

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG
Court : **MOLOTO J**

CASE NUMBER: LCC19R/98

In the review proceedings in the case between:

JACOB DE WET CONRADIE

Applicant

and

CHARLES LOUIS FORTUIN

Respondent

JUDGMENT

MOLOTO J:

[1] This is an automatic review in terms of section 19(3) of the Extension of Security of Tenure Act, No 62 of 1997 (hereinafter “the Act”) of a judgment of the Additional Magistrate for the district of Worcester granted on 10 December 1998. Applicant is the owner of Kanetvlei farm in the district of Worcester. Respondent is said to be applicant’s erstwhile employee residing on Kanetvlei and is alleged to have voluntarily resigned on 23 July 1997.

[2] Notwithstanding his resignation, the respondent did not vacate his accommodation on the farm, the right to which accommodation arose solely from the employment agreement.¹

[3] The application was brought on an urgent basis. Paragraphs 15 and 16 of the supporting affidavit referred to section 15 of the Act, which provides for urgent applications. Section 15 provides as follows:

“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 the final

¹ Section 8(2) of the Act.

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.”

[4] Section 15 was amended by section 26 of the Land Affairs General Amendment Act, No 61 of 1998, by the addition of a second sub-section which reads:

“15(2) The owner or person in charge shall beforehand give reasonable notice of any application in terms of this section to the municipality in whose area of jurisdiction the land in question is situated, and to the head of the relevant provincial office of the Department of Land Affairs for his or her information.”

Act 61 of 1998 came into effect on 28 September 1998, before this application was launched in the Magistrate’s Court on 5 November 1998. In my view, failure to comply with the sub-section is a fatal defect.

[5] A rule *nisi* was issued on 16 November 1998 in terms of which an interim order was granted for the eviction of respondent from Kanetvlei farm. The rule was returnable on 10 December 1998. On 10 December 1998 the Additional Magistrate made the rule *nisi* a final order. It is not clear from the Additional Magistrate’s record of proceedings whether there were any appearances on behalf of the parties on 10 December 1998. It appears as if the order was granted by default of appearance.

[6] The Additional Magistrate granted a final order in terms of section 15 of the Act, a section

which expressly provides for temporary relief “pending the outcome of proceedings for a final order.”²

[7] Both parties were asked to submit written submissions and the Additional Magistrate was asked to provide reasons for judgment before this review. The applicant’s submissions were received on 28 January 1999 and the Additional Magistrate’s reasons on 3 February 1999. No submissions were received on behalf of respondent.

[8] Although applicant agrees that a section 15 order is an interim order, he submits that the irregular order granted by the Additional Magistrate should be condoned and stand as an interim order and applicant be granted leave to institute proceedings for a final order. Respondent will suffer no prejudice, so the argument goes, because he is currently not being deprived of his accommodation due to the fact that he is being kept in prison by the Correctional Services Department for the offence which precipitated the application in the first place. Respondent is said to be serving a sentence of six months’ imprisonment for the offence.

[9] The Additional Magistrate conceded in his reply that (and I quote) “die aansoek ingevolge artikel 15 Wet 62 van 1997 foutiewelik op 10 Desember 1998 finaal gemaak is” and requests that the order be set aside.

[10] I do not agree with applicant’s submission that the irregular order be condoned and be made interim. Inasmuch as respondent is in prison, applicant will suffer no prejudice by applying for a fresh order of eviction in terms of section 9³ of the Act. This way, all the necessary notices in terms of the Act can be served on all relevant parties, who may make alternative arrangements for respondent.

² Section 15 of the Act; see also *Ngaphola v Magashoa*, 19 January 1999, as yet unreported, at par 2.1.1; *Uitkyk Farm Estates (Edms) Bpk v Visser and Another LCC 60/98*, 6 November 1998, as yet unreported, at par 29; *City Council of Springs v Occupants of the Farm Kwa-Thema 210 [1998] 4 All SA 155 (LCC)* at 157.

³ Unlike section 15, section 9 provides for normal procedure for eviction where there is no urgency. With respondent in prison for six months it does not appear there is still a ground for an urgent application in terms of section 15.

[11] I agree with the Additional Magistrate's view that the order of 10 December 1998 be set aside and accordingly make the following order:

The order of the Additional Magistrate for the district of Worcester made on 10 December 1998 is hereby set aside in whole in terms of section 19(3)(b).

JUDGE J MOLOTO

Handed down on: 16 February 1999

For the applicant:
Basson Blackburn Inc, Paarl

For the respondent:
Unrepresented