

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG**

In the matters between :

CASE NUMBER : LCC 4/97

S MKWANAZI

Plaintiff

and

**BIVANE BOSBOU (PTY) LTD
MINISTER OF LAND AFFAIRS**

First Defendant
Second Defendant

CASE NUMBER : LCC7/97

S S MSIMANGO

Plaintiff

and

**J P DE VILLIERS
THE MINISTER OF LAND AFFAIRS**

First Defendant
Second Defendant

CASE NUMBER : LCC9/97

M NGEMA, M MHLONGO and Z NGEMA

Plaintiffs

and

**C M F VAN DER WALT
THE MINISTER OF LAND AFFAIRS**

First Defendant
Second Defendant

CASE NUMBER : LCC10/97

M P MDLETSHE

Plaintiff

and

**N J NXUMALO
AYR BOERDERY CC
THE MINISTER OF LAND AFFAIRS**

First Defendant
Second Defendant
Third Defendant

JUDGMENT

GILDENHUYS J :

Background

[1] In four separate cases, plaintiffs obtained eviction orders from Magistrates' Courts against defendants, in consequence whereof the defendants were ejected from farms where they were

living. Those defendants have now, as Plaintiffs in four separate actions before this Court, asked for orders that the evictions be declared unlawful, that they be reinstated as labour tenants, alternatively be declared to be labour tenants, and for further relief which, in some cases, includes awards of damages. Labour tenants are given extensive protection under the Land Reform (Labour Tenants) Act, No 3 of 1996 (hereinafter “the Act”). These cases turn on the ambit of that protection, and on this Court’s jurisdiction to adjudicate thereon.

[2] The Defendants in the four actions before this Court (to whom I shall refer as “the Defendants”) filed pleas challenging this Court’s competence and jurisdiction to grant the orders prayed for. The parties agreed to the prior adjudication of those issues in advance of the main hearing¹. Issues of competence and jurisdiction which arose in the four cases were consecutively argued before this Court on the same day. It is expedient for the Court to deal with all four cases in the same judgment. The parties consented to this.

Jurisdiction to declare the ejection unlawful

[3] In each of the cases, the Plaintiffs asked this Court to declare their ejection from the farms to be unlawful. This Court is a creature of statute.² It has no jurisdiction beyond what is given to it in terms of a statute,³ expressly or by implication.⁴ It has no power, except possibly in

¹ This is permissible under Rule 57 of the Rules of the Land Claims Court.

² It was established by section 22(1) of the Restitution of Land Rights Act No 22 of 1994. See in this connection *Zulu and Others v van Rensburg and Others* 1996 (4) SA 1236 (LCC) at 1244I - 1245A.

³ This court is given specific powers relating to evictions under sections 7, 8, 9, 10, 12, 13 and 14 of the Act, and general powers under sections 29, 30, 32, 33 and 34 of the Act.

⁴ Jurisdiction may be granted to a court under implied authority. See *Hatfield Management Board v Mynfred Poultry Farm (Pvt) Ltd* 1963(1) SA 737 (SR) at 739F :

“It is however, recognized that authority may be implied as well as expressed and when the Act gives jurisdiction to the court on the main subject in dispute its purpose is not to be defeated because the ancillary powers which are necessary to enforce that jurisdiction have not been specifically mentioned.”

See also *Chunguete v Minister of Home Affairs and Others* 1990 (2) SA 836 (W) at 842I; *National Party v Jamie N O and Another* 1994 (3) SA 483 (EL AT : WCD) at 492H - I and *Zulu and Others v van Rensburg* supra n 2 at 1246 H -I.

review proceedings (which these proceedings are not), to declare anything done under the order of another court to be unlawful. If the Plaintiffs want to attack such an order, they must institute appeal or review proceedings in a court of competent jurisdiction, which court, in appropriate cases, could be this Court.⁵

Reinstatement as labour tenants

[4] The Plaintiffs before this Court (to whom I shall refer as “the Plaintiffs”) alleged that, at all relevant times, they were labour tenants, and that they are entitled to apposite protection under the Act. One of the purposes of the Act is to provide for security of tenure of labour tenants.⁶ The date of commencement of the Act is 22 March 1996. Notwithstanding this date, some of the protections provided by the Act were extended back to 2 June 1995.⁷ This includes the reinstatement of labour tenants who vacated a farm or were evicted between 2 June 1995 and 22 March 1996. Reinstatement can be achieved under section 12 of the Act, which reads as follows:

“12. Reinstatement

- (1) A person who -
- (a) in terms of section 3 would have had a right to occupy and use land if the provisions of this Act had been in force on 2 June 1995; and
 - (b) between 2 June 1995 and the commencement of this Act vacated a farm or was for any reason or by any process evicted,

may institute proceedings in the Court for an order of reinstatement of such rights.

- (2) The Court may, subject to such conditions as the Court may impose, make an order -
- (a) that a person referred to in subsection (1) be regarded as a labour tenant or his or her associate for the purposes of this Act;
 - (b) for the reinstatement of a labour tenant or his or her associate on such terms as it deems just;

⁵ See sections 13(2) and (3) and 32 of the Act.

⁶ See preamble to the Act.

⁷ See sections 3(1) and 12(1) of the Act.

(c) for the payment of compensation, having regard to the provisions of section 10; and

(d) for costs.

(3) ...”

[5] The dates on which eviction orders were obtained against the Plaintiffs, and the dates on which they were actually ejected, are as set out hereunder.

Case number	Plaintiffs	Date of judgment	Date ejected
4/97	Mkwanazi	15 June 1995	20 September 1995
7/97	Msimango	26 April 1996	14 May 1996
9/97	Ngema, Mhlongo and Ngema	5 April 1995	November 1995
10/97	Mdletshe	8 March 1996 ⁸	3 October 1996 ⁹

[6] The fount and source of the Court’s jurisdiction to reinstate a person as labour tenant is section 12 of the Act.¹⁰ A person may apply for reinstatement under section 12 if that person meets the following two requirements :

- he or she was a labour tenant (as defined in the Act) on 2 June 1995¹¹; and
- between 2 June 1995 and 22 March 1996, he or she vacated a farm or was by any process evicted¹².

⁸ On 17 October 1995 the parties signed a deed of settlement in terms of which plaintiff agreed to vacate the farm. The deed of settlement was made an order of the magistrate’s court. The plaintiff did not vacate the farm, and on 8 March 1996 a default judgment was obtained against him on the deed of settlement.

⁹ Although the papers of the Plaintiff contain a different date, it was agreed, during argument, that 3 October 1996 is the correct date.

¹⁰ Quoted in par 4 above.

¹¹ Section 12(1)(a) read with section 3(1) of the Act.

¹² Section 12(1)(b) of the Act.

First reinstatement requirement : comply with statutory requisites to be a labour tenant

[7] To meet the first requirement for reinstatement, the Plaintiff must comply with all the statutory requisites of the definition of a labour tenant.¹³ The definition¹⁴ reads as follows :

“labour tenant means a person -

- (a) who is residing or has the right to reside on a farm;
- (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
- (c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm,

including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3(4) and (5), but excluding a farm worker.”

The only aspect of the definition which I was asked to adjudicate upon at this stage, is whether “residing”, as used in par (a) of the definition, means “lawfully residing”. Whether the Plaintiffs comply with the requisites of the definition of “labour tenant” stands over for decision at the main trial.

[8] The word “reside” has not acquired any technical content and can have a wide variety of meanings.¹⁵ In each case, it must be determined what meaning the legislature had in mind.¹⁶ The following content given to the word “reside” by Baker J in the matter of *Barrie NO v Ferris and*

¹³ See *Mahlangu v De Jager* 1996(3) SA 235(LCC) at 241 E - F and *Ngcobo and another v Van Rensburg and others*, LCC18/97, 4 December 1997, as yet unreported

¹⁴ In section 1(xi) of the Act.

¹⁵ *Tick v Broude and Another* 1973(1) SA 462(T) at 469E.

¹⁶ *Buck v Parker* 1908 TS 1100 at 1104.

*another*¹⁷, where it was used in a will, conforms in my view to what the legislature intended by using the word “residing” in the definition of labour tenant :

“‘reside’ means that a person has his home at the place mentioned. It is his place of abode, the place where he sleeps after the work of the day is done . . . It does not include one’s weekend cottage unless one is residing there . . . The essence of the word is the notion of ‘permanent home’ ”.

This accords with the dictionary definition of “reside” given in *The New Shorter Oxford English Dictionary*¹⁸ :

“dwell permanently or for a considerable time, have one’s regular home in or at a particular place”.

[9] In the context of the four cases now before this Court, the Plaintiffs’ residence may have been unlawful because its contractual basis may have terminated, or because it was contrary to an order of court. The plain meaning of the word “reside” does not exclude residence under such circumstances. If a person has his or her home at a particular place, he or she resides there, whether it is legal or not. This interpretation accords with the purpose of the Act, viz to give protection to labour tenants who would otherwise be required to vacate the farms where they live because their contractual or common law rights to live there had terminated.

Second requirement for reinstatement : meaning of “vacated”and “by any process evicted”

[10] To decide whether the Plaintiffs meet the second requirement for reinstatement, it is necessary to determine the meaning of the terms “vacated” and “by any process evicted”. Where there is doubt, a meaning must be given to the terms which accords with the general purpose of the Act. It is not necessary, for purposes of this judgment, to interpret the term “for any reason evicted”.

¹⁷ 1987(2) SA 709 (C) at 714F.

¹⁸ Brown (ed), *The New Shorter Oxford English Dictionary* Volume 2 (Clarendon Press, Oxford, 1993) at 2560.

[11] A person “vacates” a farm when he or she actually quits the farm.¹⁹ The dictionary definition of “vacate” is to “leave, cease to occupy”, to “make vacant” or to “deprive of an occupant or holder”.²⁰ This can occur voluntarily or involuntarily.

[12] The meaning of “evict” presents more problems. The dictionary definition of “evict” is “expel from land or a building, usually by legal process” or “drive out”²¹. The phrase “by any process evicted”, as used in section 12(1)(b) of the Act is, in my view, of sufficiently wide ambit to include expulsion through legal process. When is a person “expelled” through legal process? Plaintiffs submitted that this happens when legal proceedings for an eviction order are instituted. The initiation of legal proceedings for an eviction does not, in my view, constitute an expulsion, because such proceedings would not necessarily result in an eviction order. There may be a valid defence. Expulsion certainly occurs upon the implementation of an eviction order through the actual ejection of a person pursuant to a writ of ejection. Can it also occur earlier, when the eviction order is made? The importance of the date lies in the fact that only persons who “vacated” a farm or were “by any process evicted” between 2 June 1995 and 22 March 1996 are entitled to apply for reinstatement under section 12(1) of the Act.

[13] If the ambit of the phrase “by any process evicted” is restricted to actual ejection through some form of process, it would leave a person against whom an eviction order was granted before 22 March 1996 but who was actually ejected after 22 March 1996, without protection²². This would create a gap in the continuous protection which the legislature must have intended to give to labour tenants under the Act. In terms of section 13(1) of the Act, the provisions of sections 7 to 10 of the Act become applicable to pending court proceedings as from 22 March 1996. If an eviction order has already been granted on 22 March 1996, the proceedings

¹⁹ *Sapro v Schlinkman* 1948(2) SA 637(A); *Bourbon-Leftley v Turner* 1963(2) SA 104 at 106F - 107D.

²⁰ *The New Shorter Oxford English Dictionary* (Vol 2) supra, n 18 at 3537.

²¹ *The New Shorter Oxford English Dictionary* (Vol 1) supra, n 18 at 867.

²² This happened in the *Mdletshe* case. See par 5 above and par 15 below.

are no longer pending, and there would be nothing to stop the implementation of the order, even after 22 March 1996.²³ This result the legislature could not have envisaged.²⁴

[14] Having regard to the purpose of the Act, viz to grant protection to labour tenants as from 2 June 1995, it seems to me that the term “was by any process evicted”, as used in section 12(1)(b) of the Act, is wide enough to include the granting of an eviction order by a court.²⁵ The meaning of the word “process” can include court process²⁶. In the context of section 12(1)(b), it can include the court order of eviction²⁷ as well as the writ under which a person is ejected. There may also be other meanings. For purposes of this case, it is sufficient to decide that the ambit of the term “was by any process evicted” includes both the granting of an eviction order by a court and the actual ejection of a person under a writ.

²³ The first Plaintiff (Mkwanazi) applied to the Magistrate’s Court to have the default judgment against her set aside. When this was unsuccessful, she appealed to the Natal High Court. The appeal failed, on the basis that the first Plaintiff had not shown any prospect of proving a labour tenancy agreement. A labour tenancy agreement is not essential for a labour tenancy relationship under the Act. Because judgment in the Magistrate’s Court had already been given on 22 March 1996, the Natal High Court, in a judgment given on 6 May 1996, decided that the provisions of the Act do not apply to the matter. McLaren J held as follows :

“At the outset I should state that the parties . . . were ad idem that the provisions of section 13(1) of the Land Reform Labour Tenants Act 3/1996 are not applicable to the action in the magistrate’s court nor to this appeal. It seems to me as if the parties are correct in that assessment inasmuch as all the indications are that the proceedings in the magistrate’s court terminated at the time when the judgment appealed against was given, and that there were therefore no longer ‘proceedings pending in any court at the time when the said Act came into operation’.”

²⁴ Stratford J A held in *Hatch v Koopoomal* 1936 AD 190 at 209 :

“If, examining results, you find absurdity or repugnance of a kind, which, from a study of the enactment as a whole, you conclude the Legislature never could have intended, then you are entitled so to interpret the enactment as to remove the absurdity or repugnance and give effect to the intention of the Legislature”.

²⁵ This interpretation was considered in *Mahlangu v de Jager* supra, n 13 at 244 A - D, but no decision was made thereon.

²⁶ In *Dorfman v Deputy Sheriff for the Witwatersrand District* 1908 TS 701 at 703 Innes C J described “process of court” as something which “proceeds from the court”. In *Garrett v Lea Hobbs Milton and Company* 1979(4) SA 922 (W) Nicholas J said at 924H :

“‘process of court’, in its limited sense, connotes a mandate, summons or writ by which a person or thing is brought into court for litigation. In its wide sense, however, it may connote any court document employed in the process of litigation”.

²⁷ The term “process” can include an order of court : see *Botes v Botes* 1944 WLD 76 at 78.

[15] It is now necessary for me to determine whether, on the assumption that the Plaintiffs comply with the provisions of section 12(1)(a), there is also compliance with section 12(1)(b), which will empower the Court to order reinstatement of each Plaintiff's rights as a labour tenant. A plaintiff will comply with section 12(1)(b) if he or she either "vacated" a farm or was "by any process evicted" between 2 June 1995 and 22 March 1996. In the Mkwanazi case the eviction order was granted and ejection took place between those two dates. The Plaintiff therefore meets the requirements of section 12(1)(b). In the Msimango case both the eviction order and the actual ejection occurred after 22 March 1996. Consequently, the Court does not have the power to order reinstatement in terms of section 12(1).²⁸ In the case of Ngema, Mhlongo and Ngema, although the eviction order was granted before 2 June 1995, the actual ejection took place between 2 June 1995 and 22 March 1996. In the result, the Court has jurisdiction to order the reinstatement of the rights of those Plaintiffs. In the Mdletshe matter the eviction order was granted between 2 June 1995 and 22 March 1996, while the actual ejection took place after 22 March 1996. Because the eviction order was granted within the period 2 June 1995 to 22 March 1996, the Court has jurisdiction to grant reinstatement of this Plaintiff's rights.

Do the existing orders of the Magistrates' Courts prevent reinstatement

[16] At best for the Defendants, the existing orders of the Magistrates' Courts made against the Plaintiffs could contain findings that the Plaintiffs are not labour tenants. On behalf of the Defendants it was argued, quite strenuously, that the orders did contain such findings, that such findings are *res judicata* and that this Court cannot now come to a different conclusion. The orders made by the magistrates were not made in terms of the Act. Therefore, a finding by a magistrate that any Plaintiff is not a labour tenant can only be a finding that such Plaintiff is not a labour tenant under common law. Although the institution of labour tenancy created under the Act is built on the common law concept, it is something different. The first is a consensual relationship subject to the law of contract. The second is a statutory relationship which comes into existence when a person meets the requirements of the definition of "labour tenant" in section 1 of the Act. It is not

²⁸ Because sections 7 to 10 of the Act applied to the proceedings when the eviction order was granted [see section 13(1) of the Act], this plaintiff's remedy (if any) may lie in an appeal or a review.

founded on *consensus*, and it is regulated by the provisions of the Act.²⁹ Although the Plaintiffs may not be common law labour tenants, the Act entitles them to show that they meet the requirements³⁰ which will enable them to apply for the reinstatement of the rights given to statutory labour tenants under the Act. The magistrates did not make any finding on whether such requirements had been met or not.

[17] The question can also be approached from a different angle. Section 12(1) of the Act creates a new right for a person who meets certain requirements to apply to this Court for an award of the rights of a statutory labour tenant. Where a person who was evicted in terms of an order of a court makes such an application, this Court may, under section 12(3)(b) of the Act, override the eviction order by granting an order of reinstatement.³¹ The use of the word “reinstatement” in section 12(1) is unfortunate. The so-called “reinstatement order” which the Court may make under section 12(1) does not “reinstate” rights which were previously lost : the order creates new rights³². That is the only interpretation I can give to section 12(1). The eviction

²⁹ See *Zulu and Others v Van Rensburg and Others* supra n 2 at 1265 G - H :

“On a proper interpretation of the Act, it is clear that it creates a form of statutory labour tenancy in respect of those persons who qualify under paras (a), (b), and (c) of the definition . . . ”

³⁰ Set out in subsection 12(1) read with section 3(1) and the definition of “labour tenant” in section 1(xi) of the Act.

³¹ Section 12(3) reads :

“Where a person referred to in subsection (1) was evicted in terms of an order of a court -

(a) . . .

(b) the Court shall in addition to any other factors which it deems just and equitable, take into account -

(i) whether the order of eviction would have been granted if the proceedings had been instituted after the commencement of this Act; and

(ii) whether the person ordered to be evicted was effectively represented in those proceedings, either by himself or herself or by another person.”

³² The rights are rights which *would have* existed if the provisions of the Act had been in force on 2 June 1995. The rights did not actually exist.

orders given by the magistrates, and the findings on which they were based, can be no bar to the exercise of the new rights granted under section 12(1) of the Act.

Does the Court have jurisdiction to adjudicate on claims for damages

[18] The Act grants some protection and awards certain rights to statutory labour tenants. The protection, in the main, is protection against eviction.³³ This is contained in chapter 2 of the Act. The rights are mainly rights to acquire land or rights in land. This is contained in chapter 3 of the Act. The Act is curiously silent on other aspects of the statutory labour tenancy relationship. It also does not give this Court jurisdiction to adjudicate on such other aspects. On the one hand, if a land owner should fail to allow a labour tenant his full cropping or grazing rights, it will constitute a form of eviction³⁴, and this Court will have jurisdiction.³⁵ On the other hand, if a land owner should fail to pay a labour tenant any monetary wage to which he may be entitled, this Court will probably not have jurisdiction to grant any relief.

[19] This Court is given specific powers to make orders for the payment of compensation in sections 10(1)(a) and 12(2)(c) of the Act. Compensation under section 10(1)(a) may be awarded when the Court makes an order for the relocation of a labour tenant. It is not applicable in the matters now before this Court. Compensation may also be awarded under section 12(2)(c). The fact that section 12(2)(c) of the Act follows upon section 12(2)(b), which provides for the reinstatement of a labour tenant or his or her associate, coupled with the fact that the protection awarded to labour tenants under chapter 2 (of which section 12 forms part) relate mainly, if not exclusively, to eviction, leads me to the conclusion that awards of compensation under section 12(2)(c) can only be made by this Court if the compensation is for a loss which somehow relates to eviction.³⁶

³³ Eviction has a wide meaning, and includes the deprivation of a right of occupation or use of land. See the definition of “eviction” in section 1(vi) of the Act.

³⁴ See the definition of “eviction” in section 1(vi) of the Act and the analysis thereof in *Zulu and Others v Van Rensburg and Others* supra n 2 at 1259 A - H.

³⁵ Section 5 read with section 29 of the Act.

³⁶ This conclusion finds support in *Mlifi v Klingenberg* (1998) 3 All SA 639 (LCC) at 664a.

[20] This Court has, in my view, no power to award compensation for any damage or loss suffered by any person if such damage or loss does not have some connection with an eviction. For example, an award of compensation in respect of malicious injury to property where such injury was caused in circumstances unconnected to an eviction, would be beyond the jurisdiction of this Court. The claims for damages which some of the Plaintiffs have brought, are in respect of damage to or destruction of their assets. It is not stated under which section of the Act such claims are brought. The only possible section which I could find is section 12(2)(c). If the claims are indeed brought under that section, the Plaintiffs must show that the damage or loss has some connection with an eviction. This was not alleged. Factually there may well be such a connection. The Plaintiffs should be given an opportunity to allege and prove and the Defendants an opportunity to dispute such a connection. Consequently, a decision on whether this Court has jurisdiction to award the damages claimed by some of the Plaintiffs, must stand over for decision at the main hearing.

Conclusion

[21] The decision of the Court on the legal points argued before it on 28 September 1998 is set out hereunder :

- (a) This Court has no jurisdiction in these proceedings to declare that the ejection of the Plaintiffs from the respective farms pursuant to orders made in magistrates' courts, was unlawful.
- (b) It is not required under paragraph (a) of the definition of "labour tenant" contained in section 1 of the Land Reform (Labour Tenants) Act that a person residing on a farm must reside lawfully.
- (c) The Plaintiffs in cases 4/97, 9/97 and 10/97 comply with the requirements of section 12(1)(b) of the Land Reform (Labour Tenants) Act. The Plaintiff in case 7/97 does not comply with the requirements of section 12(1)(b).

- (d) Nothing contained in the eviction orders made in magistrates' courts against the Plaintiffs, nor in any decision of any magistrate preceding such orders, prevent the Plaintiffs from applying for the reinstatement of their rights as labour tenants under section 12 of the Land Reform (Labour Tenants) Act.
- (e) This Court has jurisdiction under section 12(2)(c) of the Land Reform (Labour Tenants) Act to award compensation only in cases where the loss or damage in respect of which compensation is sought, has some connection with an eviction.

JUDGE A GILDENHUYS

I agree

JUDGE J MOLOTO

Heard on: 28 September 1998

Handed down: 23 October 1998

For the Plaintiff :

Mr C Loots (Loots Attorneys) Pietermaritzburg (LCC 4/97, LCC 7/97, LCC 9/97, LCC10/97)

For the Defendants :

Adv C J Van Schalkwyk instructed by *Uys & Partners* (Vryheid) (LCC 4/97)

Mr A B T Van der Merwe (Cox & Partners) Vryheid (LCC 7/97, LCC 9/97, LCC 10/97)