IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT RANDBURG

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.

[redacted] **17 March 2023**

SIGNATURE DATE:

Case No: LCC36/19

In the matter of:

BHUTI ZEPHANIA MOKOENA First Plaintiff

PAUL SAMUEL MOKOENA Second Plaintiff

NOMASONTO SINNAH MOKOENA (NKOSI) Third Plaintiff

BETTY JOANA MOKOENA Fourth Plaintiff

OTHER DESCENDANTS OF MOKOENA FAMILY Fifth Plaintiff

and

LAMBRECHTS FAMILIE TESTAMETERE TRUST First Defendant
(with registration number IT23511/08)

CORNELIUS GABRIËL VOLSCHENK Second Defendant

THE DIRECTOR-GENERAL OF THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM Third Defendant

THE MINISTER OF THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM Fourth Defendant

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JUDGMENT

COWEN J

Introduction

1. Five plaintiffs have approached this Court in action proceedings for relief under the Land Reform (Labour Tenants) Act 3 of 1996 (the LTA) relating to Portion 3 of the Farm Morgenster 204 IS, Hendrina, Mpumalanga Province (the property or the farm).

2. The plaintiffs are Mr Bhuti Zephania Mokoena, Mr Paul Samuel Mokoena (now deceased), Mrs Nomasonto Sinnah Mokoena, Ms Betty Joana Mokoena and the remaining descendants of the Mokoena family. Mr Bhuti Mokoena, the first plaintiff, is the brother of Ms Betty Joana Mokoena, the fourth plaintiff. The second plaintiff, the late Mr Paul Samuel Mokoena, was their elder brother. Mrs Nomasonto Sinnah Mokoena, whom for reasons set out below, I refer to as Ms Nkosi, is their mother.[1]

[1] Some of the relief was ultimately sought only in respect of the three specifically named surviving plaintiffs and the judgment and order I make is prepared accordingly. I have added the surname (Nkosi) to the citation of the third plaintiff for certainty.

3. The plaintiffs seek relief declaring them to be labour tenants in terms of section 33(2A) of the LTA and declaring them to hold various incidental rights. They also seek relief compelling the Director-General of the Department of Rural Development and Land Reform (the DG) without delay to process an application lodged to acquire the affected part of the property on behalf of their families.[2]

4. The first defendant is the current registered owner of the property, the Lambrechts Familie Testamentere Trust (the Trust).[3] The second defendant is Cornelius Gabriel Volschenk (Mr Volschenk) cited as the property manager. The third defendant is the DG and the fourth defendant is the Minister of the Department of Rural Development and Land Reform (the Minister).

5. Initially, both the first and second defendants opposed the action and filed pleas, including special pleas, but only the second defendant ultimately opposed the action. The third and fourth defendants abide the action. On 7 June 2022, I heard

[2] In their statement of claim, the plaintiffs seek the following specific relief:

1. An order declaring them as labour tenants in terms of section 33 (2A) of the Labour Tenants Act in respect of the property.
2. An order declaring the nature and extent of the plaintiffs' land use rights and the servitudes they are entitled to on the aforesaid property to be:
2.1 The right to reside in the family homestead on the property and to make reasonable extensions to that homestead;
2.2 The right to maintain their homestead and to make reasonable alterations thereto;
2.3 The right to graze 50 to 60 heads of large stock and 40 heads of small stock;
2.4 The right to plough the land as allocated to the plaintiffs' family by successive owners of the property, approximately 6 hectares and to rotate such land use, if necessary;
2.5 The right to sufficient access to water for domestic purpose including livestock and crop irrigation;
2.6 The right to have servitudes registered over the property for purpose of exercising the rights described in paragraph 2.1 and 2.5 above.
3. An order against the third defendant ordering him to process the application for acquisition of land lodged by the first to fourth plaintiffs in 2001.
4. An order that personal servitudes be registered over the property in favour of the plaintiffs in the terms outlined above.
5. The third defendant be ordered to process the plaintiffs' application for acquisition of the land or the property without delay.
6. Costs of suit in the event that the claim is opposed.
7. Further and / or alternative relief.

[3] The Trust became the owner of the property following the passing of the late Mr Lambrecht, the erstwhile owner of the property. During testimony, the witnesses referred to the owner being Mr Lambrecht in circumstances where the events that were the subject of the testimony occurred when he was the owner.

argument in respect of two special pleas raised by the second defendant, which I dismissed in a judgment and order delivered on 14 June 2022 (the June 2022 judgment). The court convened a site inspection at the property on 1 August 2022 attended by representatives of all the parties including the third and fourth defendants. The parties pointed out various relevant sites with the benefit of a map which was subsequently introduced into evidence as Exhibit A, attached.[4]

6. Shortly before the trial was to commence on 2 August 2022, the first defendant, represented by Mr Richards, indicated that it no longer intended to oppose the action, subject to an imminent amendment to the statement of claim, which concerns the number of livestock in respect of which the plaintiffs assert a right to graze. In prayer 2.3 of the notice of motion, the plaintiffs assert a right to graze 50 to 60 heads of large stock and 40 heads of small stock. As matters transpired, the parties effected the amendment to the statement of claim by agreement on 3 August 2022. Its broad effect is that the plaintiffs ask this court to determine the number of livestock with reference to expert evidence subsequent to the determination of the main action.[5]

7. The action proceeded on Monday 2 August 2022. Mr Malowa SC appeared for the plaintiffs and Ms Oschman appeared for the second defendant.[6] On 2 August 2022, the parties addressed me on whether the second defendant is entitled to

[4] By agreement between the plaintiffs and the second defendant, certain amendments were made to Exhibit A at the end of the trial. Witnesses were requested to give their evidence with reference to clean copies of the map, with each given its own Exhibit number. The map was printed by the neighbour Mr Landman, who used a geographical information system available through AGRI. The parties' representatives used the map at the site inspection, but it was produced for the first time that day through second defendant.
[5] The DG did not object to the amendment on the basis that they would instruct one of their in-house experts to prepare and produce a report.
[6] On 2 August 2022, Mr Richards appeared for the first defendant, but he was excused after the parties attended to the amendment of the statement of claim and the first defendant confirmed it was abiding the decision.

defend the action at this stage. Mr Malowa contended that the second defendant is no longer entitled to defend the action given the first defendant's changed stance. This, he submitted, is because the second defendant's right to participate as property manager is contingent on the opposition of the registered owner of the property, the first defendant. Neither of the parties objected to the issue being raised and addressed, and I considered it to be in the interests of justice to deal with it.[7] After hearing the parties, I ruled that the second defendant is entitled to defend the action and the trial proceeded on an opposed basis.

8. The evidence commenced on 3 August 2022 and, following an adjournment on 11 August 2022, was completed on 1 September 2022.[8] The Court heard argument on 18 October 2022.[9] The plaintiffs led three witness; the first, third and fourth plaintiffs, commencing on 3 August 2022 and closing their case on 5 August 2022. As indicated above, the second plaintiff is now deceased: he passed away in August 2018. The second defendant led four witnesses: the second defendant himself,[10] Mr Barend Johan Wheeler,[11] Mrs Annatjie van der Bank[12] and Mr Joseph Ncongwane.[13] Mr Wheeler is an attorney. Mrs van der Bank is a former school teacher who used to live and teach in nearby Hendrina. Mr Ncongwane is a former employee of Mr Lambrecht who used to live on the property but who left in 2000. The second defendant closed his case on 1 September 2022. Each witness testified through a translator. In the case of the plaintiffs, the evidence was given

[7] Although Mr Malowa raised the issue, the Court raised the related concern whether a manager would have standing in that capacity. Neither party objected to the matter being addressed.
[8] Evidence was led on 3, 4, 5,10, 11, 31 August and 1 September 2022.
[9] Argument was initially scheduled for 12 September 2022. However, the parties failed to deliver their heads of argument timeously and a new date for argument was scheduled.
[10] Mr Volschenk testified on 10 and 11 August 2022.
[11] Mr Wheeler testified on 11 August 2022.
[12] Mrs van der Bank testified on 31 August 2022.
[13] Mr Ncongwane testified on 31 August 2022 and 1 September 2022.

in isiZulu. In the case of the second defendant's witnesses, the evidence was given largely in Afrikaans although at times the witnesses reverted to English.

9. Challenges were encountered during testimony. First, the translation process impacted the evidence, most notably cross examination. While translation can, in its nature, affect the flow of cross examination, in this case, this was exacerbated by inaccuracies introduced by the interpreter. In light of the challenges, I requested and considered input from the parties, who confirmed that the trial could proceed. In certain circumstances, the legal representatives of the parties intervened to ensure accurate translation, an approach the parties accepted. In all the circumstances, I was satisfied that the evidence was adequately translated, albeit not wholly accurately. Secondly, the plaintiffs' literacy levels introduced challenges, an issue not infrequently encountered in this Court. The third plaintiff is not literate. The plaintiffs were not able proficiently to interpret the map, Exhibit A. In my view, this challenge, which is a function of this country's colonial and apartheid history, warrants cautious judicial responsiveness during testimony to ensure accuracy and fairness, an approach I sought to follow during the trial. However, relative linguistic proficiency in the court room has material consequences for the evaluation of evidence, including, for example, understanding the truly or intended import of answers given, especially in cross examination.

10. In my view, all of the witnesses who testified for the plaintiffs were, on the whole, credible witnesses. This does not mean that I have accepted all features of their testimony, but in my assessment, this is a case where an untruth or inaccuracy in one part of testimony, or inconsistencies (internally or between witnesses) does

not taint the entire testimony. A difficulty with the first and third plaintiffs' evidence is that it was given at a high level and at times, some details that lend weight to testimony was absent. This too is a difficulty not uncommon in this court. The third plaintiff's testimony was provided simply but the import of her evidence was quite clear and the witness was frank about what she could and could not recall or testify about at this point in time and why.

11. The witnesses who testified on behalf of the second defendant, including the second defendant himself, were similarly largely credible witnesses. As with the plaintiffs this does not mean that I accepted all features of the evidence, specifically that of the second defendant. But there were two main difficulties with the second defendants' evidence. The first is that his personal and direct knowledge of relevant events and facts is limited both in respect of the time period to which it relates and the subject matter. In the result, for the most part, the plaintiffs' evidence stands uncontested as regards the nature and extent of their rights at relevant times. Secondly, tracts of the second defendant's version (and that of his witnesses) were not put to the plaintiffs' witnesses, which, on certain issues, contributed to my accepting the plaintiffs' version.

12. After evaluating the evidence in light of the applicable law, I have concluded that the plaintiffs are entitled to their relief, albeit not in the precise form in which it was sought or in its full extent. It must be noted upfront that this is a case, amongst many, where labour tenants have waited far too long for the secure tenure that the Constitution promises them. It can only be hoped that the processes anticipated

by my order ensue speedily so that land justice can be achieved in this corner of Mpumalanga which the parties call home.

The applicable legal framework

13. As the Constitutional Court said in *Mwelase*, '[l]abour tenancy has deep roots in our land's pernicious racial past'.[14] It amounts to a transaction where a 'labour tenant provides labour on a farm in exchange for the right to live there and work a portion of the farm for his or her own benefit.'[15] Historically, the position of a labour tenant on the land was marked by insecurity, and due to our history, 'labour tenants were overwhelmingly black, and the landowners on whose favour they depended were overwhelmingly white.'[16] The LTA provides statutory redress for this position, thereby giving effect, amongst other provisions, to section 25(6) of the Constitution.[17] The Constitutional Court held in *Mwelase* that the LTA's 'main objective [is] to fortify the status of labour tenants, which was precarious'. Amongst its mechanisms to promote greater tenure security, the Court held, are 'by conferring as a right what had previously been a tenuous permission' and conferring a right to acquire ownership of the land that labour tenants used and occupied.[18] In this case, the plaintiffs assert both of these rights.

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14 *Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another* [2019] ZACC 30; 2019 (11) BCLR 1358 (CC) ; 2019 (6) SA 597 (CC) (*Mwelase*) at para 5.
15 Id.
16 *Mwelase* at para 8.
17 Section 25(6) provides: 'A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.' See *Mwelase* para 7, noting that the LTA predates the 1996 Constitution.
18 See *Mwelase* para 8 and 9.

14. Section 3(1) of the LTA confers on persons who were labour tenants on 2 June 1995 various rights with his or her family members including the right:

14.1. To occupy and use that part of the farm in question which he or she or his or her associate was using and occupying on that date;

14.2. To occupy and use that part of the farm in question the right to occupation and use of which is restored to him or her in terms of the LTA or any other law.

15. In order to succeed with the relief sought that relates to their alleged status as labour tenants, the plaintiffs must show, first, that they fall within the definition of a labour tenant. The second defendant has disputed that the plaintiffs are labour tenants. He admits that the third plaintiff resides on the property but pleads that she is an occupier in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA). He disputes that the remaining plaintiffs are labour tenants but pleads that these rights were terminated or waived because they voluntarily left the property.

16. A labour tenant is defined in section 1 of the LTA to mean:

"a person -
(a) Who is residing or has the right to reside on a farm;
(b) Who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and

(c) Whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm, including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3(4) and (5) but excluding a farmworker."

17. The plaintiffs must show that they comply with each of the three requirements in (a), (b) and (c) of the definition.[19] The question of the date at which the Court must test whether a person is a labour tenant has been the subject of various cases. Section 3(1) of the LTA confers rights on persons who were labour tenants on 2 June 1995. However, it has long been clear that the definition is not rigidly time bound. In *Mlifi* this Court held, in a case that concerned the application of section 12 of the LTA:[20]

> '2 June 1995 is the date which the legislature, in its wisdom, chose at which the Court must test whether a person is a labour tenant. One therefore assesses a person as of 2 June 1995 and applies paragraphs (a), (b) and (c) of the definition of labour tenant to his or her position as of that date. If on 2 June 1995 he or she is no longer providing labour, the enquiry does not end there. One enquires further whether on 2 June 1995 he or she had provided labour in the past. If so, he or she satisfies the requirements of paragraph (b) of the definition.'

18. In The SCA considered the issue of timing in *Ngcobo* in context of an eviction, and held that '(it) obviously could not have been the intention of the Legislature to exclude from the protection of the Act anyone who has, since 2 June 1995, become a labour tenant as defined in the Act.'[21] This does not mean, however, that to qualify as a labour tenant, a person must prove labour tenancy after 2 June 1995.

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[19] *Ngcobo and others v Salimba CC, Ngcobo and others v Van Rensburg* [1999] ZASCA 22; [1999] 2 All SA 491 (A) (*Ngcobo*) at para 11 and the preceding paragraphs, in which previous, at time conflicting, decisions (both in this Court and the High Court) dealing with whether the provisions must be read disjunctively or conjunctively was considered.
[20] *Mlifi v Klingenberg* [1998] ZALCC 7 (*Mlifi)* at para 27.
[21] Supra n 19 at para 5.

Rather, the rights that vested then remain vested unless thereafter terminated under the provisions of the LTA itself. Accordingly, while what ensued after 2 June 1995 is relevant, if the plaintiffs demonstrate that they were labour tenants at that date, and their rights have not terminated under the LTA, then they are entitled to relief.

19. As to the standard and onus of proof, it falls on the plaintiffs to show, on a balance of probabilities, that they are labour tenants as defined. Section 2(6) applies, which provides:

> 'For the purpose of establishing whether a person is a labour tenant, a court shall have regard to the combined effect and substance of all agreements entered into between the person who avers that he or she is a labour tenant and his or her parent or grandparent, and the owner or lessee of the land concerned.'

20. If a person establishes that they fall within the definition of a labour tenant, the onus shifts to the defendant to show, if alleged, that the plaintiffs were farmworkers.[22] A farmworker is defined in section 1 to mean:

> 'a person who is employed on a farm in terms of a contract of employment which provides that –
> (a) In return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land; and
> (b) He or she is obliged to perform is or her services personally.'

[22] M*lifi* at para 14. The onus shifted by virtue of an amendment introduced to the LTA in Act 63 of 1997 introducing *inter alia* section 2(5) which reads: Section 2(5) provides:
'If in any proceedings it is proved that a person falls within paragraphs (a), (b) and (c) of the definition of 'labour tenant', that person shall be presumed not to be a farmworker, unless the contrary is proved.' The second defendant does not allege farm worker status.

21. In *Ngcobo,* the SCA held that the proviso relating to farmworkers requires 'a holistic or continuous approach assessing the 'predominant quality of occupation over the whole period during which the present occupier has been complying with [the definition of farmworker]. What we have to find is the overall sense and value of the occupation. …'. [23]

22. When a person's status as farmworker is in issue, this Court has accepted that the person alleging that status must lead evidence 'of the person's remuneration and factors that influence the value of [the person's] right to occupy and use land.'[24] This Court has held that value is from the perspective of the landuser. [25] In *Mahlangu,* evidence from expert valuers was led. In *Masondo*[26] this Court held (per Bam P and Moloto J) '[q]uantitative evidence is only necessary when the excess is not obvious.' In some cases, this Court has been in a position, without quantitative evidence, to conclude that a person was receiving the 'absolute minimum' in the form of remuneration and that the value of the residence, grazing and cultivation 'far outweighs' the value of any remuneration benefit. However, the SCA emphasized the importance of evidence on values in the decision on appeal in *Masondo*, while accepting that each case must be decided on its own facts.[27] In considering the value of occupation and use of property, consideration may be given both to economic values and non-economic value, more especially the value of having 'a hearth and home of [one's] own, a place [to] find the fundamental security of living and surviving off the land'.[28]

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[23] Supra n 19 at para 26.
[24] *Mahlangu v de Jager* [1999] ZALCC 3 (*Mahlangu*) at para 50.
[25] For example in *Mahlangu* supra n 24 at para 50.
[26] *Masondo and others v Woerman* [1999] ZALCC 35 (*Masondo*) at para 52.
[27] *Woerman NO and another v Masondo and others* [2001] ZASCA 119; [2002] 2 All SA 53 (A) at paras 21 to 23.
[28] *Ngcobo* supra n 19 at para 28.

23. The Constitutional Court considered the nature of labour tenancy in *Goedgelegen*[29]:

> '46… [labour tenancy] under the common law arises from a so-called innominate contract between the landowner and the labour tenant to render services to the owner in return for the right to occupy a piece of land, graze cattle and raise crops. In name, it is an individualised transaction that requires specific performance from the contracting parties. This means that labour tenancy does not sit well with commonly held occupancy rights. It is a transaction between two individuals rather than one between the landlord and a community of labour tenants. It must however be recognised that despite the fiction of the common law in regard to the consensual nature of labour tenancy, on all accounts, the labour tenancy relationships in apartheid South Africa were coercive and amounted to a thinly veiled artifice to garner free labour.'

24. This holding was considered by the Supreme Court of Appeal in *Brown v Mbhense*[30] in which the majority made further findings when considering the respective positions of family members when asserting labour tenancy rights, which must be distinguished from a community, and which findings have guided me, as follows:

> '[27] … it is important to appreciate that when labour tenants conclude contracts with farm owners, they are not assisted by lawyers. They represent a vulnerable section of society, are almost always impecunious, unsophisticated and unschooled. One should

[29] *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* [2007] ZACC 12; 2007 (10) BCLR 1027 (CC) ; 2007 (6) SA 199 (CC) (*Goedgelegen*) at paras 46.
[30] *Brown v Mbhense and another* [2008] ZASCA 57; [2008] 4 All SA 26 (SCA); 2008(5) SA 489 (SCA) at para 27 and 28.

not lose sight of the power imbalance in the relationship between the farm owner and the labour tenant and the truism that only free men and women can meaningfully negotiate.

[28] It is simplistic to approach the relationship between a farm owner and a labour tenant as necessarily one in respect of which only one member of a household or family unit has the right to be or remain on the farm as a labour tenant. Complexities abound. For example, it might well be inferred in appropriate cases that *each* member of a family unit consisting of a father, mother and child agreed with the farm owner that he or she be afforded labour tenancy rights in return for his or her providing labour individually and not necessarily in equal measure. Furthermore the arrangements in respect of the time periods during which the manner in which labour is provided by each member of the family unit might mutate over time and in relation to successive owners of the farm, depending on the changing requirements of the farm and the demands of the owner. That metamorphosis would have led inexorably to labour tenancy relationship between the farmer and each individual member of the family unit. …'

25. Labour tenancy rights are further regulated by section 3(2), which provides that these rights may only be terminated in accordance with the provisions of the LTA and shall terminate by waiver, death, eviction or acquisition of ownership.[31] As to waiver, pleaded (albeit in the most general of terms) in this case, section 3(3) provides:

[31] The specific terms of section 3(2) inasmuch as they relate to waiver are in section 3(2)(a) as follows:
(2) The right of a labour tenant to occupy and to use a part of a farm as contemplated in subsection (1) together with his or her family members may only be terminated in accordance with the provisions of this Act, and shall terminate
(a) subject to the provisions of subsections (3) to (7), by the waiver of his or her rights; …'

"(3) A labour tenant shall be deemed to have waived his or her rights if he or she with the intention to terminate the labour tenant agreement – (a) leaves the farm voluntarily; or (b) appoints a person as his or her successor."[32]

26. Section 3(6) and (7) further regulate waiver of rights in the following terms:

'(6) A labour tenant may, subject to subjection (7), waive his or her rights or a part of his or her rights if such waiver is contained in a written agreement signed by both the owner and the labour tenant.

(7) The terms of an agreement whereunder a labour tenant waives his or her rights or part of his or her rights in terms of subjection (6) shall not come into operation unless –

(a) the Director-General has certified that he or she is satisfied that the labour tenant had full knowledge of the nature and extent of his or her rights as well as the consequences of the waiver of such rights; or

(b) such terms are incorporated in an order of the Court or of an arbitrator appointed in terms of section 19.'

27. To assert the right to acquire ownership of the land that the plaintiffs used and occupied, allegedly as labour tenants, the plaintiffs seek to compel the DG to process an application they plead they lodged in terms of section 16 of the LTA. Section 16 of the LTA confers on labour tenants or their successors the right to apply for an award of various land. Such applications had to be lodged with the DG in terms of section 17 of the Act on or before 31 March 2001. The categories of land in respect of which an award may be made are specified in section 16 as follows:

"(a) the land which he or she is entitled to occupy or use in terms of section 3;

[32] Sections 3(6) and 3(7) further regulate waiver by written agreement, which is not in issue in this case.

(b) the land which he or she or his family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or his or her family was deprived contrary to the terms of an agreement between the parties;

(c) rights in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm; and

(d) such servitudes of right of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which he or she enjoys or has previously enjoyed as a labour tenant;

Or such other compensatory land or rights in land and servitudes as he or she may accept in terms of section 18(5): Provided that the right to apply to be awarded such land, rights in land and servitudes shall lapse if no application is lodged with the Director-General in terms of section 17 on or before 31 March 2001.'

28. The duties of the DG once a claim is lodged are set out in section 17 of the LTA and the sections that follow. The process entails that the DG forthwith give notice of receipt of the application to the owner of the land and any other registered right in question; draw his or her attention to the content of section 17 and 18, causes a notice of the application to be published in the Gazette and calls upon the owner by written request to furnish him or her within 30 days with various specified information and documents.[33] The owner must within one calendar month of receipt of the notice inform the DG whether he admits or denies that the applicant is a labour tenant and if denied, on what grounds.[34] Where the applicant's status as labour tenant is agreed, a process is set out in section 18 of the LTA to resolve the application by agreement. Where the status is in dispute or there is no response, then a judicial or arbitration process follows. Ultimately, that process may result in the award of land to the labour tenant.[35] The LTA regulates the payment of just

[33] Section 17(2).
[34] Section 17(4).
[35] Section 22.

and equitable compensation to the owner or other affected person and the State grant of subsidies or advances to labour tenants.[36]

The second defendant's interest

29. In the statement of claim, the plaintiffs allege that the second defendant is the manager of the property. In its plea, the second defendant notes this allegation and does not plead any other right or interest. The parties were in agreement that a manager of property owned by another would not ordinarily have standing to defend a claim for labour tenancy under the LTA. However, that is not the only consideration in this case.

30. The second defendant's entitlement to defend the action turns on whether he has a direct and substantial interest in the subject matter of the litigation: put differently whether he has a right which is or might be affected by the order that is sought.[37]

31. Mr Malowa submitted that the second defendant has no right to defend the action as he is not the owner. An owner is defined in the LTA as 'the owner, as defined in section 102 of the Deeds Registries Act [47 of 1937], of a farm, and where it occurs in the definition of labour tenant, includes his or her successors and predecessors in title'.[38] In context, this means the registered owner of the property, the first defendant.

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[36] Section 23 to 28.

[37] *South African Riding for the Disabled Association v Regional Land Claims Commissioner and others* [2017] ZACC 4; 2017(8) BCLR 1053 (CC); 2017(5) SA 1 (CC) (*SARDA*) at paras 9 and 10.

[38] In section 102 of the Deeds Registries Act, an owner is defined to mean, in relation to immovable property, 'subject to paragraph (b), the person registered as the owner of holder thereof and includes the trustee in an insolvent estate, a liquidator or trustee elected or appointed under the Agricultural Credit Act, 1966 (Act 28 of 1966), the liquidator of a company or a close corporation which is an owner and the executor of any owner who has died or the representative recognised by law or any owner who is a minor or of unsound mind or is otherwise under

32. Ms Oschman submitted that the right to defend an action for a declarator in terms of section 32 (2A) of the LTA cannot be restricted to an owner of property as the rights that flow from the status of labour tenancy attach to the property itself. In this case, she submitted, the second defendant is a *bona fide* possessor of the property and, furthermore, the second defendant was entitled to defend the action in view of a dispute about ownership pending in the Middelburg High Court.

33. The pleadings unfortunately do not canvass all of these matters. However, while the pleadings are of central importance, I did not confine myself to them when dealing with the second defendant's interest. With the agreement of the parties, I had regard the information the parties drew to the Court's attention during the case management process.[39] The information relates to ongoing proceedings between the first and second defendant in the Middelburg High Court about the ownership of the property. In brief, the second defendant has instituted proceedings against the first defendant claiming the transfer of the property based on an agreement of sale concluded between the parties in 2003, a copy of which the Court was referred to. The first defendant is defending those proceedings on the basis that the sale agreement was breached and cancelled. The proceedings are still pending and at present no end is in sight.

disability, provided such trustee, liquidator, executor or legal representative is acting within the authority conferred on him or her by law.' Paragraph (b) deals with spousal property.

[39] Relying on the Court's inquisitorial powers. See *Mlifi* supra and section 32(3)(b) of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act). The information in question was drawn to the Court's attention during the case management process and the parties agreed that the Court should receive information about the status of proceedings in the Middelburg High Court when considering this issue.

34. I agree with Ms Oschman that the right to defend an action in terms of section 32 (2A) is not limited to the owner of the property. The question will always be whether the person has a direct and substantial interest in the subject matter of the case. In this case, I am satisfied that the second defendant has such an interest in circumstances where he is in possession of the property, has been in possession for over 20 years and asserts a right, albeit disputed, to receive transfer of the property as its rightful owner pursuant to a sale agreement concluded in 2003.

35. As indicated above, I have come to this conclusion relying on the Court's inquisitorial powers. In my view it is unfortunate that this Court was placed in a position where this became necessary, a circumstance that arose due to the scant manner in which the second defendant pleaded its own interest. My conclusion is reinforced by the constitutional imperative that persons with a direct and substantial interest must be heard.[40] But in arriving at the conclusion, I have taken cognisance of Mr Malowa's appropriate reminder that a labour tenant asserting their constitutional and statutory rights to tenure security should not be made to suffer the added indignity of enforcing their rights against persons without any right to participate in proceedings. In this case it is common cause that the second defendant only arrived at the property in 2000 and his personal and direct knowledge of relevant facts is accordingly limited. Mr Malowa is correct that these known circumstances mean that the second defendant is not in any position seriously to challenge much of the evidence of the plaintiffs. However, it does not, in the circumstances of this case, mean that he is not entitled to defend the action.

[40] As emphasized in *SARDA*, supra, at para 10.

The section 16 relief

36. The plaintiffs plead, essentially, that in February 2001, the first and second plaintiffs, the late Mr Josiah Mokoena and the late Mr Ncane Petrus Mokoena lodged an application for the acquisition of land and servitudes in terms of Chapter 3 of the Act on behalf of the entire Mokoena family. It is further pleaded that the DG published the application in the Government Gazette on 26 April 2001, in GG 22231, but has failed to process the application, in breach of the duty to do so. The DG is not opposing the relief sought and the second defendant merely noted these allegations in his plea.

37. The issue can be disposed of simply. The Government Gazette itself provides confirmation that an application was lodged by the persons mentioned. No application forms were supplied in evidence. However, the DG and the Minister, who were asked to produce the application forms as lodged, notified the Court through the case management process that, while they do not have the application in its possession, they do not dispute that the applications were lodged as some applications were lost after lodgment.[41]

38. The oral evidence of both the first plaintiff and the third plaintiff confirm that applications were lodged. It appears that this occurred in two stages. The first plaintiff himself attended the government office in Ermelo when he was about 25 years old, in other words before the due date of 31 March 2001. He says that the officials came to the property and met with other family members including his

[41] The information is contained in the notice to abide dated 6 May 2022.

father, uncle and the elder brother. He does not know why other names are not included in the Government Gazette but he recalls that his mother was at work. The third plaintiff says that the remaining three plaintiffs attended the offices, when she was at work. It is thus not wholly clear whether their applications were made at the property or at the office, but it is clear that they were made.

39. Both the evidence of the first and third plaintiffs confirms that the applications were lodged on behalf of the whole family. The third plaintiff said so in terms and the first plaintiffs' testimony emphasises the purpose of the official's visit to the property to meet with Mokoena family members. Moreover it is clear from the evidence during the trial that the named persons in the Government Gazette are, in addition to the first plaintiff, who initiated the process, the heads of households in the Mokoena family and the first born son.

40. The second defendant's own testimony confirms the lodgment of the applications. He tells the Court that the Department of Land Affairs informed him of the claims. Under cross-examination, he stated that he had received a document from the Department in 2000 regarding the claims. The document was not produced. However, he confirmed that it was a result of these applications that he, together with Mr Lambrecht had, in 2005, initiated proceedings in this Court to dispute the named applicants' status as labour tenants. I refer to these as the 2005 proceedings. The 2005 proceedings were not prosecuted, but their institution corroborates the plaintiffs' case that the applications were lodged.

41. The *Mwelase* case deals with the extraordinary delays in processing labour tenancy applications and no further comment is required here. What warrants emphasis is that three of the four persons whose own names appear in the Government Gazette are since deceased. The resultant injustice to them and their families is manifest and profound.

42. In my view, the plaintiffs have established their entitlement to relief against the third defendant substantially in the form in which it is sought. The order contemplates that the application be processed without delay. In circumstances where the plaintiffs' status as labour tenants has been determined in this judgment, this should be possible within a four-month period. Should additional time be required for any reason, the DG may request such time from the Court on good cause shown. My order makes it clear that it is the finding of this Court, as pleaded, that the named persons lodged the applications on behalf of their families and accordingly, the third and fourth plaintiffs are also to be regarded as applicants albeit not specifically named in the Government Gazette. I also make provision in my order for the parties to return for further relief should it not be possible for the applications to be processed to finality without further recourse to Court.

The relief relating to the plaintiffs' labour tenancy status

43. At an early stage of the trial, the plaintiffs clarified the scope of the property affected by the claim. The plaintiffs do not seek relief in respect of the whole of the property. The affected property is located on the southern part of the property depicted on Exhibit A (attached) in two sections, one marked K4 measuring 27.49 hectares and

one marked M3L5 marked 3.54 hectares and access thereto (the affected property). Ultimately, there was no dispute about the use to which various parts of the affected property was put. The dispute relates to the exclusivity of the use, in other words the extent to which the use was exclusive to the Mokoena family or shared with other families working on the farm, the precise arrangements relating to the use and with whom various rights resided. It is convenient to refer to three different uses of the affected property, as follows:

43.1. The Mokoena's residential area, which is in the area marked K4 that lies to the east of the dam, depicted in blue (the residential area). There is no dispute that this area was used by the Mokoena family for residential purposes, to cultivate their vegetables in a vegetable garden and for small livestock such as goats, chickens, ducks and doves. Another family, the Segudla family, also occupied a part of this area for a period but left when the second defendant took over in 2000. The extent of the area so used is not known.

43.2. The grazing camp, which extends across K4 both on the Eastern and Western side of the dam and measures 27.49 hectares in extent (the grazing camp). There is no dispute that the Mokoena family used this area for grazing.

43.3. The cultivation area, which is the area marked M3L5 measuring 3.43 hectares in extent (the cultivation area).

44. There is also no dispute about the identities of the plaintiffs and their familial relationships. The third plaintiff, Mrs Nomasonto Sinnah Mokoena, who still resides permanently on the property,[42] is the widow of the late Mr Kosie Josiah Mokoena. They were married under customary law. Her ID document refers to her surname as Nkosi, as her surname was not formally changed after her marriage. On counsel's request, she is referred to in the record of evidence as Mrs Nkosi and I use the name Mrs Nkosi in this judgment from here onwards as a result. This will facilitate legal certainty, but it must be emphasized that this does not detract from the fact that her customary marriage, which is not in dispute, enjoys full legal recognition.

45. Mrs Nkosi and the late Mr Josiah Mokoena are the biological parents of the first, second and fourth plaintiffs, who are siblings. The second plaintiff, Mr Paul Samuel Mokoena,[43] the eldest of the three siblings, apparently born in 1969, is now deceased, having passed away in 2018. The first plaintiff, Mr Bhuti Zephania Mokoena, born in 1975,[44] is the middle child. He now lives with a disability which, it is common cause, was caused after the second defendant shot him on Christmas eve in 2001 during an altercation about access to the property: the circumstances are in dispute. The first plaintiff pleads that his residence is the property, an allegation the second defendant notes. The fourth plaintiff, Ms Betty Joana Mokoena, born in 1978, is the youngest sibling and last born.[45] She is a mother

[42] ID 5009080306083
[43] ID 6910275359085
[44] ID 7507015669085
[45] ID 7801130341088. There were inconsistencies in the evidence about whether she was born on the farm or before the family arrived on the farm but nothing turns on it. She was born in 1978, the year the family arrived.

too, her children being Kosi Mphile Mokoena, Nontlantla Mokoena, Thapelo Mokoena and Emihle Mokoena.

46. There is no dispute that the Mokoena family arrived on the property during 1978, the year Ms Betty Mokoena was born. They arrived together with the now late Mr Thuli ('Tollie') Mokoena (deceased after 1995) and his wife, being Mr Josiah Mokoena's biological parents and thus Mrs Nkosi's in-laws. Also with them was Mr Josiah Mokoena's brother, the now late Mr Ncane Petrus Mokoena also now deceased, and his family. The Mokoenas all lived together in the residential area, with each household having their own houses. Houses were demolished as family members passed.

47. The plaintiffs' statement of claim is, unfortunately, not a model of clarity. However, reasonably interpreted, and at its core, the plaintiffs allege that they lived and worked on the property following their arrival in 1978, and that as at 2 June 1995 or during 5 years preceding 22 March 1996, being the date of commencement of the LTA, most of the family members were labour tenants. They claim that they worked on the property for insignificant remuneration. The erstwhile owner gave them consent to reside there and erect houses, and they ploughed land for subsistence, grazed cattle and kept other livestock.

48. There is no dispute that the erstwhile owner is Mr Lambrecht, who retired and left the property in 2000. At that stage, the second defendant took over the management of the property. Before that the second defendant had resided on

the adjacent property. Mr Lambrechts passed on and in 2008 the property was transferred into the Trust.

49. In his plea, the second defendant has sought to place much of what the plaintiff alleges in dispute. However, as indicated above, in circumstances where he only took over management of the property in 2000, he has, in the main, not advanced an alternative version and has very little personal or direct knowledge of relevant events prior to that date. In the result, much of the plaintiffs' evidence is ultimately uncontested. At least in respect of important features of the evidence, the following dictum from *Mlifi* is apposite.

> 'The metaphor "balance of probabilities" conveys that the party bearing the onus has to put sufficient evidence into his pan of the balance to make the probabilities arising from that evidence outweigh the other. As the defendant put no evidence into his pan there is no weighing up of probabilities arising from his evidence. In the circumstances unless the plaintiff's evidence is found to be without credibility, his evidence stands.'[46]

50. The main issues for determination on the evidence are these:

50.1. Whether the first, third and fourth plaintiffs are labour tenants;

50.2. Whether the first and fourth plaintiffs have waived any labour tenancy rights they may have enjoyed by voluntarily leaving the property;

50.3. If so, whether they are entitled to the incidental relief claimed in respect of their status as such.

[46] At para 15.

Status as labour tenants

51. This is a case, not untypical, where there was no written agreement regulating the agreements in place between Mr Lambrecht and the members of the Mokoena family, whether in respect of their residence, labour or grazing and cropping rights. However, when consideration is given to the combined effect and substance of all the agreements that were in place, it is clear, in my view, that each of the plaintiffs are labour tenants as defined in the LTA.

52. Given the history, chronology and context of these agreements and the significant delays that have ensued, it makes sense first to deal with paragraph (a) of the definition, thereafter to deal with paragraph (c), which concerns the position of the plaintiffs' parents or grandparents and finally to deal with paragraph (b), the plaintiffs' own position.[47]

(a) The plaintiffs' residence or the right to reside on the farm

53. Paragraph (a) of the definition requires proof, in this case, that the person alleging labour tenancy status resides or has the right to reside on the property.

54. There is no dispute that Mrs Nkosi currently resides on the property. Mrs Nkosi confirmed that she currently lives alone at the homestead but that her grandson, who has finished school, sometimes resides with her and helps her. There are currently two residential buildings in the homestead area. The first plaintiff testified

[47] See above at para 16 for the full definition.

that historically they were not restricted in how many houses they could build, and historically, each head of household, had their own homestead in the residential area. This evidence was unchallenged.

55. There is similarly no dispute that neither the first or fourth plaintiffs currently stay at the property. Mr Bhuti Zephenia Mokoena nevertheless testified that he 'resides' on the property, as it remains, for him, his home. However, he explained that he no longer stays there day to day due to the shooting incident in 2001 which left him disabled. After a lengthy stay in hospital thereafter, he now stays day-to-day at a place that accommodates disabled persons for a fee, referred to in evidence as Nhlazatshe, Chief JM Dlamini Cheshire Home. He explained that he is unable to stay at the property due to his condition, including challenges relating to access.

56. The first plaintiff testified that his sister (Mrs Betty Mokoena, the third plaintiff) resides on the farm with her mother and her children. However, she does 'piece' jobs and stays in a shack in the nearby township when she is working. Two of the children are attending school. But they come home to the farm during the school holidays. The first plaintiff confirmed under cross examination that at this stage, only his mother and one of the grandchildren are residing on the farm, a concession which, in context, must be understood to mean residing 'day to day'.

57. Ms Betty Mokoena testified that she resides currently at her sister's house, but that 'my home is at the farm'. She stays with her sister because there is no work at the farm, and she is able to access employment more easily when staying with her sister. She explained that she stayed at the farm until 2010. She found work in

2003 as a domestic worker. Under cross-examination she confirmed that she and her brother would stay at school and come home over the weekends, however, Mrs Nkosi's testimony under cross examination reveals that this was only during the later part of their schooling.

58. There was no dispute that the Mokoena family members, specifically Mr Thule Mokoena and his wife, and Mr Josiah Mokoena, are buried in Kwazamokuhle Cemetry in nearby Hendrina. However in each case, and in accordance with their culture, the burial ceremonies were at the family homestead on the property, this being their home. There was no dispute that the family would similarly hold any burial ceremony for the plaintiffs at the farm. Each of the plaintiffs regard the farm as their home, and the evidence established, indeed Mr Volschenk conceded, that there is no reason why the children cannot return should they wish to. Indeed, while disputed, he testified that the first plaintiff should have no difficulty accessing the homestead by vehicle should he wish to. The only reason why the first and fourth plaintiffs do not in fact stay on the farm day to day is because the first plaintiff is disabled and the fourth plaintiff has challenges accessing employment.

59. It is thus clear that as at 2 June 1995, each of the plaintiffs was residing on the property. It is not necessary for me to decide whether, as Ms Oschman submitted, their current living arrangements preclude them from asserting 'residence' on the property for purpose of the definition of labour tenant, as whatever their current residence, their freedom, and in turn their right, to reside, return and have their burial ceremony on the property, is not in issue. I deal with the alleged termination and waiver below.

(c) The residence of the plaintiffs' parents or grandparents and their use of cropping or grazing land on the property in consideration for the provision of labour

60. Paragraph (c) of the definition of labour tenant requires, in this case, proof that the parent or grandparent of the person alleging the status resided or resides on the farm and had use of cropping or grazing land on such farm, and in consideration of such right provided or provides labour to the owner of the farm, and excludes a farmworker.

61. The evidence established that the position of Mr Josiah Mokoena and Mr Thuli Mokoena (his father) was substantially the same. There is no dispute that both gentlemen resided on the property. Moreover, I am satisfied, on the evidence, that, historically, and as at 2 June 1995, both gentlemen (Mrs Nkosi's husband and the first and fourth plaintiffs father) either provided, or had provided labour to Mr Lambrecht in consideration for their residence and use of cropping or grazing land on the property, as contemplated by paragraph (c) of the definition of 'labour tenant'.

62. The evidence of provision of labour was clear and uncontested, both as regards Mr Josiah Mokoena and Mr Thuli Mokoena. Mr Josiah Mokoena was a tractor driver for Mr Lambrecht and worked for him on a permanent basis for monthly remuneration. His father, Mr Thuli Mokoena was, according to Mrs Nkosi, a supervisor. It is not clear whether he worked on a permanent basis or full-time, but

the evidence that he provided labour on the farm, confirmed by others, is uncontradicted.

63. Although the second defendant did not allege that any farm worker status, I deal with what the evidence showed. None of the plaintiffs were, however, in a position to testify about what remuneration was paid to Mr Josiah Mokoena or other persons who provided labour. Mrs Nkosi explained that there would be payment in cash monthly in an envelope. She burnt the envelopes: she would not have done that had she known they would be needed now. However, she provided the most vivid description of its adequacy of payment when asked what she could do with the money month to month. She answered that she and her husband would buy groceries and could cover what the household needed. She also confirmed that there was further payment in kind, specifically in the form of maize and meat. They would receive 60kg of mealie meal at month end and meat, which she referred to as 'lunchbox'. They would also receive milk.

64. The second defendant has no knowledge of the remuneration levels that were in place with Mr Lambrecht but he sought to establish this through the evidence of Mr Ncongwane and Mr Wheeler. Mr Ncongwane, however, was not in a position to testify as to what any member of the Mokoena family was paid, only what he was paid. He testified that he was paid R100 a month in 1994, in cash without payslip and would also receive about thirty 50 kg bags of mielies, once a year, after the harvest. If he did not use all of these, Mr Lambrecht would buy the mielies back. Employees, he said, would also receive milk in the morning. He testified that as at 2000, monthly payment was approximately R350 a month. Mr Wheeler was called

in his capacity as an attorney representing Mr Lambrecht in the 2005 proceedings. In those proceedings, Mr Lambrecht pleaded the amounts that the farmworkers were paid on the farm between the years 1978 to 2000, which amounts allegedly commenced at R50 per month (with 70 bags of mielies) in 1978 to R310 per month (and 50 bags of mielies) in 2000. Mr Wheeler confirmed that the pleadings were in accordance with his verbal instructions. However, as Mr Malowa pointed out to him during cross-examination, these proceedings were not pursued and these allegations were pertinently disputed. Thus, even if, in view of Mr Lambrecht's passing, the testimony is treated as admissable despite its hearsay nature, its probative worth is limited. Nevertheless, as I explain below, I am of the view that the plaintiffs must succeed in their claim even accepting the evidence to be correct.

65. There was no dispute in evidence that both Mr Josiah Mokoena and Mr Thule Mokoena kept cattle under their arrangements with Mr Lambrecht. Furthermore there was evidence, ultimately uncontested, that all workers received maize from the cultivation area, which they worked. Although the land was Mr Lambrecht's, and planted and ploughed by him, this was all done through the workers, who could then have the yield. The yield was harvested and ground by those who provided labour, albeit with the use of Mr Lambrecht's tools. This was ultimately confirmed by Mr Ncongwane, but his testimony emphasised that the cultivation area was shared between workers. He explained that, at least during his time, each worker was allocated four rows of mielies. While these specific arrangements were not put to the plaintiffs in their cross-examination, in context of the evidence as a while, I accept that the yields from the cultivation area were shared amongst the families

working on the farm. While this may affect the extent of the rights, I am satisfied that they constitute cropping rights for purposes of the LTA.[48]

66. In light of the testimony on the position of Mr Josiah Mokoena and Mr Thule Mokoena, there can be no question that they provided labour in exchange for their right to reside, graze and use cropping land.

67. The only question of fact is whether the second defendant rebutted the presumption, in section 2(5) of the LTA, that they were not farmworkers as defined, in other words, that their remuneration was not predominantly in cash or some other form of remuneration and predominantly in the right to occupy and use land. The second defendant did not plead the issue as pointed out above. But in any event, the evidence adduced does not ultimately assist them. The only evidence adduced by the second defendant was the evidence of payment levels referred to above from Mr Ncongwane and Mr Wheeler. The second defendant did not attempt to quantify the relative value of the right to occupy and use the land and the remuneration paid, in cash and kind. In my view, this is fatal in this case. This is a case where, absent contradiction through quantitative evidence, the facts speak strongly for themselves: the value of the right of occupation and use of the substantial land for residential and grazing alone is obviously highly significant, economically and otherwise, and the payment, enough to pay for groceries is, relatively speaking, insignificant. That is all the more so, when one considers that the plaintiffs kept a garden to grow vegetables and kept small livestock in the residential area too, such as chickens, ducks, doves and goats. In the result, as a

[48] Cf *De Jager & Sons v Elfas Mandla Kumalo* LCC75/98 at para 8; *Masondo* supra n26 at para 35.

matter of fact, I have concluded that both Mr Josiah Mokoena and Mr Thule Mokoena fall within the requirements of paragraph (c).

68. The only question of law is whether Mrs Nkosi, Mr Josiah Mokoena's wife, can rely on Mr Thule Mokoena's status as a labour tenant in circumstances where he is her father in law and not her direct parent. On a narrow interpretation, the reference to a grandparent or a parent would be restricted to one's own mother or father, grandmother or grandfather, whereas on a more generous interpretation, it would include a spouse's parents or grandparents. On a generous and purposive interpretation, however, she would be able to rely on her father in law's status. The generous interpretation is in my view opposite as it better promotes the spirit, purport and objects of the Bill of Rights,[49] specifically the rights both to equality and to participate in the cultural life of one's choice.[50] It recognises that, as in this case, a woman married under customary law, may frequently become an integral part of a husband's family unit, yet still affords her the full protection of the LTA. The narrow interpretation, on the other hand, would serve to exclude many women from the LTA's protections afforded to labour tenants merely because they have become so integrated, and subordinate their rights to those of their husbands.[51]

(b) Do or did the plaintiffs have the right to use cropping or grazing land on the farm and in consideration of such right provide or provided labour to the owner

[49] *Goedgelegen* supra n 29; *Wary Holdings (Pty) Ltd and another* [2008] ZACC 12; 2009(1) SA 337 (CC); 2008(11) BCLR 1123 (CC).
[50] See section 30 and section 31 of the Constitution, and section 9.
[51] *Cf Klaase and another v van der Merwe NO and others* [2016] ZACC 17; 2016(9) BCLR 1187 (CC); 2016(6) SA 131 (CC) at paras 45 to 66 in context of ESTA.

69. On the evidence, none of the plaintiffs, surviving or deceased, provided (or currently provide) labour to the second defendant, in other words after 2000. However, the position was different during Mr Lambrecht's time and at the relevant date of 2 June 2005 and prior thereto. In this regard, the evidence established that each of the surviving plaintiffs provided labour to Mr Lambrecht. Mrs Nkosi provided both farm and domestic labour. This was not on a full-time basis nor was it during all periods during her residence on the farm from 1978. Rather, it appears that there were periods when she was a stay at home mother focusing on her children's upbringing. But there were other periods when she worked on a regular basis after her children were attending school. This does not mean that she was the only person providing domestic labour or that she did not provide such labour to any one else. She does not recall what she was paid, but it can be assumed, in context, that it would not have been more than that of the husband.

70. The plaintiffs' evidence also established that both the first and the fourth plaintiffs used to work on the farm during school holidays. Indeed, it establishes that the arrangement was that all children living on the farm would work during school holidays. The first plaintiff testified that this work ensued when he was about 13 or 14 and continued until he was about 15 or 16 in the early 1990s. He recalls being paid R5 a day, later R10. The fourth plaintiff testified that she worked on the farm from the age of 13: she recalls being R10 for her work after two weeks. She testfied that she would pick up the mielies after harvesting, that Mr Lambrecht would tell her father that the children must help to do this, but she was also clear that there was voluntariness in the arrangements in that the children wanted the money. Under cross-examination, she conceded that the work was 'casual'.

71. Mr Ncongwane, called as a witness by the second defendant, was in a position to confirm that the fourth plaintiff would work during school holidays. He had no personal recollection of the position of the first plaintiff. However, this does not undermine the plaintiffs' evidence that he did as, not only was this not put to the first plaintiff but Mr Ncongwane was not working on the farm at the relevant time: he only commenced work there in 1994, when the first plaintiff was already 19. By that time, according to the first plaintiff, he had dropped out of school and was running marathons, on a paid basis, for the Ermelo Mrathon Club through Morzando Mine.

72. One of the second defendant's witnesses, Mrs Annatjie van den Bank, testified that the first plaintiff worked in her garden for her over three years, between 1998 and 2000, initially for three days a week and thereafter every day. He would come in the afternoons 'after school'.[52] She testified that the third plaintiff worked for her at the same time as a domestic worker, also initially three days a week and thereafter five days a week. They were both paid monthly. However, even if such employment ensued as testified, it cannot detract from the plaintiffs' status as labour tenants as at 2 June 1995, for purposes of the LTA.

73. Ms Oschman submitted that the work done by the plaintiffs does not constitute 'labour' for purposes of the LTA as it was not permanent and, at least in respect of

[52] This version was not put to the first plaintiff and it is difficult to reconcile with his evidence that he dropped out of school. He would have been 23 when working for Mrs van den Bank. It is possible she meant after she had finished teaching.

the first and fourth plaintiffs, was merely casual, for 'pocket' money.[53] I disagree. First, the fact that children may have been paid minimally for vacation work does not make the work any less arduous or material. Second, the evidence shows that it was expected of all children to do this work as part of the arrangements between Mr Lambrecht and the respective families and their members. Third, the submission in my view overlooks the exploitative nature of child labour and the vulnerability of children, which, under current law, remain considerations even when a child reaches the lawful age of work of 15.[54] Furthermore, as to the fact that the work was only done during school holidays, there is precedent in this court for treating 'piece' jobs as sufficient to constitute labour under the definition of labour tenant in the LTA.[55] This is analogous.

74. Ms Oschman submitted further that even if it is accepted that the surviving plaintiffs provided labour, it cannot be concluded that they did so in consideration for any right to use cropping or grazing land. In this regard, it was submitted that the right to keep cattle was not theirs, but that of Mr Josiah Mokoena. The cropping rights were wholly in issue but I have concluded they vested and qualify as such under the LTA.

75. It is not strictly necessary for me to decide this issue in order to determine Mrs Nkosi's status as a labour tenant. This is because the evidence was undisputed

[53] Reliance was placed on *Deo Volente Rusoord BK v Shongwe & Others* 2006 (2) SA 5 (LCC), which I regard to be distinguishable.
[54] Under section 43 of the Basic Conditions of Employment Act 75 of 1997 children under the age of 15 may not be employed. Should children between the ages of 15 and 17 seek employment, there is a duty on a business to ensure that this does not interfere with school-going activities and that special mechanisms are in place to prevent, identify and mitigate any workplace related harms to young workers. A business must ensure that young workers under 18 years of age are provided with work appropriate for their age and the work should not poste any risk to the well-being, education, physical or mental health and spiritual, moral or social development of the young worker. The best interests of the child remains paramount.
[55] *Masondo*, supra n 26, para 34.

that the Mokoena family kept a subsistence vegetable garden, planting vegetables such as pumpkins, beans, cabbage and spinach. Her testimony reflected the size as being in a square shape approximately the width of the court room (which measures approximately 9 metres. However, I return to this issue below when dealing with the declaratory relief sought as that relief requires consideration of the scope and extent of rights.

76. The position of the first and fourth plaintiffs is, however, complicated by the fact that their labour was provided when they were children. While there can be no doubt that their rights to reside was linked to their provision of labour, it is possible that the rights of grazing and cultivation resided with their parents, not directly with them. However, in my view, even if that is so, this cannot deprive the children of their status of labour tenants as the LTA must be interpreted in a manner that best protects their rights. To this end, I am of the view that where children provided labour as part of the arrangements in place to secure residence, cultivation and grazing rights, they satisfy the requirements of paragraph (b) derivately through their parents. My conclusion is fortified by the fact that, on the facts of this case, the arrangements that were in place relating to cropping and grazing were clearly intended to benefit the members of the family as a whole, in circumstances where each family member was providing labour in some form.

77. In arriving at these conclusions I have given effect to the holding of the Constitutional Court in *Goedgelegen* and the Supreme Court of Appeal in *Mbhense*.[56]

[56] See above paras 23 and 24

78. I have also considered that illegality may have tainted the agreement as between an owner and a child providing labour. No argument was addressed to me on this issue and my attention was not drawn to the specific legal proscriptions that applied at the relevant times. However, I am satisfied that even assuming the agreements were void for illegality, this could not deprive the children of the protections otherwise afforded to them by the LTA, the distinctive purpose of which includes to secure tenure rights and thereby give effect to section 25(6) of the Constitution.

79. In the result, in my view, each of the plaintiffs must be declared labour tenants in respect of the property.

Termination and waiver

80. As mentioned, the second defendant pleaded termination, alternatively waiver, of any rights by the first and fourth defendant. He did so without much elaboration, but in circumstances where these plaintiffs no longer remain on the farm: he says they voluntarily left. Although the argument was, responsibly, not persisted with any vigour during argument, it was not abandoned. It can be dealt with simply. Section 3(2) governs termination and, in this case, requires proof of waiver. Section 3(6) and (7), referred to above, govern the waiver of rights in a written agreement. There was no evidence or suggestion that their requirements are met.

81. To the extent that conduct is relied upon, a person who alleges waiver has the onus to prove it on a balance of probabilities[57] and clear evidence of a waiver is

[57] *Hepner v Roodepoort-Maraisburg Town Council* 1962(4) SA 772 (A) at 778.

required: a person is not lightly deemed to have waived their rights. A person must have full knowledge of the nature and extent of any rights being waived and where conduct is relied on, the conduct must be plainly inconsistent with the intention to enforce the right.[58] In this case, constitutional rights are at stake, and the LTA must be interpreted and applied accordingly. Section 3(3) deems a person to have waived their rights if they, with the intention to terminate the labour tenant agreement leaves the farm voluntarily. There is no suggestion that either the first or fourth plaintiff left the farm (assuming they did), with the intention to terminate the labour tenancy agreement. Both were residing on the farm in June 1995. Moreover, the evidence confirms that the circumstances in which the first and fourth plaintiffs no longer stay permanently on the farm (from 2001 and 2010 respectively) is wholly unrelated to their assertion of any labour tenancy status. They are not responsible for the delays on the part of the State in respect of the application for an award of land and they have maintained their stance that they are entitled to their status as labour tenants. Neither plaintiff consider themselves to have left the farm permanently: both regard it as their home. In these circumstances it cannot be said that either plaintiff waived any rights.

The incidental declaratory relief

82. The remaining relief sought can be described as declaratory relief sought to define the land use rights that flow from the plaintiffs' status as labour tenants. These

[58] Id. See too *Feinstein v Niggli* 1982(2) SA 684 (A) at 688-689. And see *Mahomed and another v President of the RSA and others* [2001] ZACC 18; 2001(3) SA 893 (CC); 2001(7) BCLR 685 (CC) at para 63. In *Mohamed* supra the Constitutional Court held in context of consenting to deportation to a country that might impose the death sentence, unconstitutional in South Africa, assumed (without deciding) that such consent would be enforceable and held at para 63: 'To be enforceable, however, it would have to be a fully informed consent and one clearly showing that the applicant was aware of the exact nature and extent of the rights being waived in consequence of such consent.'

rights have their source in section 3 of the LTA, and they exist independently of an award of land that may be made under Chapter 3.

83. The specific relief sought in this regard is found in paragraph 2 of the statement of claim,[59] and concerns the right to reside, maintain and make reasonable extensions or alternations to the homestead, grazing rights, the right to plough approximately 3.5 hectares of land and to rotate such land use, the right to sufficient access to water for domestic purposes including livestock and crop irrigation and the right to have servitudes registered for these purposes. In respect of the latter, the pleadings, reasonably interpreted, allow a case to be advanced to secure physical access to the relevant areas and evidence on that issue was canvassed by both parties. The pleadings also can be interpreted to secure registration of real rights that may be held to exist.

84. Ms Oschman submitted that the declaratory relief sought is not competent. However, the argument advanced was raised as a special plea and dealt with in my judgment of 14 June 2022. The questions remain whether the plaintiffs have made out a case to justify the relief sought and whether the Court should, in its discretion grant the declaratory relief.[60] There are various considerations that arise in this case. One is whether the rights asserted are being infringed or threatened.[61] It is clear from the evidence that not only is the plaintiffs' status as labour tenants

[59] See n 2 above.
[60] Section 22(2)(a) confers on this Court all the powers in relation to matters falling within its jurisdiction as are possessed by a High Court having jurisdiction in civil proceedings at the place where the land in question is situated, including the powers of a High Court in relation to any contempt of the court. At present, the position is regulated by section 21(1)(c) of the Superior Courts Act 10 of 2013 which provides, inter alia, that a high court has jurisdiction in relation to all causes arising within its area of jurisdiction and has the power, 'in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.'
[61] *Geldenhuys and Neethling v Beuthin* 1918 AD 426 at 440-441 affirmed in *DG Department of Home Affairs and another v Mukhamadiva* [2013] ZACC 47; 2014(3) BCLR 306 (CC) at par 33.

in dispute but their ability to use the land in the manner that they contend they are entitled to is compromised.

85. The highly compromised relationship between the parties is another factor It is common cause that the relationship between the second defendant, who is in *de facto* control of the farm, and the plaintiffs, has broken down materially. The cause of the breakdown is in dispute, but there can be no question that the parties are not able to engage meaningfully with each other on matters germane to the exercise of the plaintiffs' rights. For some time, it has become necessary for matters to be pursued through attorneys and there is a long history of dispute, both formal and informal. At times, Mr Lambrecht had to be approached to assist. There can be little doubt on the evidence that it has been the second defendant's wish, since he took over the farm, for the Mokoena family to leave. Certain incidents have become violent including the 2001 shooting that left the first plaintiff disabled, and a second incident which involved the second defendant killing the plaintiffs' dogs (in circumstances where the second defendant says they killed his ducks). Also material is the dispute between the parties regarding the impoundment and auction of the Mokoena cattle. It is common cause that the second defendant removed the Mokoena cattle and took them to the auction house. He testified that it was by arrangement with Mr Josiah Mokoena. On the other hand, the plaintiffs' understanding of the circumstances, if true, would mean there was no consent to do so. While I return to the issue of cattle, it is not necessary for me to attribute responsibility for this state of affairs or for each of the specific events: what is glaringly obvious is that the relationship has broken down profoundly. On its own, this generates difficulties and certainty is warranted.

86. Also relevant in this matter is whether the relief, if granted, will settle the issue between the parties and whether justice and convenience favour the grant of relief. Another is the DGs now hopefully imminent processing of the application for an award of land, as it would be undesirable for this court – through any declaratory order it makes now – unduly to constrain or predetermine the outcome of that process and specifically the manner in which any award, if made, is framed. I have also been guided by the nature of the rights asserted, mindful both of the rights of owners and labour tenants, which must be promoted, respected, protected and fulfilled, and ultimately balanced. From the owners' perspective, the restrictions which labour tenancy place on their rights can be material. Yet labour tenants are a vulnerable group and land injustice and tenure insecurity continues to undermine their dignity and ability to live productive lives both generally and in this case in particular.

87. In my view, the circumstances of this case warrant the grant only of some further declaratory relief, at least at this stage.

88. In respect of access to water, the second defendant does not, substantially, dispute the plaintiffs' rights of access to sufficient water from the property's sources for domestic purposes including drinking, livestock and crop irrigation. The second defendant accepts that the dam was always accessible for livestock and and he says that the spring in the close vicinity can be used for other purposes including drinking. He maintains that the water is clean. Ms Nkosi explained, however, that she does not trust the cleanliness of the spring water, and currently obtains water

from the municipality delivered by truck. No water quality tests were proffered in evidence. Rather Ms Nkosi referred to an incident where she found tissues in the spring and explained that the family has frequently resorted to rain water, collected in buckets, for drinking purposes. There was evidence that at least historically water was collected from the river. It is not explained why there is no direct water supply to the household itself or why it is necessary for the plaintiffs, should they use the spring or river, to collect the water personally. The evidence did not canvass access to water for cultivation purposes. Importantly, there was no evidence from which the court could conclude how water should be accessed, for what purposes and in what amounts and the declarator sought does not deal with these material practical issues. In these circumstances and at this stage, I am not persuaded that this court should grant declaratory relief as its grant would undermine and not generate certainty, and the evidence shows that the second defendant accepts the need for the plaintiffs to access water from farm owners. In these circumstances, the parties should be directed, rather, through their attorneys, to engage meaningfully regarding the plaintiffs' access to water.

89. In my view, declaratory relief is warranted in respect of the residential rights of the plaintiffs as labour tenants as these rights lie at the heart of the dispute between the parties. There is no dispute about the location of the residential area, although it is not wholly clear how much of the area was historically occupied by the Segudla family. In view of my conclusion in respect of grazing rights, this becomes immaterial at this stage. While there are currently two homesteads, the evidence established that over time, and as the need arose, the Mokoena family would construct or demolish residential structures. It also established that the residences

are not currently adequate to house the first plaintiff given his disability and related needs. There was no evidence about its adequacy for purposes of accommodating the fourth plaintiff and her children. The evidence did not establish, moreover, that there has been any thwarted attempt to maintain, alter or extend the homestead or to render it suitable for the first plaintiffs' needs, nor was it explained what is sought to be done and at whose cost. In *Daniels,*[62] in context of the rights of occupiers under ESTA, the Constitutional Court held that occupiers are entitled to bring their dwellings to standards that conform to conditions of human dignity, a right that is not contingent on the consent of the owner.[63] Dwellings must be habitable, which 'connotes making whatever improvements that are reasonably necessary to achieve this.'[64] The findings in *Daniels* must apply with equal force to the position of a labour tenant. However, I am not satisfied that this Court should grant declaratory relief in the abstract form it is sought. Again, without suggesting that owner consent is required, the parties should at this stage be directed to engage meaningfully about the manner of exercise of these incidental rights including the need, if any, to erect new structures.

90. First, I am not persuaded that any declaratory relief should be granted, at least at this stage, in respect of registrable servitudes. The reason is the imminent processing of the application for the award of land. Different considerations may apply as that process unfolds, and whatever its outcome. However, I am satisfied that declaratory relief should be granted to secure and regularise the plaintiffs' right of access to their residence, both via vehicle and pedestrian access. The evidence

[62] *Daniels v Scribante and another* [2017] ZACC 13; 2017(4) SA 341 (CC); 2017(8) BCLR 949 (CC)
[63] Paras 59 to 60.
[64] Para 33.

established that the plaintiffs' pedestrian access is inadequate, yet simple to procure without any undue impact on either the owner or the second defendant. There is no dispute that the plaintiffs have, historically, traversed the south-eastern boundary of the property to access the gravel road which lies on the property's north-eastern boundary. However, if they do so, they are required to climb through a fence when they reach the gravel road. They have in the result relied on the generosity of the neighbouring farmer who permits them to use his access road, again requiring the plaintiffs to climb through a fence. This is both undignified and inadequate. Again, engagement must ensue so that there is pedestrian gate access to the property from the gravel road.

91. As to vehicular access, the plaintiffs' testimony was unequivocally to the effect since the arrival of the second defendant, vehicular access has been compromised. They say that they were required both to sign in on arrival but to pay R5 to do so. This resulted, historically, in Mr Josiah Mokoena leaving his vehicle on another property. It is common cause that the 2001 shooting, which resulted in Mr Mokoena's disability, arose due to a dispute about vehicle access and the route and they no longer bring vehicles to the homestead, although the municipal water truck is afforded access. The second defendant testified that there is no restriction on vehicular access, save for a requirement to sign in, which he justified for security reasons. However, he relied on an agreement to use an alternative route which was neither used nor pointed out during the site inspection. Nor was it put to the plaintiffs during their cross-examination. The route does traverse a stream and at that point is muddy and, at least at times, is difficult to use without a suitable vehicle. Vehicular access is, moreover, unduly limited in that it

does not reach the homestead area itself. There is clearly a need for the plaintiffs' vehicular access to be unimpeded, enhanced and regularised. If an award of property is made, this might sensibly in due course entail access via the north-eastern boundary. However, at this juncture, various suitable arrangements may be made and engagement must ensue to that end.

92. I am, furthermore, satisfied that declaratory relief should be granted at this stage in respect of ploughing (cropping) rights and grazing rights. The extent of cropping and grazing rights, and the plaintiffs' own entitlement to assert them independently of the late Mokoena heads of household, warrant elaboration. In this regard, section 3(1)(a) confers the right on a labour tenant to occupy and use that part of the farm in question which he or she or his or her associate was using and occupying on that date. An associate is defined, in section 1, to include a family member of a labour tenant. For this reason alone, the plaintiffs may assert the rights. But in any event, on the facts of this case, I am of the view that the cropping rights probably vested also in the surviving plaintiffs and the grazing rights also with Mrs Nkosi.

93. As regards cropping rights, I find on the evidence that the cropping use rights in the cultivation area were conferred on persons who provided labour to Mr Lambrecht. While it is clear that the cropping use rights were conferred on those permanently employed, such as the late Mr Josiah Mokoena, it is less clear whether they also vested with other members of families who provided labour on the farm. In my view, the evidence shows that they probably did and thus the surviving plaintiffs each had such rights as each provided labour not least during

harvest time. The arrangements in place on the farm were that the whole family provided labour and the cropping use rights flowed consequently to benefit the whole family. That was the position as at 2 June 1995. As indicated, I have also found that the area was shared between families and thus that the Mokoena family may only assert use rights to a portion thereof. Accepting that there were some six other families on the property, this means at least one sixth of the cultivation area is affected (accounting for contingencies).

94. As regards grazing rights, the evidence established that the right to keep cattle resided with each of the Mokoena heads of household including at least Mr Thuli Mokoena, and Mr Josiah Mokoena. The cattle grazed at least throughout the grazing camp, with their kraal, and immediate grazing area close to the homestead. Mrs Nkosi testified that they could also graze elsewhere such as where the mielies were planted after harvest. It was common cause that other families that kept cattle could also graze their cattle in the grazing camp but their kraals were on a different part of the property, where those families resided, and it appears that there was at least some grazing for them at those sites. In Mr Ncongwane's case, he explained that the cattle would graze in the grazing camp in the day. But they would sleep in their separate kraal area and also graze between their own kraal and the grazing camp over a distance of some 50 metres. The first plaintiff conceded that he did not know the specific arrangements between Mr Lambrecht and his father, but his understanding was that there was no limit to the number of cattle, and at an earlier stage the family had between 40 and 60 cattle. Ms Nkosi conceded under cross examination, in accordance with the second defendant's version, that her husband was only meant to keep five or six cattle, but her evidence also shows that the

arrangement entailed that as cattle numbers increased, some would be sold and there was no strict adherence to the number at any point in time, this would be discussed over time and Mr Lambrecht would become involved assisting with the sale of cattle. It is clear that they kept many more than 5 cattle over time, and that the cattle of deceased family members would become the cattle of the surviving heir. When Mr Volschenk removed the cattle to auction, the Mokoena cattle numbered 16 or 17.

95. The disputed versions on the removal of the cattle are these. According to the plaintiffs, Mr Volschenk had agreed to allow the Mokoena cattle to graze on another part of the property outside of the grazing camp, but after the cattle were moved to that area, he removed the cattle to auction without consent. Mr Volschenk testified that the agreement with Mr Josiah Mokoena was that the cattle would be sold at auction, and that he had allowed the cattle to graze on the alternate camp for two months to restore their health, which had been dire given the overgrazing of the grazing camp over the years. His version was not, however, put to the plaintiffs and it is difficult to believe that Mr Josiah Mokoena would not have informed any member of the family, especially his wife, that a primary asset, the cattle, were to be sold. Furthermore, his evidence on this aspect did not strike me as wholly truthful, as he was unable to give satisfactory answers under cross-examination as to the actual circumstances of the removal. In my view, the evidence establishes that the Mokoena cattle were probably removed from the property without the Mokoena's consent and sent to auction, although it is not clear what happened to them. In any event, even if Mr Mokoena did agree to sell the cattle in question,

there is nothing to suggest that he thereby relinquished any rights to keep and graze cattle in the grazing camp. At most, it required restoration.

96. Could the grazing rights nevertheless only be asserted by Mr Josiah Mokoena, who, as a result of the delays in processing his application, did not realise the benefits of secure tenure promised by the Constitution? Or could they also be asserted by his family members, including his wife, Mrs Nkosi, who held all property in community with him[65] and shared responsibility for them including by milking them? In my view, the evidence shows that the arrangements were made specifically with Mr Josiah Mokoena, but entailed that each household could keep cattle. These rights could be asserted intergenerationally. As a matter of law, and as at June 1995, Mr Josiah Mokoena was still alive and Mrs Nkosi was the joint owner of the cattle. In these circumstances I am satisfied that Mrs Nkosi was independently entitled to grazing rights in respect of the grazing camp as at 2 June 1995.

97. It is appropriate that the amended relief sought is granted, which entails that expert advice be relied upon to determine the number of cattle that can be grazed in the grazing area under applicable law and sound practice. I conclude that the number of livestock should not be otherwise limited. Although other families used the grazing area, the Mokoena cattle kraal and homestead is located in the grazing camp, and dominate the area to the south east of the dam. Their own grazing rights related to the full grazing camp and it would be inappropriate artificially to delineate a part of this area due to the sharing arrangement. Moreover the

[65] *Gumede v President of the Republic of South Africa* [2008] ZACC 23; 2009(3) SA 152 (CC); 2009(3) BCLR 243 (CC).

evidence shows that any agreement to keep only 5 cattle was not strictly enforced, and higher numbers were accepted over time. The Mokoena cattle holdings together well exceeded five. Different considerations might apply should the processing of the section 16 application result in an award of the land.

Costs

98. This Court only grants costs in special circumstances of which there are none. Each party should pay its own costs.

Order

99. The following order is made.

99.1. The first, third and fourth plaintiffs are declared to be labour tenants in terms of section 33(2A) of the Labour Tenants Act on Portion 3 of the Farm Morgenster 204IS, Hendrina, Mpumalanga province (the property).

99.2. It is declared that the plaintiffs' land use rights on the property include, without limitation:

99.2.1. The right to reside in the family homestead on the property;

99.2.2. The right to access the family homestead by vehicle and pedestrian access;

99.2.3. The right to graze such number of small or large livestock in the grazing camp marked K4 measuring 27.49 hectares in extent as can lawfully and reasonably be sustained which numbers shall be

determined by an expert in the field of agriculture appointed by the third and fourth defendants following the following procedure:

99.2.3.1. The expert shall deliver a report within 60 days of the court order, detailing the number of cattle and other livestock that can graze in the grazing camp, being an area of 27.49 hectares of land surrounding 5.6 hectares of dam water.

99.2.3.2. The first and second defendants shall thereafter be afforded the opportunity to deliver own expert report or reports in response thereto provided such report or reports are delivered within 60 days of delivery of the report referred to above.

99.2.3.3. The Court shall thereafter make the determination within 15 days of the receipt of such reports.

99.2.3.4. In the event that the expert fails to comply with the time-frames above, any party may approach the court seeking an order to finalise the issue.

99.2.4. The right to crop in the homestead area by planting a vegetable garden and to use one sixth of the cultivation area marked M3L5 for cropping.

99.3. The plaintiffs and the defendants shall, through their attorneys, conduct a meaningful engagement:

99.3.1. To facilitate the plaintiffs' access to adequate water for domestic, cultivation and animal use using water resources from the property;

99.3.2. To ensure the plaintiffs' access to the family homestead by vehicle and pedestrian access including through gate access and in such a manner that enables vehicular access directly to the homestead;

99.3.3. In respect of any maintenance and reasonable alterations or extensions to the homestead required to render the property habitable and to comport with standards of dignity, and to enable an additional structure or structures to be built to ensure the plaintiffs' reasonable accommodation.

99.4. The third defendant is ordered to process the plaintiffs' application for acquisition of the affected property without delay (within four months of the date of this order or such further time as may be authorised), which application shall be processed as an application lodged on behalf of the families of the named applicants including, without limitation, the first, third and fourth plaintiffs.

99.5. The parties are granted leave to approach the Court under the same case number for further relief.

99.6. Each party shall pay their own costs.

SJ COWEN
JUDGE,
LAND CLAIMS
COURT

Representation:

Plaintiffs: M Malowa SC instructed by Matloga Attorneys

First Defendant: C Richards instructed by TC Botha Attorneys (no participation beyond the first day of trial)

Second Defendant: I Oschman instructed by PWG Attorneys

Third and Fourth Defendants: No appearances.