

## IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG**

**CASE NUMBER:** LCC16R/98

In the review proceedings in the matter between:

**KANHYM (PTY) LTD**

Applicant

and

**WILSON SHABANGU**

Respondent

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### JUDGMENT

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**MOLOTO J:**

[1] Applicant obtained an order for the eviction of respondent in the Magistrate's Court, Middelburg (MP) in terms of the provisions of the Extension of Security of Tenure Act, No 62 of 1997 (hereinafter referred to as the "Act"). The full judgment of the Magistrate, handed down on 14 October 1998, reads as follows : -

- "1. The application against the Respondent succeeds with costs to be taxed on a party and party scale.
2. An order for the eviction of the Respondent from House number 73 in Thokoza Township on the farm Arendsfontein, district of Middelburg, is hereby granted, subject to the following :
  - (a) the Respondent shall vacate the said property not later than the 11th day of January 1999;
  - (b) if the Respondent has not vacated the said property on the date contemplated in 2(a), the eviction order may be carried out on the 12th day of January 1999;
  - (c) a copy of the eviction order is to be served on the Respondent personally by the Sheriff, such service to be effected only after the automatic review of the order by the Land

Claims Courts under section 19(3) of the Extension of Security of Tenure Act, 1997 (Act 62 of 1997)”

[2] The matter is now before the Land Claims Court for automatic review in terms of Section 19(3) of the Act.

[3] Applicant, Kanhym (Pty) Ltd, instituted its action by way of motion proceedings. One George Von Wuldfuge Eybers deposed to the only founding affidavit. Mr Eybers does not give any particulars of the applicant in his affidavit. In fact, except for mentioning its name on the heading of the case, no reference is made to Kanhym (Pty) Ltd throughout the papers. The result is that no averments are made in the papers to show that it has locus standi. On this ground alone, I am satisfied that the Magistrate’s order ought to be set aside. The fact that correspondence annexed to the papers in support of applicant’s case and addressed to respondent, is written on a letterhead of Kanhym Landgoed only serves to confuse the matter further.

[4] Mr Eybers does not say in his affidavit how he is associated with the applicant, if at all. Therefore, it is not clear whether he has any authority to depose on behalf of applicant. All he says is that he is “the manager, manpower of Kanhym Estate, a division of Foodcorp Operations Limited with place of business at Driehoek Farm, Middelburg district, Mpumalanga” and that he is “properly authorised to make this affidavit ...”

[5] Nowhere are we told how Kanhym Estates or Foodcorp Operations Limited is associated with Kanhym (Pty) Ltd. Less still are we told what the relevance of Kanhym Estates or Foodcorp Operations Limited to these proceedings is. In reply to respondent’s challenge to his authority to prosecute this case on behalf of applicant, Mr Eybers annexed a document to his replying affidavit which he called a resolution by the Board of Directors authorising him to bring this application on behalf of the applicant. The document bears no relation to the applicant. It is headed : “Foodcorp (Proprietary) Limited (Registration number 98/03563/07)”. It is not a resolution of Kanhym (Pty) Ltd.

[6] The purported resolution does not authorise Mr Eybers to prosecute this case, neither does it authorise him to depose to affidavits in this case. It reads :

“That George Von Wuldfuge Eybers in his capacity as Human Resources Manager of Kanhym Estates be and he is hereby empowered to sign all eviction orders and related documents for the removal of people from Thokoza Township on behalf of the company.”

Of importance is that the resolution does not authorise Mr Eybers to do anything connected with the prosecution of this case, because it is not passed by the applicant i e Kanhym (Pty) Ltd.

[7] Mr Eybers makes a bare allegation in paragraph 4 of his affidavit that applicant is the owner of house number 73 Thokoza Township, which respondent occupies. Given the complete absence of any reference to the applicant in the affidavits, it is not clear whose property house no 73 Thokoza Township is. Clarity could have been achieved by annexing proof of ownership. It can, therefore, not be readily accepted that house number 73, Thokoza Township is the property of the applicants, Kanhym (Pty) Ltd.

[8] Applicant based its application for eviction on the allegation that respondent unlawfully sold liquor in house number 73, Thokoza Township. A disciplinary inquiry was held and a record of the proceedings is filed with the papers. Unfortunately an illegible photocopy of the handwritten record is filed and I am not able to make out what took place during those proceedings. It is in any event not necessary for me to refer to those proceedings.

[9] In the founding affidavit of Mr Eybers it is alleged, at paragraph 5 thereof, that -

“The respondent’s right to occupy the premises was strictly subject to the respondent’s employment with Imperial Truck Systems contemplated in Section 8(2) of the Act. As Imperial Truck Systems is a contractor of the applicant the same conditions relating to tenure, applicable to the applicant’s employees apply to employees of Imperial Truck Systems”

[10] Section 8(2) of the Act reads -

“The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.”

[11] If this section is applicable to respondent, then respondent must have either resigned or been dismissed in terms of the Labour Relations Act before his right of residence could be terminated. It is common cause that no such resignation or dismissal has taken place. Therefore, based on the assertion in paragraph 5 of Mr Eybers' founding affidavit, the termination of the right of residence is premature. Applicant's legal representative submitted that Section 8(2) is not applicable to the respondent because he is not the applicant's employee, but rather the employee of Imperial Truck Systems. I do not agree with that submission. Respondent does not have to be applicant's employee for Section 8(2) to apply. It is sufficient that his right of residence arises solely from an employment agreement. It is quite clear, on a reading of Section 8(2), that the identity of the employer is immaterial and I find that Section 8(2) is applicable to the respondent..

[12] The Act requires that before an occupier is evicted he or she, the municipality having jurisdiction and the head of the Provincial Department of Land Affairs concerned must be notified of the intention to evict. In this regard the Act specifically states that the notice "shall set out the grounds on which the eviction is based".<sup>1</sup> Annexures "C" and "D" to the replying affidavit of Mr Eybers are the notices given to the Department of Land Affairs and the municipality respectively. They read as follows :

"We refer to the abovementioned matter and notify you of our intention to apply for an eviction order on 7 August 1998 at 08:30 in the Magistrate's Court of Middelburg.

Attached is (sic) three Notices of Motion for Mr S B Mashiloane, Mr Shabangu and Mr Mlangeni".

Copies of these Notices of Motion are not annexed to the affidavit. If, however, such Notices of Motion are identical to the Notice of Motion used to launch these proceedings, then no "grounds on which the eviction is based" are set out in either the said Notice of Motion or the above-quoted letters. Proper notice in terms of the Act has therefore not been given.

[13] I am satisfied that the eviction should not stand and accordingly make the following order:

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<sup>1</sup> Section 9(2)(d) of the Act.

- (1) The order of the Magistrate given on the 14th October 1998 is hereby set aside in whole;
- (2) The following order is substituted in whole :

The application is dismissed with costs.

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**JUDGE J MOLOTO**

**Handed down on:** 10 December 1998

For the applicant :

*J Floor* instructed by *Pienaar, Swart & Nkaiseng*, Vanderbijlpark  
correspondent attorneys : *Coetzee & Partners*, Middelburg

For the respondent :

*M Botha* instructed by *Ntuli Noble & Spoor Inc*