

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on 12 October 2012  
Before **Mpshe AJ**  
Decided on: 29<sup>th</sup> October 2012

**CASE NUMBER: LCC61-2/10**

In the case between:

<b>THE MINISTER OF LAND AFFAIRS/RURAL DEVELOPMENT</b>	1 <sup>st</sup> Applicant
<b>THE DIRECTOR GENERAL OF THE DEPARTMENT OF RURAL DEVELOPMENT &amp; LAND REFORM</b>	2 <sup>nd</sup> Applicant
<b>THE CHIEF LAND CLAIMS COMMISSIONER</b>	3 <sup>rd</sup> Applicant
<b>THE REGIONAL LAND CLAIMS COMMISSIONER LIMPOPO</b>	4 <sup>th</sup> Applicant

And

<b>NICHOLAAS J G VAN COLLER &amp; OTHERS</b>	Respondents
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## JUDGEMENT

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**MPSHE AJ:**

### Introduction

This is an application for leave to appeal against the judgment of this court of the 11<sup>th</sup> June 2011.

### Background

[1] Applicants launched an application seeking a declaratory order and other relief. The relief sought was embodied in thirteen prayers in total. The prayer reads as follows:

1. "An order declaring that Agreement of Sale annexed to the 4<sup>th</sup> Respondent's answering affidavit and which was signed by the parties on or about November 2008 which Agreement was approved by the 1<sup>st</sup> Respondent in March 2008, that the terms and conditions that the parties agreed on and that its an Agreement between the parties.

2. Ordering the 1<sup>st</sup> Respondent to re-sign the Agreement of Sale (annexed to the answering affidavit) within 14 (fourteen) days from the date of this order and to submit it to the Applicants' attorneys of record, Lourens Attorneys.

3. Authorising the Sherriff of the above Honourable Court, in the event of the 1<sup>st</sup> and/or 4<sup>th</sup> Respondent failing to sign the deed of sale referred to in paragraph 1 supra within the time period allowed, to sign the Agreement of Sale on behalf of the 1<sup>st</sup> and/or 4<sup>th</sup> Respondent and who's signature thereto shall have the same effect as if signed by the 1<sup>st</sup> and/or 4<sup>th</sup> Respondent;

4. Directing the 1<sup>st</sup> to 4<sup>th</sup> Applicants to pay the amount of R700 452.50 (Seven Hundred Thousand Four Hundred and Fifty and Fifty Cents) being 50% of the purchase price for the Portions 14 and 24 of the farm Rietspruit 527KQ, Waterberg District, Limpopo Province ("the property") to the conveyancing attorneys, Lourens Attorneys, within 14 (fourteen) days from date of this order;

5. Directing the 1<sup>st</sup> to 4<sup>th</sup> Applicants , through a duly authorised agent to sign all transfer documents or any other documents reasonably necessary, which shall give effect to the transfer of the property, within a period of 7(seven) days after written request from the appointed attorneys, Lourens Attorneys, to do so;

6. Authorising the sheriff of the above Honourable Court , in the event of the 1<sup>st</sup> to 4<sup>th</sup> Applicants or either them failing to sign the documents referred to in paragraph 4 supra within the time period allowed, to sign all such documents on behalf of the 1<sup>st</sup> to the 4<sup>th</sup> Applicants or either of them, who's signature thereto shall have the same effect as if signed by the 1<sup>st</sup> to the 4<sup>th</sup> Applicants or either of them;

7. That the 1<sup>st</sup> to 4<sup>th</sup> Applicants be ordered to provide the conveyancing attorneys within 7 (seven) after complying with prayer 3 supra and at the request of the conveyancing attorneys, with a written undertaking (Annexure "A" to Annexure "MB1") in terms of which payment of the balance of the purchase price is guaranteed;

8. That the 1<sup>st</sup> to 4<sup>th</sup> Applicants are jointly ordered and directed to instruct the conveyancing attorney, Lourens Attorneys, within 5 (five days) after complying with prayer 6 supra, to lodge the registration papers for purposes of effecting the transfer of the Applicants' property on to the name of the 5<sup>th</sup> Respondent, failing which, the said conveyancer is hereby authorised to lodge the registration papers.

9. That the 1<sup>st</sup> to 4<sup>th</sup> Applicants are jointly ordered and directed to pay the balance of the purchase price to the conveyancing attorney within 7 (seven) days after the date of transfer of the said property onto the name of the 5<sup>th</sup> Respondent;

10. That the Department of Land Affairs, represented by the 1<sup>st</sup> to 4<sup>th</sup> Applicants are ordered to pay the interest at the rate of 15.5% per annum as damages to the Applicants on the amount of R1 400 905.00 and calculated from 1 April 2009 or any other date determined by the Honourable Court to date of payment of the balance of the purchase price.

11. That the 1<sup>st</sup> and 4<sup>th</sup> Applicants jointly and severally ordered to pay the Applicants' cost of this application on attorney and client scale".

A Settlement Agreement was reached in respect of prayers 1-9 of the Notice of Motion on the 25<sup>th</sup> January 2011.

[2] Argument on prayers 10 to 11 was postponed *sine die*. The argument on prayers 10 to 11 was then set down for the 13<sup>th</sup> April 2011.

[3] This court granted an order in favour of the Applicants (Applicants in the main matter) with costs. It is this judgment in respect of which application for leave to appeal is sought.

[4] The application for leave to appeal is to the effect that no Agreement of sale ever came into existence. That the provisions of the Alienation of Land Act No 68 of 1981 regarding the sale of land have not been complied with and that summonses do not put a debtor in *mora*. Finally that the respondents were not entitled to damages at the legal rate and costs.

[5] However at the hearing of this application it became clear that the appeal is against the awarding of damages based on the 15.5% legal rate instead of contractual damages. Further that the costs awarded in favour of the Applicants should not have been awarded as the application for costs on legal rate of 15.5% should not have been argued.

[6] I need to mention that the Applicants were represented by Counsel Mr Malowa at the hearing of the claim for damages. Mr Malowa's objection to the claim for damages at the legal rate of 15.5% was unambiguous. It was to the effect that the calculation of the damages (quantum) should not commence from the initial date of the Agreement being the 31<sup>st</sup> March 2009. He argued that the said quantum should be determined from the 25<sup>th</sup> January 2011. He argued that this was the date on which the settlement Agreement was concluded.

[7] The thrust of Mr Bedhesi's argument for the Applicants in *casu* is that the claim for damages should have been done subject to the provisions of clause 19 to the Agreement.

Clause 19 reads:

1. "In the event of any party committing a breach of this Agreement or being otherwise in default of the terms and conditions hereof, and remaining in default after being given 14 days notice in writing within which to rectify such default, the aggrieved party shall be entitled to enforce the terms and conditions of this Agreement and shall have the right to:
  - 1.1 sue for specific performance and any damages suffered; or
  - 1.2 to cancel this agreement, in either event, any action taken by the parties shall be without prejudice to their rights to claim damages arising from such default

1.3 or to any other rights the parties may have under the common law, or otherwise”.

[8] He submitted that the 14 days period had not been complied with in that a letter of demand as envisaged in clause 19 was never issued. That the parties had a valid contract between them and that the terms and conditions thereof were binding on the parties. This is actually a recital of prayer 1 to the settlement agreement.

[9] If it is accepted, he argued that terms and conditions are binding, then claim for damages can only be in terms of clause 19 to the agreement.

[10] I do follow the submission by Mr Bedhesi. However, the events in this matter did not unfold in a sequential manner eliciting step by step compliance with the provisions of the agreement.

[11] In *casu*, the settlement was reached, thereby declaring the existence of the agreement. After this declaratory, the Applicants (respondent in the damages application) tendered payment of 50% of the purchase price. This was duly paid on 3<sup>rd</sup> February 2011.

[12] There was therefore no room for the Applicants in this application to make any demands for compliance within 14 days as contemplated in clause 19. Payment of 50% of the purchase price was actually effected approximately seven days after the signature date.

[13] I am inclined to agree with counsel for the Applicants, Mr Bedhesi, that the damages at legal rate of 15.5% may not be granted under clause 19 to the agreement. He submitted that 15.5% legal rate interest is only applicable in terms of clause 6 to the Agreement.

Clause 6 reads:

“Should any part of the purchase price not be paid to the seller on the date on which it is due after registration of the property in terms of this agreement, the Purchaser shall be liable for payment of interest to the Seller on such amount at the rate published in terms of the Act on Prescribed Interest Rates, Act 55 of 1975. The interest is payable on demand (my underlining).

[14] Ms Oschman for the Applicants submitted that a letter of demand was sent to the Applicants. This letter is dated 1<sup>st</sup> December 2009. However, the letter refers and demands for registration of the property into the name of the purchaser. This letter is of no relevance in that it refers to registration before payment of the purchase price. The contents thereof despite reference to clause 13 are clearly reference to clause 19.

[15] Having heard counsel, I believe that there is a reasonable possibility that another court may come to a different conclusion. Leave to appeal to the Supreme Court of Appeal is granted.

I consequently order as follows:

Order

1. Application for leave to appeal to the Supreme Court of Appeal is granted.
2. Condonation for late filing of this application is granted
3. Costs of this application will be costs in the appeal.

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**ACTING JUDGE M J MPSHE**

For the Applicants

*Adv I Oschman* for the Applicants instructed by *Lourens Attorneys, Johannesburg*

For the Applicants

*Adv Bedhesi S C* for the 1<sup>st</sup> and 4<sup>th</sup> Respondent, instructed by *State Attorney, Pretoria*

*Adv Malowa* for the 1<sup>st</sup> and 4<sup>th</sup> Respondent, instructed by *State Attorney, Pretoria*