IN THE LAND COURT OF SOUTH AFRICA

HELD AT RANDBURG

CASE NO: LCC 112/2021

BEFORE THE HONOURABLE FLATELA J

Heard on 27 August 2024

Delivered on 19 September 2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED: YES / NO

19/09/2024
DATE

SIGNATURE

In the matter between:

RAMANATHAN NAIDOO	Applicant
and	
LAND CLAIMS COMMISSION: KWAZU-LU-NATAL	First Respondent
THE MINISTER OF RURAL DEVELOPMENT AND LAND REFORM (PREVIOUSLY KNOWN AS THE MINISTER OF LAND AFFAIRS)	Second Respondent
VINOTHAN NAIDOO *N.O.*	
(IN HIS CAPACITY AS THE CO-EXECUTOR OF THE ESTATE OF THE LATE PATHMANATHAN)	Third Respondent

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ORDER

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1. The application for leave to appeal to the Supreme Court of Appeal is granted.
2. The costs of this application shall be costs in the appeal.

LEAVE TO APPEAL JUDGMENT

FLATELA J

Introduction

[1] This is an application for leave to appeal against the judgment and order handed down by this court on 21 February 2024, dismissing the review application to set aside the First and Second Respondent's decision to settle the land claims lodged by the late Pathmanathan Runganathan Naidoo and represented herein by the Third Respondent. The Applicant also sought an order declaring that all the descendants of his late father, Runga Nattan, are equal beneficiaries of the proceeds of the settlement agreements. The review application was dismissed on two points *in limine*: the Applicant's lack of *locus standi* and non-compliance with section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA)).[1] The Applicant now seeks leave to appeal the whole judgment to the Supreme Court of Appeal. The Respondents oppose the application.

Brief Facts

[2] The Applicant's father, the late Runga Nattan, was a farmer, property developer and investor in Kwa-Zulu Natal Province whose properties were dispossessed between 1963 and 1982 as contemplated in the Restitution of Land

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[1] Section 7(1) of PAJA provides that review proceedings must be instituted no later than 180 days after the date that internal remedy proceedings have been concluded or, where no such remedy exists, after the date that "the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons."

Rights Act 22 of 1994(Restitution Act). Runga Nattan died on 4 October 1973 before the enactment of the Restitution of Land Rights Act 22 of 1994.

[3] Runga Nattan was married in a community of property to Muruvamma, and two children were born from that marriage: the late Pathmanathan Runganathan and the late Thilaimbal, a daughter who was married to Loganathan Munsamy Naidoo.

[4] According to the Applicant, Runga Nattan left his common home and settled in Harringworth, near Ixopo, where he started his farming business after his properties were expropriated by the apartheid government. His wife and children did not move with him. At Harringworth, the late Runga Nattan met with the Applicant's mother, and they set up a home. Runga Nattan began banana farming. The Applicant and his sister were born from that relationship.

[5] On 1 March 1962, Runga Nattan drew a Will that records that other than certain legacies to Thilaiambal, his brothers' sons and nephews, he bequeathed the residue of his estate to his son Pathmanathan. The Will recorded that "*I hereby give, devise and bequeath the Residue of my Estate, nothing excepted to my son Pathmanathan.*" The estate was wound up in 1982. The will was drawn before the Applicant and his sister were born.

[6] In September 1973, a few weeks before his death, Runga Nattan concluded an undertaking with the Applicant's mother wherein he agreed to pay Applicant's mother money in full and final settlement of all and any claim she might have against the said Runga Nattan. In terms of this undertaking, it was recorded that the Applicant's mother had specifically agreed that she would have no claims against Runga Nattan or his estate, irrespective of whether any bequest has been made by the said Runga Nattan in his Will.

[7] On 20 March 1997, the late Pathmanathan Ranganathan lodged various land claims with the First Respondent in his capacity as the son and the sole heir of the Runga Nattan's estate. In support of the claims, the late Pathmanathan deposed to an affidavit wherein he confirmed that he was the son and an heir of the late Runga Nattan and that in terms of the Will of his late father, he was the principal beneficiary

apart from legacies that had been bequeathed to other family members. In the claim forms, he confirmed that no other party had a valid claim against the estate except himself. The First Respondent accepted the claims. The First Respondent caused a general notice in terms of section 11(1) of the Restitution Act to be published in the Government Gazette on 26 June 1998, wherein interested parties were invited to submit comments on the land claimed within 60 days from the date of publication. The First Respondent received no comments.

[8] On 22 November 2002, the Second Respondent concluded a settlement agreement with the claimant to award an amount of R500 000(Five Hundred Thousand Rand) as a full and final settlement of all the claims. On 27 September 2007, the late Pathmanathan launched a review application to review the settlement agreement on the basis of fraudulent misrepresentation by the officials of the Second Respondents regarding the just and equitable compensation, which led him to accept the settlement. On 27 September 2021, this court granted an order in favour of the late Pathmanathan, and the settlement agreement was reviewed and set aside. The parties entered into settlement negotiations and settled the quantum of R3 250 000 in October 2014.

[9] On 22 June 2021, the Applicant brought a review application to set aside the settlement agreement entered between the First and Second Respondents and his late half-brother, Pathmanathan Ranganathan. The Applicant also sought a declaratory order that he and his sisters are equal beneficiaries with his late step-brother from the restitution awards made for the dispossession of their late father's properties.

[10] It is common cause that neither the Applicant nor his sisters lodged a land claim, and the Applicant never participated in the processes leading to the settlement of the land claims that are the subject of this review. The Applicant testified that the late Pathmanathan told him about the claims he lodged and financial compensation on 15 October 2019. The Applicant contended that he knew nothing about his late father's properties, and he was not aware that he had siblings until the late Pathmanathan contacted him through a tracing agent. He averred that the late

Pathmanathan informed him of the claims and that he took the matter to the Land Claims Court and to the Supreme Court of Appeal, where he appealed against the compensation that he received and was awarded approximately R12 million for the expropriated land.

[11] The Applicant did not explain the delay in bringing the application and did not seek condonation in terms of section 9 (1) of PAJA. He contended that he was bringing the application in terms of section 36 of the Restitution Act, which does not stipulate time limits upon which to bring review proceedings. I dismissed the application for review on the basis of non-compliance with section 7(1)(b) of PAJA.

Grounds of appeal

[12] The Applicant initially listed eleven (11) grounds of appeal in his notice of appeal. The first five grounds were abandoned at the commencement of the hearing. Amongst the grounds that the Applicant abandoned is the finding that non-compliance in terms of section 7(1)(b) PAJA would dispose of the matter in its entirety without having to deal with the merits of the matter.

[13] The application for leave to appeal is sought on two grounds, namely the court's finding that the Applicant lacked *locus standi* to institute the review proceedings (grounds 7,8,9 and 10). The second ground is that another court could find that the applicant brought this review application without unreasonable delay. The grounds are stated as follows:

1. The court erred in not placing sufficient reliance on section 36 of the Restitution Act in a determination of the issue of the Applicant's *locus standi*
2. The court misdirected itself by relying upon the definition of a "party in terms of Section 1 of the Act in a determination of the issue of the Applicant's *locus standi*
3. The court misdirected itself by relying upon the provisions of Section 2 of the Act in the determination of the issue of the Applicant's *locus standi;*

4. The court misdirected itself by relying upon the provisions of Rule 26(3) of the Rule of the Land Court regarding the definition of a party" in determining the issue of the applicants' *locus standi*.
5. The court misdirected itself in its determination of whether the applicant has local standing on an assessment of the common cause facts that he never lodged a claim before 31 December 1998 and never responded to the Government Gazette notice on 26 June 1998 when it was common cause that at the time he did not know the claimant was his biological father.

[14] On the second ground of appeal, the Applicant contends that another court would reasonably find that the Applicant brought his review application without unreasonable delay. I now deal with the two broad grounds of appeal.

On locus standi

[15] Addressing his locus *standi* in his founding affidavit, the applicant stated as follows:

i. I have the necessary local standard to bring this application to review the decision to settle made by the Land Claims Commission and the Minister and to review the settlement agreement entered into by the three Respondents in favour of the Third Respondent.

ii. In terms of Chapter 3 of the Restitution of Land Act, section 36.

36 Review of decisions of the Commission;

(1) Any party aggrieved by any act or decision of the Minister, Commission or any functional reacting or purportedly acting in terms of this Act may apply to have such act or decisions reviewed by the Court.

I am aggrieved by the act of the Minister and the Commission being the First and Second Respondents herein entering into a settlement agreement with the Third Respondent and the decision of the First and Second Respondents to enter into a settlement agreement with the Third Respondent."

[16] The Applicant relied on section 36 of the Restitution Act. It is common cause that the Applicant was not a claimant and never participated in the processes before the First and Second Respondents. On the strength of the Applicant's argument, I found that he lacked a *locus standi* to bring the review application under section 36 of the Restitution Act as he did not lodge the claim. However, he is a descendant of the late Runga Nattan.

[17] In this Application for Leave to Appeal, the Applicant's counsel argued that the Applicant's *locus standi* fell to be determined in terms of the provisions of PAJA, which provides that "any person" may institute proceedings for the judicial review of administrative action. The Applicant's counsel argued further that the Applicant had, as a direct descendant of the late Runga Nattan, had sufficient interest for the purpose of section 38 (a) of the Constitution to apply to vindicate their right to just and administrative action in terms of section 33 (1) of the Constitution.

Undue delay in bringing the review application

[18] It is common cause that the Applicant became aware of the land claims on 15 October 2019. In this application, the Applicant's counsel conceded that the Applicant did not explain the delay in instituting review proceedings from the time he became aware of the settlement agreement on 15 October 2019.

[19] During the review Application, the Applicant's counsel submitted that the review application was brought in terms of section 36 of the Restitution of Land Rights Act 22 of 1994. The Applicant's counsel also argued that the review has been brought under the principle of legality and not in terms of PAJA. Therefore, there are no statutory prescribed limits within which the review proceedings had to be brought. She argued further that the PAJA period of 180 days was not applicable. I found the

applicant's submission without merit as the applicant expressly relied on PAJA to bring the review application. Therefore, PAJA was applicable.

[20] Relying on the Constitutional Court judgment in *Sasol Chevron Holdings Limited v Commissioner for the South African Revenue Service* [2] , I found that there was non-compliance with section 7(1)(b) of PAJA, a finding that disposed of the matter in its entirety.

The test for Leave to Appeal

[21] Section 17 of the Superior Courts Act 10 of 2013 provides that:

> '(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
>
> *(a)* (i) the appeal would have a reasonable prospect of success; or
> (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
>
> *(b)* the decision sought on appeal does not fall within the ambit of section 16(2)*(a)* and
>
> *(c)* where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.'

[22] Section 17(1)(a)(i) provides that a Court *may only* grant leave to appeal where the judge or judges concerned are of the opinion that *the appeal would have a reasonable prospect of success.*

[23] In *Mont Chevaux Trust v Tina Goosen & 18 Others*[3] Bertelsmann J held as follows:

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[2] **[2023] ZACC 30**

[3] *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2335 (LCC) at para 6.

"It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court might come to a different conclusion. See Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 342H. The use of the word "would" in the new statutes indicates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against."

[24] Plasket AJA, as he then was, in ***Smith v S***[4] explained the test for reasonable prospects of success as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on facts and the law that the Court of Appeal could reasonably arrive at the conclusion different to that of the Trial Court. In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success; that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[25] The Applicant's counsel argued that regard ought to have been had to the Applicant's strong prospects of success in the review when determining the question of undue delay. The Applicant contended that the First Respondent acted *ultra vires* by accepting the claim as a deceased estate claim in terms of section 2 (1)(b) of the Restitution Act. In contrast, the claims fell to be decided as a descendant claim in terms of section 2(1)(c) and section 2(4) of the Restitution Act. The Applicant's counsel submitted that the Respondents did not properly apply their mind to whether the claim submitted complied with section 2 (1) of the Restitution Act. It was argued

[4] S v Smith 2012 (1) SACR 567, 570 para 7

on behalf of the Applicant that the State Respondents acted *ultra vires* when they decided to settle the claim of the Third Respondent.

[26] The Applicant submitted that the First Respondent did not investigate the Third Respondent's claim as required by Rule 5 of the Restitution Act. On behalf of the Applicant, it was submitted that the conclusion reached by the State Respondents was unreasonable, influenced by errors of law, took irrelevant considerations, failed to consider relevant considerations and was not rationally connected to the information before it.

[27] I have considered the grounds of appeal and the parties' respective submissions and in the light of the SCA judgment in Centre *for Child Law and Others v South African Council of Educators and Others*[5] , I am inclined to grant the leave to appeal. I am of the opinion that the appeal has a reasonable prospect of success

[28] In the circumstances, I make the following order:

a. The application for leave to appeal to the Supreme Court of Appeal is granted.
b. The costs of this application shall be costs in the appeal.

Flatela L

Judge of the Land Court

[5] (1289/2022) [2024] ZASCA 45

Appearances

For the Applicant:	**C J Moodley,**
Instructed by PN	**Haribhai Attorneys and Conveyancer**
For the First & Second Respondents:	**Mr Chithi M**
Instructed by State Attorney, KwaZulu-Natal	
For the Third Respondent:	**Adv Pudifin-Jones**
Instructed by Larson	**Falconer Hassan Parsee INC**