

## IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

15/8/14.

Case Number: 50913/13

In the matter between:

ANDRE BEZUIDENHOUT

Applicant

and

MOGALE CITY LOCAL MUNICIPALITY

Respondent

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JUDGMENT

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BAM J

1. The applicant and the respondent are involved in litigation, referred to as the "*main application*", concerning compensation for damages and/or loss allegedly sustained by the applicant due to the diversion of a road. The main application has already been enrolled for hearing.
2. In the application before this Court, in terms of the provisions of Rule 28(4), the applicant applied for the amendment of his Notice of Motion in the main application. The respondent opposed the application.
3. In paragraph 1 of the Notice of Motion in the main application the applicant prays for an order that an arbitrator be appointed to determine the amount of compensation to be paid to the applicant in terms of section 67(4) of the Local Government Ordinance, No 17 of 1939.

4. The amendment now sought by the applicant reads as follows:

*“In the alternative to paragraph 1 above, if it be held that the applicant’s claim for compensation falls under section 26(1) of the Expropriation Act, 63 of 1975 (“the Expropriation Act”) then, and in that event, it is declared that:*

*1A.1 the applicant is entitled to institute an action for payment of compensation under the provisions of the Expropriation Act;*

*1A.2 the amount of compensation is to be determined in accordance with the Expropriation Act.”*

5. During argument it was submitted by Mr S J du Plessis SC, who appeared with Mr Putter for the applicant, that the amendment would not prejudice the respondent.
6. On the other hand it was pointed out by Mr Rip SC, appearing for the respondent, that the applicant intends to introduce the additional prayers after all affidavits have been filed and that the respondent will accordingly be prejudiced in that the issue raised in the proposed amendment will have to be addressed in further affidavits. It was also submitted by Mr Rip that the applicant will in any event be entitled to institute action in terms of the Expropriation Act should he be unsuccessful with the relief presently sought in the main application.
7. In the event of the application for the amendment being dismissed by this Court, the Court hearing the main application will be called upon only to judge whether the applicant would be entitled to have the dispute between the parties be determined by the arbitrator in terms of the provisions of the Local Government Ordinance. In view of the fact that the respondent is opposing the main application it follows that it cannot be determined what the outcome of that application will be.

8. It is however clear that in the event of the Court dismissing the main application, the litigation between the parties will not stop. The applicant will apparently be compelled to institute action afresh, and will probably then his case on the provisions of the Expropriation Act.
9. If the proposed amendment is allowed, the Court hearing the main application, in the event of having dismissed the application for arbitration in terms of the Local Government Ordinance, would be called upon to adjudicate the alternative relief prayed for.
10. If the proposed amendment is not allowed applicant will still be entitled to institute action against the respondent under the provisions of the Expropriation Act. However, the ventilation and adjudication of that issue will surely be to the benefit of both parties. Although one should not speculate about it, the adjudication of that issue may dispose of a material dispute between the parties.
11. In the circumstances I am accordingly not persuaded that the respondent will be prejudiced if the application is granted.
12. Despite the fact that the application was successful, I am not prepared to order the respondent to pay the costs at this point in time. The Court hearing the main application will surely be in a better position to consider the issue of costs.

**ORDER:**

1. The application in terms of Rule 28(4) for the amendment of the applicant's Notice of Motion in the main application is granted.
2. The order is made in accordance with the Prayer 1.
3. Costs are reserved.

A handwritten signature in black ink, appearing to read 'A J Bam', written in a cursive style.

**A J BAM JUDGE OF THE HIGH COURT**

**14 August 2014**