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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 3157/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 18 November 2025

SIGNATURE:

In the matter between:

MONDOBYA PHILLIP MONYELA

APPLICANT

-and-

MPHO RACHEL MATLAKOLA

1ST RESPONDENT

ZEVEDIELA NDEBELE TRIBAL AUTHORITY COUNCIL 2ND RESPONDENT

Delivered : 18 November 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **18 November 2025 at 10:00 am.**

Date heard : 15 October 2025

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Applicant applies for an order declaring that he and the 1st Respondent hold equal rights to the property situated at Stand 3[...] Malatji Village, Zebediela (the 'Property').

[2] The 1st Respondent opposed the application. No Heads or Argument were delivered on behalf of the 1st Respondent prior to the hearing of the matter. At the onset of the proceedings, counsel for the 1st Respondent requested leave from the court to hand up the Heads of Argument. Counsel for the Applicant was already placed in possession of a copy, and no objection was thus raised to the late delivery thereof. As such, the court accepted same at this belated stage.

[3] The Applicant case is briefly the following: The Applicant and the 1st Respondent were in a romantic relationship. During or about October 2013, they agreed to obtain a stand. It was orally agreed that the 1st Respondent will attend the offices of the 2nd Respondent. The stand was consequently allocated to her.

[4] On the 2nd of November 2013, the 1st Respondent went back and requested that the stand be registered in the name of the Applicant as he was the head of the family. This was done accordingly. He thereafter continued to build a house on the stand.

[5] During 2016, the 1st Respondent indicated that she requires proof of residence to enable her to claim a housing subsidy from her employer. The Applicant was called by the 2nd Respondent, and he consequently confirmed that proof of residence may be provided to the 1st Respondent. It later transpired that the 2nd Respondent issued a new PTO (permission to occupy) in her name to the exclusion of the Applicant.

[6] Several discussions ensued between the parties, resulting in the PTO in favour of the 1st Respondent being cancelled by the 2nd Respondent. A new PTO in favour of both parties was issued on the 14th of July 2017.

[7] According to the Applicant, the 1st Respondent hereafter evicted the Applicant from the property. Several interactions between the Applicant, Respondents, the Headman of the Village, the Chief and COGHSTA transpired hereafter, resulting in a ruling by the 2nd Respondent that the 1st Respondent is to vacate the property until such time that proof was presented that she is solely entitled to the stand. This has not been done to date hereof, but the 1st Respondent nonetheless remains in occupation of the property and solely derives the benefit of the use and occupation of the property to the exclusion of the Applicant.

[8] The 1st Respondent opposed the application. The first issue raised is the fact that the order is incompetent since the parties no longer share a love relationship. Co-habiting a property would be *contra bonos mores*. The 1st Respondent also submits that there is a protection order issued against the Applicant which prohibits compliance with any order that this court may grant.

[9] Technical objections are also raised to wit the fact that the jurisdictional requirements for the granting of declaratory relief are not met and the fact that the is insufficient compliance with the regulations pertaining to the commissioning of the affidavit.

[10] As to the merits, the 1st Respondent submits that she built the house on the property by utilizing a Capitec loan. The Applicant only contributed the fence to the property. The stand was in her name even before the relationship started. It was only changed because of church rules demanding that the man is head of the household.

[11] The 1st Respondent furthermore testifies that the PTO was changed back into her name as she was the rightful possessor. She denies having evicted the Applicant as he left voluntarily to live with his wife. It however stands to be noted that the

status of the PTO is not in dispute. The 1st Respondent conceded that it is currently held in both their names.

[12] The Court is called upon to determine if the Applicant and the 1st Respondent should be entitled to jointly occupy and make use of the property.

The Applicable Legal Principles:

[13] The Court has the power in terms of Section 21(1)(c) to:

'(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination'.

[14] A court cannot grant a declaration regarding a fact: the declaration must relate to a right. Persons who have a right are those in whom the right inheres or against whom it avails.¹ A declaratory order should not be sought where there is a dispute of fact.² If a dispute of fact is foreseeable the declaration of rights should be sought by way of action and not application.³

[15] In ***National Director of Public Prosecutions v Zuma***⁴ the Supreme Court of Appeal stated:

'[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities.'

¹ ***Electrical Contractor's Association SA v Building Industries Federation SA*** 1980 (2) SA 516 (T)

² ***Hattingh v Ngake*** 1966 (1) SA 64 (O)

³ ***Electrical Contractor's Association SA v Building Industries Federation SA*** 1980 (2) SA 516 (T)

⁴ 2009 (2) SA 277 (SCA) at [26]

[16] The Court's discretion to declare the right arises only when the Court is satisfied that the claimant is an interested person and that there is an existing, future or contingent right or obligation.⁵

[17] The following was stated in **Naptosa and Others v Minister of Education, Western Cape, and Others**⁶:

'A Court, having at the first stage of the enquiry decided that the claimant is a person interested in an existing, future or contingent right or obligation, would at the second stage enquire whether or not the dispute is a proper one for the exercise of its discretionary power. As to this,

'... it must be borne in mind that, though it may be competent for a Court to make a declaratory order in any particular case, the grant thereof is dependent on the judicial exercise by that Court of its discretion with due regard to the circumstances of the matter before it'.

(Per Wessels JA in Reinecke v Incorporated General Insurances Ltd 1974 (2) SA 84 (A) at 95C.) What the discretion entails is explained by Williamson J (as he then was) in Adbro Investment Co Ltd v Minister of the Interior and Others 1961 (3) SA 283 (T) at 2858 - C:

'... (T)he Court in each case must . . . carefully determine whether or not the particular case in question is a proper case for the exercise of its discretion. For a case to be a proper case, in my view, generally speaking it should require to be shown that despite the fact that no consequential relief is being claimed or perhaps could be claimed in the proceedings, yet justice or convenience demands that a declaration be made '

A declaratory order is an order by which a dispute over the existence of some legal right or entitlement is resolved. The right can be existing, prospective or contingent (Suid-Afrikaanse Onderlinge Brand- en Algemene Versekeringsmaatskappy Bpk v Van den D Berg en 'n Ander 1976 (1) SA 602 (A)). A declaratory order need have no claim for specific relief attached to it, but it would not ordinarily be appropriate where one is dealing with events

⁵ **Reinecke v Incorporated General Insurances Ltd** 1974 (2) SA 84 (A)

⁶ 2001 (2) SA 112 (C) at 125

which occurred in the past. Such events, if they gave rise to a cause of action, would entitle the litigant to an appropriate remedy.

The second applicant is no longer employed by the Department. The other teachers have been appointed to permanent positions. Their claims for benefits lie in the past. Instead of bringing claims sounding in money for benefits which they should have received but did not receive, the applicants claim a declaratory order that they are for 1998 and 1999 entitled to all benefits afforded to educators. This is not, in the circumstances, an appropriate remedy. The claim need not have been brought by way of action. It could, like the claim for the declaratory order, have been brought on motion. It would have been the better course to take. It is artificial to declare that a litigant has certain rights when what he really wants is a judgment sounding in money. The availability of an alternative remedy is an element to be considered in deciding whether or not to grant a declaratory order. (Baxter Administrative Law at 710.)

(own underlining)

[18] And further:⁷

'I consider that the substantial delay in bringing these proceedings is another reason for exercising our discretion against the grant of a declaratory order. It is well established law that undue delay may be taken into account in exercising a discretion as to whether to grant an interdict or a mandamus, or to grant relief in review proceedings. The declaratory order, being as flexible as it is, can be used to obtain much the same relief as would be vouchsafed by an interdict or a mandamus. Where it is not necessary that a record of proceedings be put before the Court, a declaratory order could serve as a review. A Court, in exercising its discretion whether to grant a declaratory order should, accordingly, in an appropriate case weigh the same considerations of Justice or convenience' as it might do in the case of an interdict or a review.'

Prejudice features large in deciding what is just or convenient.

⁷ At 126

[19] Having regard to the authorities stated herein above, this Court is not convinced that the declaratory relief should be granted notwithstanding the fact that it is common cause that the PTO is issued in both parties' names. Notwithstanding the logistical difficulties, the Applicant elected to have his right declared - this is simply not the appropriate remedy in the circumstances.

[20] There was also a considerable delay in launching the proceedings. Both parties have moved on with their lives. It is also quite evident that it would not be practical to grant a declaratory order where the actual remedy lies in the termination of the possible partnership agreement that was concluded between the parties pertaining to the property, alternatively a review of the decision to register the permission to occupy in both parties' names. Declaratory relief will not take the matter further and the actual dispute between the parties will remain unresolved. Having regard to the personal issues prevailing between the parties, it will in fact cause severe prejudice at this stage should the court grant an order declaring any party's rights.

[21] On this basis justice and convenience favours the dismissal of the application.

[22] There is no reason why the cost order should not follow the outcome of the proceedings. Having regard to inter alia the level of complexity, the nature of the proceedings and the importance thereof to the parties, costs to counsel on Scale B is warranted.

Order:

[23] **In the result the following order is made:**

23.1 The application is dismissed;

23.2 The Applicant is ordered to pay the costs of the 1st Respondent on party and party scale including costs to counsel on Scale B.

M BRESLER AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

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