

SOUTH AFRICA / JUDGMENT

Sadien NO and Others v Sadien and Others (LCC26/10) [2024]

ZALCC 38 (1 November 2024)

[2024] ZALCC 38

COURT

Land Claims Court

BEFORE

Cowen

CASE / FILE NUMBER

LCC26/10

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Source record**IN THE LAND COURT OF****SOUTH AFRICA****HELD AT RANDBURG****CASE NO: LCC26/10****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER
JUDGES:**YES
(3)
REVISED.**DATE:**1st November 2024
In**the matter between:**MAGHERDIEN
SADIEN NO
(On
behalf of the Imam Dout Sadien
Family
Trust (IT 746/2014))
First
Applicant/Intervening Party
MOGAMMAD
YUSUF HOOSEN
(On
behalf of the Abduraghmaan
Sadien
Family Committee)

Second
Applicant/Intervening Party
MOHAMED
ALI EBRAHIM NO
(On
behalf of the Bapa (Ismail) Sadien
Family
Trust (IT 202039/2014))
Third
Applicant/Intervening Party
MAGHERDIEN
SADIEN NO
(On
behalf of the Boeta Toyer Sadien
Family
Trust IT 020531/2014))
Fourth
Applicant/Intervening Party
and
SEDIEK
SADIEN
First
Respondent
DAWOOD
SADIEN NO
(Moegtaaroellah
Sadien NO, Fatima
Sadien
NO, Rukea Shaik NO, Mogamat
Sadek
Sadien NO, Fatima Sadien NO
The
trustees for the time being of the
Boeta
Omar Sadien Family Trust (IT 201155/2014))
Second
Respondent
THE

REGIONAL LAND CLAIMS
COMMISSION:

WESTERN
CAPE
Third
Respondent
MINISTER
OF AGRICULTURE, LAND REFORM
AND
RURAL DEVELOPMENT
Fourth
Respondent
DIRECTOR
GENERAL, DEPARTMENT OF
AGRICULTURE,
LAND REFORM AND RURAL
DEVELOPMENT
Fifth
Respondent
MINISTER
OF PUBLIC WORKS
Sixth
Respondent
REGISTRAR
OF DEEDS
Seventh
Respondent
In

re:

IN
THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD
AT CAPE TOWN
Case
No.: LCC26/10
THE
REGIONAL LAND CLAIMS COMMISSION
First
Applicant
SEDIEK
SADIEN
Second
Applicant
EBRAHIM
SADIEN
Third
Applicant
and
JAZZ
SPIRIT 12 (PTY) LTD
First
Respondent
YAMIV

(PTY) LTD
Second
Respondent
HEIN
R BADENHORST
Third
Respondent
REGISTRAR
OF DEEDS
Fourth
Respondent

JUDGMENT

COWEN J:

Introduction

1. There are two applications before me which concern orders of this Court of 7 December 2012 and 8 February 2013 under case number LCC26/2010. Mpshe AJ granted these orders in respect of a land claim instituted in terms of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act). The ultimate effect of his orders is to secure the transfer of a portion of the property Erf 142 Constantia to Mr Sediek Sadien, the second applicant in the proceedings. The third applicant was Ebrahim Sadien, who became

deceased.

2. According to Mpshe AJ's judgment (dated 7 December 2012), Erf 2274, Constantia (a different property) was historically co-owned by five brothers in undivided shares: Mogamet Toyer, Adburahman, Omar, Imam Doet and Ismail. The five brothers purchased the property on 21 November 1956 for £11 000 from the estate of the late Doet Sadien. In terms of Proclamation No 34 of 10 February 1961, promulgated under section 20 of the Group Areas Act 77 of 1957, the area in which the property is situated was declared an area for ownership and occupation of members of the white population group. At that time, the brothers (in one instance his deceased estate) were the registered owners of the property. On 21 March 1962, following a public auction and subsequent negotiations, a

JAJ Badenhorst purchased the property for R13 550.

3. Mpshe AJ concluded that the Sadien brothers were dispossessed of the property as a result of racially discriminatory laws and practices, specifically the Group Areas Act and that, on the evidence, the purchase price paid cannot be regarded as equitable compensation. In circumstances where the claimants had opted for alternative land, Mpshe AJ ultimately granted inter alia an order that: 'A portion of the property Erf 1783 Constantia in the Western Cape Province measuring ten (10) hectares in extent shall be transferred to the second applicant.' On 8 February 2013, Mpshe AJ varied the first paragraph of the order by

amending it to read: 'A portion of the property Erf 142 Constantia (measuring 8.9 hectares situated in the Western Cape Province shall be transferred to the second applicant.'

4. The first application before me now is brought by various intervening parties who, in essence, comprise the Sadien family (the intervening parties). They seek relief intended to substitute themselves as the parties who obtained the substantive relief under the orders of Mpshe AJ. The second application is an application instituted by the South African Riding for the Disabled Association (SARDA). In that application, SARDA seeks relief amending or rescinding the orders of Mpshe AJ, specifically the order of 8 February 2013. The material ultimate effect of the relief SARDA seeks is to remove Erf 142 Constantia from the remit of the orders. SARDA is the occupier of Erf 142 and has been for several decades.
5. This case has a protracted and unfortunate history. That history is detailed in other judgments of both this Court and the Constitutional

Court and I do not repeat it here. What warrants emphasis at this stage is that the Constitutional Court has made it quite clear in a decision delivered in February 2017 that SARDA's interest in these proceedings is 'solely for the purpose of determining

compensation' and that SARDA has no direct and substantial interest in the property in question. [1]

6. SARDA has, in turn, made it clear in these proceedings that it does not agree with the Constitutional Court's decision. In the face of that decision, it is both puzzling and somewhat troubling that SARDA both sought to oppose the intervening parties' application and considered itself entitled to bring its application to amend or rescind the order of Mpshe AJ.

The intervening parties' application

7. The intervening parties are Magherdien Sadien NO, Mogammad Usuf Hoosen, Johamed Allie Ebrahim NO and Magherdien Sadien NO. They seek various relief which entails a declaration that the claimant applicants in LCC26/2010 are cited as representatives of the Sadien Family and orders that substitute the intervening parties, together with the Boeta Omar Sadien Family Trust (IT 29115/2014), as the relevant applicants. The State parties including the Commission for the Restitution of Land Rights (the Commission) supports the relief. Although Mr Sediek Sadien initially opposed the application, he subsequently withdrew his opposition and the application became settled as between these parties.
8. The only party who sought to oppose the relief sought was, ultimately, SARDA. In my view, on the strength of the Constitutional Court's decision, referred to above, SARDA has no standing or right to oppose the application. Although SARDA is now a party to the proceedings, its entitlement to participate is solely for purposes of determining the compensation that it is entitled to receive. Nonetheless, even if I am incorrect, and SARDA's participation in the compensation dispute entitles it to oppose the application, I am of the view that the intervening parties have established their entitlement to the relief sought. In

this regard, while SARDA was not cited in the proceedings and was not served with the process, it obtained access thereto and sought to answer the case in its own application, to which the intervening parties replied. SARDA has raised no basis for refusing the application.

9. At first blush, and due to the history of the matter, the intervention application raises a complex factual history and matrix, but it is in reality a simple case, for four reasons. First, the evidence shows that in prosecuting LCC 26/2010 and the claims, Mr Sedick Sadien and Mr Ebrahim Sadien (when alive) were acting in a representative capacity for members of the Sadien family, in respect of which four claims were lodged. Secondly, the Commission has explained that while only one of the four claims was gazetted,[2] it was so gazetted, and the claim thereafter processed, as a consolidated claim for the Sadien family claimants. Thirdly, although

there are features of the judgment of Mpshe AJ that reveal that the Court approached the matter on a different basis,[3] the effect of the orders of Mpshe AJ was to benefit the family as a whole and at the time of the hearing Mr Sedick Sadien himself

consented to enjoying the property awarded with the rest of the Sadien family. Fourthly, save for the opposition of SARDA, the

participating parties consent to the relief sought. In these circumstances, I am of view that the applicants are entitled to the

relief they seek.

10. One argument advanced by SARDA warrants separate response. SARDA sought to submit that the Restitution Act does not permit of 'family

claims' for restitution of land in that section 2 of the Restitution Act indicates who may claim restitution and does not

refer to families. While section 2 does not refer to family claims, this does not mean that restitution claims could not be lodged on behalf of or in the interests of people who comprise a family. Many such claims were lodged and many such cases come before this Court. In my view, an interpretation or application of the Restitution Act that precludes members of a family (whether together or separately) from claiming restitution of rights in land of which they were dispossessed as a result of racially discriminatory laws and practices would strip the Act of its remedial force.[4] Indeed, it would serve to entrench and perpetuate the profound indignities that South African families endured through its history

of land dispossession.

SARDA's application

11. In its application, SARDA seeks to amend or rescind Mpshe AJ's order of 8 February 2013. The import of the relief it seeks is to remove Erf 142 Constantia from its remit.

12. SARDA is not entitled to seek this relief in view of the decision of the Constitutional Court referred to above. Indeed, during argument, SARDA conceded that the real basis for its case is a contention that the Constitutional Court was incorrect. This cannot assist SARDA because not only is this Court bound by the Constitutional Court's decision, but SARDA is bound by it^[5] and cannot seek to avoid finality – which serves the public interest and the rule of law – and have the issues reopened in this way.^[6]
13. To avoid the latter conclusion, SARDA submitted that its current application raises new issues and a decision in intervention proceedings, being interlocutory, can be revisited. SARDA failed, however, to point to any new issue in this case. The only new circumstance is the fact of the intervention application: but that order only deals with who is entitled to receive transfer of the property. It does not alter SARDA's interest as determined by the Constitutional Court.

Conclusion and order

14. In the result, I am of the view that the application of the intervening parties must succeed and SARDA's application must be dismissed.
15. In the usual course, this Court does not grant costs orders save in special circumstances. I am of the view that special circumstances arise in this case in respect of SARDA's application. At this juncture, the Sadien land claim cries out for finality. SARDA has already secured a suspension of the order pending the finalization of SARDA's compensation claim. Given the circumstances in which the SARDA application was brought, it is difficult to view it as much more than a misguided effort to secure SARDA's incumbent position for as long as possible. The Constitutional Court has already spoken on the issues that SARDA effectively seeks to re-litigate. The issue of SARDA's compensation has been referred to mediation: that process must now be finalized.
16. The intervening parties sought costs against both SARDA and SARDA's attorney personally. The State parties (third to fifth respondents) sought a punitive costs order against SARDA. While this case was in my view misguided, in all the circumstances of the litigation, I do not consider it to be one that warrants a punitive costs order as against SARDA or (while less clear) a personal costs order against its attorney. I am persuaded that the circumstances are such that SARDA should be ordered to pay the costs of its application. In my view, there is no need to make a separate order dealing with the costs of SARDA's opposition to the intervening parties' application because these issues were substantially canvassed in SARDA's own application.
17. The following order is made in the intervention application:
 - 17.1. The Intervening Parties are granted leave to intervene in LCC26/2010;
 - 17.2. Sediek and Ebrahim (who has since become deceased) Sadien were cited in the proceedings under case number LCC26/2010 as representatives of the Sadien Family.

17.3. Sediek and Ebrahim Sadien are substituted by the Intervening Parties, including the Second Respondent, as the Second, Third, Fourth, Fifth and Sixth Applicants under the aforementioned case number.

17.4. The order granted by the Honourable Justice Mpshe on 7 December 2012 and as amended on 8 February 2013 under the above case number, is varied as follows:

17.4.1. Paragraph (b) of the order of 7 December 2012 is varied to read: “The Department of Agriculture, Land Reform and Rural Development to designate the said property in equal shares to the verified members of the Sadien Family land claimants, duly represented by the Imam Dout Sadien Family Trust (IT 746/2014), the Boeta Omar Sadien Family Trust (IT 20115/2014), the Abduraghmaan Sadien Family Trust (IT 20909/2014), the Bapa Sadien Family Trust (IT 202039/2014) and the Boeta Toyer Sadien Family Trust (IT 020531/2014) respectively”;

17.4.2. Paragraph (a) of the order of 8 February 2013 is varied to read: “(a) A portion of the property Erf 142 Constantia (measuring 8.9 hectares) situated in the Western Cape Province shall be transferred in equal shares to the verified members of the Sadien Family land claimants, duly represented by the Imam Dout Sadien Family Trust (IT 746/2014), the Boeta Omar Sadien Family Trust (IT 20115/2014), the Abduraghmaan Sadien Family Trust (IT 20909/2014), the Bapa Sadien Family Trust (IT 202039/2014) and the Boeta Toyer Sadien Family Trust (IT 020531/2014) respectively”.

17.5. It is recorded that the five family Trusts will formulate a decision-making vehicle, in writing, before transfer of the Erf 142 Constantia (the land) to the five family Trusts, to address matters dealing with the fair, equitable, accountable and transparent division and distribution of the land between their respective beneficiaries.

17.6. There is no order as to costs.

18. The following order is made in SARDA’s application of 5 March 2024:

18.1. The application is dismissed with costs.

COWEN J

Judge of the Land Court

Date of hearing: 2 August 2024

Date of judgment: 1 November 2024

Appearances:

Intervening parties:

Adv B Joseph SC & Adv Y Abass instructed by Igshaan Sadien Attorneys

Third to fifth respondents:

Adv DJ Jacobs SC & Adv LJ Krige instructed by the State Attorney Cape Town.

SARDA: Mr M Wagener

- [1] South African Riding for the Disabled Association v Regional Land Claims Commissioner and Others [2017] ZACC 4; 2017 (8) BCLR 1053 (CC); 2017 (5) SA 1 (CC).
- [2] The judgment records that in total four claims had been lodged: Claim C371 lodged on 29 December 1998 by Ismail Coenrad, the grandson to Ismail Sadien; Claim S851 lodged by Mogmoed Sadien on behalf of Doet Sadien; Claim S38 lodged by Mogamat Rashaad Sadien on 14 December 1995 and Claim S287 completed by Magmoed Sadien on 13 September 1996.
- [3] See paragraphs 14, 15 and 90 to 100 of the judgment.
- [4] Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd [2007] ZACC 12; 2007 (10) BCLR 1027 (CC) ; 2007 (6) SA 199 (CC).
- [5][5] Section 165(5) of the Constitution provides: ‘An order or decision issued by a court binds all persons to whom and organs of state to which it applies.’ Section 165(5) lies at the heart of the rule of law a founding value in the Constitution. See MEC for Public Works, Eastern Cape & another v Ikamva Architects CC [2022] ZASCA 184; [2023] 1 All SA 579 (SCA); 2023 (2) SA 514 (SCA) at para 30.
- [6] Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State and others [2021] ZACC 28; 2021(11) BCLR 1263 (CC) at para 1.

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