

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2024-109327

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 18 February 2026

E van der Schyff

In the matter between:

LEON MYBURGH

APPLICANT

And

THE MAMEROTSE COMMUNITY
PROPERTY ASSOCIATION

FIRST RESPONDENT

THE MINISTER OF RURAL DEVELOPMENT
AND LAND REFORM

SECOND RESPONDENT

JUDGMENT:

Van der Schyff J

Introduction

[1] The applicant, Mr. Myburgh, approached the court for final relief. This is an application against the first respondent, the Mamerotse Community Property

Association (CPA), to grant Mr. Myburgh access to the CPA's farms and to permit him to remove his Kudu and Nyala from the farms. Mr. Myburgh claims ownership of the Kudu and Nyala on the farm.

- [2] This *rei vindicatio* application was preceded by two urgent applications, one in which the matter was struck from the roll for lack of urgency, and the second was removed from the urgent roll, with a tender for costs, on receipt of the CPA's supplementary affidavit. Mr. Myburgh elected not to prosecute the application on an urgent basis.
- [3] It is trite that the primary purpose of *rei vindication* is to protect ownership rights, allowing any person who can establish ownership to recover their property.

The factual averments

- [4] The factual averments, as extracted from the founding and answering affidavits, are that Mr. Myburgh and the CPA entered into an agreement in February 2018. Mr. Myburgh believed this to be a lease agreement. The written agreement, signed by Mr. Myburgh and on behalf of the CPA, reflects that the parties agreed that Mr. Myburgh leased the property described, for among others 'game breeding' for a period of five years. The parties also recorded the following:
 - " 6.3.1 The game on the farm shall be sold to and bought by the Lessee (Mr. Myburgh) upon the finalization of game count to be done end of August 2018 which game shall become the property of the Lessee:-
 - 6.3.2 Upon the termination of the lease the parties shall conduct a game count of all the game on the property and the Lessor shall purchase the game."
- [5] On 18 March 2018, a game count was conducted by Jonnic Aviation Helicopter Services. The Game Evaluation Sensus report indicates the presence of the following game on the farm: Impala – 62, Zebra -6; Giraffe – 3, Warthog -5.' The report indicates a 90% count accuracy. Mr. Myburgh states that it was agreed between himself and the CPA that he would pay R150 000.00 for the game already

on the farm. He attached proof of payment, indicating that he paid the amount in three instalments to the CPA's account.

- [6] Mr. Myburgh then purchased a Nyala bull and four Nyala ewes in February 2019. In April 2019, he purchased 10 Kudu. In May 2019, he purchased an additional four Impala and six Kudu. In June 2019, he purchased one Kudu and 28 Impala, and on 14 July, he purchased a further five Nyala ewes. During the term of the lease agreement, various animals were sold, culled, or removed from the farm.
- [7] Mr. Myburgh informed the CPA's chairman of his intention to terminate the lease agreement in April 2024 and attached correspondence evidencing the parties' mutual agreement to terminate. Subsequent to the termination, however, Mr. Myburgh was denied access to the farms and denied the right to relocate the animals from the farm. An arrangement was later agreed to ensure the well-being of the animals, Mr. Myburgh claims to be his.
- [8] The CPA corresponded with Mr. Myburgh's attorney. The CPA denied Mr. Myburgh's ownership of the game and called on him to prove it. The CPA claims that the agreement of sale of the animals is unlawful due to non-compliance with clause 7 of the CPA's constitution.
- [9] In this court, Mr. Myburgh is only seeking restoration of the Kudu and Nyala on the farm. He accepts, for purposes of the application, that a factual dispute exists pertaining to the purchase of the game that was on the farm when the lease agreement was concluded. He thus abandoned the relief sought in respect of those animals.
- [10] He claims, however, that the evidence proves that at least two of the species which are currently on the farm, the Nyala and Kudu, were not on the farm when he initially took occupation of the farm. These species were subsequently independently purchased and introduced.
- [11] In the first answering affidavit, the CPA states that the lease agreement is not disputed. The CPA states that the 'alleged sale' of their animals was in contravention

of their constitution. They further contend that the counting process relied on by Mr. Myburgh is not accurate as "it speaks of 90% accuracy, which means it is not 100% and therefore it cannot be relied upon, or it creates a problem as to how many animals to date which constitute 10% balance on counting."

Considering the facts

- [12] The CPA does not deny in the first opposing affidavit that Mr. Myburgh bought animals that he released on the farms. As to the averment that he bought the specific number of different species of animals, the CPA answers: "We are not involved here. They [the invoices] do not take his issue anywhere. We are not involved there; we know nothing about that because it was not part of our lease". The CPA also states that "we were not aware of any animals he purchased somewhere and moved into our farm. He must have to inform us, so that we could know which animals he bought, so there could be proper distinction between our animals and his." (*sic*)
- [13] In summary, the CPA's opposition to the relief sought, as evidenced by the initial opposing papers, is that the agreement regarding the animals on the property at the time the agreement was signed is unlawful, and that they have no knowledge of other animals brought onto the farm by Mr. Myburgh. It is only in the CPA's supplementary opposing affidavit, filed after Mr. Myburgh filed his replying affidavit, and in answer to the supplementary founding affidavit filed, that the CPA claims that there were indeed Nyala and Kudu on the properties when the lease commenced.
- [14] The CPA then filed a further supplementary affidavit and requested the court's indulgence in accepting the affidavit. The CPA states that at the time of deposing to the answering affidavit, the information contained in the further supplementary affidavit was not available. The CPA raised a point of *lis pendens* in this affidavit, claiming that the urgent application is still pending.

Do the papers disclose a bona fide factual dispute?

- [15] The question at the core of the *rei vindicatio* application is whether Mr. Myburgh has made out a case that he is the owner of the Nyala and Kudu on the farm, or whether further oral evidence is required to prove ownership.
- [16] It is common cause that the lease agreement stipulated that the properties leased by Mr. Myburgh would, among others, be used for game breeding. It is also common cause that the agreement concluded between Mr. Myburgh and the CPA provided for the sale of game. The validity of the agreement of sale is challenged, but not the fact that such an agreement was concluded. It is likewise not disputed that a game count was conducted and that a price was agreed between Mr. Myburgh and the person purporting to represent the CPA, pursuant to which an amount of R150 000 was paid into the CPA's bank account for the game reflected in the Game Evaluation Sensus. The Sensus report does not reflect the presence of the species Kudu and Nyala.
- [17] Mr. Myburgh clearly stated at the outset of the litigation that there was game on the farm and that he introduced Kudu and Nyala. It is, however, only in a supplementary answering affidavit that the CPA avers, without substantiating the averment, that Kudu and Nyala were on the farm at the time the lease agreement was concluded. The CPA fails to provide any explanation from the person who acted on its behalf at the time the agreement was concluded. The CPA fails to explain why it accepted the three-installment payment of R150 000.00, which amount was paid into the CPA's bank account.
- [18] Can it then, in these circumstances, be said that a material dispute of fact arose regarding the ownership of the Kudu and Nyala that renders it impossible to determine this issue on application? The time-tested principle set out in *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1165 finds application in this matter. Murray AJP explained:

'A bare denial of the applicant's material averments cannot be regarded as sufficient to defeat [the] applicant's right to secure relief by motion proceedings in appropriate cases. Enough must be stated by [the] respondent to enable the Court to conduct a preliminary investigation ... and

to ascertain whether the denials are not fictitious intended merely to delay the hearing. ... The respondent's affidavits must at least disclose that there are material issues in which there is a bona fide dispute of fact capable of being decided only after viva voce evidence has been heard.'

- [19] In this matter, the court is faced with a bare, belatedly raised statement that Kudu and Nyala were on the farm at the time the lease agreement was concluded. The deponent to the answering affidavit does not provide the basis for the averment, nor does he explain why the statement is only raised at such a late stage, or how he has the required knowledge to make such a statement. An unsubstantiated statement, like a bare denial, cannot delay or defeat an applicant who approaches the court on motion.
- [20] Mr. Myburgh, on the other hand, presents evidence that an agreement was concluded in terms of which the parties agreed that he would purchase all the game on the farm from the CPA. On termination of the lease, the CPA would have then purchased all the game on the farm from him. It was in both parties' interest that the initial inspection be correct. The game count was completed with a 90% accuracy rate, and the agreed purchase price was paid. Whether this agreement is valid is not an issue before this court, because the validity of the agreement, and not the fact of its conclusion, is in dispute. It supports Mr. Myburgh's averment that there were no Kudu and Nyala on the farm and that he introduced Kudu and Nyala to the property. He attaches invoices as evidence that he purchased Kudu and Nyala. Counsel for the first respondent made much of the fact that the invoices were not signed, and that there is no indication or external confirmation of how many of the purchased animals were actually received at the farm. Mr. Myburgh's evidence is, however, sufficient in light of the bare denial of the CPA.
- [21] I am of the view that the papers filed off record do not support a finding that a dispute of fact regarding the introduction of Kudu and Nyala, and thus the ownership of the Kudu and the Nyala, exists. Mr. Myburgh has made out a case that he introduced Kudu and Nyala into the leased premises, that he is the owner of the said species, and that he is therefore entitled to remove them from the said premises.

Lis pendens

- [22] Mr. Myburgh clearly stated that the second urgent court application was aborted after the receipt of the CPA's supplementary opposing papers. The urgent court application is no longer a live application and *lis pendens* do not come into the fray. When the application was removed from the urgent court roll, wasted costs were tendered.

Mis-joinder

- [23] The CPA persisted with their point *in limine* of misjoinder. Counsel submitted that the second respondent was cited solely to ensure that this court has jurisdiction to hear the matter, since the farms in question are situated in the North-West Province.
- [24] The CPA's principal place of business is in Brits, North West Province. Although Brits is geographically located in the North-West Province, it falls within the jurisdiction of the Gauteng High Court.¹ The CPA suffered no prejudice because of the citation of the second respondent, and no relief is sought against the second respondent.

Costs

- [25] The principle that costs follow success applies. The matter is not overly complicated and does not justify costs on scale C.

ORDER

In the result, the following order is granted:

- 1. The points *in limine* regarding *lis pendens* and mis-joinder is dismissed.**

¹ On 29 March 2018, Government Notice 408 was published in Government Gazette 41552. Herein, the magisterial districts over which the North West Division of the High Court has jurisdiction are set out. Madibeng is not included.

2. The First Respondent, the Mamerotse Community Property Association is ordered to grant access to the applicant, Mr. L. Myburgh, to the farms Vogelfontein and Vaalboslaagte, North-West Province, to enable him to capture and remove his Nyalas and Kudu.
3. The First Respondent is to pay the costs of the application, including costs of counsel, on scale B.


 E van der Schyff
 Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicant:

Adv. W. Gibbs

Instructed by:

Payne Steynberg Inc.

For the first respondent:

Adv. D. Melaphi

Instructed by:

M.E. Makgopa Attorneys

Date of the hearing:

16 February 2026

Date of judgment:

18 February 2026