

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO:

In the matter between:

SOUTH AFRICAN RIDING FOR THE DISABLED ASSOCIATION Applicant

and

THE REGIONAL LAND CLAIMS COMMISSION: WESTERN CAPE First Respondent

MAGHERDIEN SADIEN N.O. Second Respondent

(on behalf of the Imam Dout Sadien Family Trust

(IT 746/2014)

THE ABDURAGHMAAN SADIEN FAMILY TRUST Third Respondent

(IT 20909/2014)

MOHAMED ALLIE EBRAHIM N.O. Fourth Respondent

(on behalf of the Bapa Sadien Family Trust

(IT 202039/2014)

MAGHERDIEN SADIEN N.O. Fifth Respondent

(on behalf of the Boeta Toyer Sadien Family

Trust (IT 020531/2014)

THE BOETA OMAR FAMILY TRUST Sixth Respondent

(IT 201155/2014)

SEDIEK SADIEN Seventh Respondent

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NOTICE OF APPLICATION FOR LEAVE TO APPEAL

BE PLEASED TO TAKE NOTICE that SOUTH AFRICAN RIDING FOR THE DISABLED ASSOCIATION (hereinafter referred to as “the Applicant”) hereby applies for an order in the following terms:

1. Condonation for the late filing of this application if necessary;

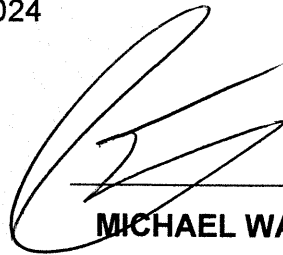
2. Granting the Applicant leave to appeal against the decision of the Land Court of 1 November 2024, published to the Applicant on 28 November 2024, under case number LCC 26/2010;

3. Directing that the costs of this application, including the costs of two counsel where employed, be costs in the appeal.

TAKE NOTICE FURTHER that the accompanying affidavit of MICHAEL WAGENER annexed hereto will be used in support of this application.

If you intend opposing this application you are required to lodge your affidavit in support of your opposition, after prior service on the Applicant, with the Registrar of this court within 10 days after service of this application on you.

DATED AT CAPE TOWN THIS 20th DECEMBER 2024



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(IT 201155/2014)

SEDIEK SADIEN Seventh Respondent



AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR LEAVE TO APPEAL

I, the undersigned, MICHAEL WAGENER, state under oath:

1. I am an attorney, duly admitted, practising under the style of Michael Wagener at Pepper St Chambers, 10 Pepper St, Cape Town. I am the attorney of record of the Applicant, the South African Riding for the Disabled Association.
2. I have acted for the Applicant since mid 2014 when still in the employ of Bowman Gilfillan, now "Bowmans".
3. I am authorized to depose to this affidavit by virtue of the resolution attached as "A".

INTRODUCTION

4. The Applicant for leave to appeal is a Registered Non-Profit (NPO) Public Benefit Organization (PBO) with a long history of service to people living with disabilities, many of these from previously disadvantaged backgrounds. In



particular, the Applicant serves, and has served countless number of children suffering from mental and physical disabilities. The Applicant services 15 special needs schools which are sponsored by the State and attended by these children.

5. The judgment of the Land Court (previously known as the Land Claims Court) from which the Applicant seeks leave to appeal directly to this Court is one which perpetuates the injustice suffered by the Applicant and the disabled community at large. Irregular proceedings in the Land Court have culminated in an order which has the effect of dispossessing the Applicant of land which it has occupied for 43 years. Possession of the land was, and is, essential for the service provided by the Applicant to children and adults living with disabilities.
6. The proceedings were irregular mainly because they did not afford the Applicant the right to heard in the selection of appropriate alternative state land to satisfy a land claim brought under the Restitution of Land Rights Act of 1994.
7. Of the three parcels of land marked out for selection as alternative state-owned land, erven 1783 and 3110 were vacant. The third, erf 142 which the Applicant has occupied for 43 years, was developed and in use for invaluable work benefitting both the disabled community and the community at large.

A handwritten signature in black ink, consisting of a stylized 'M' or 'W' shape above a series of overlapping loops.

8. Of particular concern is that despite the Land Court being a court of record, there is no record of the proceedings (a) that led to the initial selection of erf 1783 as alternative land, and no record of the proceedings which led to the later substitution of erf 1783 by erf 142.
9. The infringement of the right to be heard resulted in actual prejudice because the 2013 order which had the effect of dispossessing the Applicant was made on the mistaken assumption that the land it occupied was vacant.
10. The decisions of the Land Court commencing with that of Mpshe AJ, dated 7 December 2012, and culminating with the decision of Cowen J, dated 1 November 2024, reflect a thorough disregard of the provisions of the Restitution of Land Rights Act, 1998 ("the Restitution Act") and the common law of property and succession. Material deviation from legislation infringed the principle of legality. Furthermore, the Applicant's right to just administrative action under section 33 and its right to access to courts under section 34 of the Constitution, have been materially disregarded.

PARTIES

11. The Applicant is the South African Riding for the Disabled Association, Cape Town, a Registered Non-Profit Public Benefit Organization which provides therapeutic services for the disabled community on contiguous erven, 142, 141, 560 and 684 at 71a Brommersvlei Rd, Constantia.



12. The First Respondent is the Regional Land Claims Commissioner, Western Cape of 14 Long St, Cape Town.
13. The Second Respondent Magherdien Sadien N.O. representative of the Imam Dout Sadien Family Trust, IT 746/2014.
14. The Third Respondent is the Abduraghmaan Sadien Family Trust (IT 20909/2014).
15. The Fourth Respondent is Mohamed Allie Ebrahim N.O. on behalf of the Bapa (Ismael) Sadien Family Trust (IT 202039/2014).
16. The Fifth Respondent is Magerdien Sadien N.O. on behalf of the Boeta Toyer Family Trust (IT 020531/2014).
17. The Sixth Respondent is the Boeta Omar Family Trust (IT 201155/2014).
18. The Seventh Respondent is Sediek Sadien, an adult male businessman of 22 Plympton Road, Plumstead. He was cited originally (in 2012) as the "Second Applicant".

THE LAND COURT JUDGMENT ("THE DECISION")

19. The decision (per Cowen J) though dated 1 November 2024 was published to the Applicant only on 28 November 2024. The reason for this is that the



decision was not handed down in open court but emailed to the parties individually. Cowen J's registrar emailed the decision to the incorrect address for Applicant. This mistake was only rectified on 28 November 2024 when the decision was sent to the correct email address. These facts are apparent from the correspondence between my offices and the Registrar of the Land Court, Mr V Maqala, attached as "B1-5".

20. In the premises, this application is timeously brought.

21. The decision is annexed as "C".

GROUNDS ON WHICH THE DECISION IS DISPUTED

22. The order which flows from the decision (found at pp9 –11) is incapable of execution, incoherent and bad in law.

23. The effect of the order is to vary, 12 years after the fact, the substance of the order of Mpshe AJ of 7 December 2012 in the absence of four of the seven litigants cited and involved in the matter at the time: Ebrahim Sadien (now deceased), Jazz Spirit 12 (Pty) Ltd, Yamiv (Pty) Ltd and Hein R Badenhorst.

24. The Land Court makes no attempt to found its order on the provisions of Rule 64 read with section 35(11) of the Restitution Act which regulates the variation or rescission of orders in the Land Court. (Section 35(5) of the Land Court Act provides that the Land Claims Court rules continue to apply until new rules



have been promulgated).

25. The Intervening Parties, assuming they had locus standi, would be able to apply for rescission or variation if the order of Mpshe AJ was void from inception or obtained by fraud or mistake common to the parties, and importantly, on good cause shown. None of these essential elements have been satisfied, or even alleged, by the intervening parties. The assumption appears to be that the substance of final court orders may be varied by mere agreement between the parties. This is not the law. Once a court has pronounced a final judgment it becomes functus officio and has no further authority over the subject matter: Firestone South Africa (Pty) Ltd v Genticuro AG 1977 (4) SA 298 (A) at 306F. To bring about material change, the order must either be rescinded or appealed. It cannot simply be varied by agreement between the parties.

26. A fundamental problem with the Land Court's order is that it orders erf 142 Constantia to be "transferred in equal shares to verified members of the Sadien Family land claimants" (para 17.4.2).

26.1 There is no indication, in the reasons or order, of who the "Sadien Family land claimants" are and how and by whom they are to be "verified". On this basis alone the order is hopelessly vague and incapable of execution.



26.2 The founding affidavit in the intervention proceedings deposed to by Magherdien Sadien contains an "Updated Sadien Family Tree" (annexure MS38 to the Magherdien affidavit) which lists upward of 300 persons. The potential consequence of the order is that erf 142 which is 8900 square metres in extent will have to be sub-divided into 300 plots of approximately 30 square metres each (the size of a large bedroom). Because of Zoning and Town Planning Restrictions, the chances of obtaining town planning approval for such a sub-division in Constantia are non-existent.

26.3 Most importantly, the Restitution Act makes no provision for "family" claims. The word "family" is not mentioned, let alone defined in the Restitution act. Standard dictionaries indicate that the meaning of the word is not confined to persons related by consanguinity but may extend to all who live in one house.

26.4 The following was held by this Court in Fedsure Life Assurance Ltd and others v Greater Johannesburg Transitional Metropolitan Council and others 1999 (1) SA 374 (CC) at para 58:

"It seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. At least in this sense, then, the principle of legality is implied within the terms of the interim Constitution. Whether the principle of the rule of law has greater content than the principle of legality is not necessary for us to



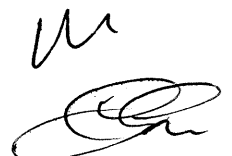
decide here. We need merely hold that fundamental to the interim Constitution is a principle of legality.”

26.5 The rule of law is now enshrined in section 1 (c) of the Final Constitution as a founding value.

26.6 Fedsure makes it clear that the Regional Land Claims Commissioner is not at liberty to create a regime of entitlement outside the four corners of the Restitution Act, based on the nebulous concept of the “family” which is, in essence, the case made out by the Intervening Parties. Neither is the Land Court, also bound by the Constitution, at liberty to endorse such exercise of power beyond the confines of the Restitution Act.

26.7 The Land Court appears to justify its award of land to “verified members of the Sadien Family land claimants” by reference to Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd 2007 (6) SA 199 (CC). In that matter, eleven well identified, individual claimants were successful in this Court on the singular facts of that case which are far removed from the present. There was no suggestion of extending the grounds for entitlement under the Restitution Act. On the contrary, this Court (per Moseneke DCJ) was at pains to establish whether the requirements of the Act had been met on the facts.

26.8 It follows that the order that erf 142 Constantia be transferred to the “verified Sadien Family land claimants” is bad in law and should be set



aside.

26.9 Paragraph 17.4.2 of the order which directs that erf 142 be transferred in equal shares to “the verified members of the Sadien Family land claimants” is contradicted by paragraph 17.5 which records that “the five family trusts will formulate a decision-making vehicle, in writing, before transfer of erf 142 Constantia (the land) to the five family Trusts, to address matters dealing with the fair, equitable, accountable and transparent division and distribution of the land between their respective beneficiaries.”

26.10 Materially different in effect from paragraph 17.4.2, paragraph 17.5 seems to envisage the transfer of erf 142 to the five trusts which will “formulate a decision making vehicle in writing” (a phrase which defies comprehension) to deal with the distribution of land between the beneficiaries of the trusts. It is worth noting that the identity of beneficiaries is recorded in all trusts registered with the Master, as these trusts are. The effect of this is that the beneficiaries of the Land Court’s order were determined in 2014 (two years after the order of Mpshe AJ) when the trusts were formed. Who the beneficiaries are will appear from the trust deeds which have not been produced. This adds to the hopeless confusion of the order and calls into question the verification process and the role to be played by the “decision making vehicle”.



26.11 An order having the effect of transferring the land to the five trusts falls to be set aside on the same basis as that part of the order transferring the land to the “Sadien Family land claimants”, being in conflict with the provisions of the Restitution Act.

27. Paragraph 17.2 of the order in the form of a declarator is bad in law.

27.1 It is not competent for the Land Court to issue a declarator which directly contradicts facts stated by an earlier (by some 12 years) judgment of the same court.

27.2 Mr Sediek (then spelt “Sedick”) Sadien, the Seventh Respondent, was substituted for his late father, Mogamat Rashaad Sadien, who submitted a claim as the son of Omar Sadien who had owned an undivided fifth share of the dispossessed property, erf 2274 Constantia known as “Sillery”. A copy of the claim submitted to the RLCC in terms of the Restitution Act is annexed as “D”.

27.3 The claim was a personal claim in terms of section 2 (1) (c) of the Restitution Act. This is clear from paragraphs 1, 2, 5, 90, and 91 of the judgment of Mpshe AJ, annexed as “E”.

27.4 The Land Court (per Mpshe AJ) held as a definitive finding that this was the only claim before the court (paragraph 15 of the judgment). This finding could only be reversed on appeal. The substance of the order



based on this finding was certainly not open to variation, 12 years later, by agreement between different parties.

28. Paragraph 17.3 of the order is entirely novel in that its effect is to substitute parties to a final order with other entities which only came into existence after the giving of the order. The new entities, trusts, were formed two years after the first order of 2012.

28.1 That a trust is not a legal person in law but a conglomeration of assets administered by the trustees (Land and Agricultural Bank of South Africa v Parker 2005 (2) SA 77 (SCA) para 10), adds to the confusion.

28.2 In any event, the substitution of the trusts as parties is a substantial, and therefore impermissible, variation of a final order other than on appeal.

29. The decision fails to deal adequately or at all with the facts placed before it.

30. The salient facts are set out below:

30.1 As shown by the title deed annexed to the Applicant's founding affidavit deposited to by its then chairperson, Dawn Goodley (part of a comprehensive property report marked "FA23" ("the property report")) "Lot I, a portion of Lot I.L. No 83 and a road of the place called Sillery" was sold by the estate of the late Doet Sadien to five persons, Dout Sadien, Abdurahman Sadien, Mogamat Toyer Sadien, Omar Sadien and



the estate of the late Ismail Sadien” for £11,000 on 6 March 1958. A copy of the deed is annexed as “F”.

30.2 The description of this land, 5.1 hectares in extent, was later changed to “erf 2274 Constantia” (property report pp 3 and 6, Goodley affidavit pp73 and 76). This was the dispossessed land referred to in paragraph 6 of the judgment of 7 December 2012.

30.3 Throughout the duration of the proceedings before the Land Court, the case presented was one for the restoration of erf 2274 to “members of the Sadien Family”. This is apparent from the Heads of Argument submitted to the Land Court in 2012 (annexure “FA4” to the Goodley affidavit pp 28-32). The extract from the Heads of Argument setting out the relief claimed is annexed as “G”

30.3.1 The mechanism there proposed for the orderly distribution of land was that the land be transferred to “an established legal entity that will be operated along the principles of a Communal Property Association” (Heads of Argument para 99.5).

30.4 Disregarding these arguments, the Land Court proceeded, mero motu, to exercise its “inquisitorial powers” to source alternative land. The justification given for this was (a) a letter written by Magmoed Sadien, a person whose claim was not recognized by the court (paragraphs 14 and

88 of the December 2012 judgment) and (b) that restoration of erf 2274 was financially too onerous (paragraph 87) the property being worth R80m to R140m.

30.5 Paragraph 98 of the Land Court's judgment reads as follows:

"In terms of section 32 (3) (b) of the Restitution Act this Court may conduct any part of any proceedings on an inquisitorial basis. Applying this inquisitorial power the court enquired as to the availability of state owned land. The court was informed that three pieces of state owned land were vacant in the province of the Western Cape and these are:

I Erf 142 Constantia

II Erf 3110 Constantia

III Erf 1783 Constantia

The Department of Rural Development and Land Reform has confirmed the availability of the same. The Department also indicated that if a judgement was given regarding the restoration of any of the three properties to the claimant they would abide with such judgement."

31. Section 35 (1) (b) reads:

"[The court may order:] the State to grant the claimant an appropriate right in alternative state-owned land and, where necessary, order the State to designate it."

32. "Designate" is not defined and must therefore be given its dictionary meaning of indicating or identifying.
33. The Promotion of Administrative Justice Act defines "administrative action" as "any decision taken, or any failure to take a decision, by...an organ of state, when exercising a public power or performing a public function in terms of any legislation..." section 1 (a) (ii).
34. There can be no doubt that designating alternative state land is an administrative function in terms of PAJA.
35. There is nothing in the Restitution Act which empowers the court to perform the administrative function of indicating or identifying appropriate alternative state land.
36. There can be no doubt that the Applicant was affected by the Land Court's designation of erf 142 Constantia.
37. Section 3 of PAJA reads in relevant part:
- "Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair...A fair administrative procedure depends on the circumstances of each case...In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1): adequate notice of the nature

and purpose of the proposed administrative action;...a reasonable opportunity to make representations...".

38. It is common cause that the Applicant was not given notice of the process of designating erf 142 as alternative land in a land claim under the Restitution Act.

39. That the process of designation of erf 142 by the Land Court was hopelessly flawed is demonstrated by the following:

39.1 Paragraph 99 of the judgment reads: "ERF 1783 CONSTANTIA was chosen taking into consideration the size of the dispossessed land. This was the closest in extent." Paragraph (a) of the order reads: "A portion of the property ERF 1783 CONSTANTIA in the Western Cape Province measuring ten (10) hectares in extent shall be transferred to the second Applicant." [emphasis added].

39.2 From the property report (mentioned in paragraph 30 above) it appears that erf 1783 is 2.6 hectares. The dispossessed property is 5.1 hectares. Erf 3110 is 3.5 hectares and erf 142 is 8.9 hectares. The erf closest in extent to the dispossessed property is therefore erf 3110.

39.3 Although budgetary considerations prompted the alternative solution of awarding alternative state land (paragraph 30.4 above) no attempt was

made by the Land Court to determine the respective values of the potential alternative erven. As was evident from the Applicant's original application for leave to intervene in 2015, erf 142 was professionally valued at R128m.

40. Apart from size and value, important factors which would have weighed with the State functionary designating alternative state land would have been the following:

40.1 The original lease granted to the Applicant in December 1980 was over four contiguous erven: erf 142, erf 141, erf 560 and 684 (annexure "FA22" to the Goodley affidavit). The Applicant occupied and continues to occupy these four erven to this day.

40.2 The Applicant had effected improvements to the land, including offices, accommodation, stables, a club house, an arena and various service structures.

40.3 Erf 1783 and erf 3110 are both owned by the Western Cape Provincial Government and are truly vacant (property report pp87- 88).

40.4 On the other hand, the Applicant had and continues to have, a long track record of providing its services to children and adults with intellectual and physical disabilities to improve their well-being and learning abilities, free

of charge, from erf 142.

40.5 The majority of the Applicant's beneficiaries are children from previously disadvantaged communities. Fifteen (previously nineteen) special needs schools regularly visit the Applicant's facility.

40.6 Erf 142 was originally zoned for educational purposes and is in convenient travelling distance from the special needs schools which make use of the Applicant's services.

40.7 The Applicant has a legitimate expectation of the renewal of its lease over the four contiguous erven. This is evident from three letters, discovered after the Applicant's initial application for leave to intervene, which were attached to Goodley's supplementary affidavit of 12 March 2024 and which are annexed as "H", "I" and "J".

40.7.1 The first letter ("H"), dated 14 March 2011, is from Joan Heming of the Constantia Property Owners' Association (now the Constantia Ratepayers' and Owners' Association) to Robin Carlisle, the then Minister of Transport and Public Works, Western Cape Provincial Government. In the letter, Heming records an undertaking by the WCPG represented by Carlisle to give the Applicant a new 50 year lease in order to continue with the good work of service to

disadvantaged children.

40.7.2 The second letter ("I"), dated 16 March 2011 from Belinda Sampson, Honorary Life President of the Applicant, to Carlisle thanking him for the undertaking.

40.7.3 The third letter ("J") is from Carlisle, qualifying the undertaking by pointing out that the four erven belonged to National Government. He gave the further undertaking to request National Government to vest the properties in Provincial Government. (This has partially been carried out in that erf 141, one of the four contiguous properties was vested in Provincial Government in 2019.)

40.7.4 The services rendered by the Applicant to the disabled form part of a social compact between and the State and community at large.

41. On 8 February 2013, again mero motu, the Land Court varied its own order to substitute erf 1783 with erf 142.

42. The substitution of erf 1783, 2.6 hectares with erf 142, 8.9 hectares was a variation of substance and therefore impermissible in law. Firestone South Africa (Pty) Ltd v Genticuro AG 1977 (4) SA 298 (A) at 306F.

43. The WCPG's position was emphatically stated in a letter from the Minister of Transport and Public Works to the Applicant dated 31 July 2013, some months after the variation, as follows:

"SARDA has a legal and demonstrable tenure which cannot be summarily terminated. On this basis there is no reason to vacate the property. To be legally compliant, the National Department of Public Works will have to take one of the following options:

Allow you to continue on your existing lease;

Find you SUITABLE alternative premises and compensate you for your improvements;

If they cancel the lease, compensate you with an amount that is agreeable to both parties.

Any action that does not comply with any of these, or in any combination, would constitute an illegal or at least challengeable offence. The Land Claims Commissioner had offered to assist SARDA in this regard."

A copy of the letter was annexed to Goodley's affidavit as "FA21". It also formed part of the Applicant's original application for leave to intervene. It is annexed here as "K".

43.1 It is important to note that the City of Cape Town's District Plan of 2023 dealing with spatial development and environmental management (part of the property report attached to Goodley's affidavit) is in keeping with the spirit of Carlisle's undertaking where it says:



“4. Brommersvlei Road (SARDA) site: Erf 141,142, 560 and 684: Size 12.3ha...

While development opportunity exists on the site (or part thereof), the existing SA Riding School for the disabled activity on the site should remain, unless in future, through mutual agreement, a more advantageous site is identified.”

43.2 The District Plan was approved after an extensive public participation.

National Government and Provincial Government had the opportunity and the obligation to comment. Both supported the plan.

44. A point which cannot be over-emphasized is that there is no record of the deliberations of the Land Court that led to the original order designating erf 1783, and no record of what event prompted the variation on 8 February 2013.

45. This fact on its own justifies the rescission of both orders.

46. In Glenister v President of the Republic of South Africa 2011 (3) SA 347 (CC) para 176, this Court held as follows:

“Endemic corruption threatens the injunction that government must be accountable, responsive and open; that public administration must not only be held to account, but must also be governed by high standards of ethics, efficiency and must use public resources in an economic and effective manner. As it serves the public, it must seek to advance development and service to the public.”

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

47. On the facts of this matter, valuable state land was awarded in conflict with the provisions of the Restitution Act under a mantle of secrecy that remains solidly intact.

48. The Land Court's designation of alternative state land is in breach of Constitutional Principle VI of Schedule 4 of the Interim Constitution 1993 which reads as follows:

"There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness."

49. The application of the constitutional principle is important because it precludes an interpretation of the Restitution Act which would allow the Land Court to embark on a process allocated to the executive, namely, the designation of alternative state land in terms of section 35 (1) (b).

50. It is vital to recognize that section 35 (9) dealing with compensation refers back to section 35 (1) (a) and not section 35 (1) (b). The implications of this will be dealt with below.

THIS COURT'S ORDER OF 23 FEBRUARY 2017



51. The operative parts of the order granted in the decision reported as South African Riding for the Disabled v Regional Land Claims Commissioner and others 2017 (5) SA 7 (CC) were that the Applicant was granted leave to intervene for the purpose of the determination of compensation and the matter remitted to the Land Court for this purpose.
52. After referral back for the determination of compensation, the Land Court referred the issue to mediation in terms of Rule 35 A.
53. The process broke down when it became apparent that there was a dispute between the Seventh Respondent, currently represented by MSK attorneys and the "Sadien Family" represented by Mr Ighsaan Sadien ("I. Sadien"), an attorney, himself a member of the "Sadien Family" and a beneficiary of the Land Court's order of 1 November 2024.
54. During mediation, I Sadien initially claimed to represent both the Seventh Respondent and the "Sadien Family" which was not party to the proceedings. The Sadien interests chose to participate in the mediation because the offer of compensation by the State was, in the Applicant's estimation, wholly inadequate to enable the continuation of the Applicant's operation. To achieve a settlement, the Sadien interests were willing to make certain concessions with regard to erf 142 and which allowed the Applicant to remain on erf 141, the second largest of the four erven. (Erf 141 belongs to the WCPG while the other three erven belong to national Government. Erf 141 was transferred from National Government to WPG after the variation order of 8 February



2013.)

55. The Seventh Respondent formally terminated the mandate of I Sadien and caused a notice of appointment to be filed by his current attorneys, MacGregor, Stanford Kruger ("MSK attorneys") on 23 September 2022. A copy of the notice is attached as "L".
56. The filing of this notice led directly to the launching, on 5 February 2024, of the "intervention application", the subject of the Land Court's order of 1 November 2024.
57. The nature of the dispute between the Seventh Respondent and the Intervening Parties, "the Sadien Family", is encapsulated in two paragraphs of the opposing affidavit deposed to on 3 April 2024 by the Seventh Respondent himself:

"20. However, the intervention application, in its current form, constitutes a wildly opportunistic attempt by the Applicants and/or certain actors behind the Applicants and/or their attorney of record, purportedly on behalf of an undefined group of approximately 300 individuals (amongst whom there is no consensus), to jump on the bandwagon' and to, potentially, usurp the proceeds of the claim (which I am naturally unable to support)."

and

A handwritten signature in black ink, consisting of a stylized, cursive name that appears to be 'C. Kruger'.

"24. As set out hereinabove and as per the order of Mpshe AJ, I am the successful claimant of the instant land claim (in my name, as per the Order)."

58. As matters turned out, the Seventh Respondent capitulated by consenting, on the eve of the hearing, to the illegal order made, based on what he had described in his affidavit as "a wildly opportunistic attempt... to jump on the bandwagon".

59. Paragraph 8 of the Land Court's decision reads as follows:

"The only party who sought to oppose the relief sought was, ultimately, SARDA. In my view, on the strength of the Constitutional Court's decision, referred to above SARDA has no standing or right to oppose the application. Although SARDA is now a party to the proceedings, its entitlement to participate is solely for purposes of determining the compensation that it is entitled to receive. Nonetheless, even if I am incorrect, and SARDA's participation in the compensation dispute entitles it to oppose the application, I am of the view that the intervening parties have established their entitlement to the relief sought. In this regard, while SARDA was not cited in the proceedings and was not served with the process, it obtained access thereto and sought to answer the case in its own application, to which the intervening parties replied. SARDA has raised no basis for refusing the application."

60. The Land Court accepted that the Applicant's own application for variation, alternatively, rescission, contained its opposition to the intervention



application. The founding affidavit analyses the legal position of the Seventh Respondent in detail and concludes as follows in paragraph 37.4, after demonstrating that the Seventh Respondent's direct descent had been established:

"The second requirement in terms of section 2 [of the Restitution Act] was met in the form of a properly lodged and gazetted claim, S38, annexed as "FA25". The claim was clearly personal to Mogamat Rashaad and cannot possibly be interpreted as a claim on behalf of the entire Sadien family."

61. The question of the legality of the Land Court's order is a legal one based on facts which are largely common cause and which appear from the judgment of the Land Court of 7 December 2012. In paragraph 33.2 of the Goodley affidavit, one of the questions to be decided is couched in the following terms:

"Whether the five Sadien Family trusts should be substituted for Sediek Sadien (SARDA opposes this as being unsupported by the common law principles of co-ownership applicable in the context of the Restitution Act)."

The Land Court was addressed at length on these issues in oral argument.

62. The Applicant's argument before the Land Court was that this Court's order of 23 February 2017 was interlocutory and therefore subject to revision should a new circumstance arise. Both the feud between the Seventh Respondent and the Sadien Family and the intervention application itself, constituted new



facts.

63. The Land Court was referred to Zondi MEC, Traditional and Local Government Affairs 2006 (3) SA 1(CC) para 30 which reads as follows:

“Simple interlocutory orders stand on a different footing [compared with final orders]. These are open to reconsideration, variation or rescission on good cause shown. Courts have exercised the power to vary simple interlocutory orders when the facts on which the orders were based have changed or where the orders were based on an incorrect interpretation of a statute which only became apparent later. The rationale for holding interlocutory orders to be subject to variation seems to be their very nature. They do not dispose of any issue or any portion of the issue in the main action.” Emphasis added.

64. Reference was also made to Bell v Bell 1908 TS 887 at 89 where Innes CJ held as follows:

“Courts will not lightly vary their own orders, even though they may be of a merely interlocutory character. And the cases in which such orders will be altered in the absence of fresh facts cannot be numerous. At the same time the present matter offers an instance of a class of case in which relief may under certain circumstances well be granted.”

65. For the reasons set out in this application it can hardly be doubted that the Applicant's right to just administrative action was affected by the second order of the Land Court of 8 February 2013 which was ultimately based on the

designation process which led to the granting of the first order of 7 December 2012.

66. At the time when the designation process was being improperly conducted by the Land Court exercising its “inquisitorial powers”, the Applicant did have, and continues to have, a legitimate expectation of the grant of a lease over the four erven which include erf 142.

67. The correspondence referred to in paragraphs 40.6 and 43 above satisfies the requirement of a legitimate expectation:

'But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the Courts will protect his expectation by judicial review as a matter of public law.... Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue...!' per Lord Fraser in Council of Civil Service Unions and Others v Minister for the Civil Service [1984] 3 All ER 935 (HL) 943j – 944a, referred to with approval by Corbett CJ in Administrator, Transvaal v Traub 1989 (4) SA 731 (A) 756.

68. In the event that it is found that the order limiting the Applicant's right to intervention to the question of compensation is a final order, it is submitted that such order was made per incuriam and therefore not binding on this



Court itself.

69. In Gcaba v Minister of Safety and Security 2010 (1) SA 238 (CC) para 62 it was held as follows:

“As a jurisprudence develops, understanding may increase and interpretations may change. At the same time though, a single source of consistent, authoritative and binding decisions is essential for the development of a stable constitutional jurisprudence and for the effective protection of fundamental rights. This court must not easily and without coherent and compelling reason deviate from its own previous decisions, or be seen to have done so.”

70. As appears from the material set out above, this Court’s decision is wrong in three inter-related respects:

70.1 It fails to recognize that section 35 (1) (b) of the Restitution Act does not empower the Land Court, mero motu or otherwise, to source alternative state land. The section empowers the court to order the State to grant a claimant an appropriate right in alternative state-owned land and where necessary, order the State to designate [ie select] it, which is something different. A myriad of considerations, not least of all budgetary, come into play when designating alternative state-owned land. The Land Court is not equipped nor empowered to make such decisions.



70.2 It fails to recognize that section 35 (9) of the Restitution Act expressly refers back to section 35 (1) (a) as opposed to section 35 (1) (b). Where alternative state-owned land is occupied, it is for the State to decide whether such land is suitable for designation and, if necessary, take the necessary steps to secure vacant occupation. The question of compensation payable under section 35 (9) read with section 35 (1) (a) is irrelevant for this purpose. Put differently, section 35 (9) applies only to the restoration of dispossessed land and not alternative state-owned land.

70.3 The third error flows from the first two which is to mistake the nature of the Applicant's interest in erf 142, which is continued possession in order to carry out its work in the public interest and for the public benefit.

71. The celebrated case of Harris v Minister of the Interior 1952 (2) SA 428 (A) provides useful guidance on the approach of an apex court to its own decisions regarded as wrong.

72. In Harris, the Appellate Division departed from its own earlier decision of Ndlwana v Hofmeyr N.O. 1937 AD 289 which had held that the parliament of the Union of South Africa could depart from provisions of the South Africa Act which prescribed how parliament was to function.



73. Centlivres JA examined the record in Ndlwana which led him to remark on the brevity of argument and the swiftness of the decision which followed. At 471F he said:

“It seems to me with great respect that this Court per incuriam pronounced a decision on a question of vital constitutional importance without hearing argument lasted a very short time (sic). The records of this Court show that even if it did hear any argument on this vital question, that argument lasted a very short time. The records of this Court show that counsel for the appellant argued from 10.5 a.m. to 11 a.m., that counsel for the respondent argued from 11 a.m. to 11.15 a.m. and that counsel for the appellant replied from 11.15 a.m. to 11.25 a.m. (This short argument contrasts strangely with the argument in this case which lasted six days.) The Court then adjourned for 35 minutes and on re-assembling at noon announced that the appeal was dismissed and that reasons would be handed in later.”

In paragraph 2 of this Court’s judgment the following opening remark is made:

“The Chief Justice directed the parties to file written submissions on the question whether the applicant had a direct and substantial interest in an amended order of the Land Claims Court that ordered transfer of a certain immovable property to the second respondent. In compliance with the directions, the parties have lodged written argument and the matter was decided without oral hearing.”

74. It may be added that no record was placed before the court. It is respectfully submitted that the outcome would have been different if the court had had the benefit of the record and full oral argument.



THE RELIEF SOUGHT IN THE LAND COURT

75. The Applicant sought the following relief:

75.1 Condonation insofar necessary;

75.2 That the order of 8 February 2013 be amended read in relevant part
"erven 3110 together with 1783 Constantia"; alternatively, "erf 3110
Constantia";

75.3 Alternatively, that the order of 8 February 2013 be rescinded;

75.4 Alternatively, that the order of 8 February 2013 be rescinded and that
these proceedings be adjourned to allow the State to identify the most
appropriate alternative state land for the satisfaction of the land claim
subject to the participation of SARDA in the process.

76. Although not mentioned in the Notice of Motion, the Applicant also sought
the dismissal of the intervention application.

77. Condonation was necessary, the application being brought outside the 10
day period allowed in Rule 64 (2) (a). As the application was evidently
prompted by the intervention application brought on 5 February 2024, it is
respectfully submitted that condonation should have been granted.



78. Merely granting rescission of the order of 8 February 2013 together with the dismissal of the intervention application may be the simplest and best solution. This would leave the Seventh Respondent with erf 1783.
79. The alternative order in paragraph 75.4 above may also be appropriate.

FINALITY

80. Properly considered, the long delay in finalizing this matter has been caused by the flaws in the Land Court's decision of 7 December 2012 itself.
81. The flaw which has possibly contributed most is found in paragraph 100 of the judgment of 7 December 2012 and which reads as follows:
- "I took the liberty of ascertaining the attitude of the second applicant [here, the Seventh Respondent] to the enjoyment of the property with the rest of the Sadien family. Counsel for the applicants Mr Krige indicated that it will be in accordance with the wishes of the family."
82. This paragraph describes the third opaque episode in the procedural history of this matter, the other two being the exercise of inquisitorial powers and the substantial variation of 8 February 2013. The following may be remarked about this passage:



82.1 Firstly, there is no indication of when, where and under what circumstances this exchange took place.

82.2 Secondly, there is no record of this interchange between junior counsel and the Court. The absence of a record taken with the apparent absence of senior counsel, indicates that the exchange was extra-curial, a fact which renders the exchange improper.

82.3 Thirdly, the context in which the exchange took place was that junior counsel (led by senior counsel) were representing the Regional Land Claims Commissioner, the Seventh Respondent and the "Sadien Family", all at the same time.

82.4 Fourthly, the Court does not say that sharing the land on an informal basis was indicated by junior counsel to be in accordance with the wishes of the Seventh Respondent, but rather that it was in accordance with the wishes of the "Family" which is not surprising.

82.5 Fifthly, there is no indication that the Seventh Respondent was consulted on the question of sharing.

83. It seems clear that paragraph 100 the judgment created an unenforceable spes which led to the intervention application 12 years later.



84. The Land Court, in its decision of 1 November 2024, misinterpreted this paragraph with material consequence. This is apparent from the second last sentence of paragraph 9 of the decision:

“[The] effect of the orders of Mpshe AJ was to benefit the family as a whole and at the time of the hearing Mr Sediek Sadien himself consented to enjoying the property awarded with the rest of the Sadien family.”

85. Finality is not an end itself. Justice takes precedence. This is clear from the Privy Council dictum per Lord Atkin: “Finality is good, but justice is better.”: Ras Bihari Lal v King Emperor [1933] 50 TLR.

86. The principle that the lapse of time does nothing to cure illegality is demonstrated by Oudekraal Estates v City of Cape Town 2010 (1) SA 333 (SCA) where an unreasonable delay of 50 years was condoned by the Supreme Court of Appeal.

CONSTITUTIONAL MATTER AND DIRECT APPEAL

87. This is a constitutional matter for the same reason given in paragraph 1 of this Court’s decision under case number CCT 172/16, namely, that it involves the interpretation of national legislation passed to give effect to section 25(7) of the Constitution.



88. Direct appeal is appropriate because this Court is being asked to depart from its earlier decision under case number CCT 172/16.

89. The Applicant does not intend appealing to any other court.

TRUNCATED PROCEDURAL HISTORY

90. This is provided for context.

90.1 The Applicant's original application for leave to intervene and rescission of the Land Court's orders of 7 December 2012 and 8 February 2013, was made to the Land Court on 31 March 2015. This has been referred to in this affidavit as the "original application".

90.2 The original application was preceded by a similar application to the SCA. The developer interests in the dispossessed land, erf 2274, Jazz Spirit 12 (Pty) Ltd and others were, at the time when the Applicant came to know of the order, on appeal to the SCA on the question of costs. The Applicant, on the advice of senior counsel, sought leave from the SCA to join in those proceedings on counsel's interpretation of the proviso to section 35(11)(b):

"Provided that where an appeal is pending in respect of such order, or where such order was made on appeal, the application shall be made to the Constitutional Court or the Appellate Division of the Supreme Court, as the



case may be.”

90.3 The SCA disagreed with this interpretation and struck the application from the roll.

90.4 The matter was enrolled before Mpshe AJ. He refused the application with costs which led to an unsuccessful application to the SCA for leave to appeal.

90.5 This Court granted limited relief on 23 February 2017.

90.6 In the course of the proceedings to determine compensation, the Applicant applied for and was granted an interdict preventing the transfer of erf 142 pending the finalization of the compensation proceedings.

90.7 The remaining milestones are referred to above.

CONCLUSION

91. The rights which the Applicant asserts in this application are not personal to its members, all volunteers. Equally, the Applicant fully supports the aim of section 25 (7) of the Constitution which is to redress past racial injustice with regard to dispossessed land. Nevertheless, if the justice called for in this application is denied, the ultimate loser will be the disabled community of

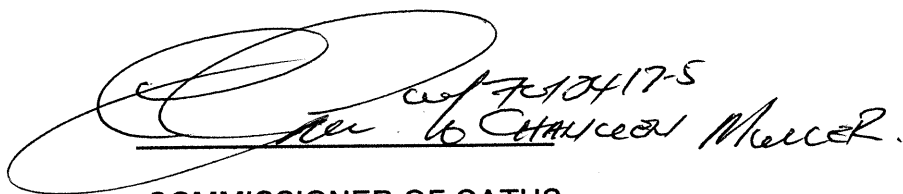


South Africa composed of men, women and children of all races.



MICHAEL WAGENER

Signed in my presence at CAPE TOWN on 20 DECEMBER 2024 by the deponent, MICHAEL WAGENER, who confirmed the correctness of the contents of this affidavit and who uttered the words, "the contents of this affidavit are true and correct, so help me God"



2017/175
to Chancelle Mercer.

COMMISSIONER OF OATHS
SUID-AFRIKAANSE POLISIEDIENS
COMMUNITY SERVICE CENTRE
20 DEC 2024
GEMEENSKAPDIENSSENTRUM
VISHOEK / FISH HOEK K.P / C.P.
SOUTH AFRICAN POLICE SERVICE



A



SARDA Centre
Brommersvlei Road
Constantia 7806

SA RIDING FOR THE DISABLED ASSOCIATION
CAPE TOWN
Non-Profit Organisation Reg: 002-822
Public Benefit Organisation No: 18/11/13/2516
Allied Member of CEEPSA Registration No: PAM 18083

"THERAPY IN MOTION"



Scan here for Website
Tel No: 021 794 4393
Email: capetown@sarda.co.za

EXTRACT FROM THE MINUTES OF A MEETING OF THE MANAGEMENT COMMITTEE OF SA RIDING FOR THE DISABLED ASSOCIATION CAPE TOWN HELD ON 19 DECEMBER 2024

PRESENT: Hillary Lane, Amanda Koen, Mel van der Spuy, Dawn Goodley, Jennifer Blackburn, Gerald Blackburn, Carol Beukman, Chloe Longmore, Beatrix Lukey

RESOLVED:

That MICHAEL WAGENER be authorised to apply to the Constitutional Court for leave to appeal against the decision of the Land Court of 1 November 2024 and to depose to an affidavit in support of such application.

Signed at SARDA on: 19 December 2024

H B Lane
Chairperson

Secretary: *Beatrix Lukey*

MICHAEL WAGENER

PEPPER ST CHAMBERS 26 November 2024
10 PEPPER ST
CAPE TOWN
michael@charterpartycases.com
ses.com

The Registrar
Land Claims Court
per email

cc The State Attorney
per email

cc Igghsaan Sadien Attorneys
Per email

MSK Attorneys
Per email

URGENT

Dear Maqala

MAGHERDIEN SADIEN NO AND OTHERS (INTERVENING)
In re RLCC AND OTHERS v JAZZ SPIRIT 12 (PTY) LTD
CASE NO: LCC 26/2010

1. I act on behalf of the South African Riding for the Disabled Association.
2. My client was a party to the above proceedings which were conducted virtually on 1 and 2 August 2024. Judgment was reserved.
3. On Friday, 22 November 2024, an application to compel discovery was served on my email address "michael@charterpartycases.com" by the State Attorney which made reference to a judgment in the above matter dated 1 November 2024.
4. Neither my client nor I have had any intimation of such judgment.
5. Kindly, and as a matter of urgency:

B2

- provide me with a copy of such judgment;
- advise where and in what manner such judgment was handed down.

Yours faithfully



MICHAEL WAGENER

B 3

From: Morongwa Mphokane MoMphokane@judiciary.org.za
Subject: RE: CASE NO LCC26/10
Date: 28 November 2024 at 12:07
To: Michael Wagener michael@charterpartycases.com
Cc: Victor Maqala VMaqala@judiciary.org.za



Dear Sir,

The judgment was sent to yourselves on 1 November 2024.
Please see attached email, and the screen shot.

Warm regards,

Reply Reply All Forward



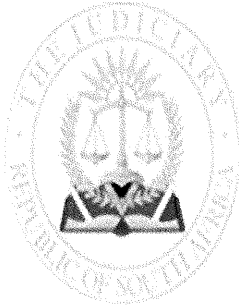
Fri 2024/11/01 20:05

Morongwa Mphokane

CASE NO: LCC26/2010 | SARDA // RLCC and others JUDGMENT

To: 'michael@charterpartycases.co.za'; 'David@macgregs.co.za'; 'TLombard@justice.gov.za'; 'info@isadienlaw.co.za'; 'Andrietha@macgregs.co.za'; 'Ighsaan Sadien', 'cavander@justice.gov.za'; 'Joel Krige'; 'Cedras Iise'; 'Brenton Joseph SC'

JudgmentCowenJ(1November2024)FINAL.pdf
682 KB



The Land Court

Judges' Chambers

Randburg Mall • (Opposite Post Office) • Cur Hill St & Kent Ave • Randburg • 2194
Private Bag X10060 • Randburg • 2125 • Tel: (011) 781 2291 • Fax: (011) 781 2217
<http://www.wits.ac.za/lcc>

MoMphokane@judiciary.org.za

1 November 2024

MICHAEL WAGNER

Email: michael@charterpartycases.co.za

MACGREGOR STANFORD KRUGER INC

Email: David@macgregs.co.za

STATE ATTORNEY

All folders are up to date. Connected to: Microsoft Exchange



From: Michael Wagener <michael@charterpartycases.com>
Sent: Thursday, 28 November 2024 11:51
To: Morongwa Mphokane <MoMphokane@judiciary.org.za>

B4

Cc: Victor Maqala <VMaqala@judiciary.org.za>
Subject: FW: CASE NO LCC26/10

MICHAEL WAGENER
PEPPER STREET CHAMBERS
10 PEPPER ST
CAPE TOWN
083 998 0091

From: Michael Wagener <michael@charterpartycases.com>
Date: Tuesday, 26 November 2024 at 11:40
To: <vmaqala@judiciary.org.za>
Cc: Lombard Tanya <TLombard@justice.gov.za>, Ighsaan Sadien Attorneys <info@isadienlaw.co.za>, David MacGregor <David@macgregs.co.za>
Subject: CASE NO LCC26/10

Dear Mr Maqala

Please find attached an urgent letter for your attention.

regards

MICHAEL WAGENER
PEPPER STREET CHAMBERS
10 PEPPER ST
CAPE TOWN
083 998 0091

Disclaimer:

The information contained in this communication from momphokane@judiciary.org.za sent at 2024-11-28 12:07:09 is confidential and may be legally privileged. It is intended solely for use by michael@charterpartycases.com and others authorized to receive it. If you are not michael@charterpartycases.com you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the contents. **Powered by Afrovation**

**CASE NO LCC262010 SARDA
RLCC and others JUDGMENT.eml**



B5

From: Michael Wagener michael@charterpartycases.com 

Subject: Case LCC 26/10

Date: 29 November 2024 at 17:17

To: Victor Maqala VMaqala@judiciary.org.za

Cc: Morongwa Mphokane MoMphokane@judiciary.org.za, David MacGregor David@macgregs.co.za, Lombard Tanya TLombard@justice.gov.za, Ighsaan Sadien Attorneys info@isadienlaw.co.za



Dear Mr Maqala

It is unfortunate that Justice Cowen's registrar published the judgment to the incorrect email address: michael@charterpartycases.co.za when she was in possession of numerous pleadings and notices (sample attached) reflecting the correct address: michael@charterpartycases.com.

As I have instructions to apply to the Constitutional Court for leave to appeal the judgment, I will regard the 28th November 2024 ie the date upon which the judgment was sent to the correct address, as the date of publication.

Yours faithfully

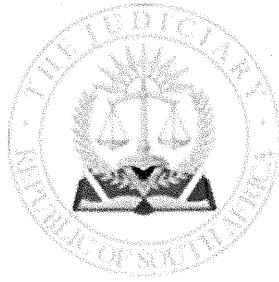
MICHAEL WAGENER
PEPPER STREET CHAMBERS
10 PEPPER ST
CAPE TOWN
083 998 0091

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.pdf



Mail Attachment.eml

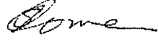




**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

CASE NO: LCC26/10

SIGNATURE:  DATE: 1st November 2024

In the matter between:

MAGHERDIEN SADIEN NO
*(On behalf of the Imam Dout Sadien
Family Trust (IT 746/2014))*

First Applicant/Intervening Party

MOGAMMAD YUSUF HOOSEN
*(On behalf of the Abduraghmaan
Sadien Family Committee)*

Second Applicant/Intervening Party

MOHAMED ALI EBRAHIM NO
*(On behalf of the Bapa (Ismail) Sadien
Family Trust (IT 202039/2014))*

Third Applicant/Intervening Party

MAGHERDIEN SADIEN NO
*(On behalf of the Boeta Toyer Sadien
Family Trust IT 020531/2014))*

Fourth Applicant/Intervening Party

and

SEDIEK SADIEN

First Respondent

DAWOOD SADIEN NO Second Respondent
(Moegtaaroellah Sadien NO, Fatima Sadien NO, Rukea Shaik NO, Mogamat Sadek Sadien NO, Fatima Sadien NO
The trustees for the time being of the Boeta Omar Sadien Family Trust (IT 201155/2014))

THE REGIONAL LAND CLAIMS COMMISSION: WESTERN CAPE Third Respondent

MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT Fourth Respondent

DIRECTOR GENERAL, DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT Fifth Respondent

MINISTER OF PUBLIC WORKS Sixth Respondent

REGISTRAR OF DEEDS Seventh Respondent

In re:

IN THE LAND CLAIMS COURT OF SOUTH AFRICA HELD AT CAPE TOWN

Case No.: LCC26/10

In the matter between:

THE REGIONAL LAND CLAIMS COMMISSION First Applicant

SEDIEK SADIEN Second Applicant

EBRAHIM SADIEN Third Applicant

and

JAZZ SPIRIT 12 (PTY) LTD First Respondent

YAMIV (PTY) LTD Second Respondent

HEIN R BADENHORST Third Respondent

REGISTRAR OF DEEDS Fourth Respondent

JUDGMENT

COWEN J:**Introduction**

1. There are two applications before me which concern orders of this Court of 7 December 2012 and 8 February 2013 under case number LCC26/2010. Mpshe AJ granted these orders in respect of a land claim instituted in terms of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act). The ultimate effect of his orders is to secure the transfer of a portion of the property Erf 142 Constantia to Mr Sediek Sadien, the second applicant in the proceedings. The third applicant was Ebrahim Sadien, who became deceased.
2. According to Mphshe AJ's judgment (dated 7 December 2012), Erf 2274, Constantia (a different property) was historically co-owned by five brothers in undivided shares: Mogamet Toyer, Adburahman, Omar, Imam Doet and Ismail. The five brothers purchased the property on 21 November 1956 for £11 000 from the estate of the late Doet Sadien. In terms of Proclamation No 34 of 10 February 1961, promulgated under section 20 of the Group Areas Act 77 of 1957, the area in which the property is situated was declared an area for ownership and occupation of members of the white population group. At that time, the brothers (in one instance his deceased estate) were the registered owners of the property. On 21 March 1962, following a public auction and subsequent negotiations, a JAJ Badenhorst purchased the property for R13 550.
3. Mpshe AJ concluded that the Sadien brothers were dispossessed of the property as a result of racially discriminatory laws and practices, specifically the Group

Areas Act and that, on the evidence, the purchase price paid cannot be regarded as equitable compensation. In circumstances where the claimants had opted for alternative land, Mpshe AJ ultimately granted *inter alia* an order that: 'A portion of the property Erf 1783 Constantia in the Western Cape Province measuring ten (10) hectares in extent shall be transferred to the second applicant.' On 8 February 2013, Mpshe AJ varied the first paragraph of the order by amending it to read: 'A portion of the property Erf 142 Constantia (measuring 8.9 hectares situated in the Western Cape Province shall be transferred to the second applicant.'

4. The first application before me now is brought by various intervening parties who, in essence, comprise the Sadien family (the intervening parties). They seek relief intended to substitute themselves as the parties who obtained the substantive relief under the orders of Mpshe AJ. The second application is an application instituted by the South African Riding for the Disabled Association (SARDA). In that application, SARDA seeks relief amending or rescinding the orders of Mpshe AJ, specifically the order of 8 February 2013. The material ultimate effect of the relief SARDA seeks is to remove Erf 142 Constantia from the remit of the orders. SARDA is the occupier of Erf 142 and has been for several decades.
5. This case has a protracted and unfortunate history. That history is detailed in other judgments of both this Court and the Constitutional Court and I do not repeat it here. What warrants emphasis at this stage is that the Constitutional Court has made it quite clear in a decision delivered in February 2017 that SARDA's interest

in these proceedings is 'solely for the purpose of determining compensation' and that SARDA has no direct and substantial interest in the property in question.¹

6. SARDA has, in turn, made it clear in these proceedings that it does not agree with the Constitutional Court's decision. In the face of that decision, it is both puzzling and somewhat troubling that SARDA both sought to oppose the intervening parties' application and considered itself entitled to bring its application to amend or rescind the order of Mpshe AJ.

The intervening parties' application

7. The intervening parties are Magherdien Sadien NO, Mogammad Usuf Hoosen, Johamed Allie Ebrahim NO and Magherdien Sadien NO. They seek various relief which entails a declaration that the claimant applicants in LCC26/2010 are cited as representatives of the Sadien Family and orders that substitute the intervening parties, together with the Boeta Omar Sadien Family Trust (IT 29115/2014), as the relevant applicants. The State parties including the Commission for the Restitution of Land Rights (the Commission) supports the relief. Although Mr Sediek Sadien initially opposed the application, he subsequently withdrew his opposition and the application became settled as between these parties.
8. The only party who sought to oppose the relief sought was, ultimately, SARDA. In my view, on the strength of the Constitutional Court's decision, referred to above,

¹ *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 has no standing or right to oppose the application. Although SARDA is now a party to the proceedings, its entitlement to participate is solely for purposes of determining the compensation that it is entitled to receive. Nonetheless, even if I am incorrect, and SARDA's participation in the compensation dispute entitles it to oppose the application, I am of the view that the intervening parties have established their entitlement to the relief sought. In this regard, while SARDA was not cited in the proceedings and was not served with the process, it obtained access thereto and sought to answer the case in its own application, to which the intervening parties replied. SARDA has raised no basis for refusing the application.

9. At first blush, and due to the history of the matter, the intervention application raises a complex factual history and matrix, but it is in reality a simple case, for four reasons. First, the evidence shows that in prosecuting LCC 26/2010 and the claims, Mr Sedick Sadien and Mr Ebrahim Sadien (when alive) were acting in a representative capacity for members of the Sadien family, in respect of which four claims were lodged. Secondly, the Commission has explained that while only one of the four claims was gazetted,² it was so gazetted, and the claim thereafter processed, as a consolidated claim for the Sadien family claimants. Thirdly, although there are features of the judgment of Mpshe AJ that reveal that the Court approached the matter on a different basis,³ the effect of the orders of Mpshe AJ was to benefit the family as a whole and at the time of the hearing Mr Sedick Sadien himself consented to enjoying the property awarded with the rest of the Sadien family. Fourthly, save for the opposition of SARDA, the participating parties

² The judgment records that in total four claims had been lodged: Claim C371 lodged on 29 December 1998 by Ismail Coenrad, the grandson to Ismail Sadien; Claim S851 lodged by Mogmoed Sadien on behalf of Doet Sadien; Claim S38 lodged by Mogamat Rashaad Sadien on 14 December 1995 and Claim S287 completed by Magmoed Sadien on 13 September 1996.

³ See paragraphs 14, 15 and 90 to 100 of the judgment.

consent to the relief sought. In these circumstances, I am of view that the applicants are entitled to the relief they seek.

10. One argument advanced by SARDA warrants separate response. SARDA sought to submit that the Restitution Act does not permit of 'family claims' for restitution of land in that section 2 of the Restitution Act indicates who may claim restitution and does not refer to families. While section 2 does not refer to family claims, this does not mean that restitution claims could not be lodged on behalf of or in the interests of people who comprise a family. Many such claims were lodged and many such cases come before this Court. In my view, an interpretation or application of the Restitution Act that precludes members of a family (whether together or separately) from claiming restitution of rights in land of which they were dispossessed as a result of racially discriminatory laws and practices would strip the Act of its remedial force.⁴ Indeed, it would serve to entrench and perpetuate the profound indignities that South African families endured through its history of land dispossession.

SARDA's application

11. In its application, SARDA seeks to amend or rescind Mpshe AJ's order of 8 February 2013. The import of the relief it seeks is to remove Erf 142 Constantia from its remit.

12. SARDA is not entitled to seek this relief in view of the decision of the Constitutional Court referred to above. Indeed, during argument, SARDA conceded that the real

⁴ *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).

basis for its case is a contention that the Constitutional Court was incorrect. This cannot assist SARDA because not only is this Court bound by the Constitutional Court's decision, but SARDA is bound by it⁵ and cannot seek to avoid finality – which serves the public interest and the rule of law – and have the issues reopened in this way.⁶

13. To avoid the latter conclusion, SARDA submitted that its current application raises new issues and a decision in intervention proceedings, being interlocutory, can be revisited. SARDA failed, however, to point to any new issue in this case. The only new circumstance is the fact of the intervention application: but that order only deals with who is entitled to receive transfer of the property. It does not alter SARDA's interest as determined by the Constitutional Court.

Conclusion and order

14. In the result, I am of the view that the application of the intervening parties must succeed and SARDA's application must be dismissed.

15. In the usual course, this Court does not grant costs orders save in special circumstances. I am of the view that special circumstances arise in this case in respect of SARDA's application. At this juncture, the Sadien land claim cries out for finality. SARDA has already secured a suspension of the order pending the finalization of SARDA's compensation claim. Given the circumstances in which

⁵⁵ Section 165(5) of the Constitution provides: 'An order or decision issued by a court binds all persons to whom and organs of state to which it applies.' Section 165(5) lies at the heart of the rule of law a founding value in the Constitution. See *MEC for Public Works, Eastern Cape & another v Ikamva Architects CC* [2022] ZASCA 184; [2023] 1 All SA 579 (SCA); 2023 (2) SA 514 (SCA) at para 30.

⁶ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State and others* [2021] ZACC 28; 2021(11) BCLR 1263 (CC) at para 1.

the SARDA application was brought, it is difficult to view it as much more than a misguided effort to secure SARDA's incumbent position for as long as possible. The Constitutional Court has already spoken on the issues that SARDA effectively seeks to re-litigate. The issue of SARDA's compensation has been referred to mediation: that process must now be finalized.

16. The intervening parties sought costs against both SARDA and SARDA's attorney personally. The State parties (third to fifth respondents) sought a punitive costs order against SARDA. While this case was in my view misguided, in all the circumstances of the litigation, I do not consider it to be one that warrants a punitive costs order as against SARDA or (while less clear) a personal costs order against its attorney. I am persuaded that the circumstances are such that SARDA should be ordered to pay the costs of its application. In my view, there is no need to make a separate order dealing with the costs of SARDA's opposition to the intervening parties' application because these issues were substantially canvassed in SARDA's own application.

17. The following order is made in the intervention application:

17.1. The Intervening Parties are granted leave to intervene in LCC26/2010;

17.2. Sediek and Ebrahim (who has since become deceased) Sadien were cited in the proceedings under case number LCC26/2010 as representatives of the Sadien Family.

- 17.3. Sediek and Ebrahim Sadien are substituted by the Intervening Parties, including the Second Respondent, as the Second, Third, Fourth, Fifth and Sixth Applicants under the aforementioned case number.
- 17.4. The order granted by the Honourable Justice Mpshe on 7 December 2012 and as amended on 8 February 2013 under the above case number, is varied as follows:
- 17.4.1. Paragraph (b) of the order of 7 December 2012 is varied to read: *“The Department of Agriculture, Land Reform and Rural Development to designate the said property in equal shares to the verified members of the Sadien Family land claimants, duly represented by the Imam Dout Sadien Family Trust (IT 746/2014), the Boeta Omar Sadien Family Trust (IT 20115/2014), the Abduraghmaan Sadien Family Trust (IT 20909/2014), the Bapa Sadien Family Trust (IT 202039/2014) and the Boeta Toyer Sadien Family Trust (IT 020531/2014) respectively”*;
- 17.4.2. Paragraph (a) of the order of 8 February 2013 is varied to read: *“(a) A portion of the property Erf 142 Constantia (measuring 8.9 hectares) situated in the Western Cape Province shall be transferred in equal shares to the verified members of the Sadien Family land claimants, duly represented by the Imam Dout Sadien Family Trust (IT 746/2014), the Boeta Omar Sadien Family Trust (IT 20115/2014), the Abduraghmaan Sadien Family Trust (IT 20909/2014), the Bapa*

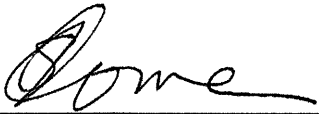
Sadien Family Trust (IT 202039/2014) and the Boeta Toyer Sadien Family Trust (IT 020531/2014) respectively”.

17.5. It is recorded that the five family Trusts will formulate a decision-making vehicle, in writing, before transfer of the Erf 142 Constantia (the land) to the five family Trusts, to address matters dealing with the fair, equitable, accountable and transparent division and distribution of the land between their respective beneficiaries.

17.6. There is no order as to costs.

18. The following order is made in SARDA’s application of 5 March 2024:

18.1. The application is dismissed with costs.



COWEN J

Judge of the Land Court

Date of hearing: 2 August 2024

Date of judgment: 1 November 2024

Appearances:

Intervening parties:

Adv B Joseph SC & Adv Y Abass instructed by Igshaan Sadien Attorneys

Third to fifth respondents:

Adv DJ Jacobs SC & Adv LJ Krige instructed by the State Attorney Cape Town.

SARDA: Mr M Wagener

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"CFAIS" 135

COMMISSION ON RESTITUTION OF LAND RIGHTS

REGIONAL LAND CLAIMS COMMISSIONER

COMMISSION ON RESTITUTION OF LAND RIGHTS	
REGIONAL LAND CLAIMS COMMISSIONER FOR	3
1995-12-14	
STREEK-GRONDREKONKOMISSARIS VIR	
KAPE TOWN/NAARPSIN: 8000	
NOMINER: POLLESENIL VAN	
GRONDSIFTE	



10

LAND CLAIM FORM

The following information is required for the Commission on Restitution of Land Rights to process your claim. Please supply as much information as possible. Please indicate where the information is not available. The more information you can supply, the more helpful it will be. Please note that the Commission is there to assist you, where needed.

Details of property/land being claimed in terms of the Restitution of Land Rights Act, 1994 (Act No 22 of 1994):

20

CLAIM - REF. NO. S.38.

1. **Property description: Rural/Urban** (Delete which is not applicable)
 - 1.1 If it is rural land, the portion(s), name(s) and number(s) of the farm and district in which it is situated
REMAINING EXT. OF LOT I A PORTION OF LOT I.L. NO. 483 & A ROAD OF THE PLACE CALLED SILLERY CONSTANTIA
 - 1.2 If it is urban land, the street address and erf no which appears on the deeds description.

30

2. Which department/body acquired the property? CITY COUNCIL
 - 2.1 In what year was it acquired? 1963
 - 2.2 What was the amount of compensation paid with regard to the:
 - property R13,500
 - improvements _____

2.3 Was any land/housing allocated as compensation NO

Remarks (additional information): THE FAMILY SPLIT UP
+ MY MOTHER SUFFERED ^{OF} A HEART PROBLEM
+ DIED ABOUT 1 YR AFTER BEING EVICTED, WE
SEND SOME OF OUR POSSESSIONS FOR NEXT TO NOTHING
+ THE REST WE GAVE AWAY (FURNITURE, CROCKERY, FARMING
GOODS INCLUDING CATTLE) AS WE HAD NO PROPER
HOME. I SUPPORTED MY FATHER UNTIL HE DIED IN 1974
AFTER SUFFERING OF A SEVERE STROKE.

10

3. Full particulars of person who lost the right in land:

- Name/Community/Trust OMAR SADIEN (MY DECEASED FATHER)
- ID Number of individual claimant 022 361989 M.
- Male/Female (Delete which is not applicable)

4. Full particulars of applicant, if not the person who lost the right in land:

Name/Community/Trust

MOGAMAT RASHAD SADIEN

Male/Female (Delete which is not applicable)

If you are acting on behalf of a community/trust, please give your:

- Name ~~MOGAMAT RASHAD SADIEN~~
- ID Number 410 326 5043 024
- Male/Female (Delete which is not applicable)

20

- In what capacity are you acting

AS THE SON OF OMAR SADIEN, I FEEL I SHOULD
CLAIM, AS I SUPPORTED HIM AFTER HE LOST THE PROPERTY
UNTIL HE DIED.

5. Do you know about any other family member that might have an interest or claim on the land? YES

5.1 If so, please give details

THE INTERESTED FAMILY MEMBERS HAVE ALREADY
APPROACHED THEIR LAWYER, REGARDING THE CLAIM.
DUE TO MY POOR HEALTH I'M UNABLE TO
COMMUNICATE WITH THEM REGARDING THE CLAIM.

30

6. Please give the reason for your claim. (If you need more space please attach a separate page)

AS I'M NOW AN INVALID I WOULD APPRECIATE
IT IF I SHOULD BENEFIT ON BEHALF OF THE
LOSS OF MY FATHER, I'M SUFFERING OF AN ANGINA
HEART. I'VE HAD 2 STROKES I'M PARTLY PARALYSED ON THE
RIGHT SIDE & MY SPEECH IS SLIGHT. I'M ATTENDING
SOMERSET HOSPITAL & MY DR. TOLD ME THAT MY CHANCES
OF RECOVERING IS SLIGHT. I LIVE ON A PENSION
OF ABOUT R400 A MONTH.

7. Other evidence to substantiate your claim

I'VE ENCLOSED SOME PAPERS (DEEDS OF SALE)
& I.D. COPIES, WITH MY PREVIOUS CORRESPONDENCE
PLEASE SEE CLAIM DATED 1/8/95
REF. NUMBER S38

8. Please attach the following documents where applicable and available to substantiate your claim(s):

8.1 If you are the original owner who lost a right in land:

- Certified copy of your identity document *
- Certified copy of the deed which was held by you with regard to the land being claimed

8.2 If you are a descendant of the person who lost a right in land:

- Certified copy of your identity document and that of the person who has lost a right in land *
- Power of Attorney to act on his behalf or to claim the land if the original person who lost a right in land is still alive
- Certified copy of the deed which was held by the person who lost a right in the land being claimed * contact Deeds Office, 90 Plein Street,

Cape Town Tel 451037

08:00 - 12:00 and 13:00 - 14:30 Mondays to Fridays

8.3 Please attach any other document(s) which you wish, in support of your claim

- Certified copy of the will of the person who lost a right in land, or
- Certified copy of the final liquidation and distribution account as submitted to the Master of the Supreme Court

8.5 In case of inheritance without a will: (INTESTATE)

- Final liquidation and distribution account as submitted to the Master of Supreme Court, or
- A sworn statement from the executor stating your relation to the person who lost a right in land and his/her position with regard to any heirs

10

8.6 The written consent of all heirs with an interest in the claim, or if you are the sole heir a sworn statement stating this fact

9 Any other information you would like to bring to the Commission's attention

I WISH TO BRING TO YOUR ATTENTION THAT SHOULD I DIE, THE BENEFITS OF ANY CLAIMS DUE TO ME SHOULD BE HANDED TO MY 2 DAUGHTERS NAMELY
FATIMA-SADIEN I.D. 670104 0133 02 4
CARMA-SADIEN I.D. 711220 0190 08 6
+ THAT IT SHOULD BE DIVIDED EQUALLY.

20

10. I (full name) MO GAMAT RASHAD SADIEN
 certify that the above mentioned information is correct to my knowledge.

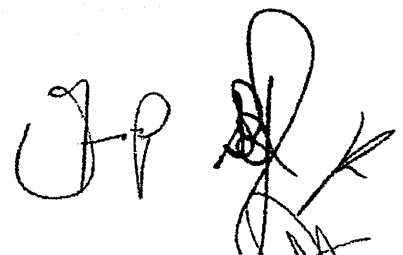
Signature  Date 7/12/95
 Place _____

11. Contact address 2 "CHINA VILLAS" WORCESTER RD.
WALMER EST. 7925

*n.b
 NEW ADDRESS.
 FOR NEXT 6 MONTHS*

Telephone number _____

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IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at CAPE TOWN

Before Mpshe AJ

CASE NUMBER: LCC26/10

Heard on: 19 – 23 March 2012

Decided on: 7 December 2012

In the case between:

**THE REGIONAL LAND CLAIMS COMMISSIONER
SEDICK SADIEN
EBRAHIM SADIEN**

1st Applicant
2nd Applicant
3rd Applicant

and

**JAZZ SPIRIT 12 (PTY) LTD
YAMIV (PTY) LTD
HEIN R. BADENHORST
THE REGISTRAR OF DEEDS**

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent

JUDGEMENT

MPSHE AJ

Introduction

[1] This is a claim by Mogamat Rashaad Sadien for restitution of rights in land in the land described as Remainder Erf 2274Constantia in the Western Cape Province (the property).

[2] This is a claim for physical restoration of the property. He claims in his capacity as a direct descendant of Omar Sadien, his father. It does not appear that he claims on behalf of all other descendants.

[3] The claim is based on the alleged dispossession of the property under the Group Areas Act 77 of 1957. The property at the time of dispossession was co-owned by five brothers in

undivided shares. It is alleged that the property was forcibly sold and that just and equitable compensation was not paid.

[4] The claim is opposed by first to third respondents who contend that the property was not dispossessed in terms of the Restitution of Land Rights Act 22 of 1994 but was sold on auction due to financial distress.

Parties

[5] First applicant is the **Regional Land Claims Commissioner: Western Cape**, with offices in Cape Town.

Second applicant is **Sedick Sadien** he is the son to the deceased claimant Mogamat Rashaad Sadien, who had lodged a claim with first applicant.

Third applicant **Ebrahim Sadien** is the son of the deceased claimant Magmoed Sadien. Magmoed Sadien is the late son of the late Ismael Sadien. Third applicant is thus the grandson of the late Ismael Sadien, a co-owner of the property.

First respondent is **Jazz Spirit 12 (Pty) Ltd**, a company duly registered according to the company laws of South Africa with offices in Constantia, Western Cape. First respondent not formed after the purchasing of the property by J.A.J Badenhorst.

Second respondent is **Yamiv (Pty) Ltd** a company duly registered according to the to the company laws of South Africa. With its previous address at Sillery Farm, Silley Lane Constantia. Second respondent bought the property in 1981.

Third respondent is **HEIN J. BADENHORST**, an adult male businessman, of No. 1 Evergreen Avenue, Constantia. The third respondent was at all material times a director of the first respondent.

Fourth respondent is **THE REGISTRAR OF DEEDS**, a juristic person capable of being sued and cited in terms of the Deeds Registries Act 47 of 1937 with offices at Plein Street, Cape Town, and which is, *inter alia*, responsible for the sub-division of immovable property,

in *casu* the subdivision of the subject property (known as remainder of erf 2274 Constantia). The fourth respondent is cited herein because of its interest in the present application.

Background

[6] In 1902 Dawood (recorded as Doet or Dout) Sadien bought at least 3 portions of land from the subdivided Sillery Estate, one of which (erf 2274) became his family's home and source of livelihood. The family farmed on this property until they were allegedly dispossessed of the land. In 1921, after building and donating a mosque to the local Muslim community, Doet died, leaving his wife (Fatima) a usufruct of the remainder of the family farm, which she continued to run. In 1956, Fatima (Doet's widow) died, and the farm was purchased on auction by five of the Sadien brothers (Mogamet Toyer, Abdurahman, Omar, Imam Doet and Ismail). Ismail died after the purchase but before the transfer, and the land was transferred in March 1958 into the names of the four surviving brothers and deceased Estate of the fifth brother Ismail. In 1961, some five years after the Group Areas Inquiry, and simultaneously to the consideration of radical new powers for the Group Areas Board, vast tracts of Cape Town were declared White areas by proclamation 34 of 1961, gazetted on Friday 10th of February.

[7] The claim form was completed by Mogamot Rashaad Sadien substituted by second applicant Sedick Sadien. The property before dispossession was co-owned by the five Sadien brothers. The property was later a subject of a forced sale.

[8] The property was sold on auction to J.A.J Badenhorst, grandfather to third respondent on 21st March 1962 for the amount of R13 550.00.

[9] A brief status of the subject property before and after dispossession is necessary. Prior to dispossession the property was a market garden on a farm in Constantia. It was basically agricultural. The claimants used the property and earned their living through fruit and vegetables business. Claimants made use of water from a river stream that ran through the property. The said stream is no longer in use as same has been shut down by the local authorities. This then renders the vegetable and fruit business impossible due to lack of water. Evidence of the applicants is to the effect that the family made a living from the land which was fertile and well watered. The family ran a farm stall and a hawking business. They also

grew seeds for a nursery. The family lived and enjoyed proceeds from the property. They basically were able to lead a competitive lifestyle befitting that period in time.

[10] On the 30 June 2005 the current owners obtained a Record of Decision. This basically grants the owner (respondents) permission to develop the property. This entailed the sale, rezoning, intention to sub-divide and develop the property as contemplated in section 11 (7) (aA) of the Act. The Record of Decision was obtained in terms of the Environmental Conservation Act 73 of 1989 granting permission for a change of land use from public open space to residential purposes.

[11] The property owners have obtained permission to rezone the property from public open space to sub-divisional area. The decision was obtained from the Department of Environmental Affairs and Development Planning (DEA and DP) in terms of section 44 of the Land Use Planning Ordinance 15 of 1985 (LUPO).

[12] On approval by the DEA and DP in terms of section 44 LUPO to sub-divide the subject properties; the subject property has overcome change over a long period of time. It is currently a residential area and is unsuitable for market gardening and production of seeds. It is clear that for the subject property to revert to its former status much will have to be done.

[13] There is currently an official land use planning for the subject property in the form of a residential estate. I have not come across evidence from the applicants, given the change in the property, as to their intended use upon restoration. There is only evidence to the effect that claimants want the land to be restored.

Claims Lodged

[14] A total of four claims were lodged. This claim is C371 lodged on 29th December 1998 by Ismail Coenrad the grandson to Ismail Sadien. Claim S851 lodged by Mogmoed Sadien on behalf of the dispossessed co-owner Doet Sadicn. Claim S38 lodged by Mogamat Rashaad Sadien on the 14th of December 1995. Claim S287 completed by Magmoed Sadien on the 13th of September 1996.

[15] Only one of the above claims namely S38 was duly processed and gazetted on 1st April 1999 under notice 499 of 1999. It therefore means that only one claim is before this court.

Facts not in Issue

By formal admission

[16] The following issues are common cause:

[16.1] that the Sadien brothers purchased the property on 21 November 1956 in equal shares for £11 000 from the estate of the late Doet Sadien;

[16.2] that Ismail Sadien (one of the five Sadien brothers) passed away before registration of the transfer of ownership of the property on 6 March 1958 in favour of the Sadien brothers, with the result that his share was transferred in the name of Estate Late Ismail Sadien;

[16.3] that the ownership of the property was transferred in favour of the four living brothers and the estate late Ismail Sadien.

[16.4] that the Group Areas Act (and its successors) and the Community Development Act (and its successors) were both Acts that have in the past discriminated on the basis of race as contemplated in terms of section 2(1) of the Restitution Act;

[16.5] that in terms of proclamation No. 34 of 10 February 1961 promulgated in terms of section 20 of the Group Areas Act (77 of 1957) the area in which the property is situated was declared an area for ownership and occupation of members of the White group;

[16.6] that the Sadien brothers (including the estate late Ismail Sadien) were the registered owners as at date of the said 1961 proclamation;

[16.7] that the Sadien brothers on 14 March 1962 attempted to sell the property by way of a public auction and that the auctioneers accepted Mr. Jacob Adriaan

Jacobus Badenhorst's bid for R 12 700.00, the latter, who on the basis of his race group qualified to hold ownership of the property;

[16.8] that the Sadien brothers rejected the bid and further negotiations between the parties ensued and which culminated in an agreement *inter parties* in terms of which J A J Badenhorst purchased the property for R 13 550.00 on 21 March 1962.

[16.9] that the Sadien family lived and enjoyed their livelihood on the property.

Facts in Issue

[17] The issues which this Court is required to decide are:

[17.1] whether the Sadien Brothers were dispossessed of their rights in the property as a result of past racially discriminatory laws or practices when it was purchased by a Mr J A J Badenhorst on 21 March 1962; **and if so,**

[17.2] whether they were paid just and equitable compensation as contemplated in section 25(3) of the Constitution or any other consideration which is just and equitable; **and if not,**

[17.3] whether the second respondent's notice to the first applicant should be accepted as a notice complying with the provisions of section 11 (7) (aA) of the Restitution Act. Section 11 (7) (aA) provides:

“(7) Once a notice has been published in respect of any land –

(aA) no person may sell, exchange, donate, lease, subdivide, rezone or develop the land in question without having given the regional land claims commissioner one month's written notice of his or her intention to do so, and, where such notice was not given in respect of –

(i) any sale, exchange, donation, lease, subdivision or rezoning of land and the Court is satisfied that such sale, exchange, donation,

lease, subdivision or rezoning was not done in good faith, the Court may set aside such sale, exchange, donation, lease, subdivision or rezoning or grant any other order it deems fit;

(ii) any development of land and the Court is satisfied that such development was not done in good faith, the court may grant any order it deems fit;"

SPECIAL PLEA

[18] Mr. Van der Westhuizen for the respondents submits that the claim for restoration of the property is a debt in terms of the prescription Act 68 of 1969, and that the claim has therefore prescribed, section 11 provides:

"The periods of prescription of debts shall be the following:

....

(d) save where an Act of Parliament provides otherwise, three years in respect of any other debt."

[19] It is indeed so that the word "debt" includes right in land for purposes of the Prescription Act 68 of 1969.

[20] In the case of *Barnett and Others v Minister of Land Affairs and Others*¹, Brand AJ said the following:

"In my view it is fair to say that the government was aware of the identities of the defendants and of the facts upon which its claims against them rely, more than three years before the present action was instituted. I am also prepared to accept that the vindicatory relief which the government seeks to enforce constitutes a 'debt' as contemplated by the Prescription Act. Though the Act does not define the term 'debt', it has been held that, for purposes of the Act, the term has a wide and general meaning and that it includes an obligation to do something or refrain from doing something (see e g *Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A) at 344-G and *Desai NO v Desai and Others* 1996 (1) SA 141 (A) at 146H-J). Thus understood, I can see no reason why it would not include a claim for

¹ 2007 (6) SA 313 (SCA) at page 320 paragraph 19

the enforcement of an owner's rights to property (see also e.g. *Evins v Shield Insurance Co Ltd* 1979 (3) SA 1136 (W) at 1141F-G)."

[21] The dictionary meaning of the word "debt" is said to be "something owed or due which one person is under an obligation to pay or render to another..."²

I further accept that the Prescription Act is binding on the state.

[22] Mr. Jacobs for the applicants submitted that the Prescription Act cannot be grafted onto the Restitution Act. He argued that the provisions of the Prescription Act are inconsistent with the Restitution Act. In support hereof he referred to section 16(1) of the Prescription Act. Section 16(1) reads:

Subject to the provisions of subsection (2) (b), the provisions of this chapter shall, save in so far as they are inconsistent with the provisions of any Act of Parliament which prescribes a specified period within which a claim is to be made or an action is to be instituted in respect of a debt or imposes conditions on the institution of an action for the recovery of a debt, apply to any debt arising after the commencement of this Act.

[23] Mr. Jacobs submits that the Prescription Act is not applicable in the present case due to it, Prescription Act, being inconsistent with the Restitution of Land Rights Act 22 of 1994.

[24] It is necessary to embark on an enquiry as to the consistency or otherwise, of section 11 to the Prescription Act read with the provisions of section 2 (1) (a) and 2 (1) (e) to the Restitution Act.

Section 2 (1) (a) states that

"a person shall be entitled to restitution of a right in land if:
(a) he or she is a person dispossessed of a right in land after 19 June 1913"

Section 2 (1) (e) provides that

"the claim for such restitution is lodged not later than 31 December 1998". (my emphasis)

² New Shorter Oxford English Dictionary

[25] I am of the opinion that the provisions of the Prescription Act particularly Chapter III thereof are of a general nature. This is ascertainable from the wording in particular of section 11 (d) which states that the period of prescription shall be as stated in the Act “save where an Act of Parliament provides otherwise ...”

[26] The logical interpretation thereof in my opinion is that if there be any Act of Parliament providing for prescription of a debt then the Prescription Act may not apply. This is further galvanised by the provisions of section 16(1) of the Prescription Act.

[27] However, on the other hand section 2 (1) (a) and section 2 (1) (e) provides specifically for restitution matters. It must have been the intention of the lawmaker to regulate debts arising through claims of rights in land. The cut-off date 31 December 1998 lays down a prescription period. If therefore Chapter III of the Prescription Act is said to be applicable in restitution cases, section 2 (1) (a) and 2 (1) (e) would be rendered futile.

[28] I am not aware of any provision in the Restitution Act that provides for the processing of a claim after lodgement to be finalised within a specific period. I come to the conclusion that the provisions of Chapter III to the Prescription Act are inconsistent and cannot apply to claims under the Restitution Act. This special plea stands to be dismissed.

Section 11 (7) (aA) Compliance

[29] Applicants submit that the subdivision, rezoning and development of remainder of erf 2274 Constantia falls to be set aside. The submission is premised on the provisions of section 11 (7) (aA) to the Act. The section provides as follows:

“Once a notice has been published in respect of any land no person may sell, exchange, donate, lease, subdivide, rezone or develop the land in question without having given the regional land claims commissioner one month’s written notice of his or her intention to do so, and, where such notice was not given in respect of –

- (i) any sale, exchange, donation, lease, subdivision or rezoning of land and the Court is satisfied that such sale, exchange, donation, lease, subdivision or rezoning was not done in good faith, the Court may set aside such sale, exchange, donation, lease, subdivision or rezoning or grant any other order it deems fit;
- (ii) any development of land and the Court is satisfied that such development was not done in good faith, the Court may grant any order it deems fit;”
[my emphasis]

[30] In deciding on this issue I need to enquire into the absence or otherwise of the notice as required. Further if the notice was not given, I need to enquire whether such failure to give notice demonstrates lack of good faith.

[31] The interpretation and application of any section within an Act is a process that is fraught with various considerations. It is not enough to simply look at a section; one must consider the section in relation to the entire Act and the objects of that Act. The golden rule of interpretation is to be found in *Farrar's Estate v Commissioner for Inland Revenue*³

“The governing rule of interpretation...is to endeavour to ascertain the intention of the lawmaker from a study of the provisions of the enactment in question”

[32] However, for Botha⁴ the legislative function is a purposive activity; in terms of this approach, the purpose or object of the legislation (the legislative scheme) is the prevailing factor in interpretation. The context of the legislation, including social factors and political policy directions, are also taken into account to establish the purpose of the legislation. These arguments are given in light of the change in the status of South Africa from parliamentary sovereignty to Constitutional democracy. The Constitution and not parliament is now supreme thus the move away from the intention of the legislature to the purpose of the Act [my emphasis]

[33] Thus when interpreting and applying section 11 (7) (aA) this must be done in the context of the objects and purpose of the Restitution Act and the Constitution.

Interpretation of the Section

[34] In order to interpret this section it is necessary to understand it within the context of the Restitution Act. The constitutionality of section 11 (7) was challenged in *Transvaal Agricultural Union v the Minister of Land and Another*⁵. The Constitutional Court was

³ 1926 TPD 501 at page 508

⁴ Botha C. *Statutory Interpretation* (4th Ed) (Juta, Cape Town 2005) at 56

⁵ 1997 (2) SA 621 (CC)

required to examine if this section met the Constitutional requirements of just administrative action; in doing so the court considered the object of the section and held:

“The purpose of s 11 (7) and (8) of the Act is to maintain the status quo pending the determination of the claim for restitution, and to protect claimants against possible eviction or damage to improvements to the property while the claim is being processed. These could include residential accommodation and other improvements necessary for the claimants to continue living on the property.⁶”

[35] The Constitutional Court found that the purpose of this section is to maintain the *status quo* and protect claimants pending the determination of their restitution claim. Thus the provisions of this section must be interpreted in view of the object of the entire section which is to maintain the *status quo* and protect the claimants.

[36] From the provisions of the section the following is apparent: firstly, this section only comes into operation once a notice has been published⁷. Prior to such happening this section cannot be relied on.

[37] Secondly, the section is restrictive in that it prevents a person from performing any of the following acts: selling, donating, leasing, subdividing, rezoning or developing the land in question without giving written notice to the regional land claims commissioner. Two possible interpretations may emerge from this; on the one hand it could be argued that the land owner need only give the notice after which he may perform the act. On the other hand it is submitted that the regional land claims commissioner should have the power to authorise the proposed act. Van Der Merwe⁸ is a proponent of the former construction arguing that the section does not prohibit the activities it merely requires notification of an intention to do so. On the other hand it may be argued that if the regional land claims commissioner could do nothing as long as the notification was given that may defeat the object of the Act. However, this is a question that has yet to come before the courts and the reason for this is linked to the application of the section which will be discussed below.

⁶ *Supra* note 6 at paragraph 34

⁷ This refers to a notice in terms of section 11 (1) of Act 22 of 1994

⁸ Van Der Merwe C.F. 2003. “Consequences of Gazetting a Land Claim” *The South African Valuer*, December:14-19 at 18-19

[38] Thirdly, the role of the Court if this section is invoked; from a reading of the entire section, the Court is only required to review any of the listed activities if they take place without a notice being given. Thus as was mentioned above it could be argued that the regional land claims commissioner should be allowed to authorise the activity because once a notice is given the Court will not come into play despite the fact that the activity may have not occurred in good faith. On the other hand the commissioner may, after notice is given, rely on the other remedies such as an interdict to prevent the land owner from defeating the purpose of the Act.

Application of the section

[39] The application of this section is linked to the role this Court plays in terms of this section. The section will generally be invoked if a land owner or any other person performs one of the listed activities without giving the regional land claims commissioner notice. In *Allie NO & Another v the Department of Land Affairs and 3 Others*⁹ section 11 (7) (aA) was invoked by the applicant hoping that a sale of property subject to a land claim would be set aside. Meer AJ canvassed the issue in the following manner:

“The issue that I am required to determine with regard to the sale of the subject property by the second to the third respondent is whether the Court may set aside the sale in terms of section 11 (7) (aA) (i) on the grounds that it was not done in good faith. It was common cause that the subject property was sold to the third respondent contrary to second respondent’s stated policy not to sell properties subject to land claims. It was also common cause that as far back as 1993 the Department of Housing received a letter from the Regional Land Claims Commissioner to the effect that a claim for restitution of land rights had been registered by the claimant against the subject property in terms of Section 10 of the Restitution Act and that steps had been taken to have the claim published in the in the Government Gazette as required by the Act. Thereafter the claim was referred to the Housing Board task team. The above notwithstanding, the subject property was sold to the third respondent in November 1997 as part of a low cost housing sale policy at the price of R95,28 per square metre. The subject property fell into what was called Phase 2 of Walmer Estate”¹⁰

[40] After determining that the subject property had been sold contrary to the provisions of section 11 (7) (aA), Meer AJ was faced with another question. Does the sale stand to be set aside on the basis of *mala fides*? with regard to this she held that:

“The property was mistakenly sold contrary to the decision, in the absence of the kind of mala fides referred to in Leach. The commentary on mala fides by Burns accordingly has no application to the different circumstances of the present case. Nor, in my view, do these

⁹ (LCC 13/200) [2002] ZALCC 50

¹⁰ *Supra* note 10 at paragraph 73-74

sections of Baxter and Wiechers as referred to support an argument construing second respondent's negligence in selling the property as mala fides. As is aptly argued by Wiechers, mala fides presumes consciousness of wrongfulness, a conscience which was clearly absent in the sale of the subject property. Therefore the negligence on the part of the second respondent notwithstanding, I am unable to find that the sale was not in good faith and stands to be set aside for that reason."¹¹

[41] In *Crystal Holding (Pty) Ltd & Others v The Regional Land Claims Commissioner*¹² the section was mentioned in passing. The respondents tried to invoke it to justify their obligation to interfere in an agreement entered into with the applicant, the court held as follows:

"It could not therefore be true and correct to say when the applicants entered into the Shareholders Agreements, the notice was still valid and that they had thereby acted in violation of the provisions of sections 11 (7)(a) and (aA)."

[42] The conclusion in the *Crystal Holdings (Pty) Ltd* case is reached because the Court was of the view that the restitution process was complete because the land had been transferred to the claimants, therefore, it was found that the Restitution Act did not apply and section 11 (7) (aA) could not be relied on.

[43] If a person fails to give notice as required and embarks on the prohibited activities, that entitles the claimant or any interested party to approach court to set aside any of the said activities.

[44] The manner in which the first applicant handled this matter is discomforting. On the 23rd September 2009 the first applicant wrote a letter to one of the directors of first respondent one John Viveiros. This letter calls upon the first respondent to stop the development forthwith as the same are in contravention of section 11(7) of the Act. It cannot be true that the knowledge about the development reached first applicant only during the year 2009. First applicant was served with a notice as early as 29 November 2002 and further received notification of the intended development on the 11 May 2005 to which nothing was done by the first applicant.

[45] Startling again is the memorandum of the first applicant dated 16 November 2009. This memorandum suggests that the whereabouts of first respondent are unknown.

¹¹ *Supra* note 10 at paragraph 82-83

¹² [2008] 1 All SA 243 (N)

[46] This is confusing given the fact that the very Legal Officer seeking to assist in locating the first respondent has actually as far back as 23 September 2009 instructed first respondent to stop the development. It appears to have been the right hand not knowing what the left hand is doing.

[47] Under the *bona fide* belief that section 11 (7) (aA) has been complied with, third respondent representing first respondent sent a letter dated 26 November 2009 to first applicant informing first applicant of commencement of the development on the property.

[48] The first applicant reacted to the notice seven years later. The first applicant had the authority to deal with the intended development in accordance with section 6(3) of the Act as far back as 2002.

[49] It is our law that both rights of the owner and claimant(s) are to be respected.

[50] Mr. Jacob for applicants argues that the alleged notice of the 29 November 2002 is invalid because it was not done by the owner of the property. There is no merit in this line of argument, section 11 (7) (aA) states "no person may sell ..." [my emphasis]

[51] The purpose of section 11 (7) (aA) plays a role. In other words what is it that the legislature intends to achieve with this provision. I have indicated earlier that, in my opinion, the purpose is to alert the Commission about activities conducted or to be conducted on the subject property. The Act does not prescribe as to how the notice is to be written. As long as a notice is served, no matter how deficient, it shall be accepted as a notice.

[52] In *Unlawful Occupiers, School Site v City of Johannesburg*¹³ Brand JA stated that:

"It is clear from the authorities that even when the formalities required by statute are peremptory it is not every deviation from the literal prescription that is fatal. Even in that event, the question remains whether, in spite of the defects, the object of the statutory provision had been achieved." [my emphasis]

Brand JA was relying on the dictum of Olivier J.A in *Weenen Transitional Local Council v van Dyk*¹⁴ which held as follows:

¹³ 2005 (4) S. A. 199 (SCA) at 209G-paragraph 22

“it seems to me that the correct approach to the objection that the appellant had failed to comply with the requirements of s 166 of the ordinance is to follow a common-sense approach by asking the question whether the steps taken by the local authority were effective to bring about the exigibility of the claim measured against the intention of the legislature as ascertained from the language, scope and purpose of the enactment as a whole and the statutory requirement in particular (see *Nkisimane and Others v Santam Insurance Co Ltd* 1978 (2) SA 430 (A) at 434A – B). Legalistic debates as to whether the enactment is peremptory (imperative, absolute, mandatory, a categorical imperative) or merely directory; whether ‘shall’ should be read as ‘may’; whether strict as opposed to substantial compliance is required, whether delegated legislation dealing with formal requirements are of legislative or administrative nature, etc. may be interesting, but seldom essential to the outcome of a real case before the courts. They tell us what the outcome of the court’s interpretation of the particular enactment is; they cannot tell us how to interpret. These debates have a posterior, not a priori significance. The approach described above, identified as ‘... a trend in interpretation away from the strict legalistic to the substantive’ by Van Dijkhorst J in *Ex parte Mothuloe (Law Society, Transvaal, Intervening)* 1996 (4) SA”

In paragraph 23 Brand JA clarified the reason for this approach and went on to say:

“...the purpose of s 4(2) is to afford the respondents in an application under PIE an additional opportunity, apart from the opportunity they have already had under the Rules of Court, to put all the circumstances they allege to be relevant before the court (see *Cape Killarney Property Investments* at 1229E - F). The two subsections of s 4(5) that had not been complied with were (a) and (c). The object of these two subsections is, in my view, to inform the respondents of the basis upon which the eviction order is sought so as to enable them to meet that case. The question is therefore whether, despite its defects, the s 4(2) notice had, in all the circumstances, achieved that purpose. With reference to the appellants who all opposed the application and who were at all times represented by counsel and attorneys, the s 4(2) notice had obviously attained the Legislature’s goal. However, there were also respondents who did not oppose and who might not have had the benefit of legal representation. It is with regard to these respondents that the question arises whether the s 4(2) notice had, despite its deficiencies achieved its purpose.”

[53] In the light of the above, I find that proper notice was given in compliance with section 11 (7) (aA) of the Act.

Dispossession

[54] A claim for restitution of a right in land under section 2 of the Restitution Act may succeed only if:

- (a) the claimant is a person or community or part of a community;
- (b) that had a right in land;

¹⁴ 2002 (4) SA 653 (SCA) at paragraph [13]

(c) which was dispossessed;

(d) after 19 June 1913;

(e) as a result of past racially discriminatory laws or practices;

(f) where the claim for restitution was lodged not later than 31 December 1998; and

(g) no just and equitable compensation was received for the dispossession.[my emphasis]

The above requirements were outlined in the *Department of Land Affairs v Goedgelegen Tropical Fruits*¹⁵.

[55] Section 25 (7) of the Constitution of the Republic of South Africa provides:

“A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to restitution of the property or to equitable redress”.

[56] In analysing the purpose of the Restitution of Land Rights Act 22 of 1994 (the Act) the Constitutional Court states in *Alexkor Ltd v Richtersveld Community*¹⁶

“In our view, although it is clear that a primary purpose of the Act was to undo some of the damage wreaked by decades of spatial apartheid, and that this constitutes an important purpose relevant to the interpretation of the Act, the Act has a broader scope. In particular, its purpose is to provide redress to these individuals and communities who were dispossessed of their land rights by the government because of the government’s racially discriminatory policies in respect of those very land rights.”

[57] In the *Department of Land Affairs* case it was held at paragraph 53 that¹⁷:

“It is by now trite that not only the empowering provision of the Constitution but also of the Restitution Act must be understood purposively because it is remedial legislation umbilically linked to the Constitution. Therefore, in construing “as a result of past racially discriminatory

¹⁵ 2007 (6) SA 199 (CC)

¹⁶ 2004 (5) S A 460 (CC) at page 492 paragraph 98

¹⁷ *Supra* note 17 at page 218-219 paragraph 53

laws or practices” in its setting of section 2 (1) of the Restitution Act, we are obliged to scrutinise its purpose. As we do so, we must seek to promote the spirit, purpot and objects of the Bill of Rights. We must prefer a generous construction over a merely textual or legalistic one in order to afford claimants the fullest possible protection of their constitutional guarantees. In searching for the purpose, it is legitimate to seek to identify the mischief sought to be remedied. In part, that is why it is helpful, where appropriate, to pay due attention to the social and historical background of the legislation. We must understand the provision within the context of the grid, if any, of related provisions and of the statute as a whole including its underlying values. Although the text is often the starting point of any statutory construction, the meaning it bears must pay due regard to context. This is so even when the ordinary meaning of the provision to be construed is clear and unambiguous.” [my emphasis]

[58] The requirement “as a result of past racially discriminatory laws or practices” is the only one in dispute. It is common cause that:

- (i) the Group Areas Act (and its successors) and the Community Development Act (and its successors) were both Acts that have in the past discriminated on the basis of race as contemplated in terms of section 2(1) of the Restitution Act;
- (ii) that in terms of proclamation number 34 of 10 February 1961 promulgated in terms of section 20 of the Group Areas Act (77 of 1957) the area in which the property is situated was declared an area for ownership and occupation by members of the White group;
- (iii) that the Sadien brothers were the registered owners as at date of the said 10 February 1961 proclamation; and
- (iv) that the Sadien brothers in view of their race group were disqualified from forever continuing to remain the owners of the property and that if they were to sell the property, they could only do so to a “white” person or alternatively face possible expropriation in terms of the discriminatory laws as and when the State deemed fit so to do.

[59] In LAWSA volume 10 the purpose of the Group Areas legislation is described as follows:

"the ultimate object of the Group Areas Legislation was the establishment and allocation of group areas in which only members of specified racial groups would be entitled to own and occupy land in their respective areas".

[60] Discrimination between the groups and members of the different groups is an inevitable consequence of the application of the Act. Proclamation of a group area entails consequences for owners of fixed property in that the commercial value of the property would be affected. This court is to determine the reasons for the loss of the property by the Sadien family. Was the dispossession as a result of the racially discriminatory laws or practices of the time?

[61] The Constitutional Court, in *Department of Land Affairs*¹⁸ states the following regarding meaning of "as a result of"

"I conclude that the term "as a result of" in the context of the Restitution Act is intended to be less restrictive and should be interpreted to mean no more than 'as a consequence of' and not 'solely as a consequence of'. It is fair to add that, on this construction, the consequence should not be remote, which means that there should be a reasonable connection between the discriminatory laws and practices of the State, on the one hand, and the dispossession, on the other. For that determination, a context-sensitive appraisal of all relevant factors should be embarked upon".

[62] The applicants submit that the dispossession was occasioned by the racially discriminatory practices then in the form of the Group Areas Act 77 of 1957 (as amended) and the Proclamation of number 34 of 1961 dated 10 February 1961.

[63] The Respondent's defence is that the dispossession was not as a result of discriminatory laws or practices but financial distress on the part of the claimants. The argument is that the property was sold by the Sadien brothers at an auction in order to pay the registered bond to the mortgagee.

[64] Conrad Henre Hablutzel an auctioneer and valuer in the employ of J. J. Hofmeyr and Son testified. I hasten to state that he was a credible witness. His evidence is to the effect that according to ledgers in his possession and custody pertaining to the Sadien family loan accounts, he disputes the presence of any financial distress on the Sadien family. However, he conceded that shortly after the 1961 proclamation, the family fell in arrears but managed to make good the debt.

¹⁸ *supra* note 17 at page 224 paragraph 69

[65] I am of the opinion that Mr. Hablutzel was best suited to testify about the presence or otherwise of the alleged financial distress. It may be argued that the witness merely interpreted ledger entries done by his grandfather some fifty years ago. It may be so but this does not make him a non-credible witness. Note that even if the family had financial distress—they would have been forced to sell because the Group Areas Act gave them no choice.

[66] Dawood Sadien testified that he grew up on the property from age fourteen. He is the son to Omar Sadien. I found him to be a credible witness. He also dispelled the allegations that the Sadien family had financial distress. His evidence is further corroborated by Prof. Nicoleen Natrus, an economist and lecturer at the University of Cape Town.

[67] On the issue of financial distress it was suggested under cross examination that the widow of the late Ismail Sadien did not have money to take transfer of the share in the deceased's estate. In reply Prof. Natrus said¹⁹

“Well I have a long discussion about that, that given that 1951 said that it was a controlled area right, they could only get a coloured person buying into that and given that 1956 people knew that it was going to be a white area right, you could say she wasn't able to sell it, but that's got nothing to do with financial distress, it's got everything to do with the Group Areas Act...”

This is a neutral independent witness who, in my mind was quite credible.

[68] The respondents on the other hand tendered no evidence to support the financial distress defence. The only argument advanced is that the Sadien family had a shortfall of R 1 871.02 at the close of their account and the said shortfall was paid two years later after the sale of the property. It is argued that this should indicate presence of financial distress, nothing really turns on this.

[69] I conclude that, based on the evidence before me, there was no financial distress experienced by the Sadien family.

¹⁹ Transcript page 982 lines 20-25

[70] On the 10 February 1961 Proclamation Number 34 was promulgated in accordance with section 20 of the Group Areas Act 77 of 1957. Paragraph A (a) of the proclamation states:

“(a) that the areas defined in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the schedule hereto shall, as from the date of publication hereof, be areas for occupation and ownership by members of the White group...”

[71] It is common cause that the subject property falls under paragraph 16 to the schedule. The property then became a controlled area.

[72] On the 21st of March 1962 the property was sold on auction by the Sadien brothers. It was bought by Jacob Adriaan Jacobus Badenhorst, the grandfather to the third respondent for the amount of R 13 550.00. The said property was subsequently transferred and registered in the name of Jacob Adriaan Jacobus Badenhorst.

[73] Mr. Van der Westhuizen for the respondents submits that there was no racially discriminatory law or practice in operation at the time of the auction sale. Further that, if the court finds otherwise then a submission is made that section 23 of the Group Areas Act 77 of 1957 read with A (h) of the 10 February 1961 proclamation would apply. The effect here being that the claimants or the Sadien family were under no pressure to vacate or sell the property as they did. That no notification or any activity was taken by the then authorities to enforce the Group Areas provisions. Section 23 (1) of the Group Areas Act 77 of 1957 provides:

“As from the date specified in the relevant proclamation under sub-paragraph (ii) of paragraph (a) of sub-section (1) of section *twenty*, and notwithstanding anything contained in any special or other statutory provision relating to the occupation of land premises, no disqualified person shall occupy and no person shall allow a disqualified person to occupy any land or premises in any group area to which the proclamation relates, except under the authority or a permit.” [my emphasis]

Paragraph A (h) to the 1961 proclamation provides:

“that the provisions of section twenty three of the said Act shall, on the expiration of a period of seven years as from the date of publication hereof, apply in the areas defined in paragraphs 10 and 16 of the Schedule hereto.” [my emphasis]

It is indeed so that the claimants or the Sadien family had the right to occupy the premises until the 10th February 1968. However, the fact that the family voluntarily left the property earlier does not warrant a conclusion that there was no dispossession.

Causal Connection

[74] The Constitutional Court in the *Department of Land Affairs*²⁰ states:

“In enacting the Restitution Act, the Legislature must have been aware that apartheid laws on land were labyrinthine and mutually supportive and in turn spawned racist practices, and *vice versa*. Therefore, often the cause of historical dispossession of land rights will not lie in an isolated moment in time or a single act. The requisite causal connection must be gathered from all the facts as long as the connection comments itself to common sense and is reasonable rather than remote or far-fetched.” [my emphasis]

[75] The effect the proclamation had on the property was that of compliance by the registered owner.

[76] It was common then that authorities would visit controlled areas and measure premises and inform the community that they will be moved to other places soon. This is common knowledge to all affected in the past and I take judicial cognisance thereof. Events of Sharpeville and Langa in the 1960's were indication and signal enough to communities in affected areas as to what the then apartheid government was capable of doing²¹.

[77] It is significant to note that in 1962 the property was advertised for auctioning for all to see. At the bottom of the advert words “Proclaimed White Area” were visible.

[78] Evidence by Prof. N. Natrus is to the effect that the value of the property dropped from R 22 000.00 in 1958 to R 13 550.00 in 1962. She ascribes the drop to the Group Areas Act as people were forced to sell their properties.

[79] It is recorded that the Sadien family was told to go because the area is going to be a white area and they will lose everything if they do not go. The shops and butchery in the

²⁰ *Supra* note 17 at page 223E paragraph 66

²¹ Evidence of Spatial Historian S.M Titlestad, Transcript page 117

neighbourhood of the property were demolished. It was all over that Group Area had now arrived²².

[80] Evidence by second applicant Sedick Sadien, son to one of the five Sadien brothers Abduragman Sadien confirms the happenings of that time. He is now 77 years of age. He was born and lived on the Sillery property. His unchallenged evidence is that his father told him that the farm was being sold because it is now Group Areas time. That the area was now a white area. That everything like shops and flats were demolished.

[92] It was not always a requirement that before affected persons could leave the controlled area; the State was expected to take action to move people or even to advise them to move. The mere passing of a proclamation in most cases caused panic and coupled with the presence of government officials, evoked fear in people's minds.

[81] The Constitutional Court in the *Department of Land Affairs*²³ matter stated:

“In my view, the causal connection under s. 2 of the Restitution Act should not be understood to require that the State or a public functionary should itself perform the dispossession of rights in land. It is sufficient if the termination of rights in land is permitted, aided and supported by racially discriminatory laws or practices of the State or other functionaries exercising public power. The question is not whether the dispossession is effected by the State or a public functionary, but rather whether the dispossession was as a consequence of laws or practices put in place by the State or other public functionary.” [my emphasis]

[82] Attached to the Deed of Transfer is a Group Areas Act certificate certifying that the property is within a white group area. This certificate is issued in compliance with section 30 (1) of the Group Areas Act 77 of 1957.

[83] Another certificate regarding this property was issued on the 26 February 1963 in terms of section 17 (3) of the Group Areas Development Act 69 of 1955 as amended. This certificate was issued before the registration and transfer of the property in the name of Jacob Adriaan Jacobus Badenhorst.

²² Report of Oral Historian C. Cornell, page 1998 volume 5 of the Record

²³ *Supra* note 17 at page 225 I – J paragraph [76].

[84] I come to the conclusion that the sale and dispossession of the property was as a result of the racially discriminatory laws and practices.

Just and Equitable Compensation

[85] A claimant who has received compensation at the time of dispossession will not be entitled to restitution of a right in land. Section 2 (2) of the Act provides:

- “No person shall be entitled to restitution of a right of land if –
- (a) just and equitable compensation as contemplated in section 25 (3) of the Constitution; or
 - (b) any other consideration which is just and equitable, calculated at the time of any dispossession of such right, was received in respect of such dispossession.”

[86] It is common cause that the market value of the property at the time of dispossession in 1962 was R 22 000.00. Further that an amount of R 13 550.00 was paid as a purchase price at the time of dispossession. The purchase price paid cannot be regarded an equitable compensation as contemplated in section 2 (2) of the Act²⁴.

Restoration

[87] Regarding restoration of the property as it is presently an evaluation of the property will have to be conducted. It was suggested that the property may be worth an amount in the region of R 80 million to R 140 million. I am aware of the strain on the finances of the department²⁵. However, the claimants have always opted for alternative state land. The Commission informed the current owners that the claim was for alternative state land. The same Commission even informed the claimants that “we do not regard the restoration of the land as feasible”²⁶

²⁴ *Abrams v Allie NO* [2004] 2 All SA 99 (SCA)

²⁵ *Baphiring Community v Uys and Others* 2010 (3) SA 130 LCC; *Nkomazi Municipality v Ngomane of Lagedlane Community and others* [2010] 3 All Sa 563 (LCC)

²⁶ Letter dated 11 May 2005 (submitted in terms of Rule 47), Bundle at page 90

[88] In addition a letter dated 12 March 2003 from the Commission indicates that the nature of the claim is for alternative state land. The issue of alternative land was never changed save at the hearing of this matter. One of the claimants Magmoed Sadien wrote a letter to the Commission which reads:

“Dear Mrs. Jansen

LAND CLAIM – ERF 2274 CONSTANTIA

I refer to the letter of Mr. D. M. Jacobs of your office, dated 11 May 2005.

I herewith confirm that the claim is for alternative state land to the same value. I also want to request that no development take place on Erf 2274 until this land claim has been settled.

Regarding my claim against the farm stall (claim ref. No. S721) your officials have told me that they would investigate the possibility that alternative state land can be offered to the current owner in exchange for the relevant piece of land. I would appreciate if that can be done.

Yours faithfully

Mr. Magmoed Sadien
(13 June 2005) “

[89] I come to the conclusion that restoration in the form of alternative state land or equal redress by means of financial compensation would be appropriate.

Entitlement to a Right in Land

[90] The subject property was co-owned by the five Sadien brothers each entitled to a one-fifth undivided portion. Only one descendant (Mogamat Rashaad Sadien) lodged a restitution claim representing his forebear.

[91] The right in land claimed given the interpretation of the statute²⁷ would have to be awarded to the descendant who lodged a claim²⁸. This implies that the second applicant

²⁷ Section 2 (1) (C) (i) and (ii)

before Court would be entitled to a one-fifth undivided share of the subject property. The other descendants who have not lodged claims stand to benefit nothing.

[92] The question to be answered is as to what then happens to the remaining four-fifths of the subject property. Does this revert to the state or get retained by the current land owner?

[93] The Sadien family lived a communal life on the subject property they co-owned. The statute (the 'Act') does not provide for a situation of descendants who have not lodged claims.

"The Court must exercise its powers to order restitution within the confines of the Restitution Act, duly interpreted by using all relevant norms of interpretation (the presumptions and other intra-textual and extra-textual aids). Where the language of a statute leaves a gap to be filled, the Court must fill that gap. In doing so, it must reconstruct the thinking contained in the statute, consider the practical implications and come up with a solution which conforms with the purpose of the statute and with the spirit, purport and objects of the Bill of Rights, while also serving the requirements of justice and equity.

The purpose of statutory interpretation is to give meaning to legislative text. The Constitutional Court, in interpreting the fundamental rights enshrined in chap 3 of the constitution, adopted '... an approach which, whilst paying due regard to the language which has been used, is "generous" and "purposive" and gives expression to the underlying values of the Constitution'. This Court has, in the past, followed the same approach in interpreting the Restitution Act.

Per Gildenhuys J in *In Re Former Highlands Residents: Sonny and Others v The Department of Land Affairs*²⁹.

[94] In achieving the "generous and purposive" interpretation Dodson J³⁰ suggests as follows:

"The purposive approach as elucidated in the decisions of the Constitutional Court and this Court requires that one must:

- (i) in general terms, ascertain the meaning of the provision to be interpreted by an analysis of its purpose and, in doing so,

²⁸ Section 2 (1) (C) (i) and (ii)

²⁹ 2000 (2) SA 351 (LCC) at page 355-356 paragraphs 10 and 11

³⁰ *Minister of Land Affairs and another v Slamdien and others* [1999] 1 All SA 608 (LCC)

- (ii) have regard to the context of the provision in the sense of its historical origins;
- (iii) have regard to its context in the sense of the statute as a whole, the subject matter and broad objects of the statute and the values which underlie it;
- (iv) have regard to its immediate context in the sense of the particular part of the statute in which the provision appears or those provisions with which it is interrelated;
- (v) have regard to the precise wording of the provision; and
- (vi) where a constitutional right is concerned, as is the case here, adopt a generous rather than a legalistic perspective aimed at securing for individuals the full benefit of the protection which the right confers”

[95] It is trite that the purpose of the restitution provision in the Constitution and the Restitution Act is to remedy the injustice perpetrated by dispossession of the right in land. The claim of the descendants is not to make good the injustice suffered by the claimants but rather the injustice suffered by their parents. The fact that certain descendants did not lodge claims, in my mind, should not be interpreted as meaning that their forebears did not suffer injustice at the time of the dispossession. I am inclined to accept that the facts *in casu* justify the restoration of rights in land even to those who did not lodge claims when they qualified to but did not do so. It is the injustice caused by the dispossession that has to be addressed.

[96] I have already indicated above that the descendants who did not lodge claims shared the subject property at the time of the dispossession. They were (the descendants who did not claim) not exempt from the injustice and hurt occasioned by the dispossession. I am in agreement with *Gildenhuys J*³¹

“In my view, the purpose of the Constitution and of the Restitution Act will not be fully achieved if restitution is reduced by holding back portions which would have gone to descendants who failed to lodge claims. Such partial restitution would leave some of the injustice unremedied.”

[97] It is desirable, given the fact that the whole Sadien family led a communal life on the property that the land is restored to all the descendants. However, only one descendant has submitted a land claim and logically restoration is to be in his interests. I am of the opinion that the land to be restored be shared or enjoyed accordingly by all including those descendants who have not lodged a claim.

³¹ *Supra* note 32 at page 361 paragraph 21 G-H

[98] In terms of section 32 (3) (b) of the Restitution Act this Court may conduct any part of any proceedings on an inquisitorial basis. Applying this inquisitorial power the court enquired as to the availability of state owned land. The court was informed that three pieces of state owned land were vacant in the province of the Western Cape and these are:

- I. Erf 142 Constantia
- II. Erf 3110 Constantia
- III. Erf 1783 Constantia

The Department of Rural Development and Land Reform has confirmed the availability of the same. The Department also indicated that if a judgement was given regarding the restoration of any of the three properties to the claimant they would abide with such judgment.

[99] ERF 1783 CONSTANTIA was chosen taking into consideration the size of the dispossessed land. This was the closest in extent.

[100] I took the liberty of ascertaining the attitude of the second applicant to the enjoyment of the property with the rest of the Sadien family. Counsel for the applicants Mr Krige indicated that it will be in accordance with the wishes of the family.

Costs

[101] The trend generally is that costs follow the event. However, in matters before the Land Claims Courts the general rule may not always apply.

[102] In this case an unusual picture regarding litigants emerges. Generally in restitution claims the state is the defendant / respondent and claimants (private individuals) are plaintiffs or applicants. The unusual part is that the state (RLCC) is one of the applicants herein. The effect being that the current landowners are the only respondents. The existence of a *lis* between the claimants and the state is skewed. The restitution claim is not against the respondents but the state who is also an applicant herein in the form of the Land Claims Commission.

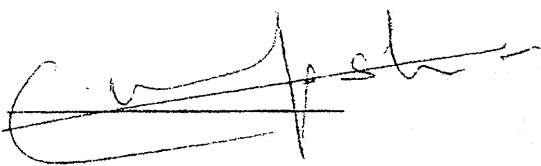
[103] The claimants have achieved success in this matter not against the respondents but against the state. Generally I would have to make an order of costs against the state in favour of the claimants. This I cannot do. The claimants are funded by the state³². I am inclined to make no order as to costs.

In the circumstances I am satisfied that the following order is appropriate

Order

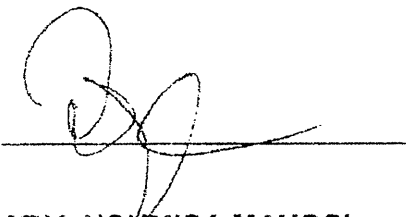
- a) A portion of the property ERF 1783 CONSTANTIA in the Western Cape Province measuring ten (10) hectares in extent shall be transferred to the second Applicant.
- b) The Department of Rural Development and Land Reform to designate the said property in favour of the second Applicant.
- c) The interdict order granted on the 23rd of February 2010 is hereby upheld.
- d) There is no order as to costs.

³² *Florence v Broadcount Investments (Pty) Ltd* (LCC 148/2008) [2012] ZALCC 11 (5 June 2012)



MPSHE AJ

ncur



ADV. NCUMISA MAYOSI
ASSESSOR

For the applicant

Adv Jacobs S C & Adv J Krige instructed by State Attorney, Cape Town.

For the respondents

Adv J A van der Westhuizen S C Adv L van Huysteen & instructed by Johann du Plessis
Attorneys, Somerset West

94

C.H. BRAND F CH Brand no 1

RECEIVED
13-2-1958
INGEDIEN

one
with No. 1
V. Brand.
and.

29 58

2-2-1958
26-2-1958
BURNETT

11110.

B 7096 / 1902

RECEIVED
83-6-6
428-7-7
RECEIVED
1958
EX-100
P. R. 1958

Die Aktekenommer van die grond hierin
boekroff is:
The Deeds Registry number of the land hereto
scribed is: 710 Bond/land
No. 100
A. S. POTGIETER
Kantoor: 100 Bond/land
Deeds Town: 100 Bond/land
3.12.1963

DEEDS TOWN

ROSS & GROENHURST
SOLICITORS.
4 Water St. Cape Town.

Deed of Transfer.

BY VIRTUE OF A POWER OF ATTORNEY

Know all Men whom it may concern

That PATRICK BERNARD WOLFE GROENHURST
ASSISTANT
appeared before me, Registrar of Deeds, He, the said Applicant, being duly
authorised thereto by a Power of Attorney lodged with me granted to him by

MOGAMET TOYER SADIEN in his capacity as
the sole surviving Executor Testamentary
of the Estate of the late DOET SADIEN

- Coloured Group. -

dated the 27th January, 1958
and drawn up and witnessed in accordance with law, at

CAPE TOWN

Prepared by me,
A. S. POTGIETER
Registrar of Deeds
3.12.1963
To
Share of Estate of late Doet Sadien
No. 100 Bond/land

6/11/58
Mogamet Toyer Sadien

And the said Appearer declared that on the 21st November, 1956, the said Estate, had truly and legally sold to the undermentioned Transferees Nos. 1 to 4 and to Transferee No.5 during his lifetime, which sale was confirmed by an Order of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa dated 4th. December 1957.

Share of Said Sadien - Type No. 1

1 von Constatant Titel
 1 von Registered Title No. 17453 issued in terms of
 1 von Constatant Titel
 1 von Registered Title No. 17453 issued in terms of

Art. 37 Wet No. 47/1937

Share of Said Sadien - Type No. 1

Share of Said Sadien - Type No. 1

E. L. SMITH

27 NOV 1958

Share of A. M. J. an O. Sadien

1 von Constatant Titel
 1 von Registered Title No. 17454 issued in terms of
 1 von Constatant Titel
 1 von Registered Title No. 17454 issued in terms of

Art. 37 Wet No. 47/1937

Share of A. M. J. an O. Sadien

Share of A. M. J. an O. Sadien

E. L. SMITH

27 NOV 1958

had truly and legally sold, and that He, in his capacity as Attorney aforesaid, did by these presents, cede and transfer, in full and free property to and on behalf of

1. DOUT SADIEN (born on 17th September, 1890);
2. ABDURAHMAN SADIEN (born in or about the year 1900); *no card*
3. MOGAMET TOYER SADIEN (born on 9th September, 1901);
4. OMAR SADIEN (born on 27th July, 1905) and
5. THE ESTATE OF THE LATE ISMAIL SADIEN No. 4891/57.

IN EQUAL SHARES - all Coloured Group -
 their Heirs, Executors Administrators, or Assigns

CERTAIN piece of redeemed quitrent land situate at Constantia, in the Local Area of Constantia, Cape Division, being the remaining extent of Lot I, a portion of Lot I.L. No. 483 and a road of the place called SILLERY.

MEASURING as such remainder:- Six (6) Morgen, Five Thousand One Hundred and Ninety Five (5195) Square Feet.

EXTENDING as the Deed of Transfer with Diagram No. 4200/1902 annexed made in favour of the said (now late) DOET SADIEN on the 12th December, 1902, No. 13429, will more fully point out.

SUBJECT to the conditions as referred to in such last mentioned Deed of Transfer.

FURTHER/....

FURTHER SUBJECT to the Servitude referred to in the endorsement dated 10th October, 1913 on said Deed of Transfer No. 13429/1902, reading as follows:-

"REGISTRATION OF SERVITUDE.

By Deed of Transfer No. 8798 October, 1913 the right of access to the sloop shown on the diagram hereto annexed for the purpose of taking water has been granted in favour of the property thereby conveyed, as will more fully appear on reference to the said Deed."

WHEREFORE/.....

758/1980
 758/1981
 758/1982
 758/1983
 758/1984
 758/1985
 758/1986
 758/1987
 758/1988
 758/1989
 758/1990
 758/1991
 758/1992
 758/1993
 758/1994
 758/1995
 758/1996
 758/1997
 758/1998
 758/1999
 758/2000

Wherefore the Appearer, renouncing all the Right and Title
 the said Estate
 heretofore had to the premises, on behalf as aforesaid, did in consequence; also
 acknowledge the Estate as aforesaid, to be entirely dispossessed of, and
 disentitled to the same; and that by virtue of these Presents, the said Transferees
 and their aforesaid, now are and henceforth shall be entitled thereto
 conformably to local custom, Government however reserving its rights;

And finally acknowledging his Principal to have been satisfactorily paid
 the whole of the purchase money amounting to a sum of
 ELEVEN THOUSAND POUNDS (£11,000.--.) Transfer Duty having
 been paid on that amount plus £110.0.0. Auction Sales Tax

In Witness whereof, I, the said Registrar, together with the Appearer
 have subscribed to these Presents, and have caused the Seal of Office to be affixed
 thereto.

Thus done and executed at the Office of the Registrar of Deeds, in CAPE
 TOWN, in the Province of the Cape of Good Hope, on the 6th
 Day of the Month of March in the year of our Lord, One Thousand
 Nine Hundred and FIFTY-EIGHT (1958)
 Registered in the Register
 of *Constantia*
 Book 2 Folio 413 (5)

Bond S 22/167. S 78/87. S 87/88. S 35/264. S 78/89

G. A. Luedersberg
 Clerk-in-Charge.

I certify that deceased In my presence,
 Trfor was at the date of his death
 a member of the "Coloured" group in
 terms of Act No. 77/1957, and that
 at the date of the within described
 transaction and at this date, the Trfees were and are members of
 the said "Coloured" Group in terms of Act 77/1957 and that they
 may lawfully acquire and hold the within described property. I
 certify that the parties hereto are not Natives in terms of Reg.
 49 of Act 10/1956.

ASSISTANT Registrar of Deeds.

Conveyancer 96

NOTES CONTAINED ON SEPARATE SHEET WITHIN.

G

**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT CAPE TOWN**

Case No.: LCC26/10

In the matter between

THE REGIONAL LAND CLAIMS COMMISSIONER	First Applicant
SEDICK SADIEN	Second Applicant
EBRAHIM SADIEN	Third Applicant
And	
JAZZ SPIRIT 12 (PTY) LTD	First Respondent
YAMIV (PTY) LTD	Second Respondent
MR HEIN. R. BADENHORST	Third Respondent
THE REGISTRAR OF DEEDS	Fourth Respondent

APPLICANTS' HEADS OF ARGUMENT

1. On the 23rd February 2010 this court issued an ex parte order in the following terms:

2.1. The first respondent is immediately interdicted from developing the remainder of erf 2274 Constantia until the granting of the order sought in paragraph 2.2 hereof;

authority therefor exists and in the alternative and in any event were not done in good faith and without notice being given and should be set aside.

99.3 The land known as Remainder of erf 2274 Constantia should be restored to the members of the Sadien Family.

99.4 A restoration order should be issued in terms of section 35 (1)(a) of the Restitution Act that Remainder of erf 2274 Constantia should be restored to the Sadien Family, in settlement of the claim and where necessary, the prior acquisition or expropriation of the land.

99.5 The State should transfer in full ownership of the claimed land, existing over the land to an established legal entity that will be registered and operated along the principles of a Communal Property Association.

99.6 Compensation should be awarded to the Sadien family for the loss of the rights of use and occupation and ownership, to be determined at a later stage.

- 99.7 In determining the amount of compensation payable to the current Owners due regard must be had to the provisions of section 25 (3) of the Constitution.
- 99.8 The Commissioner render assistance to the Sadien family to facilitate the drafting of a business plan for the development of the land restored to them, including re-establishing the farming operations.
- 99.9 The Commissioner should facilitate the involvement of the appropriate Local and Provincial Government structures in ensuring that claimants receive necessary assistance in the resettlement process.
- 99.10 The sale from Yamiv (Pty) Ltd to Jazz Spirit 12 (Pty) Ltd in 2002 and transfer in 2003 be set aside.
- 99.11 The rezoning, and development of erf 2274 Constantia be set aside.
- 99.12 The change of land use by the Department of Environmental Affairs and Development Planning permission dated 30 June

2005 in respect of erf 2274 Constantia, and the City of Cape Town be set aside.

99.13 The appeal decision by the Ministry of Cultural Affairs, Sport and Recreation in respect of the proposed sub-division of erf 2274 Constantia, dated 25 April 2005 be set aside.

99.14 The intended sub-division of erf 2274 Constantia be prohibited.

99.15 That the interdict be extended pending the transfer of the property to the Sadien family.

99.16 That Jazz Spirit 12 (Pty) Ltd and any other interested party as opposes this application, pay the costs of suit.

L.J. KRIGE

Huguenot Chambers

H

Belinda

From: Joan Heming [joan.heming@telkomsa.net]

Sent: 14 March 2011 12:43 PM

To: Robin Carlisle

Subject: SA Riding for the Disabled

Dear Robin, many thanks for your time on Friday and the great news that you will give SA Riding for the Disabled a 50 lease on the Brommersvlei Rd site that they currently use. They are thrilled that they will have the security of tenure that will allow them to up grade their facilities in order to offer their wonderful service to an extended number of disadvantaged children.

I have explained that your Department will want part of the land for residential development and I will be meeting with them tomorrow to map out their requirements on the site. After this, SARDA will write to you so that hopefully, a good arrangement can be concluded.

best regards
Joan

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1204 / Virus Database: 1498/3505 - Release Date: 03/13/11

2011/03/14

I
SOUTH AFRICAN RIDING FOR THE DISABLED ASSOCIATION
CAPE TOWN BRANCH

Non-profit Organisation No. 002-822
Public Benefit Organisation No: 18/11/13/2516



"Therapy in motion"

Handwritten signature



Associate Member of Riding for the Disabled Association (U.K.)
Affiliated Member of Riding for the Disabled International
Patron : Mrs Mary Slack

Life President : Mrs Belinda Sampson
Tel : (021) 7944393
Fax: (021) 7942497

Life Vice President : Joy Finlay
P O Box 235,
Constantia 7848

16th March 2011

Min. Robin Carlisle
Minister of Transport and Public Works
Provincial Government, Western Cape
P.O. Box 9185
Cape Town.

Dear Robin,

'Ride easy - leave to me'

Joan Heming has told me the incredible news that you are now able to arrange for SARDA to have a 50 year lease of the property it occupies on Brommersvlei Road in Constantia. How can I possibly convey to you our utter delight at this realization of a dream we have worked towards for so many years? It is truly wonderful news and I do thank you - and Joan - from the bottom of my heart for all you have done and are doing on SARDA's behalf.

I attach a plan of the Brommersvlei site for ease of reference. In return for a 50 year lease, we would give up the two top erven - 689 and 560, (5.258 acres) for you to dispose of for residential use. This should provide some 10 x 2000ms erven, which at current prices should realise about R3million each. SARDA will happily relinquish these erven as the remainder (Erven 141 and 142) will leave sufficient ground for the additional horses, grazing and stabling necessary for expansion - and for the very necessary secure 'out rides' for our physically and mentally challenged riders. I also attach details of SARDA's current classes, riders, volunteer instructors, helpers, and waiting list of schools wanting to send their disadvantaged children to SARDA.

I shall be grateful if you let me know to whom we should now communicate and what steps your Department and SARDA should take to finalise this 50 year lease. We have asked Joan Heming to continue to assist us.

My warmest thanks again. I cannot tell you how good it is to know that SARDA's Cape Town Branch will have a secure venue from which to continue to provide physical, emotional, sporting and recreational therapy to many more deserving riders in the years ahead.

Sincerely

Belinda

Belinda Sampson
SARDA Life President.

Encls: 2



Ministry of Transport and Public Works: Western Cape
Ministerie van Vervoer en Openbare Werke: Wes-Kaap
Ishe Lezoihulho Namiabenzi Yoluntu: Lentahona Koloni

Reference:
Verwysing:
Isalathiso:

Enquiries:
Navraa: Robin Carlisle
Imbuzo:

Ms Belinda Sampson
SA Riding for the Disabled Association
P O Box 235
CONSTANTIA
7848

(Fax – 021 794 2497)

Dear Belinda

SA RIDING FOR THE DISABLED ASSOCIATION, CAPE TOWN BRANCH

I am writing with regard to your letter of 16 March 2011.

To my extreme regret, investigation reveals that the even you are writing about, are properties of National Public Works and not of my Department.

I must therefore endeavour by all means to make good my undertaking to you by requesting National Department of Public Works to vest the property in the Province.

Be assured that I will make every effort to secure your tenure so that you can continue with your wonderful work.

Kind regards

**ROBIN CARLISLE
MEC TRANSPORT AND PUBLIC WORKS**

Date: 14 April 2011



Western Cape
Government

MINISTRY OF TRANSPORT AND PUBLIC WORKS

Reference: DTPW-2013/4339

Via email: [capetown-pr@sarda.co.za]

Dear Ms Poweles

Possible loss of land for SARDA

Your letter to the premier regarding "the questionable land claim" refers.

In our previous communication, both via email and telephonically, I had thought I had advised what I believe to be the appropriate action. Let me summarise my views again below:

SARDA has a legal and demonstrable tenure which cannot be summarily terminated. On this basis there is no reason to vacate the property. To be legally compliant, The National Department of Public Works will have to take one of the following options:

Allow you to continue on your existing lease;

Find you **SUITABLE** alternative premises and compensate you for your improvements ;
If they cancel the lease, compensate you with an amount that is agreeable to both parties.

Any action that does not comply with any of these, or in any combination, would constitute an illegal or at the very least, a challengeable offence. The Land Claims Commissioner had offered to assist SARDA in this regard.

The Province is SARDA's refuge of last resort. We will, if necessary, find a place for you, if there are still matters that are not clear, please feel free to contact my department.

Kind regards


ROBIN CARLISLE
MINISTER OF TRANSPORT AND PUBLIC WORKS
Date: 31/07/2013

8th Floor, 9 Dorp Street, Cape Town, 8001
Tel: +27 21 483 2200 fax: +27 21 483 2217

PO Box 2603, Cape Town, 8000
www.westerncape.gov.za

L

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Case No: **LCC26/2010**

In the matter between:

**SOUTH AFRICAN RIDING FOR THE DISABLED
ASSOCIATION ("SARDA")**

Claimant

and

**THE REGIONAL LAND CLAIMS COMMISSIONER:
WESTERN CAPE**

First Defendant

SEDIEK SADIEN

Second Defendant

**THE MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM**

Third Defendant

THE MINISTER OF PUBLIC WORKS

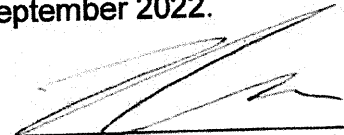
Fourth Defendant

**SECOND DEFENDANT'S NOTICE OF SUBSTITUTION OF ATTORNEYS OF
RECORD**

KINDLY TAKE NOTICE that the Second Defendant's former attorneys of record, Igshaan Sadien Attorneys, have failed to withdraw as attorneys of record for the Second Defendant despite the content of paragraph 7 of the Second Defendant's Answering Affidavit dated 31 August 2022, filed.

KINDLY TAKE FURTHER NOTICE that the Second Defendants' former attorneys of record, Igshaan Sadien Attorneys, are hereby substituted as the attorneys of record for the Second Defendant and attorneys MacGregor Stanford Kruger Inc, set out below, are now the attorneys of record for the Second Defendant, as per written instruction received from the Second Defendant.

Dated at Cape Town on this the 23rd day of September 2022.



MacGregor Stanford Kruger Inc
Second Defendant's Attorneys
12th Floor, One Thibault
Thibault Square
17 Hans Strijdom Avenue
Cape Town
8001
Email: David@Macgregs.co.za
Email: Nicole@macgregs.co.za

To: **THE REGISTRAR**
Land Claims Court
RANDBURG
Email: DMaluleke1@judiciary.org.za

To: **MICHAEL WAGNER**
Claimant's Attorneys
Pepper Street Chambers
10 Pepper Street
CAPE TOWN
Email: michael@charterpartycases.com

AND TO: **THE STATE ATTORNEY**
First, Third and Fourth Defendants' Attorneys
22 Long Street
CAPE TOWN
Ref: T Lombard
Email: tlombard@justice.gov.za

AND TO: **IGHSAAN SEDIEN ATTORNEYS**
C/O Lionel Murray Schwormstedt & Louw
Second Floor
General Building
42 Burg Street
CAPE TOWN
Email: info@isadienlaw.co.za