



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
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Heard: 26 April 2024

Handed down: 03 May 2024

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No: 1308/2023

In the matter between: -

**MINISTER OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT**

APPLICANT

and

RORISANG MCVIGAR LEBOKO

FIRST RESPONDENT

**ALL UNIDENTIFIED UNLAWFUL OCCUPIERS
OF SHEFFIELD FARM**

SECOND RESPONDENT

JUDGMENT

INTRODUCTION: -

[1] On 17 July 2023, the Minister of Agriculture, Land Reform and Rural Development ("the Minister") issued an application in which she requested the following relief, namely that: -

1.1 The respondents be interdicted and restrained from invading state owned land known as Sheffield Farm, described as portion 57 (portion 42) Plaas 35 and Portion 62 Plaas, portion of portion 60 (Welgevonden) 35, each measuring 3455.4807, Kuruman RD, John Taolo Gaetsewe District, Northern Cape Province ("the Farms");

1.2 The respondents be interdicted from grazing their livestock on the Farms;

1.3 The respondents be ordered to vacate and/or remove their livestock from the Farms within 30 calendar days from service of the order;

1.4 Should the respondents not vacate and/or remove their livestock from the Farms, the Sheriff, with the assistance of the South African Police Services, be authorised to attach, remove and deliver such livestock to the nearest animal pound; and

1.5 The respondents to pay the costs of the application in the event of opposition.

[2] According to the deed of transfer and the DeedsWeb search reports attached to founding affidavit, the correct descriptions of the Farms are: -

2.1 Portion 57 (a portion of portion 42) of the farm number 35;

2.2 Portion 62 (Welgevonden) (portion of portion 60) of the farm number 35; and

2.3 Portion 57 of the farm number 35.

APPLICABLE LAW: -

[3] For the Minister to obtain a final interdict, she has to establish: -¹

3.1 a clear right;

3.2 an injury committed or reasonably apprehended; and

3.3 the absence of a satisfactory alternative remedy.

[4] The first requisite involves proof, on a balance of probabilities, that as a matter of substantive law an applicant has a clear or definite legal right. The second requisite requires an applicant to establish that his or her "clear" legal right has been infringed by the defendant to his or her prejudice, actual or potential. The third requisite in effect requires an applicant to show that the extraordinary remedy of a final ("perpetual") interdict is the only appropriate form of relief and that there is no other adequate remedy.

THE MINISTER'S CASE: -

Clear right: -

[5] It is common cause between the parties that the National Government of the Republic of South Africa is the registered owner of the Farms that the respondents are grazing their livestock on;

[6] According to the Department of Agriculture, Land Reform and Rural Development ("the Department"): -

¹ Setlogelo v Setlogelo 1914 AD 221 at 227.

- 6.1 The Farms are earmarked for the identified priority categories who meet the selection criteria of the Department's policy to allocate land to qualifying applicants at market related rental;
- 6.2 None of the second respondents have applied to the Department for the allocation of land;
- 6.3 None of the respondents are residing on the Farms; and
- 6.4 The respondents do not have a lawful right to be in occupation of the Farms, either by express or tacit consent; or in terms of lease agreements.

Injury committed or apprehended: -

[7] The Minister avers that: -

- 7.1 The Department has received 218 applications to lease the Farms;
- 7.2 The respondents refuse to vacate the Farms;
- 7.3 As a result of the respondents' unlawful action, the Department is prohibited from preparing the land for successful applicants; and is therefore unable to allocate the property to deserving applicants in accordance with its leasing policy; and
- 7.4 The Department will continue to suffer prejudice if the relief is not granted.

No alternative remedy: -

- [8] The Department attempted to resolve the dispute between the parties by convening a meeting with some of the respondents, which meeting did not yield any positive results as the attending respondents refused to sign the attendance register. Thereafter the Department, accompanied by members of the South African Police Service, delivered notices to the respondents to remove their livestock from the Farms. The notices, however, came to nought.

THE RESPONDENTS' CASE: -

- [9] A respondent is required to set out which of the applicant's allegations he admits and which he denies and to set out his version of the relevant facts. It is normally not sufficient to rely on a bare or unsubstantiated denial,² but it is permissible to seek to impugn the veracity of the applicant's allegations by examining their inherent validity or probity in all the proved circumstances and without advancing evidence.³ A respondent is accordingly not entitled simply to make denials or challenge the applicant's evidence without itself proffering any evidence in answer to the allegations contained in an applicant's founding affidavit.⁴
- [10] The first respondent did not oppose the application. The second respondent, being the 64 occupiers of the Farms who are identified in the answering affidavit, oppose the application. In their answering and confirmatory affidavits, the respondents do not deny that the Minister: -

10.1 Has a clear right to the relief she seeks;

² Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at page 1163 to 1165.

³ Kelleher v Minister of Defence 1983 (1) SA 71 (E) at page 74.

⁴ Gemeenskapontwikkelingsraad v Williams and Others (2) [1977] 4 All SA 317 (W) at page 324.

10.2 Would suffer harm if the relief is not granted; and

10.3 Does not have an alternative remedy available to her.

[11] The respondents assert that: -

11.1 They have been using the Farms for grazing purposes for approximately 3 200 livestock since 2018, with the acquiescence by the current lessee and Mr D Wiid, the farm manager; and

11.2 Mr J Bless and his family have been "on the land for more than 30 years."

[12] No confirmatory affidavit of Mr Wiid is attached to the answering affidavit in support of the respondents' allegations.

[13] The application is opposed solely on the basis that the relief sought is not just and equitable. In the alternative, the respondents submit that the Department should allocate alternative land to them, and that such an order would achieve the removal of the respondents from the Farms, whilst still protecting them from the destitution that an unconditional interdict is likely to cause.

[14] Mr F Sangoni, on behalf of the respondents, requested me to exercise my discretion in favour of the respondents, despite the fact that the Minister satisfies the requirements for a final interdict. In support of his argument, he relied on the judgment in the matter of **Chapmans Peak Hotel (Pty) Ltd v Jab & Annalene Restaurants CC t/a O'Hagans**⁵ where the Court held: -

"...The existence of a general, unqualified discretion to refuse a final interdict where all the other requisites have been established has been questioned. According to LAWSA such discretion "is very limited and depends exclusively upon the question whether the alternative remedy is adequate". On the other hand, there is authority

⁵ [2001] 4 All SA 415 (C) at paragraph [23].

both in this Division and in the Appellate Division acknowledging the existence of a seemingly unqualified discretion."

- [15] Mr Sangoni argued that a practical order should be granted that would balance the rights of the Department and the respondents who are productive members of society. He suggested that the tender process for applications for the allocation of land should be reopened in view of the fact that the respondents failed to submit applications as a result of them either being unaware of the process or because they are old and illiterate. In the alternative, he proposed that the Department should make suitable alternative land available to the respondents.
- [16] I am nevertheless not persuaded that this Court has a seemingly unqualified discretion to refuse the relief in the circumstances of this matter in view of the judgment of the Supreme Court of Appeal in the matter of **Hotz v the University of Cape Town**⁶ where the Court confirmed that: -

"The law in regard to the grant of a final interdict is settled. An applicant for such an order must show a clear right; an injury actually committed or reasonably apprehended; and the absence of similar protection by any other ordinary remedy. Once the applicant has established the three requisite elements for the grant of an interdict the scope, if any, for refusing relief is limited. There is no general discretion to refuse relief. That is a logical corollary of the court holding that the applicant has suffered an injury or has a reasonable apprehension of injury and that there is no similar protection against that injury by way of another ordinary remedy. In those circumstances, were the court to withhold an interdict that would deny the injured party a remedy for their injury, a result inconsistent with the constitutionally protected right of access to courts for the resolution of disputes and potentially infringe the rights of security of the person enjoyed by students, staff and other persons on the campus. (my emphasis)

⁶ [2016] 4 All SA 723 at paragraph [29].

[17] The evidence clearly establishes that the Minister has met the three requirements for a final interdict; and that she is thus entitled to the relief she seeks.

[18] I am, however, mindful of the respondents' plight and I accordingly intend to make an order which would grant the respondents fair opportunity to remove their livestock from the Farms.

COSTS: -

[19] In the circumstances of the case, fairness also suggests that no cost order should be made.

WHEREFORE THE FOLLOWING ORDER IS MADE: -

1. The respondents are ordered to vacate and/or remove their livestock from the immovable property known as Sheffield Farm, described as portion 57 (a portion of portion 42) of the farm number 35, Portion 62 (Welgevonden) (portion of portion 60 and Farm 35 (portion 57), each measuring 3455.4807, Kuruman, John Taolo Gaetsewe District, Northern Cape Province within 90 calendar days from service of the order; and
2. From the expiration of the 90 calendar day period referred to in 1 above, the respondents are interdicted and restrained from invading the immovable property known as Sheffield Farm, described as portion 57 (a portion of portion 42) of the farm number 35, Portion 62 (Welgevonden) (portion of portion 60) and Farm 35 (portion 57), each measuring 3455.4807, Kuruman, John Taolo Gaetsewe District, Northern Cape Province; and
3. From the expiration of the 90 calendar day period referred to in 1 above, the respondents are interdicted from grazing their livestock on the immovable property known as Sheffield Farm, described as portion 57 (a portion of portion 42) of the farm number 35, Portion 62 (Welgevonden) (portion of portion 60

and Farm 35 (portion 57), each measuring 3455.4807, Kuruman, John Taolo Gaetsewe District, Northern Cape Province.



STANTON, A

On behalf of the applicant

Adv. NM Phakama

On instruction of the Office of the State Attorney

On behalf of the second respondent:

Adv. F Sangoni

On instruction of Ian Levitt Attorneys care of Haarhoffs Attorneys