



**IN THE LAND CLAIMS COURT OF SOUTH AFRICA  
HELD AT RANDBURG**

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
	19/11/12
	<i>[Signature]</i>

**CASE NO: LCC 120/2010**

In the matter between:-

**ABRAHAM LAMA WOLLACH N.O.**

First Applicant

**HARTEBEEKRAAL FARMS (PTY) LTD**

Second Applicant

and

**THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA**

First Respondent

**THE DEPARTMENT OF RURAL DEVELOPMENT  
AND LAND REFORM**

Second Respondent

**THE COMMISSION ON RESTITUTION ON LAND RIGHTS**

Third Respondent

**THE REGIONAL LAND CLAIMS COMMISSIONER**

Fourth Respondent

Handed Down on: 19 April 2018

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## JUDGMENT

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**CANCA AJ**

### **Introduction**

[1] The applicants apply to the Supreme Court of Appeal for leave to appeal against the whole of my judgment and order handed down on 15 January 2018. The application is opposed by the respondents.

[2] The applicants sought payment of just and equitable compensation from the State arising out of the dispossession of the second applicant's farm in terms of the provisions of the Group Areas Act, No. 36 of 1966. Alleging under-compensation on dispossession, action for equitable redress was instituted during 2010 in accordance with the provisions of section 25(7) of the Constitution of the Republic of South Africa, Act No. 108 of 1996, read together with the provisions of section 2(1)(c) of the Restitution of Land Rights Act, No 22 of 1994 ("the Restitution Act"). The judgment found that the second applicant was not under-compensated at dispossession and that the amount paid to it was just and equitable.

[3] The applicants attack both the findings on the facts and those on the law. The attack against the findings on the facts rests on 3 grounds. These are that I erred in:

3.1 rejecting the valuation report of the applicants' valuer, Mr van der Spuy, despite him having applied generous discounts on adverse variables affecting his comparable properties;

3.2 rejecting the farm Morningstar as a comparable notwithstanding that that farm has the most comparable infrastructure, operations and land when compared to the subject farm; and

3.3 accepting the valuation report prepared by the respondents' valuer, Mr Du Toit. This report was criticized for, *inter alia*, failing to take into account the use and the operational infrastructure of any of the comparable properties. The valuer is also criticized for, despite his in-depth reasoning, arriving at a value that is "*less than half the compensation of R475 627.00*" paid at dispossession. This raised serious questions about the credibility of his valuation, so the criticism continued.

4. With regard to the findings on the law, the applicants aver that I:

4.1 failed to follow the leading approach for valuation of farmland for purposes of land restitution;

4.2 erred in accepting Mr Du Toit's valuation given that it was a desk top valuation based solely on title deeds and aerial photos;

4.3 failed, in the light of the two valuations being so wide apart, to become a "super valuer"; and

4.4 erred in accepting Du Toit's approach that farming operations are not taken into account for valuation, instead of the one followed by Mr Van der Spuy which took that into account.

5. It is now accepted that the test relating to the grant or otherwise of an application for leave to appeal is more stringent since the enactment of the Superior Courts Act 10 of 2013 ("the Act"). This is so because section 17 of the Act provides that leave to appeal should only be granted where "*the appeal would*

*have a reasonable prospect of success*". See *The Mont Chevaux Trust (IT 2012/28) v Tina Goosen and 18 Others* (LCC14R/2014) at paragraph 6 and *Daantjie Community and Others v Crocodile Valley Citrus Company (Pty) Ltd and Another* (75/2008) [2015] ZALCC 7 (28 July 2015) at paragraph [3]. Previously, the test was whether there was a reasonable possibility that another court might come to a different finding. Bertelsmann J, in *The Mont Chevaux Trust* referred to above, found that the use of the word "would" in the Act indicated a measure of certainty that another court would differ from the court whose judgment is sought to be appealed against. I now turn to deal with the merits of the application.

6. The grounds advanced for criticizing the findings on fact, in my view, transverse issues in respect of which reasoned findings are made in the judgment. For instance, the underlying reasons for rejecting Van der Spuy's comparable properties and, hence, his report, are set out in paragraph [43] of my judgment. See also paragraph [64] thereof. And, importantly, Van der Spuy did not put in issue any of the transactions Du Toit selected as comparators.

7. The grounds upon which leave to appeal is sought in respect of the findings on the law are misplaced. The contention that the leading approach for the valuation of farmland in land restitution matters was not followed, is also unsustainable. The legal principles applicable in matters of this nature are set out fairly comprehensively in the judgment and have been applied. It is also evident from the contents of paragraphs [28] and [29] of the judgment that further factors beyond market value were taken into consideration in arriving at my finding.

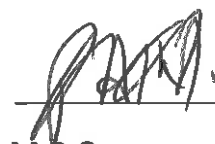
8. I have carefully considered the submissions of both counsel and come to the view that, in the light of precedent and the clear provisions of the requisite legislation, all of which are referred to in the judgment, another court would not come to a finding different from mine.

9. As I have found that another court would not come to a finding different from mine, I am of the view that there are no reasonable prospects of success on appeal.

10. As a last stab at being granted leave to appeal, it was argued on behalf of the applicants that the appeal was of general importance to the wider public as the Supreme Court of Appeal would bring certainty to the process of farm valuations in land restitution cases. I agree with counsel for the respondents that there is nothing novel in this matter and that the law in respect of matters of this nature is clear.

11. In the light of the above, I order as follows:

1. The application for leave to appeal is dismissed.
2. No order as to costs.



M P Canca

Acting Judge, Land Claims Court

Appearances:

For the Applicant

Advocate A Oosthuizen SC

Instructed by Advocate J Buurman  
Charnock and Wessels Attorneys, Cape  
Town.

For the State Respondents Advocate K Pillay  
Advocate Joseph  
Instructed by The State Attorney, Cape Town.