

IN THE HIGH COURT OF SOUTH AFRICA**(GAUTENG DIVISION, PRETORIA)**

In the matter between:

GORDON LESLIE BREDEKAMP

and

KAREL FRANCOIS BREDEKAMP**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0101

2020-09-14

GD-PRET-038

GRIFFIER VAN DIE HOOGGEREGSHOF SUID-AFRIKA
GAUTENG-AFDELING
PRETORIA SOUTH AFRICA GAUTENG DIVISION

CASE NO: 41794/2019

Applicant

1st Respondent

2nd Respondent

PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001

2020-09-14

L. W. MOTAU

GRIFFIER VAN DIE HOË HOF VAN
SUID AFRIKA GAUTENG-AFDELING

RULE 16A(1) NOTICE OF 1ST RESPONDENT

BE PLEASED TAKE NOTICE that the First Respondent herein has raised a constitutional issue in the application filed under the above case number.

TAKE NOTICE FURTHER that the First Respondent seeks an order:

1. Declaring Article 10, 11 and 13 of the *Placaet* of 26 September 1658 ("the *Placaet*") that declares that a lessee of a rural property has no right of retention over the leased property for improvements effected with the landlord's consent over the property and the restriction on the compensation payable to the lien holder of rural property to be unconstitutional and invalid on the following grounds;
 - 1.1. Article 10 of the *Placaet* reads as follows, as translated by WE Cooper

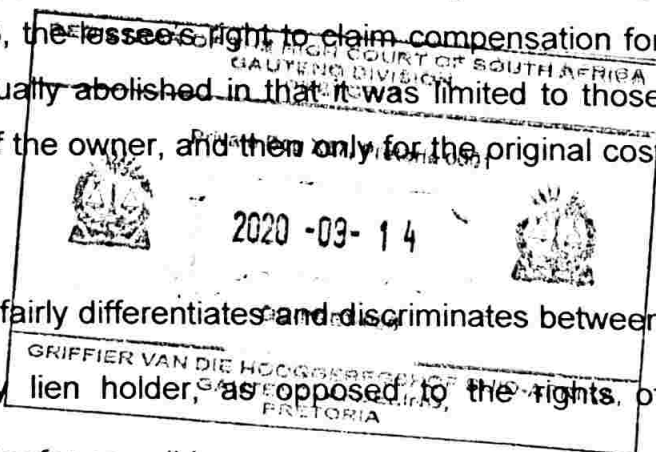
Landlord and Tenant (2ed) at 329 note 3:

"Provided, nevertheless, that whenever the owner of any lands, takes them for himself, or lets them to others, he is bound to pay the old lessee, or his heirs, compensation for the structures, which the lessee had erected with the consent of the owner, as well as for ploughing, tilling, sowing and seed corn, to be taxed by the court of the locality, without, however, the lessees being allowed to continue occupying and using the lands, after the expiration of the term of the lease, under the pretext of (a claim for) material or improvements, but may only institute their action for compensation after vacating (the lands)" (for the original Dutch, see for example *Cooper loc cit*; *Syfrets Participation Bond Managers, supra*, at 110I-111A; for other, very similar, translations, see *Lee Commentary* at 92 and *George Wille Landlord and Tenant in South Africa* (5 ed) at 270).";

1.2 Under Article 11 compensation payable for "structures" was restricted to bare materials, not including sand and lime, and excluding the costs of labour. In terms of Article 13, the lessee's right to claim compensation for plantings and trees was virtually abolished in that it was limited to those planted on the instructions of the owner, and then only for the original cost of the plants.

1.3 It is clear that the *Plecaet* unfairly differentiates and discriminates between the rights of an urban property lien holder, as opposed to the rights of an agricultural property lien holder for no valid reason;

1.4 There is no legitimate justification for the out-dated discrimination against agricultural property lien holders in a modern dispensation as governed by the Constitution of the Republic of South Africa;

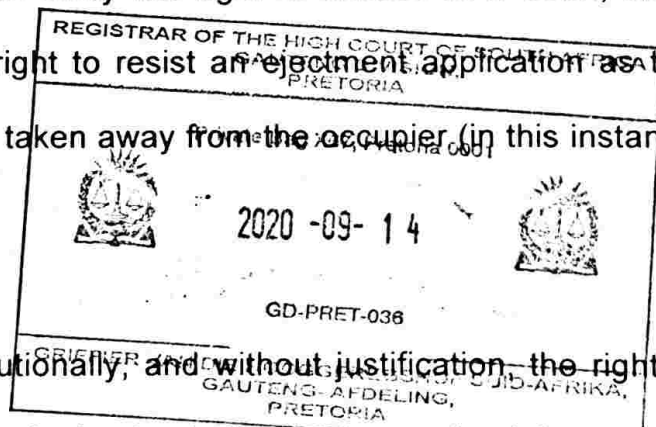


1.5 The *Placaet* imposes severe limitations on the common-law rights of agricultural lessees to claim compensation for improvements while occupying the property, and is by its very nature inequitable and unfair to whomever it applies.

1.6 The *Placaet* infringes upon the rights of a claimant (such as the First Respondent) for improvements because, if not for the *Placaet* the Claimant have a secured claim.

1.7 The different articles of the *Placaet* deal in an irrational manner with different claims for different types of improvements and unlawfully discriminates between the holders of different improvements.

1.8 The *Placaet* effectively takes away the right to access to a court, as it deprives a claimant of the right to resist an ejection application as the improvement lien defence is taken away from the occupier (in this instance the First Respondent).



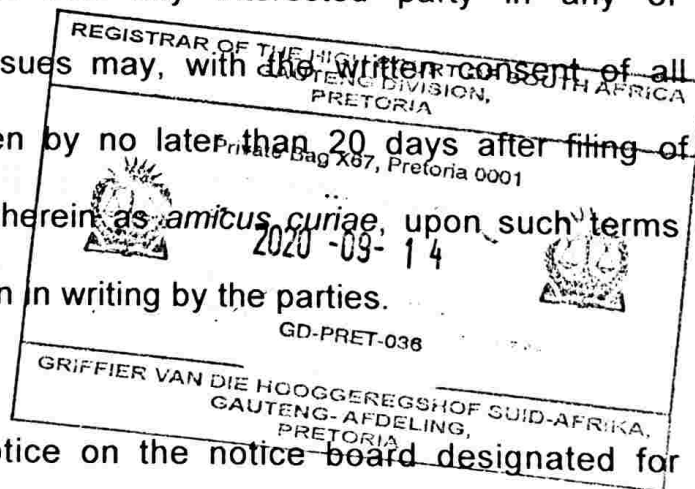
1.9 The *Placaet* limits unconstitutionally, and without justification, the right to housing because the occupier is deprived of the defence of a right to retain possession in order to protect an improvement lien. Occupiers with such a right (urban occupiers) can therefore resist an ejection application whereas rural occupiers cannot.

1.10 The *Placaet* unlawfully infringes on the occupier/claimants constitutional right

to retention of the property and the value of its lien in that it *inter alia*:

- fails to recognise section 9 of the Constitution that provides that everyone is equal before the law and has equal protection and benefit of the law;
- takes away a persons' right to property as defined in Section 25 of the Constitution, in essence amounting to the arbitrary deprivation of property.
- It takes away the right of a persons' access to court as defined in Section 34 of the Constitution, by depriving a person the right to resist an ejectment application on the basis of a improvement lien that is available to urban occupiers.

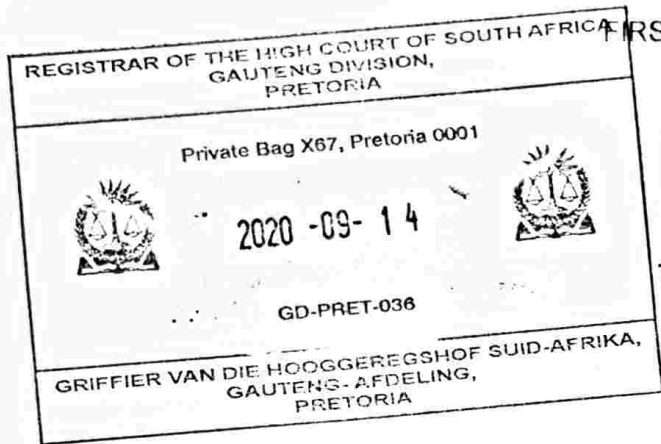
AND TAKE NOTICE FURTHER that any interested party in any of the aforementioned constitutional issues may, with the written consent of all the parties to the proceedings, given by no later than 20 days after filing of the Plaintiff's Affidavit, be admitted therein as *amicus curiae*, upon such terms and conditions as may be agreed upon in writing by the parties.



KINDLY forthwith place this notice on the notice board designated for this purpose and ensure that same remains on such notice board for a period of 20 days, whereafter you shall endorse the notice to state on which day the notice was placed on the notice board and, on expiry of the 20 day period, place such endorsed notice in the court file.

SIGNED at PRETORIA on this 11TH day of SEPTEMBER 2020.

Handwritten signature/initials



BREDENKAMP ATTORNEYS INC.

FIRST RESPONDENT'S ATTORNEYS

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TIJGER VALLEI OFFICE PARK

SILVER LAKES ROAD

SILVER LAKES, PRETORIA

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**TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA**

AND TO: STROEBEL SIGN THEUNISSEN (NORTH) INC.

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SERVICE BY EMAIL**

*Received on 11/9/2020
on ("UP")*

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**AND TO: CITY OF TSHWANE METROPOLITAN MUNICIPALITY
SECOND RESPONDENT
TSHWANE HOUSE,**

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PRETORIA

RECEIVED A COPY ON THIS _____ DAY OF SEPTEMBER 2020



OFFICE OF THE ATTORNEY GENERAL
PROSECUTOR GENERAL
LITIGATION SERVICES
2020 -09- 11
LITIGATION MANAGEMENT
IDH:00

M. Madiba

SECOND RESPONDENT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

 2020 -09- 14 

GD-PRET-036

GRIFFIER VAN DIE HOOGGEREGSHOF SUID-AFRIKA,
GAUTENG-AFDELING,
PRETORIA