THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 982/2023

In the matter between:

THE MINISTER OF DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM	**FIRST APPELLANT**
DIRECTOR GENERAL OF DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM	**SECOND APPELLANT**
CHIEF LAND CLAIMS COMMISSIONER	**THIRD APPELLANT**
REGIONAL LAND CLAIMS COMMISSIONER EASTERN CAPE PROVINCE	**FOURTH APPELLANT**
OFFICE OF THE VALUER GENERAL	**FIFTH APPELLANT**

and

THAMSANQA DAVIS BISSET	**RESPONDENT**

Neutral citation: *The Minister of Department of Rural Development and Land Reform and Others v Thamsanqa Davis Bisset* (982/2023) [2024] ZASCA 164 (2 December 2024)

Coram: MEYER, KATHREE-SETILOANE and UNTERHALTER JJA and MOLOPA-SETHOSA and MOLITSOANE AJJA

Heard: 21 November 2024

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 2 December 2024.

Summary: Land – compensation – s 42D of the Restitution of Land Rights Act 22 of 1994 – settlement agreement – absence of concurrence – review – absence of administrative action – powers of review.

ORDER

On appeal from: Land Claims Court of South Africa, Randburg (Muvangua AJ sitting as court of first instance):

1 The appeal succeeds.

2 The order of the high court is set aside, and replaced with the following order: 'The application is dismissed'.

JUDGMENT

Unterhalter JA (Meyer and Kathree-Setiloane JJA and Molopa-Sethosa and Molitsoane AJJA concurring):

[1] The respondent, Mr Bisset, represents the Bisset family. The Bisset family owned land in Gqeberha. The Bisset family, in 1972, was dispossessed of their ownership of this land as a result of past racially discriminatory laws. In terms of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act), the Bisset family lodged a claim for the restitution of their rights in the land that they had owned. In 2008, Mr Bisset was visited by, Vanessa Daniels, an official of the Regional Land Claims Commissioner, Eastern Cape Province, the fourth appellant (the Commissioner). Mr Bisset, on 18 April 2008, signed a document headed, 'Settlement Agreement in terms of s 42D of the Restitution of Land Rights Act 22 of 1994'. The document reflected the terms of an agreement in terms of which the Bisset family would accept a restitution award as compensation for the dispossession of their land rights. Mr Bisset did not accept that the Bisset family's claim had been lawfully settled and, many years later, in September 2021, he brought proceedings to declare the settlement agreement invalid, and have it reviewed and set aside. Mr

Bisset also sought an extension of the 180-day period, in so far as this was necessary, in terms of s 9(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[2] The review was brought on the basis that the settlement agreement reflected an amount in respect of the value of the land, but it failed to place any value on the emotional suffering of the family; and hence, relevant factors were not considered. In addition, Mr Bisset claimed that compensation was determined at the instance of an unauthorised person; and that the settlement offer of the Commissioner was arbitrary, capricious and unreasonable. The review was opposed by the appellants who defended the legality of the settlement agreement.

[3] The high court (*per* Muvangua AJ), notwithstanding the passage of time, considered it to be in the interests of justice to condone the delay of Mr Bisset in bringing the review. As to the merits of the review, the high court held that the Commissioner, when determining compensation, must, in terms of the Restitution Act, consider both the financial and non-financial factors listed in s 33 of the Restitution Act. The Commissioner did not do so, and thus, the high court reasoned, the settlement agreement should be reviewed and set aside, which it then ordered. With the leave of the high court, the appellants appeal to this Court.

[4] The premise from which the high court's judgment proceeds is that there was a settlement agreement concluded between Mr Bisset and the Commissioner. This premise requires scrutiny. It is common ground that Mr Bisset on 18 April 2008 signed the document to which I have referred. Mr Bisset complained that Ms Daniels had made him sign the document, but that the nature and content of the settlement was not explained to him. Later in 2008, Mr Bisset stated that he advised Ms Daniels that, 'the settlement agreement is no longer accepted'. The deponent to the answering affidavit, Mr Maphuta, the Regional Land Claims Commissioner, denied

that Mr Bisset had expressed any uncertainty to Ms Daniels as to what he was signing. He further denied that the settlement agreement was not explained to him. No confirmatory affidavit from Ms Daniels formed part of the papers.

[5] The following matters were not disputed. First, that Mr Bisset, after signing the document, had called Ms Daniels to inform her that the settlement was no longer accepted. Second, that the document containing the settlement agreement was not signed by the Commissioner on behalf of the Department of Rural Development and Land Reform (the Department). Third, a framework settlement agreement was signed by a Mr Daniels on behalf of the Veeplaas community claimants in April 2007 (of which Mr Bisset's claim formed part) in terms of s 42D of the Restitution Act. But this agreement nevertheless required individual claimants, such as Mr Bisset, to conclude separate settlement agreements with the Minister of Rural Development and Land Reform (the Minister), if they so wished. Fourth, the Department never paid any compensation to Mr Bisset as specified in the settlement agreement, or otherwise. Fifth, in early 2019, Mr Bisset's attorney engaged further with representatives of the Commissioner concerning appropriate compensation in respect of Mr Bisset's claim, among others. Meetings were held; Mr Bisset was invited to present a proposal for compensation that included the loss suffered by the Bisset family by way of distress directly caused by its dispossession. This, the firm of attorneys, Maci Incorporated, acting for Mr Bisset, indicated that it could not do. No agreement was reached, and the review was eventually brought.

[6] These undisputed facts give rise to only one conclusion. Although Mr Bisset signed the proposed settlement agreement, there is no evidence that the Minister's representatives did so, or otherwise evidenced their concurrence. There was no indication, following Mr Bisset's disavowal of the settlement agreement, that the Commissioner considered there to be a binding agreement. Nor was there any

compensation paid to the Bisset family pursuant to any settlement agreement or any attempt to do so. In 2019, the Commissioner and Mr Bisset's attorney recommenced negotiations for compensation, without any indication from the Commissioner that this was futile because a binding settlement agreement had already been concluded. It follows that there was no settlement agreement concluded between Mr Bisset and the Minister in terms of s 42D of the Restitution Act.

[7] If there was no settlement agreement, there was nothing to declare invalid, nor to review and set aside. Mr Bisset is not bound by any settlement agreement. He and the Commissioner are, therefore, at liberty to continue their negotiations to reach an agreement. And if they cannot, then Mr Bisset may seek other recourse to pursue his claim. The review proceedings sought to undo an agreement that had not been concluded. The high court declared invalid, reviewed and set aside what it described in its order as 'the settlement agreement that was signed by the applicant [Mr Bisset] on 18 April 2008'. But all that existed was a document that contained terms upon which a settlement was proposed, and which Mr Bisset had signed. The high court had no power to exercise its review powers to review and set aside a document that was not a binding settlement agreement, or, to put the matter in the framework of public law, to review and set aside something that was not yet a decision on the part of the Commissioner amounting to administrative action.

[8] Once that is so, the order made by the high court cannot stand. It was made on the basis of an incorrect premise. The appeal succeeds. The appellants, given the nature of this case, did not seek costs from Mr Bisset, either in respect of the appeal or the proceedings before the high court.

[9] In the result, the following order is made:

1 The appeal succeeds.

2 The order of the high court is set aside, and replaced with the following order: ‘The application is dismissed’.

D N UNTERHALTER
JUDGE OF APPEAL

Appearances

For the appellants:	T Seneke SC (with him L Hesselman)
Instructed by:	State Attorney, Gqeberha
	State Attorney, Bloemfontein
For the respondent:	A M Maseti
Instructed by:	Maci Attorneys, Port Elizabeth
	Phatshoane Henney Attorneys, Bloemfontein.