



**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.
15-07-2019	
<i>[Signature]</i>	

Before: **CANCA AJ**

**CASE NO.: LCC 10/2011B**

In the matter between:

**SAZISO MNDIYATA**

First Applicant

**LIZIWE SONJICA**

Second Applicant

**ZODWA LANGAZANA**

Third Applicant

and

**UMGUNGUNDLOVU  
COMMUNAL PROPERTY ASSOCIATION**

First Respondent

**THULANI EUGINE MCHUNU**

Second Respondent

**IRVIN MHLONGO**

Third Respondent

**MPENDULO FRANK SIMAMANE**

Fourth Respondent

<b>THULISILE HAPPYNESS TSHUTSHA</b>	Fifth Respondent
<b>SIBONGILE DANCA</b>	Sixth Respondent
<b>MINISTER OF RURAL DEVELOPMENT AND LAND REFORM</b>	Seventh Respondent
<b>DIRECTOR-GENERAL: RURAL DEVELOPMENT AND LAND REFORM</b>	Eighth Respondent
<b>CHIEF LAND CLAIMS COMMISSIONER</b>	Ninth Respondent
<b>REGIONAL LAND CLAIMS COMMISSIONER, EC</b>	Tenth Respondent
<b>NEDBANK LIMITED</b>	Eleventh Respondent

Matter heard: 02 May 2019

Judgment: 15 July 2019

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## **JUDGMENT**

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**CANCA AJ**

### **Introduction**

[1] The applicants approached Court on an urgent basis on 27 February 2019 seeking, in Part A of their application, an order:

1.1 interdicting the first respondent from paying the second, fourth, fifth and sixth respondents their monthly salaries;

1.2 interdicting the second, third, fourth, fifth and sixth respondents from accessing or operating any bank account held with the eleventh respondent under the name of the first respondent;

1.3 directing the ninth respondent to preserve the funds standing to the credit of the first respondent's bank accounts. And, to restrain the second, third, fourth, fifth and sixth respondents' access to those accounts, including any other person purporting to be a signatory on the first respondent's bank accounts; and

1.4 directing the seventh respondent to take over control and management of the first respondent's affairs pending the election of a new or interim committee.

[2] In Part B of the application, an order reviewing and setting aside certain decisions and actions of the first respondents is sought on the basis that the decisions and actions were irrational, invalid and unlawful.

[3] On receipt of the application papers, I issued directions in terms of Rule 34(3)(b) of the Rules of Court and granted, *ex parte*, the relief sought in paragraphs 1.1, 1.2 and 1.3 above, on an interim basis. The parties agreed to an extension of the timelines and amended directives were issued, setting down the matter for hearing on 28 March 2019.

[4] The first to sixth respondents ("the main respondents") have, in their answering papers, raised 5 points *in limine* relating to jurisdiction, locus standi, the prematurity of the application, the failure to exhaust internal remedies and the lack of proper facts before the Court.

[5] As to the merits of the matter, the main respondents contend, *inter alia*, that the application is an abuse of process as it pertains to historical grievances which establish no basis in fact or law. They further contend that it is not enough for a Court to review and set aside decisions merely because a party feels that they are disagreeable or that there is another or better way of taking a decision. Reliance for this contention was placed on *Minister of Home Affairs v Eisenberg &*

*Associates: In Re Eisenberg & Associates v Minister of Home Affairs and Others* 2003 (5) SA 281 CC at para [68].

[6] The matter did not proceed on the day it was set down for as counsel advised that the parties were attempting to settle the matter. The Court encouraged this and directed the parties to arrange another date for the hearing of the matter in the event that a settlement evaded them.

[7] The parties failed to find each other and the hearing then took place on 2 May 2019. Following argument, I granted an order in the following terms:

- “1. The Rule Nisi given on 27 February 2019 is discharged.*
- 2. The application is dismissed.*
- 3. No order as to costs. Reasons to follow in due course.”*

I now set out the reasons for the aforesaid order.

## **Parties**

[8] The first applicant, Saziso Mndiyata (“Mndiyata”), an adult male, deposed to the founding affidavit wherein he avers that he is a member and a beneficiary of the first respondent. He is also the chairperson of a group calling itself the Concerned Land Claimants (“the concerned group”).

[9] The second applicant, Liziwe Sonjica (“Sonjica”), an adult female, is a member and beneficiary of the first respondent. She is also, currently, the secretary of the concerned group.

[10] The third applicant, Zodwa Langazana (“Langazana”), an adult female, is also a member and beneficiary of the first respondent. She is currently an organizer and coordinator of the concerned group.

[11] The first respondent, Mgungundlovu Communal Property Association (“the CPA”), is a communal property association registered in terms of the provisions of section 8 of the Communal Property Association Act, No 28 of 1996 (“the CPA Act”).

[12] The second respondent, Thulani Eugene Mchunu, an adult male, is the current chairperson of the CPA.

[13] The third respondent, Irvin Mhlongo, an adult male, is the CPA’s vice-chairperson.

[14] The fourth respondent, Mpendulo Frank Simamane, an adult male, is the CPA’s secretary.

[15] The fifth respondent, Thulisile Happyness Tshutsha, an adult female, is the CPA’s deputy-secretary.

[16] The sixth respondent, Sibongile Danca, an adult female, is the CPA’s treasurer.

[17] The seventh respondent, The Minister of Rural Development and Land Reform (“the Minister”), is cited in her capacity as the political head with oversight over the Department of Rural Development and Land Affairs (“the Department”).

[18] The eighth respondent, the Director-General, Rural Development and Land Reform ("the DG"), is the head and accounting officer responsible for administrative control over the Department.

[19] The ninth respondent is the Chief Land Claims Commissioner ("The Chief Commissioner") and the official responsible for the administrative control of the processing of land claims in South Africa.

[20] The tenth respondent is the Regional Land Claims Commissioner, Eastern Cape ("the Regional Commissioner") is the official endowed with jurisdiction to process and administer land claims lodged in the Eastern Cape Province.

[21] The eleventh respondent is Nedbank Limited ("Nedbank"), a bank duly registered in terms of South Africa's banking laws.

## **Background**

[22] The following appears from the papers. The community of Mgungundlovu ("the claimant community"), which is situated in the Bizana administrative district in the Eastern Cape Province, was forcibly removed from their ancestral land in the 1980s after the former Transkei homeland government signed a lease agreement over their land with Transkei Sun International Limited ("Transun"), a subsidiary of Sun International South Africa Limited, for the development of a resort, casino and a golf course. The development, known as the Wild Coast Sun, borders the town of Port Edward in south-western part of KwaZulu-Natal Province.

[23] The claimant community instituted a land claim with the Regional Commissioner on 23 September 1995, in terms of the Restitution of Land Rights Act, 22 of 1994 ("the Restitution Act"), for the restitution of the land described as Farm No 1-D. T, situated in the administrative of Bizana as well as certain neighbouring land ("the claimed land"). The claimed land is, save for the Wild Coast

Sun, largely undeveloped. The claimant community was also paid a sum of R50 million by the Minister as part of the settlement.

[24] The claim was eventually referred to this Court in terms of section 38B of the Restitution Act under case number LCC10/2011 and, after the exchange of pleadings, the parties eventually entered into an agreement to settle the claim. The settlement agreement was made an order of Court on 10 November 2014.

[25] The following actions took place after the conclusion of the settlement agreement:

25.1 The claimants registered the CPA on 26 September 2015 in accordance with the CPA Act.

25.2 An election for the appointment of the CPA's management committee was held during July 2015. Twelve persons were elected under the supervision of the Independent Electoral Commission of South Africa ("the IEC"). Five of these persons formed the executive and the rest were additional members, together, they are hereafter referred to as the "2015 Committee".

25.2.1 Prior to the election of the 2015 Committee, there were two other committees which represented the land claimants. First, there was a committee which was elected by the claimants on the direction of the Regional Commissioner on 8 August 2014 ("the 2014 Committee"). The election of this committee was also overseen by the IEC. The direction by the Regional Commissioner was issued in terms of section 10(4) of the Restitution Act which empowers the Regional Commissioner to direct a community meeting to be convened, and an election to be held when there is a dispute as to the legitimate representatives of a claimant community for purposes of the Restitution Act.

25.2.2 The Regional Commissioner directed the election of the 2014 Committee because there was another committee ("the old

Committee”) that existed prior to the formation of the 2014 Committee. The old Committee’s legitimacy was allegedly not recognized by the claimant community and this appears to have been the Regional Commissioner’s reason for initiating the formation of the 2014 Committee.

25.2.3 The old Committee, of which the third applicant, Langazana, is a member, following the election of the 2014 Committee, unsuccessfully sought an Order from this Court overturning the results of the election and declaring it, namely the old Committee, the lawful representatives of the claimant community.

[26] It is evident from the papers that there is long history of ill-will between the members of the concerned group and the 2014 Committee. The major source of the bad blood between the two groups appears to be the allegations by the concerned group that the executive of the 2014 Committee was misusing the Development Funds, notwithstanding the fact that comprehensive financial controls, which were approved by both the Minister and the Regional Commissioner are in place.

[27] During April 2018, the D-G, following a number of complaints by the concerned group, initiated a process which entails investigating the complaints and facilitated meetings between the protagonists in an endeavor to settle their dispute. This process is, apparently, on-going.

[28] It is appropriate that, before considering the merits of this matter, that I first determine the preliminary points raised by the main respondents.

### **Points in limine**



[29] Does this Court have jurisdiction to entertain this matter? Mr. Premhid, for the main respondents, contends that this Court, although enjoying a status similar to that of a High Court, does not have general jurisdiction and therefore cannot entertain this application as its powers are specifically prescribed by legislation.

[30] Mr. Premhid relies on a number of authorities for the abovementioned contention, including, *Manong & Associates (Pty) Ltd v Department of Roads and Transport, Eastern Cape & Others (No. 2)* 2008 (6) SA 434 (EqC) at paras [5] to [10] which analyses specialists Courts. See also *Genadendal Transformation Committee v Theewaterskloof Municipality* [2014] ZALCC 14, where the Court pronounced on its jurisdiction as follows:

*“The Constitution does not refer to this Court at all, and therefore cannot be directly relied upon to establish the extent of its jurisdiction. This Court only deals with some aspects of Land Reform, and only when it has explicit legislative authority to do so.”*

[31] This Court was established by section 22 of the Restitution Act which provides that:

*“(1) There shall be a court of law to be known as the Land Claims Court which shall have the power, to the exclusion of any court contemplated in section 166 (c), (d) and (e) of the Constitution –*

*(a) to determine a right to restitution of any right in land in accordance with this Act;*

*(b) to determine or approve compensation payable in respect of land owned by or in the possession of a private person upon expropriation or acquisition of such land in terms of this Act;*

*(c) to determine the person entitled to title to land contemplated in section 3;*

*(cA) at the instance of any interested person and in its discretion, to grant a declaratory order on a question of law relating to section 25*

*(7) of the Constitution or to this Act or to any other law or matter in respect of which the Court has jurisdiction, notwithstanding that such person might not be liable to claim any relief consequential upon the granting of such order;*

*(cB) to determine whether compensation or any other consideration received by any person at the time of any dispossession of a right in land was just and equitable;*

*(cC) to determine any matter involving the interpretation or application this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No.3 of 1996), with the exception of matters relating to the definition of "occupier" in section 1 (1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997);*

*(cD) to decide any constitutional matter in relation to this Act or the Land Reform (Labour Tenant) Act, 1996 (Act No. 3 of 1996);*

*(cE) to determine any manner involving the validity, enforceability, interpretation or implementation of an agreement contemplated in section 14(3), unless the agreement provides otherwise;*

*(d) to determine all other matter which require to be determined in terms of this Act.*

*(2) Subject to Chapter 8 of the Constitution, the Court shall have jurisdiction throughout the Republic and shall have-*

*(a) all such powers in relation to matters falling within its jurisdiction as are possessed by a High Court having jurisdiction in civil proceedings at the place where the land in question is situated, including the powers of a High Court in relation to any contempt of the Court;*

*(b) all the ancillary powers necessary or reasonably incident to the performance of its functions, including the power to grant interlocutory orders and interdicts;*

*(c) the power to decide any issue either in terms of this Act or in terms of any other law, which is not necessarily within its jurisdiction but is incidental to an issue within its jurisdiction, if the Court considers it to be in the interests of justice to do so.”*

[32] The aforementioned provisions of section 22 (1) and (2) make it clear that this Court’s powers are limited to land restitution, land tenancy and matters falling within the provisions of the Extension of Security of Tenure Act, No. 62 of 1997 (“ESTA”).<sup>1</sup> The only exception being the matters referred to in section 22(2)(c) of the Restitution Act, if a Court considers it to be in the interests of justice to consider such matters.

[33] The applicants’ complaints cannot be said to be incidental to land restitution as the Court’s jurisdiction was exhausted when the parties concluded the settlement agreement which extinguished the claimant community’s land claim. Rather, their complaints are in respect of issues of governance. This matter clearly does not fall within the three categories which the Legislature has clothed this Court with jurisdiction to adjudicate. Mr. Madikizela, for the applicants, correctly in my view, did not argue that this matter is incidental to land restitution and that it would be in the interests of justice for this Court to consider it.

[34] Mr. Premhid also submitted that the applicants’ suit pertains to the management of the CPA which is the subject of a different Act, in respect of which this Court has no jurisdiction. Reliance for this submission was placed on subsections 2(1)(b) of the CPA Act.<sup>2</sup> I find merit in this submission.

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<sup>1</sup> The preamble to this Act reads:

*“To provide for measures with State assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and to regulate the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land; and to provide for matters connected therewith.”*

<sup>2</sup> This sub- section reads:

**“2. Application of Act. – (1) The provisions of this Act shall apply to a community- (b) entitled to or receiving property or other assistance from the State in terms of an agreement or in terms of any law, on condition that an association be formed in accordance with the provisions of this Act;”**

[35] It is common cause that the condition referred to in sub-section 2(1)(b) has already taken place, namely, the CPA was in existence when this application was launched with the result that this Court's role ended when the settlement agreement was concluded.

[36] The mere fact that the dispute originates in a claim for restitution does not necessarily mean that all subsequent judicial claims fall under the jurisdiction of this Court. The issues in the case of *Mathebula & Others v The Nwandlelamhari Communal Property Association & Others* [2019] ZAGPPHC 201 (9 May 2019), some of which are similar to the issues raised in this matter, was heard in the High Court.

### Costs

[37] The first to sixth respondents seek a costs order against the applicants. It is the practice of this Court not to award costs unless there are extraordinary circumstances. This application has been dismissed on technical grounds and not on its merits. I am not persuaded that the circumstances of this case warrant a departure from the aforementioned practice.

[38] In the result, I find as follows:

1. The objection to the jurisdiction of this Court is upheld.
2. There is no order as to costs.



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MP Canca,

Acting Judge, Land Claims Court

**Appearances:**

For the Applicants: Mr. S. Madikizela

Instructed by: Mkhize PR Attorneys, Durban

For the 1<sup>st</sup> – 6<sup>th</sup> Respondents: Adv. K Premhid

Instructed by: Richard Spoor Inc. Attorneys, Johannesburg