



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

Case number: LCC 79/2022

Before: The Honourable Acting Judge Montzinger

Hearing: 01 August 2025 (further submissions 12 Sept 2025)

Delivered: 08 January 2026

(1) REPORTABLE: Yes ☒ / No ☐
(2) OF INTEREST TO OTHER
JUDGES: Yes ☒ / No ☐

Date: 08 January 2025

In the matter between:

AMOS HEZEKIAN MKWANAZI

First Applicant

MALI ELIAS MKWANAZI

Second Applicant

and

**DIRECTOR-GENERAL FOR THE DEPARTMENT OF
AGRICULTURE, LAND REFORM AND RURAL
DEVELOPMENT**

First Respondent

THE SPECIAL MASTER OF LABOUR TENANTS

Second Respondent

ARBEIDSKROON BOERDERY (PTY) LTD

Third Respondent

Summary: Claim for acquisitive prescription in terms of the Prescription Act and to be awarded land and servitudes in terms of the Labour Tenants Act 3 of 1996 (the “LTA”) or for section 16 application in terms of the LTA to be processed - whether this Court has jurisdiction to entertain an acquisitive prescription claim in terms of the Prescription Act – the meaning of ‘*sufficiently connected*’ as contemplated in section 24(1)(c) of the LTA - whether the claim for acquisitive prescription have been established on the papers – postponement of determination of labour tenant related relief pending the outcome of an application lodged in terms of section 16 of the LTA – whether to compel the Director General to process the applicants’ LTA application.

ORDER

1. The first applicant’s claims for ownership and servitudes by acquisitive prescription in respect of the Rietfontein farm are dismissed.
2. The first applicant’s claim to be awarded land and/or servitudes, in respect of the Rietfontein farm, on the basis of being a labour tenant, as claimed in prayer 2 of the notice of motion, is dismissed.
3. The second applicant’s claim for an award of land and/or servitudes, in respect of the Rietfontein farm, on the basis of being a labour tenant, is postponed *sine die*.
4. The first respondent (the Director-General) is directed to process the applicants’ application dated March 2000 in terms of the relevant provisions of the Land Reform (Labour Tenants) Act 3 of 1996 (the “LTA”) within 30 days of this order, and to take all reasonable steps to ensure the finalisation of that process within six months of the date of this order.
5. The first respondent shall, within a month after the expiry of the sixth month period stated in paragraph 4 above, file an affidavit with the Registrar and

serve it on the applicants and the third respondent reporting on:

5.1 the steps taken in compliance with paragraph 4 of this order.

5.2 the status of the LTA application; and

5.3 the further steps and anticipated timelines (if any) required for its finalisation.

6. If the first respondent is unable to finalise the LTA process within six months of the date of this order, either the applicants or the third respondent may enrol the matter for further directions and/or determination of the remaining relief. In the event that the parties rather seek the determination of the remaining relief, either party may supplement its papers in respect of the second applicant's claim as a labour tenant, irrespective of the status of the LTA application process.
7. In respect of the unsuccessful relief claimed in prayers 1 and 2 of the notice of motion insofar as they relate to the first applicant, each party shall pay its own costs.
8. The costs relating to the remaining relief, including the costs occasioned by the filing (and the necessity) of the first respondent's affidavit pursuant to the Court's directive, stand over for later determination.

JUDGMENT

Montzinger AJ:

Introduction

[1] This application concerns the tenure and proprietary rights claimed by Mr Mkwanazi Snr and Jnr¹ as members of the Mkwanazi family in respect of a portion

¹ The first and second applicants, respectively.

of the farm Rietfontein, of which the third respondent, Arbeidskroon Boerdery (Pty) Ltd (“Arbeidskroon”) is the current owner. Mr Mkwanazi Snr alleges that he and his family have occupied and used the land they refer to as the “Mkwanazi property”² for several decades and seek to have those rights formally recognised and secured.

[2] The amended notice of motion requests three main types of relief. First, relying on the relevant provisions of the Prescription Act³, Mr. Mkwanazi Snr seeks declaratory orders that he became the owner of the Mkwanazi property and grazing and water servitudes over adjoining parts of the Rietfontein farm through acquisitive prescription. Second, and in the alternative if the main relief for acquisitive prescription should fail, Mr. Mkwanazi Snr and Jnr, claiming to be labour tenants, seek an award to them of the Mkwanazi property they are occupying together with water and grazing rights in terms of section 16(1)(a) and (d) of the LTA. Thirdly, and further in the alternative, they also seek an interdict ordering the Director General (the first respondent) and / or the Special Master (the second respondent) to process and finalise their LTA application⁴ lodged in March 2000.

[3] The Director-General is joined to the proceedings because of its statutory responsibilities under the LTA⁵, while the Special Master is joined by virtue of its

² For convenience, and because it is the terminology employed by the parties in the affidavits and heads of argument, I refer to the relevant portion on the Rietfontein farm as the “Mkwanazi property”. This is only a descriptive label used to identify the area on which the Mkwanazi family resides. It should not be understood as any acceptance or confirmation that the land so described belongs to the first applicant, or that he holds any right of ownership in respect of it.

³ Prescription Act 68 of 1969

⁴ The LTA application is an application in terms of section 16 of the LTA required to be lodged with the Director-General before 31 Marh 2001 in terms whereof an applicant can apply for an award of land and, where appropriate, grazing and water associated servitudes.

⁵ Land Reform (Labour Tenants) Act 3 of 1996 (“LTA”).

office having been established by this Court to help the Department⁶ to process labour tenants' claims⁷. Although the Director General and the Special Master filed notices of participation no answering affidavits were delivered. The application, in its entirety, is therefore only actively opposed by Arbeidskroon.

[4] According to Mr Mkwazazi Snr he and his late wife arrived on the Rietfontein farm with his uncle and moved onto the farm after an agreement with the then owner, the late Mr Hendrik Louwrens ("Louwrens Snr"). That agreement contemplated that Mr Mkwazazi Snr and his wife would work on the Rietfontein farm as labour tenants, which they apparently did from 1962 until 1969. Mr Mkwazazi Snr further alleged that in 1969 their work as labour tenants came to an end and he and his late wife established a homestead on the area on the Rietfontein farm that they call the Mkwazazi property. They fenced and developed the area for residential and subsistence agricultural purposes and have since used it as their home and family burial ground. Their son, Mr. Mkwazazi Jnr, who was born on Rietfontein, also later worked on the farm. In 2002 ownership of the Rietfontein farm passed to Arbeidskroon and Du Plessis, as its representative, took over the management. For many years, so it is alleged, neither the late Louwrens Snr or subsequently his son, Louwrens Jnr, nor Arbeidskroon (by virtue of Du Plessis), as owners or persons in charge, objected to the Mkwazazi family's occupation on the Mkwazazi property or to their use of grazing land and water on adjacent parts of the Rietfontein farm.

⁶ Department of Rural Development and Land Reform

⁷ *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another* 2019 (11) BCLR 1358 (CC) ; 2019 (6) SA 597 (CC)

[5] The relationship between the Mkwanazi family and Du Plessis, as representative of Arbeidskroon, deteriorated in 2021 after the collapse of a dwelling. The Mkwanazi family began reconstruction of the dwelling without consent. An interdict, in the form of a *rule nisi*, was obtained by Arbeidskroon to stop the ongoing construction but was discharged on the return day. Subsequent thereto, in January and May 2022, Arbeidskroon issued notices purporting to terminate Mr Mkwanazi Snr's right of residence and to initiate eviction proceedings in terms of ESTA⁸. The present proceedings were instituted shortly thereafter.

[6] Arbeidskroon takes issue with this Court's jurisdiction to determine the relief concerning the acquisitive prescription claims. It is further Arbeidskroon's case that on the facts Mr Mkwanazi Snr has in any event failed to make out a case for acquisitive prescription. It is also disputed that either Mr Mkwanazi Snr or Jnr qualify as a labour tenants to be granted the relief for an award of ownership, grazing and water rights in terms of section 16(1)(a) and (d) of the LTA. Arbeidskroon also argued that the further alternative relief in paragraph 3 of the notice of motion to order the Director General to process and finalise the LTA application is essentially incompetent as the main relief in paragraphs 1 and 2 of the notice of motion cannot succeed.

[7] In a supplementary practice note filed on 30 July 2025, prior to the hearing of the matter, the Mkwanazis' stance in relation to the relief being sought shifted in two material respects. First, Mr Mkwanazi Snr no longer persisted in his claim to

⁸ Extension of Security of Tenure Act 62 of 1997 ("ESTA")

be a labour tenant⁹. Second, the Court was asked to rather postpone the acquisitive prescription and labour-tenant related claims in terms of the LTA *sine die* and to only grant the relief in prayer 3 of the notice of motion by compelling the Director-General and or the Special Master to process the Mkwanazi family's LTA application. Arbeidskroon for its part, persisted that the Court should not postpone the determination of any of the issues and rather decide them.

[8] At the hearing I raised with the parties my intention to obtain certainty whether an LTA application had in fact been lodged and accepted by the Department. Counsel agreed that the Court had the power to request such clarification. I therefore directed the Director-General to file an affidavit dealing with the existence and status of the document annexed as FA12¹⁰ to the founding affidavit, and the steps required to have been taken as prescribed by sections 16 to 18 of the LTA. The matter was then postponed providing the Director General an opportunity to file such an affidavit, and the parties to file supplementary submissions in response thereto.

[9] The Director-General filed its affidavit, on behalf of the Department, and confirmed that FA12 is a copy of an LTA application lodged and accepted on behalf of the Mkwanazi family before 31 March 2001 and that, for various reasons, it has not been processed in accordance with the relevant provisions of the LTA. The Director-General indicated that the Court is at liberty to refer the

⁹ This meant the relief sought in respect of section 16(1)(a) and (d) of the LTA as it concerns the first applicant was no longer viable.

¹⁰ This document annexed as FA12 was presented as proof of lodgment of the LTA-application with the Department.

matter back to its office so that the LTA application can be prosecuted in accordance with the provisions of the LTA.

[10] Against this background, four issues fall to be determined. Firstly, whether this Court has jurisdiction to determine Mr Mkwanaazi Snr's acquisitive prescription claim and whether that claim should be decided notwithstanding apparent disputes of fact. Secondly, assuming the court has jurisdiction, whether on the facts pleaded in the affidavits and with regards to the law, Mr Mkwanaazi Snr has made out a case for acquisitive prescription. Thirdly, how to treat the labour-tenant related claims, in circumstances where Mr Mkwanaazi Snr no longer persists to be a labour tenant and where Mr Mkwanaazi Jnr's alleged labour-tenant status is disputed. Fourthly, whether, and in what terms, an order should be granted to compel the processing of the LTA application and to regulate the further conduct thereof and how it affects the further conduct of Mr Mkwanaazi Jnr's labour tenant related relief. It is to these issues that the judgment now turns.

This Court's jurisdiction to determine the acquisitive Prescription claim

[11] Since jurisdiction is a matter of law and not of judicial indulgence¹¹, and concerns a court's lawful power to hear and determine a dispute¹² and to grant effective relief¹³, it must be determined upfront, as a threshold issue¹⁴.

¹¹ *Mhlango & Others v Mokoena* 2022 (6) SA 129 (SCA) at para 19.

¹² *Gcaba v Minister for Safety and Security* [2009] ZACC 26, 2010 (1) SA 238 (CC), 2010 (1) BCLR 35 (CC) at para 74, citing *Graaff-Reinet Municipality v Van Ryneveld's Pass Irrigation Board* 1950 (2) All SA 448 (A), 1950 (2) SA 420 (A) at 424. See further *Ewing McDonald & Co Ltd v M&M Products* 1991 (1) SA 252 (A) at 256G.

¹³ *Spendiff v Kolektor (Pty) Ltd* 1992 2 All SA 50 (A), 1992 (2) SA 537 (A) 551D, citing *Wright v Stuttaford & Co* 1929 EDL 10 at 42.

¹⁴ *S v Boesak* [2000] ZACC 25, 2001 (1) BCLR 36, 2001 (1) SA 912 (CC) at para 11; *Fraser v*

[12] Arbeidskroon submitted that this Court lacks jurisdiction to determine Mr Mkwana's acquisitive prescription claim because neither the Restitution Act¹⁵, the LTA, ESTA nor the LCA¹⁶ expressly confers jurisdiction on the Land Court to adjudicate claims under the Prescription Act. Relying on *Mathe*¹⁷ and *Lhulwini*¹⁸, Arbeidskroon emphasised that the Land Court is a creature of statute in terms of section 166(e) of the Constitution, has no general or plenary jurisdiction, and its powers must be carefully circumscribed by its enabling legislation. It was further contended that a prescription claim is neither "*incidental*" (under the repealed section 22(2)(c) of the Restitution Act) nor "*sufficiently connected*" (under section 24(1)(c) of the LCA) to the labour-tenant related relief, because the causes of action are conceptually distinct. Particular reliance was placed on *Temba Xulu*¹⁹, where this Court declined to assume jurisdiction over a trust-law dispute arising from a restitution settlement.

[13] Arbeidskroon further made the Court aware of the principle of continuance of jurisdiction as confirmed by *Thermo Radiant*²⁰ to assert that jurisdiction must be assessed as at the date of institution of the proceedings. That meant that Arbeidskroon wanted the court to assess this Court's jurisdiction to determine the

ABSA Bank Limited [2006] ZACC 24, 2007 (3) SA 484 (CC), 2007 (3) BCLR 219 (CC) at para 35; *Loureiro v Imvula Quality Protection (Pty) Ltd* [2014] ZACC 4, 2014 (5) BCLR 511 (CC), 2014 (3) SA 394 (CC) at para 31.

¹⁵ Restitution of Land Rights Act 22 of 1994

¹⁶ The Restitution Act, LTA, ESTA and LCA are referred to as the 'land reform statutes'

¹⁷ *Mathe & Others. v Lanseria Commercial Crossing (Pty) Ltd & Others* [2011] ZALCC 15 ("*Mathe*") para 42

¹⁸ *Lhulwini Mchunu Community v L Hancock & Others* [2020] ZALCC 1 ("*Lhulwini*") at para 11

¹⁹ *Temba Xulu and Others v The Master of the High Court and Others* (2024) ZALCC 20 ("*Temba Xulu*")

²⁰ *Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakers (Pty) Ltd* 1969 (2) SA 295 A at 310 D. The continuance of jurisdiction principle essentially entail that a Court's jurisdiction must be assessed as at the date of institution of the application or action.

issues before it under the pre-LCA framework because the application was launched in 2022.

[14] The Mkwanzis contended that the prescription claim is intertwined with the labour-tenant related relief and that it would be artificial, and inimical to the objects of land reform, to fragment the dispute across different courts. They submitted that the prescription issue is “*sufficiently connected*” to the labour-tenant related relief because the claims concern the same land, the same parties, and substantially the same history of occupation and use. In support they rely on *Mamahule*²¹ where the Constitutional Court endorsed a functional approach by the Land Claims Court to its ancillary powers to enable the effective exercise of its land-reform jurisdiction, and *Kham*²² where the Constitutional Court warned against unduly narrow constructions of a specialist court jurisdiction that would stultify its legislative purpose.

[15] These contentions must be assessed against the Land Court’s jurisdictional framework. Prior to 5 April 2024 the jurisdiction of the Land Claims Court (as it was then called) was primarily regulated by Chapter 3 of the Restitution Act²³, sections 29 and 30²⁴ of the LTA and section 20 of ESTA. In particular, section 22(2)(c) of the Restitution Act empowered that Court to decide an issue in terms of “*any other law*” not ordinarily within its jurisdiction where it was “*incidental to*”

²¹ *Mamahule Communal Property Association and Others v Minister of Rural Development and Land Reform* (CCT179/16) [2017] ZACC 12; 2017 (7) BCLR 830 (CC) (“*Mamahule*”)

²² *Kham and Others v Electoral Commission and Another* 2016 (2) BCLR 157 (CC); 2016 (2) SA 338 (CC) (“*Kham*”) para 40, with reference to *Chirwa v Transnet Ltd* [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC) at paras 47-54 and 101-113 and *Gcaba v Minister of Safety and Security* [2009] ZACC 26; 2010 (1) SA 238 (CC); 2010 (1) BCLR 35 (CC) (*Gcaba*) at para 57.

²³ Deleted by s. 36 read with item 4 of the Sch. to Act No. 6 of 2023 w.e.f. 5 April 2024.

²⁴ Both these sections were also deleted by the amendment reference in n 20 *supra*.

“*an issue*” within its jurisdiction and where it was in the interests of justice to do so.

[16] On 5 April 2024 the LCA came into operation. It re-established the Land Court as a Superior Court and reshaped the Court’s jurisdictional architecture by repealing (amongst other provisions) Chapter 3 of the Restitution Act and sections 29 and 30 of the LTA, while preserving (with amendments) section 20 of ESTA. Section 7(1) of the LCA provides, in general terms, that the Land Court has jurisdiction to determine matters in terms of the LCA and “*any other law*” that confers jurisdiction on it. It is implicit in the wording of that section that the “*any other law*” reference is a reference to at least ESTA, the LTA and the Restitution Act that also confer jurisdiction on the Land Court to decide disputes falling under those statutes.

[17] Since a claim for acquisitive prescription claim does not resort under either ESTA, the LTA and the Restitution Act the Mkwanzis rely on section 24(1)(c) of the LCA. That provision expressly empowers this Court to decide “*any issue in terms of any other law, which is not ordinarily within its jurisdiction but is sufficiently connected to a matter within its jurisdiction, if the Court considers it to be in the interests of justice to do so.*” The conferral of jurisdiction is therefore conditional: the party invoking it must show (i) a matter within this Court’s jurisdiction; (ii) an “other law” issue not ordinarily within it; (iii) a sufficient connection between them; and (iv) that the interests of justice favour this Court deciding the “other law” issue.

[18] With the statutory framework and stated legal principles in mind, the starting point in resolving the jurisdiction issue in this instance is to determine whether

there is an issue before the court over which it in fact has jurisdiction. The next step is to determine whether there is an issue that falls under another law over which the Land Court does not ordinarily have jurisdiction. Lastly, to determine whether the '*other law*' issue is sufficiently connected to the matter over which the Court does have jurisdiction.

[19] This first step can be disposed of summarily. In this instance the Court does have jurisdiction over the labour-tenant related relief as claimed in prayers 2 and 3 of the notice of motion. In respect of the second step, it is patently apparent that the Prescription Act is not mentioned in any of the land reform statutes, which means that this Court does not ordinarily have jurisdiction to determine an issue that falls under the Prescription Act. The last step is then to decide whether the acquisitive prescription claim is '*sufficiently connected*' to the matter over which the Court does have jurisdiction.

[20] The meaning of "*sufficiently connected*" in section 24(1)(c), while seemingly obvious, is not defined in the LCA. Applying the interpretive approach in *Endumeni*²⁵, the starting point is the ordinary language. "*Connected*" denotes a link, relationship or association between two things. The adverb "*sufficiently*" qualifies that relationship. It requires that the link must be of an adequate degree to justify what would otherwise be an exceptional step. The Land Court deciding an issue under "*any other law*" that does not ordinarily fall within its subject-matter jurisdiction. The phrase therefore conveys a threshold of closeness. It is not enough that the "*other law*" issue has some marginal or superficial association

²⁵ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA)

with the land related matter. The connection must be real and substantial rather than tenuous, remote or merely incidental in the everyday sense.

[21] The purpose and context of section 24 of the LCA supports the interpretation given to “*sufficiently connected*” stated above. The section is concerned with the Court’s powers in the adjudication of land related matters and is part of a statutory framework aimed at effective, coherent and just resolution of land related disputes. Section 24(1)(c) therefore serves a dual purpose. On the one hand, it equips the Land Court to decide questions arising under other statutes where that is necessary (or materially useful) to resolve a land matter properly within its jurisdiction, thereby avoiding fragmentation of disputes, duplication of proceedings, increased cost and the risk of inconsistent factual findings. On the other hand, it protects the specialist character of the Court by ensuring that it does not become a general forum for disputes that only happen to have a peripheral connection to land. It appears that the requirement of “*sufficient connection*”, coupled with the further requirement that the Court must consider it to be in the interests of justice to decide the issue, operates as a gatekeeping mechanism.

[22] Having stated my rationale for giving meaning to the words “*sufficiently connected*” I am satisfied that the acquisitive prescription claim in this instance is sufficiently connected to the labour-tenant related relief. Both sets of relief concern the same portion of land, the same parties, and the same long history of residence, use and occupation on Rietfontein. The factual enquiry implicated by prescription, how, on what basis, and with what asserted rights the Mkwanzazi family occupied and used the land, overlaps materially with the factual enquiry implicated by the labour-tenant related claims. To require separate proceedings

in different courts on those interwoven facts would risk duplicated litigation, increased costs, delay and inconsistent factual findings. The same reasons also support a conclusion why it is also in the interests of justice for this Court to determine the prescription claim.

[23] In respect of the argument that an acquisitive prescription claim and labour tenancy related relief are mutually destructive causes of action, I disagree. The argument conflates jurisdiction with merit. The enquiry under section 24(1)(c) is a threshold one concerned with the power of the court to determine, whether the '*other law*' issue is sufficiently connected to a matter within this Court's jurisdiction, and whether it is in the interests of justice for this Court to decide it. The enquiry is not yet concerned with the merits of the acquisitive prescription claim. The alleged incompatibility between a claim relying on labour tenant status and acquisitive prescription may play a part when the Court determines the merits of either of the claims, but it does not dispose of the issue of the Court's jurisdiction. Once the jurisdictional threshold is met, the Court remains fully entitled, indeed obliged, to determine the claims on their merits and at that point it may be relevant that the claims are mutually destructive of each other.

[24] Nor am I persuaded by the submission that the pre-constitutional pedigree of the Prescription Act and the constitutional genesis of the land-reform statutes are so "disparate" that no nexus can exist between them. The mere fact that prescription is rooted in the common law does not render it conceptually or normatively incapable of interacting with land-reform and eviction disputes. Indeed, prescription has significant implications for land and security of tenure, and its application in a particular case may either entrench or reconfigure

land-holding patterns. It would not be consistent with the overarching objective of the land reform legislative framework, if a Court established precisely to adjudicate complex land-rights disputes were precluded, as a matter of principle, from determining whether prescription has operated in relation to land that is, for example, the subject of a labour-tenant related dispute before it.

[25] It is necessary to state that the conclusion reached in this judgment does not mean that the Land Court will in the future invariably exercise incidental jurisdiction over a claim or an issue under the Prescription Act, whenever that statute is invoked as the '*other law*'. Each challenge must be assessed on its own facts, against the meaning of '*sufficiently connected*' and the relevant interests of justice considerations. It follows that the Court may, on one set of facts, properly assume jurisdiction to determine another law issue, yet, on different facts, the Court may properly decline to do so because the connection is too remote or collateral.

[26] Lastly, in respect of the continuance of jurisdiction argument and to the extent that Cowen DJP in *Temba Xulu*²⁶ remarked that it might be "debatable" whether the Restitution Act or the LCA applies to pending matters, section 35 of the LCA resolves the debate. In particular, section 35(1)(b)(i) of the LCA expressly provides that proceedings instituted in the Land Claims Court and still pending when the LCA commenced must be continued and concluded under the LCA and, for that purpose, are deemed to have been instituted under it, unless the Court finds that the interests of justice require the matter to be concluded under the pre-LCA framework. The default position is therefore clear and does not conflict

²⁶ Note 19 *supra*, par 26

with the principle of continuance of jurisdiction, which operates subject to the Legislature's power to alter the basis for a court's jurisdiction, which it has done in respect of the Land Court with the enactment of the LCA with appropriate measures for pending matters to not negate the court's jurisdiction. This Court's basis for jurisdiction over all extant matters is therefore assessed and governed by the LCA unless the interests of justice require otherwise.

[27] I therefore find that this court does have jurisdiction to determine the acquisitive prescription claim by Mr Mkwanazi Snr. However, whether the factual and legal requirements to succeed with his claim have been met requires different considerations, to which I now turn.

Mr Mkwanazi Snr's claim for acquisitive prescription

[28] I will briefly capture the settled legal requirements a party must establish to succeed in a claim for acquisitive prescription. Thereafter, I will determine, having regard to the manner in which Mr Mkwanazi Snr has approached the Court for the relief, whether entitlement to the relief has been established.

[29] Section 1 of the Prescription Act provides:

"Subject to the provisions of this Chapter and of Chapter IV, a person shall by prescription become the owner of a thing which he has possessed openly and as if he were the owner thereof for an uninterrupted period of thirty years or for a period which, together with any periods for which such thing was so possessed by his predecessors in title, constitutes an uninterrupted period of thirty years."

[30] Section 6 of the Prescription Act, dealing with servitudes, similarly requires that the claimant must openly and “*as though entitled to do so*” exercise the rights of the servitude for an uninterrupted period of 30 years.

[31] As the court found in *Stoffberg*²⁷ the meaning of these provisions in the Prescription Act is well established. The continuous possession required by section 1 is the physical detention²⁸ of the thing (*corpus*) with the intention of an owner²⁹. In addition, the possession must be without force, in the absence of consent on the request of the possessor, openly and so patent that the owner, with the exercise of reasonable care, would have observed it³⁰. All these requirements are expressed in the maxim *nec vi, nec clam* and *nec precari*.

[32] In *Bisschop*³¹, the court clarified further that mere occupation of property for a period of thirty years does not necessarily vest in the occupier a prescriptive title to the ownership of that property. In order to create a prescriptive title, such occupation must be a use adverse to the true owner and not occupation by virtue of some contract or legal relationship which recognises the ownership by someone else. In *Pezula*³² the SCA found that use or occupation with the owner’s consent, whether express or tacit and where the owner has reserved at all times the right to revoke such consent, is inconsistent with the occupier acting as if

²⁷ *Stoffberg N.O and others v City of Cape Town* [2019] JOL 44838 (SCA) para 14 (although in the context of a matter that concerned the application of the 1943 Prescription Act, the provisions in the 1969 read substantially the same)

²⁸ The common law *civilis possessio*

²⁹ *animus domini*; *Stoffberg supra*

³⁰ *Kruger v Joles Eiendom (Pty) Ltd and another* 2009 (3) SA 5 (SCA); [2009] 1 All SA 553 (SCA) para 13.

³¹ *Bisschop v Stafford* 1974 (3) SA 1 (A) with reference to *Malan v Nabygelegen Estates* 1946 AD 562

³² *Pezula Private Estate (Pty) Ltd v Metelerkamp* 2014 (5) SA 37 (SCA) with reference to *Morkels Transport (Pty) Ltd v Melrose Foods (Pty) Ltd & another* 1972 (2) SA 464 (W) at 478A-482A.

owner and cannot establish an acquisitive prescription claim, whether for a claim for ownership of land or a servitude, however long it continues.

[33] A claim to acquire ownership or water and grazing servitudes by acquisitive prescription has an inherently expropriatory effect on the registered owner, because it results in the involuntary creation of a real burden over the servient land. In respect of servitudes our courts have consistently required strict clarity as to the content and extent of any servitude alleged to have been acquired by prescription³³.

[34] Finally, the onus to prove all the elements of an acquisitive prescription claim rests on the party that relies thereon, and the continuous period may include possession by the predecessors in title³⁴.

[35] With the foreshadowed legal requirements to establish a claim for acquisitive prescription in mind, I now turn to consider whether the acquisitive prescription claim should be determined at this juncture since Mr Mkwanazi Snr's approached this court on motion seeking final relief and it is apparent that the affidavits reveal material disputes of fact with regards to this issue.

[36] When a dispute arises in motion proceedings, a court has a few procedural choices. It may, determine the matter on the papers by applying the *Plascon-Evans*³⁵ rule and in an appropriate case exercise any of the options stated in Land Court Rule 33(8)(a-c)³⁶. Where material disputes were reasonably

³³ *Kruger v Joles Eiendom (Pty) Ltd and another* 2009 (3) SA 5 (SCA); [2009] 1 All SA 553 (SCA) and the authorities referred to. See also: *Eden Crescent Share Block Ltd v Olive Marketing CC and Others* [2022] ZASCA 177; 2023 (3) SA 476 (SCA) in the context where a contract did not describe or define the servitudes clearly.

³⁴ *Welgemoed v Coetzer* 1946 TPD 701 at 720; *Bisschop v Stafford* at 7H-9D

³⁵ *Plascon-Evans Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)

³⁶ (8) Where an application cannot properly be decided on affidavit, the Court may dismiss the

foreseeable and the applicant nonetheless pressed ahead on motion for final relief, the Court may dismiss the application.

[37] It was suggested on behalf of Mr Mkwanazi Snr that there are essentially no material disputes of fact as Arbeidskroon cannot contradict the evidence by Mr Mkwanazi Snr. Furthermore, it was suggested that if the Court does find the existence of a dispute that it should exercise its discretion and refer the matter to oral evidence.

[38] I am persuaded that in the present matter there are material disputes on the papers in respect of the acquisitive prescription and grazing and water servitudes claims. Those disputes are not contrived. There is, however, not a formal application to refer the disputes to oral evidence in order to assist the court in exercising its discretion. I am therefore constrained to approach the prescription claim in accordance with the principles governing disputes of fact in motion proceedings, as laid down in *Plascon-Evans*.

[39] That said, in the context, circumstances and facts of this case, it is neither necessary nor appropriate to invoke rule 33(8)(a-c) to direct a referral to oral evidence or to postpone the determination of the relief pending the outcome of the LTA application. However, although it could be said that the factual disputes in this matter were foreseeable, dismissal of the application on that basis alone is also not warranted.

application or make any other order with a view to ensuring a just and expeditious decision. Without limiting this discretion, the Court may, on such conditions as it may determine - (a) order that oral evidence be heard on specific issues with a view to resolving any dispute of fact; and (b) order any deponent to appear personally or grant leave for him or her or any other person to be subpoenaed to appear and be examined and cross-examined as a witness; or (c) refer the matter to trial with appropriate directions on further procedure.

[40] I am rather mindful, having regard to the interests of judicial economy, the history of the dispute and the need for finality on whether ownership or servitudes have been acquired by Mr Mkwanazi Snr by acquisitive prescription, that the just and expeditious course is to determine the acquisitive prescription claims at this juncture. This course is also appropriate since I intend to determine the matter on Mkwanazi's Snr's version only to avoid any factual disputes. I now turn to the claim to the merits of the acquisitive prescription claim.

[41] The starting point is the nature of Mr Mkwanazi's occupation when it commenced. On his own account he came to Rietfontein in about 1962 to work for the then owner, the late Louwrens Snr. He alleges that in June 1969 he and his late wife established their homestead on the area now described as the Mkwanazi property, and he expressly linked their right to do so to an agreement with the late Louwrens Snr. It was alleged that they would, for the period 1962 – 1969, work for the Louwrens family (for wages and produce) and, in return, they would be “*free to live on, build and keep a home on the property*”. On that version Mr Mkwanazi Snr's original entry and continued residence on the relevant portion of the Rietfontein farm was by permission and pursuant to an arrangement with the owner.

[42] Possession that originates and continues by consent is, in the language traditionally used in our law, *precario*. It is not “*possession as if owner*” for purposes of section 1 of the Prescription Act, nor is it the open exercise of a servitude right “*as though entitled*” for purposes of section 6. Where occupation begins by consent, acquisitive prescription will not run unless and until the occupier clearly and unequivocally repudiates the permissive basis of that initial

occupation and thereafter possesses adversely to the owner. Mr Mkwanazi Snr's affidavits contain no allegation of any such conversion to adverse possession at any identifiable point, still less one that endured uninterrupted for the requisite 30-year period.

[43] On the contrary, Mr Mkwanazi's own narrative repeatedly reflects recognition of the Rietfontein owners' title and of his family's residence as being accommodated within the framework of their relationship with Rietfontein's owner. First, there is an acknowledgement that Rietfontein belonged to Louwrens Snr and that it later passed to Arbeidskroon. Second, Mr Mkwanazi Snr describes his residence and use as having been tolerated and accepted by the owners for many years. None of that is inconsistent with occupation with consent by the owner. The critical feature is not the length of occupation but the substance of the occupation. A long period of permissive occupation does not morph into adverse possession merely because the owner did not object.

[44] Mr Mkwanazi's own conduct, on his own version, also sits uneasily with the proposition that he regarded himself as owner by operation of law after the expiry of the alleged 30-year period (1969 to 1999). In 2000 he lodged the LTA-application. Whatever his personal understanding of that process, a section 16 LTA-application is premised on the land being owned by another person and on the applicant seeking an award of land rights under the LTA. It is not conduct ordinarily consistent with an occupier who believes that ownership has already vested in him by acquisitive prescription and who acts accordingly. This is a strong indicator that Mr Mkwanazi Snr did not possess *animo domini* required to establish a prescription claim.

[45] It follows that, on Mr Mkwanazi Snr's own version, the necessary element of adverse possession (*nec precario*) is absent. Without that element, the enquiry cannot progress to the question whether the 30-year period was uninterrupted or completed. In other words, even if one assumes that Mr Mkwanazi Snr's occupation was in the open, continuous and for a long period of time, the statutory requirement that it be "*as if he were the owner*" is not met where the occupation is expressly rooted in permission granted by the acknowledged owner and is not shown to have been converted into adverse possession by a clear repudiation of that permission.

[46] The same difficulty is dispositive of the alleged prescriptive servitudes. Mr Mkwanazi Snr's own account locates the family's grazing and water use within the same historical arrangement that allowed them to reside and live on the farm while rendering labour. He does not allege facts demonstrating that he openly exercised a clearly defined right of grazing or water access as though he were entitled to it, adversely to the owner, for a continuous 30-year period. Moreover, the claim for the servitudes must also fail because Mr Mkwanazi Snr's description of these servitude rights is framed in broad, general terms. A servitude capable of acquisition by prescription must be ascertainable and exercised as of right. It cannot rest on an indistinct assertion of general access to grazing and water associated with residence on a farm.

[47] For these reasons, accepting Mr Mkwanazi Snr's factual allegations at their highest, the requisites of acquisitive prescription are not established. The claim in prayer 1 must therefore fail.

The second applicant's labour-tenant related claim

[48] Given my findings in respect of the acquisitive prescription claim, and Mr Mkwanazi Snr's abandonment of any relief premised on his own alleged labour-tenant status, the remaining relief that requires attention is materially narrower. It concerns, first, Mr Mkwanazi Jnr's claim to be awarded ownership and/or servitude rights under the LTA on the basis that he is a labour tenant. Secondly, how the relief directed at compelling the Director-General to process and finalise the long-outstanding section 16 LTA application affects the determination of the labour tenant related relief by Mr Mkwanazi Jnr.

[49] The LTA defines a labour tenant by reference to three core elements: the right to reside; the right to crop or graze (or to have had such right); and the provision of labour to the owner or lessee as consideration for those rights, coupled with the generational component that a parent or grandparent resided on a farm and similarly had cropping or grazing rights in return for labour. It is also significant that the LTA directs that, for the purpose of establishing whether a person is a labour tenant, the Court must have regard to the "*combined effect and substance*" of all agreements entered into between the person asserting labour-tenant status (and his or her parent or grandparent) and the owner or lessee of the land concerned³⁷. The legislature therefore envisaged that a person's labour-tenant status in general will turn on a careful reconstruction of historic arrangements across generations, often involving contested evidence as

³⁷ Section 2(6) of the LTA

to the nature of the residence, the extent of the grazing/cropping rights, and the character and incidence of labour.

[50] The scheme of the LTA also makes plain that the status of an applicant as a labour tenant may be disputed and is, in that event, designed to be ventilated either through the LTA process or the Land Court. Section 16 of the LTA confers the right to apply for an award of land, while section 17 then prescribes the notice of application and initial procedure. That process requires that the application is lodged with the Director-General, who must notify the owner and other right-holders and call for information; the owner must then, within one calendar month, inform the Director-General whether he or she admits or denies that the applicant is a labour tenant and, if denied, the grounds for that denial.

[51] If the owner does not admit that the applicant is a labour tenant, the Director-General must, at the request of either party, refer the application to this Court. In addition, any person whose rights are affected has the right to participate in the proceedings before the arbitrator and the Court. These provisions are not consistent with the notion that a labour-tenant applicant must first obtain, in separate proceedings, a definitive declaration of labour-tenant status before the administrative process can lawfully commence. On the contrary, the LTA anticipates that a labour-tenant status claim may be disputed, and it prescribes how such disputes are to be managed and, if necessary, referred for adjudication, either to the court or an arbitrator.

[52] This is reinforced by the powers conferred on the Court (and an arbitrator) once an LTA application is before it. Section 22 expressly empowers the Court, when dealing with an application referred to in section 16, to determine whether

an applicant is a labour tenant “*if that is in dispute*”³⁸. The LTA therefore contemplates that labour-tenant status can be a contested question within section 16 of the LTA application process, and that it is properly determined by the Court as part of that process when a referral occurs.

[53] However, also important for present purposes, the LTA goes further. Section 33(2) provides that the Court has jurisdiction and the necessary or reasonably incidental powers to determine any justiciable dispute arising from the statute. Section 33(2A) provides, in express terms, that *at the instance of any interested person (including a person who avers that he or she is a labour tenant), irrespective of whether or not such person has lodged an application in terms of section 17*, the Court may determine whether a person is a labour tenant. The consequence is twofold. First, as a matter of construction, the LTA plainly permits this Court to determine a person’s labour-tenant status even while the administrative process under section 16 and 17 is pending (or even where no section 16 application exists). Secondly, that does not mean that the Court must, in every case, decide someone’s labour-tenant status immediately or on motion. It means that the Court has the power to do so where it is just, practical and procedurally fair.

[54] In this matter, the evidential and procedural context is important. The Court called for clarity on whether the LTA application was in fact lodged and accepted. In response, the Director-General filed an affidavit confirming, in substance, that FA12 is a copy of an application in terms of section 16 of the LTA, lodged on behalf of the Mkwana family before the cut-off date; that it was accepted as an

³⁸ Section 22(4)(a) of the LTA

application in terms of sections 16, 17 and 18 of the LTA; and that it has not yet been processed in accordance with sections 17(2) to 17(5). The Director-General also indicated that it does not oppose the alternative relief that the matter be referred back to it to process the section 16 application in accordance with section 17.

[55] Against that backdrop, although section 33(2A) empowers this Court to determine whether Mr Mkwanazi Jnr is a labour tenant, the manner in which a labour-tenant status must be established under section 2(6), by having regard to the combined effect and substance of the relevant agreements across generations, signals that the enquiry is much more fact-sensitive and, in this matter, is likely to require *viva voce* evidence when it is to be determined. The affidavits (and the parties' own submissions) demonstrate that Mr Mkwanazi Jnr's alleged labour-tenant status is disputed on material issues going to the heart of the definition. In circumstances where the parties have not asked that the matter be referred to oral evidence, and where the LTA application exists that is specifically designed to crystallise those kind of disputes, facilitate participation by affected persons, and trigger either a mediated resolution or a referral to this Court, it is both fair and practical to permit that the LTA application process runs its course before the Court is asked to determine Mr Mkwanazi Jnr's status as a labour tenant.

[56] The relief that follows is therefore crafted to (a) give effect to Mr Mkwanazi Snr's abandonment of his labour-tenant claim, (b) preserve Mr Mkwanazi Jnr's position pending the finalisation of the LTA application, and (c) impose obligations

on the Director-General to finalise the LTA application to avoid further delay in the finalisation of this matter.

[57] In respect of costs the Director-General was directed to address costs, including why its office should not bear the costs of both Mr Mkwanazi Snr and Jnr and Arbeidskroon in circumstances where the existence and status of the LTA application had been squarely raised on the papers, yet no affidavit was filed until the Court intervened. The information about the veracity of the LTA application was plainly within the Department's knowledge and ability to verify.

[58] That said, the Director-General and the Special Master were not parties to the disputes on acquisitive prescription and Mr Mkwanazi Snr's labour-tenant related claim, and Arbeidskroon has been successful in opposing that relief. It would therefore not be fair to saddle the Director-General with the costs of issues in which the Director-General had no substantive interest. At the same time, consistent with the approach ordinarily followed in this Court, that costs orders are granted only in exceptional circumstances, I am not persuaded that this matter warrants an adverse costs order against Mr Mkwanazi Snr in respect of the failed acquisitive-prescription claim or the abandoned labour-tenant related relief. In respect of the outcome of that relief each party should bear its own costs.

[59] The costs relating to the remaining relief (prayers 2 and 3 insofar as they concern Mr Mkwanazi Jnr), including the costs occasioned by the Director-General's belated participation, stand over for determination once the LTA application process has run its course and the further conduct of the matter is determined. At that stage the Court will be better placed to assess whether,

and to what extent, the Department's delay and conduct justify a costs order in relation to the outstanding LTA relief.

Conclusion

[60] For all the reasons foreshadowed I make an order in the following terms:

1. The first applicant's claims for ownership and servitudes by acquisitive prescription in respect of the Rietfontein farm are dismissed.
2. The first applicant's claim to be awarded land and/or servitudes, in respect of the Rietfontein farm, on the basis of being a labour tenant, as claimed in prayer 2 of the notice of motion, is dismissed.
3. The second applicant's claim for an award of land and/or servitudes, in respect of the Rietfontein farm, on the basis of being a labour tenant, is postponed *sine die*.
4. The first respondent (the Director-General) is directed to process the applicants' application dated March 2000 in terms of the relevant provisions of the Land Reform (Labour Tenants) Act 3 of 1996 (the "LTA") within 30 days of this order, and to take all reasonable steps to ensure the finalisation of that process within six months of the date of this order.
5. The first respondent shall, within a month after the expiry of the sixth month period stated in paragraph 4 above, file an affidavit with the

Registrar and serve it on the applicants and the third respondent reporting on:

- 5.1 the steps taken in compliance with paragraph 4 of this order.
 - 5.2 the status of the LTA application; and
 - 5.3 the further steps and anticipated timelines (if any) required for its finalisation.
6. If the first respondent is unable to finalise the LTA process within six months of the date of this order, either the applicants or the third respondent may enrol the matter for further directions and/or determination of the remaining relief. In the event that the parties rather seek the determination of the remaining relief, either party may supplement its papers in respect of the second applicant's claim as a labour tenant, irrespective of the status of the LTA application process.
 7. In respect of the unsuccessful relief claimed in prayers 1 and 2 of the notice of motion insofar as they relate to the first applicant, each party shall pay its own costs.
 8. The costs relating to the remaining relief, including the costs occasioned by the filing (and the necessity) of the first respondent's affidavit pursuant to the Court's directive, stand over for later determination.


A MONTZINGER
Acting Judge of the Land Court

Appearances:

Attorneys for first and second applicants:	Webber Wentzel Mr A Khumalo
Counsel for first and second applicants:	Mr N Ferreira Ms N Luthuli Ms M Kruger
Attorneys for first and second respondents:	State Attorney Mr S. P. Mathebula
Counsel for first and second respondents:	Mr. M Nazi
Attorneys for third respondent:	Soretha Venter Attorneys Mr S Holland
Counsel for third respondent:	M. G. Roberts SC Ms E Robers