

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held in **Bergville** on **12 July 2006**
Before **Ncube AJ**

CASE NUMBER: LCC57/05

Decided on: **27 July 2006**

In the matter between :

GUDLUKA PIOS DLADLA

Plaintiff

and

BAREND CHRISTOFFEL BRITS

Defendant

JUDGMENT

NCUBE A J :

[1] On 2 September 2005 the plaintiff instituted an action against the defendant. In that action, the plaintiff claimed the following relief : -

- (i) A declaratory order in terms of Section 33 (2A) of Act 3 of 1996, that he is a labour tenant.
- (ii) Costs of suit in the event of the matter being defended.

[2] The matter was defended. The defendant denied that the plaintiff was a labour tenant. The matter was subsequently set down for hearing on 12 July 2006.

[3] On 6 July 2006, the defendant's attorney wrote to plaintiff's attorney informing him that the defendant was then conceding that the plaintiff is in fact a labour tenant. It was also suggested to the plaintiff's attorney that no order as to costs should be sought. The plaintiff's attorney decided to proceed with the hearing in order to obtain a decision in respect of costs.

[4] This judgment is therefore concerned with the issue of costs only.

[5] The plaintiff's attorney contends that the defendant ought to have known right from the beginning that the plaintiff was a labour tenant and should not have defended the action.

[6] Section 1 of the Land Reform (Labour Tenants) Act gives the following definition of a labour tenant : -

- “(a) a person 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 farm worker.”

On the other hand, a farm worker is defined as -

“a person who is employed on a farm in terms of a contract of employment which provides that –

- (a) in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land, and
- (b) he or she is obliged to perform his or her services personally.”

[7] These two definitions should be read together in order to determine whether a person is a labour tenant or a farm worker.

[8] The plaintiff in this matter argued that the defendant acted *male fide* and unreasonably when he denied that the plaintiff was a labour tenant and therefore he should be ordered to pay the costs of the suit.

[9] In his plea, the defendant admitted that the plaintiff was residing on his farm but indicated that he had no knowledge of the fact that the plaintiff's father also resided on the farm and that he had the use of the farm and in consideration thereof he provided labour to the owner or the lessee of the farm. The plaintiff's father is deceased and he is not known to the defendant.

[10] The defendant whilst admitting that the plaintiff provided labour to the owner, denied that the plaintiff was paid predominantly in the right to occupy and use the land in question.

[11] The question as to whether a person is paid predominantly in the right to occupy and use land requires expert knowledge. Mr Lotz argued that this fact was beyond the defendant's personal knowledge and it cannot be said that he acted *mala fide* or unreasonably when he denied it in his plea. I agree. This is one of the allegations which the plaintiff had to prove in order to obtain a judgment in his favour.

[12] On 27 June 2006 the defendant received the plaintiff's summary of the expert evidence which was to be given by the plaintiff's expert witness. That summary dealt with the value to be attributed to the remuneration, food rations and other benefits received by the plaintiff as well as the value of the cropping and grazing rights which the plaintiff enjoyed. After receipt of such information the defendant then conceded that the plaintiff was indeed a labour tenant.

[13] Section 33(1)(f) of the Land Reform (Labour Tenant) Act provides that in addition to the power to make other orders in terms of the Labour Tenant Act, the Court may make such order for costs as it deems just. This section enjoins the Court in making the costs order to have regard to considerations of equity and fairness. See *Hlatshwayo and Others v Hein 1999 (2) SA 834 LCC at 848 (E)*.

[14] It is the practice of this Court not to make a costs order in matters of this nature unless special circumstances are proved to be present. See *Singh and Others v North Central and South Central Local Council and Others 1999 (1) All SA 350 (LCC) at 399 F-G*.

[15] I come to the conclusion that the defendant only denied those allegations which were not within his personal knowledge and it cannot be said that he acted unreasonably when he did so. There are no special circumstances which can persuade this Court to depart from its normal practice.

[16] I accordingly make the following order :

- 1 Plaintiff is declared a labour tenant in terms of Section 33(2)(A) of the Land Reform (Labour Tenant) Act, Act 3 of 1996.
- 2 No order is made as to costs.

ACTING JUDGE M T NCUBE

For the plaintiff :
Mr C Loots of Loots Attorneys, Pietermaritzburg.

For the respondent :
Adv G M E Lotz instructed by Christopher Walton & Tatham Attorneys, Ladysmith