

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

**RANDBURG**

In chambers: **Moloto AJ**

**CASE NUMBER: LCC 95R/00**

**MAGISTRATE'S COURT CASE NUMBER: 1368/00**

Decided on: 19 December 2000

In the review proceedings in the case between:

**PRETORIUS GJ**

Applicant

and

**RAMOSEME JM**

First Respondent

**RAMOSEME EMN**

Second Respondent

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## JUDGMENT

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**MOLOTO AJ:**

[1] This is an automatic review under section 19(3) of the Extension of Security of Tenure Act<sup>1</sup> (hereinafter referred to as “the Act”) of an order granted by the Magistrate, Ficksburg on 14 November 2000, for the eviction of the respondents from the farm Van Rensburgsending, Ficksburg, Free State.

### Facts

[2] The first respondent was employed by the applicant until he was dismissed on 4 December 1999. The first respondent's right of residence arose out of his employment. The second respondent's right of residence arose out of her relationship with the first respondent, with whom she lives as his wife. The couple have three minor children.

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1 Act 62 of 1997, as amended.

[3] The eviction order must be made in accordance with the provisions of the Act. Section 9 of the Act provides as follows:

“9 **Limitation on eviction**

- (1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.
- (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;
  - (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.”

Non-compliance section 9(2)(a)

[4] The applicant alleges that the employment relationship came to an end because the first respondent was involved in the theft of fruit from the farm, or at least was abetting in the theft which his wife committed. It is crucial for the applicant to prove that the right of residence of the respondents was terminated on a lawful ground. In the case of an employee that would be if the employment relationship was terminated in accordance with the Labour Relations Act.<sup>2</sup> The documentation upon which the

applicant relies to prove that the first respondent was dismissed in accordance with the Labour Relations Act appears to relate to a Mr Skara. There is no indication whatsoever that Skara and the first respondent are one and the same. The eviction order stands to be set aside for that reason alone. I will however mention a few other problems I have with the papers as this will assist not only the magistrates but other land owners when faced with eviction applications like this.

Non-compliance with section 9(2)(b)

[5] I am of the opinion that if the dismissal was not valid then any notice to vacate will also not be valid. There has been no compliance with section 9(2)(b).

Non-compliance with section 9(2)(c)

[6] As the respondents have been occupying the farm since a date prior to 4 February 1997 section 10 must be applied. It appears as if the applicant is relying on section 10(1) as he suggests that the relationship between himself and the first respondent has been fundamentally breached. As the applicant has not proved this breach because he relies on a disciplinary hearing which he has not proved took place he cannot be said to have satisfied the requirements of section 9(2)(c).

Compliance with section 9(2)(d)(i)

[7] The prescribed forms were personally served on the respondents on 27 January 2000. There is however no copy of the Sotho forms served simultaneously with the Afrikaans version. Had this been the only omission I would have accepted the late filing of the Sotho forms.

Compliance with section 9(2)(d)(ii) and (iii)

[8] The requisite forms were sent to the municipality Ficksburg and to the head of the Bloemfontein office of the Department of Land Affairs. The forms were sent by registered post. Service by registered post is in accordance with the regulations.<sup>3</sup> All these notices will have to be served again.

#### Non-compliance with section 9(3)

[9] Although the magistrate requested the necessary 9(3) report the document which was submitted does not comply with all the requirements of section 9(3). Acting Judge Meer has set out succinctly what the report must contain. In her judgment in *Glen Elgin Trust v Titus*<sup>4</sup> she says:

“ I offer the following comments on section 9 reports generally in the hope that they will be of assistance to authors of such reports in future. Reports must emanate from full investigations with all relevant parties. They ought to clearly set out the constitutional rights of both owner and occupier and avoid the perception of being one-sided. The questions of alternative accommodation and hardships should similarly be considered with regard to the respective positions of owners and occupiers alike. It must be borne in mind that the Act seeks not only to regulate the eviction of vulnerable occupiers in a fair manner, but also recognises the right of land owners to apply to court for an eviction order under appropriate circumstances.”<sup>5</sup>

A new report must be obtained if and when the applicant decides to pursue the eviction application.

#### Non-compliance with section 12

[10] Section 12(1)(a) and (b) require an evicting court to set two separate dates. One being the date on which the occupier must vacate and the other a date on which the occupier may be evicted if he or she has failed to move. As long ago as November 1998 this court has been criticising magistrates for not complying with these requirements:

“The order in this matter compelled the respondent to vacate the land “*voor of op* 17/11/1998”. Whilst this may seem an insignificant discrepancy, in the context of the automatic review process, such an order is problematic. The effect of the words in italics is to make the order applicable and effective (although not

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3 Regulation 9(6) published in Regulation R1632 Government Gazette 19587, 18 December 1998.

4 LCC 81R/00, 15 December 2000, as yet unreported.

5 *Glen Elgin Trust* above n 4 at para [13].

executable) immediately it is made. It has the effect of placing pressure on the respondent to vacate the land before the review process is completed. Indeed, a conscientious respondent is more likely to leave the land well before the date, especially where the enforcement of the order will happen the next day. This could give rise to a serious injustice and disruption if, after the land has been vacated in response to the order before the appointed day, the magistrate's decision is set aside on review. A specific date should have been set in terms of section 12(1)(a) which accommodated the review process and the communication of its outcome to the parties. The date determined in section 12(1)(b) should then allow the respondent sufficient time to pack up and vacate the farm without a resort to the mechanisms for execution of an order.”<sup>6</sup>

The magistrate ought to set two separate and distinct dates. These dates should also allow for the review process even although an eviction order is suspended pending the review process.<sup>7</sup>

### Compliance with section 13

[11] Section 13 which provides for compensation for improvements and other issues appears to have been complied with as the applicant alleges that no improvements were made, no plants were ever planted and no wages are due. Unless the respondents come to court to make allegations to the contrary the evicting court is entitled to accept the applicants version on this issue.

### Order

[12] In the circumstances the order for the eviction of the respondents granted on 14 November 2000 in Ficksburg case number 1368/2000 is set aside in its entirety.

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**ACTING JUDGE J MOLOTO**

For the applicant  
*Du Toit & Louw Inc*, Ficksburg

For the respondents

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<sup>6</sup> *Roux v Lekekiso* LCC 13R/98, 16 November 1998, [1998] JOL 4157 (LCC); internet web site <http://www.law.wits.ac.za/lcc/lccalph.html>.

<sup>7</sup> Section 19(5) of the Act.

*No appearance*