

**IN THE LAND CLAIMS COURT OF SOUTH AFRICA**




**HELD IN RANDBURG**

Case No.: LCC02/2018

**Before: The Honourable Justice Ncube**

Heard On: 16 March 2018

Delivered: 09 May 2018

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1) REPORTABLE: <del>YES</del> / NO	
(2) OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO	
(3) REVISED: <del>YES</del> / NO	
09/05/2018	
DATE	SIGNATURE

In the matter between:

**JOSEPH NTAMBO MAKUBO AND FAMILY**

**Applicant**

and

**MR J S UYS**

**1<sup>st</sup> Respondent**

**RIET POORT BOERDERY (PTY) LTD**

**2<sup>nd</sup> Respondent**

**DIRECTOR GENERAL DEPARTMENT OF RURAL  
DEVELOPMENT AND LAND REFORM**

**3<sup>rd</sup> Respondent**

**LEKWA LOCAL MUNICIPALITY**

**4<sup>th</sup> Respondent**

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**JUDGMENT**

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## NCUBE AJ

### Introduction

- [1] This matter was brought before me on urgent basis. After reading the Notice of Motion and Founding Affidavit, I was satisfied that the allegations made by the Applicants, if established, would, at least render the matter semi urgent. I condoned non compliance with rules prescribed for ordinary applications. I accordingly issued directives as to the service of papers and time limits. The matter was set down for hearing on 07 February 2018. On that date, parties requested an adjournment to 16 March 2018 as they wanted to conduct an inspection *in loco* at the farm to verify the truthfulness of the facts alleged by the Applicant. The application was argued on 16 March 2018.
- [2] Applicant seeks (a) an order declaring him a “long-term occupier” of Rietpoort, Standerton Mpumalanga (“the farm”), (b) an order interdicting and restraining the First and Second Respondents, their agents, employees and family members from intimidating, harassing, assaulting, threatening and coming to the home of the Applicant and from behaving in any manner that would constitute an infringement of their personal liberty (c) an order directing the First and Second Respondents to allow the Applicant’s cattle to access water “from the main river on the farm.” I pause to mention that the “agents,” “employees and “family members” of the First and Second Respondents mentioned in the Notice of Motion, are not cited as a party to the application and their identity is not disclosed. The application is opposed by the First and Second Respondents. The Third and Fourth Respondents did not participate in these proceedings neither did they file Notice to abide.

### Urgency

- [3] Mr Harms, Counsel for First and Second Respondents, argued that the matter was not urgent at all, whilst Mr Slabbert, Counsel for the Applicants, argued to the contrary. The Notice of Motion was signed on 05 November 2017. The Founding Affidavit was commissioned on 04 December 2017, almost a month

from the date on which the Notice of Motion was signed. The Notice of Motion and Founding Affidavit were filed with the Registrar on 09 January 2018, more than a month from the date on which the Founding Affidavit was commissioned. Despite those shortcomings, Mr Slabbert still argued that the matter was urgent.

- [4] Rules of this court require that the Applicant should state in his affidavit the circumstances which render the matter urgent and reasons why he cannot obtain substantial redress at a hearing in due course.<sup>1</sup> Applicant states in his Founding Affidavit that the dam from which his cattle obtain water may run dry at any time. However it is common cause that the dam is 90% full at the moment. It is common cause also that the same dam was provided by the Respondents so that Applicant's cattle and those of his brother may have access to drinking water. Legal representatives from both sides conducted inspection *in loco* on the farm and they are in agreement that there is no main river on the farm, as Applicant seeks an order compelling Respondents to allow Applicant's cattle to access water from the main river on the farm
- [5] Applicant seems to be saying that the court must order the Respondents to allow applicant's cattle to access the main river should the dam run dry in future. Applicant has also mentioned threats of eviction, harassment and assaults on him and members of his family. In his Founding Affidavit, Applicant does not say he or any of the members of his family was ever assaulted by either the First Respondents or any member of the First Respondent's family.
- [6] I am satisfied that the matter is not urgent. Even on the merits, there is no reasonable prospect of success; otherwise I would have adjudicated on the merits of the application for the sake of reaching finality, even though there is no urgency. Mr Slabbert concedes that the Applicant is not a long term occupier. In fact this is a matter which should not have seen the light of the day.

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<sup>1</sup> Rule 34 (2)

Costs

[7] The practice in this court is not to make costs orders unless there are good reasons to do so. Parties agreed that there should be no costs order made.

Order

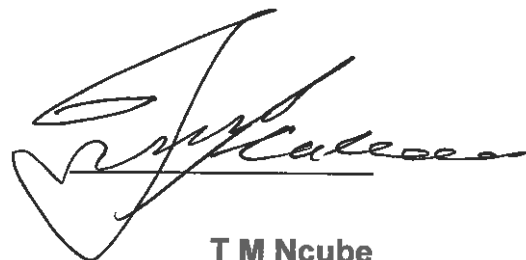
[8] In the result, I make the following order:

1. The application is struck off roll.
2. There is no order as to costs.

Appearances

For Applicant: Adv. J P Slabbert *instructed by Sibusso Simelane Attorneys - Betal*

For Respondents: Adv. C L H Harms *instructed by Storm Attorneys – Waterkloof ridge, Pretoria*

A handwritten signature in black ink, appearing to read 'T M Ncube', written over a horizontal line.

**T M Ncube**

Judge of the Land Claims Court