

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

CASE NO: LCC01/2011

DELETE WHICHEVER IS NOT APPLICABLE

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

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SIGNATURE

28 February 2024
DATE

In the matter between:

Thuthukani Land Claim Committee

Claimants

Concerning various Farms in the District of Lion's River

JUDGMENT ON COSTS

NCUBE J

Introduction

[1] A claim for the restitution of land rights was lodged by one Msuseni Shakespeare Dladla ("Mr Dladla") on behalf of the Thuthukani Community, ("the Thuthukani Claim"). The claim was in terms of section 2 of the Restitution of Land Rights Act¹ ("the Act"). It was a claim for physical restoration of several farms, in the district of Lion's River. Mr Dladla submitted two claim forms. The first claim form was dated the 25th of April 1996. The second was dated the 29th of July 1997. The claimed land was accordingly published in the Government Gazette. In 2008, the

¹ Act 22 of 1994.

Regional Land Claims Commissioner, KwaZulu-Natal (“RLCC”) referred the Thuthukani claim to the Land Claims Court in terms of section 14 of the Act² for adjudication.

[2] At a pre-trial conference held on 18 August 2022 this matter was set down for trial commencing on 01 February 2023 and which was going to last for the whole month. The claimants, were by then legally represented by M.C Ntshalintshali Attorneys. Afterwards Ntshalintshali Attorneys withdrew as attorneys of record without filing a formal Notice of Withdrawal. At some stage, during one of the pre-trial conferences, Mandla Ntuli Attorneys came on board as legal representatives for the claimants.

[3] The matter did not proceed on 01 February 2023. Mandla Ntuli Attorneys, just before the commencement of the matter delivered a Notice of Motion seeking a postponement of the matter. The application for the adjournment was not opposed by any of the parties. In their affidavit, Mandla Ntuli Attorneys state that they were not ready to proceed with the trial on 01 February 2023 seeing that they had just came on board as the Claimants Legal representatives in June 2022. The Claimants were previously represented by MC Ntshalintshali Attorneys, Mandla Ntuli Attorneys had to properly prepare for the trial. Indeed at the pre-trial conference held on 18 August 2022, Counsel indicated that he had not consulted with witnesses including expert witnesses. The matter was subsequently adjourned to 14 September 2023.

[4] The matter could not proceed to trial on 14 September 2023. It was not clear as to whether the Claimants wanted restoration of land or financial compensation. Apart from that, on 11 September 2023, Mandla Ntuli Attorneys filed a Notice of Withdrawal as Claimants’ attorneys of record. The matter was then adjourned for the 14 September 2023. The question of legal representation was not finalized and the claimants were referred to Legal Aid South Africa.

[5] On 14 September 2023, the matter was adjourned for hearing on 12 and 13 February 2024. Mandla Ntuli Attorneys, MC Ntshalintshali and the RLCC were

² Ibid.

ordered to show cause why they could not be ordered to pay wasted costs occasioned by the adjournment of the matter on 01 February 2023. Mandla Ntuli Attorneys were called upon to show cause why they should not be ordered to pay wasted costs of the RLCC, Mondi and NCT *de bonis propriis* occasioned by their late withdrawal as attorneys of record.

[6] Mandla Ntuli being the Director of Mandla Ntuli Attorneys has deposed to an Affidavit explaining reasons why they could not proceed with the matter on 01 February and 14 September 2023. Mr Cele, Counsel for Mandla Ntuli Attorneys, also addressed the court at length as to why Mandla Ntuli Attorneys should not be held liable to pay the costs. In the Affidavit, Mr Ntuli explains that there had been many challenges in this matter. There was no beneficiary verification list. The beneficiary list had to be attended to by the RLCC. The non-availability of the beneficiary list led to factions being formed amongst the claimants. The attorneys therefore, did not even know who they should consult with.

[7] As Mr Ntuli explains in his Affidavit, the list was going to show who of those claimants were labour tenants and those who formed a community, if there was a community. It appears that there was a misunderstanding between the RLCC and Mandla Ntuli Attorneys with regard to the beneficiary list. The claimants believed that the RLCC was going to settle the matter once the beneficiary list was available. A list with two hundred and sixteen (216) households was given to the RLCC. In turn, the RLCC demanded that the list be reduced to forty (40) or forty-three (43) households.

[8] A costs *de bonis propriis* order is not an order which is lightly resorted to. Such an order may be made against an attorney only in reasonably serious cases, like cases involving dishonestly, willfulness or negligence in a serious degree.³ In *SA Liquor Traders' Association and Others v Chairperson, Gauteng Liquor Board and Others*⁴ O'Regan J expresses herself in the following terms:-

³ Immelan v Louber en 'n Ander 174 All SA 89 (A)

⁴ 2009(1) SA 565 (CC) para 54

“An order of *costs de bonis propriis* is made against attorneys where a court is satisfied that there has been negligence in a serious degree which warrants an order of costs being made as a mark of the court’s displeasure.”

[9] In *Adendorffs Boerderye v Shabalala and Others*⁵ Mathopho J said:-

“It is true that legal representatives sometimes make errors of law, omit to comply fully with the rules of the court or in other ways related to the proceedings. This is an everyday occurrence. This does not, however, per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioner such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to make its profound displeasure at the conduct of an attorney in any particular context. Examples are dishonesty, obstruction of the interest of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court and gross incompetent (sic) and a lack of care.”

[10] Mandla Ntuli Attorneys’ conduct must therefore be viewed in light of the principles discussed above. *Costs de bonis propriis* may be ordered only if this court finds that Mandla Ntuli Attorneys’ conduct amounts to gross negligence or that they were dishonest in their dealings with the court.

[11] From the Affidavit filed and from submissions made in court by Mr Cele it is clear that since Mandla Ntuli Attorneys took over this matter, there was never a stage where they negligently or dishonestly handled the matter, even worse, Mandla Ntuli Attorneys have not been paid their fees and it does not look like they will ever be paid in the immediate future.

[12] I must say something about MC Ntshalintshali Attorneys. They did not file an affidavit opposing the call for an order to pay wasted cost for 01 February 2023.

⁵ (1997/15) [2017] ZASCA 37(27 March 2017) at para 35

However, there is no evidence that either Mandla Ntuli or MC Ntshalintshali Attorneys were responsible for the adjournment of the matter on 01 February 2023. The starting point of exercise is that the Land Claims Court (“LCC”) does not award costs unless there are exceptional circumstances which warrant an award of costs. There are no such exceptional circumstances in this case.

[13] I find that neither MC Ntshalintshali nor Mandla Ntuli Attorneys are to blame for the adjournment of the case on 01 February and 14 September 2023.

[14] In the result it is declared that MC Ntshalintshali and Mandla Ntuli Attorneys are not liable to pay the wasted costs occasioned by the adjournment on 01 February and 14 September 2023.

NCUBE J
Judge of the Land Claims Court
Randburg

Judgment reserved: 13 February 2024

Judgment delivered: 28 February 2024

Appearances

For the Claimants: Adv Dlamini, MW
Instructed by: Legal Aid South Africa

For the Landowners: Adv Goddard, G
Instructed by: Shepstone & Wylie Attorneys and Paul Misselhorn
Attorneys
Durban

For the State Defendants: Adv Nqala, CM
Instructed by: State Attorney, KwaZulu-Natal

Durban