

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **MOLOTO J**

CASE NUMBER: LCC 45R/00

MAGISTRATE'S COURT CASE NUMBER: 115/99

Decided on: 23 June 2000

In the review proceedings in the case between:

SHANNA ROCK PROPERTIES CC

Applicant

and

VAN ZYL E

First Respondent

VAN ZYL D

Second Respondent

JUDGMENT

MOLOTO J:

[1] On 25 May 2000 the Magistrate, Richmond, gave judgment in case number 115/99, in terms of which he granted an order for the eviction of the respondents and their dependants with costs. He suspended the eviction order in terms of section 11(b) of the Land Affairs General Amendment Act, 2000¹ pending the review of the order by this Court. The matter now comes before me for review.

[2] The eviction process is regulated by section 9(2) of the Extension of Security of Tenure Act² (which I shall refer to as "the Act") which provides:

“(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;

1 Act 11 of 2000. Section 11(b) of Act 11 of 2000 amended section 19 of the Extension of Security of Tenure Act, Act 62 of 1997 by the insertion of a subsection 5 which reads:

“(5) Any order for eviction contemplated in subsection (3) shall be suspended pending the review thereof by the Land Claims Court.”

2 Act 62 of 1997 as amended.

- (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 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."

[3] In order, therefore, to determine whether the applicant complied with the requirements of the Act, the requirements of section 9(2) must have been complied with:

(a) Termination of right of residence (section 9(2)(a))

The notice of termination of the right of residence was delivered to the first respondent only, and not to the second respondent. The second respondent became aware of the notice and testified to that effect. There is no requirement that each of the respondents receive a notice of termination, as the second respondent derives her right of residence from her marriage to the first respondent. I am satisfied that this requirement was complied with.

(b) The occupier has not vacated the land within the notice period (section 9(2)(b))

The notice dated 23 February 1999 required the respondents to vacate the land by 31 March 1999. They have not so vacated the land and as at 25 May 2000, when the

Magistrate gave judgment, they were still on the land. Section 9(2)(b) has been complied with.

(c) Conditions for eviction in terms of section 10 or 11 (sections 9(2)(c) and 9(3))

The relevant section is section 11(2),³ which is applicable to occupiers who came onto the land after 4 February 1997. The respondents came onto the property in question in May 1998. The Magistrate commented at some length on the fairness of the applicant's treatment of the respondents. I am satisfied that there would have been compliance with section 11 had a new section 9(3) not been introduced into the Act in March 2000.⁴ Section 9(3) reads:

- “(3) For the purposes of subsection (2)(c), the Court must request a probation officer contemplated in section 1 of the Probation Services Act, 1991 (Act No. 116 of 1991), or an officer of the department or any other officer in the employment of the State, as may be determined by the Minister, to submit a report within a reasonable period-
- (a) on the availability of suitable alternative accommodation to the occupier;
 - (b) indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children, if any, to education;
 - (c) pointing out any undue hardships which an eviction would cause the occupier; and
 - (d) on any other matter as may be prescribed.”

It appears from the papers that the Magistrate has failed to call for a section 9(3) report. It is also clear from the papers that the Magistrate had knowledge of Act 11 of 2000. There is no explanation on the papers for the failure to comply with section 9(3) and I consider this to be fatal to the applicant's case.⁵

(d) Notices to occupier, municipality and Department of Land Affairs (section 9(2)(d))

3 Section 11(2) provides that in circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.

4 Section 9(3) was introduced by section 10 of Act 11 of 2000.

5 *Lusan Premium Wines (Pty) Ltd v Stoffels and Others* [2000] 2 All SA 368 (LCC) at para [13].

The last requirement of section 9 of the Act is that notices of intention to apply for an eviction order must be served on each of the occupiers over the age of 18, the municipality in whose area of jurisdiction the land in question is situated and the head of the relevant provincial office of the Department of Land Affairs.

Service of these notices is regulated by the Regulations⁶ to the Act. Regulation 9(2) provides that “[s]ervice of a notice in terms of section 9(2)(d)(i) of the Act on an occupier must be effected by the sheriff within whose area of jurisdiction the land in question is situated”.

While the regulation has a peremptory wording, regulation 11(2) seems to allow some discretion. It reads:

“(2) If the court hearing the matter is not satisfied that service was effected in accordance with these regulations or if the Court is not satisfied that a copy of the notice was in fact received by the person on whom it was required to be served, it may make such order as it deems fit.”

Whereas there is no proof of service by the sheriff, I am satisfied that the respondents did become aware of the applicant’s intention to apply for an eviction order. This, notwithstanding the fact that there is no record of a notice addressed to the first respondent. Although this is not a minor omission, both respondents attended court throughout the duration of the case. In addition, in the light of the order I intend making, I am satisfied that any prejudice that could have resulted from the omission will be cured.

Service of the notices in terms of section 9(2)(d)(ii) and (iii) of the Act can be effected in various ways as provided in regulation 9(6). Although there is nothing legally wrong with these notices, it would have been helpful to have the municipality and provincial office of the Department of Land Affairs affix their respective date stamps on the copies. As things stand, with one notice addressed to both institutions, it cannot be

determined from the signatures of the respective recipients of the notice, which copy was served on the municipality and which on the Department of Land Affairs.

[4] Order :

- A The order of the Magistrate, Richmond, made on 25 May 2000 in case number 115/99 is hereby set aside in its entirety.
- B The case is remitted to the Magistrate to comply with section 9(3) of the Extension of Security of Tenure Act.
- C The Magistrate must afford the parties a reasonable opportunity to reply to the section 9(3) report.
- D At least two months must have lapsed from the date of service of this judgment on each of the respondents before the parties are given the opportunity to reply to the section 9(3) report.
- E A copy of this judgment must be served on each of the respondents as provided in the Rules of the High Court.

JUDGE MOLOTO

For the plaintiff :
Mr M Dollar of Moore & Company, Camperdown

For the defendants:
Unrepresented.