

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

CASE NUMBER: LCC6R/00

In chambers: **DODSON J**

MAGISTRATE'S COURT CASE NUMBER: 1207/1999

Decided on: 4 February 2000

In the review proceedings in the case between:

SENTRALE KAROO DISTRIKSRAAD

Applicant

and

ISAK ROMAN

Respondent

CASE NUMBER: LCC7R/00

MAGISTRATE'S COURT CASE NUMBER: 1205/1999

SENTRALE KAROO DISTRIKSRAAD

Applicant

and

JANNETJIE KOOPMAN

Respondent

CASE NUMBER: LCC8R/00

MAGISTRATE'S COURT CASE NUMBER: 1206/1999

SENTRALE KAROO DISTRIKSRAAD

Applicant

and

ALIDA KROTZ

Respondent

JUDGMENT

DODSON J:

[1] The applicant in the three cases to which this judgment relates is the Central Karoo District Council. I will refer to it as “the Council”. The respondent in each case occupies a structure made from wood, corrugated iron and tarpaulin on a road reserve alongside the Aberdeen/Nelspoort Gravel Road.

[2] The Council brought applications against each respondent in the Beaufort West Magistrate’s Court for an order evicting him and his family from the structure and authorising the Sheriff to remove them to the “squatter camp” in Beaufort West. The notice of motion makes it clear that the order in each case is sought in terms of section 4(1) of Act 19 of 1998. That Act is the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act. I will refer to it as “PIE”. The applications were duly served on the respondents who did not oppose them. Orders as sought by the Council were duly granted on 23 December 1999. The documents in each case were then sent to this Court “vir hersiening deur die grondeisehof”.

[3] PIE repealed the Prevention of Illegal Squatting Act.¹ One of the primary functions of PIE is to regulate the eviction of “unlawful occupiers”. An “unlawful occupier” is defined in PIE as meaning -

“a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996...”

In *ABSA Bank Ltd v Amod*² this term was held to mean-

“a person who has without any formality or right moved onto vacant land of another and constructed or occupied a building or structure thereon”.³

Although this approach seems correct, it is not necessary for me to decide that issue here. What is particularly important for present purposes is that the definition expressly excludes “a person who is an occupier in terms of the Extension of Security of Tenure Act”.⁴ I will refer to this Act as ESTA.

1 Act 52 of 1951.

2 [1999] 2 All SA 423 (W).

3 Above n 2 at 429 i. This approach was followed in *Ross v South Peninsula Municipality* [1999] JOL 5298 (C).

4 Act 62 of 1997.

[4] The latter exclusion is logical because an occupier in terms of ESTA is by definition a person who has or at a certain time had consent or another right in law to occupy the land of another. Under ESTA, the Land Claims Court has both original jurisdiction to hear matters pertaining to occupiers and, more importantly, appeal and review powers over the magistrates' courts in respect of their decisions in terms of ESTA.⁵ Most important for present purposes is section 19(3) of ESTA which confers an automatic review jurisdiction on the Land Claims Court in respect of eviction orders made by magistrates against occupiers in terms of ESTA.⁶

[5] PIE, by contrast, includes no automatic review procedure and confers no jurisdiction on the Land Claims Court. Only original jurisdiction is dealt with in PIE. The only courts having original jurisdiction under PIE are the magistrates' courts and the high courts.⁷ A review in respect of a magistrate's decision under PIE would lie to the high court having jurisdiction over that magisterial district. Moreover, in the absence of any express provision for automatic review in terms of PIE, a review to the high court would be a review in terms of rule 53 of the high court rules at the instance of one of the parties.⁸

[6] The orders in these applications were purportedly sent for automatic review to the Land Claims Court by the magistrate who gave the orders. Given that the orders were plainly made in terms of PIE and no defence was raised based on any alleged protected status as an occupier in terms of ESTA,⁹ the magistrate had no power or duty to send them on automatic review. The Land Claims Court has no jurisdiction to review the orders.

5 Sections 19(2), 19(3) and 20 of ESTA.

6 See the discussion on the nature of this type of review in *Lategan v Koopman and others* 1998 (3) SA 457 (LCC); [1998] 3 All SA 603 (LCC).

7 Section 8(1) read with section 9 and the definition of "court" in section 1 of PIE. See the judgment of Moloto J in *Theunissen v Chibodu*, LCC 70R/99, 18 November 1999, internet website address <http://www.law.wits.ac.za/lcc/1999/theunissensum.html> at para [3] and Gildenhuys J in *Van der Walt and Others v Lang and Others* 1999(1) SA 189 (LCC) at 196 n 6.

8 Erasmus and Van Loggerenberg *Jones and Buckle: Civil Practice of the Magistrates' Courts in South Africa* 9th ed, Vol 1 (Juta, Cape Town 1996) at 343.

9 If such a defence is raised, the Land Claims Court would, in my view, have an automatic review jurisdiction. See *Skhosana and Others v Roos T/A Roos se Oord and Others* [1999] 2 All SA 652 (LCC) at 659 d to f.

[7] The applications are accordingly referred back to the magistrate concerned and no order is made.

JUDGE DODSON

For the applicant:

Mr Wagener of Wagener Attorneys, Beaufort West

For the three respondents

Unrepresented