

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **MOLOTO AJ**

CASE NUMBER: LCC 71R/00

MAGISTRATE'S COURT CASE NUMBER: 2231/00

Decided on: 02 October 2000

In the review proceedings in the case between:

HILDENBRAND, R

Applicant

and

PLAATJIES, F

APRIL, M

APRIL, C

APRIL, M

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

JUDGMENT

MOLOTO AJ:

Introduction

[1] Applicant brought an urgent application for the removal of the four respondents from his farm, Rhebokskloof Plaas (the "farm") in terms of section 15 of the Extension of Security of Tenure Act¹ (the "Act") pending a final eviction order in terms of section 9 of the Act. This is an automatic review in terms of section 19(3) of the Act, of the removal order granted by the Magistrate, Wellington.

Background facts

[2] Both the applicant and one Anna Conradie deposed to affidavits setting out the facts in support of the application. The first and second respondents are husband and wife and the third and fourth respondents are their children. Briefly both deponents state that the first respondent, who was employed by the applicant, as well as the third and fourth respondents abuse alcohol. When under the influence they become violent towards the deponents, other persons on the farm and tourists visiting the farm.

1 Act 62 of 1997, as amended.

The fourth respondent is alleged to have threatened to kill the applicant. The applicant terminated the first respondent's employment and right of residence. The applicant applied for an urgent eviction order basing the urgency on a fear for her safety, for the safety of her family and other persons on the farm.

Compliance with section 15(1)(a)

[3] Section 15(1) provides as follows:

“(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.”

This Court has already held that there must be compliance with all four sub-sections of section 15(1)² for an order for removal in terms of section 15. In this regard applicant's affidavit attests to a real and imminent danger to her family and other persons on the farm if the respondents are not removed. Therefore I am satisfied that there has been compliance with section 15(1)(a).

Compliance with section 15(1)(b)

[4] There is no indication on the papers that there is no alternative remedy available to the applicant. Therefore I am not satisfied that section 15(1)(b) has been complied with.³

2 See for example *Du Preez v Tserema* [2000] 3 All SA 367 (LCC); *Slaley Farms (Pty) Ltd v Swarts*, 49R/99, 8 October 1999, [1999] JOL 5522 (LCC); internet address <http://www.law.wits.ac.za/lcc/1999/slaley2sum.html>.

3 On the availability of alternative remedies see *Slaley Farms* above n 2 at para [14].

Compliance with section 15(1)(c)

[5] The respondents did not enter an appearance to defend and the magistrate granted the removal order by default. Whilst the applicant attests to the hardship applicant will suffer if the respondents are not removed there is no indication on the papers of the hardship the respondents may suffer nor that the hardship the applicant will suffer exceeds the likely hardship to the respondents. If there was insufficient information on the papers to enable him to weigh up the competing interests of the applicant and the respondents the magistrate ought to have called for evidence in this regard. Therefore I am not satisfied that section 15(1)(c) has been complied with.

Compliance with section 15(1)(d)

[6] It is clear from the papers that no arrangements have been made for the reinstatement of the respondents if a final eviction order is not granted. I asked both the magistrate and the attorneys acting for the applicant to furnish reasons why the eviction order should not be set aside for failure to comply with section 15(1)(d). Neither could justify the confirmation of the order. Neither indicated what provisions have been made for the reinstatement of the respondents if the final order is not granted. This requirement has, accordingly, not been complied with.

Compliance with section 15(2)

[7] Section 15(2) provides:

“(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.”

Section 15(2) is compulsory. It is not clear whether there was proper service of the urgent application on the municipality and the provincial director of the Department of Land Affairs, and whether section 15(2) has accordingly been complied with.

[8] In arriving at an appropriate order I take into account that the respondents are still in occupation. I also take into account that applicant seems to be in a position to apply for a final eviction order on 27 October 2000. I make this assumption because the papers contain section 9(2)(d)(ii) and (iii) notices sent by registered post to the municipality and the provincial director of the Department of Land Affairs respectively. These notices indicate that an application for the eviction of the four respondents will take place on 27 October 2000.

Order

[9] In the circumstances the order granted by the Magistrate, Wellington in case 2231/00 is set aside and substituted by the following order:

- A The applicant is given leave to reapply in terms of section 15 on the same papers, suitably amended;
- B The respondents are ordered to keep the peace and to refrain from assaulting the applicant and other persons on the farm;
- C The Sheriff is required to serve this judgment on the respondents and to have the order, particularly paragraph B, interpreted to them in a language they understand.

ACTING JUDGE MOLOTO

For the applicant:

Me Engelbrecht, Wellington.

For the respondents:

No appearance.