IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case number: **28475/2020**

In the matter between:

BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD	Plaintiff
and	
THE CITY OF EKURHULENI METROPOLITAN MUNICIPALITY	First Defendant
MINISTER OF AGRICULTULRE, LAND REFORM AND RURAL DEVELOPMENT	Second Defendant

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FIRST DEFENDANT IN RECONVENTION'S PLEA TO PLAINTIFF IN RECONVENTION'S COUNTERCLAIM

The First Defendant in reconvention (the Plaintiff in convention) pleads as set out below to the counter claim of the Plaintiff in reconvention (the First Defendant in convention).

The parties are referred to below as in convention.

1.

Ad paragraphs 1 to 6 of the counterclaim

The contents of these paragraphs are noted.

2.

Ad paragraph 7 of the counterclaim

2.1 Annexure A consists of *facta probantia* and argument to which the Plaintiff is not required to plead. In any event, the motivation for the offer of R0 is irrelevant and the contents thereof are denied.

2.2 The Plaintiff pleads as set out below to the specific paragraphs of the First Defendant's plea which are incorporated by reference in its counter claim.

2.3 **Ad paragraphs 3.1 to 3.4 of the First Defendant's plea**

2.3.1 Save to admit the contents of paragraph 3.1 of the First Defendant's plea, the contents of these paragraphs are denied. It is specifically denied that the Plaintiff in this matter is not entitled to the payment of any compensation.

2.3.2 The Plaintiff repeats the contents of paragraph 3 (including subparagraphs) of its particulars of claim.

2.4 **Ad paragraph 3.5 of the First Defendant's plea**

2.4.1 The compensation to which the Plaintiff is entitled is in an amount of R30 055 000,00.

2.4.2 The Plaintiff repeats the contents of paragraph 6 *alternatively* paragraph 6A of its particulars of claim.

2.4.3 Save as set out above, the contents of this paragraph are denied.

2.5 **Ad paragraph 3.6 of the First Defendant's plea**

2.5.1 It is denied that the Expropriation Act is unconstitutional and invalid as alleged or at all. The Plaintiff pleads that it can and must be interpreted and applied in accordance with the Constitution as set out in paragraph 6 of its particulars of claim.

2.5.2 In any event, the Plaintiff is entitled to just and equitable compensation in terms of section 25(3) of the Constitution as pleaded in paragraph 6A of the particulars of claim.

2.6 **Ad paragraphs 4.1 and 4.2 of the First Defendant's plea**

2.6.1 Save to note the contents of paragraph 4.1 of the First Defendant' plea, the contents of these paragraphs are denied.

2.6.2 The Plaintiff repeats the contents of paragraph 4.1 and 4.2 of its particulars of claim.

2.7 **Ad paragraphs 5.1 to 5.7 of the First Defendant's plea**

2.7.1 The contents of these paragraphs are admitted insofar as they accord with the wording of section 14 of the Expropriation Act, 1975 and section 25(2) and 25(3) of the Constitution.

2.7.2 Save as set out above, the contents of these paragraphs are denied.

2.7.3 It is specifically denied that the Expropriation Act is unconstitutional as alleged or at all. The Plaintiff pleads that it can and must be

interpreted and applied in accordance with the Constitution as set out in paragraph 6 of the plaintiff's particulars of claim.

2.8 **Ad paragraph 5.8 of the First Defendant's plea**

The contents of this paragraph are irrelevant to the Plaintiff's case and it is in any event denied that this is an appropriate case for the application of the statement in paragraph 5.8.

2.9 **Ad paragraphs 7.1 and 7.2 of the First Defendant's plea**

2.9.1 The contents of these paragraphs are denied. The Plaintiff repeats the contents of paragraph 5 of its particulars of claim.

2.9.2 It is specifically denied that the Expropriation Act is unconstitutional as alleged or at all. The Plaintiff pleads that it can and must be interpreted and applied in accordance with the Constitution as set out in paragraph 6 of the plaintiff's particulars of claim.

2.10 **Ad paragraph 8.1 of the First Defendant's plea**

Save to admit that the expropriation of the property was for a public purpose, the contents of this paragraph are denied.

2.11 **Ad paragraphs 8.2 and 8.3 of the First Defendant's plea**

2.11.1 The Plaintiff admits that section 25(3) of the Constitution requires just and equitable compensation taking into account all relevant factors including market value.

2.11.2 The Plaintiff repeats the contents of paragraph 6 alternatively paragraph 6A of the particulars of claim.

2.11.3 Save as set out above, the contents of these paragraphs are denied.

2.12 **Ad paragraph 8.4 of the First Defendant's plea**

2.12.1 The Plaintiff admits that the expropriation of the property is for a public purpose.

2.12.2 The Plaintiff further admits that the First Defendant had regard to the factors set out in paragraph 8.4.1 to 8.4.8 of the plea but denies that the First Defendant was entitled to rely on the factors set out therein for purposes of quantifying the offer of compensation. The Plaintiff further denies that the said factors are correct in fact and pleads that they are in any event irrelevant.

2.12.3 The Plaintiff denies that it held the property for speculative purposes or that it was unused.

2.12.4 The Plaintiff pleads that the relevant factors are as set out in paragraph 6A of the particulars of claim.

2.12.5 Save as set out above, the contents of this paragraph are denied.

3.

Ad paragraphs 8 to 12 of the counterclaim

3.1 The contents of these paragraphs are denied.

3.2 The Plaintiff repeats the contents of paragraphs 3 and 4 of its particulars of claim.

3.3 The Plaintiff further pleads that section 12(1) and 12(2) of the Expropriation Act, 1975 can and must be interpreted and applied in accordance with the Constitution as set out in paragraphs 5 and 6 of the Plaintiff's particulars of claim.

3.4 In the alternative, the Plaintiff repeats the contents of paragraph 6A of the particulars of claim.

4.

Ad paragraphs 13 and 14 of the counterclaim

The contents of these paragraphs are denied.

5.

Ad paragraphs 12 to 14 of the counterclaim

The contents of these paragraphs are denied.

6.

Ad paragraph 15 of the counterclaim

6.1 The State is obliged, in terms of section 25(2)(b) read with section 25(3) of the Constitution, to pay an amount of compensation for an expropriated property which is just and equitable having regard to all relevant factors including market value and which reflects an equitable balance between the public interest and the interest of those affected.

6.2 Except as aforesaid, the remainder of the contents of this paragraph is denied.

7.

Ad paragraph 16 of the counterclaim

The content of this paragraph is denied.

8.

Ad paragraph 17 of the counterclaim

The content of this paragraph is denied.

WHEREFORE THE PLAINTIFF PRAYS FOR AN ORDER AS FOLLOWS:

That the First Defendant's counterclaim be dismissed with costs.

THUS DATED AT PRETORIA ON THIS 18th DAY OF JANUARY 2021.

G L GROBLER SC

J L GILDENHUYS SC

I HLALETHOA

COUNSEL FOR THE PLAINTIFF

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AND TO: **MASHIANE, MOODLEY & MONAMA INC.**
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