the Registrar addressed a letter to the parties drawing their attention to the letter of 7 March 2022, the contents of which are set out above. The parties were requested to; " not refer any settlement agreement until there has been compliance";
10. Save for a letter dated 10 August 2023 from the plaintiffs' attorneys which does not appear to resolve the issues, the granting of an order remains to be finalised.

.....

5. At the pretrial conference the Court will investigate any non-compliance with the Rules or with any direction previously given in the matter and give such interlocutory orders or directions in relation to the parties' failure;
 - a. to comply with the contents of the Registrar's letter of 7 March 2022 despite applying on 3 March 2023 for the grant of the order in the same terms as before;
 - b. to have reverted to the court within a reasonable time after requesting and obtaining a 14 day extension during March 2022
 - c. to ensure that the court was apprised of whether there had been compliance with all the terms of the draft consent order attached to the Deed of Settlement dated 17 July 2021, including the terms set out in clause 4.1

TAKE NOTICE FURTHER THAT;

6. In the event that any party fails to attend the pretrial conference, despite the giving of this notice, the Court intends proceeding with the conference, and make orders in the manner contemplated by inter alia Rules 30 (3), (7) (a) and (b) and (9)(k) with regard to the filing of affidavits arising from the events set out in paragraph 5 above, including an application for condonation
7. Each party is required to attend personally or through a duly appointed legal representative as required under Rule 30(3).
2. The terms of the notice are self-explanatory. The need to hold a conference and make a final order arose in the manner set out in para 3(g) of the notice; namely, that during an audit it was discovered that this file remained open because none of the parties had taken any further steps in the matter since March 2022 when a requested extension of time was granted to the plaintiff.

CONFERENCE OF 23 AUGUST 2023

3. All the affected parties were represented at the conference of 23 August 2023. It was explained by the parties that it was considered unnecessary to enroll the matter and make the settlement an order of court since they had implemented their agreement and did not need the further assistance of the court.
4. The court accepted the explanation but indicated that this should have been conveyed to the registrar at the time so that the file could be endorsed accordingly; particularly as a risk may arise if one of the parties was later to contend that the matter was still pending before a judge. The court was however satisfied that in the circumstances no formal application for condonation need be brought.
5. In terms of this court's powers to make orders at a pretrial conference, and upon being satisfied through the subsequent production of photographic evidence that the graves had been fenced off as required in terms of clause 4.1 of the deed of settlement, it was agreed that the court would make an order so as to facilitate the closure of the file in a manner that would both record the settlement and address the outstanding issues which had been raised through the Registrar in March 2022

ORDER

6. The court accordingly orders that:
 1. It is declared that all obligations of the respective parties in terms of the Draft Consent Order attached to the Deed of Settlement dated 17 July 2021 ("the Draft Consent Order") have been complied with;
 2. The Draft Consent Order is made an Order of Court

DATE OF HEARING: 23

August 2023

DATE OF JUDGMENT: 25 August 2023

FOR THE APPLICANTS: Mr M B Gumede

MB Gumede & Associates

FOR THE FIRST RESPONDENT: Adv Snyman

PGPS Attorneys

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Prepared on 11 October 2026 · Esheria