

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, MTHATHA**

CASE NO: **3771/2018**

Date heard: **07 February 2019**

Date delivered: **26 February 2019**

In the matter between:

**DEPARTMENT OF RURAL DEVELOPMENT
LAND REFORM**

First Applicant

CHIEF MNCEDISI NDAMASE

Second Applicant

and

ANDILE NTSADU

First Respondent

THOKOZILE NTSADU

Second Respondent

VUYISA MBIZA

Third Respondent

MR QUPE

Fourth Respondent

**ALL PERSONS ASSOCIATING THEMSELVES WITH
FIRST TO THE FOURTH RESPONDENTS' UNLAWFUL
ACTIVITIES IN FARM 191, SIBANGWENI, LIBODE**

Fifth Respondent

**UNLAWFUL INVADERS OF FARM 191, SIBANGWENI,
LIBODE**

Sixth Respondent

JUDGMENT

LOWE, J:

INTRODUCTION

- [1] This matter was brought as an urgent interdict, Applicants seeking an interdict restraining Respondents and any persons acting “*in cahoots*” with them from occupying Farm Sibangweni No. 38, Nyandeni Municipality, Libode also known as Farm 191 (“*the land*”), together with ancillary relief preventing Respondents from erecting structures on the land.
- [2] First to Fourth Respondents gave notice to oppose and have filed answering affidavits.
- [3] It seems unlikely that the remaining Respondents are properly before the Court but that is a matter for another day.
- [4] First to Fourth Respondents raised the following points *in limine*:
1. Non-Joinder;
 2. Urgency;
 3. *Locus standi* of Applicants.
- [5] It is clear from the affidavits that the land incorporates an “*allotment 225*” in respect of which allotment First to Fourth Respondents assert title.
- [6] The urgency issue in the light of the full set of papers filed essentially falls away. In any event on the facts set out I consider the matter to have been of

sufficient urgency to warrant the procedure and time limits of the application process.

- [7] As to non-joinder after some argument, First to Fourth Respondents' counsel correctly on the facts and on the inevitable findings flowing from the facts and the law, abandoned same.

THE ESSENTIAL BACKGROUND

- [8] I will set out only those facts relevant to the remaining point *in limine*.
- [9] The parties were correctly of the view that *locus standi* should be determined before the merits, as disposition of an application where Applicants have no *locus standi* is in principle the appropriate procedure as this, the issue, is divorced from the substance of the case.¹
- [10] Shortly then Applicants contend, through the Chief Director Mthatha, Eastern Cape Provincial Shared Service Centre of the Departments of Rural Development and Land Reform, that First Applicant is the custodian of the land and annexes a Certificate of Registered State Title T00075/2009 [Issued under the provisions of Section 18 of the Deeds Registries Act, 1937 (No. 47 of 1937)]. This certificate reads as follows:

“CERTIFICATE OF REGISTERED STATE TITLE

¹ *Giant Concerts CC v Rinaldo Investments (Pty) Limited & Other* 2013 (3) BCLR 251 (CC) para [41].

[Issued under the provisions of section eighteen of the Deeds Registries Act,
1937 (No. 47 of 1937)]

Whereas the Minister of Lands has applied under the provisions of section eighteen of the Deeds Registries Act, 1937, for the issue to the Republic of South Africa of a certificate of registered State title in respect of the undermentioned land, being a piece of unalienated State land which has been separately surveyed and is shown on the diagram annexed thereto.

Now therefore, in pursuance of the provisions of the said Act, I the Registrar of Deeds at UMTATA do hereby certify that the said

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its successors in title or assigns is the registered owner of the FARM SIBANGWENI NO. 38, NYANDENI MUNICIPALITY, DISTRICT OF LIBODE, PROVINCE OF THE EASTERN CAPE, IN EXTENT: 6073,0976 (Six Zero Seven Three Comma Zero Nine Seven Six) Hectares, (Held by SG Diagram No. 3997/2006).

In witness whereof the said Registrar, have subscribed to these presents, and have caused the seal of office to be affixed thereto.

Thus done and executed at the Office of the Registrar of Deeds at Umtata on this 29 Jan 2009 day of 29 Jan 2009."

[11] Section 18 of the Deeds Registries Act 47 of 1937 contemplates that such a Certificate of Registered State Title (as in this matter) may be executed in respect of unalienated State land.

[12] There can be no doubt that the land relevant in this matter is indeed unalienated State land in respect of which a perfectly proper and legitimate Certificate of Registered State Title has been issued.

- [13] This alone answers part of Respondents *locus standi* point. However Respondents contend that Applicants have no *locus standi* as they are not “*custodians of the land in question*” referring to Section 1 of the Upgrading of Land Tenure Rights Act 112 of 1991.
- [14] First to Fourth Respondents allege that “*Allotment 225*” belongs to the late Milton Ntsadu in terms of Proclamation 26 of 1936 as read with the Communal Land Rights Act of 2004.
- [15] I do not intend to deal with the above on the allegation that the Late Ntsadu or his Executor has land tenure in terms of Act 112 of 1991, save to point out that the Late Ntsadu’s rights purportedly at least lapsed on his death in terms of Section 9(2) of the Proclamation, his widows and/or heirs having first claim to re-allotment of the said Allotment 225. The papers do not set out this latter event at all. This is however for another Court to decide in due course if *locus standi* is established and is not relevant thereto for present purposes – and I make no finding hereon.

STATE LAND

- [16] The State carries out various functions of Governance of land. National and Provincial Government may have governance responsibility in respect of National State land and other public land.

- [17] On 27 April 1994 all State land vested in either the National Government or a Provincial Government as per Section 239 of the Interim Constitution Act 200 of 1993. The 1996 Constitution effectively re-enacts Section 239 in Item 28 of Schedule 6. As was previously the case Certificates were to be issued by the Minister of Rural Development and Land Reform.
- [18] In Schedule 4 to the 1996 Constitution the Development functions of State land are in the first instance the responsibility of the Provinces.
- [19] The Government Immovable Asset Management Act 19 of 2007 provides a framework for management of, *inter alia*, land held or used by a National or Provincial Department.² This affects effective rearrangement of immovable property within Government. The Act specifies that the Minister of Land Affairs (now the Minister of Rural Development and Land Reform) is the custodian of land vesting in the National Government and situated in “*the former homelands*” – unless this specific function had been assigned to other Ministers in previous legislation.³
- [20] None of the parties herein contend that the land concerned is either, “*old*” or “*new*” Municipal commonage, nor does this appear to be the case *in casu* and accordingly I will not deal therewith.

² Section 3

³ Section 4 and White Paper 5.7; LAWSA, Vol 10 para 49-50

- [21] The Proclamation relied upon refers, where relevant to this matter, to arable allotments (Section 4) and not commonage which is dealt with in Section 5. The permission given in 1968 related to an arable allotment.
- [22] The First to Fourth Respondents were not in occupation of the allotment prior to 7 August 2018 insofar as the papers allege. Nothing is set out as to what happened to the land, or whether it was farmed or occupied after the death of the Late Ntsadu many many years ago.⁴
- [23] It would seem to me that on the papers and having referred to the Certificate of Registered State Title relevant and against the background of the Legal Enactments relevant there can be no doubt that the First Applicant has *locus standi* to bring this matter.
- [24] In the result the objection as to *locus standi* falls to be dismissed.
- [25] As to costs it seems to me that these should be reserved for the Court dealing with the merits of the dispute in due course.
- [26] It is accordingly ordered that the First to Fourth Respondents' points *in limine* fall to be dismissed, costs reserved.

M.J. LOWE
JUDGE OF THE HIGH COURT

⁴ I need thus not refer to or apply *Nandipha NO v Irfani Traders CC t/a Jabulani Hardware and Another* (4654/2017) [2018] ZAECHMHC 50 (21 August 2018)

Obo the Applicants: Adv E M Matanda

Instructed by: The State Attorney, Mthatha

Obo the Respondents: Adv M I Mneni

Instructed by: Mgxaji Zazaza Attorneys, Mthatha