

SOUTH AFRICA / JUDGMENT

Raphahlela v Ramolotja and Others (4545/2022) [2023]

ZALMPPHC 3 (18 January 2023)

[2023] ZALMPPHC 3

COURT

Limpopo High Court, Polokwane

BEFORE

Kganyago

CASE / FILE NUMBER

4545/2022

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REPUBLIC OF SOUTH
AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
LIMPOPO DIVISION,
POLOKWANE
CASE NO: 4545/2022

REPORTABLE:

NO
OF INTEREST TO THE
JUDGES: NO
Revised
18/01/2023
In

the matter between:

MOLOKO
GERALD RAPHAHLELA
APPLICANT
And
ANDRIES
SELLO RAMOLOTJA
FIRST RESPONDENT
DIKGALE
TRADITIONAL COUNCIL
SECOND RESPONDENT
KGOSI
SOLOMON MALESELA DIKGALE
THIRD RESPONDENT

MEC
FOR CO-OPERATIVE GOVERNANCE, HUMAN
SETTLEMENT
AND TRADITIONAL AFFAIRS
FOURTH RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The applicant has launched an application against the respondents seeking orders that the applicant be declared to be the lawful

occupier of site 0009 of farm Kalkfontein no 859-LS Portion in terms of the permission to occupy (PTO) dated 1st November 2019; and that the first respondent be ordered to remove any improvements, constructions done by him on the site within 14 days of the order failing which the applicant shall be entitled to deal with such improvements and/or constructions as he deems fit, and the first respondent shall not have any claim in respect of same.

- [2] The applicant alleges that he had bought a piece of land from the second and third respondent wherein he was issued with a PTO dated 1st November 2019 which is attached as an annexure to the applicant's founding affidavit. The PTO has been issued in the name of "Babirwa Properties" and also in the names of "Raphahlelo Moloko Gerald". That after he bought that land, he brought about some improvements with the intention of conducting some business on that site. According to the applicant, during September 2021 it came to his knowledge that the first respondent was interfering with the possession of his land by amongst others erecting fences and/or other constructions on the land under the guise that he is the owner of the land, and all these happened without the consent of the applicant. That led to the applicant launching the current application.

- [3] The first respondent is opposing the applicant's application. In his answering affidavit the first respondent had raised two points in limine. The first point in limine is that of misjoinder/non-joinder. In relation to this point in limine, the respondent had stated that the transaction regarding the purchase of the piece of land at Morare Park in Sebayeng was bought by Tshifulu Mining (Pty) Ltd and not the first respondent. Therefore, Tshifulu Mining had a direct and substantial interest in the outcome of the matter. The first respondent had attached the alleged receipt issued by the second respondent in favour of Tshifulu Mining. The second point in limine related to the alleged dispute of fact. The first respondent did not state the full details of the alleged dispute of fact, but has merely stated the application cannot be adjudicated on papers, as the merits of the case did not justify the granting of the relief sought by the applicant.

- [4] Regarding the merits, the first respondent in his answering affidavit has stated that the selling of land at Sebayeng is the responsibility of the Sebayeng Steering Committee which will liaise with the headman. That once the offer to purchase is confirmed, the headman will accompany the prospective buyer to the second respondent, and that payment of the land will be made to the steering committee. The first respondent has stated that the applicant did not follow that procedure. Further that the applicant's PTO has not been signed by the 3rd respondent, and also that the applicant has failed to attach proof of payment for the said land. The first respondent dispute that the applicant is the owner of the piece of land in dispute. Further that the first respondent is not the owner of that land, but that the lawful owner is Tshifulu Mining.
- [5] In his replying affidavit the applicant has stated that according to the records of CIPC the company named Thifulu Mining (Pty) with that registration number did not exists. Further that the first respondent had failed to attach a confirmatory affidavit from the representative of the said company to confirm that indeed there was a transaction and purchase of the said piece of land.
- [6] The first respondent's point in limine is that of misjoinder/non-joinder. The test for joinder requires that a litigant has a direct and substantial interest in the subject

matter of the litigation, that is, a legal interest in the subject matter of the litigation which may be affected by the decision of the court. (See *Pheko and Others v Ekurhuleni Metropolitan Municipality* (no 2)[1]). According to the first respondent the sale of the piece of land was between the second respondent and Tshifulu Mining (Pty), and that he is not the owner of that land. Tshifulu Mining appears to be a juristic person. It is trite that a juristic person is capable of suing and to be sued in its own names. The applicant in his replying affidavit has stated that according to the CIPC records, Thifulu Mining (Pty) does not exist. However, the applicant has failed to attach any proof from CIPC supporting his version. Without any supporting documents from CIPC his version on this aspect will remain hearsay evidence without any probative value.

- [7] At this stage the overwhelming evidence is that the piece of land in dispute has been purchased by Tshifulu Mining (Pty). Tshifulu Mining will be affected by any order made by this court relating to the piece of land. Therefore, Tshifulu Mining has a direct and substantial interest in the subject matter of the litigation. The first respondent point in limine has merit. For the proper adjudication of this dispute all the affected parties needed to be before court. The proper remedy will be to stay the proceedings pending the joinder of Tshifulu Mining (Pty).
- [8] Regarding the second point in limine that of dispute of fact, the first respondent dispute that he is the owner of the piece of land in dispute, and that he did not take part in the purchase of that property. Since the first respondent is alleging that he is not the owner of the property, it will therefore be appropriate not to deal with the issue at this stage before the joinder of Tshifulu Mining.

[9] In the result the following order is made:

9.1 The first respondent's point in limine of non-joinder is upheld with costs.

9.2 The proceedings are stayed pending the joinder of Tshifulu Mining

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA, LIMPOPO DIVISION,

POLOKWANE

APPEARANCES:

Counsel for the applicant

: Adv AM Schenhage

Instructed by

: Henstock van der Heever attorneys

Counsel for the first respondent : Adv MJ Rameetse

Instructed by

: SS Senwamadi Inc attorneys

Date heard

: 24th November 2022

Electronically circulated on

: 18th January 2023

[1] [2015] ZACC 10 at para 56

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