

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

Case Number: LCC 51/2022

Reportable: No

Of Interest to other Judges: No

Revised: Yes

Before: The Honourable Acting Judge President Meer

Heard on: 10 June 2022

Delivered on: 10 June 2022

In the matter between:

TAFELKOP (PTY) LTD

First Applicant

FONTIS DEVELOPMENTS (PTY) LTD

Second Applicant

and

DIKGALAOPENG COMMUNITY

(DI THOMO TSA BOKONE)

First Respondent

ANDREW MAMADILE MOHLALA

Second Respondent

MARIBE MAILULA HENDRICK

Third Respondent

BAKWENA BA MATSEPE

TRADITIONAL COUNCIL

Fourth Respondent

CHIEF LAND CLAIMS COMMISSIONER

Fifth Respondent

REGIONAL LAND CLAIMS COMMISSIONER:

PRETORIA

Sixth Respondent

CHIEF DIRECTOR: RESTITUTION SUPPORT:

LIMPOPO

Seventh Respondent

MINISTER OF AGRICULTURE, LAND REFORM

AND RURAL DEVELOPMENT

Eighth Respondent

JUDGMENT

MEER AJP

[1] The Applicants sought on an urgent basis to review and set aside, alternatively suspend, an interim order of the Groblersdal Magistrates Court granted *ex parte* on 22 March 2022. The order interdicted *inter alia* the Applicants from continuing with the development of a shopping complex on the farm Eengevonden, in the Limpopo province, in respect of which the First Respondent has lodged a restitution claim. The basis for the review is that the Magistrate lacked jurisdiction as the application pertained to the First to Third Respondents' (applicants in the court *a quo*) rights in terms of the Restitution of Land Rights Act 22 of 1994 ("Restitution Act"), a matter over which this Court has exclusive jurisdiction.

[2] The First to Third Respondents opposed the application. I shall refer to them as the "Opposing Respondents". The other cited Respondents have not participated in these proceedings. The Opposing Respondents successfully challenged the *locus standi* of the Applicants on the basis that there was no resolution by the directors of the Applicant companies authorizing the institution of proceedings. The Applicants were however given an opportunity to approach the Court on the same papers duly supplemented. The Applicants have now filed the requisite resolution authorizing the institution of proceedings, and the application can now be considered.

[3] The subject matter of the application before the Magistrate has its genesis in the Restitution Act, over which this Court has exclusive jurisdiction. The right which the First Respondent (applicant in the court *a quo*) sought to protect by applying for the interdict was their right to restitution, which the development by the Applicants of the land claimed by them, could compromise. That this Court has sole jurisdiction in respect of the subject matter of the interdict is evident from section 22(1)(cC) and (d) of the Restitution Act which provide:

"22 Land Claims Court. (1) There shall be a court of law to be known as the Land Claims Court which shall have the power, to the exclusion of any court contemplated in section 166 (c), (d) or (e) of the Constitution -

...

(cC) to determine any matter involving the interpretation or application of this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), with the exception of matters relating to the definition of “occupier” in section 1 (1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997);

...

(d) to determine all other matters which require to be determined in terms of this Act.”

The court *a quo* accordingly did not have the requisite jurisdiction. The Opposing Respondents have not even asserted otherwise.

[4] The Magistrate’s jurisdiction was also in my view barred under sections 29 and 30 of the Magistrates Court Act 32 of 1944. Whilst section 30(1) thereof empowers a Magistrate to grant an interdict, section 29(1)(g) read together with the *Gazette*¹ sets a jurisdictional limit of R200 000 for district magistrates courts and R400 000 for regional magistrates courts on the monetary value of the cause of action. The Applicants’ value of the undeveloped land of R10 000 000 is not disputed, and clearly places this matter beyond the jurisdiction of the magistrates court.

[5] Finally, I am inclined to agree with the Applicants that the Magistrate committed an irregularity in entertaining the application on an *ex parte* basis, contrary to Magistrates Court Rule 55(3)(a). The Rule precludes *ex parte* applications except where the court is satisfied that “the giving of notice to the party against whom the order is claimed would defeat the purpose of the application or the degree of urgency is so great that it justifies dispensing with notice”. The unsubstantiated averment by the Opposing Respondents (as applicants in the court *a quo*) that should the Applicants (respondents in the court *a quo*) be aware of the proceedings before an interim order is granted, the building will continue to completion, does not pass muster. No factual and evidential basis in satisfaction of

¹ GN 216 in GG 37477 (27 March 2014).

Rule 55(3)(a) is provided, other than the *ipse dixit* of the deponent. For this reason too, the order ought not to have been granted by the Magistrate.

[6] In view of all of the above, I am satisfied that the order of the Magistrate stands to be reviewed and set aside. In keeping with this Court's practice not to grant orders for costs other than in exceptional circumstances, which I do not find in the present application, I intend granting no order as to costs.

Order:

1. The interim order of the Magistrate for the District of Elias Motsoaledi sitting at Groblersdal under case number 207/2022 granted *ex parte* on 22 March 2022 is reviewed and set aside.
2. There is no order as to costs.

Y S MEER

Acting Judge President
Land Claims Court

APPEARANCES

For the Applicants: Adv S. Ogunronbi
Instructed by:
Strydom Britz Mohulatsi Inc.

For the First, Second and
Third Respondents: Adv. R. H Mahlase
Instructed by:
KJ Mogofe Attorneys