

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at RANDBURG on 9 Oct 2000, 10 Oct 2000, 18 Nov 2002  
before **Moloto J**

CASE NO: LCC 18/00

Decided on: 22 November 2002

In the matter between :

**DEO VOLENTE RUSOORD BK**

Plaintiff

and

**SHONGWE, T**  
**SHONGWE, B**  
**SHONGWE, J**  
**TWALA, N**

First Defendant  
Second Defendant  
Third Defendant  
Fourth Defendant

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## JUDGMENT

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### **MOLOTO J:**

[1] The plaintiff is a close corporation duly registered in terms of the laws of the Republic of South Africa and carries on business as a holiday resort under the name Deo Volente Rusoord on the Remaining Portion of Portion 2 of the farm Kopje Alleen Number 726, Registration Division JT, Mpumalanga Province (“the farm”). The plaintiff is the owner of the farm. The defendants are all adult persons who reside on the farm. The first, second and third defendants are siblings and the fourth defendant is the wife of the third defendant. The plaintiff brought an action against the defendants in terms of the Extension of Security of Tenure Act<sup>1</sup> (“the Act”) for their eviction from the farm. The defendants pleaded that they are not occupiers as defined in the Act, but rather they are labour tenants within the meaning of that term as contemplated in the Land Reform (Labour Tenants) Act<sup>2</sup> (“Labour Tenants Act”), alternatively, if it is found that they are not labour tenants, then and only then, that they are occupiers as defined in the Act.<sup>3</sup> As a

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1 Act 62 of 1997, as amended.

2 Act 3 of 1996, as amended.

3 The two terms are no longer mutually exclusive after the amendment of the definition of “occupier” by the deletion of para (a) of the definition by section 6(a) of the Land Affairs General Amendment Act, 51 of 2001.

result of this plea, there was a separate hearing<sup>4</sup> of the issue whether or not the defendants are labour tenants. This judgment deals with that section of the case.

[2] Section 1 of the Labour Tenants Act defines a labour tenant as a person-

- “(a) who is residing or has the right to reside on a farm;
- (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
- (c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm,

including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3 (4) and (5), but excluding a farmworker.”

[3] For one to succeed in showing that one is a labour tenant, one must, therefore, satisfy the following test, to which the defendants are put:

- (a) Reside or have the right to reside on a farm:

There is no dispute about the fact that the defendants reside on the farm and have the right to reside thereon. In fact, the plaintiff concedes that when it acquired the farm, the defendants were already residing on the farm.

- (b) Provide labour in return for cropping or grazing rights

There is a dispute about whether or not the defendants had cropping or grazing rights. It was testified on behalf of the plaintiff that the defendants do not cultivate the land and do not have livestock on the farm. On the other hand the defendants testified that they ploughed the land and planted mealies, sweet potato and pumpkin; and that they had 8 cattle. On inspection of the farm, the Court found, at the defendants’ homestead, a disused cattle kraal, a patch of ground which shows signs of long-past cultivation and a disused and broken plough. According to Mr Theunis Sevenster, one of the members of the plaintiff, the defendants have never had cattle in the cattle kraal or ploughed any piece of land

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4 Under Rule 57 of the Land Claims Court Rules.

since the plaintiff acquired the farm. I do not have to resolve these disputes because it is common cause that at present and at the time of instituting this action, neither the defendants nor their family members worked for the plaintiff. The defendants testified that when they were still very young (they had just started school), they used to provide labour to the previous owner, Mrs Prinsloo, who paid them 50c for an afternoon of work after school and R1,00 per day over weekends. They did not provide the labour on behalf of or in the place of either their father or mother. Their parents still provided the labour they were contracted to provide. They looked after two cattle which was neither their father's nor their mother's chore. It seems it was just a way of obtaining some pocket money, and not labour provided in return for the right to reside, graze and crop on the farm. This is even more so because the money was paid directly to them, not their father or mother. None of the defendants worked for Mr Deon Venter, who owned the farm after Mrs Prinsloo. Neither did the father of the first, second and third defendants work for him as he (father of first to third defendants) was old and on pension. Out of the six years that Mr Deon Venter was on the farm, the mother of first, second and third defendants worked for him for one year only. None of the defendants has worked for the plaintiff. Neither the father nor the mother of first, second and third defendants worked for the plaintiff. There is no evidence that the parents of the first, second and third defendants were themselves labour tenants and that therefore one of the children was appointed a successor in terms of section 3(4) of the Labour Tenants Act and the rest are associates of a labour tenant. Therefore, the requirement to provide labour has not been satisfied.

(c) Whose parent or grandparent resided on the farm

It is common cause that the parents of the first, second and third defendants resided on the farm. However, it is disputed that they provided labour in return for the right to crop and graze. It was testified on behalf of the plaintiff that the defendants' father was an independent contractor who built some of the houses on the farm and was paid in cash for his services and not in the right to crop and graze. It was similarly testified that when the defendants' mother worked for various owners of the farm, she was paid in cash. The defendants were not able

to say how their father was paid, but they said that the mother was paid far less than what the plaintiff's witnesses said she was paid and that the shortfall was made up by cropping and grazing. As I have already found that none of the defendants provide or provided labour to the owner or lessee in return for cropping or grazing rights, it is not necessary to make a finding on these disputes.

[4] My finding is that the defendants are not labour tenants within the meaning of that term as contemplated in the Land Reform (Labour Tenants) Act. The plaintiff is granted leave to enrol the matter for the hearing of the remaining issues.

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**JUDGE J MOLOTO**

For the plaintiff:

*Adv J J Botha* instructed by *Leon J J Van Rensburg Attorneys*, Germiston.

For the defendants:

Present in person.