

SOUTH AFRICA / JUDGMENT

Senamela v Mokwana NO and Others (LCC05/2016) [2019] ZALCC 8 (29 March 2019)

[2019] ZALCC 8

COURT

Land Claims Court

BEFORE

Barnes

CASE / FILE NUMBER

LCC05/2016

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT RANDBURG

Case

No: LCC05/2016

Heard: 12 - 16

November 2018

Judgment:

29 March 2019

In

the matter between:

MPUPUTLANE

MATHABATHA

SENAMELA Plaintiff

and

AMOS

STEFAANS MOKWANA

N.O. 1st

Defendant

MOJASAGAGE

SOPHIE MOKWANA

N.O. 2nd

Defendant

MPHO

STEPHEN MOKWANA

N.O. 3rd

Defendant

DIRECTOR-GENERAL: DEPARTMENT OF RURAL 4th
Defendant
DEVELOPMENT
AND LAND REFORM

JUDGMENT

BARNES AJ

Introduction

1. This case began as an application, launched in January 2016, in which the plaintiff sought an order declaring her and her family to be labour tenants as defined in the Land Reform (Labour Tenants) Act 3 of 1996 (“the Act”), and consequential relief.
2. On 13 February 2017, the application was referred to trial.
3. The land to which this case relates is Portion 2 of the Farm Uitkyk 172 JS, in Limpopo Province, on which the plaintiff and her family resided until March 2013. I will refer to it in this judgment as “the farm”.
4. The farm is presently owned by the Mokwana Family Trust of which the first to third defendants are trustees. The third defendant is the son of the first and second defendants.
5. The plaintiff alleges that in March 2013, she and her family were constructively evicted from the farm by the first and third defendants. The plaintiff has, since March 2013, lived in an informal settlement in Sehleklwene.
6. At the commencement of the trial on 12 November 2018, Advocate Rossouw SC who appeared for the first to third defendants, applied for a separation of issues. The issue sought to be tried and determined separately was whether the plaintiff had voluntarily left the farm in March 2013. This issue is significant by virtue of section 3(3)(a) of the Act which provides as follows:

“3 Right to occupy and use land

.....

- (3) A labour tenant shall be deemed to have waived his or her rights if he or she with the intention to terminate the labour tenancy agreement -
 - (a) leaves the farm voluntarily; or
 - (b)

7. Mr Rossouw submitted that the central issue in dispute between the parties was whether or not the plaintiff had left the farm voluntarily; that this issue was potentially determinative of the entire dispute between the parties and that it was accordingly convenient for it to be tried separately. Advocate Meyer, who appeared for the plaintiff, opposed the application for separation, contending that it was undesirable for the matter to be tried on a piecemeal basis. After hearing submissions from both counsel, I gave judgment in which I granted the application for separation.
8. The sole issue for determination before me is accordingly whether the plaintiff left the farm voluntarily in March 2013.

The Evidence

The Case for the Plaintiff

The Plaintiff, Mrs Mpuputlane Senamela

9. The plaintiff, Mrs Mpuputlane Senamela, is 76 years of age. She was born and grew up on the farm Duikerkrans in Limpopo Province. Duikerkrans was owned by a Mr Ben Roos.
10. Mrs Senamela married her late husband on Duikerkrans, where they lived for a time, before moving onto the farm, then also owned by Ben Roos.
11. Mrs Senamela testified that she worked as a domestic worker for Ben Roos on the farm. Her husband worked in the fields. They were not paid, but were entitled to keep livestock and had grazing and cropping rights on the farm.
12. Mrs Senamela and her husband had five children: Johannes, Marcus, Martha, Christinah and Nkoni. Nkoni died very young and was buried on Duikerkrans. Martha and Christinah passed away while the family lived on the farm and are buried there, in the family grave plot.
13. Ben Roos passed away and his sons took over the running of the farm for a time. In 2012, the Mokwanas purchased the farm.
14. Mrs Senamela testified that shortly after their arrival on the farm, the Mokwanas erected a fence, which enclosed the Senamela's homestead and kraal, effectively fencing them in.
15. Mrs Senamela testified that there were two gates in the fence: the first was the main gate which provided access to the main road. The second provided access to the river. She testified that the Mokwanas kept these gates locked and only gave the Senamela family the keys when they felt like it.
16. Mrs Senamela testified that when her family was without the keys, they had to climb over the main gate in order to access the main road and crawl under the fence in order to access the river. She testified further that they were forced to enlarge a small opening in the fence in order to get their cattle out of the kraal.

17. Mrs Senamela testified that she and her husband had always been entitled to collect and sell firewood on the farm. She testified that on Sunday 10 March 2013, persons came to the farm to buy firewood from them. When they attempted to exit the farm in their bakkie, they found the main gate locked. The third defendant, Mr Steve Mokwana, arrived. He was angry and demanded to know why wood was being removed from the farm. He drew his firearm and pointed it at the driver of the bakkie. Mrs Senamela testified that her husband intervened and said “don’t shoot this innocent person, rather shoot me.” Steve Mokwana withdrew his firearm and the group returned to the Senamela’s home. The first defendant, Mr Amos Mokwana, also arrived. There was an altercation over the money paid to Mr Senamela for the firewood, with the Mokwanas attempting, at one point, to take the money from Mr Senamela. Mrs Senamela testified that the Mokwanas were angry and said to her husband “we are going to get you”. They then left the Senamela homestead.
18. The following day was Monday 11 March 2013. At around 18:00 in the evening Mrs Senamela was fetching the cattle from the river when she noticed a private vehicle on the main road approaching their homestead.
19. Mrs Senamela later learned that two unknown men had come looking for her husband. Mr Senamela sent his grandson to receive them. When Mr Senamela emerged from the house, he was shot twice, in the presence of his grandson.
20. Mr Senamela died on the way to hospital.
21. Mrs Senamela testified that on Wednesday 13 March 2013, Amos and Steve Mokwana came to her home and asked what had happened. She told them that her husband had passed away. They instructed Mrs Senamela to leave the farm. Amos Mokwana said his son was now the owner of the farm and they did not want the plaintiff and her family there. Mrs Senamela testified that Amos Mokwana said “don’t you ever put your house on our farm.”
22. Mrs Senamela testified that thereafter, Amos and Steve Mokwana came to her home on more than one occasion and instructed her to leave the farm and to do so by no later than Monday 18 March 2013. They said “on Monday, we must not find you on this farm.”
23. On Thursday 14 March 2013, Mrs Senamela was served with an urgent court application in which the Mokwanas sought to interdict Mr Senamela’s burial on the farm. The application was brought on less than 24 hour notice and was set down for hearing in the Pretoria High Court at 10:00am on Friday 15 March 2013.
24. Mrs Senamela testified that she was, in the circumstances, unable to oppose the application.
25. On Friday 15 March 2013, the Pretoria High Court granted an order in Mrs Senamela’s absence interdicting Mr Senamela’s burial on the farm. The order was served on Mrs Senamela on the same day.

26. On Friday 15 March 2013, a night vigil was held for Mr Senamela at the Senamelas homestead. Mrs Senamela testified that Amos Mokwana arrived with a group of men and demanded to know why the vigil was being held. Mrs Senamela did not respond to him.
27. On Saturday 16 March 2013, Mr Senamela was buried, not in the family grave plot on the farm, but in a graveyard at Syplaas.
28. Mrs Senamela testified that on their return from the funeral, only the vehicle she was travelling in was permitted entry to the farm. The remaining vehicles in the funeral convey were locked out by the Mokwanas.
29. Mrs Senamela testified that on Sunday 17 March 2013 she left the farm. She moved to an informal settlement in Sehleklwene, where she built a shack.
30. Mrs Senamela testified that she believes that Amos and Steve Mokwana were responsible for her husband's murder. She testified that she did not wish to leave the farm but felt that she had no choice. She testified that when she left the farm she feared for her life. "My life was in danger," she said, "because my husband had been murdered."
31. Under cross examination, Mrs Senamela was asked why she wanted to return to the farm. She answered that she has sleepless nights because she is unable to see her children. She confirmed that she was referring to her daughters, Martha and Christinah, who are buried on the farm.
32. It was put to her that she could simply ask the Mokwana's permission to visit her daughters' graves. Mrs Senamela answered that she had attempted to visit the graves on one occasion. She was refused entry by the Mokwanas, she said, and told never to set foot on the farm again.
33. It was put to Mrs Senamela that the first and third defendants would deny threatening her or her husband or instructing her to leave to the farm. It was further put to her that the first and third defendants would deny ever having spoken to her and would say that they avoided her because she was a drunk who swore at people. Mrs Senamela denied this and consistently maintained her version regarding the events of March 2013.
34. Mrs Senamela was a good, solid witness, and her evidence was not impugned in any material respect under cross examination.

The Case for the Defendants

35. Four witnesses testified on behalf of the defendants: Mr Amos Mokwana, the first defendant; Mr Steve Mokwana, the third defendant; Mr Katishi Nkune, a retired police detective and Mr Ndala Molishe, one of the Senamela's neighbours in 2013.
36. It is convenient to begin with the evidence of Mr Steve Mokwana.

Mr Steve Mokwana

37. Steve Mokwana is one of the trustees of the Mokwana Family Trust which became the registered owner of the farm in 2012.
38. Mr Mokwana testified that soon after purchasing the farm, he approached Mr Senamela and asked him whether he would agree to move to Portion 5 (another Portion of the Farm Uitkyk owned by the Mokwana Family Trust). Mr Mokwana testified that Mr Senamela initially agreed but then changed his mind and said that he wanted to live in the village. Mr Mokwana told him that he was prepared to build him a house in the village but Mr Senamela again changed his mind and said that he did not want to move.
39. Mr Mokwana confirmed that he built a fence around the Senamela's homestead and kraal. He testified, however, that the fence had three access points. The first of these was the main gate which provided access to the main road. Mr Mokwana testified that Mr Senamela was given a key for the main gate and denied that it was ever taken away from him. Mr Mokwana testified that the other two access points were openings in the fence. One of these provided access to the river. According to Mr Mokwana, neither of these openings were gated. Mr Mokwana accordingly disputed that the Senamelas were "fenced in."
40. Asked in his evidence-in-chief about his relationship with the Senamelas, Mr Mokwana answered that it was "smooth." However, Mr Mokwana then went on to give evidence which revealed a relationship that was anything but smooth.
41. In his testimony, Mr Mokwana did not refer to Mrs Senamala by name but as "the old lady" or "that granny". He testified that he had never spoken to her. He stated that he avoided her because she was always drunk and swearing at people. He stated further that he was afraid of her because of "the witchcraft". Mr Mokwana testified that he had information that the Senamelas had been chased away from their original home in Severfontein because Mrs Senamela was accused of witchcraft and that they had thereafter invaded the farm. I pause to mention that these allegations were made for the first time in Mr Mokwana's testimony and formed no part of the defendants' pleaded case. On the contrary, the defendants, in their pleadings, pleaded no knowledge of the Senamela's history.
42. Mr Mokwana testified that Mr Senamela had, on one occasion, left the main gate open, causing his cattle to stray onto the main road. He also testified that Mr Senamela's dogs had killed three of his impala on the farm, as a consequence of which he laid a criminal charge of malicious damage to property against Mr Senamela.
43. Mr Mokwana testified that the Senamelas brewed and sold beer and ran an initiation school from their homestead, neither of which he had given permission for as the owner of the farm.

44. Mr Mokwana testified that he learnt from his workers that Mr Senamela was collecting and selling firewood on the farm. He testified that he confronted Mr Senamela about this and told him to stop. Mr Mokwana testified that Mr Senamela continued regardless. Asked whether he had taken any further action, Mr Mokwana answered that he had not. "What could I do", said Mr Mokwana, "he was an adult, I could not sjambok him".
45. In his evidence-in-chief, Mr Mokwana was asked to respond to Mrs Senamela's allegations regarding the altercation over the firewood on Sunday 10 March 2013, during which he was alleged to have pointed a firearm and he and his father were alleged to have threatened Mr Senamela. Mr Mokwana answered that he had not been on the farm on that day and had no idea what Mrs Senamela was talking about. Mr Mokwana testified that he had not been on the farm for the entire week of 10 March to 17 March 2013.
46. Mr Mokwana disputed that he or his father had threatened the Senamelas. He further disputed that they had instructed Mrs Senamela to leave the farm. His family had no difficulty with the Senamelas living on the farm, said Mr Mokwana, and had never instructed them to leave or sought their eviction.
47. Mr Mokwana was asked to explain the reason for bringing the court application to interdict Mr Senamela's burial on the farm. He answered that his family had believed that if Mr Senamela was buried on the farm, the Senamelas would have a land claim in respect of the farm.
48. Mr Mokwana was referred to the founding affidavit in support of the application to interdict Mr Senamela's burial on the farm. That affidavit was deposed to by Mr Mokwana himself. He confirmed this. I will refer to it as "the first affidavit." Paragraph 5.2 of the first affidavit stated as follows:
- "The First Respondent [Mrs Senamela] and members of her family (including the deceased) resides on the farm without the permission of the Applicants and despite numerous requests refuses to vacate the property."*
49. Mr Mokwana testified that this statement was incorrect.
50. Mr Mokwana was then referred to paragraph 5.3 of the first affidavit which stated as follows:
- "I have already given my attorneys instruction to institute eviction proceedings against the Respondents."*
51. Mr Mokwana testified that this statement too was incorrect.
52. Mr Mokwana was cross examined by Ms Meyer. He did not fare well.
53. Ms Meyer began by asking Mr Mokwana to explain the incorrect statements in paragraphs 5.2 and 5.3 of the first affidavit. Mr Mokwana's attempts to do so were garbled and far-fetched. At one stage he sought to explain paragraph 5.2 by suggesting that he may have been referring, mistakenly, to another family living on the farm. He was adamant that he

had never instructed his attorneys to institute eviction proceedings against the Senamelas, yet maintained that paragraph 5.3 was not incorrect. This, despite having conceded in his evidence-in-chief that paragraph 5.3 was incorrect.

54. Mr Mokwana was also asked to explain why paragraph 5.5 of the first affidavit referred to “the applicants” (in the plural) – which included himself – visiting the Senamela’s homestead on Wednesday 13 March 2013 if he had not been on the farm during the week of 10 to 17 March 2013, as he had testified.
55. Mr Mokwana maintained that he had not been on the farm during that week and could not explain why paragraph 5.5 of the first affidavit (which he had deposed to) referred to the applicants (which included himself) visiting the Senamelas at their homestead on Wednesday 13 March 2013.
56. Mr Mokwana was also referred to paragraph 6.2 of the first affidavit which stated as follows:
“The Respondents occupy the property illegally and refuse to vacate the property.”
57. When asked about the correctness of this statement, Mr Mokwana hedged, contending in one breath that this statement was correct and in the next that it was incorrect.
58. It was common cause that the interdict obtained by the Mokwanas on Friday 15 March 2013 (which was granted in the form of rule nisi) was subsequently discharged and a punitive costs order granted against the Mokwanas. It was also common cause that the Mokwanas, in June 2013, brought an application to rescind that order. In her cross examination, Ms Meyer referred Mr Mokwana to the founding affidavit in support of the rescission application. That affidavit too was deposed to by Mr Mokwana. He confirmed this. I will refer to it as “the second affidavit.” Ms Meyer pointed out that the second affidavit made a number of averments identical to the incorrect averments made in the first affidavit and asked Mr Mokwana whether he could explain why the same mistakes were made in two successive affidavits. He could not.
59. Ms Meyer asked Mr Mokwana whether he had read the second affidavit before signing it. He hedged and said “It depends, I had attorneys I trusted”. When asked the question again, Mr Mokwana answered that he had not read the affidavit. When questioned further, Mr Mokwana changed his version again and said that he could not remember whether he had read the affidavit before signing it.
60. Ms Meyer asked Mr Mokwana to explain the reason for bringing the application to interdict Mr Senamela’s burial on the farm. Mr Mokwana repeated his answer given in his evidence-in-chief, viz that his family had believed that if Mr Senamela was buried on the farm, this would give the Senamelas a land claim. Ms Meyer pointed out that this was wrong in law. She also pointed out that this was not among the reasons stated at the time for bringing the application. Notably, in the first affidavit the stated reasons for the application were: that the Senamelas were occupying the farm illegally; that their eviction was being sought; and the funeral would likely result in the poaching and looting of the Mokwanas livestock and game.

Mr Mokwana could not explain this contradiction. It was put to Mr Mokwana that the interdict application was brought in order to intimidate the Senamela's and drive them off the farm.

61. Ms Meyer asked Mr Mokwana to explain the rationale for erecting a fence around the Senamela's homestead and kraal. Mr Mokwana answered that he had done so for security reasons. When asked about the openings in the fence and whether they ought not to have been gated to ensure security, Mr Mokwana answered that the main gate was kept locked and that this provided sufficient security. Mr Mokwana was again asked to explain the rationale for erecting a fence around the Senamela's homestead and kraal, if, as he had testified, the main gate provided sufficient security. He could not. It was put to Mr Mokwana that the fence was erected in order to harass and intimidate the Senamelas.
62. Ms Meyer asked Mr Mokwana when he acquired knowledge of the allegations of witchcraft against Mrs Senamela. He answered that it was in 2016. It was pointed out to Mr Mokwana that he had testified that he was afraid of Mrs Senamela in 2013 because of "the witchcraft". Faced with this contradiction, Mr Mokwana testified that one of his temporary workers had told him that Mrs Senamela was a witch and a drunk. He could not remember the worker's name.
63. Mr Mokwana's demeanour in the witness box was highly unsatisfactory.
64. He displayed undisguised contempt for Mrs Senamela, referring to her not by her name but disrespectfully as "the old lady" or "that granny". He repeatedly accused her of witchcraft (which accusations were never put to her) and of being a drunk and verbally abusive. At one stage in his testimony he described her as a "vulgar aggressive drunk". He maintained simultaneously, however, that he kept away from her and had never actually spoken to her.
65. Mr Mokwana also displayed bitterness and animosity towards Mr Senamela. He accused him, in addition to the accusations set out above, of growing dagga on the farm and of keeping stolen cattle on the farm (this latter accusation was also not put to Mrs Senamela as it ought to have been).
66. When challenged under cross examination, Mr Mokwana became argumentative and belligerent. Throughout his testimony, but particularly when under pressure during cross examination, Mr Mokwana had a tendency to launch into long angry speeches against the Senamelas, in which he criticised them and repeated the accusations referred to above.
67. The remaining witnesses for the defendants did little for their case. Their evidence is set out, briefly, below.

Mr Amos Mokwana

68. Mr Mokwana senior is 85 years of age.

69. Mr Mokwana admitted that he had visited the Senamela's homestead in the days after Mr Senamela's murder. He could not remember whether he had done so on Tuesday 12 March 2013 or Wednesday 13 March 2013. He testified that he had visited in order to pay his condolences to the Senamela family. He said that the family was not pleased to see him and he had left.
70. Mr Mokwana denied that he had threatened the Senamelas or instructed Mrs Senamela to leave the farm.
71. He also denied that he was present on the farm on Sunday 10 March 2013 or had any knowledge of the altercation over the firewood which was alleged to have taken place on that day.
72. Mr Mokwana denied that he attended the night vigil held for Mr Senamela on Friday 15 March 2013.
73. Under cross examination, Mr Mokwana was asked to explain the rationale for the erection of the fence around the Senamela's homestead and kraal. He answered that it was to keep the Mokwana's livestock and game out of the Senamela's compound where they were at risk of being attacked by the Senamela's dogs. It was pointed out to him that there were, on his son's version, two openings in the fence, which meant that the animals were not prevented from straying into the Senamela's compound. Mr Mokwana accepted this and was, like his son, ultimately unable to explain the rationale for the erection of the fence.
74. Save for the above, Mr Mokwana senior was able to add little to the case for the defendants. He frequently responded to questions, particularly under cross examination, by claiming that he had no knowledge of the matters in question and suggesting that his son be asked. This included questions pertaining to the application to interdict Mr Senamela's burial on the farm. Mr Mokwana stated that he was unsure whether such an application had been brought but accepted that it might have been and said that his son would know.

Mr Katishi Nkune

75. Mr Nkune is a retired police detective. In 2013, he was a commander in the SAPS detectives based in Laersdrift. He was the detective responsible for the investigation of Mr Senamela's murder.
76. It was clear that the purpose of calling Mr Nkune was to inform the Court that the SAPS had found no evidence linking the first or third defendants to Mr Senamela's murder. This, Mr Nkune did. He was, however, an unimpressive witness.
77. In the first place, Mr Nkune had not taken the trouble to refresh his memory about the case and was, as a consequence, unable to give clear evidence in relation to key aspects of the investigation. For example, Mr Nkune's account of what Mrs Senamela told him after the murder was garbled and confused. He testified that he had taken a statement from her but had not seen it since 2013 and could not remember what she had said.

78. Secondly, aspects of Mr Nkune's testimony raised question marks about the manner in which the investigation was conducted. For example, Mr Nkune testified that although the first and third defendants were suspects in the murder investigation, he had not considered it necessary to instruct the third defendant to leave the Senamela's homestead when he found him there on Wednesday 13 March 2013.
79. Furthermore, Mr Nkune testified that it was clear to him that there was no feud between the Mokwana and Senamela families. This despite Steve Mokwana having laid a criminal charge of malicious damage to property against Mr Senamela and despite the Mokwanas having brought an application to interdict Mr Senamela's burial on the farm, both facts of which Mr Nkune was aware.
80. Mr Nkune testified that the Mokwana's firearms were sent for ballistics testing and could not be linked to the bullet cartridges found at the scene of Mr Senamela's murder. Thereafter, the docket was closed.

Mr Ndala Molishe

81. Mr Molishe testified that he was a neighbour of the Senamela family in 2013.
82. Mr Molishe testified that he attended Mr Senamela's funeral on Saturday 16 March 2013. He testified that after the burial, the funeral party returned to the Senamela's home where they partook in a meal. Mr Molishe testified that immediately after the conclusion of the meal, members of the Senamela family and the funeral party began dismantling the Senamela's homestead and packing the Senamela's belongings into vehicles. This surprised him, he said. He testified that the plaintiff and her family left the farm that day, that is, on Saturday 16 March 2013.
83. In cross examination, it was put to Mr Molishe that Mrs Senamela did not know him and that he had not been at Mr Senamela's funeral. It was further put to Mr Molishe that Mrs Senamela and her family had left the farm on Sunday 17 March 2013 and not on Saturday 16 March 2013.
84. I now turn to analyse the evidence.

Analysis

85. The evidence of Steve Mokwana was false in a number of key respects. He testified that he and his family had no difficulty with the Senamelas living on the farm and had never instructed them to leave or sought their eviction. This was clearly false. On Mr Mokwana's own version, he attempted, shortly after purchasing the farm in 2012, to secure Mr Senamela's agreement to move to Portion 5 of the Farm Uitkyk and then the village. By March 2013, it was clear that the Mokwana's were taking active steps to remove the Senamelas from the farm. Steve Mokwana stated under oath, in two sets of court papers, that the Senamelas were living on the farm without the Mokwana's permission and that

lawyers had been instructed to institute proceedings for their eviction. Mr Mokwana's claim that those statements were incorrect was disingenuous and his attempts to explain how these errors occurred, twice, in successive court applications, were garbled and far-fetched.

86. Mr Mokwana's evidence that his relationship with the Senamela's was smooth was also patently false. On Mr Mokwana's own version, there was significant tension between them in relation to a whole host of incidents and issues. Mr Mokwana had laid a criminal charge of malicious damage to property against Mr Senamela and had brought the interdict application preventing his burial on the farm. Furthermore, Mr Mokwana, in his testimony, displayed undisguised bitterness and animosity towards Mr and Mrs Senamela.
87. Mr Mokwana's testimony that he erected a fence around the Senamela's homestead and kraal for security reasons made little sense. On his own version, given the openings in the fence, it was redundant as a security measure. Furthermore, and in any event, he conceded that the main gate was kept locked and that this provided sufficient security. Two conclusions flow from this: the first is that Mrs Senamela's version that the openings in the fence were gated is the more probable one, supporting her contention that her family was fenced in. The second is that since the defendants could provide no rational reason for the erection of the fence, the inescapable conclusion, as was put to Mr Mokwana in cross examination, is that it was put up to harass and intimidate the Senamelas.
88. In my view, Steve Mokwana was also not truthful in the reason he gave the Court for bringing the application to interdict Mr Senamela's burial on the farm, viz that he believed that it would give the Senamelas a land claim in respect of the farm. This is disingenuous. It has no basis in law and was not stated as the reason for bringing the application in the first place. Furthermore, and importantly, it will be recalled that two of the Senamela's daughters were already buried on the farm. There was in these circumstances, no logic in disallowing the burial of their father on the same grave plot, other than to intimidate the Senamelas in an effort to drive them off the farm.
89. Steve Mokwana's testimony was clearly false in at least the above respects. His testimony regarding the accusations of witchcraft against Mrs Senamela was probably also false. This is so by virtue of his contradiction regarding the dates – he testified that he was afraid of Mrs Senamela in 2013 by reason of the witchcraft, and that he heard about the accusations of witchcraft against Mrs Senamela for the first time in 2016. Also significant, in my view, is the fact the defendants did not plead that the Senamelas recently invaded the farm – as a consequence of accusations of witchcraft made against Mrs Senamela. It is however not necessary for me to make a definitive finding on the veracity of Mr Mokwana's evidence on this score. So much of Mr Mokwana's evidence was false that it is not possible to place reliance on any of it.
90. Mrs Senamela, on the other hand, gave good evidence which was not impugned in any material respect under cross examination. I therefore accept Mrs Senamela's version in all material respects and find that the first and third defendants threatened Mr Senamela on 10

March 2013 and instructed Mrs Senamela to leave the farm during the week of 10 to 17 March 2013. The blatant hostility displayed towards Mrs Senamela in Court also corroborates her version that she was told to leave the farm. I further accept Mrs Senamela's testimony that she did not wish to vacate the farm and felt that she had no choice but to do so.

91. It remains to briefly deal with the evidence of Mr Molishe. I am of the view that his evidence does not take the matter any further. Whether Mrs Senamela left the farm on Saturday 16 March 2013 or Sunday 17 March 2013 does not change my key findings made above.
92. It follows from those findings that Mrs Senamela's vacation of the farm was not voluntary.
93. In accordance with the practice of this Court not to make costs orders in matters such as this which fall within the genre of social litigation, I make no order as to costs.

Order

94. In the circumstances, I make the following order:
 1. The plaintiff's vacation of Portion 2 of the Farm Uitkyk 172, JS in Limpopo Province in March 2013 was not voluntary.
 2. There is no order as to costs.

Acting Judge of the Land Claims Court

Appearances:

For the plaintiff: Adv D E Meyer instructed by Lawyers for Human Rights

For the defendants: Adv A B Roussouw SC and Adv M Riley instructed by Sebueng Attorneys

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Prepared on 12 October 2026 · Esheria