



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>09 September 2025</u>	
DATE	SIGNATURE

CASE NO: 5354 / 2022

In the matter between:

PETRUS ZEELIE N.O.

APPLICANT

[in his capacity as interim court-appointed
Administrator of the Mjejane Trust (IT 6335/04)]

And

SOUTH AFRICAN NATIONAL PARKS

FIRST RESPONDENT

**MJEJANE POARENT GAME RESERVE
HOME OWNERS ASSOCIATION NPC**
(Registration number 2008/009355/08)

SECOND RESPONDENT

MJEJANE GAME RESERVE HOME

THIRD RESPONDENT

HOME OWNERS ASSOCIATION NPC

(Registration number 2009/016655/08)

LUGEDJANE DEVELOPMENTS (PTY) LTD

(Registration number 2003/024086/07)

FOURTH RESPONDENT**SUNSET BAY TRADING 58 (PTY) LTD**

(Registration number 2004/012062/07)

FIFTH RESPONDENT**THE REGIONAL LAND CLAIMS**

COMMISSIONER: MPUMALANGA

SIXTH RESPONDENT

**THE MINISTER OF AGRICULTURE,
RURAL DEVELOPMENT, LAND AND
ENVIRONMENTAL AFFAIRS, NATIONAL
GOVERNMENT**

SEVENTH RESPONDENT**SAFRICAN LEISURE PROPERTIES CC**

(Registration number 1996/057434/23)

EIGHTH RESPONDENT**MJEJANE RIVER LODGE (PTY) LTD**

(Registration number 2013/163655/07)

NINTH RESPONDENT

J U D G M E N T

RATSHIBVUMO DJP:

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the hand-down is deemed to be on 09 September 2025 at 14H00.

[1] Introduction.

This is an application in which the Applicant, in his capacity as the Administrator of Mjejane Trust, seeks several declaratory orders against various respondents. Chief among these is an order declaring that a binding agreement referred to as the compromise agreement has come into existence between the Mjejane Trust, SANParks, and the Chief Land Claims Commissioner. This agreement affirms that the Mjejane Trust and its beneficiaries may, at all relevant times, utilise the Marula Bridge constructed across the Crocodile River alongside the remainder of Portion 50 of the Farm Tenbosch 162, Registration Division JU, Mpumalanga Province, to access Portion 1 of the Farm Lodwich's Trust within the Kruger National Park. This access is granted in exchange for waiving the rights of land claimants who represented the Mjejane Trust and its beneficiaries to claim such land within the Kruger National Park.

[2] The Respondents, particularly the First, Second and Third Respondents, oppose the application. The First Respondent raised a point *in limine*, questioning this Court's jurisdiction to hear the application. This is premised on the Applicant's assertions to the effect that "the applicant will first and foremost seek an order of specific performance of the compromise agreement pertaining to the bridge concluded between Mjejane Trust, the First Respondent and the Sixth Respondent, including a declaratory order interdictory relief."¹

¹ See paragraph 399 of the Applicant's Founding Affidavit on p. 174 of the paginated bundle.

[3] The First Respondent further emphasized the objection to this Court’s jurisdiction based on the Applicant’s statement that “it is clear that in exchange for a waiver of a legitimate land claim by land claimants who were forcefully removed from a portion of land located within the KNP, a binding compromise agreement was concluded between the Trust (MT), the LLC [the Sixth Respondent], and SANParks [the First Respondent], that MT (in whose favour other land was restituted) and its beneficiaries will have the right in perpetuity to access such land on a restricted basis by virtue of a low water bridge from their own land, which bridge was constructed and built with funding provided by the LLC.”²

[4] Based on the above, the First Respondent argued that section 22(1)(cE) of the Restitution of Land Rights Act, No. 22 of 1994 (the Act),³ the Land Court has exclusive jurisdiction to determine any matter involving the validity, enforceability, interpretation or implementation of the agreement that relates to land that forms the subject of a land claim.

[5] Although the First Respondent wanted the point *in limine* to be decided first and separately, the Applicant had a different approach. The Applicant set the matter down for hearing on the main application, intending that the point *in limine* could be decided together with the other issues in the main application.

² See paragraph 360 of the Applicant’s Founding Affidavit on p. 162.

³ Chapter III of this Act (which includes section 22) has been repealed by section 36 of the Land Court Act 6 of 2023 (the new Act), which came into operation on 05 April 2024. The Act still applies to these application proceedings, despite having been repealed in light of section 35(1)(a) of the new Act, which provides, “[A]ny proceedings arising out of the application of this Act or any other law conferring jurisdiction on the Court, pending in any court other than the Land Claims Court established by section 22 of the Restitution of Land Rights Act, at the commencement of this Act must be continued and concluded in every respect as if this Act had not been passed.”

[6] For practical reasons and to avoid prejudging the outcome of the point raised *in limine*, this Court decided to hear the submissions on this aspect without examining the merits of the main application.

[7] The applicable law.

Section 22(1)(cE) of the Act provides,

“(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-

...

(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.”

[8] Section 14(3) on the other hand provides,

“(3) If in the course of an investigation by the Commission the interested parties enter into a written agreement as to how the claim should be finalised and the regional land claims commissioner having jurisdiction certifies in writing that he or she is satisfied with the agreement and that the agreement ought not to be referred to the Court, the agreement shall be effective only from the date of such certification or such later date as may be provided for in the agreement.”

[9] In *Bangani v Minister of Rural Development and Land Reform and Another*,⁴ the Full Court, sitting as the court of appeal, considered the issue of the High Court’s jurisdiction to hear claims over land ownership and the interpretation of section 22(1)(cE) of the Act. In that matter, the High Court, sitting as the court of first instance, had refused to enforce the agreement under which the appellant was to have been paid R88,167.26 as compensation for a land claim. The main issue the High Court would have considered was whether the appellant had the necessary *locus standi* to enforce the agreement, given that she was not a direct descendant of the claimant but the wife of the direct descendant.

⁴ 2 All SA 453 (ECM).

[10] Before the hearing, a point *in limine* was raised, asserting the lack of jurisdiction by the High Court because, in enforcing the agreement, the High Court would be deciding on a matter that involves the validity, enforceability, interpretation, or implementation of an agreement contemplated in section 14(3) of the Act, which falls squarely within the exclusive jurisdiction of the Land Court. As a result, the High Court dismissed the claim without considering the merits or the plaintiff's *locus standi*. The Plaintiff appealed against this outcome. In dismissing the appeal, the Full Court found no difference between agreements made under section 42D and those made under section 14(3) of the Act. Section 14(3) was broad enough to include even agreements made with the Minister. Essentially, the Full Court concluded that the Land Court, rather than the High Court, had exclusive jurisdiction to determine the validity, enforceability, interpretation, or implementation of that agreement.

[11] **Discussion.**

In opposing the First Respondent's assertions, the Applicant submitted that section 14(3) was not applicable in this case because the relief sought does not affect land ownership. Furthermore, the Applicant argued that a referral to the Land Court had already been made regarding this claim, which had been dealt with to finality. The First Respondent disputed this assertion, stating that it does not originate from the affidavits presented by the Applicant. The Applicant relied on its argument in a replying affidavit, in which the following was averred:

“There was most certainly a land claim which form part of the Tenbosch land claims, which resulted in litigation and eventually, settlement of such claims. I am not in possession of such documents, but I will endeavour to find all the necessary documents pertaining to this land claim and to submit it (sic) to the court in a supplementary affidavit. However, I annex hereto an affidavit of Mr. Sarrel Arnoldus Cilliers, a partner in the firm Du Toit-Smuts & Partners (previously Du Toit-Smuts & Matthews Phosa) in Mbombela, who was intricately involved in that

specific land claim acting on behalf of certain land owners, and who has confirmed to me the fact that there was such a land claim by the Lugedlane community and that such land claim was in fact settled.”⁵

[12] I agree with the First Respondent that the replying affidavit does not specify the claim or the land involved, making it impossible for the court to confirm that the claim in question is the same one over which the claimants are said to have waived their rights. No new affidavit detailing or providing the documents that the Applicant promised to find and submit was presented to the Court. The confirmatory affidavit by Mr. Cilliers does not resolve the issue, as it lacks the details missing from the replying affidavit.

[13] The Applicant’s argument that the ownership rights of the Mjejane Trust beneficiaries remain unaffected contradicts the very relief sought. It is evident that if the Court grants specific performance and declares that the agreement was reached and should be honoured by all parties, as the Applicant claims, the land ownership of the Mjejane Trust beneficiaries would be impacted, since the Court would be confirming their waiver over the land claim.

[14] No one argued that the appeal judgment in Bangani referred to above was decided wrongly. However, the Applicant submitted that the facts in Bangani were different from those in this case. In my observation, the only difference that stands out between these two cases is that, whereas the claimant in Bangani had reached an agreement to be compensated in cash for the land, *in this case, the beneficiaries are alleged to have agreed to be compensated through the benefits of accessing the land via the low water bridge.*

⁵ See paragraph 102 of the Applicant’s Replying Affidavit on p. 2988 of the paginated bundle.

[15] I conclude that the nature of the Applicant's claim, in which specific performance is sought, cannot be determined without first establishing the validity, enforceability, interpretation, or implementation of the compromise agreement. Section 22(1)(cE) of the Act states that this falls within the exclusive jurisdiction of the Land Court. This decision does not even require considering the First Respondent's version regarding the alleged existence of a compromise agreement. It also does not imply that the Court is convinced such an agreement existed. That is a determination for the Land Court to make.

[16] Conclusion.

It follows, therefore, that applications seeking enforcement of the compromise agreement should be dismissed for lack of jurisdiction. According to the Notice of Motion, prayers intertwined with the alleged agreement include prayers 1-4, 6 & 8. In this application, the Applicant sought a total of 13 prayers against various respondents. The remaining prayers, except for those mentioned above, are either only loosely connected or unrelated to the agreement. The Applicant chose to have all the prayers in the Notice of Motion considered together in a single application. It is not for the Court to alter that choice. However, when a preliminary objection is raised, as it was by the First Respondent, it must be dealt with before addressing other issues.

[17] This judgment focused on the point *in limine* raised regarding this Court's jurisdiction. The merits of the application concerning the existence of the agreement were not considered for the reasons mentioned earlier. There is no objection to this Court's jurisdiction in respect of other prayers than those referred to in paragraph 16 above. For the reasons stated in this judgment, the application concerning these cannot be heard together with the determination of the existence or validity of a contract unless they are set down for hearing separately.

[18] The Second and Third Respondents were represented at this hearing. Their counsel refrained from making submissions on the point *in limine*, correctly arguing that the Second and Third Respondents were not parties to the alleged compromise agreement, and their opposition to the application was unrelated to the agreement. Even after being invited, counsel for the Second and Third Respondents did not make any submissions regarding costs if the Court accepted the point *in limine* raised by the First Respondent. Accordingly, the Court will make no costs order in respect of the Second and Third Respondents. If necessary, this can be addressed later when the remaining issues are heard or if the court with jurisdiction finally hears the matter.

[19] Regarding the First Respondent's point *in limine*, there is no reason why costs should not follow the outcome. Although the First Respondent requested that the Applicant be ordered to pay punitive costs in his personal capacity, I am not persuaded that such an award is justified. Much of the reasoning provided in support of this request examines the merits of the application, which were not considered in this judgment. There is very little blame that can be attributed to the Applicant personally regarding the point *in limine* upheld by the Court.

[20] The Order:

For the reasons stated above, I make the following order:

20.1 The Application in respect of prayers 1-4, 6 & 8 in the Notice of Motion is dismissed for lack of jurisdiction.

20.2 The Applicant is ordered to pay the First Respondent's costs, including costs of two counsel taxable on scale B.


TV RATSHIBVUMO

**DEPUTY JUDGE PRESIDENT
MPUMALANGA DIVISION OF THE HIGH COURT**

APPEARANCES:

FOR THE APPLICANT:

ADV. R DU PLESSIS SC

ADV. G BENSCH

INSTRUCTED BY:

DU TOIT-SMUTS ATTORNEYS

NELSPRUIT

FOR THE FIRST RESPONDENT:

ADV. J VOSTER SC

ADV. L KUTUMELA

INSTRUCTED BY:

SAVAGE JOOSTE & ADAMS

C/O SWANEPIEL & PARTNERS INC

NELSPRUIT

**FOR THE SECOND & THIRD:
RESPONDENTS**

ADV. D MITCHELL SC

ADV. L SISILANA SC

INSTRUCTED BY:

VASCO DE OLIVERA INC

**C/O PIETER SWANEPIEL
ATTORNEYS
NELSPRUIT**

DATE HEARD: 12 AUGUST 2025

JUDGMENT DELIVERED: 09 SEPTEMBER 2025