



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mamahule Communal Property Associations and Others versus the Minister of Rural Development and Land Reform

CCT 179/16

Date of judgment: 5 May 2017

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 5 May 2017, the Constitutional Court handed down judgment in an application for leave to appeal concerning the question whether the Land Claims Court is empowered to adjudicate matters under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE).

During May 1996, the Mamahule Community and several other communities (communities) lodged claims in terms of the Restitution of Land Rights Act 22 of 1994 (Restitution Act) for the restitution of five farms in the Limpopo Province. The farms included Kalkfontein 1001 LS (farm). A settlement agreement was drafted in accordance with the provisions of the Restitution Act. The agreement was never signed as the second applicant approached the Land Claims Court to contest the beneficiaries in the claimants' verification list. That dispute remains unresolved before the Land Claims Court. Whilst resolution was pending, the communities started demarcating and allocating plots on the farm.

This precipitated an application in the High Court of South Africa, Gauteng Division, Pretoria by the Minister of Rural Development and Land Reform (Minister) against the communities. The Minister sought orders interdicting the demarcation and allocation of plots; declaring that the members of the communities were unlawful occupiers as defined in PIE; and evicting the communities from the farm. That application was settled with the communities making an undertaking to desist from their conduct, but the demarcation and allocation of plots continued.

The Minister brought another application against the communities – this time before the Land Claims Court – for substantially similar relief.

The Land Claims Court held that while it did not have jurisdiction under PIE, it had jurisdiction under the Restitution Act to grant the following interim relief pending the final determination of the land claim in respect of the farm: declare that the communities have no legal right or title to take occupation of the farm or portions of it; declare that the communities are an unlawful occupier as defined in PIE; and order the eviction of the communities from the farm. It then made an order in those terms. The Court also interdicted the communities from engaging in any activity involving the demarcation and allocation of sites on the farm and any other related activity pending the final determination of the claim in respect of the farm. Applications for leave to appeal brought before the Land Claims Court and Supreme Court of Appeal were unsuccessful.

Before the Constitutional Court, the communities argued that the Land Claims Court had no jurisdiction to declare that it was an unlawful occupier in terms of PIE because, based on the definition of “court” in section 1 of PIE, declarations of rights under PIE are within the exclusive realm of the Magistrates’ Court and the High Court.

The Minister conceded that PIE does not empower the Land Claims Court to make a declaration of unlawful occupation under PIE. However, he submitted that the Land Claims Court’s declaration was made in terms of the Restitution Act and that sections 6(3), 11(7), 22(1)(cA) and 22(2) of the Restitution Act do empower the Land Claims Court to make the declaratory order on the lawfulness of the communities’ occupation.

In a unanimous judgment, this Court held that while the Land Claims Court has no authority under PIE to declare a person an unlawful occupier, it was empowered under Section 22(2)(b) of the Restitution Act to issue the declaration of unlawful occupancy, albeit shorn of its reference to PIE. The question whether the applicants are unlawful occupiers is sufficiently connected to the dispute pending before the Land Claims Court regarding who the deserving beneficiaries should ultimately be. The Land Claims Court’s declaration ensures that its eventual resolution of the pending claim will not be hamstrung by the site demarcation and allocation and resultant occupation of the farm. The communities’ application was dismissed.