

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on 29 March 2001, 19 April 2001  
before: **MOLOTO AJ**

**CASE NUMBER: LCC 120/00**

Decided on: 4 April 2002

In the matter between:

**FELIX GEORGE GAY, NO**

Applicant

and

**LOUIS SIBIYA**

First Respondent

**POPPIE WILHELMINA VOSTER**

Second Respondent

**THE REMAINING 32 OCCUPIERS OF PORTION 236 OF  
THE FARM RIETFontein 189 IQ**

Third Respondent

---

## JUDGMENT

---

**MOLOTO AJ:**

[1] This is an application in terms of the Extension of Security of Tenure Act<sup>1</sup> (“the Act”) for the eviction of the respondents from the property known as Portion 236 of the farm Rietfontein 189, Registration Division IQ, Gauteng (“the property”). The property is in the area of jurisdiction of the Mogale City Local Council.

[2] The applicant is the trustee of the insolvent estate of one Noun Francis, the owner of the property. The first and second respondents occupy a dwelling house on the property. The third respondent comprises collectively some thirty-two people who occupy shacks they erected on the property. It appears that the first and second respondents leased the property from Mr Noun Francis and the third respondent is sub-leasing from the first and second respondents. The monthly rental by first and second respondents was R7000,00. The lease agreement was entered into before Noun Francis was sequestrated. The ground for the termination of the lease and eviction of the respondents is failure to pay the rental.

---

1 Act 62 of 1997, as amended.

[3] The matter first came up for argument on 29 March 2001 when the parties agreed to a postponement of the matter to 19 April 2001, the applicant to pay the wasted costs occasioned by the postponement. On 19 April 2001 Mr Van Rensburg, for the respondents, argued a point *in limine* that a notice of termination of the right of residence in terms of section 8 of the Act had not been served on the second and third respondents. Therefore, so the argument went, the subsequent steps taken to evict them were not valid. The point *in limine* was upheld with respect to the third respondent only.

[4] Mr Van Heerden contended on the merits that the first and second respondents paid rental to a certain Mr Ferreira who is unknown to the applicant. Even then they paid up to January 2000 on their own version. Therefore their eviction would be just and equitable in the circumstances. Mr Van Heerden further submitted that the first and second respondents could possibly not be occupiers as they could afford rental of R7000,00 per month, which is in excess of the R5000,00 limit prescribed by the definition of occupier in the Act.<sup>2</sup> To this latter issue Mr Van Rensburg replied that the money for rent was collected from the sub-tenants, the third respondent. This submission is supported by the evidence.

### **Requirements for eviction**

[5] The requirements for the grant of an eviction order are set out in section 9 of the Act, which reads:

- “(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

---

2 In terms of the definition of “occupier” read with the regulations published in Regulation R1632 Government Gazette 19587, 18 December 1998, a person earning a monthly income in excess of R5000,00 is excluded from the definition of an occupier.

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

### **Section 9(2)(a)**

[6] The first step is to terminate the occupier's right of residence. In order to do so, an occupier must be given notice of termination of the right. This is the point argued *in limine*. I am satisfied a notice was furnished to the first and second respondents only. The notice of 28 January 2000 which was handed to the second respondent was addressed to the first respondent only, as also the notice dated 31 March 2000. Although not expressly stated; it appears the first and second respondents are jointly and severally liable for rental, so that a notice to one would be valid against the other. Section 9(2)(a) of the Act was accordingly not complied with in respect of the third respondent.

### **Section 9(2)(b)**

[7] To the extent that section 9(2)(a) has not been complied with, to that extent section 9(2)(b) has also not been complied with. Until a respondent is given notice to vacate the property, there

can be no talk of failure to vacate. Accordingly, section 9(2)(b) has not been complied with, in respect of the third respondent.

### **Section 9(2)(c)**

[8] It was conceded that the respondents could have come to the farm before 4 February 1997. In that event, for purposes of section 9(2)(c), the applicable section is section 10. This will apply to the first and second respondents only, as the occupiers in respect of whom section 9(2)(a) and (b) has been complied with.

[9] The first and second respondents' right to reside on the property emanated from the lease agreement. There was no suggestion that the lessor had not complied with the terms of the agreement of lease. On the other hand, the first and second respondents paid rental to Mr Ferreira who did not, in turn, hand it to the applicant. It was not shown that the first and second respondents paid the rental to the applicant. In the premises I find that section 10(1)(b) applies to the default by the first and second respondents and that therefore the requirements of section 9(2)(c) have been complied with in respect of the first and second respondents only.

### **Section 9(2)(d)**

[10] Section 9(2)(d) provides that the various notices to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs, shall be given after the termination of the right of residence. Mr Van Rensburg conceded that the said notices had been properly given in terms of the proviso to section 9(2)(d). This can be so with respect to the first and second respondents only. Service of the notice of motion on the third respondent cannot serve the purposes of the proviso before termination of the right of residence.

### **Section 9(3)**

[11] A section 9(3) report was submitted. The report is silent on the position of the applicant. In terms of this report a number of factors militate against eviction of the respondents. These factors are (1) that there is no suitable alternative accommodation, (2) the children attend local

schools and eviction will disrupt their education and (3) the respondents are employed in the vicinity hence would lose their employment if evicted. These factors are mentioned in respect of the third respondent only.

[12] The following order is made:

- (1)(a) Application for the eviction of the first and second respondents is granted. The first and second respondents are ordered to vacate the applicant's property on or before 30 April 2002, failing which the sheriff is authorised and ordered to remove them on 15 May 2002.
- (b) Application for the eviction of the third respondent is dismissed.
- (2) The applicant is ordered to pay the wasted costs occasioned by the postponement on 29 March 2001.
- (3) But the for the order in paragraph (2) above, no order is made as to costs.

---

**ACTING JUDGE J MOLOTO**

For the applicant:

*Adv C W J van Heerden, instructed by Moodie & Robertson, Johannesburg.*

For the respondents:

*Mr N van Rensburg of Nico van Rensburg Attorneys, Randburg.*