

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **MOLOTO J**

CASE NUMBER: LCC 62R/00

MAGISTRATE'S COURT CASE NUMBER: 1035/2000

Decided on: 23 August 2000

In the review proceedings in the case between:

HOLT LEISURE PARK (PTY) LTD

Applicant

and

JOSEPHS, R
NEL, C

1st Respondent
2nd Respondent

JUDGMENT

MOLOTO J:

[1] The applicant brought an application in the Magistrate's Court for the district of Wellington under case number 1035/2000 for the eviction of the respondents from the applicant's farm called Doolhof Farm and Oaklands Stud. The application was brought in terms of the provisions of the Extension of Security of Tenure Act.¹ (I shall refer to that Act as "ESTA"). The matter comes before me for automatic review in terms of section 19(3) of ESTA.

[2] The application appears to have been postponed at least twice for the Provincial Director of the Department of Land Affairs, Cape Town to submit a section 9(3) report. No report was forthcoming. There is no duty on the magistrate to postpone an eviction application indefinitely when the Department fails to submit the necessary report. Each application must be considered on its own merits. On the facts, this case appears to be one in which no report was necessary, it being alleged that the first respondent breached section 10(1) read with section 6(3) of ESTA.²

1 Act 62 of 1997, as amended.

2 *Westminster Produce (Pty) Ltd t/a Elgin Orchards v Simons and Another*, LCC 44R/00, 7 July 2000, internet website <http://www/law/wits/ac/za/lcc/2000/44r00sum.html> at paras [16] - [19].

[3] My concern is the granting of costs on the scale of attorney and client when a case for such an order has not been made out. The only justification, given by the applicant, for asking for costs on an attorney and client scale is that the respondents refused to vacate the applicant's farm, thus compelling the applicant to bring the application against the respondents. The court will award costs against a party on an attorney and client scale:

“... where his conduct has been unworthy, reprehensible or blameworthy or where he has been actuated by malice or has been guilty of grave misconduct either in the transaction under inquiry or in the conduct of the case.”³

It is the practice of this Court not to grant costs except in exceptional circumstances.⁴ This practice was extended to cases coming for automatic review in terms of ESTA.⁵ I have, however, taken into account the fact that the respondent has failed to vacate the premises as agreed in October 1999 in the costs order I intend making.

[4] I am satisfied that an eviction is appropriate in this case but as the magistrate appears to have omitted some words from the order, I have decided to set it aside in whole and replace it with a new order. The order of the Magistrate, Wellington, dated 3 August 2000 is set aside in whole and substituted with the following order:

- (1) The respondents, together with their children, must vacate the farm known as Doolhof Farm and Oaklands Stud, district of Wellington, Province Western Cape, within 7 days of service of this order on them.

3 Cilliers *Law of Costs* 3rd ed (Butterworths, Durban 1997) at para 4.15. See also *Nojame v Meyer*, LCC 153/98, 14 June 1999, [1999] JOL 5012 (LCC), internet web site <http://www.law.wits.ac.za/lcc/1999/nojamesum.html> at para [9]; *Ntuli and Others v Smit and Another* 1999 (2) SA 540 (LCC); [1999] 2 All SA 1 (LCC) at paras [25] - [32].

4 See for example *Ntuli* above n3 at para [25]; *Skhosana and Others v Roos t/a Roos se Oord* [1999] 2 All SA 652 (LCC) at 666c - e.

5 *Erasmus v Mothoale and Others*, LCC 62R/99, 1 November 1999, [1999] JOL 5718 (LCC), internet website <http://www.law.wits.ac.za/lcc/1999/erasmussum.html> at para [7].

- (2) If the said respondents and their children have not vacated the farm by the date stipulated in paragraph (1) above, the eviction order may be carried out on the fifth day after the said date referred to in paragraph (1) above.
- (3) The applicant must pay the first respondent the sum of R14 250,00 on the date he and his family voluntarily vacate the farm. In the event of the respondents not vacating the farm voluntarily the sum of R14250,00 must be deposited at the Magistrate's Court, Wellington in which event the first respondent will only receive payment of any balance owing after taxation as set out in paragraph (5) below.
- (4) In the event of the respondents not vacating the farm voluntarily as provided in paragraph (1) of this order the respondents shall be liable for the costs of the application on the party and party scale, otherwise each party is to bear its own costs.
- (5) If the respondents fail to vacate the farm voluntarily as provided in paragraph (1) of this order and become liable for the applicant's costs as provided in paragraph (4) above, then the applicant shall be paid its taxed costs from the sum of R14 250,00 referred to in paragraph (3) before the balance, if any, is paid to the respondent.
- (6) The applicant must serve this order on the respondents.

JUDGE MOLOTO

For the applicant:
Basson Blackburn Attorneys, Paarl.

For the respondent:
In Person.

