

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

In Chambers
before **Moloto AJ**

CASE NUMBER: LCC 67R/01
MAGISTRATE'S COURT CASE NUMBER:3631/2000

Decided on: 13 July 2001

In the matter between:

DIE TRUSTEES VAN DIE BARNATO BOERDERY TRUST

Plaintiff

and

MOUTLOUNG, I

First Defendant

MOPELOA, I

Second Defendant

MANYANE, I

Third Defendant

DENESO, F

Fourth Defendant

MELAMU, J

Fifth Defendant

MAROENYANE, J

Sixth Respondent

LABSE, L

Seventh Respondent

CHABELI, D

Eighth Respondent

KOLOI, N

Ninth Respondent

JUDGMENT

MOLOTO AJ:

[1] The plaintiff brought an action in the Magistrate's Court, Kroonstad for the eviction of the nine defendants from the farm Barnato, district Kroonstad, Free State Province (the "farm"). On 22 June 2001 the magistrate ordered that the first to fifth defendants leave the farm by 29 June 2001 failing which the eviction order may be executed on 6 July 2001. The matter now comes before me on automatic review in terms of section 19(3) of the Exetension of Security of Tenure Act¹ ("the Act").

1 Act 62 of 1997, as amended.

[2] The magistrate's file was received at this Court on 4 July 2001. This Court has in the past admonished that when dates are set for the vacation and eviction of occupiers from land under the Act, sufficient time² must be allowed for the review of the matter. The time allowed by the magistrate in this case is unreasonably short. Section 19(5) of the Act specifically provides that any order by the magistrate shall be suspended pending the review thereof by the Land Claims Court. I caused a letter to be telefaxed to the magistrate on 4 July 2001 ordering that his/her order of 22 June 2001 be suspended pending the review of the case. It is unbecoming that the Court should still be resorting to such desperate measures to get co-operation.

[3] The plaintiff's summons calls upon the defendants to enter appearance to defend within five days of service on them of the summons and then to answer the claim of the plaintiff the particulars of which the defendants are referred to. In terms of section 17(4) of the Act, until such time as the rules of court of the magistrates' courts are made, the rules of procedure applicable in civil actions and applications in a High Court shall apply in respect of any proceedings in a magistrate's court in terms of the Act. The rules of court as contemplated in this subsection have not yet been made, therefore the applicable rules are High Court rules. In terms of the High Court rules the defendants must be given ten days to enter appearance and thereafter twenty days to file a plea. Therefore the five days given in the plaintiff's summons amounts to short notice. In a case such as this, where the defendants are in default of appearance to defend, it is important to ensure that every rule is observed. This Court has referred to this requirement in previous judgments³ and warned against using magistrates' courts' rules.

[4] The action is brought by the trustees. Their names are not mentioned anywhere in the pleadings. The law on trusts stipulates that all the trustees must bring the action together or if one of them acts,

2 See, for example, *Lategan v Koopman and others* 1998 (3) SA 457 (LCC) at 465F-466A; *Roux v Lekekiso* LCC 13R98, 16 November 1998, [1998] JOL 4157 (LCC) at para [9]-[10]; internet web site address: <http://www.law.wits.ac.za/lcc/lccalph.html> at para[9]-[10]. See also Rule 35A(1)(a) of the Land Claims Court rules published in Government Gazette 17804, 21 February 1997, as amended by GN 345, Government Gazette 18728, 13 March 1998 and GN 20049, Government Gazette 594, 7 May 1999.

3 See *Spies v Mahlangu*, LCC 19R/98, 22 March 2000, [2000] JOL 6330 (LCC), internet web site <http://www.law.wits.ac.za/lcc/2000/9r00sum.html> at para [5]. See also *Van Zyl NO v Maarman*, [2000] 4 All SA 212 (LCC); 2001 (1) SA 957 (LCC) at para [3].

he/she must have the written authority of the others.⁴ This Court has, in a number of decisions⁵, emphasized the importance of ensuring that whoever acts for the trust, must have the requisite authority.

[5] The eviction of occupiers in terms of the Act is regulated by section 9, the relevant subsection of which provides that-

“(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.

(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 an 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

4 Honoré’s *South African Law of Trust* 4th ed (Juta, Cape Town 1992) at 266; *Rosner v Lydia Swanepoel Trust* 1998 (2) SA 123 (T) at 127C; *Cupido v Kings Lodge Hotel* 1999 (4) SA 257 (R) at 263F-G.

5 *Glen Elgin Trust v Titus and Another* [2001] 2 All SA 86 (LCC) at para [14].

(d) on any other matter as may be prescribed.”

[6] There is an allegation made to the effect that the right of residence of the defendants was terminated when the employer reduced staff as a result of operational requirements and they were required to vacate the farm on or before 31 August 1999. The requirement of section 9(2)(a) is accordingly satisfied, as also that of section 9(2)(b) because the dependants have not vacated the farm.

[7] For purposes of compliance with section 9(2)(c), it is admitted in evidence that all the defendants were occupiers on 4 February 1997. This would make the provisions of section 10 applicable to them. The right of residence of all the defendants was terminated because the trust was rationalising its farming business due to operational needs. Therefore the relevant subsection of section 10 is subsection (2). I must consider whether suitable alternative accommodation is available. The evidence that there are fifty erven purchased by the “owner” from the Kroonstad Municipality does not satisfy the requirements of section 10(2). It’s not clear whether they are vacant or not and if not, whether the accommodation on them complies with the definition of suitable alternative accommodation.⁶ There must be efforts at obtaining suitable alternative accommodation, not just erven which may be vacant. I am satisfied that the requirements of section 10 were not complied with.

[8] Section 9(2)(d) of the Act provides that notices must be served on the occupiers, the municipality within whose area of jurisdiction the land is situated and the head of the relevant provincial office of the Department of Land Affairs. The notices must be completed on Form E or F to the Regulations⁷ made under the Act or substantially conform with such forms. There is substantial conformity with the notices to the municipality and the Department of Land affairs, but not with the notices to the defendants. The notices were in one language only and there were no separate notices for each member of the family. The notices to the defendants must be in two official languages, one of which must be one best understood by the occupier; there must be a separate notice for each member of the household older than eighteen years and all occupiers under eighteen must be listed on a notice to an adult.

6 See the definition of “suitable alternative accommodation” in Section 1 of the Act.

7 Regulations contained in Government Notice R 1632 in Government Gazette No 19587 of 18 December 1998.

[9] The said notices are said to have been delivered by hand by one K J Bezuidenhout to the defendants. K J Bezuidenhout is said to be a labour consultant of the plaintiff. Service of the notices on the defendants ought to be by the sheriff⁸. Service of the notices on the defendants was therefore defective.

[10] A report in terms of section 9(3) of the Act was submitted. The report points out that in some of the families there are school-going children who may be adversely affected by the eviction. The magistrate did not comment on the report to give his evaluation thereof. He/She ought to have done so.

[11] I am concerned about other aspects of the plaintiff's case. There is no allegation of the ownership of the farm or how the trust relates to the farm. Accordingly it is not clear whether the trust has *locus standi* to bring the action. The other concern relates to the fact that no inquiry seems to have been undertaken in terms of section 13 of the Act relative to compensation for structures erected or standing crops planted by the defendants. There is evidence about wages only. Finally, the order of the magistrate is with respect to defendants number one to five. Nothing is said about sixth to ninth defendants. It is important that there is certainty about the claim against them. If the plaintiff chose not to proceed against the remaining defendants, then the case against them should have been withdrawn otherwise the magistrate ought to have dismissed it.

[12] Order :

The order of the magistrate, Kroonstad given on 22 June 2001 in this case is set aside in whole.

ACTING JUDGE J MOLOTO

For the plaintiff:

Grimbeek, de Hart & van Rooyen Attorneys, Kroonstad

For the defendants:

No appearance.