

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION,
PRETORIA

29/7/15

CASE NO: 2014/31873

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED. <u>✓</u>
..... 29.7.15	
DATE	SIGNATURE

In the matter between:

KENNEHT TSHEPO MOKOENA
STEFAN SITHOLE
FANA ENOCH NKOSI
QONDENI MATHEBULA
THE SOMHLOLO TRUST

1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT

and

MALAZA LILLIAN
SHABALALA POPPY
PERTUNIA NKOSI
MKHONZA NOMTHANAZO

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT

J U D G M E N T

WRIGHT J

1. The first to third applicants are the trustees of the fourth applicant trust. The trust owns a farm and has done so since 23 May 2007. The applicants seek the eviction of the respondents from a portion of the farm, portion VO9. They do not seek the removal of the respondents from the farm as a whole. The applicants allege that the respondents are unlawful occupiers of VO9. The applicants want to be able to conduct forestry and extract gum from trees on VO9. The farm is held in trust by the trustees for the benefit of the members of the Eludlambedlwini traditional community. The applicants allege that when the trust acquired the farm the respondents resided on a different part of the farm to VO9. The applicants emphasise that the respondents do not occupy part VO9. They are simply in the process of building there illegally. They reside on a different part of the farm to part VO9.
2. The first respondent is a woman. She says that neither she nor the other respondents have built illegal structures. The structures were built before the trust acquired the land. She was born and grew up on the farm. Her parents lived, died and were buried on the farm. She says that she is a lawful occupier of the farm under The Extension of Security of Tenure Act 62 of 1997. She says that she has not built new structures. She simply maintains old ones. She says that a brick structure on VO9 is not hers but belongs to a neighbour.
3. The second, third and fourth respondents make allegations of a similar nature. I am unable to decide the facts properly on paper. In my view the facts must be established at a trial preceded by full pleadings and discovery.

ORDER

1. The notice of motion stands as a simple summons.
2. The notice of intention to oppose stands as a notice of intention to defend.
3. The applicants are to deliver a declaration by 31 August 2015.
4. Thereafter the matter is to proceed as a trial action.
5. The question of costs is reserved.



GC WRIGHT J
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION,
PRETORIA

On behalf of the Applicants:	Adv D Mtsweni
Instructed by:	S Roux Attorneys Inc
	012 460 0666
On behalf of the Respondents:	Adv G R Egan
Instructed by:	N. Maharaj Attorneys
	011 867 8080
Date of Hearing:	29 July 2015
Date of Judgment:	29 July 2015