


REPUBLIC OF SOUTH AFRICA



IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LCC01/2024

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
	22 January 2024
..... SIGNATURE DATE

In the matter between:

PIET RISENGA MASINGI

Applicant

and

KAALLEGTE FARM 283 KR

First Respondent

THE TRUSTEES OF THE FARM

Second Respondent

KAALLEGTE FARM 283 KR

ANY PERSON IN CHARGE OF THE ADMINISTRATION

Third Respondent

AND ALL OPERATIONS AT KAALLEGTE FARM 283 KR

REASONS FOR THE ORDER

NCUBE J

Introduction

[1] This matter served before me on 05 January 2024. It was brought on urgent basis. I accordingly condoned non-compliance with the Rules relating to form, service and timelines. I issued directives with regard to filing of answering and replying affidavits. The matter was extremely urgent as the applicant sought the order permitting him to bury his son Jim Shibereki ("the deceased") on Kaalegte Farm 283 KR ("the farm"). The funeral was due to take place on Sunday the 7th of January 2024. The matter was heard on Saturday the 6th of January 2024. I dismissed the application and promised to give reasons later. This judgment is concerned with those reasons.

Parties

[2] The applicant is Piet Risenga Masingi ("the applicant"). He is the biological father of the deceased. He resides at Ga-Pila Village Makopane, in Limpopo. The first respondent is the farm situated at Mooi Plaas Boerdery, Limpopo. The second respondents are trustees of the farm. The third respondent is any other person who might be in charge of the administration and all operations on the farm.

Service

[3] In terms of the directives I issued, the applicant had to serve all the papers and directives to the respondents on 05 January 2024 at 14h00. The respondents were directed to file their answering affidavits on 05 January 2024 at 17h00. The applicant was directed to file his replying affidavit on 06 January 2024 at 09h00. The matter was going to be heard on 06 January 2024 at 09h00. The respondents did not file their answering affidavit and they did not attend the hearing which was done electronically

on MS Teams. According to the return of service, the papers were served on the respondent, on 05 January 2024 by affixing them on the gate on the farm as no other manner of service was possible. The application was argued by Mr Maabane on behalf of the applicant in the absence of the respondents. The application was subsequently dismissed.

Factual background

[4] The applicant is the biological father of the deceased. The deceased was born on the farm in 1976 and he continued residing on the farm until 1979. In 1979 the applicant and the whole of his family left the farm and went to settle at Ga-Pila Village in Mokopane, Limpopo. The farm was, by then owned by one Paul Earls. The previous owners of the farm had allowed the applicant and other families residing on the farm to bury their departed members of the family on the farm.

[5] In June 2020 the applicant's wife ("Mrs Masingi") died at Limpopo. With the consent of the previous farm owners Mrs Masingi was buried on the farm although the family was no longer residing on the farm. In November 2023, the applicant's younger brother Joseph Masingi ("Joseph") passed away. The applicant sought the consent of the current owner of the farm to bury Joseph on the farm. Consent was not given, consequently, Joseph was buried at an alternative cemetery at Mosetjana, Makopane. The applicant reported the death of the deceased herein and requested for permission to bury him on the farm. No response was forthcoming from the respondent. The applicant, as he was anticipating the refusal from the respondents, approached this court for a *mandamus*.

Legal Matrix

[6] The starting point of exercise is section 6(2)(dA) which provides that the occupier shall have the right to bury a deceased member of his or her family who at the time of that person's death was residing on the land on which the occupier is residing in accordance with their religion or cultural belief, if an established practice in respect of the land exists.

Discussion

[7] The first problem which the applicant is facing is to prove that the deceased died whilst resident on this particular farm. The applicant left the farm with his family members in 1979 which is forty-five (45) years ago. The deceased was not residing on the farm at the time of his death. He had left the farm forty-five (45) years ago. The applicant also was not residing on the farm with the deceased when the deceased passed away.

[8] Section 6(2)(dA) is framed in the present tense not in the past tense. The section does not deal with the person who at some stage in the past, resided on that particular farm. For the deceased to be buried on the farm, he must be resident on the farm with the occupier at the time of his death. The applicant himself cannot prove that he is still an occupier on this particular farm. The applicant provides no reason why members of his family must continue to be buried on the farm which he left forty-five (45) years ago.

[9] The Act requires that the rights of the occupiers must be weighed and balanced against the rights of land owners. There can be no justification for the applicant, to

continue to bury more members of his family on a farm where he does not reside and where for forty-five (45) years has not stayed there.

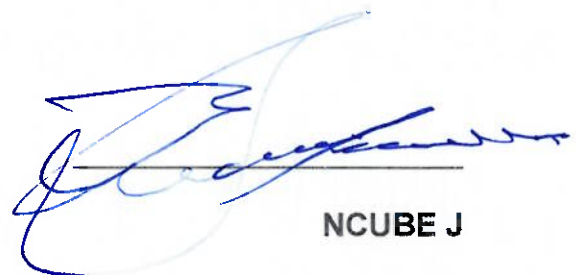
Costs

[10] The application was unopposed, In any event this court does not award costs unless there are special circumstances warranting an award of costs. There are no such circumstances in this matter.

Order

[11] In the result, I make the following order

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

A handwritten signature in blue ink, appearing to read 'NCUBE J', is written over a horizontal line. The signature is stylized and cursive.

NCUBE J
Judge of the Land Claims Court of
South Africa, Randburg

Appearances

For Applicant: Mr Maabane

Instructed by: Legal Aid SA

For Respondent: non-appearance