

**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION – MAHIKENG**

**CASE NO: UM 157/2019**

Reportable: **YES/NO**

Circulate to Judges: **YES/NO**

Circulate to Magistrates: **YES/NO**

Circulate to Regional Magistrates: **YES/NO**

**In the matter between:**

**MAHIKENG LOCAL MUNICIPALITY**

**Applicant**

**And**

**VELAPHI GWIRIRI**

**1<sup>st</sup> Respondent**

**CHRIS MOSIANE**

**2<sup>nd</sup> Respondent**

**DAVID MBOCHELA**

**3<sup>rd</sup> Respondent**

**FARAKI LEFINI**

**4<sup>TH</sup> Respondent**

**ANY OTHER INDIVIDUAL WHO ASSOCIATES  
THEMSELVES WITH THE UNLAWFUL  
CONDUCT OF THE FIRST TO FOURTH  
RESPONDENTS**

**5<sup>TH</sup> Respondent**

***In re:***

**MAHIKENG LOCAL MUNICIPALITY**

**Applicant**

**And**

**VELAPHI GWIRIRI**

**1<sup>st</sup> Respondent**

**CHRIS MOSIANE**

**2<sup>nd</sup> Respondent**

**THE UNLAWFUL INVADER OF PORTION 2  
OF THE FARM ROOIGROND NO. 135 AND  
REMAINDER OF ERF 428, MAHIKENG**

**3<sup>rd</sup> Respondent**

**ANY PERSON WHO ASSOCIATES  
THEMSELVES WITH THE FIRST TO THIRD  
RESPONDENTS, AND/OR ANY PERSON WHO  
INTENDS TO INVADE THE LAND SITUATED  
PORTION 2 OF THE FARM ROOIGROND NO.135  
AND REMAINDER OF ERF 428, MAHIKENG**

**4<sup>th</sup> Respondent**

**THE PROVINCIAL COMMISSIONER OF POLICE:  
NORTH WEST PROVINCE**

**5<sup>th</sup> Respondent**

**THE SATION COMMANDER, MAHIKENG  
POLICE STATION**

**6<sup>th</sup> Respondent**

**Reasons for Judgment**

**DJAJE DJP**

[1] On **15 June 2023** an order was granted in the following terms:

*“1. THAT: Rule Nisi is confirmed.*

*2. THAT: The Second Respondent is ordered to pay costs.”*

[2] This matter has some history and first came before court on **18 September 2019** when the applicant sought an order against the respondents to interdict them from invading the portion of land known and described as Portion 2 of the Farm Rooigrond No. 135 and remainder of Erf 428, Mahikeng. An order was granted against the respondents with a rule *nisi* as follows:

*“1. THAT: The forms and services provided for in the rules of the above Honourable Court be and are hereby dispensed with and that the matter be treated as an urgent application in terms of the provisions of rule 6(12) of the Uniform Rules of Court.*

*2. THAT: A rule nisi be and is hereby issued calling upon the Respondents to furnish reasons, if any, on Thursday, the 24<sup>th</sup> day of October 2019 at 10h00, as to why the following order should not be confirmed:*

*2.1 That the First to Fourth Respondents be and are hereby ordered not to invade Portion 2 of the Farm Rooigrond No. 135 and Remainder of ERF 428, Mahikeng, and/or erect structures on the property, and/or reside on the property, except those who at the date of this order already resides on the property and/or those who have already erected structures.*

*2.2 The Sheriff be and is hereby authorised to enforce to enforce the aforesaid order should there not be compliance with prayer 2.1 above and that the Fifth and Sixth Respondents be ordered to maintain law and order and ensure the safety of the Sheriff in executing his duties.*

*2.3 The Sheriff be authorised be authorised to demolish all unlawful, occupied structures at the property situated at Portion 2 of the Farm Rooigrond No. 135 and Remainder*

*of ERF 428, Mahikeng and that the Fifth and Sixth Respondents be ordered to maintain law and order and ensure the safety of the Sheriff in executing his aforesaid duties.*

3. *THAT:* *Prayer 2.1- 2.2 be of interim force pending the return date.*

4. *THAT:* *Service of this order and application be effected in the following fashion:*

(a) *By attaching the order and application to three notice boards on the property.*

(b) *By publishing the order in one publication of the Mahikeng Mail.*

(c) *Upon the First and Second Respondents by the Sheriff in terms of the terms of the rules.*

(d) *By affixing the order and application on occupied structures found.”*

[2] The above order was confirmed on **7 November 2019** with the following order:

*“1. THAT: The rule nisi be and is hereby confirmed in the following terms:*

1.1 *That the First to Fourth Respondents be and are hereby ordered not to invade PORTION 2 OF THE FARM ROOIGROND NO. 135 AND REMAINDER OF ERF 428, MAHIKENG, ad/or erect structures on the property, and/or reside on the property, except those who at the date of this order already resides on the property.*

1.2 *The Sheriff be and is hereby authorized to enforce the aforesaid order should there not be compliance with prayer 1.1 above and that the fifth and sixth Respondents be ordered to maintain law and order and ensure the safety of the Sheriff in executing his duties.*

1.3 *The Sheriff be and is hereby authorized to demolish all unlawful, unoccupied structures at the property situated at PORTION 2 OF THE FARM ROOIGROND NO. 135 AND REMAINDER OF ERF 428, MAHIKENG and that the Fifth and Sixth Respondents be ordered to maintain law and order and ensure the safety of the Sheriff in executing his aforesaid duties.*

2. *THAT: First Respondent be and is hereby ordered to pay costs."*

[3] On **19 May 2022** the applicant approached this Court again seeking an order to interdict the respondents from allocating, selling or alienating land on Portion 2 of the farm Rooigrond No. 135 and the Remainder of Erf 428 Mahikeng. In this matter only the second respondent filed an answering affidavit opposing the application. The other respondents did not file any answering affidavits.

[4] The applicant approached court on the basis that the respondents were allocating and selling stands to members of the public on the portion of land known as Portion 2 of the Farm Rooigrond No. 135 and the Remainder of ERF 428, Mahikeng. This is the same portion of land where the applicant had obtained an order that the respondents were interdicted from invading. It was argued on behalf of the applicant that despite the order of **7 November 2019**, the respondents were continuing to sell and allocate stands on the said portion.

[5] In opposing the application the second respondent argued that he was not allocating stands since the order of **November 2019** and as such he is not

guilty of anything relating to the allocation or sale of stands on Portion 2 of the Farm Rooigrond. In addition, the second respondent argued that there is a dispute regarding ownership of the said piece of land between the Council of Barolong Boora Tshidi and the applicant, which has not been resolved. It was submitted that the second respondent was given the responsibility of acting as a custodian over a portion of the Erf and not the entire Erf 428 by the Traditional Council of Barolong Boora Tshidi and never acted in his personal capacity.

- [6] The issue before court was to interdict the respondents from allocating or selling stands to a piece of land belonging to the applicant. As stated above, the matter first started with an order granted against the respondents interdicting them from invading the said land and not erect any structures thereon. This order of **November 2019** was never appealed against and still stands. The second respondent only brings out the issue of dispute of ownership in the current application. However, this argument has no merit as there is no proof of any pending litigation between the stated parties for the ownership of the said piece of land. In addition, the second respondent failed to furnish any proof that he was acting under the authority of the Barolong Boora Tshidi Traditional Council as a custodian of the erf. What stands out in the opposition of the second respondent, is the denial that he was not allocating or selling any stands to the members of the public since the order of **2019**. This on its own is fatal to any defence that could be raised by the second respondent. On this ground alone the application succeeded.

### **Costs**

- [7] It is trite that costs should follow the result. I see no reason why the second respondent should not be ordered to pay costs of this application.
- [8] It was for that reason that the order was granted.

**J T DJAJE**  
**DEPUTY JUDGE PRESIDENT**

**NORTH WEST HIGH COURT, MAHIKENG**

**APPEARANCES**

**DATE OF HEARING : 15 JUNE 2023**

**DATE REQUEST FOR REASONS : 20 JUNE 2023 :**

**DATE OF JUDGMENT : 10 AUGUST 2023**

**ATTORNEYS FOR THE APPLICANT : M E TLOU ATTORNEYS  
NO. 43 CNR BADEN  
POWELL & VISSER STR  
MAHIKENG**

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