

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on 4 - 6 September 2001
before **Moloto AJ**

CASE NUMBER: LCC 87/00

Decided on: 13 September 2001

In the matter between:

GAMEVEST (PTY) LTD Applicant

and

**THE REGIONAL LAND CLAIMS COMMISSIONER
FOR THE NORTHERN PROVINCE AND MPUMALANGA** First Respondent

THE CHIEF LAND CLAIMS COMMISSIONER Second Respondent

THE LAND CLAIMS COMMISSION Third Respondent

THE BA-PHALABORWA BA GA-MASEKE TRIBE Fourth Respondent

THE BA-PHALABORWA BA GA-SHAI TRIBE Fifth Respondent

JUDGMENT

MOLOTO AJ:

[1] This is an application for leave to appeal to the Supreme Court of Appeal against the whole of the judgment and order of this Court handed down on 6 July 2001.¹ The alleged grounds of appeal are too numerous to repeat. In view of my finding in the main application, I deal only with the grounds which are central to that decision.

¹ *Gamevest (Pty) Ltd v The Regional Land Claims Commissioner for the Northern Province and Mpumalanga and Others*, as yet unreported, is available on the Internet at [2001] JOL 8503 (LCC) and <http://www.law.wits.ac.za/lcc/2001/87-00sum.html>.

[2] The applicant had brought an application in terms of section 36 of the Restitution of Land Rights Act² (hereinafter “the Act”) for the review and setting aside of certain decisions taken and/or actions undertaken by the first, alternatively the second and further alternatively the third respondent and other relief. Section 36 of the Act reads as follows:

- “(1) Any party aggrieved by any act or decision of the Minister, Commission or any functionary acting or purportedly acting in terms of this Act may apply to have such act or decision reviewed by the Court.
- (2) The Court shall exercise all the Supreme Court’s powers of review with regard to such matters, to the exclusion of the provincial and local divisions thereof.”

[3] The first respondent had received documents in support of a claim for restitution of a right or rights in land on behalf of, amongst others, the fourth and fifth respondents. Part of the land claimed belongs to the applicant. On becoming aware of the claims in respect of its land, the applicant made certain enquiries at the offices of the first respondent and obtained some documents from the first respondent relating to the claim. The applicant formed the view that the claims of the fourth and fifth respondents³ were defective in that the claim forms did not contain sufficient detail to satisfy the requirements of section 6(1)(a) of the Act.

[4] Section 6(1)(a) reads:

- “(1) The Commission shall, at a meeting or through the Chief Land Claims Commissioner, a regional land claims commissioner or a person designated by any such commissioner-
- (a) subject to the provisions of section 2, receive and acknowledge receipt of all claims for the restitution of rights in land lodged with or transferred to it in terms of this Act;”

[5] The relevant part of section 2 referred to in section 6(1)(a) reads as follows:

- “2(1) A person shall be entitled to restitution of a right in land if-
- (a) he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or

2 Act 22 of 1994, as amended.

3 The claims of the fourth and fifth respondents were later said to be the claims of the fifth respondent only.

- (b) it is a deceased estate dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- (c) he or she is the direct descendant of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who-
 - (i) is a direct descendant of a person referred to in paragraph (a); and
 - (ii) has lodged a claim for the restitution of a right in land; or
- (d) it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; and
- (e) the claim for such restitution was lodged not later than 31 December 1998.”

[6] The crux of the matter was whether the first or second or third respondent was duty bound, in acting in terms of section 6(1)(a), to reject out of hand any claim which, on the face of it, did not strictly comply with the requirements of section 2(1). In this context it became necessary to interpret the phrase “subject to” which appears in section 6(1)(a). It is my interpretation of the phrase which is, amongst others, the ground of appeal. Related to that was the view that my finding that no reviewable decision had been taken by any of the first three respondents was erroneous. It was alleged that, in making this finding, I relied on the correspondence annexed to the affidavits in support of the applicant’s application instead of the affidavits themselves, which are sworn to. This is not entirely the case. I regarded the correspondence as the objective facts on which the affidavits were based, and also relied on the affidavits, including those of the respondents.

[7] The test in an application for leave to appeal is whether there is a reasonable prospect of success on appeal.⁴ I am satisfied that another court might come to a different conclusion on the interpretation of the phrase “subject to” in section 6 of the Act.

4 *Botes and Another v Nedbank Ltd* 1983 (3) SA 27 (A) at 28C-F; *Van Heerden v Cronwright and Others* 1985 (2) 342 (T) at 343D; *Capital Building Society v De Jager and Others*; *De Jager and Another v Capital Building Society* 1964 (1) SA 247 (A) at 247F.

[8] I make the following order:

- (1) Leave to appeal to the Supreme Court of Appeal against the whole of the judgment and order of this Court given in this matter on 6 July 2001 is hereby granted.
- (2) The costs of this application will be costs in the cause.

ACTING JUDGE J MOLOTO

For the applicant:

Adv de Villiers instructed by *Jurgens Bekker Attorneys, Johannesburg.*

For the first, second and third respondents:

Adv Shakoane instructed by the *State Attorney, Johannesburg.*

For the fifth respondent:

Adv Havenga instructed by *Steytler Nel & Calitz Attorneys, Pietersburg.*