IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on **12 May 2000 and 17 July 2000** **CASE NUMBER:** LCC16/00
before **Moloto J**

In the case between:

THUKELA WILDLIFE CC Applicant
(CK No 96/19979/23)

and

MASITHOLE MVELASE First Respondent
GWAYA MVELASE Second Respondent
NQU MVELASE Third Respondent
NCANE MVELASE Fourth Respondent
SENZO MVELASE Fifth Respondent
MAGAMA MVELASE Sixth Respondent
FIGILE MVELASE Seventh Respondent
MAXABA MVELASE Eighth Respondent
DHU MVELASE Ninth Respondent
SHISHILIZI MVELASE Tenth Respondent

JUDGMENT

MOLOTO J:

[1] On 23 March 2000 applicant issued an urgent application for the eviction of the respondents from its farm Brakfontein No 1316 in KwaZulu-Natal. I shall refer to it as "the farm". The order prayed for reads as follows:

> "(a) That the Applicant's failure to comply with the Rules relating to service and time limits be condoned in so far as it may be necessary;
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> (b) That the Respondents and all persons occupying through them as well as their movable property and livestock be forthwith evicted from the Farm Brakfontein No. 1316, situate in the Administrative District of Natal, Province of KwaZulu-Natal, held under Deed of Transfer T31174/96, which farm is commonly referred to and known as Emaweni Game Ranch;
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> (c) That in the event of the Respondents and the persons occupying Emaweni Game Ranch through them failing to comply with the order set forth in paragraph (b) above within seven days of the service of the said order upon them in the manner provided for hereunder, the Sheriff for the district of Colenso be and is hereby authorised to take all

such steps as may be necessary to evict the Respondents, the persons occupying through them and their movable property and livestock from Emaweni Game Ranch;

(d) That the Respondents be directed to pay the costs of this Application jointly and severally;

(e) That service of this order shall be effected :

(i) By the Sheriff serving a copy of the order on each of the Respondents personally, or by the Sheriff effecting service in accordance with the Rules of this Honourable Court;

(ii) Upon such other individuals as may be resident in the Respondents' kraal, by the Sheriff reading out the order to them in the English and Zulu language and by displaying a copy of the order at a prominent place within the Respondents' kraal.

(f) That the Applicant be granted further and/or alternative relief."

[2] The matter was finalised on 17 July 2000 when I granted prayers (a), (b), (c) and (e) of the order prayed. Following hereunder are the reasons for granting the order.

[3] The facts are that one Mr George Phillip Horner ("Horner") owned several pieces of land collectively known as Ganna Hoek, of which the farm formed a part. A certain Mr Mgcacane Alfred Mvelase (henceforth referred to as the "deceased") was, in his lifetime, married to the first and eighth respondents. The rest of the respondents are relatives of the deceased and all lived in his kraal on the farm. The respondents were family members or associates of the deceased within the meaning of those terms as defined in the Land Reform (Labour Tenants) Act.[1] I shall refer to it as the Labour Tenants Act. Other families also lived on the farm. In or about 1996 the other families together with the deceased (the latter acting also on behalf of the respondents) applied, in terms of section 17 of the Labour Tenants Act, for acquisition of land from Horner. Two pieces of land outside the farm but on the remainder of Ganna Hoek and a third piece belonging to Horner's father were agreed upon and those who made the application formed a communal property association in terms of the Communal Property Associations Act[2] to buy the land applied for on behalf of all these families, including the respondents. I shall refer to it as "the CPA Act". The communal property association was registered

1 Act 3 of 1996, as amended.

2 Act 28 of 1996, as amended.

in terms of the CPA Act under the name Siphintuthuko Communal Property Association ("the Association"). The deceased was a member of the committee that ran the affairs of the Association and in that capacity was one of the signatories to the agreement of purchase and sale of the land. In applying for the Government subsidy to finance the purchase, the deceased caused applications for those of the respondents who qualified for such a subsidy to be made, and they were all successful.

[4] Simultaneously with the Association's negotiations for the purchase of land from Horner and his father, the applicant was also negotiating the purchase of the farm from Horner. At all material times the members of the Association, including the respondents, were aware of the applicant's negotiations to purchase the farm and that once transfer of the land applied for by them had been registered in the name of the Association, they would have 60 days within which to relocate from the farm to the Association's land. It was in fact a term of the agreement between the Association and the Horners. This was a common understanding between all three parties to the agreements, *viz* the Association, the Horners and the applicant. Indeed the applicant made it quite clear that it was not prepared to proceed with the purchase unless the members of the Association, including the respondents, vacated the farm. Reduction of the purchase agreement by the Association to writing was delayed for some two years and only happened on 18 November 1998. What caused this delay is not quite clear, but, in the knowledge that agreement in principle had been reached that the respondents would relocate, the applicant finalised its purchase of the farm and took transfer of it on 4 November 1996. The applicant agreed to allow the members of the Association, including the respondents, to stay on the farm pending transfer of the land to the Association. A reference in the agreement between Horner and the Association, to the effect that "until such time as the land is transferred to the legal entity the status quo remains" is said to refer to the fact that the members of the Association, including the respondents, would remain on the farm until the transfer of the land to the Association. That, notwithstanding the fact that the portion occupied by the Association or its members was being sold to the applicant. The applicant was aware of this arrangement and agreed to it. The members of the Association, including the respondents, were recognised by Horner, his father and the applicant as labour tenants as defined in the Labour Tenants Act.

[5] The property purchased by the Association was transferred to the Association and is held by Certificate of Consolidated Title dated 20 April 1999 which appears to be the same date on which the Association took transfer of the various pieces of land that were consolidated. The Association holds the property for the benefit of the members of the Association, including the respondents. The rest of the families constituting the Association timeously (i e within 60 days of 20 April 1999) relocated to the land held by the Association. Only the deceased and the respondents did not relocate. Hence the applicant, as owner of the farm, commenced proceedings to evict the deceased and the respondents. However, the deceased passed away during February 2000 after receiving several letters warning him to vacate the farm but before being served with the papers in this matter. The area allocated to the deceased's family (i e the respondents) on the land sold to the Association is still vacant and is ready for occupation by them. The respondents persist in their refusal to vacate the farm. Those are the facts.

[6] Mr Lotz, appearing for the applicant, argued briefly that the applicant is the registered owner of the farm, that the terms of the various agreements between Horner and his father on the one hand and the Association on the other, included stipulations in favour of the applicant as well as obligations for the applicant. The stipulation in favour of the applicant is the promise of the undisturbed use and enjoyment of the farm 60 days after the Association took transfer of its own land. The corresponding obligations were that the applicant allows the members of the Association, including the respondents, to remain on the farm until about 60 days after transfer is effected to the Association and to assist the members of the Association, including the respondents, to relocate when the time comes. The applicant repeats its preparedness, even at this stage, to assist with the relocation of the respondents. As the third party in whose favour the stipulation was made, and having accepted the stipulation, the applicant can sue or be sued on the contract.[3]

[7] Mr Mkwanazi, counsel for the respondents, indicated that he only had instructions to apply for a postponement in order that he could be properly instructed. An earlier application by the respondents themselves for the same reason had been refused on 12 May 2000 when the matter first came up for argument. The reason therefor was that the respondents had had ample opportunity since 4 April 2000

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3 *McCullogh v Fernwood Estates Ltd* 1920 AD 204 at 206.

when they were served with the papers to secure the services of a lawyer. Once again, there had been more than enough time since 12 May 2000 to 17 July 2000 for the respondents to properly instruct a lawyer. When the matter was postponed for other reasons on 12 May 2000 to 17 July 2000, the respondents were warned by the Court to take advantage of the postponement to obtain the services of a lawyer. Accordingly the application by Mr Mkwanazi was refused, whereupon Mr Mkwanazi withdrew from the case. The second respondent, on behalf of the respondents, took over and stated that they had not relocated because they do not like the land they were to relocate to, that they did not consider themselves bound by the actions of the deceased and that the other families already on the land did not welcome them.

[8] The deceased died in February 2000, long after 20 April 1999 when transfer passed to the Association. Indeed, at the time of his death, several letters of demand had already been sent to him. This indicates that, notwithstanding being a signatory to the purchase and sale agreement, the deceased had changed his mind about relocating to the new place. Again, while the deceased was still alive, the ninth respondent indicated that they were not prepared to vacate their kraal. This indicates that the respondents, together with the deceased in his lifetime, decided they were no longer interested in relocating. But they cannot just renege on their obligations without consequences. In addition, the respondents cannot now, after the deceased's death, declare themselves not bound by his actions. They were aware of these arrangements and if they did not want to be bound they should have informed the deceased and Horner. As for the point that the other families on the land they bought do not welcome them, that is a matter between the respondents and such families. It has nothing to do with the applicant. In saying it has nothing to do with the applicant, I must not be understood to say I believe it is true that they are unwelcome.

[9] The Labour Tenants Act is social legislation intended to secure the tenure of a certain category of labourers whose tenure has been precarious over the years, namely labour tenants. In this case the labour tenants (as the applicant and the Horners accepted the respondents to be) have had their tenure upgraded from that of labour tenant to that of owner. It is strange, given their participation in the Association, for the respondents to turn around and refuse to assume their chosen status which secures their tenure. The Labour Tenants Act can be said to help bring certainty to the landowner or person in charge about the use and enjoyment of his land. In a situation like the present, where a landowner

agrees to an award of land to his employees as labour tenants and sells them a piece of land which they chose, it is only fair and just that such labour tenants vacate the landowner's property and take occupation of the land they have chosen. As it is, the applicant acquired the farm with the express intention of running a game ranch, which intention was known to the respondents as early as the negotiation stage in 1996. The applicant states that up to now it has not begun with its game ranch business all because of the presence of the respondents on the farm. The financial loss that the applicant is suffering as a result, cannot be allowed to continue. Certainty in the use and enjoyment of its property must also be assured a landowner in the applicant's position.

[10] Section 3(2) of the Labour Tenants Act provides that -

> "(2) The right of a labour tenant to occupy and to use a part of a farm as contemplated in subsection (1) together with his or her family members may only be terminated in accordance with the provisions of this Act, and shall terminate-
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> (a) . . .
>
> (b) . . .
>
> (c) . . .
>
> (d) on acquisition by the labour tenant of ownership or other rights to land or compensation in terms of Chapter III."

[11] The Association holds the land for the benefit of its members. The respondents are members of the Association, therefore the situation is equivalent to saying the respondents have acquired rights in land, hence their right to occupy and use part of the farm has terminated. If I am wrong in saying so, and as a result there is doubt about the Court's jurisdiction to hear the matter, then I deal with that issue hereunder.

[12] Section 30(1) of the Labour Tenants Act provides that -

> "The provisions of sections 22, 24, 25, 28, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28J, 28K, 28L, 28M, 28N, 29, 30, 31, 32, 37 and 38 of the Restitution of Land Rights Act, 1994 (Act 22 of 1994), shall apply *mutatis mutandis* to the performance by the Court of its functions in terms of this Act: Provided that the reference to the Commission on Restitution of Land Rights in section 32 (3) of the said Act shall for the purposes of this Act be deemed to be a reference to the Director-General."

[13] In turn section 22(1)(cC) of the Restitution of Land Rights Act[4] provides that this Court shall have power, to the exclusion of any court contemplated in section 166(c), (d) or (e) of the Constitution -

> "(cC) to determine any matter involving the interpretation or application of this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No 3 of 1996), with the exception of matters relating to the definition of 'occupier' in section 1 (1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997);"

[14] The respondents applied to acquire a portion of the Horners' land in terms of the Labour Tenants Act on the basis that they were labour tenants as defined in that Act. The Horners accepted this claim by the respondents that they are labour tenants and the agreements reached between the respondents and the Horners were on that basis.

[15] To the extent that it might be argued that this Court has no jurisdiction to hear the matter, the above-quoted sections of the Labour Tenants Act and the Restitution of Land Rights Act make it quite clear that the Court does have the requisite jurisdiction.[5]

[16] The consequence that must follow the respondents' refusal or failure to vacate the applicant's farm is the order I made on 17 July 2000 and which is referred to above.

JUDGE J MOLOTO

Heard on: 12 May 2000 and 17 July 2000 **Handed down:** 25 July 2000

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

4 Act 22 of 1994.

5 See also *Zulu and Others v Van Rensburg and Others* 1996 (4) SA 1236 (LCC) at 1246C - 1247F; *Froneman v Mvelase and Others*, LCC 113/99, 23 September 1999, [1999] JOL 5409 (LCC), internet web site http://www.law.wits.ac.za/lcc/1999/fronsum.html and *Labuschagne v Sibiya and Another*, LCC 28/98, 4 August 1999, [1999] JOL 5167 (LCC), internet web site http://www.law.wis.ac.za/lcc/1999/labuschagnesum.html.

For the respondents:
Adv D Mkwanazi.