



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 7336/2023

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<u>31/10/2025</u>	<u>[Redacted]</u>
Date	Signature

In the matter between:

TAAMF

SOUTHERN SPHERE PLATINUM (PTY) LTD

AND

TAU GLOBAL CONSTRUCTION (PTY) LTD

SPENCER PAILE

MMILONG TRANSPORT

MBONJOMANE PLANT AND TRANSPORT CC

FIRST APPLICANT

SECOND APPLICANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

KGOMO RESORT

FIFTH RESPONDENT

KA MATETE TRANSPORT

SIXTH RESPONDENT

MODIPADI NGWATO TRADING

SEVENTH RESPONDENT

UNLAWFUL OCCUPIERS

EIGHTH RESPONDENT

THOBEJANE MOTLOKWA SOLOMON

NINTH RESPONDENT

THOBEJANE MAHUTSA ELSIE

TENTH RESPONDENT

JUDGMENT

NGOBENI J

INTRODUCTION

[1] The first applicant is Tubatse African Agriculture Merging Farmers Communal Property Association (TAAMF), established under the provisions of sections 1,2(b) and 8 of the Communal Property Association Act 28 of 1996(CPAA), with its registered address at Portion 3 (a portion of farm 1) of the Farm Grootboom, 336 K.T. Steelpoort, 1133 (Farm).

[2] The second applicant is Southern Sphere Platinum (PTY) Ltd, a private company, with its main registered place of business on the 1st Floor, One-on-ninth, 23 Ninth Street, Melrose Estate, Johannesburg, 2198.

- [3] The first respondent is Tau Global Construction (Pty) Ltd, a private company duly registered according to the laws of South Africa, with a registered address at 2192 Aloeridge East, Aloe Street, Burgersfort, Limpopo, 1150, and who is currently trading at Portion 3 (a portion of portion 1) of Farm Grootboom 336, Registration Division K.T. Limpopo.
- [4] The second respondent is Spencer Paile, an adult male person, whose further particulars are unknown to the applicants and is currently running a business from Portion 3 (a portion of portion 1) of the Farm Grootboom336, Registration Division K.T. Limpopo.
- [5] The third respondent is Mmilong Transport, a business whose further particulars are unknown to the applicants and is currently trading from portion 3 (a portion of portion 1) of the Farm Grootboom 336, Registration Division K.T. Limpopo.
- [6] The fourth respondent is Mbojane Plant and Transport Hire CC, A Close Corporation duly registered in accordance with the laws of South Africa, with its registered address at 17 Tukakgomo Village, Steelpoort, Steelpoort, Limpopo, 1133, and who is currently trading at Portion3 (a portion of portion 1) of the Farm Grootboom 336, Registration Division K.T. Limpopo.

- [7] The fifth respondent is Kgomo Resort, a business whose further particulars are unknown to the applicants and is currently trading from Portion 3 (a portion of portion 1) of the Farm Grootboom 336, Registration Division K.T. Limpopo.
- [8] The sixth respondent is Ka Matete Transport, a business whose further particulars are unknown to the applicants and is currently trading from portion 3 (a portion of portion 1) of the Farm Grootboom 336, Registration Division K.T. Limpopo.
- [9] The seventh respondent is Modipadi Ngwato Trading, a business whose further particulars are unknown to the applicants and is currently trading from Portion 3 (a portion of portion 1) of the Farm Grootboom 336, Registration Division K.T. Limpopo.
- [10] The eighth respondent are all other illegal occupiers that are occupying the said Portion 3 (a portion of portion 1) of the Farm Grootboom 336, Registration Division K.T. Limpopo.
- [11] The ninth and tenth respondents, in their capacities as the trustees of Motlokwa Family Trust, applied to be joined in these proceedings as intervening parties and on 16 May 2024, Acting Judge Deane granted that application. The basis of the application is that Motlokwa Family Trust

concluded a lease agreement for 20 hectares with the first applicant on 20 May 2012, although the date that appears on the lease agreement is 29 May 2012, and that lease agreement was prepared by M.G. Phatudi Inc. (Attorneys).

[12] The returns of service for the Notice of Motion are filed on pages 90 to 95 in the bundle that is titled "Updated Index 1". I could not find the returns of service for the seventh to the tenth respondents. The explanation in the preceding paragraph regarding the ninth and tenth respondents is enough to explain why there are no returns of service for the ninth and tenth respondents. Paragraph 55 of the Founding Affidavit of Stanley Moyane makes mention of first to eighth respondents. However, the seventh respondent was represented by Advocate Letsoalo during the hearing of this matter in court.

[13] The application by the applicants is for the eviction of the respondents from the Farm. In issue then between the applicants and the respondents is whether the respondents have the right to occupy the Farm in question. There is a document filed by the applicant which is titled 'TUBATSE AFRICAN AGRICULTURAL MERGING FARMERS "TAAMF" COMMUNAL PROPERTY ASSOCIATION (CPA)', which states that on investigation the first applicant came to the conclusion that the businesses that are occupying and trading on the Farm do not have

authorization to occupy the Farm, hence the application before this court for eviction.

FACTUAL BACKGROUND

[14] The first applicant, TAAMF, has ownership rights on portion 3 (a portion of portion 1) of the Farm Grootboom 336, (Farm), held by Trust Deed T17669/19999PTA (Trust). It is on the basis of the said ownership rights that the first applicant entered into a lease agreement with the second applicant as per the Lease Agreement (Agreement) which is attached to the founding affidavit as Annexure C. The Agreement in the main allowed the second applicant to operate mining activities on the Farm.

[15] The mining operations by the second applicant could include the establishment of an open pit and underground mining operations and other activities that are related to mining operations, which are not even necessary to mention for purposes of this application. The allegation by the second applicant is that when it was surveying the Farm for purposes starting with its mining operations, it then came to the attention of the second applicant that there are several businesses that are occupying and trading on the Farm, whereas the second applicant holds mining rights in the form of a lease on the Farm from the first applicant. The first applicant investigated the businesses that were trading on the Farm and

came to the conclusion that they were all trading on the property illegally. It is the basis upon which the first and second applicants approached this court for eviction of the respondents.

[16] The eviction proceedings are launched on the basis of the founding affidavit of one Stanley Moyane who states that he is the chairperson of the first applicant.

[17] The first, third, fourth and sixth respondents, who are represented by Mr Mahlaela of Malope D Mahlaela Inc. contend that the Farm in question was occupied by their forefathers or grandparents who were forcefully removed by the apartheid government, but after 1994 the land was claimed and many beneficiaries got organized and formed TAAMF CPA (first applicant). The respondents, even though they were the beneficiaries of the first applicant, still entered into long-term lease agreements and some entered into sale agreements with their own CPA, being the first applicant. The said respondents allege that when Mr. Stanley Moyane (Moyane) entered into an agreement with the second applicant, he did not inform them. The said respondents contend that, they are not occupying the Farm illegally as alleged by the applicants.

[18] The second, fifth, ninth and tenth respondents are represented by Mr. Mmola of Mmola Attorneys who submitted that the said respondents have

been occupying the Farm in question for eight years by the fifth respondent and eleven years by the second, ninth and tenth respondents, and that their lease agreements were not cancelled by the parties or any order of a court of law.

[19] The sixth respondent denies that it is an unlawful occupier on the basis of the lease agreement of a renewal period of 99 years, which is attached to the answering affidavit. The sixth respondent further states that because of the fact that it entered into a lease agreement with the first applicant, the approach of the first applicant should have been to terminate the lease agreement and or declare it null and void, before it could embark on the eviction proceedings. Attached to the answering affidavit is a lease agreement between the first applicant and R.K. Petroleum (PTY) LTD, which was prepared by Maile & Associates Attorneys and signed on behalf of the first applicant on 29 September 2016. Subsequent to that, on the date that appears to be 04 March 2020, the Director General on behalf of the Minister signed for the extension of the duration from ten (10) years to thirty (30) years ending on 10 March 2040.

[20] There is a lease agreement entered into between the first applicant and Modipadi A Ngwato Trading and Construction (PTY) (Ltd) (seventh respondent), dated 01 September 2012, prepared by M.G. Phatudi Inc.(Attorneys) attached to the confirmatory affidavit of Mahlatse

Mashigoane, on behalf of the seventh respondent, confirming what was stated by one Richo Matete Mnisi about the existence of their businesses. In reaction to this eviction application there is also a confirmatory affidavit by one Mika Michael Mopane, who stated that he was the chairperson of the first applicant at the time when lease agreements were entered into between the first applicant and the sixth and seventh respondents, and submits that those lease agreements are valid.

- [21] The ninth and the tenth respondents were given leave to intervene in these proceedings by Acting Judge Deane on 16 May 2024. The ninth and tenth respondents are the Trustees of Motlokwa Family Trust and for purposes of this proceedings Thobejane Mahutsa Elsie (Elsie) deposed to an answering affidavit relating to both the ninth and the tenth respondents, and Thobejane Motlokwa Solomon (Solomon) deposed to a confirmatory affidavit to the answering affidavit of Elsie. Attached to the two affidavits that I have already mentioned is the lease agreement that was entered into between the first applicant and Motlokwa Family Trust, dated 29 May 2012, prepared by M.G. Phatudi Inc. (Attorneys). In addition to what I have already mentioned as having been attached, there is also a letter from M.G. Phatudi Incorporated, dated 18 June 2013, addressed to Motlokwa Family Trust (MFT), requesting MFT to make a payment as the first applicant was in a serious financial crisis.

[22] There is also a meeting of the tenants that was called by M.G. Phatudi Incorporated, which was to be held on 23 August 2013, and it appears from the subsequent letter that Motlokwa Family Trust did not attend that meeting and they were threatened with a letter dated 02 August 2013, that if they did not attend the meeting that was supposed to be held on 12 August 2013, their lease agreements could be terminated since those agreements were concluded with the former Executive Members of the first applicant being Mr. Nkoana and Mr. Mohlala. It appears that such a meeting was held on 12 August 2013, but the contents of the letter have faded, and therefore not easy to read as to who was in that meeting. In a turn of events, there is even a letter dated 02 August 2013 by M.G. Phatudi Incorporated, asking for an update about a criminal case that was opened against Mr. Jabu Mohlala and Mr. Daniel Nkoana.

[23] In reaction to the lease agreements that were attached by the respondents, the first applicant states that the property on which the Farm is situated is what is agricultural land, which in terms of the law a portion of that land cannot be leased for a period of ten years or longer. The further submission is that because the lease agreements of the respondents were longer than ten years, and no permission was sought from the Minister of Agriculture, and they are therefore void.

IN ISSUE

[24] On the basis of the allegations by the applicants that the respondents are occupying the Farm without permission, the court must decide as to whether they have to be evicted or not. The applicants further state that even if the respondents were to rely on the lease or sale agreements or contracts that were entered into with the respondents, those contracts are void for failure to comply with provisions of section 3(d) of the Subdivision of Agricultural Land Act 70 of 1970, and therefore unenforceable.

APPLICABLE LAW

[25] The Subdivision of Agricultural Land Act¹ (SALA) was enacted to control the subdivision and, in connection therewith, the use of agricultural land. Section 1 of the Subdivision of Agricultural Land Act Repeal Act² was to repeal the whole of SALA, but to date has not come into operation which means that SALA is in effect still the law governing the subdivision of agricultural land. There are plans underway to cure the impasse by introducing a Bill, which I will not even delve into discussing the contents because that is irrelevant for purposes of issues to be decided in this case.

¹ 70 of 1970.

² 64 of 1998.

[26] The summary of the definition of agricultural land in terms of section 1 of SALA is any land except for land located within the jurisdiction of various municipal or local authorities and other specific areas like townships. Agricultural land is not exclusively arable land or where land is used for pasture. The meaning is broad in that it includes farm property which is relevant for the discussion in the case at hand as the property in question is a farm, and therefore agricultural land. For a transaction that involves subdivision of agricultural land the consent of the Minister of Agriculture (Minister) is mandatory. The consent of the Minister is also mandatory when a lease contract for a period of more than 10 years is entered into, or consecutive leases that add up to 10 years or more.

[27] Section 3(d) of Subdivision of Agricultural Land Act (SALA) reads as follows:

"3 Prohibition of certain actions regarding agricultural land

(a), (b), (c) ...

(d) no lease in respect of a portion of agricultural land of which the period is 10 years or longer, or is the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time to at the will of the lessee, either by the continuation of the original lease by entering into a new lease, indefinitely or for periods which together with

the first period of the lease amount in all to not less than 10 years, shall be entered into;

(e), (f), (g)... "

[28] Section 3(d) of SALA is better understood if it is read with provisions of section 4(1)(a) of the same Act which reads as follows:

"4 Application for consent of Minister, and imposition, enforcement or withdrawal of conditions by him

(1)(a) Any application for the consent of the Minister for the purposes of section 3 shall: -

- (i) in the case where any act referred to in paragraphs (a) to (e) of that section is contemplated, be made by the owner of the land concerned,*
- (ii) be lodged in such place and be in such form and be accompanied by such plans, documents and information as may be determined by the Minister."*

DISCUSSION

[29] The purpose of the Communal Property Associations Act (CPAA) is to enable communities to form juristic persons, to be known as communal property associations in order to acquire, hold and manage property on a

basis agreed to by members of a community in terms of a written constitution.

[30] The preamble of the CPAA states that *"whereas it is desirable that disadvantaged communities should be able to establish appropriate legal institutions through which they may acquire, hold and manage property in common, and whereas it is necessary to ensure that such institutions are established and managed in a manner which is non-discriminatory, equitable and democratic and that such institutions be accountable to their members, and whereas it is necessary to ensure that members of such institutions are protected against abuse of power by other members..,"*

[31] The Constitutional Court in *Bakgatla-ba-Kgafela Communal Property Association v Bakgatla-ba-Kgafela Tribal Authority and Others*³, restated the purpose of the Communal Property Association Act (CPAA) in line with what is stated in the preamble of the CPAA.

[32] The applicants in the case at hand, allege that the lease contracts that the respondents entered into with the first applicant are void because they are for lengthy periods of time without the permission of the Minister in contravention of provisions of section 3(d) of SALA. Contracts must be

³ (CCT231/14) [2015] ZACC 25; 2015 (6) SA 32 (CC); 2015 (10) BCLR 1139 (CC) (20 August 2015).

distinguished. There are those that are illegal because they are *contra bonos mores*, and there are those that are illegal because of non-compliance with statutory formalities, and there are those that are illegal because the contract is unenforceable.

- [33] The first applicant was purchased for the people of Tubatse by the Department of Land Affairs, and it was eventually registered on 24 February 1998, with a Title Deed with registration certificate number CPA 98/00041/A UNDER TAAMF as the legal owner. The people from the community were given an opportunity to lease out property from the Farm for business purposes. The land was not leased for residential purposes but for business purposes, hence the application of *The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998* (PIE Act) cannot find application in this case. An attorney was appointed in order to facilitate and draw contracts between the first applicant and members of the community who wanted to lease land on the farm for business purposes. The contracts that were annexed by the respondents in their answering papers show that the first applicant was party to these contracts.

[34] In *Hanekom and Another vs Lombard*⁴ it was made explicitly clear that:

"Nowhere in the Act (Subdivision of Agricultural Land Act 70 of 1970-own addition) is it stated that where a portion of agricultural land with 'agricultural capacity' is leased, that the lease of such a portion of the property does not fall foul of the provisions of section 3(1)(d) of the Act. The Act clearly seeks to prevent the fragmentation of agricultural land, which in my view even includes arable or non-arable land"

[35] The contracts at hand are clearly invalid or void because they were entered for ridiculously long periods of time. The contracts are void because the Minister did not give consent for such leases. It is the law that the maxim *ex turpi non oritur actio* prohibits the enforcement of immoral or illegal contracts⁵. The maxim *in pari delicto potior est conditio defendentis*, curtails the right of delinquents to avoid the consequences of their performance or past performance of such contracts⁶. The reality in the case at hand is that when these contracts were entered into there were even attorneys who were involved in drafting leases for them, and in my view if that aspect is reasonably viewed, the respondents might not even have known that they are entering into *void* contracts because of non-compliance with statutory

⁴ Appeal (A33/2023) ZAWCHC 237; [2023] 4 All SA 381 (WCC) (7 September 2023).

⁵ *Nathane v Khoatso* (4643/2023) [2024] ZAFSHC 100 (4 April 2024).

⁶ *Ibid* footnote 5.

requirements. I believe that they robed lawyers in because they believed that they would guide them in terms of the law and also act in terms of what the law required in as far as the contracts or purported contracts in question are concerned. The first applicant was party to these illegal contracts.

[36] In my view this is a typical case where the principle as laid down in *Jajbhay v Cassim*⁷, that while illegal contracts are discouraged, the court can relax the strict rule of in *pari delicto* or *par delictum* rule (meaning in equal fault) to do simple justice between the parties if public policy is not affected. The concept of simple justice between man and man was introduced suggesting that courts should consider the need for fairness between the individuals involved.

[37] The Supreme Court of Appeal followed the same reasoning as in the *Jajbhay* case, *supra*, in *Klokow v Sullivan*⁸, where it was said on paragraph 17 of the judgment that as a general rule, a plaintiff who was found to be in *pari delicto* was hence unable to recover any money paid or property handed over to a defendant pursuant to it, and if a plaintiff based his case on such a contract in formulating his pleading, he would fail on this basis alone.

⁷ (1939) AD 537, Special Investigating Unit and Another v Smith and Others (1127/2017) [2018] ZAECHGHC 10 (20 February 2018).

⁸ (410/2004) [2005] ZASCA 99; 2006 (1) SA 259 (SCA) (29 September 2005).

[38] The need for relaxation of the *pari delicto* rule is necessary in this case looking at the length of the period of time that the respondents have been leasing the portions of the Farm and as submitted, the kind of investments that have been made. It is not a simple case where the court can order demolition of the structures from the land on which they might be beneficiaries of that land looking at the circumstances surrounding this case.

[39] The case at hand is distinguishable from the case of *Hanekom and Another v Lombard*⁹, *supra*, in that the land in the case belonged at hand does not belong to individuals, but to the Community and the respondents are members and or beneficiaries of that very land as members of the community. In the founding affidavit of the first applicant, on page 15 of 18, paragraph 48, it is stated that being the beneficiaries of the first applicant does not entitle the respondents to occupy any piece of property.

[40] In the case at hand, they are not just occupying any piece of property, but they are according to the purported contracts occupying property assigned to them by the first applicant. The first applicant is still the same entity that initially entered into lease agreements with the respondents. The only thing that changed is the Executive Committee of the first

⁹ *Ibid* footnote 4, *MCC Bazaar v Harris* [1954] 3 All SA 107 (T).

applicant. The principle of public policy being justice between man and man does not necessarily mean that the applicants must endorse the illegal or void contracts, but rather to find a way to deal with the impasse that face them.

[41] It is rightly submitted in my view, by the sixth respondent, on paragraph 21 of its answering affidavit that the first approach by the applicants should have been to terminate the lease agreement and or declare it null and void before the eviction application. That in my view would be the simple justice between man and man as envisaged by the *par delictum* rule in the *Jhajbhay* case, *supra*. In *Msibi v Sadheo*¹⁰, which involved a claim for ejectment, the court on whether the issue of public policy should be pleaded for the defence to succeed said the following:

"...The Courts will come to to the rescue of one of the parties where such a course is necessary in order to prevent injustice, or to satisfy the requirements of public policy...(It was) suggested that this question of public policy should be specifically raised so that evidence could be led upon it. But public policy does not rest upon the evidence of any party. It exists as a fact just as much does air which a man breathes..."

¹⁰ 1946 NPD 787, *Mamoojee v Akoo* 1947 (4) SA 733 (N) et 739.

[42] The difficulty with the institutions that are created in terms of the Communal Property Associations Act is that the people that run these institutions often forget that they are not there to carry out their own personal interests, but they are elected or appointed to carry out the interests of the community that appointed or elected them. These institutions are mostly embroiled in this kind of litigation because people forget the initial plan of the formation of such institutions, and the administration of the resources, mostly financial resources of the Associations, are the issues that members of the CPA's would often fight about.

[43] This court believes that until viable methods of administering these institutions are found, the kind of litigation such as the one at hand will be the order of the day. To mind comes the cases of *Department of Agriculture, Land Reform and Rural Development: Director General v Barolong Boo Maiketso Communal Property Association and Others* (UM262/2023) [2024] ZANWHC 215 (11 September 2024), *Mathebula and Others v Nwandlamhari Communal Property Association and Others* (90356/16) [2019] ZAGPPHC 201 (9 May 2019), *Bakgatla-ba-Kgafela Communal Property Association v Bakgatla-ba-Kgafela Tribal Authority and Others*¹¹.

¹¹Bakgatla-ba-Kgafela Communal Property Association v Bakgatla-ba-Kgafela Tribal Authority (full citation on footnote 3).

[44] The principle that was upheld by the Supreme Court of Appeal, at the time when it was still known as the Appellate Division in an old case of *Bhyat Department Store (Pty) Ltd v Dorklerk Investments (Pty) Ltd*¹², was where the appellant in the appeal argued that the lease that was entered into with the respondent was valid, alternatively the respondent made itself a party to the illegal contract of lease and that the parties were in *pari delicto*, and therefore the maxim *in pari delicto potior est conditio defendentis et possidentis* should operate to prevent the respondent from obtaining an order of ejectment. But obviously the law would not require the purchaser to recognise an illegal lessee¹³.

[45] The relevance of reference to the *Bhyat* case, that I have quoted above, is that the first applicant was in the first-place party to these contracts that were entered into with the respondents. It is not clear as to whether rental money was ever paid to the first applicant, and therefore the applicability of the maxim *condictio ob turpem vel iniustam causam*, which is a principle that permits the recovery of money which has been paid over in terms of an illegal agreement may not find applicability¹⁴.

¹² 1975 (4) SA (A); (293/74) [1975] ZASCA 84 (26 September 1975).

¹³ As stated in the Bakgatla-ba-Kgafela case - *Ibid* footnote 3.

¹⁴ *National Credit Regulator v Opperman and Others* 2013 (2) SA 1 (CC); *Afrisure v Watson* (522/07) [2008] ZASCA 89 (11 September 2008).

[46] Section 8(6)(d) of the Communal Property Associations Act ¹⁵ provides that the association shall have perpetual succession regardless of changes in its membership. Paragraph 31 and 32 of the Constitutional Court judgment of the *Bakgatla-ba-Kgafela, supra*, is clothed with an aura of fairness and equality in line with the Bill of Rights. The practice of banishment orders that were issued by traditional leaders for political or whatever reasons without hearings are curbed in terms of section 9 of the CPAA.

[47] In the case at hand, where the Constitution of the first applicant was changed and resolutions taken that the respondents be evicted without giving them an opportunity for the purported contracts to be interrogated, is in my view what section 9 of the CPAA prohibits, being the banishment of the occupiers by the first applicant without giving them a fair hearing at least with regard to their occupation, and why the purported contracts should be revoked, and the circumstances thereof.

ORDER

[48] In application proceedings the applicant must make out its case for the relief sought, and the applicants failed to make out a case for eviction. The first applicant and the respondents are not before court with clean

¹⁵ 28 of 1996.

hands, because of this entanglement of these contracts that they find themselves in. It is for that reason that I will order that each party bear its own costs.

[49] In the result the following order is made:

- (i) the application is dismissed,
- (ii) each party is ordered to pay its own costs.



J.T. NGOBENI
JUDGE OF THE HIGH COURT

Appearances

Counsel for 1 st and 2 nd Applicants	: Mr. J. Moolmaan
Instructed by	: Pratt Luyt & De Lange Attorneys
Counsel for 1 st , 3 rd , 4 th and 6 th Respondents	: Mr. Mahlaela
Instructed by	: Malope D. Mahlaela Inc.
Counsel for 2 nd , 5 th , 9 th & 10 th Respondents	: Mr Mmola
Instructed by	: Mmola Attorneys
Counsel for 7 th respondent	: Advocate Letsoalo
Instructed by	: JK Depanyekga Attorneys
Date of the hearing	: 28 July 2025
Date of judgment	: 31 October 2025

Judgment transmitted electronically