

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held in **Randburg** on **1 December 2004**  
Before **Bam JP** and **Moloto J**

**CASE NUMBER: LCC88/98**

Decided on: 20 December 2004

In the matter of :

**RATSEGAAI COMMUNITY**

Concerning

**HARTEBEEFONTEIN 431 JP and KOEDOESFONTEIN 432 JP**

In re :

<b>CHRISTOPHER HAIG EWING N.O.</b>	First Applicant
<b>BRIAN JOHN EATON N.O</b>	Second Applicant
<b>JANET ADRIENNE CHARTER N.O</b>	Third Applicant
<b>FRED GRENVILLE DAVIDSON</b>	Fourth Applicant

And

<b>THE DIRATSEGAE COMMUNAL PROPERTY ASSOCIATION</b>	First Respondent
<b>THE MINISTER OF LAND AFFAIRS</b>	Second Respondent
<b>REGIONAL LAND CLAIMS COMMISSIONER: GAUTENG AND NORTH-WEST PROVINCES</b>	Third Respondent
<b>REGISTRAR OF DEEDS, PRETORIA</b>	Fourth Respondent

## JUDGMENT

**MOLOTO J:**

1]This is an application for an order that the Remaining Extent of Portion 34 (a portion of portion 1) of the farm Groenfontein 429, registration division JP North-West Province, measuring 129,6049 hectares be transferred into the name of the Charter Property Trust (“the Trust”). The application is brought by four applicants, the first two of whom act in two

capacities as executors in the estate of the late Richard James Charter and trustees of the Trust. The last two act as trustees in the Trust. None of the respondents filed a notice of intention to participate in the matter.

1]

**2]Background**

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2]The first respondent lodged a claim with the Regional Land Claims Commissioner for the Gauteng and North West Provinces in terms of the Restitution of Land Rights Act<sup>1</sup> (“the Act”) for the farm Hartebeestfontein 431 JP and Koedoesfontein 432 JP, in the district of Koster. At the time of lodging the claim the two farms had been sub-divided into several portions, which were owned by different owners, among them the late Richard James Charter (“the deceased”). All the landowners of the various portions of the two farms, except the deceased, settled the claim and transferred their various portions to the first respondent. The settlement agreement was made an order of Court on 6 November 1997. One of the landowners, Hermanus Hendrik Rabie (“Rabie”), owned Portion 15 of the farm Hartebeestfontein and also the farms the Remaining Extent of Portion 34 of the farm Groenfontein 429 JP and Gouvernements Grond 430 JP which were not subject to the land claim. However, Rabie offered these two farms for sale as he found them too small to farm economically. They were also transferred to the first respondent.

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3] Later negotiations between the first two respondents and the deceased culminated in a settlement agreement being signed on 26 April 1999. The terms of the settlement agreement were that the deceased would sell Portion 13 (a portion of portion 1) of the farm Hartebeestfontein 431, Registration Division JP, North-West Province, measuring 659,6282 hectares to the second respondent for R540 000,00 and the second respondent would sell to the deceased the Remaining extent of portion 34 (a portion of portion 1) of the farm Groenfontein 429, Registration Division JP, North West Province, measuring 129,6049 hectares for R106 684,00. The implication is that the second respondent would acquire this latter farm from the first respondent. The transfers were to be registered simultaneously. Pursuant to the settlement agreement the parties thereto entered into two agreements of sale, one for disposing of Portion 13 of the farm Hartebeestfontein and the other for disposing of the Remaining Extent of Portion 34 of the farm Groenfontein. An order of this Court was then sought in the following terms:

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6]“(1) The State is hereby ordered, by agreement between the parties, to acquire or expropriate Portion 13 (a portion of portion 1) of the farm Hartebeestfontein 431, Registration Division JP, North-West Province, as held by Deed of Transfer T58296/1994 in order to restore or award that land to the claimants.

7]

2) The Court notes that this obligation will be complied with in terms of a settlement agreement entered into on 26 April 1999 between the State, the claimants and the owner, and in terms of the Deeds of Sale, schedules “A” and “B” thereto.”

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9]The settlement agreement was not made an order of Court.

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1 Act 22 of 1994, as amended.

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11] **Relief sought**

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4]I have the following problems with the order sought :

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5]There is no evidence that any of the parties to the settlement agreement of

14] 26 April 1999 refused to act in terms of the settlement agreement.

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6]The settlement agreement was not made an order of Court in the first place.

16]Therefore, when the applicants state in their supporting affidavit that the purpose

17]of the order sought is “to give effect to the order of the ..... Court granted ... on

18]26 April 1999”, they are not correct.

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7]Contrary to the settlement agreement, the order prayed is silent on the counter

20]performance, namely the transfer of Portion 13 of Hartebeestfontein to the first respondent; and

21]

8]A simple and inexpensive solution appears to be to instruct conveyancers to effect

22]transfer of the properties in terms of the Deeds of Sale that the parties concluded.

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24]**Order**

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26]The application is dismissed.

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**JUDGE J MOLOTO**

I agree,

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**JUDGE F BAM**

For the applicants :  
Mr Mills of Cliff Dekker Attorneys, Johannesburg

For the respondents :  
No appearance.