

SOUTH AFRICA / JUDGMENT

Ngcobo and Another v Van Rensburg and Others (LCC18/97)

[1997] ZALCC 9 (4 December 1997)

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COURT

Land Claims Court

CASE / FILE NUMBER

LCC18/97

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[1] Act 22 of 1994, hereafter “the Act.”

[2] This is the current property description after consolidation of the various subdivisions expropriated from the community.

[3] Act 18 of 1936.

[4] I include in the term “landowners” those who claim as direct descendants of the land owners who have died since the removal.

[5] The definition is quoted in para 7 of this judgment.

[6] In the papers, the Tswana version of his surname was used, namely Motlounng, but during the proceedings he was referred to by the Zulu version of his surname, namely Ndlovu.

[7] Namely sub 55 (of 1).

[8] See s 2(1)(c) of the Act.

[9] The relevant provisions are quoted in para 7.

[10] For example rights protected by s 8(2) of the Interim Constitution, Act 200 of 1993 and s 9(3) and (4) of the Final Constitution, Act 108 of 1996.

[11] For example *Skotnes v South African Library* 1997 (2) All SALR 379 at 384J

[12] *Venter v Rex* 1907 TS 910 at 913 and the cases quoted therein; *Union Government (Minister of Finance) v Mack* 1917 AD 731 at 739; *Public Carriers Association v Tall Road Concessionaries* 1990 (1) SA 925 (A) at 942I and 943A-H; *S v Koch* [1991] ZASCA 29; 1991 (2) SA 741 (A) at 751F-I; *Boland Bank Limited v The Master and Another* [1991] ZASCA 65; 1991 (3) SA 387 (A) at 388J- 389B; *Van Heerden and Another v Gibbered NO and Others*

[1994] ZASCA 101; 1994 (4) SA 793 (A) at 795 E-H.

[13]Du Plessis *The Interpretation of Statutes* 1 ed (Butterworths, Durban 1986) at 104.

[14]*S v Makwanyane and Another* [1995] ZACC 3; 1995 (3) SA 391 (CC) at 403A-F; *De Klerk and Another v du Plessis and Others* 1995 (2) SA 40 (T) at 46B; *Naymakazi v President of Bophuthatswana* 1992 (4) SA 540 (BGD) at 548Gff; *S v Acheson* 1991 (2) SA 805 (NmHC) at 813B; *Government of the Republic of Namibia and Another v Cultura* 2000 and *Another* 1994 (1) SA 407 (NmHC) at 418A-E.

[15]Corbett et al *The Law of Succession in South Africa* 1ed (Juta, Cape Town 1980) at

555. See also *Boswell en Andere v Van Tonder* 1975 (3) SA 29 (A) at 35H.

[16]Brown (ed) *The New Shorter Oxford English Dictionary* 4 ed (Clarendon Press, Oxford 1993) at 643.

[17]*Ibid* at 1427.

[18]*Ibid* at 1985.

[19]See n 4 *supra*.

[20] 1963

(4) SA 789 (T) at 791B- 792A

[21] 1951

(1) SA 233 (SR) at 235B

[22]*Boswell v Van Tonder* *supra* n 15 at 35F-G.

[23]Their claims were in respect of the following properties: *HlatshwayoVusumuzi*: 0,116959 share in Sub 8 (of 1), Sub 78 (of 1)

and 0,00363 share in Sub 79 (of 1); *Nxumalo Mthunywa Amon*: Sub 37 (of 1); *Hadebe Vusumuzi*: Sub 81 (of 15) and 0,010909 share in Sub 79 (of 1); *Sithole Jocenia Madoda*: 0, 69014 share in Sub 23 (of

1) and 0,003636 share in Sub 79 (of 1).

1Act 22 of 1994.

2See s 2(1) read with s 1 of the Act, quoted in my colleague's judgment at para 7.

3Section 8 of the Constitution of the Republic of South Africa Act 200 of 1993 (the Interim Constitution) and section 9 of the Constitution of the Republic of South Africa Act 108 of 1996.

4Quite how the Zulu customary law of succession, which is based on the principle of patrilineality, could meaningfully be adjusted to accommodate the right to equality, is in itself a very difficult question. See in this regard the discussion in Bennett Human Rights and African Customary Law 1ed (Juta, Cape Town 1995) at 126-7.

5S v Collop 1981(1) SA 150 (A) at 164A-B; In re Beukes and Bekker LCC 17/96, 24 July 1997, as yet unreported, at para 26. See also Devenish Interpretation of Statutes 1ed (Juta, Cape Town 1992) at 159 and Du Plessis The Interpretation of Statutes 1ed (Butterworths, Durban 1986) at 69.

6Glen Anil Finance (Pty) Ltd v Joint Liquidators, Glen Anil Development Corporation (in liquidation) 1981 (1) SA 171 (A) at 181H-182D.

7Corbett et al The Law of Succession in South Africa 1ed (Juta, Cape Town 1980) at 555.

8See the authorities referred to at paras 21- 24 of his judgment. See also the following cases where it was taken for granted that this was the meaning of direct descendant: Kruger v King Williamstown Municipality 1959

(4) SA 547 (E); Breytenbach v de Villiers NO en Andere 1961 (2) SA 542 (T).

9Jaga v Dönges NO and Another; Bhana v Dönges NO and Another 1950 (4) SA 653 (A) at 662G-663A; University of Cape Town v Cape Bar Council and Another 1986 (4) SA 903 (A) at 914A-E.

10 See the various forms of relief other than restoration provided for in s 123 of the Interim Constitution. Section 123(2) recognises that in certain circumstances it will not be just and equitable to restore land which is in the hands of a private owner. See also s 34 of the Act which provides for restoration of the land to be prevented on a blanket basis in certain circumstances.

11 See Murphy “The Restitution of Land after Apartheid: The Constitutional and Legislative Framework” in Rwelamira and Werle (eds) Confronting Past Injustices 1 ed (Butterworths, Durban 1996)113 at 116.

212 Section 2(3) of the Act read with s 121(2)(a) of the Interim Constitution.

313 Section 2(1)(c) of the Act.

414 Section 121(4) of the Interim Constitution read with s 2(1) of the Act. See also s 2(1A) of the Act.

515 Jaga v Dönges supra n 9 at 662G; University of Cape Town v Cape Bar Council supra n 9 at 913H-J.

616 See Ngcobo and Another v Van Rensburg and Others LCC 18/97, 17 October 1997, as yet unreported at para 13.

717 Hence the maxim *communio est mater rixarum* - co-ownership is the mother of disputes. Van der Merwe “Things”

in Joubert (ed) 27 The Law of South Africa 2ed (Butterworths, Durban 1996) at para 208.

818 See my colleague's judgment at para 7.

919 The Master v Todd and Another 1951

(1) SA 233 (SR) at 235B; Kruger v King Williamstown Municipality supra n 8; McKechnie and Others v Van Soelen N O and Others 1963 (4) SA 789 (T) at 791B;

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