

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG
Court: **MOLOTO J**

CASE NUMBER: LCC12R/99

In the review proceedings in the case between:

REMHOOGTE FARMS (PTY) LTD

Plaintiff

and

DAWID MENTOOR

Defendant

JUDGMENT

MOLOTO J:

[1] The plaintiff brought an action in the magistrate's court, Grabouw in case number 423/1998 for the eviction of the defendant from its farm Remhoogte (hereinafter referred to as "the farm"), situated at Appletiser Road, Grabouw. Although appearance to defend was entered on behalf of the defendant, he did not attend court, either in person or by representation. The matter accordingly proceeded by default.

[2] The plaintiff evicted the defendant in terms of the provisions of the Extension of Security of Tenure Act, No 62 of 1997 (hereinafter referred to as "the Act"). The magistrate's court granted the order of eviction on 3 March 1999 and the matter now comes before me in terms of section 19(3) of the Act for automatic review.

[3] Eviction of an occupier under the Act is governed by section 9, which prescribes that:

- "9(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
- (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."

[4] In its particulars of claim the plaintiff alleged that the defendant's right of residence had been terminated in terms of section 8 of the Act. The relevant sub-sections of section 8, on which the plaintiff relied for the termination of the right of residence are sub-sections (2) and (3). These read as follows:

- "8(2) 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.
- (3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act."

[5] In this regard, the plaintiff alleged that it employed the defendant as a tractor driver on the farm in terms of a verbal agreement during February 1990. Subsequent to the employment and on 12 November 1996, the parties entered into a written agreement in terms of which defendant was given the right to occupy, as employee, a house on the farm. The relevant clause of the agreement reads thus:

- "8(1) In die geval van beëindiging van die Huishoof se diens om watter rede ookal, sal die inwoners verplig wees om die huis binne 1 (een) maand vanaf die datum waarop die kennis gegee is te verlaat".

[6] No doubt the above-quoted clause of the agreement links the defendant's stay in the house to his continued employment. The plaintiff further alleged that its termination of defendant's services was challenged by the latter at the Commission for Conciliation, Mediation and Arbitration ("the CCMA"), but without success. The CCMA made its award on 28 April 1998, which date becomes the effective date for the termination of defendant's employment in terms of subsection 8(3) above.

[7] I am satisfied that the defendant's right of residence was terminated in accordance with section 8 of the Act and that, therefore, section 9(2)(a) has been complied with.

[8] Annexure B to plaintiff's particulars of claim is a notice to defendant to vacate the premises he occupied on plaintiff's farm within one month. Defendant did not so vacate the premises in the stipulated period. Therefore, section 9(2)(b) has also been complied with.

[9] Section 9(2)(c) requires that the conditions for an order for eviction in terms of section 10 or 11 be complied with. Defendant, having been an occupier on 4 February 1997, falls to be dealt with in terms of section 10, which prescribes that-

- “(1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-
 - (a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
 - (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar month's notice in writing to do so;
 - (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or
 - (d) the occupier-
 - (i) is or was an employee whose right of residence arises solely from that employment; and
 - (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.

- (2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.

(3) If -

- (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
- (b) the owner or person in charge provided the dwelling occupied by the occupier; and
- (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,

a court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to -

- (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and
- (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted"

There is nothing in the papers before the magistrate to suggest that the provisions of sub-section (1) were breached, hence I shall not deal with them. That being so, it must be inquired, in terms of section 10(2), whether or not suitable alternative accommodation was available. There is no evidence that suitable alternative accommodation is available, therefore section 10(2) also does not apply.

[10] It remains to examine whether plaintiff complied with section 10(3). The notice terminating defendant's right of residence is dated 21 October 1997 and is unsigned. I do not know if it was delivered to defendant, and if so, on what date. I will, however, accept that defendant received it within a reasonable time after 21 October 1997, say a month. It is more than nine months since 20 November 1997 to 3 March 1999 when the magistrate gave the judgment under review. The dwelling occupied by defendant was provided by plaintiff. The plaintiff avers that he requires the premises for occupation by other employees and unless defendant vacates them, the plaintiff will be exposed to hardship regarding accommodation for other employees. It seems, therefore, that there has been some compliance with section 10(3) which, in turn, would be compliance with section 9(2)(c). However, there is no evidence of efforts by plaintiff to secure

suitable alternative accommodation for defendant. In the absence of such evidence plaintiff cannot rely on section 10(3). I am accordingly not satisfied that section 9(2)(c) has been complied with.

[11] Finally, plaintiff must satisfy the requirements of section 9(2)(d). This subsection has to do with the giving of two calendar months' written notice by plaintiff to the defendant, the municipality in whose area of jurisdiction the land is situated and the head of the relevant provincial office of the Department of Land Affairs, of the plaintiff's intention to obtain an eviction order against defendant. This notice is to be given after the termination of the right of residence.¹ Therefore, it is apart from and in addition to the notice given under section 8. The notice in terms of section 9(2)(d) was given to defendant by means of a letter dated 20 January 1998 and annexed to the papers. A letter dated 5 November 1998 and enclosing a copy of the summons against defendant is purported to have been sent to the Town Clerk, Grabouw. A facsimile dated 20 January 1998 is alleged to have been sent to the head of the provincial office, Department of Land Affairs, for attention of Advocate Mgoqi. The facsimile does not state which provincial office this is. I assume it was intended for the provincial office of the Western Cape. It is also alleged that a copy of the transmission result report of the facsimile is annexed as annexure "E". There is no annexure "E" to the papers. Therefore, I do not know whether the facsimile was at all sent and if sent, whether Adv Mgoqi is the correct official to address it to. However, I have a more fundamental problem with this notice. Section 9(2)(d) requires that the notice shall contain "the prescribed particulars and set out the grounds on which the eviction is based". The body of the letter (facsimile) reads thus:

"As per the Tenancy Bill we have to inform you of our intention to evict Mr David Mentoer."

"A similar letter has been delivered to Mr Mentoer today."

This facsimile is written on the letterhead of Remhoogte Boerdery which is the only indication of who the "we" who intend evicting Mr Mentoer are. There is no indication of the land from which he is to be evicted.

[12] The Act stipulates that "the prescribed particulars" and "the grounds on which the eviction is based" (section 9) must be disclosed. The bare minimum of the particulars must, at the very least,

¹ *City Council of Springs v Occupants of the farm Kwa-Thema 210* [1998] 4 All SA 155 (LCC) at 162e.

be the full names and addresses of the parties, the full description of the land from which the defendant is to be evicted and information that the plaintiff will approach the court two months after receipt of the notice by the addressee. Then, of course, the cause of action must also be disclosed in the notice. These particulars are not mentioned in the notice addressed to the head of the provincial office of the Department of Land Affairs.

[13] Accordingly, I am not satisfied that the notice to the head of the provincial office of the Department of Land Affairs complies with the Act.

[14] The municipality was notified by being sent a copy of the summons, which appears to have been despatched more than two months before the hearing of the case. I, therefore, accept that the notice to the municipality was proper because the prescribed particulars and the grounds for the eviction are disclosed therein.

[15] Annexure “E”, being a copy of the transmission result report (the notice was allegedly sent by facsimile) of the notice to the head of the provincial office of the Department of Land Affairs, is not annexed and there is also no proof of delivery of the notice to the municipality. I am, therefore, not satisfied that these institutions received the notice.

[16] Although the Act states that the notice should be delivered to these institutions for information, I believe there is a good reason requiring the notice to be delivered to them. Regard being had to the purpose of the Act, which is to secure the tenure of occupiers, it is conceivable that the reason is that the municipality and the provincial office of the Department of Land Affairs may help with suitable alternative accommodation.² Therefore, it is important that these offices are properly notified of the intended action and provided with full particulars to enable them to contact the parties, should the need arise.

[17] I make the following order:

² *De Kock v Juggels and Another*, LCC7R/99, 11 March 1999, as yet unreported at par [25], internet web site address: <http://www.law.wits.ac.za/lcc/1999/dekocksum.html>; *City Council of Springs v Occupants of the farm Kwa-Thema* 210 supra n 1 at 162g; *Lategan v Koopman and Others* 1998 (3) SA 457 (LCC) at 465C-D, [1998] 3 All SA 603 (LCC) at 609c-d.

- (1) The order of the magistrate's court, Grabouw, made on 3 March 1999 in civil case number 423/1998 is hereby set aside in whole.
- (2) The matter is referred back to the magistrate, Grabouw, for re-trial in compliance with the provisions of the Extension of Security of Tenure Act, 62 of 1997, as amended.

JUDGE J MOLOTO

Handed down on: 9 April 1999