

IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 6212/2020

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDES: YES/NO

REVISED.

In the matter between:

MAMOHLOLA COMMUNITY PROPERTY ASSOCIATION

1ST APPLICANT

MASILU SAMSON MODIBA

2ND APPLICANT

TSATSI ABEL LETSOALO

3RD APPLICANT

MAREDI BERNARD LETSOALO

4TH APPLICANT

And

FRANCE MOLEWA

1ST RESPONDENT

MACK MOLEWA

2ND RESPONDENT

TICHAONA RWINDZU

3RD RESPONDENT

FIRST NATIONAL BANK, TZANEEN

4TH RESPONDENT

JUDGMENT

MANGENA: AJ

[1] Mamahlola Communal Property Association was established subsequent to the successful land restitution process instituted by the communities which were forcefully removed from the land as a result of past discriminatory laws.

[2] The Communal Property Association (CPA) was duly registered in accordance with the provisions of the Communal Property Registration Act and is the lawful

owner of all the farm properties awarded to her as part of the land restitution programme.

- [3] The CPA, acting through its elected representative brought application proceedings against the first, second and third respondents in which it sought to restrain them from setting foot on its farm portions as well as trading in and selling or buying of timber from the farms owned by her. FNB was cited as a fourth respondent and the relief sought against it was that it should be ordered to make available to the applicants the bank statements on two accounts operated by the first respondent. There was no prescribed period for which the statements are required.
- [4] The respondents opposed the application and raised 5 points in limine in relation to the application and submitted that they are dispositive of the matter. At the hearing, the parties agreed that for convenience both merits and preliminary points will be argued in tandem and so it was. I propose to deal first with the preliminary points.
- [5] The first point in limine related to lack of locus stand in judicio. It was submitted on behalf of the respondents that there was no proof attached to the papers that the CPA is registered and therefore capable of instituting the proceedings. This point was not pursued with vigour by Mr Jacobs who appeared for the respondents as on the papers before me it was clear that the CPA was registered and has been a subject of litigation in this court on matters relating to its management. Mr Jacobs conceded that the CPA is in existence and I do not consider it to be a requirement that an entity instituting legal proceedings should attach its registration papers. What is required is a resolution confirming authority to institute the proceedings. This was not the argument by the respondents and even if it were, such an argument was bound to fail for the reason that a resolution was attached to the founding affidavit. The fact that the resolution is

inelegant does not take away its legitimacy and its purpose. The point in limine is dismissed.

- [6] The second point related to non-joinder of the relevant parties such as the municipality, Ms Julia Mokhomola and the Department of Rural Development and Land Reform. The basis for raising this point as I understand Mr Jacobs arose out of the position taken by the respondents that objectively viewed, the applicants are applying for eviction of the respondents from the farms. Related to this point was the alleged non-compliance with PIE-ACT and ESTA. It was argued that the applicants were required to follow the procedures prescribed by PIE-ACT and ESTA before they could be entitled to the relief sought.
- [7] The three points raised have no merit and can be dealt with as one. The test for non-joinder is whether a party has a direct and substantial interest in the subject matter of the proceedings i.e a legal interest in the subject matter of the litigation which may be prejudicially affected by the judgment of the court. A reading of the prayers in the notice of motion does not in the slightest suggest that these are eviction proceedings as contended by the respondents. What the applicants seek is an interdict prohibiting the respondents from cutting, harvesting and selling timber from its farms. The order restraining them from “setting foot” on the farms relates to the overall objective of interdicting them from cutting and harvesting timbers.
- [8] The submission by Mr Jacobs that the respondents are the occupants of the farm and have been staying there since 1965 is rejected as all people were removed and resettled at Metz, Ga Sekororo, and other villages. The respondents received the application at the village where they reside and not at the farm. This put paid to the argument that the respondents are residing at the farm. Having concluded that these are not eviction proceedings, there was accordingly no obligation on the part of the applicants to comply with PIE/ESTA. There was

consequently no need to join the mentioned parties as none of the orders sought would prejudicially affect them. The three points in limine are dismissed.

- [9] On the merits of the application, applicants were required to satisfy the three requirements for an interdict, namely clear right even if open to doubt, irreparable harm and lack of alternative remedy.
- [10] On the evidence before me, there is no dispute that the applicants as the beneficiaries of the land restitution programme have a clear right. As the owners of the farm properties, they have a responsibility to manage the affairs of the CPA and protect its assets including the timber growing on the farms. The removal and harvesting of the timber deprives the beneficiaries of their revenue and is causing them an irreparable harm. The respondents have no legal basis to harvest the timber. The applicants have no alternative remedy.
- [11] In the premises I am satisfied that the applicants have made out a case for the prayers contained in the notice of motion with the exclusion of prayer “d”

Order

The following order is made:-

12.1. The 1st-3rd respondents and any members of their families and their assistants are ordered and restrained from setting foot on the farms Titswalo 642, Monavein 612, Mamathola Loc 635. Tamara 573, Vulivha 607, Tubb's hill 650, Morle Brook 651, Longridge 608 and Mamathola 609.

1.2.2. The first and second respondents and members of their families and/or assistants are ordered and restrained from trading in and selling timber from any of the farms mentioned in paragraph 1 above.

1.23. That the 3rd respondents and any members of his family or assistants are ordered and restrained from buying any timber from the farms mentioned in order 12.1 above from the first and second respondents or any member of their families or assistants.

1.2.4. The first, second and third respondents are ordered to pay the costs jointly and severally, one paying the other to be absolved.

MANGENA AJ
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

Representations

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| 1. Counsel for Applicant | : | Adv JLH Letsoalo |
| Instructed by | : | P.E Mashole Attorneys |
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| 2. Counsel for Respondent | : | Mr. J Jacobs |
| Instructed by | : | Joubert & May Attorneys |
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| 3. Date of hearing | : | 07 FEBRUARY 2022 |
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| 4. Date delivered | : | 14 February 2022 |