

SOUTH AFRICA / JUDGMENT

Sehole v Minister of Rural Development and Land Reform and Others (LCC288/2017) [2022] ZALCC 1 (8 February 2022)

[2022] ZALCC 1

COURT
Land Claims Court

BEFORE
Barnes AJ

CASE / FILE NUMBER
LCC288/ 2017

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IN
THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD
AT RANDBURG
Case
No: LCC288/ 2017
Date
of hearing: 13 September 2021
Date
of judgment: 8 February 2022
In

the matter between:

SEKHOANE
BENJAMIN
SEHOLE
Applicant
and
MINISTER
OF RURAL DEVELOPMENT
First Respondent
AND
LAND REFORM
CHIEF
LAND CLAIMS
COMMISSIONER
Second Respondent
SAMUEL
TSOLO AND

OTHER
Third Respondent
TSOLO
FAMILIES
S
SLIAS SEBITLOANE &
OTHERS
Fourth Respondent
REGISTRAR
OF DEEDS, NORTH WEST
Fifth
Respondent
NALEDI
LOCAL MUNICIPALITY
Sixth
Respondent
MINISTER
OF AGRICULTURE
Seventh Respondent
NORTH
WEST DEPARTMENT OF AGRICULTURE
Eighth Respondent
CONSERVATION
AND ENVIRONMENT
REGIONAL
LAND CLAIMS COMMISSIONER
Ninth
Respondent
BOIKHUCO
COMMUNAL
PROPERTY
Tenth Respondent
ASSOCIATION
BEN
SEHOLE COMMUNAL PROPERTY
Eleventh
Respondent

JUDGMENT

BARNES AJ

INTRODUCTION

1. This application concerns the farm Villa Franca 680 IN, situated in the district of Vryburg in the North West Province.

2. Three families lodged land claims in respect of the farm Villa Franca, namely: the Sehole family, the Tsolo-Maine family and the Sebitloane family.
3. All three claims were accepted as valid in terms of Restitution of Land Rights Act 22 of 1994 (“the Restitution Act”) and were duly published in the Government Gazette.
4. During or about 2007, the claims were settled on the basis that the farm Villa Franca would be subdivided and a portion thereof transferred to each of the three families. Each of the three families would also receive certain additional adjoining land.
5. Overall, in terms of the settlement, each family was to receive the following land:
 - 5.1 the Tsolo-Maine family would receive Portion 2 of Villa Franca 680 IN and Portion 1 Weltevreden 681 IN;
 - 5.2 the Sebitloane family would receive Portions 3 and 4 of Villa Franca 680 IN and Portion 3 of Oreillys Pan 682 IN; and
 - 5.3 the Sehole family would receive the remaining extent of Villa Franca 680 IN and Portion 1 of Hartebeespoort 723 IN.
6. The Sebitloane family formed the Boikhuco Communal Property Association (“CPA”) in order to take transfer of the land awarded to it in settlement of its land claim, that is, the land described in paragraph 5.2 above. The Boikhuco CPA is cited as the tenth respondent in this application.
7. In the result however, and for reasons which are not made clear in this application, the farm Villa Franca was not subdivided as intended and the entire farm Villa Franca was transferred to the Boikhuco CPA. This was done in error. Importantly, all the parties to this application accept that this was done in error and accept further that the error needs to be rectified.
8. It is against this background that the present application is brought.

THE RELIEF SOUGHT BY THE APPLICANT

9. The applicant is Mr Sekhoane Benjamin Sehole. He is the grandson of the late Mr Benjamin Polo Sehole who lodged the Sehole land claim in respect of the farm Villa Franca.
10. The applicant seeks an order in the following terms:
 - 10.1 “That the claim lodged and filed under Villa Franca 680 IN by the Applicant be declared valid and binding in effect.
 - 10.2 An order declaring the First, Second, Seventh and Ninth respondents to comply with the subdivision of the Farm Villa France 680 IN, following the Research Report no. 14/2002 of the farm Villa Franca 680, situated in the district of Vryburg, North West Province with reference number; BB012 and BB043 and agreement reached thereto.

10.3 Declaring that the entire farm registration made with the Fifth Respondent on behalf of the Fourth Respondent, Sebitloane's family, the, Boikhuco CPE Trust, be cancelled, reversed and be declared null and void abinitio,

10.4 Declaring that the First, Second, Seventh and Ninth Respondents are within a period of Thirty (30) days to commence with the Transfer and registration of the farm Villa Franca by subdivided (sic) amongst the three claimants as per agreement reached.

10.5 An Order directing the First, Second, Seventh and Ninth Respondents to comply with agreement and/or decision of subdividing, transfer and registration of the farm to be in accordance with the subdivisions that existed at the time of dispossession and in accordance to the portions and extent of each respective family as follows:

10.5.1 Tsolo Maine with portion 2 of Villa Franca 680 IN and Portion 1 Weltevreden 681 IN;

10.5.2 Sebitloane family, Portion 3 and 4 of Villa Franca 680 IN and portion 3 of Oreillys Pan 682 IN; and

10.5.3 Sehole family, being R/E of of Villa Franca 680 IN and Portion 1 of Hartebeespoort 723 IN, with extent of, 1435 8792 hectares, be

transferred and registered into the Applicant's family trust, Sehole Family Trust.

10.6 Directing the First, Second, Seventh and Ninth Respondents to pay the costs of this application on attorney and client scale, and such costs to be paid by the said Respondents jointly and severally with the one paying the other to be absolved."

THE DISPUTE AT HAND

11. As stated above, all parties to this application agree that the farm Villa Franca was transferred to the Boikhuco CPA in error and that it ought to have been subdivided and transferred to the three families as per the settlement set out above. All parties further agree that this error needs to be rectified. This agreement is recorded in an Order granted by this Court pursuant to a pre-hearing conference held between the parties on 2 November 2020. Paragraphs 1 and 2 of the Order read as follows:

1. In this order:

1.1 'The property' means all of the properties that were transferred to the tenth respondent as a result of the settlement of the land claims lodged on behalf of the Sehole, Tsolo Maine and Sebitloane families in respect of the Farm Villa Franca 680 IN.

1.2 'The three families' mean the Sehole, Tsolo-Maine and Sebitloane families intended to benefit from the settlement of the claims.

1.3 'The state respondents' means the first, second and ninth respondents.

2. The parties record their agreement as follows:

2.1 The property was, prior to the launch of these proceedings, erroneously transferred to the 10th respondent, Boikhuco CPA, in settlement of the land claims of the three families.

2.2 The property was intended to be transferred in separate parts to the three families.

2.3 It is desirable that the properties be transferred as intended.”

12. The first, second and ninth respondents have filed affidavits in which they state that they stand ready to facilitate the subdivision of the farm Villa Franca and transfer the relevant portions to the three families, as was intended in terms of the settlement. The state respondents state further that once the subdivision has taken place, the Tsolo Maine family's portion shall be transferred to the Tsolo Maine Family Trust, which has been established for this purpose, and the Sebitloane family's portion shall be transferred to the Boikhuco CPA.
13. It is in respect of the Sehole family that the problem arises. And this gives rise to the dispute at hand. The dispute is a narrow one. It pertains solely to whom the “Sehole land” is to be awarded.
14. The applicant contends that he is the sole beneficiary of the Sehole land claim. On this basis, he contends that the Sehole land falls to be transferred to the Sehole Family Trust, which comprises only of his nuclear family members.
15. The first, second and ninth respondents dispute this. They point out that the dispossessed person in respect of the Sehole family was the late Benjamin Polo Sehole (“Mr Sehole”). Mr Sehole had four children: Tefo Sehole, Mercy Thabede, Winifred Sedumedi and Olive Mabathu Malusi. They are Mr Sehole's direct descendants in respect of the land claim and accordingly the beneficiaries thereof. Tefo Sehole has since passed away and the applicant is his son. All of this is set out in the answering papers filed on behalf of the first, second and ninth respondents. It is also clearly borne out by the record of the Sehole land claim which serves before this Court.
16. The applicant contends that notwithstanding the above, and for reasons which are not made clear, the state respondents in this application, viz the first, second and ninth respondents “declared” him the sole beneficiary of the Sehole land claim. The state respondents categorically deny this in their papers and there is no evidence of this on the record.
17. The other Sehole family members also deny the applicant's contentions in this regard. They have formed the Ben Sehole Communal Property Association, the eleventh respondent herein, through which they seek to take transfer of the Sehole land.
18. The state respondents are clear in their position that once an entity has been established (whether it be a trust or a CPA) in which all beneficiaries of the Sehole land claim are represented, they will facilitate the transfer of the Sehole land to that entity. This is in the Court's view precisely what ought to happen in this case.

19. There is no evidence before this Court that the applicant is the sole beneficiary of the Sehole land claim and the applicant's contentions to this effect cannot be accepted. The applicant is therefore not entitled to an order directing that the Sehole land be transferred to the Sehole Family Trust as sought in his Notice of Motion. The applicant is also not entitled to the more general relief sought in his Notice of Motion as it is entirely unnecessary. The land claims of the Sehole, Tsolo-Maine and Sebitloane families in respect of the farm Villa Franca have already been found to be valid. Furthermore, the state respondents accept that the farm Villa Franca was transferred to the Boikhuco CPA in error and that this needs to be rectified by subdividing the Farm and transferring the relevant portions to the three families as intended in terms of the settlement. This has already been recorded in an Order of this Court and it would serve no purpose for it to be repeated here.
20. In the circumstances, I make the following order:

THE ORDER

1. The application is dismissed.
2. There is no order as to costs.

Acting Judge of the Land Claims Court

Appearances:

For the applicant: Adv Mothibi instructed by Maluleke Attorneys

For the 1st, 2nd and 9th respondents: Adv Mtheto instructed by the State Attorney

For the 3rd, 10th and 11th respondents: Adv Seboko instructed by Kgomo Attorneys

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Prepared on 13 October 2026 · Esheria