

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on 08 November 2002
before **Bam AP** and **Meer AJ**,

CASE NUMBER: LCC 16/97

Decided on: 22 November 2002

In the case between:

THE MINISTER OF DEFENCE First applicant

THE PREMIER OF THE NORTHERN CAPE PROVINCE Second applicant

and

KHOSIS COMMUNITY AT LOHATLA First respondent

GATLHOSE COMMUNITY Second respondent

MAREMANE COMMUNITY Third respondent

MINISTER OF AGRICULTURE AND LAND AFFAIRS Fourth respondent

MINISTER OF PUBLIC WORKS Fifth respondent

**REGIONAL LAND CLAIMS COMMISSIONER NORTHERN
CAPE PROVINCE** Sixth respondent

In re:

**Claims by the Gatlhose, Maremane and Khosis Communities concerning the farms known
as Gatlhose Native Reserve and Maremane Native Reserve, Lohatla, Kuruman.**

JUDGMENT

MEER AJ:

[1] The first, second and third respondents seek leave to appeal to the Supreme Court of Appeal against paragraph (a) of an order handed down on 26 August 2002 in an application in terms of section 34 of the Restitution of Land Rights Act¹ (“the Act”). I refer to the parties as in the latter application. Paragraph (a) of the order reads as follows:

1 Act 22 of 1994, as amended.

- “(a) It is ordered in terms of section 34(5)(b) of the Restitution of Land Rights Act 22, 1994 that when any claim in respect of the former Maremane and Gatlhose Reserves, including the part of the Reserves now known as the Khosis area, is finally determined, no part of the land in question shall be restored to any claimant, including the first to third respondents”.

Section 34 of the Act permits a ruling by the Land Claims Court, before the final determination of a claim for restitution of rights in land, that the land claimed shall not be restored for reasons of public interest and prejudice to the public,² thus leaving only the relief of equitable redress³ open to claimants. The order was granted pursuant to a judgment which I delivered and with which the assessor, Mr A Zybrandts, agreed. My colleague Judge Bam, who heard the application with me, handed down a minority dissenting judgment in terms of which he would dismiss the Section 34 application.

[2] Section 34(5)(b), in terms of which the aforementioned order was granted, states:

- “(5) After hearing an application in terms of subsection (1), the Court may-

...

- (b) order that when any claim in respect of the land in question is finally determined, the rights in the land in question, or in any part of the land, or certain rights in the land, shall not be restored to any claimant;”

[3] The Section 34 application arose out of a claim for restitution of rights in land by the first to third respondents in which they claimed title to and rights of beneficial occupation in the former Maremane and Gatlhose Reserves. Most of the claimed land is now a part of the South African National Defence Force Battle School, the largest military training base in the country, situated at Lohatla in the Northern Cape. A portion of the claimed land, inhabited by a small group of people belonging to the Khosis community, is surrounded by the Battle School.

[4] The grounds for appeal and argument in respect thereof on the whole traversed issues which had previously been fully canvassed before the court, and in respect of which reasoned findings are made in my judgment on the basis of the argument presented at the hearing of the

2 Section 34(6) of the Act.

3 In the form of rights in alternative state-owned land or the payment of compensation, as defined in section 1 of the Act.

Section 34 application. It would therefore serve little purpose for me to reconsider all of these here.

[5] I have carefully considered the submissions and argument of both legal representatives. I accept those submitted by Mr Van Rooyen for the first applicant in opposition to the application for leave to appeal. The gist of his argument was to endorse the majority judgment, and is therefore not repeated. In addition he submitted, correctly in my view, *a propos* paragraph [79] of the minority judgment, that as the restoration of a bundle of rights under customary law was not specifically claimed by the first to third respondents, the restoration of these other rights to land was not at issue before us during the hearing of the Section 34 application.

[6] The minority judgment takes issue also with the actual order granted,⁴ finding, in my respectful view incorrectly, that such an order is not contemplated under Section 34(5)(b) of the Act. The other points of departure of the minority judgment, and indeed the reason why it sought to dismiss the application, pertain to the following issues (footnoted with reference to relevant paragraphs in the judgments where the different stances are explained):

- 6.1 the danger to life of an isolated community in the midst of the battlefield;⁵
- 6.2 the costs of decontamination of the Khosis area;⁶
- 6.3 whether a full ventilation of all the issues is necessary before restoration is barred;⁷
- 6.4 the feasibility of providing socio-economic rights to a community in the midst of the battle school;⁸ and
- 6.5 whether there are compelling reasons for granting an order in terms of section 34, barring restoration, prior to the final determination of the claim.⁹

4 Minority judgment at para [82].

5 Minority judgment at para [75]; [86] and [87]; majority judgment at para [22] and [28] with reference to the Heitman and Mechem Reports and generally at para [32]; [33] and [36].

6 Minority judgment at para [74]; majority judgment at para [26] and [36]

7 Minority judgment at para [93]; majority judgment at para [48]-[50].

8 Minority judgment at para [88]; majority judgment at para [30].

9 Minority judgment at para [86]-[88]; majority judgment at para [45].

[7] I stand by my judgment and would have refused leave to appeal were it not for the dissenting minority judgment. In view of the latter judgment it cannot be excluded that I might be wrong, that another Court might come to a conclusion different to the one I have arrived at and that consequently there could be a reasonable prospect of success on appeal. Leave to appeal is accordingly granted.

ACTING JUDGE YS MEER

I agree that leave to appeal be granted.

ACTING PRESIDENT FC BAM

For the applicants:

Legal Resources Centre, Johannesburg.

For the respondents:

Adv P R van Rooyen SC, Adv H S Havenga instructed by State Attorney, Pretoria.