

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

CASE NUMBER: LCC19R/00

MAGISTRATE'S COURT CASE NUMBER: 4052/99

In chambers: **MEER J**

Decided on: 22 March 2000

In the review proceedings in the case between:

SPIES JDG

Plaintiff

and

MAHLANGU ML

Defendant

JUDGMENT

[1] This judgment concerns a review in terms of section 19(3) of the Extension of Security of Tenure Act¹ ("The Act"), of an eviction order granted by the Magistrate, Middelburg on 4 January 2000, for the eviction of the defendant from the plaintiff's farm Hoedspruit, Middelburg, on 28 January 2000. The eviction order was granted by way of default judgment, the defendant not having entered appearance to defend. On 16 March 2000 I set aside the eviction order in its entirety and ordered the restoration of defendant as an occupier on the farm on the same terms and conditions as existed prior to 28 January 2000, the date specified for her eviction. I indicated that my reasons would be given at a later stage. My reasons are as follows:

1 Act 62 of 1997

The magistrate erred in granting an eviction order in the absence of compliance with section 9(2)(d)(i) of the Act

[2] Section 9(2) sets out the peremptory requirements for the granting of an eviction order by a court.² These encapsulate both the substantive and procedural requirements which must be fulfilled before a court can grant an eviction order in terms of the Act. Before an eviction order can be granted there must be compliance with all of the requirements specified at section 9(2). There has been a failure to comply with section 9(2)(d)(i) in that the owner (the plaintiff in this case) failed to give the occupier (the defendant in this case) not less than two calendar months written notice of the intention to obtain an order for eviction. Without such notice there can be no order for eviction and accordingly the order stands to be set aside on the basis of this omission alone.

[3] From the particulars of claim attached to plaintiff's summons it would appear that there has been compliance with the other requirements of section 9(2). In compliance with section 9(2)(a) (and the

2 Section 9(2) provides:

“9. Limitation on eviction-

...

- (2) A court may make an order for the eviction of an occupier if-
- (a) the occupier's right of residence has been terminated in terms of section 8;
 - (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
 - (c) the conditions for an order for an eviction in terms of section 10 or 11 have been complied with; and
 - (d) the owner or person in charge has, after the termination of the right of residence, given
 - (i) the occupier;
 - (ii) the municipality in whose area of jurisdiction the land in question is situated; and
 - (iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,

not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.”

reference to section 8³ therein), it is stated that defendant's right of residence was terminated due to her unlawful and intentional conduct in setting fire to and damaging plaintiff's property for three years in a row. In compliance with section 9(2)(b) defendant was given thirty days notice to vacate the property which she failed to do. In compliance with section 9(2)(c) the conditions for the granting of an eviction order at sections 10(1)(a) and (c) are cited.⁴ Finally, in compliance with sections 9(2)(d)(ii) and (iii) the requisite notices were given to the municipality and the relevant provincial office of the Department of Land Affairs. I note that the latter notice is addressed to the Director General of Land Affairs instead of to the head of the provincial office. It was however sent by registered post to the correct provincial office, a fact which leads me to accept that there has been substantial compliance with section 9(2)(d)(iii).

The magistrate failed to comply with section 12(1)(b)

[4] In contravention of section 12(1)(b) of the Act the magistrate failed to determine a date on which an eviction order may be carried out if the occupier has not vacated the land on the date determined in accordance with section 12(1)(a). The date determined by the magistrate in terms of section 12(1)(a) was 28 January 2000. The peremptory compliance with section 12(1)(b) has been emphasized by this

3 More specifically section 8 (1)(b) which states:

“8. Termination of right of residence.-(1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to-

...
 (b) the conduct of the parties giving rise to the termination;”

4 Section 10(1)(a) and (c) provide as follows:

“10. Order for eviction of person who was occupier on 4 February 1997.
 (1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-

(a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach; or
 ...
 (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship”

court in various judgments,⁵ and it is of concern that there continues to be non-compliance therewith. The eviction order thus stands to be set aside for non-compliance with section 12(1)(b).

Failure to comply with section 17(4)

[5] I note also that in contravention of section 17(4) of the Act⁶ the summons only allows a five day period for the defendant to enter an appearance to defend as opposed to the 10 day period provided for in rule 19(1) of the High Court Rules.⁷ This contravention must be guarded against by litigants who are instituting proceedings in terms of the Act.

Delay in referral to Land Claims Court in terms of section 19(3).

[6] Finally I note my displeasure at the fact that this case was only received by the Registrar for review purposes on 13 March 2000, several weeks after the date determined for defendant's eviction (being 28 January 2000) had passed. Given that the eviction order was granted by the magistrate on 4 January 2000, the delay is inexcusable. Delays in referrals of cases for automatic review to the Land

5 See for example *De Kock v Juggels and another* 1999 (4) SA 43 (LCC) at 58C-G; *JS Beukes (Edms) Beperk t/a Dennegeur Boerdery v Jagers and others* LCC 1R/00, 18 January 2000, internet website address <http://www.law.wits.ac.za/lcc/1999/beukessum.html> at para [5] and *De Villiers v Adonis* LCC 3R/00 19 January 2000, internet website address <http://www.law.wits.ac.za/lcc/1999/3R00sum.html> at para [4].

6 Section 17(4) provides as follows:

“17(4) Until such time as rules of court for the magistrates' courts are made in terms of subsection (3), the rules of procedure applicable in civil actions and applications in a High Court shall apply *mutatis mutandis* in respect of any proceedings in a magistrate's court in terms of this Act.”

7 Rule 19(1) provides as follows:

“19(1) Subject to the provisions of section 27 of the Act, the defendant in every civil action shall be allowed ten days after service of summons on him within which to deliver a notice of intention to defend, either personally or through his attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.”

Claims Court have been criticized in various judgments of this Court.⁸ The issue has also been the subject of a practice direction circulated to magistrates by the Court.⁹ It is extremely unfortunate in the circumstances that these delays persist.

JUDGE Y S MEER

For the plaintiff:

Brandmuller-Taljaard Prokureurs, Middelburg

For the defendant:

Unrepresented.

8 See for example *Roux v Lekekiso* LCC13R/98, 16 November 1998, internet website address: <http://www.law.wits.ac.za/lcc/lccalph.html>; [1998] JOL 4157 (LCC) at paras [7] to [10] and *Mthembu v Tango* LCC 25/99, 12 July 1999, internet website address <http://www.law.wits.ac.za/lcc/1999/mthembusum.html>; [1999] JOL 5123 (LCC) at para [2] and [24].

9 The practice direction has also been published in (1999) 2 *Judicial Officer* at page 96.