



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL, DIVISION, PIETERMARITZBURG**

CASE NO: 9535/17P

In the matter between:

**AMANGCOLOSI COMMUNITY TRUST
AND 13 OTHER APPLICANTS**

First Applicant

and

**JABULANI SAPHINDA KHATHI
AND 15 OTHER RESPONDENTS**

First Respondent

ORDER

- (A) The respondents are interdicted and restrained from:
- (i) intimidating, harassing or interfering with any employee of Ithuba Agriculture (Pty) Ltd or any person involved in or connected with its farming operations;
 - (ii) intimidating, harassing or assaulting any of the trustees or members of the trust;
 - (iii) causing damage to any property of the trustees or members of the trust or Ithuba Agriculture (Pty) Ltd.
- (B) There will be no order as to costs.

JUDGMENT

Delivered on: 29 May 2018

PLOOS VAN AMSTEL J

[1] The applicants in this matter are the trustees of the Amangcolosi Community Trust, a company called Ithuba Agriculture (Pty) Ltd, of which the trust is the sole shareholder, and Mr Alfred Xulu, a former trustee of the trust and a director of the company. They seek various orders against the sixteen respondents, who are members of the same community and claim to be entitled to attend meetings of the trust. The orders sought in the notice of motion are, in summary, interdicts restraining the respondents from committing unlawful actions of intimidation, interference, and assault in connection with meetings of the trust.

[2] The trust was established after the Ngcolosi/Ntunjambili communities succeeded in a land claim in terms of the Restitution of Land Rights Act 22 of 1994 and was awarded certain land in the Kranskop area. The land is now registered in the name of the trust. The bulk of it is used for commercial cane growing and timber farming. It is managed by the company to which I have referred, which employs persons from the local community as farm labourers.

[3] The current dispute arose when the respondents, who are not members of the trust, claimed to be entitled to attend general meetings of the trust, but were not allowed to do so by the trustees.

[4] An annual general meeting of the trust was scheduled to take place on 24 June 2017 at the Ngcolosi Tribal Court at Kranskop. The court is situated in a fenced off area and access is gained through a gate. Because of previous incidents the trustees employed security guards who assisted with the registration process, which involved the identification of members whose names appeared on the register of members, who were then allowed to enter the fenced off area one by one. It is not disputed that the respondents also wanted to enter, but were not allowed to do so. The deponent to the founding affidavit says the respondents pushed past the security guards, entered the fenced off area, assaulted and threatened members who were already inside, and some shots were fired. The registration process was completely disrupted and in the interests of safety the meeting was adjourned to 8 July 2017.

[5] On 8 July 2017 the respondents again arrived at the meeting place. On this occasion the security guards managed to contain them outside the gate. The meeting proceeded and new trustees were elected. As members were leaving after the meeting some of them were attacked and injured. The respondents, or some of them, then went to the house of the eighth applicant where he was harassed and intimidated and threatened with death. They also threatened and intimidated farmworkers who were nearby and told them to stop working, failing which they would be assaulted.

[6] The deponent says this is the fourth application which the trustees and the company have brought against the respondents since 2008, relating to disturbances, violence, intimidation and assault. There have also been contempt applications as the respondents disobeyed the court orders.

[7] The basis on which the respondents claim to be entitled to attend the general meetings of the trust is clause 9.11 of the trust deed, which provides that members and members of households who have reached the age of eighteen years shall be entitled to attend and speak at a general meeting, inspect any minutes or other records of decisions of any general meeting and trustee meetings, inspect copies of financial statements and records of the trust, inspect the membership register and be candidates for election as trustees.

[8] Clause 7. 1 provides for the registration of members in a membership register. The respondents do not claim to be members. They do claim to be members of the households of registered members, and claim that clause 9. 11 applies to them. A 'household' is defined in clause 3.2 as a registered card carrying member and all his/her dependants and direct descendants.

[9] The stance taken by the trustees on the papers was that clause 9. 11 does not entitle respondents to attend a general meeting, and that only registered members are allowed to do so. During argument before me it became clear that there is a genuine dispute about the meaning of the clause, and I was informed that at the last general meeting the members agreed that the clause was ambiguous and that it should be clarified. The trustees were mandated to formulate a proposed amendment to the trust deed and this is to be discussed and voted on at the next general meeting.

[10] After senior counsel for the trustees took instructions I was informed from the bar that the respondents will be allowed to attend the forthcoming general meeting. There seemed to be agreement that the respondents would be allowed to speak at the meeting, but that in terms of the trust deed they are not entitled to vote.

[11] In the light of this development the applicants no longer sought the orders which would have been intended to keep the respondents away from the meeting place. The respondents in turn accepted, through their counsel, that whether or not they agree with the trustees or the members, they are not allowed to commit unlawful acts of intimidation and violence.

[12] It was not disputed on the papers that the respondents were present on the occasion which I have described when acts of violence were perpetrated. Not one of them has gone on oath and denied that he was party to this. The applicants are therefore entitled to an interdict restraining the respondents from committing violent acts such as those to which I have referred.

[13] Counsel for the applicants submitted that in that event the applicants would have been substantially successful and should get their costs. However, what gave rise to the trouble in the first place was the refusal by the trustees to allow the respondents to attend the general meeting. There may well be substance in the respondents' contention that they are entitled to attend the meeting, pursuant to clause 9. 11. As I have said, I was informed from the bar that at a previous general meeting the members felt that the clause was ambiguous and should be clarified. None of this was mentioned in the papers before me. The applicants have now decided to allow the respondents to attend the next general meeting, which will hopefully defuse the tension. I think a fair exercise of my discretion will be that there should be no order as to costs.

[14] I make the following order:

- (A) The respondents are interdicted and restrained from:
 - (i) intimidating, harassing or interfering with any employee of Ithuba Agriculture (Pty) Ltd or any person involved in or connected with its farming operations;
 - (ii) intimidating, harassing or assaulting any of the trustees or members of the trust;

- (iii) causing damage to any property of the trustees or members of the trust or Ithuba Agriculture (Pty) Ltd.
- (B) There will be no order as to costs.

Ploos van Amstel J

Appearances:

For the Applicants : Y Moodley SC

Instructed by : Kunene Attorneys
Pietermaritzburg

For the Respondents : S Tshangana

Instructed by : Siza Khumalo Attorneys
C/o Siva Chetty & Company
Pietermaritzburg

Date Judgment Reserved : 18 May 2018

Date of Judgment : 29 May 2018