

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: **2925/2024**

In the matter between:

JOHANNES JOSHUA BEZUIDENHOUT First Applicant

HEROLD BEZUIDENHOUT Second Applicant

JAN BERGH Third Applicant

**NUVELD FARMING EMPOWERMENT ENTERPRISE
(PTY) LTD** Fourth Applicant

v

**MINISTER FOR AGRICULTURE LAND REFORM AND
Respondent
RURAL DEVELOPMENT** First

**CHIEF DIRECTOR: WESTERN CAPE PROVINCIAL SHARED
Respondent
SERVICES CENTRE** Second

**DEPUTY DIRECTOR GENERAL FOR AGRICULTURE
Respondent** Third

LAND REFORM AND RURAL DEVELOPMENT**LUBABALO MBEKENI**

Fourth Respondent

HENDRIK BOOYSEN

Fifth

Respondent

LUCY NDUKU

Sixth

Respondent

Coram : Salie, J

Date of Hearing : 4 March 2024 (10H00-13H30)

Written Judgment delivered : 4 March 2024 (16H30) - Court 28

Counsel for Applicants : Adv. Geoff Budlender SC

Counsel for First to Fourth Respondents : Adv. Khanyisa Ngqata

Counsel for Fifth and Sixth Respondents : Adv. Madoda Titus

JUDGMENT DELIVERED ON MONDAY, 4 MARCH 2024**SALIE, J:**

1] This is an application that came before me on the urgent duty roll, argued earlier today. The matter stood down until 16h00 (after arguments were submitted by counsel for the applicants, 1st – 4th respondents and the 5th & 6th respondents respectively) for the handing down of this judgment and order. This judgment is ex tempore and of

necessity brief. The farm which forms the subject matter of the application is Plateau Farms, a state-owned farm near Beaufort West. It comprises three farms, but same has been operating as one unit.

2] The relief sought from this court is two-fold, that being, firstly an order to restore possession of two pieces of land to the applicants and secondly to interdict the 1st to 4th respondents (from allocating any part of the farm to anyone, pending the finalisation of the review application presently pending between the applicants and the 1st to 3rd respondents.) Nuvelde Farming Empowerment Enterprise (Nuvelde) has been in possession of Plateau farms and farming it since 2017. In 2020 an allocation process was conducted by the delegated committee for the department and in terms of which it was recommended that a 30-year lease be granted to Nuvelde.

3] In 2023 the aforesaid recommendation was rejected by the then Chief Director, the 4th respondent, Mr. Mbekeni. This gave rise to the review application presently pending between the applicant and the 1st to 3rd respondents which was launched in April 2023. It suffices to state that the review will be heard by this Court on a future date.

4] The genesis of this application lies in the 4th respondent having granted permission to the 5th and 6th respondents (Mr. Booysen and Ms. Nduku) to occupy part of Plateau. The applicants' gripe is that 4th respondent did so without following the

processes required by the department's own policies and consequently, the summary actions which followed must be seen as having spoliated the peaceful and undisturbed possession of the applicants. The applicants submit that they possessed exclusive use of the keys to the locks on the gates to the two properties in question (Dassiesfontein and Dassies 2) and which had been locked by them at the time of the acts of spoliation, that the respondents broke the locks and put their own locks on the gates excluding therewith the applicants use and possession of the property and they had been grazing and farming the said farm. The taking of the property by the department and the 5th and 6th respondents were without any legal process and court order.

5] Consequently, the applicants seek a mandament van spolie and an interdict preventing any official of the department from allocating (and thereby implementing) parts of Plateau pending the outcome of the pending review application.

6] In its opposition, the 1st to 4th respondents submitted that the application is not urgent and that there is no basis for this court to find that its conduct in changing the locks and giving the 2 farms to the 5th and 6th respondents is unlawful and consequently that no act of spoliation had occasioned. Furthermore, it also submitted that the history of events in relation to the rights of the farms and other background facts are salient to the determination whether the department had acted unlawfully. The argument follows that, given the past injustice to the 5th and 6th respondents, the allocation to them were both necessary to address the past injustice committed to them respectively when sometime during 2017, both Nduku and Booyesen were unfairly and harshly removed

from the farm and so to honour the department's land reform objectives. Similarly, the decision to allocate the Plateau farms to other beneficiaries is not only an imperative goal incumbent upon the state departments but so too to effect same within a speedy process. Further to this, counsel for the state argued that it is not so that Nuvelde had been in peaceful and undisturbed possession of the Plateau farms as a whole unit and that it would not prejudice them that 2 of the sub-farms had been allocated to the 5th and 6th respondents. Counsel pointed out that the caretaker agreement in terms of which Nuvelde had been farming on the Plateau farms had expired some years ago and this left the department to allocate and physically give possession to other beneficiaries.

7] Counsel for the 5th and 6th respondents submitted that the applicants are non-suited from having it being found by the court to be urgent as it had unduly truncated the time-table, giving the respondents less than 2 days to respond to a founding affidavit well in excess of 200 pages. The argument follows that on the applicable principles of urgency, the applicant's conduct falls short of alleging urgency and on that basis the application ought to be struck. It was also pointed out that as the applicant's replying affidavit had not been properly commissioned, the applicant's case before the court thus rests on an uncontested version of the 5th and 6th respondents and consequently, on that basis alone, ought to be dismissed with costs. Lastly, counsel argued that as the applicants had changed the locks after the initial act of spoliation, it had thus lost its right to approach this court on the basis of spoliation.

8] In determination of this application, moreover, the relief sought for spoliation, the court need to be satisfied that the applicant was in peaceful and undisturbed possession of the farms and that it was unlawfully deprived of possession by the respondent. The act of unlawfulness is underpinned by the lack of consent of the applicant to be so dispossessed and without any due legal process. The right to relief under the *mandament van spolie* arises from deprivation of possession otherwise than through legal process.

9] It is trite law that one is not allowed to take the law into one's own hands. Any self-help action in dispossessing another forcibly or wrongfully against the possession of property, will upon application to court be restored as a preliminary to any inquiry as to the merits of the dispute. The main purpose of the *mandament van spolie* is to preserve public order by restraining persons from taking the law into their own hands and inducing them to resort to the arms of the law for the pursuit of due process.

10] As a possessory remedy, it is exclusively directed at restoring the factual position as it was before the dispossession, which is determined separate and distinct from an investigation into the rights of the parties. It is by its very nature urgent and on the chronology of events herein, I am satisfied that the matter is properly on the urgent roll and in fact urgent.

11] Counsel for the state argued that the issue of possession is not common cause. I have difficulty with this submission. At various junctures the state does not dispute that the Plateau farms operate as a unit and that the 3 farms need to function as such to be viable. This is contained in its own reports. As such, I cannot accept that Nuvelde had no real possession of the 2 farms in question. Mr. Bezuidenhout, the first applicant, had possession of the keys to both the gates of Dassiesfontein and Dassies 2 when the spoliations took place on 17 January 2024 and 7 February 2024 respectively. It is not disputed that the respondents proceeded to cut the locks on the gates to the two portions in order to enter and take possession of the properties and thereafter replaced it with their own locks. It is also not disputed that grazing of cattle by Nuvelde over the past 7 years took the form of moving it to different portions of the farms to allow grazing areas to “rest” and recultivate. The permission by the state to Nuvelde to farm on the Plateau farms was not limited to a certain portion only and it also received a quarterly report from 2017 until December 2023 over the full Plateau farms as Nuvelde was required to do in terms of the caretaker agreement. Furthermore, Mr. Mbekeni called on the applicants in February 2023 for their consent to allocate the farms in question to other persons. I find it problematic to accept in these circumstances that Nuvelde had not held possession of these farms *nec vi, nec clam et nec precario* (without force, secrecy or permission) and that its possession was in fact peaceful and undisturbed.

12] I further find state Counsel’s submission that the state was not required to follow due process, or alternatively that their internal commissions and reports amounted to following due process to warrant critique. I hold this view, given that the possession by

Nuveld cannot be reasonably disputed and that a change of heart so to speak on the part of the department apropos the allocation process cannot amount to affording the respondents the right to entrench upon the possession of the applicants as the possessor and to evict them from the farms in question. The historical background of the Plateau farms, injustices suffered by other beneficiaries including the 5th and 6th respondents, land reform objectives and the failure to have done so in the past by the department, are relevant elsewhere but certainly not in this determination.

13] The argument by counsel for 5th and 6th respondents that the replying affidavit is fatally defective is considered as follows. The affidavit, albeit titled and purported as that, had not been commissioned in terms of regulation 4(2) of the Oaths Act. Accordingly, it is not before the Court under oath. Mr. Budlender in reply conceded this to be the case, as that same resulted as a mishap during the efforts to have same commissioned at the police station. However, as I see it, the averments supporting the facts upon which the relief is sought, are set out in the founding affidavit and the material aspects had been deal with in the reply thereto in the replying affidavits to the answer of the state respondents. The impugned actions overlap in both set of papers and are duly dealt with under oath.

14] The 5th and 6th respondents also submitted points *in limine* that the non-joinder of the trusts which the 5th and 6th respondents respectively represent is fatal as well as the failure to join the other 79 beneficiaries given that they have an interest in the allocation process and would have the right to intervene. I am not persuaded that these

submissions bear merit. My position is fortified by the fact that throughout the papers, Ms. Nduku and Mr. Booysen are referred to as the beneficiaries and referred to by their names specifically by both the applicants and all the respondents. So too are the acts of spoliation committed by Mr. Mbekeni, Ms. Nduku and Ms. Booysen. I fail to understand the argument that no legal recourse can be gained as against them without the trusts whom they represent, that being in particular, Ms. Nduku and Mr. Booysen. Furthermore, it is so that there are 79 other beneficiaries. However, the latter has nothing to do with the spoliation application. As it relates to them not having been joined to seeking an interdict as per prayer 6.2 of the notice of motion (restraining allocations of any portion of Plateau Farms to any person pending the review), it is significant a fact that the review application is pending between the applicants and the 1st to 3rd respondents. This interdict is sought to preserve the status quo whilst that matter is being heard and determined. The relief sought is interlocutory to that relief being sought as between the applicant and the state parties herein. I cannot see it nor can it be considered a fatal non-joinder as it seeks the preservation of the process of that review.

15] On the facts and circumstances of this case, I can find no basis upon which to deviate from the principle that the despoiled applicant be restored possession before all else, (*spoliatus ante omnia restituendus est*) and in the circumstances the applicant is justified in its application for an order restoring possession of the farms, described as:

15.1] Farm Dassiesfontein No.73 Portion 6 (South Dassiesfontein); and

15.2] Farm Dassiesfontein No. 73 Portion 5 (Portion 1 North Dassiesfontein).

16] Secondly, I am satisfied that on the facts before me that it is evident that onward allocation by the state respondents would mean that the decision would be implemented in the same manner as had been done in the manner herein. This would undermine the pending review proceedings. Accordingly, this would be an exceptional circumstance where the threatened and intended actions (namely, future spoliations) by the state respondents must be curtailed so as to ensure that the subject matter forming the basis of the pending review does not become moot, undermined or interfered with which would otherwise most probably hamper the review Court from making a determination in the review proceedings. It follows that the review proceedings need be finalized and heard as soon as possible.

17] As regarding costs, I am satisfied that nothing on the papers before me warrants me to deviate from the normal costs order and accordingly, costs must follow the result.

18] In the circumstances and for the reasons aforementioned, I make the following order:

“(i) The applicants’ possession of the properties referred to in 12.1 and 12.2 are herewith declared to be restored ante omnia with immediate effect;

(ii) The first to the fourth respondents and the officials of the Department of Agriculture, Land Reform and Rural Development is interdicted and

restrained from allocating (and implementing such allocation) in respect of any allocation of any portion of Plateau Farms (being the various portions of the farms listed in annexure A hereto) to any person, pending the finalisation of the review proceedings under case number 6553/2023.

- (iii) *The applicants' costs of suit shall be paid by the First to Third Respondents, jointly and severally, the one paying the other to be absolved."*

SALIE, J
JUDGE OF THE HIGH COURT
WESTERN CAPE