

## REPUBLIC OF SOUTH AFRICA

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

CASE NO: HCAA37/2023

- (1) REPORTABLE: YES/NO  
 (2) OF INTEREST TO THE JUDGES: YES/NO  
 (3) REVISED: YES/NO

Naude – Odendaal J

SIGNATURE

DATE

04/11/2024

In the matter between:

SESHEGO LAND CLAIMS COMMITTEE

APPELLANT

and

MINISTER OF AGRICULTURE,  
LAND REFORM AND RURAL DEVELOPMENT1<sup>st</sup> RESPONDENTLIMPOPO PROVINCIAL OFFICE OF THE DEPARTMENT  
RURAL DEVELOPMENT AND LAND REFORM2<sup>nd</sup> RESPONDENT

JUDGMENT

NAUDÉ-ODENDAAL J:

- [1] This is an appeal against the judgment of the High Court dismissing the Appellant's application for a mandamus to compel the Respondents to acquire additional land and appoint consultants for rezoning of land already acquired. The appeal is with leave to appeal by the court *a quo*.
- [2] The Appellant represents members of the Seshego Community who were dispossessed of land during 1968 during the apartheid era. Pursuant to this claim, the Respondents acquired Portions 20 and 21 of the farm Jansenpark 1136, through the Proactive Acquisition Strategy (PLAS) program with the aim of ultimately rezoning this agricultural land for residential usage for the purposes of relocating the Appellant's members in order to assist members of the Appellant who had missed the 1998 land claims deadline.
- [3] The Appellant in the court *a quo* applied for an order compelling the Respondents to acquire additional land beyond Portions 20 and 21, and to appoint consultants for rezoning the acquired portions.
- [4] The Appellant submitted that central to the application is an undertaking made by the Respondents in a meeting on the 17<sup>th</sup> of August 2017 to the effect that additional land would be acquired to accommodate all the claimants, as it had become apparent that the acquired portions of land would be insufficient.

- [5] The Respondents contend that they have fulfilled their undertaking by acquiring Portions 20 and 21, and that there is no legal obligation to acquire additional land. It was submitted that the land was acquired under the umbrella of the Proactive Land Acquisition Strategy ("PLAS") in terms of which the state retains ownership but leases the land to individual smallholders for purposes of agriculture. The Respondents submit that these properties have been donated to the Polokwane Municipality for purposes of resettling the Appellants.
- [6] The grounds of appeal are as per the Notice of Appeal and will not be repeated herein. In addition, the parties to the appeal were requested in writing to prepare and present argument on why this court (and the court *a quo* had) has jurisdiction and not the Land Claims Court.
- [7] During argument of the Appeal, the Appellant's legal representative conceded that the basis of this dispute is a land claim. It was however submitted that the Appellant applied for a mandamus and therefor the High Court had jurisdiction. The Appellants legal representatives further submitted that the application did not fall within the corners of Section 22 of the Restitution of Land Rights Act, 22 of 1994, in terms whereof the Land Claims Court had exclusive jurisdiction.
- [8] It was submitted by the Appellant's legal representative that if one looks at the relief claimed, the court *a quo* had the necessary jurisdiction to hear the application.
- [9] The relief applied for in the *court a quo* was as follows:-

- "1. Directing the Respondent to act on its undertaking and/or the agreements entered into with the Applicant, to acquire additional and/or alternative land for the community of Seshego in complete fulfilment of their land claim.*
- 2. Directing that the First and Second Respondents are obliged to take further steps to ensure that additional land is acquired to accommodate the remaining beneficiaries of the Seshego Land Claim.*
- 3. Directing that the First and Second Respondents are obliged to appoint a consultant for rezoning of the farms which are made available for the purpose of the settlement of the beneficiaries.*
- 4. Directing the Respondent to pay the costs of the Application in an event of opposition to the relief sought."*

[10] The Appellants further submitted that prayer 3 of the Notice of Motion stood independent from prayers 1 and 2 of the Notice of Motion as it speaks of the rezoning of the already allocated land.

[11] Without any further ado, it needs to be stated that after acquisition of Portions 20 and 21 of the farm Jansenpark 1136, the portions were approved on 14 May 2019 for donation and transfer to the Polokwane Municipality, to eventually be allocated to the Appellant for community settlement. The process aimed to ensure that the two properties would be rezoned to be suitable for settlement. The intention was that in the process, individual sites would be demarcated and allocated to the Appellant's members as per their request.

- [12] The Polokwane Municipality is the registered owners of Portions 20 and 21 of the farm Jansenpark 1136. Furthermore, the Polokwane Municipality deals with rezoning of properties falling within its area of jurisdiction and not the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The Polokwane Municipality was not a party to the proceedings before the court *a quo*. The court *a quo* in its judgment was of the view, that it was not necessary to grant an order in terms of prayer 3 of the Notice of Motion, as it was not necessary to order something that is already being done.
- [13] Although the court *a quo* made the correct finding in refusing to grant an order in terms of Prayer 3, this court is of the view that the court *a quo* should have refused to grant prayer 3 on the basis that the Polokwane Local Municipality was not a party to the proceedings and rezoning was done by the local municipal authority exclusively. A Rezoning involves the amendment of the current zoning designations to allow for different types of land uses, such as residential, commercial, industrial or agricultural. The Change of a Zoning category or Rezoning is dependent on Council Policies such as a Spatial Development Framework, Local Structure Plans or Urban Development Framework. The Rezoning Process is subject to each requirement of the respective Local Municipality. Each Municipality has different requirements for a Rezoning Application and Rezoning Process and therefore falls squarely only within the ambit of the Local Municipality and in this instance the Polokwane Local Municipality.
- [14] This then brings this court to prayers 1 and 2 of the Notice of Motion as quoted here above. Prayer 1 and 2 talks about "***the acquisition of additional land***". The

underlying substance of the Appellant's claim is fundamentally a request for additional land to be provided to its members. This is essentially a land restitution issue that must be pursued through the proper statutory channels established by the **Restitution of Land Rights Act 22 of 1994** ("the Act").

[15] **Section 22(1) of the Act** provides that the Land Claims Court shall have jurisdiction over all matters pertaining to the Act, and stipulates as follows:-

*"(1) There shall be a court of law to be known as the Land Claims Court which shall have the power, to the exclusion of any court contemplated in section 166 (c), (d) or (e) of the Constitution –*

*(a) to determine a right to restitution of any right in land in accordance with this Act;*

*(b) to determine or approve compensation payable in respect of land owned by or in the possession of a private person upon expropriation or acquisition of such land in terms of this Act;*

*(c) to determine the person entitled to title to land contemplated in section 3;*

*(cA) at the instance of any interested person and in its discretion, to grant a declaratory order on a question of law relating to section 25(7) of the Constitution or to this Act or to any other law or matter in respect of which the Court has jurisdiction, notwithstanding that such person might not be able to claim any relief consequential upon the granting of such order;*

*(cB) to determine whether compensation or any other consideration received by any person at the time of any dispossession of a right in land was just and equitable;*

*(cC) to determine any matter involving the interpretation or application of this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), with the exception*

*of matters relating to the definition of “occupier” in section 1 (1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997); [Para. (cC) substituted by s. 4 of Act 11/2000]*

*(cD) to decide any constitutional matter in relation to this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).*

*(cE) to determine any matter involving the validity, enforceability, interpretation or implementation of an agreement contemplated in section 14(3), unless the agreement provides otherwise; [Para. (cE) inserted by s. 7 of Act 18/99]*

*(d) to determine all other matters which require to be determined in terms of this Act. [Subs. (1) amended by s. 10 of Act 78/96 and substituted by s. 13 of Act 63/97]”*

[16] The Appellant’s claim for additional land to be provided to its members clearly falls within the ambit of Section 22(1)(a) as it requires a determination on the restoration or award of rights in land.

[17] The Appellant was informed in par 3 of a letter dated the 19<sup>th</sup> of December 2014 as follows:-

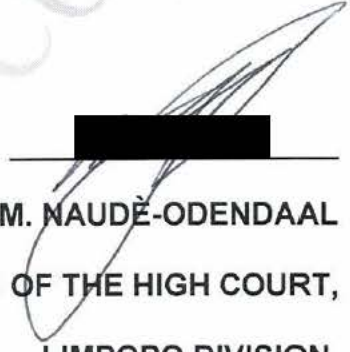
*“The Committee should also remember that the acquisition of portions 20 & 21 of Jansenpark 1136 LS to Seshego Community Land Claim was due to the community’s inability to lodge the land claim in time during the previous lodgment period of the 31 December 1998. Therefore, the Committee is advised to take advantage of the reopening of the land claims process which have started from the 30 June 2014 ending 30 June 2019 since [it] is the relevant process to get the land restored back to the Seshego Community.”*

- [18] The fundamental nature of the Appellant's relief sought, is the provision of additional land. The Appellant failed to make use of the avenues open to it timeously and now wants to resort to this court to aid in their assistance. In this Court's view, the proper forum for the Appellant to pursue its claim for additional land is through the land claims process, administered by the Land Claims Commission, with the Land Claims Court having jurisdiction to adjudicate such disputes.
- [19] In this Court's view, the Land Claims Court has exclusive jurisdiction to entertain the relief sought by the Appellant. The Court *a quo* should and could not have entertained the application and ought to have dismissed the application for lack of jurisdiction in respect of prayers 2 and 3 of the Notice of Motion. Although this court's reasoning differs from that of the Court *a quo*'s, the ultimate order, that the application be dismissed was correct *albeit* for different reasons. The appeal therefore stands to fail.
- [20] The only issue remaining is the issue of costs. The general rule applicable to costs is that the costs should follow the event. It was submitted by the Appellant that the Biowatch-principle which dictates that the costs must be borne by the State in Constitutional litigation, should be applicable. This approach safeguards the "*over-arching principle of not discouraging the pursuit of constitutional claims.*"
- [21] However, in this Court's view, the appeal does not amount to Constitutional Litigation in the true sense where the Biowatch-principle should be applied. In the

result a just order in respect of costs would be that the Appellant should pay the costs.

[22] Accordingly, this court therefore makes the following order:-

1. The appeal is dismissed with costs.



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M. NAUDÉ-ODENDAAL  
JUDGE OF THE HIGH COURT,  
LIMPOPO DIVISION,  
POLOKWANE

I AGREE:



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G.C. MULLER  
JUDGE OF THE HIGH COURT,  
LIMPOPO DIVISION,  
POLOKWANE

I AGREE:



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**M. MATHABATHE**  
**ACTING JUDGE OF**  
**THE HIGH COURT,**  
**LIMPOPO DIVISION,**  
**POLOKWANE**

**APPEARANCES:**

**HEARD ON: 2 AUGUST 2024**

**JUDGMENT DELIVERED ON: 4 NOVEMBER 2024**

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