



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 12 April 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Loskop Landgoed Boerdery (Pty) Ltd and Others v Petrus Moeleso and Others (390/2021) [2022] ZASCA 53 (12 April 2022)

The Supreme Court of Appeal (SCA) today upheld an appeal in part against the order of the Land Claims Court, Randburg (LCC), and which order of the LCC was set aside and replaced with an order, inter alia, restoring possession of the use of land for grazing livestock, to the respondents. No order as to costs of the appeal was made.

The primary issue in the appeal involved the reduction of the respondents' grazing area from two camps to one camp, on the farm Barnea 231 within the district of Bethlehem, Free State Province (the farm). The appeal arose from proceedings instituted in the LCC by the respondents for certain declaratory orders.

The owner of the farm was the second appellant, Mr W A Pieters. On 1 March 2018, however, the first appellant, Loskop Boerdery (Pty) Ltd, took over the farming operations on the farm. The third appellant, Mr Riaan Pieters, is the son of Mr W A Pieters and the sole director of the first appellant. The first respondent, Mr Petrus Moeleso, was born in 1974 and has since birth resided on the farm. The second respondent, Mr David Mofokeng; the third respondent, Ms Maki Moeleso (Tshabalala); and the fourth respondent, Ms Nini Mabe, resided on the farm.

It was not disputed that as on 1 March 2018 the respondents had consent to keep cattle on the farm and were allocated at least two grazing camps for the purposes of grazing. It was further not disputed that the camps allocated to the respondents became overgrazed and required rehabilitation for a period of two years. The appellants removed the cattle from the two overgrazed camps to another camp on the same farm. The removal was effected despite the refusal of the respondents to consent thereto. It was common cause that the appellants did not bring an application to relocate the respondents' cattle to another camp on the same farm.

The SCA found that para 2 of the LCC's order (wherein the appellants were ordered to restore to the respondents the right to graze on a camp of at least similar capacity to the camp from which their livestock had been removed) was misconceived. This was on the grounds that the

LCC did not forewarn the appellants that it was contemplating such an order. The LCC simply granted the order without affording the appellants an opportunity to respond. Importantly, the papers did not disclose any legal basis for a right to alternative grazing. The SCA further found that para 2 of the order was also impermissibly vague and prejudicial, and thus could not stand.

The SCA found further that the LCC and the parties had mischaracterised the issues for determination in the appeal. The real dispute between the parties, the SCA found, was whether the respondents were in peaceful and undisturbed possession of the grazing camps prior to being spoliated, and not whether the respondents' possession was based on any right. This, because the respondents sought relief in the form of the *mandament van spolie* in terms of para 1 of its notice of motion.

In this regard, the SCA found that, on the appellants' own version, the respondents were deprived of possession of the two grazing camps that they had been given consent to use. Thus, dispossession of the actual possession of the two camps or the quasi-possession in respect thereof by the respondents without consent or a court order, was unlawful and amounted to a spoliation.

The SCA therefore held that para 1 of the LCC's order (wherein the appellants' conduct in reducing the grazing available to the respondents in the absence of a court order was held to be unlawful) was correctly granted. Paragraph 2 of the LCC's order was reformulated to provide that the respondents' possession of the camps, of which they had been dispossessed, had to be restored forthwith.

Finally, the SCA found that a costs order against the appellants was not warranted by the LCC and each party should have paid its own costs in the proceedings in the LCC. With regard to the costs of the appeal, the SCA held that the appellants had partial success, therefore no order as to costs of the appeal was made.

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