




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

Case No: LCC 36/2018

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
25/10/2018	
DATE	SIGNATURE

Heard: 23/10/2018

Judgment: 25/10/2018

In the matter between:

REVELL CLIVE SAINT

First Applicant

RRR VENTURES CC

Second Applicant

DDD VENTURES CC

Third Applicant

KEMBALI FARMS CC

Fourth Applicant

SILVER HILLS NURSERIES (PTY) LTD

Fifth Applicant

VSHAMBANI CC

Sixth Applicant

IRENE SAINT

Seventh Applicant

LIGITPROPS 1034 CC	Eighth Applicant
DOVEA ESTATES CC	Ninth Applicant
DOVEA TRUST CC	Tenth Applicant
MAYO FARM CC	Eleventh Applicant
ASHBROOK FARMS (PTY) LTD	Twelfth Applicant
ASHBROOK TRUST	Thirteenth Applicant
BECHOO BROTHERS FARMING ENTERPRISES CC	Fourteenth Applicant
RICHARD HOUTING	Fifteenth Applicant
HIBBERDENE / MTWALUME FARMERS ASSOCIATION	Sixteenth Applicant
 and	
CHIEF LAND CLAIMS COMMISSIONER	First Respondent
REGIONAL LAND CLAIMS COMMISSIONER, KWA-ZULU NATAL	Second Respondent
THE MINISTER OF RURAL DEVELOPMENT AND LAND REFORM	Third Respondent
THE MATHULINI COMMUNAL PROPERTY ASSOCIATION	Fourth Respondent
INKOSI BHEKIZIZWE NIVARD LUTHULI	Fifth Respondent
THE VALUER GENERAL	Sixth Respondent
PAUL ANTHONY SAAD	Seventh Respondent
B J GASA FARM CC	Eighth Respondent

JUDGMENT

BARNES AJ

1. This is an opposed interlocutory application.

2. The application is brought by the first, second and third respondents herein who seek, as their primary relief, an order directing the applicants to join certain individuals as respondents in the main application.

3. For convenience, the first, second and third respondents will be referred to herein as "the interlocutory applicants."

4. The interlocutory applicants also seek the following relief:
 - "2. THAT leave be and is hereby granted to the First, Second and Third Respondents to deliver their opposing affidavits after such joinder has been effected and within the time periods prescribed by the Rules for delivery of affidavits by the parties sought to be joined.

 3. THAT the failure of First, Second and Third Respondents to deliver answering affidavit timeously be and is hereby condoned and the bar imposed upon those parties removed."

5. In the main application, the applicants seek declaratory orders to the effect that the land claim of the Mathulini Community has been settled as between the claimant community, the applicants and the relevant state parties, in respect of phases 2 and 3 thereof. The applicants also seek relief to give effect to such settlement. More particularly the applicants seek:

“An order in terms of Section 35(2)(fA) of the Restitution of Land Rights Act 22 of 1994 (“the Restitution Act”) read with Section 22(1)(cE) to give effect to a settlement agreement concluded between the Applicants and the Mathulini Community who had lodged a claim on 30 June 1998” and

“Declaratory orders that the heads of agreement concluded on 17 December 2010 and the management agreement concluded on 12 September 2012 constitute the settlement agreement contemplated by section 14(3) of the Restitution Act and that such agreements are valid and enforceable and that it pertains to phases 1, 2 and 3 of the land claims which was divided into 3 phases by virtue of monetary constraints of the state.”

6. The fourth respondent in the main application is the Mathulini Communal Property Association, a Communal Property Association (“CPA”) established in terms of section 5 of the Communal Property Associations Act 28 of 1996. As is typically the case in such matters, the Mathulini Communal Property Association (“the MCPA”) was formed as a vehicle for the administration of the immovable properties awarded to the Mathulini claimant Community pursuant to the settlement of its land claim.
7. The properties awarded to the Mathulini claimant Community in terms of phase 1 of its land claim have already been transferred to the MCPA.

8. In their founding affidavit in support of their prayer for joinder, the interlocutory applicants say the following:

“There is currently a dispute in the Mathulini Community as to who are the rightful office bearers of the Mathulini Communal Property Association...there are two factions currently existing each of which claim that they are the rightful and properly elected Executive Committee of the Fourth Respondent. The one faction is led by Luthuli and the other faction by one Mandlenkosi General Radebe.”

9. It is the members of the Radebe faction that the interlocutory applicants seek to have joined as respondents in the main application.
10. The applicants oppose the joinder application *inter alia* on the basis that the MCPA, is like all CPAs, a universitas, and is, as such, a juristic person distinct from the individuals comprising it.
11. Moreover, and indeed for this reason, Rule 10 of the Rules of this Court provides that a CPA may be cited as a party in its own name without reference to its members or office bearers.
12. The applicants accordingly submitted that there was no necessity for them to cite the individual members of either faction of the MCPA. This is undoubtedly correct¹ and in my view rendered the joinder application ill-conceived from the

¹ See for example in this regard *Burger v Rand Water Board* [2006] SCA 104 (RSA)

outset.

13. However, at the hearing of the application on 23 October 2018, Adv Aboobaker SC who appeared on behalf of the interlocutory applicants, abandoned the prayer for joinder. He did so on the basis of a judgment handed down in this Court by Canca AJ on 5 September 2018 ("the Canca judgment"), which, Mr Aboobaker contended, rendered the prayer for joinder moot.
14. The Canca judgment ruled on a challenge to the validity to the MCPA Constitution and challenges to the validity of the appointment of various committee members at various times. It is not necessary for the purposes of this judgment to deal with the Canca judgment in any detail. It suffices to say that it was Mr Aboobaker's stated reason for the abandonment of the prayer for joinder. Mr Aboobaker went further however and submitted, from the Bar, that this Court should grant alternative relief, in the form of ordering a meeting of the MCPA for the election of a new committee - something which was ordered in the Canca judgment and, allegedly, not done.
15. This request for alternative relief was not accompanied by any appropriate prayer in a new or amended notice of motion, nor any affidavit setting out the relevant facts. As such it was improperly made and falls to be rejected.
16. Adv Roberts SC who appeared on behalf of the applicants in the main application, and the respondents in the joinder application, complained that

the interlocutory applicants had been aware of the Canca judgment since its delivery on 5 September 2018 and yet had failed to timeously abandon or amend the relief sought. There is a dispute between the parties to as when the interlocutory applicants became aware of the Canca judgment. What is clear however is that they must have been aware of it from at least 5 October 2018 when they received the applicants' heads of argument which made explicit reference to it. In my view, there is merit in Mr Robert's complaint in this regard. 5 October 2018 was a full two weeks prior to the hearing date. The interlocutory applicants ought, during this period, have taken appropriate steps to withdraw or amend their application. Instead, they came to Court with what was effectively, on their own version, a moot application.

17. Mr Roberts submitted that this conduct warrants the Court making a punitive costs order against the interlocutory applicants. Mr Roberts submitted that such a costs order is warranted on a number of additional grounds also. In this regard, Mr Roberts submitted that the interlocutory applicants lacked standing to bring the application, that the deponent to their founding affidavit lacked authority to depose to it and further that the interlocutory applicants have inappropriately entered the fray by supporting the so-called Radebe faction in relation to the Mathulini Community land claim. All these allegations are disputed in both the interlocutory application and the main application and I do not believe that it is necessary for purposes of this judgment for the Court to determine these wide-ranging disputed issues.

18. In any event I am not convinced that those issues, even if established in the applicants' favour, would necessarily warrant a punitive costs order. The issue of an appropriate award costs must be considered in the context of the default position in this Court, which is not to grant costs orders at all. Considered in this context, I am satisfied that it is appropriate to make a costs order against the interlocutory applicants in this case. This is warranted on the basis that not only was the joinder application ill-conceived from the outset, but it was thereafter set down, unaltered, despite having become moot.
19. It remains to deal with the relief sought in prayer 3 of the interlocutory application which has been quoted above. This relief too is misguided. The "bar" applies to actions and not applications and the interlocutory applicants are therefore not "barred" from filing answering papers in the main application. If they do so out of time, they are required to apply for condonation. Whether or not condonation should be granted will depend on the merits of the relevant condonation application and is certainly not something this Court can be called upon to rule upon at this stage.
20. In the circumstances I make the following order:

Order

1. The interlocutory application is dismissed.

2. The first to third respondents are to pay the applicants' costs, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel.

A handwritten signature in black ink, appearing to be 'BARNES AJ', written over a horizontal line. The signature is stylized with a large, circular initial 'B'.

BARNES AJ

Acting Judge of the Land Claims Court

Appearances:

For the first, second and third respondents: Adv T Aboobaker SC with Adv M Ngcobo instructed by the State Attorney

For the applicants: Adv M Roberts SC with Adv E Roberts instructed by Cox and Partners