IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG **CASE NUMBER**: LCC 39R/01
In chambers: **MOLOTO AJ** **MAGISTRATE'S COURT CASE NUMBER**: 509/00

Decided on 15 March 2001

In the review proceedings in the case between:

MOUTON, F S Applicant

and

JANSE, J 1st Respondent

VAN ROOY, A 2nd Respondent

JUDGMENT

MOLOTO AJ:

Introduction

[1] Applicant brought an urgent application for the removal of the respondents from his farm, Latboskoofplaas, Porterville (the "farm") in terms of section 15 of the Extension of Security of Tenure Act[1] (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, Piketberg.

Background facts

[2] Both the applicant and his son deposed to affidavits setting out the facts in support of the application. The first and second respondents are husband and wife. Briefly both deponents state that the first respondent, who was employed by the applicant, resigned from his employment with the applicant in August 2000. The hearing of the application for a final eviction order was to have been held on 22 February 2001. The events which caused the applicant to nonetheless apply for an urgent

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1 Act 62 of 1997, as amended.

eviction order occurred on 24 January 2001. On that day the son of the respondents was playing with matches when he set the farm alight. It was fortunate that the son of the applicant was driving past when he saw the smoke. Everyone, but the two respondents, rushed to put the fire out. When the applicant and his son asked the first respondent to help with the firefighting he refused. This behaviour is surprising when one considers that it was the first respondent's child that started the fire in the first place. This attitude of the first respondent has caused friction with the workers on the farm. The applicant has suffered damage to his implements and his fencing. In addition he and two of his neighbours have lost their grazing land.

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."

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 his property and to the relationship between him and the other workers on the farm if the respondents are not removed. I am satisfied that there has been compliance with section 15(1)(a).

Compliance with section 15(1)(b)

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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.

[4] The applicant alleges that there is no alternative remedy to rectify the unpleasant situation that has developed between the applicant and the respondents. The behaviour of the first respondent in failing to assist the firefighting of a fire that his child started brings me to the conclusion that the applicant is correct in this regard. Untold damage could have resulted from that fire. The relatively minor damage was as a result of a concerted effort by the applicant, his family, his workers and his neighbours working together to prevent the fire from spreading. I am satisfied that section 15(1)(b) has been complied with.

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. Obviously the applicant is in a perfect position to indicate to the court what hardship he will suffer if the respondents are not removed. He is in a less favourable position as regards the hardship the respondents may suffer if the urgent temporary eviction order is granted. The applicant has indicated that the first respondent's mother lives in Saron but there is no indication that she is in a position to house the whole family. It is impossible from the scant information available to decide that the hardship the applicant will suffer exceeds the likely hardship that the respondents will suffer. As I have said before,[3] if there was insufficient information on the papers to enable the magistrate to weigh up the competing interests of the applicant and the respondents the magistrate ought to have called for evidence. This further evidence could have been in the form of a supplementary affidavit. Therefore I am not satisfied that section 15(1)(c) has been complied with.

Compliance with section 15(1)(d)

[6] The applicant has indicated that he will reinstate the respondents if a final eviction order is not granted. Section 15(1)(d) has been complied with.

Compliance with section 15(2)

[7] Section 15(2) provides:

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3 *Hildenbrand v Plaatjies and others* LCC 71R/00, 2 October 2000, [2000] JOL 7493 (LCC), http://www.law.wits.ac.za/lcc/2000/ 71r00sum.html.

> "(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 peremptory. It appears that the notice of motion and the various annexures were sent by facsimile transmission to the municipality and the provincial director of the Department of Land Affairs. I am concerned that the papers were sent so close to the end of the normal government business day, at 16:14 to the municipal offices and at 16:27 to the Department of Land Affairs in Cape Town. As the hearing was to take place at 09:00 the following morning very little could be done. Although I believe this very short notice could have been remedied by, for example, an earlier letter warning of the impending application, 16 or 17 hours notice is not an unacceptable notice period in urgent applications.[4] Add to this the fact that the municipality and the Department of Land Affairs are not parties to the litigation. I conclude that section 15(2) has been complied with.

[8] In arriving at an appropriate order I take into account that the respondents have behaved deplorably but that the application for a final eviction order was to have been heard on 22 February 2001.

Order

[9] In the circumstances the order granted by the Magistrate, Piketberg on 26 January 2001 in case 509/2000 is set aside and substituted by the following order:

1. The applicant is given leave to reapply in terms of section 15 on the same papers, supplemented by such further affidavits as the case may require;
2. The applicant is ordered to reinstate the respondents;
3. The respondents are ordered to keep the peace;

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4 *Uitkyk Farm Estates (Edms) Bpk v Visser and Another* LCC 60/98, 6 November 1998, internet address http://www.law.wits.ac.za/lcc/1998/uitkyksum.html.

4 The Sheriff is required to serve this judgment on the respondents and to have this order, particularly paragraph 3, interpreted to them in a language they understand.

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ACTING JUDGE MOLOTO

For the applicant:
De Villiers-Van Zyl Inc, Porterville.

For the respondents:
No appearance.