IN THE *SABWIL* HUMAN RIGHTS COURT

THULAMELA CHAMBERS, SANDTON Case no: 1312/2017

In the matter between:

BAKWENA BA MARE Applicant

and

GRANTHAM, MARY 1st Respondent

DIRECTOR-GENERAL-
DEPARTMENT OF RURAL AND LAND REFORM 2nd Respondent

MINISTER FOR RURAL DEVELOPMENT
AND LAND REFORM 3rd Respondent

2017 SHRC Case – section 25

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1 The applicant is the Bakwena Ba Mare, a community that successfully applied in terms of the Restitution of Land Rights Act 22 of 1994 for restitution of land around Buccleuch and Midrand, South Africa. A significant portion of this land is a piece of privately owned land, the Downton Farm, a 97 hectare farm bordering

Buccleuch and across the highway from the Waterfall Estate and the Mall of Africa.

2 Pursuant to this award, the owner of the land prior to the restitution award, Ms Mary Grantham, and the Department of Rural and Land Reform (represented by the second and third respondents) entered into negotiations and a dispute arose on the value of the land. The deadlock prejudices the applicant who places the discord before the SABWIL Human Rights Court. The applicant has waited many years for the restitution of the land and the delay in ownership transfer owing to the dispute is in intolerable.

3 The first respondent is Mary Grantham, a fifty year old widow. She is the last surviving daughter of Earl Grantham and inherited the Downton Farm from him.

4 The Department alleges that at present the land is zoned as agricultural land and is prepared to pay R940 000.00. Ms Grantham alleges that this calculation fails to take into consideration the current process underway to rezone the land as commercial property and the plans to develop it accordingly. She says that the true value of the land is therefore R15 791 388.00, but she is prepared to accept no less than R10 000 000.00 for the land.

5 The Department insists that the proper calculation of the land must be based on its current use.

6 Ms Grantham avers that this is incorrect. She says that the process for rezoning and developing the property is well under way. Many of the permits have already been filed and are awaiting approval and, of concern, a special purpose vehicle (the Downton Development Corporation 81 (Pty) Ltd) has been set up for the development, and it has accumulated a significant amount of loans to fund the development, for which Grantham has signed herself as surety. Grantham alleges that the total amount spent or secured over the farm amounts to R900 000.00.

7 Over and above this, the farm is her only asset. She explains that after being widowed at the age of thirty she moved back home with her father and began to work together with him on the farm. Gradually she took over the entire operation thereof. Aware of this, Mr Grantham, while catering for his other two surviving daughters, made a specific provision in his will that the farm and all its assets be inherited by her alone.

8 Ms Grantham argues that if the future potential land use is disregarded in the compensation calculation she will suffer a severe

injustice. If the Department's position were to be accepted, the net effect would be that her means of survival and her entire net worth would be eliminated. This is because she would remain liable as surety for the debts of the Downton Development Corporation, which would draw almost all of the compensation awarded by the state. On the other hand, the Community would benefit from the award of land that is in prime position for future development and, if properly developed, in less than a decade shall be worth at least half a billion (R500 000 000.00) Rand.

9 She alleges that she has never studied or developed a career, and instead was totally dependent on her husband until his death, and thereafter on her father and the Downton Farm. The plan to develop the farm into commercial property was intended to provide for her retirement and to ensure that she had sufficient means to live until her death. She argues that a failure to take her personal circumstances into account results in compensation that is not just and equitable.

10 The Department argues that the land must be considered in its historical context. It was first acquired by the Grantham family in 1920, the community residing thereupon having been forcibly removed a few years earlier. Its use has, since that date, always

been agricultural. To date it has remained a successful farming operation that in recent days operated as a craft beer brewery. It is still marked as agricultural land, and has been valued by the City of Johannesburg at R940 000.00.

11 The Department further warns that if Ms Grantham's argument is to be accepted, the land reform process would become unsustainable. It would mean that the simple earmarking of land for commercial development will result in the rapid escalation of the price of land, and thereby make compensation entirely unaffordable. It also argues that the individual circumstances of owners should not be taken into account, and that the matter should remain confined to concerns pertaining to the land (such as the factors listed in section 25(3) of the Constitution).

12 Having read through the papers, the 2017 SHRC asks the first and second respondents for submissions on the following:

> **What amount, if any, is just and equitable compensation taking into account the spirit, purport and objects of the Constitution and sections 25(2) and (3) thereof?**

13. In order to motivate the 'just and equitable compensation' payable to the Ms Grantham you are invited to have regard to:

13.1 apposite case law including *Msiza*[1] ;

13.2 the appropriate method to determine the value of the property;

13.3 the weight that must attach to the market value of the property relative to the other factors;

13.4 a proposed starting point for the compensation analysis;

13.5 whether the SHRC is confined to factors pertaining to the land in making a determination on the appropriate amount of compensation, or may it (and should it) consider the circumstances of the owner of the land and

13.6 any other relevant criteria that the SHRC must consider including whether the application of the *Pointe Gourde* principle applies.

14. The legal representatives of Ms Grantham and those of the Department are to prepare written heads of argument advancing their client's case, no more than ten pages each. Kindly email this to the

[1] 2016 (5) SA 513 (LCC) rw 2017 ZASCA 130

SHRC Registrar per email address shrc.sabwil@gmail.com no later than 8 December 2017, 10am. The written argument will be forwarded to the SHRC Justices and the opposing party.

15. At the hearing set down for 13 December, 10am, oral argument in the main is allowed per party at maximum five minutes for the senior counsels and in reply three minutes for each junior. There is a Silk and junior counsel per party. Each party compiles written heads of argument. The senior counsel argues in the main and the junior in reply.

16. Each senior and junior counsel team is assigned two *SABWIL* Luminaries. The first Luminary hails from the South African Human Rights Commission whilst the second is a practising advocate. The former is a guide on research whilst the latter can direct you in the argument. The SHRC senior and junior counsels do the work and not the Luminaries.

17. A *SABWIL* Alumni who participated in the 2016 SHRC is available for guidance on court protocol. This will be communicated in due course.

18. Please ensure that the SHRC counsel is at Thulamela Chambers 08.45 am, 13 December, 2017. The 2017 SHRC programme follows shortly after the heads of argument are filed.

On this 3 November 2017 at Sandton

The Registrar, SHRC