



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 30165/21

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 17 June 2026

In the matter between:

DEBEER: JACOB BERNARD

FIRST APPLICANT

DE BEER: MARGRIETHA WILHEMINA

SECOND APPLICANT

And

RABBONI CHRISTIAN SCHOOL (PTY) LTD

1st RESPONDENT

DEPARTMENT OF EDUCATION

2nd RESPONDENT

THE MINISTER OF BASIC EDUCATION

3rd RESPONDENT

THE MEMBER OF THE EXECUTIVE COUNCIL FOR

EDUCATION IN THE NORTH WEST PROVINCE

4th RESPONDENT

JUDGEMENT

ALLY AJ

[1] This is an opposed application for:

- 1.1. the ejectment of the Respondent from the property described as Portion 603 (a portion of Portion 26) of the farm Krokodildrift 446, Registration Division JQ, Northwest Province;
- 1.2. the removal by the Respondent of all improvements and building works effected to the property;
- 1.3. the restoration of the property by the Respondent to the condition that the property was in when receiving it;
- 1.4. the Respondent to desist from effecting any other works or improvements to the property;
- 1.5. costs of the application

[2] This Court gave judgment wherein the matter was referred to oral evidence. This judgment is in respect of the oral evidence led and the pleadings as a whole.

[3] The Respondent has since amended its defence with leave of the Court and has joined the second to fourth respondents. The First Respondent also filed a counterclaim wherein relief is claimed against the second to fourth respondents and requests the Court, in the event of ruling in favour of the Applicants, to stay the execution of the judgment for a certain period of time pending the First Respondent's request to the relevant member of the executive council responsible for education.

- [4] The request to the relevant member of the executive council would be to consider expropriating 'the property'.

EVIDENCE LED AT ORAL EVIDENCE STAGE

- [5] As there had been an 'agreement' between the Applicants and the First Respondent that the First Respondent would have the duty to begin leading evidence on the issues referred for oral evidence, The First Respondent called its witnesses.
- [6] The First Respondent called the Mr Abraham Jacobus Sipsma, the deponent to the First Respondent's answering affidavit and present director and headmaster of the First Respondent.

MR ABRAHAM JACOBUS SIP SMA

- [7] The evidence of Mr Sipsma revealed that he was a teacher during the time his father, Jan, was the headmaster which school was established in 1995. During this time plans¹ were drawn as to how the school was to be developed.
- [8] The plans were supposed to be taken further by Mr Cheyne in terms of obtaining authorisation for the wishes of the parties but same was not completed.
- [9] It is clear from the evidence of Mr Sipsma that he became involved in the school at an early stage where he started off as a teacher and then with his

¹ CaseLines: Section O112-O115

late father as part of the management of the school. This period was some 20 years in extent.

- [10] The school management had decided to develop the school and plans² were developed for this purpose which included a sports facility and technical component of the school.
- [11] Mr Sipsma testified about the layout of the plan³ as set out in documents discovered by both the applicants and the first respondent. Presently, the applicants occupy HEF on the plan and the first respondent DFG. This is common cause.
- [12] Mr Sipsma testified that he became a member of the board of trustees of the school in 2001. At this time the board of trustees appointed a certain Mr Cheyne as a land surveyor to do the subdivision of the land in respect of the two properties.
- [13] From the period 2001 to 2008 the work that Mr Cheyne was appointed to complete was not completed and this was only realised in 2008. It was also during 2008 that an objection or communication was received from the first applicant. It was during 2009, however, that a new town planner and land surveyor was appointed because the school had financial constraints during the period of 2008. The new land surveyor was a certain Mr De Klerk.

² CaseLines: Section: O112 – O117

³ CaseLines: Section: O162

- [14] Mr Sipsma Senior passed away in 2015 and Mr Sipsma Junior became Chairperson of the board of trustees. During this time the board of trustees was of the view that the subdivision and consolidation plans needed to be finalised. Mr Sipsma then testified that he approached the first applicant to finalise the arrangements of the subdivision and consolidation and the first application stated that Mr Sipsma must make an offer. During this discussion about the finalisation of the subdivision and consolidation, Mr Sipsma testified that he presented the first applicant with an agreement from the lawyers that both parties needed to sign. It was at this point that the first applicant requested Mr Sipsma to make an offer.
- [15] An offer was made to the first applicant through the school's lawyers which offer was rejected by the first applicant.
- [16] Mr Sipsma testified that the first applicant never denied the existence of the agreement regarding the use of HEF and DFG. He further testified that Mr Lourens, the applicants' attorney, indicated that there is no written agreement and denied that there was agreement on the oral agreement.
- [17] Cross-examination of Mr Sipsma was directed first at the terms used in respect of the properties, namely, the perpetual nature of the exchange of the properties identified as HEF which was used by the applicants and DFG used by the respondent. Mr Sipsma confirmed that the perpetual nature of the agreement and the personal servitude came from the respondent's attorneys. He, however, understood the agreement to be a "ruiltransaksie" which would continue in perpetuity. When confronted with the use of the word 'perpetuity' Mr Sipsma accepted that as he understood it, the exchange

of the properties and use thereof will continue until finalisation of the agreement in terms of legislation, that is, that arrangements would be made with the relevant authorities to obtain the necessary ministerial consent because the land was agricultural land. Mr Sipsma also conceded that he was aware from the beginning that ministerial consent was needed for the subdivision and consolidation of the relevant properties.

- [18] Mr Sipsma conceded that in response to the letter⁴ from the applicants' attorneys, no mention is made of the fact that they cannot be told to vacate portion DFG because there was a personal servitude in existence which was of a perpetual nature.

MR FRANS JOHANNES KRUGER

- [19] Mr Kruger was called to testify on behalf of the respondent. He testified that he was part of the board of trustees from the inception of the school which was in 1995. He further testified that he was present when discussions were held about the use of the properties by the school and the applicants. In this regard he testified that the first applicant had never objected to the use of the property by the school.
- [20] The central point of Mr Kruger's cross-examination centred around whether he was present at the school in 2015 and when he stated that he had left the school by then, cross-examination was terminated.

⁴ CaseLines: Section: O40 - O41

MR JEFFREY BERNARD DE KLERK

[21] Mr De Klerk was called as a final witness for the respondent. Mr De Klerk is a town planner and has practised privately since 2005 and in the public service in the early 1970s. He testified that he received instructions from both parties but he was first approached by the first applicant through a certain Mr Freddie De Beer. The approach related to a proposed township establishment on the applicants' property.

[22] He further testified that during this time he was appointed by the respondent to do a subdivision and consolidation and called it a land exchange process. As part of this process, he submitted a subdivision and consolidation application to the Department of Agriculture in terms of Act 70 of 1970⁵. He had to obtain powers of attorney from both parties which he did.

[23] Mr de Klerk testified that a rezoning application was submitted on behalf of the respondent and the application was subsequently approved⁶. He concluded his testimony to indicate that the first applicant did not object to the subdivision and consolidation and was actually part of the application process that unfolded.

CONTENTIONS BY THE PARTIES

⁵ Subdivision of Agricultural Land Act

- [24] The applicants' case is that they own the property and the first respondent is in unlawful occupation of portion DFG which represents Portion 603.
- [25] Furthermore, so the applicants' submit, the first respondent has failed in proving that they have a right to be in occupation of portion DFG.
- [26] The question that arises is whether the first respondent has shown a right to be in occupation of portion DFG. The evidence of the first respondent's witnesses, is that the applicants and the first respondent had entered into a 'ruiltransaksie' an exchange. Mr Sipsma when pressed by Counsel of the applicants, indicated that after consultation with legal representatives of the first respondent, this 'ruiltransaksie' was actually one that was in 'perpetuity'; it would exist up until the formalities had been completed. The formalities related to formalising the agreement in accordance with legislation.
- [27] Counsel for the applicants submits that it is common cause that there was an agreement to use each other's land but that agreement came to an end when the applicants requested the first respondent to vacate.

EVAULUATION

- [28] The first question that arises is whether on the evidence the first respondent has proven that a servitude existed and that such servitude bars the applicants from evicting the first respondent.
- [29] The witnesses in my view, have proven on a preponderance of probabilities that there was an agreement between the applicants and the first respondent to exchange land. However, that is not the end of the enquiry.

[30] The second question is whether this exchange of land was in perpetuity so as to bar the applicants from evicting the first respondent. On a conspectus of the evidence, it is my view that the first respondent has been unable to prove that the agreement, which is common cause, was in actual fact in perpetuity.

[31] The third and important question is whether the Alienation of Land Act⁷ applies to this agreement and whether the agreement complies with the provisions of the Alienation of Land Act.

[32] Section 1 of the Alienation of Land Act⁸ provides:

*“ **“alienate”**, in relation to land, means sell, exchange or donate, irrespective of whether such sale, exchange or donation is subject to a suspensive or resolute condition, and “alienation” has a corresponding meaning;”*

[33] In my view, the exchange agreement testified to by the witnesses for the first respondent and which is common cause between the parties, falls squarely within the definition of ‘alienate’ in the Alienation of Land Act⁹.

[34] Section 2(1) of the Alienation of Land Act¹⁰ provides:

“ No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of

⁷ Act 68 of 1981 as amended

⁸ *supra*

⁹ *supra*

¹⁰ *supra*

alienation signed by the parties thereto or by their agents acting on their written authority.”

- [35] It is clear from Section 2(1) of the Alienation of Land Act that there is a requirement for a written agreement for an alienation of land to be valid. I am of the view that on the evidence before Court, no such ‘written agreement’ exists and thus any oral agreement between the parties is in contravention of the Alienation of Land Act and thus null and void and unenforceable.
- [36] In respect of the counterclaim, it is my view that the first respondent, as stated above, has failed to prove that it has an enforceable right to continued occupation of portion DFG. Furthermore, it is my view, that it would not be just and equitable for the applicants to await the response from the second to fourth respondents regarding an application to expropriate the relevant portion of the land occupied by the first respondent. In fact, the first respondent has requested the relevant authorities to assist with no success.

CONCLUSION

- [37] Accordingly, there is no other conclusion than that the applicants have proven that the portion DFG, which is Portion 603, occupied by the first respondent is the property of the applicants.
- [38] The first respondent, in my view, has shown no enforceable right to be in continued occupation of portion DFG when regard is had to all the evidence.
- [39] With regard to the timeline within which the first respondent must vacate the property, it is my view that a period of 90 days is reasonable and fair in the circumstances, taking into account that the first respondent is a school.

- [39] There is no reason why costs should not follow the result and no argument to the contrary was made by either of the parties. Furthermore, both parties agreed that the Scale of costs should be at Scale B.
- [40] Finally, I must apologise to the parties for any inconvenience caused in delaying the delivery of this judgment.
- [41] Accordingly, an Order in terms of the order marked "X", as amended, is granted.

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA
Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **17 June 2026**.

Date of hearing: 11 April 2025

Date of judgment: 17 June 2026

Appearances:

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Counsel for the Respondents: **Adv. A. Kloppers**

17/6/26

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Before the Acting Justice Ally AJ

In the matter between

DE BEER: JACOB BERNARD

DE BEER: MARGIETHA WILHELMINA

And

RABBONI CHRISTIAN SCHOOL (PTY) LTD

DEPARTMENT OF EDUCATION

THE MINISTER OF EDUCATION

THE MEMBER OF THE EXECUTIVE COUNCIL

RESPONSIBLE FOR EDUCATION IN THE NORTH

WEST PROVINCE



Case No: 3165/2021

FIRST APPLICANT

SECOND APPLICANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

COURT ORDER

HAVING heard evidence and read and considered all the documents filed of record as well as having considered all submissions of Counsel of the parties, the following Order is made:

NNI

1. An Order ejecting the First Respondent from the Applicants' property, namely, Portion 603 (a portion of portion 26) of the Farm Krokodil drift 446 Registration Division JQ, Northwest Province ("the Property") within 90 [ninety] days of this Order;
2. First Respondent is ordered to remove all improvements and building works to "the property" that they have effected, within 90 [ninety] days of this Order;
3. First Respondent is ordered to restore the property to the condition in which it was received;
4. First Respondent is ordered to desist from effecting any other works or improvements to "the property" other than as ordered herein;
5. The First Respondent's counterclaim is hereby dismissed with costs;
6. The First Respondent is to pay all the costs of the application including the hearing of oral evidence and the costs of Counsel in terms of Rule 69 to be at Scale B.



Counsel for the Applicant: Adv. Jan Moller: 082 3715 081

Counsel for the 1st Respondent: Adv. A. Kloppers: 076 452 5145