

**IN THE NORTH GAUTENG HIGH COURT OF PRETORIA
REPUBLIC OF SOUTH AFRICA**

Case number: 23269/2013

In the matter between:

18/2/2014

JACOBS E J

Applicant

and

MARINGA, MANAKE GILBERT

First Respondent

MARINGA, MOKAETSIE FAITH

Second Respondent

MAHLABEHOANE, VUKI MICHEAL

Third Respondent

THE MINISTER OF AGRICULTURAL
AND LAND AFFAIRS

Fourth Respondent

THE REGISTRAR OF DEEDS, PRETORIA

Fifth Respondent

THE SHERIFF OF THE HIGH COURT, MOKOPANE

Sixth Respondent

PETRUS JACOBS MARYN VAN STADEN N.O.

Seventh Respondent

MARIAAN BARNARD N.O.

Eighth Respondent

STANDARD BANK OF SOUTH AFRICA LIMITED

Ninth Respondent

JUDGMENT

DE KLERK AJ

The Applicant seeks declaratory orders in the following form:

- (i) That the sale of the property known as Remaining extent of portion 9 (A portion of portion 1) of Farm 293, Grasvally, Registration Division K R, Limpopo Province, to the First, Second, Third and Fourth Respondent be declared null and void;
- (ii) That the registration and transfer of the property known as Remaining extent of portion 9 (A portion of portion 1) of Farm 293, Grasvally, Registration Division K R, Limpopo Province to the First, Second, Third and Fourth Respondent be declared null and void;
- (iii) That the property known as Remaining extent of portion 9 (A portion of portion 1) of Farm 293, Grasvally, Registration Division K R, Limpopo Province fall back to the insolvent estate of Schalk Willem Adriaan Lombaard and Emmarenthia Lombaard.

The Applicant further seeks an order directing the First to Fourth Respondents to pay the costs of the application.

The First to Fourth respondents oppose the application and have raised a *point in limine* that the applicant has no *locus standi*.

The common cause facts are:

The First to Fourth Respondents' are the registered owners of the immovable property situated at the remaining extent of portion 9 (a portion of portion 1) of the Farm 293, Grasvally, Registration Division K R Limpopo Province.

The Applicant is occupying the property in terms of a lease agreement entered into on or about the 28th of February 2010 with the previous owners of the property, a certain Mr and Mrs Lombard.

In terms of the said agreement the Applicant would lease the property for a period of 5 years with an option to renew the lease.

Standard Bank obtained judgment against the Lombaards and on the 12th of November 2010 the said property was sold in execution.

Subsequent thereto (on 19 April 2011) the property was registered in the First to Fourth Respondents' names.

The Lombaards' estate was sequestrated and the Eighth and Ninth Respondents were appointed as provisional trustees on 15 June 2011.

During or about August / September 2011 the first to fourth respondents caused summons to be issued against the Applicant for rental due in terms of the lease agreement.

The Applicants' contentions:

That the sale of the property is unlawful and void due to non-compliance with the provisions of the Subdivision of Agricultural Land Act 70 of 1970 as the First, Second, Third and Fourth

Respondents did not obtain written permission from the Minister for the sale.

The gist of the Applicant's case is set out as follows:

"The sale being unlawful would result in that should I make payment to the First to Fourth Respondents I might be doing so in terms of an illegal alternatively unlawful, further alternatively void agreement. Should the situation then be remedied the party whom lawfully purchased the property might very well have a claim against me for payment of rental for a substantial amount.

In the alternative to the above the curators might very well have a substantial claim against me for the payment of rental. I have concern as to who is legally entitled to the proceeds of the property and even further, I have certain rights to the property, none of which can even be investigated In the current state of affairs."

The Respondents' contentions:

That the provisions of the Subdivision of Agricultural Land Act 70 of 1970 are not applicable.

Furthermore as stated herein before the First, Second, Third and Fourth Respondents have raised a point *in limine* that the applicant has no *locus standi* on the basis that he is neither a curator nor a creditor of the insolvent estate of the Lombaards, and he was not a party to the agreement that was concluded at the sale in execution.

Evaluation of facts:

The reason for the application as stated herein before is the Applicant's "concern as to who is legally entitled to the proceeds of the property", in other words to whom he must pay the rent.

Consequently, so the Applicant's argument runs he might be faced with substantial claims for rental by a subsequent "lawful" owner or the curator.

In my view same does not support the relief claimed by the Applicant. It is further common cause that the curator of the estate, with the information at hand, "consistently refused" to embark upon this course.

With regard to the Applicant's further reservation in respect of claims by a "subsequent lawful owner" the latter would have no legal basis for such a claim against the Applicant.

In my view none of the Applicant's rights have been or will be adversely affected. Be that as it may the issue of standing must be decided *in limine* before the merits are considered.

Locus standi is the Applicant's right to approach the court for the relief sought.

The duty to prove *locus standi* rests on the party instituting the proceedings.

It is a requirement that a party to litigation must have a direct and substantial interest in the right, which is the subject matter of the litigation, and in the outcome of the litigation.

The question as to whether the Applicant has the said right will depend on the factual and legal context of the case.

As to the question whether the Applicant had a right to a declarator in the form sought the court's power to grant such relief is derived solely from S 19 (1) (a) (iii) of the Supreme Court Act. S 19 (1) (a) states that a provincial or local division shall have power (iii) in its discretion and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation notwithstanding that such person cannot claim any relief consequential upon the determination.

Although the issue of a declaratory is therefore discretionary there are two stages to the enquiry. In terms of S 19 (1) (a) (iii) of the Supreme Court Act 59 of 1959, an Applicant (for a declaratory) must show that he has an interest in an existing, future or

contingent right. The right must attach to the Applicant and not be a declaration of someone else's right.

The Applicant must have a direct right concerning the subject matter of the litigation and not merely a financial interest which is only an indirect interest, in such litigation.

The right or obligation which is the object of the enquiry may be existing, future or contingent but it must be more tangible than the mere hope of a right or mere anxiety about a possible obligation.

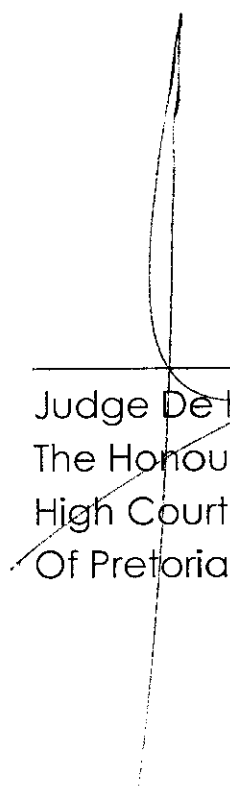
(Contact props 25 proprietary 2000 (3) All SA 443 C).

I am of the view that it is clear that the Applicant has no interest in any existing future or contingent right or obligation which flows from that contract. The court, cannot issue a declaratory in regard to the rights and duties flowing from a contract to which the Applicant was not a party.

In my view, the Applicant therefore lacks *locus standi* as he cannot be regarded as being an interested person as envisaged by S 19 (1) (a) iii of the Supreme Court Act.

The application is therefore dismissed with costs.

Signed at Pretoria on this 18th day of February 2014.



Judge De Klerk AJ
The Honourable Judge of the
High Court
Of Pretoria