

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

CASE NUMBER: LCC17R/02

In chambers: **BAM AP**

MAGISTRATE'S COURT CASE NUMBER: 4334/2001

Decided on: 27 May 2002

In the review proceedings in the case between:

SLABBERT, ET

Plaintiff

and

NKOSI, E

Defendant

JUDGMENT

BAM AP:

[1] This is a review in terms of section 19(3) of the Extension of Security of Tenure Act¹ ("the Act") of an order by the Magistrate, Ermelo, on 27 February 2002 for the eviction of the defendant from the plaintiff's farm, Tweefontein 479, district Ermelo.

[2] I am unable to confirm the eviction order on review because of the non-compliance with some of the peremptory requirements for an eviction order, as set out below.

Section 9(2)(a)

[3] The plaintiff makes the bald allegation that the defendant's right of residence was terminated in terms of section 8(2) of the Act, but does not provide sufficient information to enable a finding to be made that this was indeed the case. The magistrate erred in the circumstances in accepting that the right of residence was terminated in accordance with section 8(2). The plaintiff is required to place before the court all the necessary factual allegations to

1 Act 62 of 1997, as amended.

show compliance with the Act before an eviction order can be granted.² The only information that is provided is that the employment contract was terminated during 2000 and that the right of residence terminated at the same time. There is nothing regarding the circumstances surrounding the termination of the employment contract and the right of residence.

Section 9(2)(c)

[4] There is no allegation as to how long the defendant was an occupier, and it is therefore impossible to determine whether section 10 or 11 applies.³ If section 11 did apply, as was alleged in argument by the plaintiff's legal representative, it was necessary for the magistrate to consider fully the factors in section 11(3).⁴ There is insufficient information provided for the magistrate to have adequately considered these factors and the magistrate should have called for such evidence or dismissed the action.

Section 13

[5] The plaintiff has made no allegations regarding section 13. In such a case the magistrate must make enquiries regarding the requirements in this section, such as whether any structures were erected, improvements made, or crops planted and whether any wages are due, before an eviction order can be granted,⁵ which he has not done.

2 See *Karabo and Others v Kok and Others* 1998 (4) SA 1014 (LCC), [1998] 3 All SA 625 (LCC) at para [13] and *De Kock v Juggels and Another* 1999 (4) SA 43 (LCC) at para [13].

3 See note 2 above, also *Van Breda v Filander* 1999 (4) SA 498 (LCC) at para [6].

4 Section 11(3) reads as follows:
“(3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to-

- (a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties;
- (c) whether suitable alternative accommodation is available to the occupier;
- (d) the reason for the proposed eviction; and
- (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.”

5 See *Lategan v Koopman en Andere* 1998 (3) SA 457 (LCC); [1998] 3 All SA 603 (LCC) at para [14] and *Eduard Haumann Brink Trust v Solomons* LCC 65R/01, 3 July 2001, at para [13] available from <http://www.law.wits.ac.za>.

Order

[6] The order of the Magistrate, Ermelo made on 27 February 2002 in this matter is set aside in whole and is substituted with the following order.

- “(a) The matter is referred back to the Magistrate’s Court, Ermelo.
- (b) The plaintiff is granted leave to renew the application on the same papers, suitably amended and supplemented and on notice to the defendant.”

ACTING JUDGE PRESIDENT F BAM

For the plaintiff:
Noltes Attorneys, Ermelo.

For the defendant:
Absent.