

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In Chambers: MEER J

CASE NUMBER:LCC 62R/99

MAGISTRATE'S COURT CASE NUMBER: 211/99

In the review proceedings in the case between

J A ERASMUS

Applicant

and

B MOTHUALE

First Respondent

B NKOSI

Second Respondent

S MOFOKENG

Third Respondent

S SODWANI

Fourth Respondent

A GORATE

Fifth Respondent

T MOFOKENG

Sixth Respondent

L HLABO

Seventh Respondent

L NKOSI

Eighth Respondent

JUDGMENT

MEER J:

Introduction

[1] This case was sent to the Land Claims Court for automatic review under section 19(3) of the Extension of Security of Tenure Act, No 62 of 1997 (hereinafter referred to as “the Act”). On 8 September 1999, the Magistrate, for the district of Koppies, granted an order for the eviction of the respondents from the applicant’s farm, “Goedehoop”, Koppies, Free State pending the determination of the action for eviction. The eviction of the respondents was to take place on 01 October 1999 if

the respondents failed to vacate the farm by 30 September 1999. The eviction date was extended to 02 November 1999 to enable this Court to review the eviction order. I set aside the magistrate's order on 25 October 1999 and indicated that my reasons would follow. My reasons are as follows:

Factual Background

[2] It appears from the papers submitted to this Court that the respondents were employed by the applicant until they were summarily dismissed on 05 March 1999. Prior to their dismissals they were given numerous written warnings to return to work they refused to do so. There is no information before me whether their services were terminated in accordance with the provisions of the Labour Relations Act as is required by section 8(2) of the Act.¹ After their dismissal the respondents were given 14 days within which to vacate their accommodation on the farm. The respondents refused to vacate the farm and section 9(2)(d) notices were sent to the respondents, the municipality and the Department of Land Affairs on 20 May 1999.

[3] An application for the eviction of the respondents pending the final determination of the action for eviction was launched on 23 August 1999 and a summons for the eviction of the respondents was issued on 24 August 1999. The summons was served on the respondents on 25 August 1999. There is no indication on the papers before me that the application was served on the respondents. However the fact that they were in court on 08 September 1999 suggests that service did occur.

[4] The application was heard on 08 September 1999 in the absence of the respondents. The papers do not indicate the time that the order was made. However, the respondents appeared at the court at 09:30. They informed the court that they had been granted Legal Aid. Their attorney failed to appear and the court, having waited until 10:00 for the respondents' attorney to appear, confirmed

1 Section 8(3) of ESTA provides as follows:

“(3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act.”

the eviction order. The Magistrate granted the application and the respondents were ordered to vacate the farm on or before 30 September 1999. The order further provided that if the respondents failed to vacate the farm on that date the Sheriff was authorised to evict the respondents on 01 October 1999. As indicated in paragraph [1] the date for the eviction was extended until 02 November 1999.

Interim Removal Orders in terms of the Act

[5] It is clear from the papers that the intention of the applicant was to obtain an interim order pending the finalisation of the action. The Act makes provision for such an order in section 15. Section 15 (1) of the Act provides:

“15 Urgent proceedings for eviction

(1) Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that occupier if it is satisfied that-

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land;
- (b) there is no other effective remedy available;
- (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted; and
- d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted. ”

It is clear that all the provisions of section 15 must be complied with before a court may grant an interim order evicting an occupier from any land². There is no indication from the pleadings that the requirements for the granting of an urgent eviction order for removal as required by sections 15 (a)

2 *Uitkyk Farms (Edms) Bpk v Visser and Another*, 6 November 1998, website address: <http://www.law.wits.ac.za/lcc/1998/uitkyksum.html>, *Kgaphola v Mogashoa*, LCC15R/98, 19 January 1999, [1999] JOL 4424 (LCC), website address: <http://www.law.wits.ac.za/lcc/1998/kgaphulosum.html>.

-(d) were present nor that the magistrate satisfied himself thereto before granting the order, as he is required to do by the section. The eviction order must, therefore, be set aside.

[6] I note, in passing, my concern both at the conduct of the respondents' attorney in failing to arrive for the hearing of the application and that the magistrate saw fit, in the circumstances, to proceed with the matter.

Costs

[7] The magistrate ordered the respondents to pay the costs of the application. The issue of costs has been discussed in several judgments of this Court.³ There is no reason on the papers for me to depart from the general practice adopted by this Court not to grant costs except in unusual circumstances. The award of costs against the respondents must be set aside.

Appropriate order

[8] In the circumstances, the proper approach is to set aside the order of the magistrate. I make the following order in terms of section 19(3)(b) of the Act:

The order granted by the magistrate for the district of Koppies in case 211/99 for the eviction of the respondents is set aside in its entirety.

JUDGE Y S MEER

3 *Serole and Another v Pienaar* [1999] 1 All SA 562 (LCC) at 570, *Skhosana and Others v Roos T/A Roos se Oord* [1999] 2 All SA 652 (LCC) at 666c-e. Compare *Karabo and Others v Kok and Others* 1998 (4) SA 1014 (LCC) at 1024J-1025B, [1998] 3 All SA 625 (LCC) at 635g-h..

Handed down on:01 November 1999

For the applicant: *Grimbeek De Hart and van Rooyen, Kroonstad*

For the first, second and third respondents:
Unrepresented