

SOUTH AFRICA / JUDGMENT

Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Others (LCC107/2013) [2016] ZALCC 21 (14 November 2016)

[2016] ZALCC 21

COURT

Land Claims Court

BEFORE

Ncube AJ

CASE / FILE NUMBER

LCC107/2013

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE LAND

CLAIMS COURT OF SOUTH AFRICA

HELD AT

RANDBURG

CASE

NO: LCC107/2013

Before:

The Honourable Ncube AJ

Heard

on: 11 October 2016

Delivered

on: 14 November 2016

In

the matter between:

BHEKINDLELA

MWELASE

1st

Applicant

JABU

AGNESS MWELASE N.O

2nd

Applicant

MNDENI

SIKHAKHANE

3rd

Applicant

BAZIBILE

GRETTA MNGONA N.O
4th
Applicant
ASSOCIATION
FOR RURAL ADVANCEMENT
5th
Applicant
And
THE
DIRECTOR-GENERAL FOR THE DEPARTMENT
OF
RURAL DEVELOPMENT AND LAND REFORM,
1st
Respondent
MINISTER
OF RURAL DEVELOPMENT & LAND
REFORM
2nd
Respondent
THE
HILTONIAN SOCIETY
3rd
Respondent

JUDGMENT

NCUBE AJ

Introduction

- [1] This is an application in which the applicants seek a declaration that the second respondent, the Minister of Rural Development and Land Reform (“the Minister”) is in contempt of an order of this court issued out on 17 May 2016 (“the order”) The order states:

“By agreement between the parties, the following order is made an order of court.

1. The parties shall negotiate in good faith to conclude a Memorandum of Understanding (MOU) with the following basic features:

1.1. the Department of Rural Development and Land Reform (Department) will appoint within its organisational establishment, a senior manager responsible for managing the national implementation of Land Reform (Labour Tenant) Act (LTA), and in particular the requirements of ss 16-18; and, section 4 of the Extension of Security of Tenure Act (ESTA). The project will do so within the broader programme aimed at land acquisition for farm dwellers (labour tenants and occupiers in terms of ESTA).

1.2. The manner in which the forum referred to in 1.4 below will interact, if at all, with the two district land reform structures established by the department which involves organs of Civil Society, namely, District Land Reform Committee (DLRCS) and district Agri-Parks

management Councils (DAMCs). (sic)

1.3. Farm dwellers (labour tenants and occupiers) will nominate two (2) representatives to serve in each of two structures referred to in 1.2 above.

1.4. A National Forum of Non-Governmental Organisations (NGOs) that deal with farm dwellers (labour tenants and occupiers) in the Country will be established by the end of July 2016.

1.5. The Forum working together with the Department will be responsible, inter alia, for policy formulation, development of a national programme for implementation and monitoring and evaluation of progress.

1.6. The Department will facilitate establishment of such a Forum, and shall ensure appropriate provincial representation.

1.7. The senior manager referred to in 1.1, will provide secretariat support to the Forum.

1.8. The senior manager referred to in 1.1 above, will monitor the implementation of the provisions of LTA and ESTA, as required by the

MOU.

2. The senior manager will file quarterly reports with the legal representatives of the parties for a period of 24 months, where after

the parties will assess the need for further reporting. The contents of these reports will be the same as previously agreed between the parties or as negotiated in the M O U. The first report will be filed on 31 July 2016.

3. If the parties are able to conclude the MOU, the parties will file a copy of the MOU with the Court, for record purposes.

4. If the parties are unable to conclude the MOU by 30 June 2016, any party may set down the matter for hearing.

5. There is no order as to costs for the hearing of 12 and 17 May 2016.”

[2] The applicants contend that the Minister refused or failed to negotiate in good faith as required by the above order.

[3] The Minister opposes the application, on the basis that he did not refuse or fail to comply with the order, or if it is found that he refused or failed to comply, he contends that such refusal or failure was not wilful or malafide .

The Parties

- [4] The first and third applicants are residents of the farm commonly known as Hilton College (“the farm”), situated in Pietermaritzburg, in Kwa-Zulu Natal. The first and third applicants together with their parents and grandparents were born and bred on the farm. The second and fourth applicants are the executors of the estate of people who were also resident on the farm but who have since died. The fifth applicant is a Non-Governmental Organization, which amongst other things, looks after the interest of farm dwellers.
- [5] The first respondent is the Director General (DG) for the Department of Rural Development and Land Reform. The second respondent is the Minister of the Department of Rural Development and Land Reform. The third respondent is the association not for gain and the owner of the farm on which the first to fourth applicants are resident.

Background

- [6] In July 2013, the applicants filed an application seeking to have the labour tenant claims of the first to fourth applicants (“individual relief”) referred to this court for adjudication. The applicants also sought systemic relief to compel the first respondent to process all other labour tenant claims. The matter has been before Court on several occasions and several orders have been granted.
- [7] In November 2013, the DG agreed to individual relief. However, the DG agreed that he did not have records of all other labour tenant claims. He agreed to compile statistics for outstanding claims. When the DG filed statistics, it was clear that there was a huge amount of work still to be done in order to correctly capture the status of many outstanding labour tenant claims. Consequently, the applicants’ sought the appointment of a special master, who would assist the DG in the monitoring and implementation of the Land Reform (“Labour Tenant Act”). (“the Act”)[1].
- [8] When the application for the appointment of a special master came before Court on 19 September 2014, a consent order was granted. In terms of that order, the DG was directed to collate statistics regarding the state of the outstanding labour tenant claims and provide those statistics to the Court by 31 March 2015. On 28 June 2015, another consent order was granted. In terms of that order, the DG was required to file progress reports to the Court. The reports were to be accompanied by an implementation plan.

- [9] The due dates for the reports were:

9.1 31 July 2016

9.2 30 October 2015

9.3 12 February 2016.

The reports among other things, had to deal with the progress which the DG expected to make for the next three month period. The applicants would be expected to respond to the DG’s report[2].

- [10] In case problems were experienced with the reporting progress, any party would be entitled to set the matter down for hearing[3]. The order mentioned in paragraph 1 above was the last one.

Events after the order

- [11] Pursuant to paragraph 1 of the order, the parties commenced with negotiations on 30 May 2016. Mr Glenn Farred, the manager of the fifth applicant was present at a meeting held on 30 May 2016. The next meeting was held on 08 June 2016. At that meeting, the representatives of the Department informed the applicants that the Minister interpreted paragraph 1.6 of the order to direct that the Minister alone had to establish a National Forum of NGO's ("the Forum"). The Minister also interpreted paragraph 1.4 of the order to mean that all NGOs dealing with farm dwellers were to be invited to the formation of the Forum.
- [12] The Minister instructed the Deputy Director General (DDG): support services to issue an advertisement inviting all NGO's working with farm dwellers to register with the Department for purposes of forming the Forum. The minister intended convening a national conference of all registered NGO's between June and July 2016. At the conference, the participants were going to formulate the terms of reference for the national Forum. Mr Dodson, for the applicants' argued that the Minister was in contempt of the order of 17 May 2016, because he refused to negotiate with the applicants' on an issue specifically listed in the order. – i.e. the formation of the Forum.
- [13] On 10 June 2016, the applicants addressed a letter to the Minister advising him that his interpretation of the order was wrong. The State Attorney responded on behalf of the Minister in a letter dated 13 June 2016 to say the steps taken by the Minister were intended to meet the requirements of the court order of 17 May 2016.
- [14] Mr Dodson argued further that what the Minister did was not what the order required. The order required good faith negotiations towards the conclusion of the memorandum of understanding (MOU), not unilateral action.
- [15] Mr Notshe, for the Minister argued that the Minister was not in contempt of court since he did not wilfully and with malafides refuse to comply with the order. Accordingly to Mr Notshe, the order was ambiguous and the Minister took steps to implement the order the way he understood it.

Contempt of court

- [16] Mr Dodson correctly stated in his argument that contempt of court is the commission of any act or statement that displays disrespect for authority of the court, of its officers acting in an official capacity, including wilful disobedience or resistance to lawful court orders. In this regard, in *Pheko and others v Ekurhuleni City*[4]; Nkabinde J expressed herself in the following terms:

“The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial as the capacity of the courts to carry out their functions depends upon it. As the constitution commands, orders and decisions issued by a court bind all persons to whom and organ of state to which they apply and no person or organ of state may interfere in any manner with the functioning of the courts, it follows from this that disobedience towards court orders or decisions risks rendering our courts important and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”

[17] The following are the elements of contempt of court[5].

- (a) The order must exist
- (b) The order must have been duly served on or brought to the notice of the alleged contemnor
- (c) There must have been non-compliance with the order and
- (d) The non-compliance must have been wilful or malafide.

To succeed, the applicant must prove at least the first three elements of contempt. Once the applicant has proved the existence of the order, the service thereof and non-compliance, the onus shifts to the non-complier to show, on a balance of probabilities that non-compliance was not wilful or malafide[6].

[18] The test for a civil contempt is whether the breach was committed deliberately and malafide. In Fakie[7]. Cameron J expressed himself in the following terms:

“The test for when a disobedience of a civil order constitute contempt has come to be stated on whether the breach was committed ‘deliberately and malafide’ A deliberate disregard is not enough since the non-complier may genuinely; albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide. These requirements - that the refusal to obey should be both wilful and malafide and that reasonable non-compliance, provided it is bonafide, does not constitute contempt, accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.”

[19] In the present case, the issue for determination is whether the Minister’s non-compliance was wilful and malafide. In other words, the question to be asked is whether the Minister deliberately disregarded the court order. He genuinely believes that what he did was in fact in compliance with the court order. That much is apparent from the Minister’s answering affidavit where he states:

“The action that I took is in compliance with the provisions of paragraphs 1.4 and 1.6 of the court order. The order required that ‘The Department will facilitate the establishment of such a forum and shall ensure appropriate provincial representation.’ I was merely facilitating the establishment of such a Forum, and to answer appropriate provincial representation”

[20] Dodson argued that the language of the order is clear and unambiguous. It requires good faith negotiation and not unilateral

action by the Minister. Dodson also says that the Minister's interpretation reads sub-paragraph 1.4 and 1.6 of the order in isolation and ignores the introductory sentence on paragraph 1 ("The parties shall negotiate in good faith to conclude a Memorandum of understanding (MOU)").

[21] Even if the Minister erred in interpreting paragraphs 1.4 and 1.6 of the order in isolation, which in my view, does not constitute

malafide justifying the request for a contempt order.

[22] Indeed, paragraph 1.4 of the order, enjoins the Department to facilitate the establishment of the Forum. In coming to the view that the order was directing him, as the political head of the Department, and a party to the proceedings, to take initiative in the establishment of the Forum, the Minister did not, I believe, commit an act of non-compliance wilfully, malafide or otherwise. He interpreted the order in a particular way and acted accordingly in compliance therewith. This in my view does not amount to an act of contempt. I am accordingly unable to grant the relief sought by the applicants.

Costs

[23] It is the practice of this court not to make cost orders unless there are good reasons to do so. The Supreme Court of Appeal has confirmed this practice[8]. Both Mr Dodson and Mr Notshe argued for their costs. In my view, there is no good reason to deviate from the general principle of this Court not to grant an order for costs.

[24] Order

In the result, I make the following order:

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

Ncube, AJ

Appearances:

For the Applicants: Adv. Dodson SC: Instructed by Legal Resource Centre, KZN

For the First Respondent: Adv. Jansen: Instructed by the State Attorney, Pretoria

For the Second Respondent: Adv. Notshe SC: Instructed by the State Attorney, Pretoria

[1] Act 3 of 1996

[2] Page 13 line 25 of the typed record

- [3] Page 14 line 5 of the typed record
 - [4] 2015 (5) SA 600 at para 1
 - [5] Pheka - Supra
 - [6] Fakie No v CCII Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326 (SCA) at Par 9
 - [7] Supra at 333, para 9 and 10
 - [8] Haak Doutmbly Boerdery CC v Mpela 2007 (5) SA 596 (SCA) at 618
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCC/2016/21.html>

CASE PAGE https://chat.esheria.ai/case-law/south-africa/unknown-plaintiff-v-unknown-defendant-contempt_of_court-alcc-2016-lcc107-2013--6a3ea5123b1caa912980a5cb

Prepared on 14 October 2026 · Esheria