

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **MEER J**

CASE NUMBER: LCC 36R/00

MAGISTRATE'S COURT CASE NUMBER: 979/00

Decided on 14 June 2000

In the review proceedings in the case between:

Du PREEZ C J

Applicant

and

TSEREMA J

First Respondent

OSUWANE W M

Second respondent

NKOMA J

Third respondent

MADIOPE S L

Fourth respondent

TSHWENE J T

Fifth respondent

MAFISE B

Sixth respondent

NKADIMENG J M

Seventh respondent

SHIKWANE A N

Eighth respondent

THIPE S

Ninth respondent

PAULINA

Tenth respondent

MAKOLA M M

Eleventh respondent

MABULA J

Twelfth respondent

MOSHIA G M

Thirteenth respondent

MONOGE M S

Fourteenth respondent

TSHWAENE J M K

Fifteenth respondent

MOGOSOANE E M

Sixteenth Respondent

MOLEBATSI F D

Seventeenth Respondent

MAKGWALE R M

Eighteenth Respondent

SETLALOGILE H

Nineteenth Respondent

KGAPETSI O C

Twentieth Respondent

MABONA A

Twenty-First Respondent

ANDRIES

Twenty-second Respondent

JUDGMENT

MEER J:

[1] This is a review of an order granted under section 15 of the Extension of Security of Tenure Act¹ (hereinafter referred to as “ESTA”). Applicant brought urgent proceedings in the Brits magistrate’s court for the eviction of respondents from his farm, Volhard, Sanddrif in the Brits area. He had employed the respondents as farm workers, and had provided them with accommodation. The respondents were occupiers under ESTA, whose rights of residence arose from their employment. On 21 February 2000 a temporary order for the removal of respondents was granted by the Magistrate, Brits pending the outcome of proceedings for a final eviction order in terms of section 9 of ESTA. The return day was set for 22 March 2000, and costs were reserved.

[2] Applicant’s affidavit in support of the section 15 application tells a tale of industrial dispute and aggressive confrontations between the parties between 26 January and 15 February 2000. The dispute incorporated two illegal strikes² and failed disciplinary hearings. This culminated in the dismissal of respondents on 3 February 2000 with notice to them to leave their residential quarters by 7 February 2000. Respondents did not vacate the premises, instead they referred the dispute to the CCMA for determination.

[3] The applicant’s affidavit goes on to describe an ugly confrontation at the farm on 15 February 2000. On that day respondents armed with sticks, stones and sharp instruments came upon applicant’s driver and three workers from a neighbouring farm who were doing repair work. The first respondent ordered them to down tools. The applicant intervened and the respondents left. Shortly thereafter respondents, waving their weapons rushed at applicant and a neighbouring farmer. The applicant, fearing for his life states that he fired a warning shot in self defence. The respondents threatened to burn the houses of applicant and a neighbouring farmer, to burn workers’ quarters, and to throw petrol

1 Act 62 of 1997.

2 The strikes occurred primarily because applicant was perceived to be undermining the authority of first respondent, the trade union shop steward amongst the workers, as well as dissatisfaction about the date on which wages were paid.

bombs at them and murder their families. Several other farmers appeared on the scene to help, the police arrived and after a struggle all but four respondents were arrested. Those arrested were locked up at the Brits prison where the urgent application for their removal was served upon them on 17 and 20 February 2000. Personal service also occurred on the other respondents. From the record it would appear that those respondents who were arrested are out on bail, and that their bail conditions prevent them from going onto the applicant's premises.

[4] In compliance with section 15(1) of ESTA applicant's affidavit contains those allegations stipulated at section 15(1)(a) -(d)³ as requirements which have to be satisfied for the granting of an urgent removal order under section 15. In this regard applicant's affidavit attests to a real and imminent danger to his family and property if respondents are not removed and to no other effective remedy being available. The affidavit also states that the hardship to him and his family exceeds that of the respondents if an order for their removal is not made, and he undertakes to reinstate the respondents if a final order is not granted.

[5] In compliance with the peremptory requirement of section 15(2) of ESTA applicant caused a copy of the section 15 application to be served on the offices of the Department of Land Affairs in Brits. He, however, failed to serve the application on the relevant municipality, another peremptory requirement specified at section 15(2), which states:

3 Section 15, which deals with urgent evictions, provides:

(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.

(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.

“ 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” (my emphasis).

The significance of service upon a municipality has been commented upon in several judgments of this Court,⁴ in which it has been held that failure to comply with peremptory service on a municipality comprises a ground for not confirming an eviction order. The municipality, as the relevant local authority, may be in a position to take steps to deal with the situation or appraise of suitable alternative accommodation. Notwithstanding the failure to serve on the municipality, the magistrate granted an interim order for the eviction of respondents on 21 February 2000, and set the return day for 22 March 2000. Sadly despite the fact that the applicant appears to have made out a *prima facie* case for an urgent order under section 15(1), the failure to serve on the municipality beforehand in as required by section 15(2), prevents me from confirming the interim order and thereafter ordering service on the municipality. This omission can be easily rectified by immediate service on the municipality and a recommencement of the application with due service on the respondents, the municipality and the head of the relevant provincial office of the Department of Land Affairs.

[6] I note that on the return day the magistrate was mistakenly of the view that she could not confirm the interim order for eviction, pending the outcome of proceedings for a final order of eviction under section 9 of ESTA, and that she was required to grant a final order. Due to this misapprehension she found, on the basis of *Malan v Gordon & Another*,⁵ that since the dispute over the termination of respondents' employment had not been determined by the CCMA in accordance with the Labour

4 *De Kock v Juggels and Another* 1999 (4) SA 43 (LCC) at para [25]; *Lategan v Koopman* [1998] 3 All SA 603 (LCC); 1998 (3) SA 457 (LCC) at para [13]; *City Council of Springs v Occupiers of Kwa Thema* 2000 (1) SA 476 (LCC); [1998] 4 All SA 155 (LCC) at para [14].

5 1999 (3) SA 103 (LCC).

Relations Act⁶ the applicant could not terminate the respondents rights of residence,⁷ that no final eviction order could be made. Whilst it is perfectly correct that no final order for eviction can ensue under section 9 in these circumstances,⁸ there is nothing to prevent the confirming of an interim eviction order under section 15 on the return day, if the prerequisites of that section are satisfied. Although the transcript of the proceedings is unclear in part and reflects many omissions,⁹ it would appear that the focus of the hearing was not the satisfaction of the requirements for an order under section 15, but considerations about a final order. On the assumption therefore that a final eviction order (which in the circumstances he could not grant), was required on the return day of the section 15 application, the magistrate ordered as follows:

“...that the return date of the Section 15 order is extended sine die. The applicant is ordered to commence proceedings for a final order within 30 days after the termination of the right of residence becomes effective in terms of Section 8 (3) of ESTA.”

Had the requisite notice been served upon the municipality in terms of section 15(2) and had the magistrate been satisfied on the return day as to the requirements specified at section 15(1)(a)-(d), it would have been permissible for an interim order for respondents’ removal to have been confirmed under section 15. The confirmed rule would then have remained an interim order pending the outcome of proceedings for a final order.¹⁰

[7] In the circumstances I substitute the following order in whole for the order granted by the Brits Magistrate on 23 March 2000 in case 979/00:

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- 6 Section 8(3) provides:
“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 (Act 66 of 1995), and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act”
- 7 In accordance with section 8(2) of ESTA
- 8 That is, where a dispute has not been determined in terms of the Labour Relations Act.
- 9 A note from the stenographer attributes the poor record to faulty microphones and tapes, such a situation should not be allowed to persist in courts as it militates against the administration of justice.
- 10 See *Uitkyk Farm Estates v Visser*, LCC 60/98, 6 November 1998, internet website address <http://www.law.wits.ac.za/lcc/1998/uitkyksum.html> para [29.2].

- A The applicant is given leave to recommence the Application in terms of section 15 on the same papers and in strict compliance with the peremptory provisions of the section;
- B The applicant may commence proceedings for a final order once the termination of the right of residence becomes effective in terms of section 8 (3) of ESTA.
- C The parties are ordered to keep away from each other pending the resolution of this matter.

JUDGE YS MEER

For the applicant:

Mr Wright, De Jager & Erasmus Prokureurs, Brits

For the respondent

Mr Maake, Legal Resources Centre, Pretoria