

3/12/2010

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH-GAUTENG HIGH COURT, PRETORIA)

DELETED WHERE NECESSARY IS NOT APPLICABLE

(1) HEREIN APPLICABLE

(2) DEINTEREST TO OTHER JUDGES

3-12-10

DATE

SIGNATURE

CASE NO: 40124/08

In the matter between:

PETRUS JACOBUS VAN STADEN N.O

1ST APPLICANT

MATHOLE SEROFO MOTSHEKGA N.O

2ND APPLICANT

JAQUELINE FOURIE N.O

3RD APPLICANT

And

THE REGIONAL LAND CLAIMS COMMISSIONER

1ST RESPONDENT

LIMPOPO PROVINCE

MINISTER OF AGRICULTURE AND LAND

AFFAIRS

2ND RESPONDENT

THE CHIEF LAND CLAIMS COMMISSIONER

3RD RESPONDENT

THE COMMISSIONER ON RESTITUTION OF

LAND RIGHTS

4TH RESPONDENT

JUDGMENT

MSIMEKI, J

INTRODUCTION

[1] The applicants had brought an application seeking the following relief against the respondents:

- “1. The respondents be and is (sic) hereby ordered to provide to the Applicants within 7 days after service upon the respondents of this order, the further particulars sought by the Applicants in terms of section 10 (7) of the Expropriation Act, 63 of 1975, as contained in the Applicants’ letter to the first Respondent, dated 14 February 2008, and annexed as annexure “MVS6” to the founding affidavit;
2. That the respondents, jointly and severally, the one paying the other to be absolved, be ordered to pay the costs of this application;
3. Further and/or alternative relief.”

BRIEF FACTS

[2] The remaining extent of the farm Callias 226, Registration Division KT, Limpopo Province, in extent 2355, 8802 hectares, and held by Rivermouth under title deed number T83452/1998 (“the farm”) had been expropriated by the state which had offered R13.361.000.00 as compensation therefor. The applicants then in terms of s10 (7) of the Expropriation Act number 63 of 1975 (“the Act”) asked for further particulars. The further particulars were not furnished until the applicants launched an application to compel the respondents to furnish them with the further particulars. The applicants did not persist in seeking the substantial relief once the required information was furnished. Only the question of costs remained to be determined as the respondents had not tendered the costs of the application. The respondents only tendered the costs when the matter was removed from the roll on 18 May 2009. The applicants contended that the respondents ought to have tendered the costs which they are entitled to while it is the respondent’s contention that the applicants are not

entitled to any costs. The disagreement resulted in this application which concerns itself with the issue of costs only.

- [3] Mr Van Der Merwe appeared for the applicants while Mr Moosa appeared for the respondents.
- [4] The applicants had based their application on s10 (7) of the Act which reads

“The Minister may from time to time ask for reasonable particulars regarding the owner’s claim for compensation, and the owner may from time to time ask for reasonable particulars regarding the Minister’s offer of compensation, and particulars so asked for shall be furnished within a reasonable time.” (emphasis added)

It is clear from the reading of the section that the Minister has authority, from time to time, to ask for reasonable particulars regarding the owner’s claim for compensation. Similarly, the owner from time to time, has, the same authority to ask for reasonable particulars regarding the Minister’s offer of compensation. The required information has to be furnished within a reasonable time.

- [5] As alluded to above, it has been the respondents’ case that the applicants are not entitled to the costs. S10 (7), according to them, does not cover the information such as the applicants called for.

[6]

COMMON CAUSE FACTS

These are that:

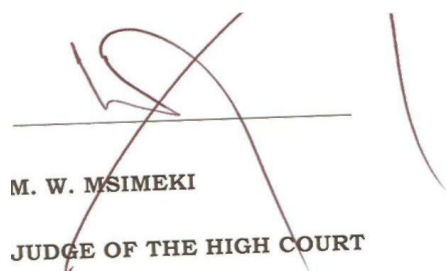
1. The State expropriated the property.
2. It offered R13.361.000.00 for having expropriated the property.
3. The applicants then called for further particulars.
4. Under cover of the respondent's attorney's letter dated 22 October 2008 a valuation report of J D van Heerden was forwarded to the applicants' attorneys. The letter and the report are referred to in paragraph 4 of the respondent's answering affidavit.
5. The letter of 22 October 2009 confirms in paragraph 1 that the applicants are entitled to know how the amount offered as compensation for the expropriation is made up.
6. The report of J D van Heerden dated 13 March 2006 satisfied the applicants who, upon receipt thereof, decided not to pursue the substantial relief that they had sought in their application.

[7]

It is clear that the applicants received the information that they had needed after they launched their application to compel the furnishing thereof. There can, therefore, be no doubt that they are entitled to the costs. There can further be no doubt that the applicants were entitled to the information which had something to do with the amount offered. Surely this is covered by s10 (7) of the Act. It was also not clear as to whom the offer was addressed to. This is borne out by

correspondence between the parties' legal representatives especially paragraph 1 of the letter from the applicants' attorneys dated 20 February 2009. This clearly shows that confirmation of the one to whom the offer was directed was needed so that the matter could be laid to rest. Mr van Der Merwe submitted that the issue of the further particulars and the clarity relating to the one the offer was addressed to caused the applicants to pursue the application. This much is clear from the letter addressed to the respondents' attorneys by the applicants' attorneys.

- 3] Mr Moosa's submission that Mr J D van Heerden's report confirms the amount offered and that the applicants should, therefore, have known how the amount offered was arrived at has no basis. The applicants, in the first place, would never have known how the amount was arrived at before they had sight of the report. Secondly, the amount offered was simply offered without showing how it had been arrived at. The request for the further particulars, in my view, is covered by annexure MVS 6 which indeed deals with and relates to the offer of the Minister. It has, in my view, by now been sufficiently demonstrated that the applicants are indeed entitled to the costs of the application. The application, therefore, stands to succeed.
- 2] Mr Van Der Merwe submitted that the costs payable should be on the scale as between attorney and client as, according to him, the respondents' conduct warrants that. I do not agree.

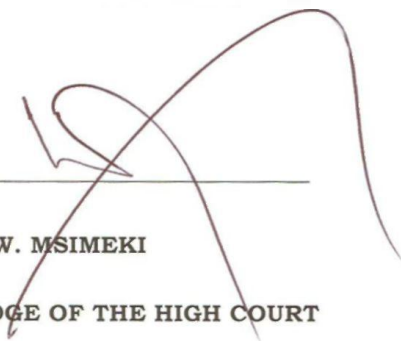


M. W. MSIMEKI

JUDGE OF THE HIGH COURT

[10] In the result the order I make is as follows:

- The respondents, jointly and severally, the one paying the others to be absolved, are ordered to pay the costs of the application.



A handwritten signature in dark ink, consisting of a large, stylized 'M' followed by a long, sweeping horizontal stroke that extends to the right and then curves downwards.

M. W. MSIMEKI
JUDGE OF THE HIGH COURT