

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

CASE NUMBER: LCC57R/00

In chambers: **Meer J**

**MAGISTRATE'S COURT CASE NUMBERS: 339/99
340/99**

Decided on: 29 August 2000

In the review proceedings in the case between:

JOSEPH BAYNES BOARD OF ADMINISTRATION

Applicant

and

DLAMINI, Q

1st Respondent

MADLALA, M

2nd Respondent

JUDGMENT

MEER J:

[1] This is an automatic review in terms of section 19(3) of the Extension of Security of Tenure Act¹ (hereinafter referred to as “the Act”) of an order granted by the magistrate, Richmond on 27 June 2000 for the eviction of the respondents from the property known as Baynesfield Estate owned by the applicant.

1 Act 62 of 1977, as amended.

[2] The eviction order was granted in terms of the Act after the magistrate was satisfied that the applicant's right of residence had been terminated in terms of section 8(4)(a)² of the Act in that the respondents being occupiers over the age of 60 years had committed a breach contemplated in section 10(1)(a)³ read with section 6(3)(c)⁴ of the Act. He found that the breach occurred when the respondents lit several fires on the property without permission during a time of the year when fires were prohibited by the requisite fire regulations due to weather conditions. In so doing the magistrate was satisfied that the respondents had engaged in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity as contemplated at section 6(3)(c) of the Act. The magistrate found moreover that there had been compliance with the peremptory requirements of section 9 of the Act and that the requirement of suitable alternative accommodation did not have to be considered (given that section 10(1)(a) applied to respondents).

[3] I find that I am unable to confirm the eviction order for the simple reason that both the record as well as submissions received for the purpose of this review raise the possibility that the respondents may not be occupiers under the Act, but rather labour tenants under the Land Reform (Labour Tenants) Act⁵ (I will refer to it as the "Labour Tenants Act"). It is also clear that the respondents have applied

2 Section 8(4) states:

“(4) The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and-

(a) has reached the age of 60 years; or

(b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge, may not be terminated unless that occupier has committed a breach contemplated in section 10 (1)(a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.”

3 Section 10(1)(a) states:

“(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.”

4 Section 6(3)(c) states as follows: “An occupier may not engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; ”

5 Act 3 of 1996, as amended.

for an award in land in terms of section 16(1)⁶ of the Labour Tenants Act. If a person is a labour tenant the Act has no application. This much is clear from the definition of occupier⁷ in the Act which specifically excludes labour tenants.

[4] The following extracts from the testimony of Mr Chapi, the Department of Land Affairs land rights officer for the area, refer to the possible labour tenancy status of the respondents. Page 90 of the record states as follows:

“Mr Browne: Now did you told Mr Kennedy there that look these guys satisfies the definition of labour tenants then we will make the necessary subsidy arrangements for them to buy.
Witness 1: Yes I did.

6 Section 16 of the Labour Tenants Act is entitled “Right to Acquire Land.” Section 16(1) states:
“(1) Subject to the provisions of this Act, a labour tenant or his or her successor may apply for an award of-

- (a) the land which he or she is entitled to occupy or use in terms of section 3;
- (b) the land which he or she or his or her family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or his or her family was deprived contrary to the terms of an agreement between the parties;
- (c) rights in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm; and
- (d) such servitudes of right of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which he or she enjoys or has previously enjoyed as a labour tenant,

or such other compensatory land or rights in land and servitudes as he or she may accept in terms of section 18 (5): Provided that the right to apply to be awarded such land, rights in land and servitudes shall lapse if no application is lodged with the Director-General in terms of section 17 on or before 31 March 2001.”

7 “‘Occupier’ means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding—

- (a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);
- (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including as person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
- (c) a person who has an income in excess of the prescribed amount;”

- Mr Browne: And Mr Kennedy said well I am not sure that they satisfied the definition of labour tenants.
- Witness 1: Yes that is why after a
- Mr Browne: Did you talk about perhaps maybe you could reach a compromise for other land to be bought for these people if they were labour tenants?
- Witness 1: The Acts allowed that to protect..”

Page 93 records the following testimony:

- “Mr Browne: Mr Chapi are you disputing that during November 1998 your Department issued section 17 notices that these people were labour tenants to Baynesfield Estate.
- Witness 1: I don’t say this did not happen but I say that I do not remember whether this happened before we took the history of the people.”

[5] Mindful of the jurisdictional problems the above testimony posed vis a vis potential labour tenants being evicted under ESTA, I invited the Department of Land Affairs, the magistrate and the parties to make submissions about the possible labour tenancy status of the respondents and on the status of the application for an award of land by the respondents in terms of section 16 of the Labour Tenants Act. Submissions were received from applicant’s attorney and Mr Chapi of the Department of Land Affairs. The applicant’s attorneys state in their submissions that on 16 November the Director General for the Department of Land Affairs served a notice on applicant in terms of section 16(1) and 17(1)⁸ of the Labour Tenants Act on behalf of the respondents. In response thereto the applicant instructed them to serve a notice on the Director General denying that the respondents were labour tenants on the grounds that they were farm workers and accordingly specifically excluded from the Labour Tenants Act. Mr Chapi’s submissions indicate that the Department of Land Affairs is still in the process of pursuing the question of respondents’ labour tenancy status. He states that in view of the landowners denying the labour tenancy status, his office will grant the landowners an opportunity to be involved in settlement negotiations. Failing that the court will have to decide on the labour tenancy status. He states also that whilst this case was still on trial the “occupiers went to the Mobile Unit to register as Labour Tenants”, which I take to be a reference to the respondents. He does not explain why this issue was not

8 Section 17(1) states: “ An application for the acquisition of land and servitudes referred to in section 16 shall be lodged with the Director-General.”

significantly canvassed by him at the hearing, an omission on the part of the responsible Land Affairs officer, which is perturbing to say the least.

[6] Section 17(6) of the Labour Tenants Act makes it clear that the mere denial by the landowner of a person's labour tenancy status is not sufficient for a finding that they are not labour tenants. The section states:

“If the owner does not inform the Director- General within the period referred to in subsection (4) that he or she admits that the applicant is a labour tenant, the Director-General shall, at the request of either party, refer the application to the Court.”

Clearly the Director-General ought to have referred the application to the Land Claims Court. Thereafter in terms of section 19(1) read with section 22(4)(a) of the Labour Tenants Act, it is the Land Claims Court or an arbitrator that hears the application for an award in land in terms of section 16 and determines whether an applicant is a labour tenant. An order may also be made under section 22(2) of the Labour Tenants Act that land or a right in land held by an owner of affected land, be awarded to an applicant.

[7] I note that it was never contended that the respondents had waived their rights as labour tenants in terms of section 3 of the Labour Tenants Act. Section 3(6) permits a labour tenant to waive his or her rights if such waiver is reduced to writing and signed both by the owner and the labour tenant. Section 3(7) provides, in addition, that the terms of a waiver agreement only come into operation once the agreement has been approved by the Director-General or its terms are incorporated in an order of Court or of an arbitrator appointed in terms of section 19.

[8] In this regard it is important to remember that section 14 of the Labour Tenants Act provides that no labour tenant may be evicted while a section 16 application for an award in land is pending unless the court is satisfied that there are special circumstances which make an eviction fair, just and equitable.

[9] What is clear from the above is that securing the eviction of the respondents is no easy matter. The issue of their labour tenancy status must be resolved and their application in terms of section 16

expeditiously attended to. Clearly the eviction of the respondents under the Act should not have been granted. For this reason I cannot confirm the eviction order.

[10] Although section 13(1A)(b) of the Labour Tenants Act states that if an issue arises in a case in a magistrate's court which requires that court to interpret or apply the Labour Tenants Act, and oral evidence has been led, that court shall decide the matter in accordance with the provisions of the Act, I do not believe that the circumstances of this case permit a decision to be taken by a magistrate's court. This is so because an application has been made by the respondents for an award in land under section 16 and the landowner has denied that they are labour tenants. Section 17(6) accordingly requires that the application be referred to the Land Claims Court for determination.⁹

[11] In the circumstances I make the following order -

- (a) The order of the magistrate, Richmond granted in case no 339/99 and 340/99 is hereby set aside in its entirety;
- (b) the respondents are directed to take the necessary steps to secure the expeditious resolution of the application in terms of section 16 of the Land Reform (Labour Tenants) Act;
- (c) In the event of it being determined or agreed pursuant to the application in terms of section 16 of the Land Reform (Labour Tenants) Act that the respondents are not labour tenants, the applicant is granted leave to apply for their eviction on the same papers, as amended, if necessary;
- (d) The parties are admonished to behave towards one another without hostility pending the resolution of this matter.

⁹ Section 17(6) refers to "the Court". "Court" is defined in the Act as the Land Claims Court.

- (e) The Registrar is directed to furnish the Director-General of the Department of Land Affairs with a copy of this judgment.

JUDGE Y S MEER

For the applicant

E R Browne Incorporated, Pietermaritzburg

For the respondents

Govindasamy and Pillay, Pietermaritzburg