

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In Chambers: **Bam AP**

Decided on: 23 November 2001

CASE NUMBER: LCC 78R/01

MAGISTRATE'S COURT CASE NUMBER: 112/2001

In the review proceedings in the case between:

F J TERBLANCHE EDMS BPK

Applicant

and

MPHUTI, M D

Respondent

JUDGMENT

BAM AP:

Background

[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 the eviction order granted by the Magistrate’s Court, Balfour on 1 August 2001 against the respondent from the farm Beerlaagte (“the farm”). The respondent did not oppose the application, but he attended court the day when the eviction order was granted.²

[2] The applicant, a company, is the owner of the farm. Mr Terblanche, the director, launched the application on behalf of the applicant. Although he stated that he was authorised to act on behalf of the applicant, no resolution was filed by the applicant to that effect.³

1 Act 62 of 1997, as amended.

2 The Magistrate postponed the matter for two days to enable the respondent to appoint an attorney. See the discussion at para [10] hereunder.

3 See *City Council of Springs v Occupants of the Farm Kwa-Thema, 210*, LCC 10R/98, 2 September 1999, [1999] JOL 5280 (LCC), Internet web site address <http://www.law.wits.ac.za/lcc/1999/springs99sum.html> at para [32] where it was held that “[a]lthough it would have been a wise precaution for the applicant to attach an authorising resolution to its papers, this is not strictly necessary.”

Requirements for an eviction order

[3] For an eviction order to be granted there must be compliance with all the peremptory requirements specified in section 9(2) of the Act. Section 9(2) reads:

“(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 with section 9(2)(a)

[4] In order to comply with section 9(2)(a) an owner or person in charge must terminate the occupier's right of residence in accordance with section 8 of the Act. The deponent to the applicant's founding affidavit, Mr Terblanche, merely stated that the respondent left the service of the applicant on 1 March 2000 and is now working for another company. He did not advise whether the respondent's right of residence was terminated or why the respondent left. It is not evident whether the respondent was dismissed or whether he resigned voluntarily. Furthermore, he did not advise whether or not the

respondent's right of residence was solely dependant on his employment.⁴ On the information before me it is impossible to find that the respondent's right of residence was terminated.

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

[5] Section 9(2)(b) of the Act requires that the owner or person in charge must give the occupier a notice period within which to vacate the farm. There is no indication on the papers that such a notice was given to the respondent.

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

[6] Under section 9(2)(c) of the Act the conditions for an eviction order in terms of section 10 or section 11 must have been complied with. Section 10 applies to a person who was already an occupier on 4 February 1997, while section 11 applies to a person who only became an occupier after 4 February 1997. The two sections differ substantially.⁵ Once again, on the papers before me, there is no evidence to determine whether I must apply section 10 or section 11 of the Act. There is also no indication that the magistrate considered any of the two sections when granting the eviction order.

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

[7] Notices as required by section 9(2)(d) have been served on the respondent, the municipality and the Department of Land Affairs. These notices can, however, only be served once the respondent's right of residence has been terminated.⁶ I have already found that this does not appear to have occurred.

4 Section 8(2) of the Act reads:

“(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.”

5 *Lategan v Koopman and Others* 1998 (3) SA 457 (LCC); [1998] 3 All SA 603 (LCC) at para [7].

6 See the wording of section 9(2)(d), quoted at para [3] above.

Non-compliance with section 9(3)

[6] Section 9(3) of the Act makes it mandatory for the court to request a report within a reasonable period on various matters pertinent to an eviction, namely the availability of alternative accommodation, the constitutional rights of those affected, the undue hardship to the occupier occasioned by an eviction and any other matter as may be prescribed.⁷ The magistrate failed to request the report.

Non-compliance with section 12

[8] The order made by the magistrate fails to comply with section 12(1) of the Act, which is peremptory,⁸ in that it fails to provide two distinct dates. Section 12(1)(a) requires the court formulating the eviction order to determine a date by when the occupier must vacate. Section 12(1)(b) requires the court to determine a separate date on which an eviction order may be carried out if the occupier fails to vacate on the date determined in terms of section 12(1)(a).⁹

Non-compliance with section 13

[9] Section 13(1)(a) of the Act provides that the court shall make an order, if applicable, for compensation to the occupier, if he erected any structure or made any improvement or has any standing crops. Section 13(1)(b) provides that the court shall make an order that any outstanding wages be paid to the occupier. There is nothing on the papers to indicate whether there is anything due to the

7 The Minister has yet to prescribe any other matters.

8 *Ferguson v Buthelezi* LCC 41R/99, 23 September 1999, Internet web site address <http://www.law.wits.ac.za/lcc/1999/fergusonsum.html> at para [18]; *Alberts v Sibiyi* LCC 66R/99, 2 November 1999, Internet web site address <http://www.law.wits.ac.za/lcc/1999/albertsum.html> at para [3].

9 See, for example, *Karabo and Others v Kok and Others* [1998] 3 All SA 625 (LCC) at para [16].

respondent under section 13 of the Act. The magistrate failed to make the necessary enquiries to established whether an order in terms of section 13 was necessary.¹⁰

Legal representation

[10] The magistrate postponed the matter from 30 July 2001 to 1 August 2001 to enable the respondent to obtain legal representation. In *Nkuzi Development Association v The Government of the Republic of South Africa*,¹¹ it was held that occupiers are entitled to legal representation at State's expense. If an occupier is undefended, the court is under a duty to enquire why. Should it appear that there is no good reason for the lack of legal representation, that fact should be brought to the attention of the responsible organs of State.¹² In the light of the *Nkuzi* case, I am of the opinion that the respondent was not given a fair opportunity to obtain the legal representation he is entitled to.

Order

[11] For the reasons set out above, I make the following order:

The whole of the order made by the Magistrate, Balfour in case 112/2001 on 1 August 2001 is set aside.

ACTING PRESIDENT F C BAM

10 There rest a duty on the magistrate to make the necessary enquiries when the applicant has failed to do so. See *Lategan*, above n 5, at para [14].

11 LCC 10/01, 6 July 2001, [2001] JOL 8500 (LCC), Internet web site address <http://www.law.wits.ac.za/lcc/2001/10-01sum.html>. See also the discussion of this judgment by Mohamed "Right to representation reiterated" October 2001 *De Rebus* No 405 at 53 and by Jazbhay "Plight of the poor - security of tenure" November 2001 *De Rebus* No 406 at 55.

12 See *Theewaterskloof Holdings (Pty) Ltd, Glaser Division v Jacobs and Others*, LCC 91R/01, 19 October 2001, Internet web ste address <http://www.law.wits.ac.za/lcc/2001/91r01sum.html> at para [19].

For the applicant:

Haarhoff Fourie and Partners, Balfour.

For the respondent:

In person.