IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

(1) **REPORTABLE:** NO

(2) **INTEREST TO OTHER JUDGES:** NO

12/2/13
DATE **SIGNATURE**

CASE No. 30542/2012

12/2/2013

In the matter of:-

SANDILE GODFREY NGOMANE N.O	First Applicant
STEFAAN SITHOLE N.O	Second Applicant
MESHACK THEMBINKOSI SILINDA N.O	Third Applicant

and

DOMAR BOERDERY BELANGE (PTY) LTD	First Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
MINISTER OF RURAL DEVELOPMENT AND LAND REFORM	Third Respondent
CHIEF LAND CLAIMS COMMISSIONER	Fourth Respondent
CHIEF DIRECTOR : DEPARTMENT OF RURAL DEVELOPMENT, MPUMALANGA PROVINCE	Fifth Respondent

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JUDGMENT

...1...

Van der Byl AJ:-

Introduction

[1] The Applicants seek, in addition to the usual order of costs and certain incidental relief, an order in terms of which the First Respondent, and all persons occupying through it, be ordered to forthwith vacate the property known as Portion 53 of the farm Tenbosch 162 JU ("*the Property*").

[2] The Applicants are the trustees of the Ingwenyama Simhulu Trust (of which the beneficiaries are the more or less 6500 members of the Hhoyi community) which is admittedly the owner of the Property, it having been transferred from the Second Respondent, the Government of the Republic of South Africa, on 21 November 2011.

[3] It is common cause -

(a) that the Hhoyi community lodged a land claim in terms of the provisions the Restitution of Land Rights Act, 1994 (Act 22 of 1994), in respect of the "*Greater Tenbosch*" area consisting of Portion 45 of the Farm Tenbosch 162, measuring 856,9560 hectares, Portion 61 of that Farm, measuring 28,1000 hectares and the Property, measuring 467,5661 hectares;

(b) that the claim in respect of all these properties farms was settled at R71 500 000 and the Second Respondent purchased the Property (together with the other two

Portions) from Hentiq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd of which the brothers, Messrs D W Hurter and D A Hurter, were the only directors, to whom I will refer as the Hurter brothers.

[4] The salient terms of the sale agreement relating to the Property (**Annexure C2, record p. 303**) finally signed on 12 May 2009 were -

(a) that the seller, Hentiq 2617 (Pty) Ltd, sells the Property to the purchaser, the National Department of Land Affairs acting on behalf of the Government of the Republic of South Africa at a purchase price of R26 598 000;

(b) that occupation and possession of the Property shall be given to the purchaser one year from the date of payment of the full purchase price.

[5] The Property was, as already indicated, transferred to the Government of the Republic of South Africa on 19 July 2010 and the purchase price was paid on 22 July 2010 so that the seller Hentiq 2617 (Pty) Ltd, was obliged to vacate the Property on 21 July 2011 which it did not do in the sense that the Hurter brothers continued to occupy the Property albeit through the First Respondent, Domar Boerdery Belange (Pty) Ltd, of which they are the only directors.

[6] It is the First Respondent's contention that it lawfully occupies the Property in terms of a valid and enforceable lease agreement concluded with the Government of the Republic of South Africa on 12 August 2009 (**Annexure SN 14, record p. 143**

onwards), being a date long before any of the relevant transfers took place in respect of the three properties purchased from Hentiq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd which seems to provide -

(a) that it is deemed to have commenced on date of payment of the full price of the properties which was done 22 July 2010;

(b) that the properties are leased for a period of five years with a right of renewal;

(c) that it would remain in force despite it being transferred to the community.

[7] The existence or validity of the lease agreement is vehemently disputed by the Applicants (and, as is apparent from confirmatory affidavits annexed to the papers, the relevant officials of the Department of Land Affairs).

[8] I am in my view bound to refer in some detail to the averments made by the respective parties relating to the disputed conclusion of the lease agreement.

Relevant facts relating to the alleged conclusion of the lease agreement

[9] The parties have, as I will show below, different versions as to what occurred in relation to the alleged lease agreement, **Annexure SN 14 which is also annexed as Annexure SN 28, record p.167**, the second one containing, incidentally, an important insertion to which I will refer soon and of which the author is unknown.

[10] On the one hand, it is, briefly stated, the First Respondent's contention -

(a) that a lease agreement, which *ex post facto* appears to contain a signature of a certain Mr. Meshack Khoza, was concluded between the First Respondent and the Government of the Republic of South Africa on 12 August 2009, ie. before the Property was transferred to the Government of South Africa (19 July 2010) and to the Applicants (21 November 2011);

(b) that in the event of the Court holding that Mr. Khoza did not have the requisite actual authority to sign the lease agreement, the "*remainder of the respondents*" are estopped from saying that no lease agreement was concluded.

[11] On the other hand, it is the Applicants' contention, referring to various affidavits filed by various officials in the Department of Land Affairs (to which I will refer below), that no such agreement was concluded as is evident, so it is contended, from the lease agreement itself where no date is filled in and any signature appended at the place provided for the signature of the lessor.

[12] There is a dispute between the parties as to what occurred in relation to the alleged lease agreement.

[13] I deal *seriatim* with the respective versions of both parties.

First Respondent's version

[14] It is the First Respondent's version -

(a) that the Second Respondent initially offered to purchase all the properties which were owned by Henriq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd (of which the Hurter brothers were, as already indicated, the only directors) consisting, in addition to the Property, also of two other farms, also portions of the farm Tenbosch 162 JU, at an all inclusive purchase price of R73 270 000;

(b) that the offer was accepted by the two companies;

(c) that subsequent to the acceptance of the offer the Second Respondent reneged on the offer in that a further offer was made at a meeting that was held at the offices of the Regional Land Claim Commission, Mpumalanga on 14 August 2008, namely -

(i) that the Second Respondent offered to purchase the properties at an all-inclusive reduced purchase price of R71 500 000;

(ii) that the Second Respondent would, subsequent to the transfer of the properties to the Second Respondent, enter into a lease agreement with Henriq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd (and not with the First Respondent) in terms of which the companies would lease the properties for a period of five years.

[15] In a letter addressed to the Land Claims Commission on 15 August 2008 by an attorney who seems to have acted on behalf of the sellers at the time, it is confirmed that the offer was accepted subject to a condition that a "*section 42D document*" be signed by the Minister before or on 30 September 2008 (which seems not to have occurred) and that an offer that the properties be leased back to the two companies for a period of five years following the purchase of the properties (which, so it appears from the letter, was also accepted by the companies subject to a written lease agreement being concluded).

(In the opposing affidavit it is contended -

(a) that, although the process ordinarily followed in land claims the land is restored and transferred directly from the owner to the successful claimant, it did not happen in this case because "*competing claims were still pending*" and that those disputes had first to be resolved before the properties could be transferred to the successful claimants so that in this case the properties were first transferred to the Government of the Republic of South Africa;

(b) that, because of this, it was within the knowledge and contemplated by the Second and Third Respondents that "*a period would have followed the sale of the properties to the Second Respondent in which the land would have laid vacant, unless it remained in occupation or was placed in occupation of a party in the period between the sale of the properties and the restoration thereof to the successful claimant*" (which, so it is contended, being the reason for the

underlying decision to have concluded the lease agreement in question.

If this was the reason for the conclusion of the lease agreement, the papers contain no reason or indication why the properties were leased by the First Respondent)

[16] The three properties were, despite the fact that the condition referred to in the letter was not complied with, sold for a purchase price of R71 500 00, but, as is evident from the three deeds of sale, the issue of the lease of the properties did, although the granting of a lease was initially included in the respective (draft) sale agreements, not form part of the lease agreement, but, on the insistence of the Second Respondent, the lease was to be dealt with separately.

[17] According to the First Respondent, however, the sale agreements were concluded on 21 April 2009 on the clear understanding that the Second Respondent, Henriq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd will separately conclude lease agreements in terms of which the Second Respondent would lease the properties to Henriq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd (or their nominee) for a period of five years.

[18] It is against this background that it is now alleged by and on behalf of the First Respondent -

(a) that by 17 April 2009 it was confirmed that the respective sale agreements and lease agreements be prepared by the attorney of Henriq 2617 (Pty) Ltd and

Martiens Landgoed (Pty) Ltd, a certain Ms Karin de Jager, and that a certain Ms. Mthethwa of the Department would attend to minor amendments to the various agreements;

(b) that Ms. De Jager was informed that the respective sale agreements will be signed by the Regional Land Claims Commissioner, Mpumalanga and the lease agree,ment by the Provincial Director General of Land Affairs after the date of the transfer of the properties to the Second Respondent;

(In relation to these contentions a letter dated 17 April 2009 addressed by Ms. De Jager to the Regional Land Claims Commissioner is annexed to the opposing affidavit and marked **Annexure D, record p. 349**, in which it is confirmed that she was acting on behalf of Henriq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd and pointed out that she prepared draft deeds of sale and a lease agreement and that they await confirmation of his "*express intention to lease the properties*" to her clients, being Henriq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd, for a period of five years - it would appear that no response to this letter was received)

(c) that Ms. De Jager, after the conclusion of the sale agreements, attended a meeting (according to the First Respondent on more or less 11 May 2009) with the then Provincial Chief Director in the Department of Rural Development and Land Reform, Ms Leona Archery, being the person duly authorized to conclude lease agreements in order to obtain the assurance that the lease agreements

would be proceeded with and signed if the sale agreements are signed;

(d) that during the meeting Ms Archery called a certain Mr De Kock, a legal representative in the employ of the Department, to attend to finalize the terms of the lease agreements with Ms De Jager whereafter it would be signed by her;

(e) that Ms De Jager furnished the proposed lease agreement to Mr. De Kock on 6 May 2009;

(f) that Ms De Jager was thereafter contacted by Mr De Kock on 12 May 2009 by way of an e-mail informing her that Ms Mthethwa would directly correspond with her with regard to the finalization of the lease agreement whereafter it could be sent to him to arrange for the signing thereof;

(g) that, following various communications between Ms De Jager on the one hand and Ms. Mthethwa and Mr De Kock on the other hand, she was informed that a lease agreement drafted by Ms De Jager (providing for the lease of the properties to the First Respondent (and not to Henriq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd) for a period of five years at an annual rental of R715 008 payable yearly in arrears) was acceptable and that the First Respondent could attend to the signing thereof and to furnish same to Mr. De Kock who would arrange it to be signed by the Acting Chief Director, Mr. Nkosi (as Ms Archery had in the meantime been transferred);

(h) that Ms De Jager then on a date which she couldn't recall (to the best of her recollection it was on the same date the original of the lease agreement was allegedly signed, namely, 12 August 2009), called at the office of Mr. De Kock, but as he was not available she handed the agreement to Mr. Khoza;

(i) that, according to Ms De Jager, Mr Khoza, according to her recollection, either "*left her presence and returned with the copy of the signed lease agreement or ... she left the original of the lease agreement with Khoza and, after having left the offices of the Third Respondent (she) enquired telephonically from Khoza whether the lease agreement was signed and that Khoza informed (her) that it was properly signed*" and that it was thereafter faxed to her;

(j) that the First Respondent and Ms De Jager, acting on the conduct of the Second Respondent and the Third Respondent, did not doubt whatsoever that the signature that appeared on the document furnished was that of an authorized official;

(k) that the First Respondent then took occupation of the properties on 12 August 2009 (and not as provided in the alleged lease agreement on 22 July 2010) and still remains in occupation (it would, however, appear that at that time the Property was still registered in the name of the seller and occupied by the seller).

[19] The Applicants' version, however, differs in various material respects from the First Respondent's version.

Applicants' version

[20] The Applicants deny, as reflected in both their founding and replying affidavits, that any lease agreement as contended by the First Respondent has ever been concluded between the First Respondent and Second Respondent.

[21] In the Applicants' founding affidavit, referring to an occasion on 12 August 2010 when Ms. Mthethwa attempted to arrange a visit to the farm by a prospective tenant, she was informed by Ms De Jager that a lease agreement was already in place.

[22] At Ms Methetwa's request Ms De Jager faxed a copy of **Annexure SN 14 (record p. 143)** to her.

[23] As appears from this document (in addition to what I have already referred to) -

(a) it purports to be a lease agreement concerning all the properties to have been concluded between Leona Archery, in her capacity as Provincial Chief Director in the Department of Rural Development and Land Reform allegedly duly authorized as the Lessor, and Domar Boerdery Belange (Proprietary) Limited, represented by Dirk Wouter Hurter and Douw Anton Hurter alleged duly authorized as the Lessee;

(b) it seems to be signed as lessee by only one of the persons representing the lessee and witnessed by Ms. De Jager;

(c) no date or signature appears at the space provided for at the end of the document for the lessor to sign, but underneath the signature of Ms De Jager appears a signature which is admittedly the signature of Mr. Khoza; (whose signature is not witnessed);

(d) the initials "*MM*" (admittedly the initials of Mr. Khoza) appear at the end of each page and at a number of places where clauses were either deleted or amended.

[24] I need to point out at this stage that, according to the Applicants (and not disputed by the First Respondent) that the application only concerns the one property since it was only this property that eventually became the property of the Inqwenyama Simhulu Trust. In respect of Portions 45 and 61 the trustees of those trusts negotiated a separate lease agreement with the Hurter brothers. According to the First Respondent the agreement was in respect of Portions 45 and 61 terminated on 23 August 2011 when a long-term lease agreement (**Annexure L**) was concluded with the Mjejane Trust.

[25] In denying the existence of a lease agreement the Applicants rely on supporting and confirmatory affidavits deposed to by -

(a) Mr Sam Nkosi, Provincial Chief Director of the Department of Rural Development and Land Reform (**Annexure SN 11, record p. 137**);

(b) Mr. Lucas Mufumadi, Director of Operations of the Department of Rural Development and Land Reform (**Annexure SN 12, record p. 139**);

(c) Ms Thulile Mthethwa, Head of the Legal Unit of the Department of Rural Development and Land Reform (**Annexure SN 13, record p. 141**); and

(d) Mr Mandla Mishack Khoza, who is employed in the Department of Rural Development and Land Reform as Project Coordinator (**record p. 415**).

[26] In particular, responding to the allegations in the First Respondent's answering affidavits dealing with Ms De Jager's allegations as to what occurred on the day she met Mr Khoza, the Applicants filed an additional affidavit by Mr. Khoza annexed to their replying affidavit in which Mr. Khoza states -

(a) that in 2009 (which could have been on 12 August 2009) he spoke to a lady attorney (who could have been Ms De Jager) accompanied by two European men (who he assumed could have been the Hurter brothers), who represented the prospective tenant of the Property and who arrived at their offices;

(b) that the lady wanted to speak to the Acting Chief Director to discuss certain clauses in a document titled "*Lease Agreement*" which was apparently in the process of being negotiated, but he was not available as they arrived without an appointment;

(c) that Mr De Kock with whom they had previously spoken was also not available;

(c) that, although that matter was not his responsibility, he offered his help to hear

what their problem was;

(d) that the lady then indicated that there were certain clauses in the Standard Lease Agreement "*which required some tweaking*";

(e) that he asked her to indicate which clauses were not in order, whereupon, she indicated that clause 4.3 is wrong which she amended in manuscript and then deleted and also changed the name of the lessee to reflect a totally different entity in clause 18;

(f) that she then asked him to witness the signature of the lessee which he did by signing below the word "*Witness*" where she had already signed as a witness, and also to initial all the amendments or additions done in manuscript which he also did;

(g) that she then said she would first go back to her office to finalize the document whereafter she would arrange for signature by the Acting Chief Director;

(h) that she and the two gentlemen then left with the original as signed and witnessed in her possession;

(i) that some days later he contacted her as he had not heard from her and requested a copy of the draft lease agreement which was then faxed to him.

It is common cause that Mr. Khoza was not authorized to sign lease agreement on behalf of the Government of the Republic of South Africa)

[27] As is set out in the Applicants' founding affidavit, and confirmed by Ms. Mthethwa, it is her version -

(a) that after the transfer of the Property to the Second Respondent. the Third Respondent wished to start a process of taking control of farming activities for the ultimate benefit of the beneficiaries by, as first step, finding a tenant or partner to take occupation of portions of the Property as the First Respondent progressed with harvesting;

(b) that for this purpose she contacted the First Respondent's attorney on 12 August 2010 to arrange a visit to the farm by a prospective tenant, but that Ms. De Jager expressed her surprise at this request claiming that a lease agreement was already in place;

(c) that at her request for a copy of the lease agreement Ms De Jager on the same day faxed a copy of the alleged lease agreement (**Annexure SN 14**) to Ms Mthethwa which concerns not only the Property (which is the only property which eventually became the property of the Ingwenyama Simhulu Trust), but also all the other properties which were owned by the entities controlled by the Hurter brothers, but was only signed by the First Respondent;

(d) that on 13 August 2010 in response to a letter received from Ms de Jager Ms Mthethwa addressed a letter to Ms. De Jager recording that no lease agreement was concluded between the First Respondent and the Provincial Land Reform Office and that the purported lease agreement was only signed by the First Respondent;

(e) that Ms De Jager on 16 August 2010 responded by a letter addressed to Ms. Mthethwa averring that the lease agreement was valid and binding and that they were consulting with senior counsel to apply for an urgent order interdicting the Commission from entering into a new lease agreement;

(f) that numerous communications were exchanged between the parties during the period 16 August 2010 to 3 May 2011 in order to resolve the dispute, but to no avail.

[28] On 10 May 2012 the First Respondent launched an urgent application under Case No. 45754/2012 seeking an interdict against certain individuals who staged an unlawful occupation of the Property in which application the First Respondent relied on the purported lease agreement.

[29] In the founding affidavit deposed to by the one Hurter brother, Mr. Douw A Hurter, the purported lease agreement was annexed which is also annexed to the founding affidavit of the Applicants as **Annexure SN 28, record p. 187**).

[30] It is of particular significance to note that at the end of that agreement where Mr. Khoza's signature appears, the word "*lessor*" had been inserted in manuscript.

[31] Although reference was made in the founding affidavit to this insertion, the First Respondent offered no explanation as to how, why and by whom that word had been inserted in the agreement.

Consideration of the defences raised by the First Respondent

[32] The Applicants are the trustees of a Trust which was established for the benefit of a community, the Hhoyi community, for the purpose of acquiring, holding and managing property, which includes land that was the subject of a land claim of which the Property forms a part.

[33] The land claim was settled in favour of the community and the Property was, together with two other farms, referred to as Portions 45 and 61 of the Farm Tenbosch, purchased by the Government of the Republic of South Africa (Second Respondent) from the owners Hentiq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd , of which the two Hurter brothers were the sole directors, for an all inclusive price of R71 500 000.

[34] The Property, having initially been transferred to the Second Respondent, was, together with the two other properties, transferred to the Trust on 21 November 2011, being a date on which the Property was occupied by the First Respondent, being a company other than any of the companies from which the Property was purchased and

of which the two Hurter brothers were also the sole directors who seem to have at all times been in occupation of the Property, apparently like the other properties.

[35] On transfer having been effected to the Trust on 21 November 2011, the Applicants sought occupation of the Property, but the First Respondent (who was, as I have already indicated, not the seller of the Property), claiming the existence of the lease agreement in question, refused to vacate the Property hence this application for the eviction of the First Respondent.

[36] As is apparent from the facts as they appear from the papers and elaborated on in argument at the hearing of this application, the question on which I am actually called upon to pronounce is the question -

(a) whether a valid and enforceable lease agreement was concluded between the First Respondent (Domar Boerdery Belange (Edms) (Bpk)) and the Second Respondent (the Government of the Republic of South Africa); or

(b) if not, whether, regard being had to the history of the events preceding the alleged conclusion of the lease agreement, estoppel can be raised as defence to the contention by the Applicants that the lease agreement is invalid and that no lease was concluded by reason of the fact that an unauthorized signature was appended thereto.

[37] It is correct, as submitted by Mr J D Maritz SC, who appeared together with Mr.

Roelofse on behalf of the Applicants, that if it is held that no lease agreement was concluded, as is contended by the Applicants, the question of estoppel can not arise except, perhaps, if the disputes of fact are held in favour of the First Respondent.

[38] I have for various reasons no doubt that no valid agreement was concluded.

[39] It cannot (and is not) disputed that Mr Khoza, whose identity was, according to the First Respondent's version, later established not authorized to sign lease agreements on behalf of the Second Respondent.

[40] Furthermore, on the face of the lease agreement Mr. Khoza's signature (or the signature of Mr. Nkosi who was admittedly authorized to sign such lease agreements) was not appended to the alleged agreement at the space provided for in the document for the signature of the lessor and no date was inserted in the space so provided. As far as Mr. Khoza's signature is concerned, it is explicitly denied by him that he signed it as lessor (which is not denied by the First Respondent and which has a clear ring of truth, on the one hand, as the whole matter was not his responsibility and, on the other hand, that he was admittedly not authorized to sign agreements of this nature). The First Respondent's belief that the agreement was "*properly*" signed is, although I have reason to doubt to the truth of the belief or to see it as nothing more than an opportunistic defence), is in any event in my view irrelevant. Ms De Jager and, on her advice, the First Respondent could not have believed that the lease agreement was signed by the lessor. One is inclined, in the absence of a proper and acceptable explanation, to think that the word "*lessor*" was later inserted next to the signature of Mr. Khoza to eliminate

any doubt as to whether or not the lease agreement was signed by Mr. Khoza on behalf of the "*lessor*". This agreement (which seems in that regard to be nothing but a forged document) was annexed to papers on 10 May 2012 at a time the First Respondent was well aware of the dispute as to whether or not the lease agreement was a valid and enforceable one (see: **paragraph [27] above**).

[41] There are various other factors which cast serious doubts on the First Respondent's contentions that they had reason to believe that the alleged lease agreement was "*properly signed*" in so far as it may be relevant.

[42] **Firstly**, there is the allegation that the Second Respondent offered, because of the reduction of the initial agreed purchase price, to lease the properties, including the Property, to the sellers, being Hentiq 2617 (Pty) Ltd and Martiens Landgoed (Pty) Ltd, and not the First Respondent. If that was an offer, as is contended by the First Respondent, it does not appear with any clarity and certainty why the Second Respondent would have concluded a lease agreement with the First Respondent which was not a seller.

[43] **Secondly**, I cannot understand why Ms De Jager, who must have noticed that the alleged agreement was not signed at the space provided for the lessor and who must have realized that there is doubt as to whether or not the agreement was duly signed on behalf of the Second Respondent. I have been referred to a decision, (***Chisnall and Chisnall v Sturgeon and Sturgeon 1993 (2) SA 642 (W)***) relating to agreements concluded in terms of the Alienation of Land Act, 1981 (Act 68 of 1981), in

which it appeared that the parties signed the relevant agreement at the wrong places designated in the relevant agreements. In my view those decisions cannot find any application in this matter since no allegations are made that the agreement was signed by the authorized person or was signed at the wrong place.

[44] **Thirdly**, there is the fact (which was not debated fully before me) that the alleged agreement purports to be concluded by Ms Leona Archery as the duly authorized representative of the Government of the Republic of South Africa (who admittedly did not sign the agreement) and by only one of the authorized representatives the First Respondent. If the agreement was in a final stage it is unexplained and a mystery why the name of Ms Archery was not replaced for name of Mr Nkosi who was to the full knowledge of Ms De Jager the relevant authorized official.

[45] **Fourthly**, there is the fact that the word "*lessor*" was falsely, if not fraudulently, inserted next to the signature of Mr Khoza with the obvious intention to convey to the Court hearing the urgent application to which I have already referred to, that the agreement was, notwithstanding the absence of a signature at the space provided for the lessor, duly signed on behalf of the Second Respondent at a stage when it was well-known to the First Respondent that it was disputed that the lease agreement was indeed signed on behalf of the Second Respondent. without disclosing it in that application that the conclusion of the agreement was in dispute.

[46] **Fifthly**, there is the fact that, in so far as the First Respondent relies on an offer made to the sellers of the properties, being Hentiq 2617 (Pty) Ltd and Martiens

Landgoed (Pty) Ltd that the Properties be leased back to the sellers (and not the First Respondent) rendering the underlying reason for the conclusion of the lease agreement not only unexplained, but also irrelevant as a reason for the conclusion of the agreement.

[47] I am accordingly satisfied that no lease agreement was duly concluded between the Second Respondent and the First Respondent.

[48] This brings me to the estoppel issue raised by the First Respondent.

[49] As I have already indicated, I agree with Mr. Maritz SC that if no valid lease agreement has been concluded the issue of estoppel cannot arise.

[50] It may be relevant in so far as the First Respondent relies on the factual disputes between the parties as to what occurred on 12 August 2009 when Ms De Jager (and possibly also the two Hurter brothers) visited the offices of the Department and met Mr. Khoza.

[51] On the one hand, it would seem to be the First Respondent's case, as supported by Ms De Jager, that Mr Khoza, according to Ms. De Jager's recollection, either "*left her presence and returned with the copy of the signed lease agreement or ... she left the original of the lease agreement with Khoza and, after having left the offices of the Third Respondent (she) enquired telephonically from Khoza whether the lease agreement was signed and that Khoza informed (her) that it was properly signed*" and that it was

thereafter faxed to her.

[52] On the other hand, according to Mr. Khoza he, not being responsible for this matter, but having offered his assistance, was requested by Ms. De Jager to initial amendments she effected to the agreement she produced and to sign as a witness at the end of the agreement where she likewise as signed as a witness.

[53] These respective versions do not in my view constitute a real and genuine dispute of facts.

[54] It seems from the opposing affidavit that Ms De Jager was not clear as to what actually occurred on the day in question in the sense that Mr Khoza either took the agreement to a place elsewhere in the building and returned with the agreement as it appears from **Annexure SN 14** and handed it to her or that she left it with him whereafter he informed her that it was properly signed and faxed to her at some later stage.

[55] This version is for various reasons to be improbable.

[56] **Firstly**, it appears, regard being had to the fact that Mr. Khoza is admittedly not authorized to sign lease agreements on behalf of the Government of the Republic of South Africa, to be highly improbable, if not impossible, that he could have said that to Ms De Jager that the agreement was properly signed.

[57] **Secondly**, the version of Ms De Jager that Mr. Khoza on her one version merely handed the document back to her after having returned to his office and on her second version that he later informed her that the agreement had properly be signed, are contradictory.

[58] **Thirdly**, Ms De Jager who seems to be a well trained notary and conveyancer, could have and in my view should have -

(a) if the agreement was handed back to her by Mr Khoza after he went into the building; or

(b) if the agreement was later faxed to her,

noticed that it was not signed at the space provided for the signature of the lessor and, knowing that Mr. Nkosi was the authorized person to sign, enquired from Mr. Khoza as to who indeed signed.

[59] In the face of the explicit evidence of Mr. Khoza that she merely asked him to sign as a witness which on the probabilities seems to me to be the truth, I am satisfied that we are not here concerned with a real and genuine dispute of fact.

[60] This dispute accordingly does not detract from my finding that no valid and enforceable agreement had been concluded.

[601 In any event the defence of estoppel can not be raised in the circumstances of this matter.

[62] It is trite that generally estoppel cannot be raised -

(a) to estop one person from denying the truth of a representation (***Alfred McAlpine & Sons (Pty) Ltd v Transvaal Provincial Administration 1977(4) SA 310 (T) at 335A***);

(b) to validate an otherwise invalid act (***Merriman v Williams 1880 Foord 135;*** *Western Credit Ltd v Mike Coppings's Truck Centre (Pty) Ltd 1966(2) SA 387 (T)*).

[63] In this case the negotiations on which the First Respondent relies were clearly between officials of the Government of the Republic of South Africa and the legal representative at the time acting on behalf of the then sellers, in circumstances where they were obviously not acting as agents of the Applicants and where the Applicants were not consulted and in any event did not participate in such negotiations. Therefore, if anyone did make any representation about the signature or authority of Mr Khoza, it was not done by the Applicants or beneficiaries of the Trust so that the Applicants can be held to any possible misrepresentations by government officials. In any event it does not appear to be the First Respondent's case that any misrepresentation to that effect was made to it.

[64] In terms of section 5 of the Alienation of State Land Act, 1961 (Act 48 of 1961), any lease of State land must be signed by an officer expressly assigned to do that failing which no valid lease agreement can be concluded. In this case it is, as I have already indicated, clear that, on the assumption that Mr Khoza signed the agreement as lessor, Mr Khoza was not authorized to sign agreement of this nature. The First Respondent can accordingly not rely on estoppel to render the agreement valid which is obviously otherwise invalid.

[65] I am accordingly unpersuaded the the First Respondent's defence of estoppel can succeed.

[66] In my view the First Respondent failed to establish any defence justifying its occupation of the Property.

[67] The Applicants' claim is a straightforward *rei vindicatio* based on their ownership of the Property and the First Respondent failed to put up a lawful defence.

[68] In the premises the following order is made:-

1. **THAT** the First Respondent, together with all persons occupying through it the property known as Portion 53 of the Farm Tenbosch 162 JU ("*the Property*"), be ordered to vacate the property forthwith or on such later date as the Applicants may in their sole discretion determine.

2. **THAT**, in the event of the First Respondent and any of the persons referred to in paragraph 1 of this order failing to vacate the Property as directed in paragraph 1 of this order, the Sheriff of this Court, Barberton or any other Sheriff with jurisdiction be authorized and enjoined to evict, if necessary, with the assistance of members of the South African Police Service, the First Respondent, together with the persons referred to in paragraph 1 of this order.

3. **THAT** the First Respondent be ordered to pay the Applicants' costs of this application, including the costs attendant upon the employment of two counsel.

.....
P C VAN DER BYL
ACTING JUDGE OF THE HIGH COURT

ON BEHALF OF THE APPLICANTS — **ADV J D MARITZ SC**
ADV J H ROELOFSE

On the instructions of — **SILINDA - MOKOENA & ASSOCIATES INC**
Building No. 2 Block 2
Monument Office Park
79 Steenbok Avenue
Monument Park
PRETORIA
Ref: Mr. KT Mokoena/PK10002/Phindi
Tel : 012 346 5440

ON BEHALF OF THE FIRST RESPONDENT — **ADV M M RIP SC**
ADV CM RIP

On the instructions of — **KRUGER NAGEL & DE JAGER INC**

c/o BARNARD & PATEL INC
17 Ivey Street
Clydesdale

.../...

PRETORIA
Ref: JE Nagel/dv/D27299
012 343 5042

DATE OF HEARING — 31 January 2013

JUDGMENT DELIVERED ON — 12 February 2013