



**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG**

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

10.05.2017

A handwritten signature in black ink, appearing to be "A. J. Ncube", is written over a horizontal line.

BEFORE: NCUBE AJ

CASE NO.: LCC74/2004

In the matter between:

MAKHUVA-MATHEBULA COMMUNITY

Applicant

And

**REGIONAL LAND CLAIMS COMMISSIONER
LIMPOPO**

First Respondent

THE CHIEF LAND CLAIMS COMMISSIONER

Second Respondent

JUDGMENT

NCUBE AJ

INTRODUCTION

[1] This is a review application. The Applicant seeks to review the decision by the First Respondent to gazette only a limited part of the Applicant's Land Claim ("the claim"). The application is opposed by both Respondents ("State Respondents").

BACKGROUND FACTS

[2] It is common cause that on 19 December 1997, Fifteen John Makhuva ("Mr Makhuva") in his capacity as the Chairperson of the Royal Council of the Mathebula Tribal Authority, lodged a claim with the office of the First Respondent on behalf of the Applicant. The claim was lodged in a prescribed claim form. Names of the claimed properties were duly reflected on the claim form.

[3] According to paragraph 1 of the claim form, the Applicant's claim was in respect of Letaba Rest Camp, Lulekani, Zebra, Genoeg and Pompot in the district of Phalaborwa. The First Respondent acknowledged receipt of the Applicant's claim on 21 April 1998. In the Government Gazette dated 08 June 2007 ("the June Gazette"), the First Respondent published the following properties as they appeared in the Applicant's claim form, (a) genoeg 15 LU, (b) Letaba Rest Camp, (c), Pompey 16 LU and (d) Zebra 19-LU. The Gazette also referred to unsurveyed land inside the Kruger National Park. Claims by other communities were published in the same Gazette.

[4] Although the claim form also made mention of “Lulekani, that property was not included in the June Gazette. The First Respondent was still seeking clarification from the Applicant if “Lulekani” referred to the land in the Township or the land which formed part of the district of Lulekani under the administration of the erstwhile Government of Gazankulu. On 23 October 2013, officials of the First Respondent held a meeting with the Applicant. The Applicant indicated at the meeting that “Lulekani”, in the claim form, referred to the district of Lulekani, which previously formed part of the erstwhile Government of Gazankulu.

[5] Having received clarification on the issue of Lulekani, First Respondent amended his June Gazette to include those properties, which together formed the “Lulekani” district. The amendment was effected by way of the General Notice No 472 of 2015, published in Government Gazette 38817 of 22 May 2015. (“the Amendment Gazette”). In total, there were 35 more properties published in the Amendment Gazette as being the expanded description of Lulekani mentioned in the claim form.

[6] The claim form was accompanied by an Affidavit deposed to by Mr Makhuva. In paragraph 10 of his Affidavit, Mr Makhuva mentions the same properties he mentioned in the claim form but he then adds “Majenje”. The Applicant submitted together with the claim form, a map depicting the claimed properties.

DICUSSION

[7] It is common cause that these are review proceedings. However, due to the manner in which the papers are drafted, the nature of the application is not readily ascertainable from the papers. Papers are drawn up in a very reckless and haphazard manner. The nature of the relief sought is not mentioned. The Notice of Application refers to the affidavit of "Mr Mishack Makhuva" as being the document on which the grounds for the application are based. However the deponent to the founding affidavit is "Mishack Mathebula" ("Mr Mathebula") not Mishack Makhuva. In his Founding Affidavit, Mr Mathebula prays that the relief sought in the "Notice of Motion" be granted. However, there is no relief sought and there is no "Notice of Motion".

[8] The Applicant contends that the First Respondent failed to publish all properties claimed. Mr Jansen, Counsel for the Applicant, argued that the First Respondent did not publish all properties mentioned on the claim form as further illustrated in terms of the map accompanying the claim form.

[9] Mr Seneke, Counsel for the State Respondents, argued, correctly in my view, that the Applicant now seeks to claim more properties than those identified in the claim form. Mr Makhuva's Affidavit confirmed the names of properties claimed as they appeared on the claim form. After the First Respondent obtained clarification on the issue of Lulekani, he published all those properties, which together constituted Lulekani as being part of the administration of the erstwhile Government of Gazankulu. Despite the fact that those properties were not specifically mentioned in the claim form, the First Respondent went out of his way to establish the names of all

those properties and published 35 more properties in the 2015 Gazette in an attempt to assist the Appellant.

[10] The claim cannot include more than what is stated on the claim form. In **Minaar N O v Regional Land Claims Commissioner for Mpumalanga and Others**¹, Gildenhuys J, expressed himself in the following terms:

"The first respondent ex post facto motivated his decision to publish the notice in letters to the applicant's attorneys dated 17 August 2005 and 11 October 2005. He stated that through investigations by his office it was found that the claimant's family was scattered beyond portion D and that they also used the other portion of Daisy Kopje for their everyday duties. The first respondent does not disclose where he obtained that information. It is not substantiated by anything in the record. Even if the information is correct, that by itself does not give the family a claim in respect of the other portions. No claim as required by section 2(1)(e) of the Act was lodged in respect of the other portions. The first respondent has no power to include unclaimed portions of Daisy Kopje in the claimed land" (My own emphases.)

[11] In the present case, the Applicant specifically mentioned the properties he was claiming. That was done in terms of the claim form, accompanied by Mr Makhuva's Affidavit. There is no justification in seeking to compel the First Respondent to publish more properties than those mentioned in the claim form.

¹ [2006] ZALCC 12 at para 19.

[12] The principle enunciated in the Minaar case above, was confirmed in **Bouvest 2173 CC and Others v Commission on Restitution of Land Rights and Others**².

In that matter, Gildenhuys J said³:

“The second respondent seems to be saying that the third, fourth and fifth respondents initially did claim these seven farms, but under different names. This is alleged to be the result of rezoning, restructuring and changes in farm names. The claimants, so the second respondent says, were ignorant of the ‘real names’ of the farms. There is no evidence in the second respondent’s records of any changes in farm names. The claim forms are very specific, referring to the claimed farms by name and number. The second respondent fails to say which (if any) of the farm names changed, nor how the third, fourth and fifth respondents might have been misled. He did not put forward any rational basis on which he included the seven farms in the claimed land” (My own emphasis).

[13] Mr Jansen submitted a draft order which the Applicant seeks. Attached to the draft order, is a list of 48 farms as well as unsurveyed State Land which the Applicant wants the First Respondent to be ordered to publish. Out of 48 farms listed, 34 of them are included in the 2015 Gazette. There are 14 more farms shown in the draft order. Those farms are privately owned by other people. They were not included in the claim form, neither did they form part of Lulekani district under the erstwhile Government of Gazankulu.

² [2007] ZALCC 7.

³ at para 8

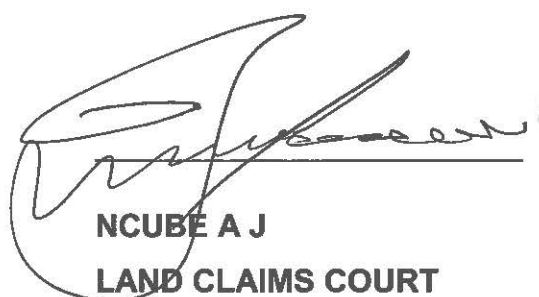
NON-JOINDER

[14] Mr Seneke indicated that the State Respondents do not pursue the issue of non-joinder. Therefore, this Court will not adjudicate on that aspect of the case.

ORDER

[15] In the result I make the following order:

1. The Application is dismissed.
2. There is no order as to costs.



NCUBE A J
LAND CLAIMS COURT
RANDBURG

APPEARANCES:

For the applicant: Adv. CR Jansen SC

Instructed by: Gilfillan Du Plessis Inc. Pretoria

For the Respondents: Adv. Thabo Seneke

Instructed by: State Attorney Pretoria

