

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED.
Signature 	
Date: 5/8/2021	

CASE NO: 6753/2018

In the matter between:

LEPELLE NKUMPI LOCAL MUNICIPALITY**APPLICANT**

And

**THE BAKGAGA BA GA-MPHALELE TRADITIONAL
AUTHORITY****1ST RESPONDENT****LEDWABA-NDLOVU TRADITIONAL AUTHORITY****2ND RESPONDENT****THE MEMBER OF THE EXECUTIVE COUNCIL,
DEPARTMENT OF COOPERATIVE GOVERNANCE,
HUMAN SETTLEMENTS AND TRADITIONAL
AFFAIRS****3RD RESPONDENT****THE MINISTER, DEPARTMENT OF COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS****4TH RESPONDENT**

JUDGMENT

MAKGOBA JP

[1] This is an application in terms of which the Applicant seeks relief against the First and Second Respondents and for an order in the following terms:

1. Declaring that the applicant is the owner of the various constituent portions of the farm known as Voorspoed 458 K.S., held under deeds of title enumerated in annexure "A" to the notice of motion.
2. Declaring that neither the first nor the second respondents have any rights or are possessed of the power to purchase, to dispose of or, to in any manner whatsoever, transact, or approve any land use on the various portions of the farm known as Voorspoed 458 K.S. without the express written approval of the applicant herein, including but not limited to:
 - 2.1. any developmental rights;
 - 2.2. the disposal of undivided erven on the constituent portions of the farm;
 - 2.3. the issuing of "Permissions to Occupy" any undivided erven on the constituent portions of the farm;

- 2.4. providing assistance of any nature to and/or facilitating the occupation and any development of undivided erven on the constituent portions by any individual.
3. Interdicting and restraining the first and second respondents from purchasing, disposing of or, in any manner whatsoever, transacting with respect to the various constituent portions of the farm known as Voorspoed 458 K.S. without the express written approval of the applicant herein, including but not limited to the conduct set out in paragraphs 2.1-2.4 above.
4. That the first and second respondents be ordered to pay the costs of this application;
5. Further and/or alternative relief.

[2] Essentially, in paragraph 1 of the notice of motion the Applicant seeks a declaratory order that it is the owner of the various constituent portions of the Farm known as Voorspoed 458 K.S. held under Deeds of Title enumerated in Annexure "A" to the notice of motion. The ancillary relief sought in paragraph 2 and 3 of the notice of motion is predicated upon the declaratory order sought under paragraph one.

The aforesaid constituent portions of the Farm Voorspoed 458 K.S. as per annexure "A" to the notice of motion are the following:

ANNEXURE “A” TO NOTICE OF MOTION

Portion Number	Owner	Title Deed	Reg. Date
1	Lepelle-Nkumpi Local Municipality	T133897/2005	2005-10-19
8	Lepelle-Nkumpi Local Municipality	T131224/2005	2005-10-12
9	Lepelle-Nkumpi Local Municipality	T131223/2005	2005-10-12
11	Lepelle-Nkumpi Local Municipality	T131483/2005	2005-10-13
12	Lepelle-Nkumpi Local Municipality	T131482/2005	2005-10-13
14	Lepelle-Nkumpi Local Municipality	T133895/2005	2005-10-19
15	Lepelle-Nkumpi Local Municipality	T130050/2005	2005-10-11
16	Lepelle-Nkumpi Local Municipality	T171375/2005	2005-12-22
17	Lepelle-Nkumpi Local Municipality	T130051/2005	2005-10-11
18	Lepelle-Nkumpi Local Municipality	T133896/2005	2005-10-19
19	Lepelle-Nkumpi Local Municipality	T133894/2005	2005-10-19
20	Lepelle-Nkumpi Local Municipality	T134717/2005	2005-10-20
21	Lepelle-Nkumpi Local Municipality	T132952/2005	2005-10-17
22	Lepelle-Nkumpi Local Municipality	T134716/2005	2005-10-20

The Parties

- [3] The applicant is the LEPELLE NKUMPI LOCAL MUNICIPALITY, a local municipality duly established by virtue of the provisions of section 12 of the Local Government: Municipal Structures Act, 117 of 1998, with principal address of operations at 170 Ba Lebowakgomo, Chuenes Poort.
- [4] The first respondent is the BAKGAGA BA GA-MPHALELE TRADITIONAL AUTHORITY, a traditional authority duly recognised in terms of the provisions of the Limpopo Traditional Leadership and Institutions Act, 6 of 2005, with principal place of operations at Seleteng Tribal Offices at Ga-Mphahlele, Limpopo Province.
- [5] The second respondent is the LEDWABA-NDLOVU TRADITIONAL AUTHORITY, a traditional authority recognised in terms of the provisions of the Limpopo Traditional Leadership and Institutions Act, 6 of 2005, with principal place of operations at Ga-Ledwaba Village, Limpopo Province.
- [6] The First and Second Respondents are, by virtue of the aforesaid Limpopo Traditional Leadership and Institutions Act 6 of 2005, *inter alia* enjoined to:

- 6.1. promote the interests of the traditional community in the area where it is seated;
- 6.2. in cooperation with the relevant municipalities and state departments, assist with the administration of the traditional community;
- 6.3. actively participate in the development of the area of the traditional community.

[7] The Third and Fourth Respondents have a direct and substantial interest in the conduct of the First and Second Respondents in that the role of traditional leaders, customary law and customs of communities fall within the functions of the Third and Fourth Respondents. No relief is sought against the Third and Fourth Respondents, they having been joined because they have the interest to which I have adverted hereinabove.

Purpose of the Application

[8] The relief and declaratory orders sought in this application are to ensure that the Applicant is able to fulfill its executive obligations under the Constitution. Confirmation hereof appears from section 154 of the Constitution of the Republic of South Africa 1996, which compels national and provincial

Government to support and strengthen the capacity of the Applicant so as to enable it to exercise its powers and to perform its constitutional functions.

- [9] The Applicant is the registered owner of fourteen (14) constituent portions of the farm Voorspoed 458 K.S., that in aggregate, essentially make up Lebowakgomo ("the Land"). The land in Lebowakgomo has historically fallen victim to numerous and persistent illegal invasions and the Applicant has, in the past years, incurred enormous expenditure in warding off these invasions on a case by case basis.

In the vast majority of instances these perpetrators of the attempted invasions purport to act under the auspices of traditional authorities (in this case either the first or second respondents) who apparently sell permissions to occupy undivided portions of this farm, despite the fact that they are neither the owners nor the holders of any real right to the property.

- [10] This application is accordingly aimed at enjoining these respondents to act in accordance with their defined obligations under the Constitution and other subsidiary legislation and to interdict any future conduct that might serve to contravene the defined roles of the First and Second Respondents in the land development and reform process.

- [11] This application is opposed by both the First and Second Respondents. Both Respondents filed their answering affidavits. However, the Second Respondent failed to serve and file heads of argument and did not appear in Court at the hearing of this matter to present its argument.

Points in Limine

- [12] The First Respondent took the following *points in limine*:

12.1. That the Registrar of Deeds is an affected party and should have been joined in these proceedings (Non-joinder).

12.2. That the Minister (without denoting the portfolio) as custodian of land should have been joined.

At the hearing of the matter Counsel for the First Respondent abandoned the *points in limine*. In the result I shall not take this aspect or issue any further.

History of the Farm Voorspoed 458 K.S.

- [13] Prior to having been consolidated into Voorspoed 458 K.S., portions of the land were utilized by the First and Second Respondents' communities from June 1962. The Second Respondent was by then known as the Ndlovu Tribal Authority. According to a report issued by an ad hoc committee to the Vice-Secretary for the State Development relating to the apportionment of land to

traditional Headmen in the 1960s and Government Gazette publication dated 29 March 1968¹ land had been allocated to the First and Second Respondents during the late 1960s. Such land constitute certain portions of the farm Voorspoed 458 K.S.

- [14] On or about the 21 December 1973 the former Chief Minister of the then Lebowa Government, earmarked many of the farms that had been allocated to the Ndlovu and Mphahlele Tribal Authorities, as farms upon which the Township of Lebowakgomo would be established. According to a memorandum ostensibly drafted by the then Department of Rural Development and Land Reform, the then Lebowa Legislative Assembly during 1973/1974 expropriated certain of the farms that had been allocated to the Ledwaba-Ndlovu Traditional Community for purposes of establishing the Lebowakgomo township. This memorandum is annexed to the founding affidavit.² A decision had been reached by the said legislative assembly to compensate the Ledwaba-Ndlovu Traditional Community for the expropriated farms, by allocating land in the Immerpan area to the said community.

- [15] The said farms so expropriated and earmarked for purposes of establishing Lebowakgomo Township are: Kafferkraal No 167 K.S.; Rooibokvlakte No 120 K.S.; Uitvlucht No 117 K.S.; Droogte No 118 K.S.; Rooiboklaagte No 111 K.S.

¹ See Annexures "LLM3" and "LLM4" to the Founding Affidavit at pages 65-70.

² Annexure "LLM5" at pages 71-80.

and Randjies No 112 K.S. At that time that land was still owned by the Republic of South Africa. With the advent of the Constitution of the Republic of South Africa, the area of jurisdiction of the then Lebowa legislative assembly was incorporated into the Province of Limpopo, which became a successor in law to the Lebowa legislative assembly.

- [16] The various portions of the farm Voorspoed 458 K.S. have been the subject matter of protracted litigation in the past years. Various portions continue to be invaded by individuals who wish to permanently reside there, and ostensibly act pursuant to authorities given to them by the First and Second Respondents. This is one of the issues to be decided in the present case.

Ownership of the land

- [17] During 2005 various farms and portions of farms now comprising Voorspoed 458 K.S., were consolidated and by way of various Deeds of Donation, transferred to the Applicant. The Applicant consequently holds the Title Deeds in respect of various portions comprising the farm Voorspoed 458 K.S., and particularly portions 1, 8, 9, 11, 12 and 14-22 as outlined in paragraph 2 hereinabove.

The Certificate of Consolidation of the aforesaid farms into Voorspoed 458 K.S. during 2003 is annexed to the founding affidavit³. The various Deeds of Registration of the fourteen (14) portions into the name of the Applicant are also annexed.⁴

- [18] The Applicant is therefore the undisputed owner of the land in respect of portions 1, 8, 9, 11, 12 and 14-22. This was rightly conceded by the First Respondent at the hearing of this matter. The Second Respondent disputes Applicant's ownership without any valid ground. It states that members of its community have been in lawful possession of the land long before the various Deeds of Donation were concluded. They aver that the various Deeds of Registration of the fourteen portions into the name of the Applicant were done unlawfully. There is however a paucity of evidence by the Second Respondent regarding the legality or otherwise of both the Deeds of Donation and Deeds of Registration. The Second Respondent's claim to any right to these portions of the farm is accordingly dismissed.

The continued land invasions and illegal occupation

- [19] The Applicant contends that various portions of the farm have been, and are now being occupied by members of the local community who have apparently

³ Annexure "LLM8" at pages 136-152.

⁴ See Annexures "LLM9.1 to LLM 9.14" to the Founding Affidavit at pages 153-208.

purchased the land from either the First or Second Respondents, all who seemingly operate under the assumption that they are entitled to deal with the land commercially as they see it.

[20] According to the Applicant the land occupation is also ongoing and there is no indication that the relevant tribal authorities have discontinued trading the land to interested purchasers. Portions 11 and 12 are among the portions that are being unlawfully occupied, with one individual being in the process of erecting a luxury hotel at Portion 12. A great many structures have been erected on various portions of the farm.

[21] It appears that in all of these incidents, occupants have erected structures, presumably at great cost, acting on the putative authority conferred by the First and Second Respondents. It appears that, in most cases, these occupants believe that the land was lawfully purchased from the First and Second Respondents.

[22] It should be noted by all and sundry that the farm Voorspoed 458 K.S., and its various portions, comprise part of the municipality's spatial development plan and accordingly forms part of the planned municipal expansion in the foreseeable future. It is expected of the First and Second Respondents to be part and parcel of such development plan. This they can do if they assist the

Applicant in the latter's efforts to prevent unlawful invasions and illegal occupation of the land.

Litigation history amongst the Parties

- [23] During 2014 the First Respondent instituted application proceedings in the High Court, Limpopo under case number 1565/2014 in terms whereof they sought a review and setting aside of a decision by the Registrar of Deeds, Pretoria, to register the farm Voorspoed 458 K.S. under Title Deed T44612/2003, in the name of the Municipality (Applicant). The substrate of this application is the allegation by the First Respondent that the land is supposed to be the subject matter of a land rights inquiry in terms of the Communal Land Rights Act 11 of 2004 and that as such it could not be alienated by the Applicant. This application was opposed by the Applicant (Municipality). The matter was heard in this Court before Muller J and the application was dismissed with costs on 4 May 2021.
- [24] During March 2017 the Applicant instituted interdictory proceedings against unknown individuals who it claimed had been unlawfully invading portion 20, Unit H of the farm. A provisional interdict was obtained, and just days prior to the return date of the application, a group of some 23 individuals sought leave to intervene in the application stating that they were apparently living on portion 20, Unit H. In each of the 23 intervening parties' affidavits they made allegations

that the land is being occupied by them and that this is done in accordance with permissions issued by the First Respondent. The permissions date back to 2015 and are annexed to the founding affidavit of the Applicant herein.⁵

[25] On the face of the aforesaid "Permission to Occupy an Allotment" being annexures "LLM 18.1-18.23" it is indicated that same are issued "Under Bakgaga Ba Mphahele Tribal Authority". The issuing of the allotment is authorised by one MA Maja who purports to be an induna or headman under the authority of the First Respondent. It is on the basis of this "Permission to Occupy an Allotment" authorised by MA Maja that the Applicant wants to make case that the permissions were issued under the authority of the First Respondent.

[26] In response to the aforesaid imputation the First Respondent has this to say in its answering affidavit:

"33.5. It is the 1st respondent's respectful submission that as a leader of a huge village like it is, it is still able to maintain law and order, but I will submit that the PTO's attached to the application ie Annexures "LLM 18.1-18.23" were issued by the headman, Maja, who is the subject of the Chief, however, according to our governance rules, a headman cannot

⁵ Annexures "LLM 18.1-18.23" at pages 254 to 279.

issue a Permission to Occupy. A Permission to Occupy is issued by the 1st respondent as the administration of the village.

33.6. It is therefore untrue to say that 1st respondent is selling or issuing PTO's regardless of whose land it is."

It is clear that the First Respondent denies that the Permissions to Occupy were issued under its authority. In the face of this denial, this Court cannot without more make a finding that the permissions to occupy issued by the headman were lawfully authorised by the First Respondent.

[27] During 2018 the Second Respondent launched an application in this Court under case number 3604/2018. In paragraph 9.2 of the founding affidavit under the said case number the Second Respondent in that application testified as follows:

"9.2 I therefore have the powers and prerogative to appoint Headman and spokespersons and to allocate the sights and/or stands in those villages and farms under my authority and this people to assist me in the governance thereof."

The deponent's reference to "villages" *inter alia* refers to the farm Uitvlucht No 117 K.S. which is part of the consolidated farm Voorspoed 458 K.S.

[28] The import of paragraph 9.2 of the aforesaid founding affidavit is:

- 28.1. An acknowledgment that sites or stands are being allocated;
- 28.2. That the Second respondent in this application arrogated itself the right to allocate sites or stands and
- 28.3. That ownership is claimed in respect of six (6) farms which form part of the consolidated farm Voorspoed 458 K.S.

The above illustrates the reason for the on-going land problems of the Applicant *vis-à-vis* the Second Respondent.

The purported land Claim

[29] The First Respondent has persisted with the allegation that there exists a land claim in respect of the land that is the subject matter of this application. However the Applicant has throughout maintained that no land claim is currently pending as it pertains to the farm Voorspoed 458 K.S.

[30] On 13 February 2013 the Applicant (Municipality) published its intention to market and dispose of erven at Portion 20, Unit H of the farm Voorspoed 458 K.S. The First Respondent objected to this proposed alienation on the basis that the land the Municipality intended to alienate was allegedly part of the First

Respondent's land, and subject to a land claim instituted by another community by virtue of the provisions of the Restitution of Land Rights Act, 1994. The said objection was in the form of a letter from the First Respondent's attorneys, Tsebane Molaba Incorporated.⁶

In a land claim in the Land Claims Court under case number LCC107/2014 the said attorneys on behalf of the First Respondent sought an interdictory relief as it pertains to the disposal by the Applicant of the erven at Portion 20, Unit H. A notice of motion to this effect is annexed to the founding affidavit.⁷

[31] It is common cause that Portion 20 of the farm Voorspoed 458 K.S. is lawfully owned and registered in the name of the Applicant under Title Deed No T134717/2005 as outlined in paragraph [2] hereinabove. Such portion of the land could not be subjected to a land claim by the First Respondent. The stance adopted by the First Respondent in this regard is erroneous.

[32] A Council meeting was held on 2 August 2013 in order to address the objection. The First Respondent was represented at the meeting by its attorney, Mr Molaba. At the meeting Mr Molaba contended that the land sought to be alienated, being Unit H, Portion 20 of the farm, was the subject of a land claim and that it could not be developed.

⁶ See Annexure "LLM21" to the Founding Affidavit at page 283.

⁷ Annexure "LLM16" at page 246.

Mr Molaba later on indicated that the First Respondent was awaiting the reopening of the land claim so as to re-lodge their claim.

It accordingly transpired that there was no land claim with respect to the applicable portion of land.

- [33] Mr Molaba was equally unable to provide Council with a publication of the land claim by the Land Claims Commissioner as required by section 11 of the Restitution of Land Rights Act, 1994. Mr Molaba, during this meeting further conceded that the land claim was refused in 2004 by the Land Claims Commissioner. This concession is evident from paragraph 4 of the minutes of the meeting annexed to the founding affidavit.⁸ In fortification of the concession made hereabove, a report by the Regional Land Claims Commissioner, Limpopo Province, Mr Mashile Mokono, dated 30 November 2004 shows clearly that whatever land claim lodged by the First Respondent was dismissed. The report is annexed to the Applicant's founding affidavit.⁹ This report underpins attorney Molaba's correct concession during the meeting that the land claim has been refused. Consequently, the First Respondent's objection to the alienation of the land was not upheld by the Council.

- [34] It should be noted that in none of the past applications or the concurrent applications that are pending, has neither the First or the Second Respondents

⁸ See Annexure "LLM 22" at page 285.

⁹ Annexure "LLM 23" at pages 289-291.

illustrated the existence of a valid land claim in respect of the farm Voorspoed 458 K.S. Accordingly, there is still no pending land claim as it pertains to the First and Second Respondents and the farm Voorspoed 458 K.S.

[35] In the papers before this Court, the Applicant states categorically that it is necessarily sensitive to the needs of the local community as it pertains to land, but cannot sit idly by and allow the unlawful conduct of the First and Second Respondents to enrich the traditional authorities unlawfully while at the same time facilitating the jumping of the queue by selected individuals that result in harm to law abiding citizens awaiting land allocation in accordance with the system employed to ensure land distribution in the municipal area. I share this sentiment with the Municipality.

[36] It is unfortunate that the conduct of the First and Second Respondents in persistently laying unfounded claim to the land in Lebowakgomo stifle progress of development in the Province of Limpopo and causes the Applicant to unwillingly spend state resources that could otherwise have been utilised for upliftment of the community. It is high time that these respondents desisted from their conduct.

The relief sought

[37] On the conspectus of evidence before this Court, the Applicant has proved that it is the lawful and registered owner of the land constituted by Portions 1, 8, 9, 11, 12 and 14-22 of the farm Voorspoed 458 K.S. The First Respondent conceded to this aspect. The Second Respondent, though disputed the Applicant's ownership of the land, was unable to bring any proof to the contrary. In the circumstances the First and Second Respondents have no powers, either in common law or in statute, to deal with this land as their own. The Applicant accordingly has a clear right to the relief sought.

[38] Considering the history of the dispute over this land, the Applicant has no reason to think that the conduct of the First and Second Respondents will abate to any degree. The Applicant is thus justified to hold a reasonable apprehension of harm.

The Applicant has endeavored to resolve the underlying disputes between it and these Respondents in several meetings but to no avail. The First and Second Respondents have now effectively refused to further partake in any meaningful attempts to allay the impasse and dispute between the Applicant and them.

In the result, the Applicant has no option but to launch this application in order to get clarity on the issues referred to in the notice of motion.

[39] For more than a century our law has authoritatively required an applicant seeking a final interdict to:

1. demonstrate a “clear right”;
2. show an injury in the form of irreparable harm actually committed or reasonably apprehended; and
3. the absence of an alternative remedy.

See ***Setlogelo v Setlogelo* 1914 AD 221 at 227.**

The Applicant proved all the requirements of an interdict relating to the Second Respondent. I am not satisfied with the evidence before me that all the requirements of an interdict have been proved against the First Respondent.

[40] There is no sufficient evidence before me to show that the First Respondent has allocated or attempted to allocate the land to its subjects or other individuals within the portions of the farm owned by the Applicant. The evidence that a certain induna/headman Maja purported to allocate land and issued permissions to occupy does not take this issue any further. The First Respondent has explained that the said allocation was done without its authority. In the circumstances of this case one cannot assume that the First Respondent would proceed to make allocations of land now or in future.

- [41] It is encouraging to note that the First Respondent has conceded and acknowledged the Applicant's ownership of the land in question. One can reasonably assume that the First Respondent will continue to respect and recognise the Applicant's rights over the relevant portions of the farm Voorspoed 458 K.S. The fact that no proper case for an interdict has been made against the First Respondent does not necessarily give it the latitude to interfere with the Applicant's rights on the portions of the farm. In the event of any unlawful conduct and interference by the First Respondent, the Applicant will obviously deal with such matter on a case by case basis.
- [42] Counsel for the First Respondent submitted that in the event the Applicant has a title, then it cannot seek a declarator but rather an interdict prohibiting anyone who does not have a title over the farms to interfere with its right of ownership. Counsel then argued that this application therefore does not meet the requirements of a declaratory order. For reasons that appear hereunder this argument has no merit.
- [43] In terms of the provisions of section 21 (1)(c) of the Superior Courts Act, 10 of 2013, the High Court may grant a declaratory order without any consequential relief. The subsection provides as follows:

“21(1) A Division has jurisdiction over all persons resident or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power-

a) ...

b) ...

c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

(2) ...

(3) ...”

[44] Under common law, the High Court did not have the jurisdiction to grant declaratory relief.¹⁰ Section 19 (1)(a)(iii) of the now repealed Supreme Court Act 59 of 1959 made provision for the granting of a declaratory relief. Currently it is governed by s 21 of the Superior Courts Act, 10 of 2013.

The requirements in respect of the granting of a declaratory order are two-fold.¹¹

¹⁰ *Geldenhuys and Neethling v Beuthin* 1918 AD 426.

¹¹ *Mahlangu and Another v Minister of Defence and Military Veterans and Another* (54573/18) [2019] ZAGPPHC 418 (5 September 2019).

- a) The court must be satisfied that the applicant has an interest in an existing, future or contingent right or obligation; and
- b) once a court is so satisfied, it must be considered whether or not the order should be granted.

[45] In ***Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd***¹² the Supreme Court of Appeal said the following with regard to the powers of the High Court to grant a declaratory order:

"[16] Although the existence of a dispute between the parties is not a prerequisite for the exercise of the power conferred upon the High Court by the subsection, at least there must be interested parties on whom the declaratory order would be binding. The applicant in a case such as the present must satisfy the Court that he/she is a person interested in an existing, future or contingent right or obligation and nothing more is required".

[46] In ***Durban City Council v Association of Building Societies***¹³ Watermeyer JA, with reference to a section worded in identical terms, said at 32:

¹² 2005 (6) SA 205 (SCA).

¹³ 1942 AD 27.

“The question whether or not an order should be made under this section has to be examined in two stages. First the Court must be satisfied that the applicant is a person interested in an “existing, future or contingent right or obligation” and then if satisfied on that point the Court must decide whether the case is a proper one for the exercise of the discretion conferred on it”.

[47] As I understand the principles set out above, once the applicant has satisfied the Court that he/she is interested in an “existing, future or contingent right or obligation”, the Court is obliged by the subsection to exercise its discretion. This does not, however, mean that the Court is bound to grant a declarator, but that it must consider and decide whether it should refuse or grant the order, following an examination of all relevant factors.

[48] Upon considering all relevant factors in the present case, I am of the view that the Applicant in this matter is clearly interested in the determination of the right of ownership of the relevant portions of the farm Voorspoed 458 K.S.

The First and Second Respondents are the interested parties on whom the declaratory order would be binding.

Accordingly, this Court is enjoined to grant a declaratory order in favour of the Applicant relating to its ownership of the relevant portions of the farm Voorspoed 458 K.S.

Conclusion and Order

[49] On a conspectus of all the evidence given by the Applicant in both the founding and the replying affidavits I come to the conclusion that the Applicant has made out a case and is entitled to the relief as outlined hereunder.

[50] In the result I grant the following order:

50.1. It is declared that the Applicant is the owner of the various constituent portions, namely Portions 1, 8, 9, 11, 12, 14 to 22 of the farm known as Voorspoed 458 K.S.

50.2. It is declared that neither the First and Second Respondents have any rights or are possessed of the power to purchase, to dispose of or, to in any manner whatsoever, transact, or approve any land use on the various portions of the farm known as Voorspoed 458 K.S. without the express written approval of the applicant herein, including but not limited to:

50.2.1. any developmental rights;

50.2.2. the disposal of undivided erven on the constituent portion of the farm;

- 50.2.3. the issuing of "Permissions to Occupy" any undivided erven on the constituent portions of the farm;
 - 50.2.4. providing assistance of any nature to and/or facilitating the occupation and any development of undivided erven on the constituent portions by any individual.
- 50.3. The Second Respondent is interdicted and restrained from purchasing, disposing of or, in any manner whatsoever, transacting with respect to the various constituent portions of the farm known as Voorspoed 458 K.S. without the express written approval of the Applicant herein, including but not limited to the conduct set out in paragraphs 50.2.1 – 50.2.4 above.
- 50.4. The Second Respondent is ordered to pay costs of this application, such costs to include the costs of two Counsel.
- 50.5. There shall be no order as to costs in respect of the First Respondent.



E M MAKGOBA
JUDGE PRESIDENT OF THE HIGH
COURT, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES

Heard on	:	29 July 2021
Judgment delivered on	:	5 August 2021
For the Applicant	:	Adv LGF Putter SC
	:	Adv SG Gouws
Instructed by	:	Verveen Attorneys
For the First Respondent	:	PC Mogale
	:	PC Mogale Attorneys
For the Second Respondent	:	No appearance
Attorneys of record for the Second Respondent	:	Director Makhafola Inc