

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG
Court : **MOLOTO J**

CASE NUMBER: LCC6R/99

In the review proceedings in the case between:

ROY ALBERTYN
NWANEDI ESTATES (PROPRIETARY) LIMITED

First Applicant
Second Applicant

and

JACKSON BHEKAPHEZULU
ABATANGO TAUWA
BENNET MPILI
RICHARD SIYILA
RICHARD BHUBESI
ELLIOT MQHABA
AMADEA (PROPRIETARY) LIMITED

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent

JUDGMENT

MOLOTO J:

[1] Applicants brought an application in the Magistrate's Court, Paarl, for the eviction of first to sixth respondents from the farm of Nwanedi Properties (Proprietary) Limited and for an order for costs against seventh respondent. Seventh respondent is the employer of first to sixth respondents. Seventh respondent leased a portion of the farm for business purposes, including accommodating first to sixth respondents thereon. However, by agreement the lease was terminated and seventh respondent undertook to vacate the farm together with first to sixth respondents. First to sixth respondents have not vacated the farm. The farm is managed by second applicant.

[2] The application was granted on 25 January 1999 in the following terms:

“Beslissing:

(1) Aansoek word toegestaan plus koste op 'n party/party skaal - kostebevel slegs teen 7de

respondent.

- (2) Respondente 1 - 6 word gelas om die eiendom nie later as 25-02-99 om 14h00 te ontruim.
- (3) By versuim mag die respondente op 1 Maart 1999 uitgesit word.”

[3] The Magistrate sent the case to the Land Claims Court for automatic review in terms of section 19(3) of the Extension of Security of Tenure Act, 62 of 1997 (hereinafter referred to as “the Act”). On receipt of the Magistrate’s Court file I requested the parties to submit written submissions they might have and also requested the Magistrate to provide me with his reasons for judgment. Respondents’ address is not known, so no request was directed to them. Applicants chose not to make any submissions and the Magistrate gave his reasons for judgment. Because of the order I intend making, I do not propose to repeat such reasons. I only wish to draw attention to some provisions of the Act that need to be borne in mind when granting orders for eviction.

[4] Section 11(3) enjoins a court to have regard to certain very specific factors in deciding whether it is just and equitable to grant an eviction order in terms of the section against persons who became occupiers after 4 February 1997. These factors are:

- “(a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties;
- (c) whether suitable alternative accommodation is available to the occupier;
- (d) the reason for the proposed eviction;
- (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.”

[5] I note that, notwithstanding reference to the order being in terms of section 11 of the Act in the heading to his reasons for judgment, the Magistrate does not seem to refer to this section in his reasons for judgment. The Magistrate gave five reasons for his judgment, only one of which, the first, referred to the termination as being lawful, just and equitable, as required by section 11(1) and (2). No reason, however, is given for this conclusion by the Magistrate. I suppose the reason might be that the contracting parties, namely plaintiff and seventh respondent terminated the relationship by mutual agreement.

[6] The provisions of section 11(3) are peremptory and applicable to the respondents who occupied the property in or about September 1997. There is no indication that the Magistrate considered them. I accordingly give the following order:

- (a) the order of the Magistrate's Court made on 25 January 1999 is hereby set aside in whole;
- (b) the case is hereby remitted to the Magistrate's Court for the Magistrate to consider the provisions of section 11(3) in deciding whether it is just and equitable to grant an order for eviction in terms of this section.

JUDGE J MOLOTO

Handed down on: 25 February 1999

For the applicant:
Van Der Spuy & Partners, Paarl

For the respondents:
Unrepresented