




**IN THE LAND CLAIMS COURT OF SOUTH AFRICA  
HELD AT RANDBURG**

**CASE NO: LCC137/2022**

Before: **The Honourable Acting Judge Muvangua**

**Heard on:** 15 November 2022

**Delivered on:** 25 November 2022

|   |   |
|---|---|
| <b>DELETE WHICHEVER IS NOT APPLICABLE</b> |   |
| (1) REPORTABLE: <del>YES</del> / NO       |   |
| (2) OF INTEREST TO OTHER JUDGES: YES / NO |   |
| (3) REVISED: <del>YES</del> / NO          |   |
| .....<br>25 November 2022<br>DATE         | .....<br><br>SIGNATURE |

In the matter between:

**MINISTER OF DEPARTMENT OF RURAL  
DEVELOPMENT AND LAND REFORM**

First Applicant

**COMMISSION OF RESTITUTION AND  
LAND RIGHTS**

Second Applicant

**CHIEF LAND CLAIMS COMMISSIONER**

Third Applicant

**REGIONAL LAND CLAIMS  
COMMISSIONER: LIMPOPO PROVINCE**

Fourth Applicant

And

**DAVID THADIEPHASWA SELAHLE**

First Respondent

|   |                     |
|---|---------------------|
| <b>THE SELAHLE COMMUNITY</b>  | Second Respondent   |
| <b>BENARENG-BA-KGOETE</b>   | Third Respondent    |
| <b>MORENA TRIBE</b>   | Fourth Respondent   |
| <b>DAVID MATHISA MASHEGO</b>  | Fifth Respondent    |
| <b>MASHEGO FAMILY</b>   | Sixth Respondent    |
| <b>MORISISHANE ARAM MAKUNYANE</b>   | Seventh Respondent  |
| <b>ALL UNLAWFUL OCCUPIERS OF LAND<br/>SITUATED AT FARM THIONVILLE 305KT</b> | Ninth Respondent    |
| <b>LIMPOPO PROVINCIAL COMMISSIONER:<br/>SOUTH AFRICAN POLICE SERVICE</b>    | Tenth Respondent    |
| <b>FETAKGOMO TUBATSE LOCAL<br/>MUNICIPALITY</b>                             | Eleventh Respondent |

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## JUDGMENT

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**MUVANGUA AJ**

### **INTRODUCTION**

- 1 The application before me was brought on an urgent basis, in terms of rule 34 of the Rules of this Court. It is in substance for an order interdicting the first to the ninth respondents (whom I will refer to as “**the respondents**” in this judgment) from occupying, demarcating, fencing or dealing in any manner with the land situated on the farm Thionville 305KT, held under Title Deed No.:T20236/1975PTA Fetakgomo Tubatse Local Municipality, Limpopo Province ( “**the farm**” ).
  
- 2 The applicants also seek an order directing the respondents to demolish and remove all structures, fences and everything else that has been erected on the

farm. The founding affidavit explains that the demolition order does not include “households that have already been erected or build as permanent structures”.

- 3 Counsel for the applicants clarified during oral arguments that the order sought is against the first to the ninth respondents. The tenth respondent is cited in their official capacity should their assistance be required. This judgment and order will therefore be brought to its attention. The eleventh respondent is similarly cited in its official capacity as the Municipality with jurisdiction.
- 4 The interdict against the respondents is sought pending the finalisation of certain competing land claims, under reference numbers: KPR 2318, KRP 5873 and KRP 2208.

## **BACKGROUND**

- 5 The background facts are as follows: on or about 24 August 2022, the applicants became aware that the respondents, among them some of the land claimants, were dividing and sub-dividing the farm and erecting temporary structures and fences on the farm, without having given the Commissioner written notice, as required by Section 11(Aa) of the Restitution of Restitution Act 22 of 1994 (“**Restitution Act**”).
- 6 The applicants argued that the unlawful invasion and sub-division of the farm would be prejudicial to rights of land claimants to restoration and would obstructing the objects of the Restitution Act.
- 7 The prejudice, according to the applicants, is anchored on three pillars:
  - 7.1 The first was that by the time that the land claims are finalised, it might not be possible to restore the land to the lawful beneficiaries if it has been developed and occupied.

- 7.2 The second was that the rate of the division and subdivision of the land, and the speed at which structures were being erected would make it difficult to restore the farm to the state that it was in when the claims were lodged.
- 7.3 The third was that it would be practically impossible to evict people who unlawfully occupied the farm.
- 8 The applicants sought an order effectively evicting the respondents from the farm forthwith. However, during oral argument, counsel for the applicants conceded that this court does not enjoy the power under the Prevention of Illegal Eviction from the Unlawful Occupation of Land Act 19 of 1998 (“**PIE**”), to evict unlawful occupiers, and that her clients would seek an order for their eviction under PIE in due course and in the appropriate forum. This concession was correctly made.
- 9 The upshot of the reasons for the prejudice that the applicants allege is that it would be difficult for the applicants and/or the lawful beneficiaries of the farm to reverse the consequences of the unlawful invasions, as well as the division and sub-division of the farm at a later stage and hence the necessity for the interdict.
- 10 The first to the fourth respondents opposed the application. They accepted that their conduct was unlawful, but asked the court to interdict future occupation, demarcation, sub-dividing and fencing of the farm, pending the finalisation of the land claims. They argued that an order requiring them to demolish and remove all structures, fences and everything else that was erected on the farm would prejudice all members of the community because they have been contributing to the upkeep and maintenance of the farm. The deponent to the answering affidavit, Mr Moroka John Sehlale, also alleged that he was appointed by the applicants as the caretaker of the farm, pending the finalisation of the land claims. Counsel for the first to the fourth respondents, Mr Seokoma, was unable to point me to any evidence that could corroborate this assertion. There is no evidence that he was appointed by the Commissioner.

11 The respondents did not allege that they issued a written notice to the relevant land claims commissioner, as is required by section 11(7) of the Restitution Act. In heads of argument, as well as in court during oral argument, counsel for the first to the fourth respondents submitted that albeit unlawfully, the demarcation, fencing and sub-dividing of the farm was done because “*there were known illegal occupiers who wanted to hijack the farm . . .*”. He submitted further that the occupation of the land was on the advice of the Commission’s representative, at a meeting held on 10 April 2022. This was a submission made by counsel in heads of argument and from the bar, unsubstantiated by the respondents in their answering affidavit, or any confirmatory affidavit and must be rejected.

## **LEGAL POSITION**

12 Section 6(3) of the of the Restitution Act permits the relevant regional land claims commissioner to apply to this court for an interdict as follows:

3. *Where the regional land claims commissioner having jurisdiction or an interested party has reason to believe that the sale, exchange, donation, lease, subdivision, rezoning or development of land which may be the subject of any order of the Court, or in respect of which a person or community is entitled to claim restitution of a right in land, will defeat the achievement of the objects of this Act, he or she may-*
  - a) *after a claim has been lodged in respect of such land; and*
  - b) *after the owner of the land has been notified of such claim and referred to the provisions of this subsection.”*

13 The jurisdictional requirements for approaching this court for an interdict are:

- a) the requisite belief by the regional land claims commissioner as specified in section 6(3), (b) a claim lodged in respect of the land in question;
- b) the relevant regional land claims commissioner has given notice to the landowner of such claim and referred them to the provisions of section 6(3); and

- c) the relevant regional land claims commissioner has given reasonable notice to interested parties.

14 Section 11 of the Restitution Act deals with the procedure after a land claim has been lodged. Subsection 11(7) broadly prohibits anyone from interfering in any manner with the land that is the subject of a land claim. Section 11(7)(aA) is relevant to this case, and it reads as follows:

*“no person may sell, exchange, donate, lease, subdivide, rezone or develop the land in question without having given the regional land claims commissioner one month's written notice of his or her intention to do so, and, where such notice was not given in respect of-*

- i) any sale, exchange, donation, lease, subdivision or rezoning of land and the Court is satisfied that such sale, exchange, donation, lease, subdivision or rezoning was not done in good faith, the Court may set aside such sale, exchange, donation, lease, subdivision or rezoning or grant any other order it deems fit;*
- ii) any development of land and the Court is satisfied that such development was not done in good faith, the court may grant any order it deems fit.”*

15 The third applicant received applications from three different claimants, all claiming the farm in terms of the Restitution Act:

15.1 the claim by the Masego family was lodged on 8 August 1996, and was published in the gazette on 20 September 2019;

15.2 the claim by the Silahle community, Bareng-Ba – Kgoete and the Morena tribe was lodged on 10 February 1998 and was published in the gazette on 30 September 2005; and

- 15.3 the claim by the Bakone-BA-Mashinging was lodged on 3 September 1998. That claim is still being investigated and has not been gazetted
- 16 The Government of the Republic of South Africa is the registered owner of the farm, under title deed T20236/1975PTA. The first applicant is the Minister of Agriculture, Land Reform and Rural Development, who is the custodian of all land that belongs to the State.
- 17 The respondents did not deny that they have unlawfully occupied, demarcated, fenced and sub-divided the farm as alleged by the applicants. To the contrary, they admitted to the unlawfulness of their conduct, both in their answering papers as well as in court.
- 18 Where the requirements for an interdict are met, section 6(3) of the Restitution Act empowers this court, “*subject to such terms and conditions and for such period as it may determine, grant such an interdict or make any other order it deems fit.*”
- 19 Similarly, section 11(7) of the Restitution Act grants this court the power in cases where a claim has been published and a sale, exchange, donation, lease, subdivision or rezoning of the land has taken place without notice having been given in terms of the section, to set aside the transactions or in the case of development of land, if the Court is satisfied that the development was not done in good faith, to grant an order it deems fit.<sup>1</sup>
- 20 This court in *Ga-Magashula*<sup>2</sup> compared the respective texts in sections 6(3), 38E and 11(7) of the Restitution Act and observed as follows:

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<sup>1</sup> *Ga-Magashula Community Trust v Marsfontein and Others* 2001 (2) SA 945 (LCC) at 36.

<sup>2</sup> *Ga-Magashula* at para 37.

*“[37] A comparison of s 6(3) on the one hand and ss 38E and 11(7) on the other, reveals that the former is couched in the future tense while the latter two are couched in both the present and the future. In addition, the former section grants the Court only the power to interdict these future activities, whereas the other two sections grant the power to both interdict and set aside activities that have already taken place. The latter two also have the requirement of good faith and while I accept that s 6(3) does not have the requirement of good faith, I cannot ignore the fact that the respondents made a full disclosure to claimants' purported representatives of their plans to exploit the minerals and that such representatives went along with such plans.” [Underling added].*

- 21 On that strength, section 11(7) empowers this court to order the setting aside of conduct that has already taken place, and not just the granting of an interdict for future conduct.
- 22 It is common cause that the respondents did not comply with the notice requirement prescribed in Section 11 (7) (Aa). Their concession in effect is that their occupation was unlawful is at odds with good faith referred to in the section. Their conduct which is tantamount to an invasion of the land, notwithstanding the status of some of them as claimants, justifiably gave rise to the fourth respondent's reason to believe that the achievement of the objects of the Restitution Act will be defeated as alluded to above. In the circumstances I am of the view that the Applicants are entitled to the relief they seek.
- 23 It is noted that as conceded, this court has no jurisdiction to evict the first to the ninth respondents, given the applicability of PIE as alluded to above. The order that I am going to give, therefore, is not for their eviction or for the removal of any dwellings. My order is confined to the removal of fencing, demarcations, and anything on the land short of dwellings.



## ORDER

24 I make an order as follows:

- 24.1 The first to the ninth respondents are interdicted from demarcating, fencing, or otherwise subdividing, rezoning, or developing the land on farm Thionville 305KT, held under Title Deed No.:T20236/1975PTA Fetakgomo Tubatse Local Municipality, Limpopo Province (“**the farm**”), pending the finalisation of a land claims under reference numbers: KPR 2318, KRP 5873 and KRP 2208.
- 24.2 The first to the ninth respondents shall remove all fences and demarcations used for purposes of demarcating, fencing or otherwise sub-dividing, rezoning, or developing the land on the farm within one month from the date of this order.
- 24.3 Should the first to the ninth respondents fail to comply with the order in paragraph 24.2 above, the Sheriff may (with the assistance of the South African Police Services) be directed to remove all fences and everything else that has been erected on the land for purposes of demarcating, fencing or otherwise subdividing, rezoning, or developing the land on the farm within 10 days from the last day of the period stated above.
- 24.4 The applicants are granted leave to serve this order by affixing copies of it on structures on the farm, as well as by erecting a board on each of the four corners of the farm.
- 24.5 There is no order as to costs.



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**N MUVANGUA**  
Acting Judge  
Land Claims Court

**APPEARANCES:**

For the Applicants:

Adv. M.V Magagane

*Instructed by:*

STATE ATTORNEY, POLOKWANE

For the First to Fourth Respondents:

Adv. D.E Seokoma

*Instructed by:*

MAHUMANI B.M ATTORNEYS INC.