IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Heard at **RANDBURG** on 8 November 2002 **CASE NUMBER**: LCC 39/02
before **Gildenhuys AJ**

Decided on: 20 November 2002

In the case between:

KUSA KUSA CC Applicant

and

MBELE, BG Respondent

JUDGMENT

GILDENHUYS AJ:

[1] The applicant is the owner of the remaining extent of the farm Uitkyk No 2156, KwaZulu-Natal. Originally he owned the entire farm. The respondent and his family live on the remaining extent of the farm. The respondent alleged that he is a labour tenant. He applied for a right in land over a portion of the farm in terms of Chapter III of the Land Reform (Labour Tenants) Act[1] (the "Labour Tenants Act"). Following upon negotiations between the applicant, the respondent and other labour tenants also living on the farm, a settlement agreement was concluded. In terms of that agreement, the applicant donated some 250 hectares of the farm Uitkyk to a communal property association to be established in terms of the Community Property Associations Act.[2] The labour tenants living on the farm would become members of that association, and thereby become entitled to live on the land to be transferred to the association. The settlement was approved by the Director-General of Land Affairs on 21 December 1998.

[2] Consequent upon this agreement, a portion (known as portion 1) of the farm Uitkyk, in extent 250,9396 hectares, was transferred to the Sibhekintuthuku Communal Property Association on 1 November 1999. The applicant remained owner of the remaining extent of the

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1 Act 3 of 1996, as amended.

2 Act 28 of 1996, as amended.

farm. The respondent is a member of the association and as such entitled to live on the land acquired by the association. On 22 December 1999 and pursuant to the agreement, the applicant paid R5 000 to the respondent in respect of his forthcoming relocation to the Sibhekintuthuku land. The respondent gave a receipt which reads as follows:

> "BAKULU MBHELE HEAD OF THE MBHELE HOUSEHOLD HEREBY ACKNOWLEDGE RECEIPT OF THE SUM OF R5000.00 (FIVE THOUSAND RAND) BEING PAYMENT AS PER AGREEMENT TO BE USED SOLELY FOR BUILDING MATERIALS IN THE CONSTRUCTION OF MY NEW HOUSEHOLD/S ON THE NEWLY ACQUIRED AND TRANSFERRED PROPERTY DONATED BY KUSA KUSA CC.
>
> I AM AWARE THAT THIS IS TO FACILITATE A SPEEDY RELOCATION AS REQUIRED BY KUSA KUSA CC, TO BE COMPLETED BY EASTER IN THE YEAR 2000.
>
> SIGNED AT LADYSMITH ON THIS 22 DAY OF DECEMBER 1999."

Notwithstanding the settlement agreement and the relocation payment, the respondent and his family did not relocate to the Sibhekintuthuku land. Efforts by the Department of Land Affairs and by a community leader, Mr Lindelani Sibisi, to get them to move, came to nought.

[3] By notice of motion dated 18 September 2002 the applicant applied for the eviction of the respondent together with all persons occupying the remainder of the farm Uitkyk through him. The founding affidavit delivered in support of the application sets out the relevant facts, but contains no indication of the legal provisions on which the applicant relies for his claim. The respondent did not enter an appearance to defend the application. The matter was heard by me on 8 November 2002 in the absence of the defendant.

[4] Under the common law, an owner of land is entitled to apply to court for an eviction order by simply alleging his ownership of the land and stating that someone else is in occupation of the land.[3] The Constitution[4] and post-apartheid land reform legislation placed restrictions on the common law right of eviction, and in some cases overrode the common law. I will proceed to consider the restrictions imposed by the constitution and by some of the legislation.

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3 *Graham v Ridley* 1931 TPD 476; *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20A.

4 Act 108 of 1996.

[5] Section 26(3) of the Constitution reads:

> "No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. . . ."

The effect of this provision was described in the majority judgment of the Supreme Court of Appeal in *Brisley v Drotsky*[5] as follows:

> "Artikel 26(3) vereis dat alle relevante omstandighede in ag geneem moet word maar bepaal nie self dat enige omstandighede relevant sal wees nie. Daarvoor moet na die algemeen geldende reg gekyk word. Omstandighede kan slegs relevant wees indien hulle *regtens* relevant is."[6]

In the following paragraph of the same judgment, it was stated:

> "Regtens is 'n eienaar geregtig op besit van sy eiendom en op 'n uitsettingsbevel teen 'n persoon wat sy eiendom onregmatiglik okkupeer behalwe indien daardie reg beperk word deur die Grondwet, 'n ander Wet, 'n kontrak of op een of ander regsbasis."[7]

[6] Oliver JA, in a minority judgment delivered in *Ndlovu v Ngcobo; Bekker and Another v Jika*,[8] recognised that the undermentioned post-apartheid laws give protection to occupiers. He identified the category of occupier which each law protects, as follows:

> "C The *Rental Housing Act50 of 1999* protects the occupation rights of (lawful) occupiers of (rural and urban) residential property
> C the *Land Reform (Labour Tenants) Act 3 of 1996* protects (lawful) occupiers of agricultural (rural) land
> C the *Extension of Security of Tenure Act 62 of 1997* ('ESTA') protects the occupation rights of persons who (lawfully) occupy (rural) land with consent of the landowner
> C the *Interim Protection of Informal Land Rights Act 31 of 1996* protects (lawful) occupiers of (rural and urban) land in terms of informal land rights
> C the *Restitution of Land Rights Act 22 of 1994* protects (lawful and unlawful) occupiers of (urban and rural) land who have instituted a restitution claim
> C the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998* ('PIE') regulates eviction of unlawful occupiers (from urban and rural land)."[9]

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5 2002 (4) SA 1 (SCA).

6 At para [42]. See also *Westminster Produce (Pty) Ltd t/a Elgin Orchards v Simons and Another* 2001 (1) SA 1017 (LCC) at para [11].

7 At para [43].

8 Case nos 240/2001, 136/2002, 30 August 2002, not yet reported.

9 At para 42.

I will now proceed to examine which of the above laws give protection to the defendant, and if there are more than one, how any divergent provisions should be reconciled.

[7] The respondent was admittedly a labour tenant before he obtained his "other rights to land". Section 3(2)(d) of the Labour Tenants Act reads:

> "The right of a labour tenant to occupy and to use a part of a farm . . . shall terminate - . . .
>
> (d) on acquisition by the labour tenant of ownership or other rights to land . . ."

The defendant acquired "other rights to land" in respect of the subdivided portion 1 of Uitkyk farm through the settlement agreement and his membership of the Sibhekintuthuku Communal Property Association. Accordingly, his right to occupy and use any part of the remainder of Uitkyk farm has terminated. Is he, despite the lapsing of those rights, still a labour tenant? The Labour Tenants Act contains the following definition of labour tenant:[10]

> "'**labour tenant**' means a person -
>
> (a) who is residing or has the right to reside on a farm;
>
> (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
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> (c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm,
>
> including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3(4) and (5), but excluding a farm worker;"
>
> (my underlining)

The respondent "has had" the right to use cropping or grazing land on the farm, and "has provided" labour to the owner. He meets the other requirements of the definition. He will, in my opinion, remain a "labour tenant" for as long as he continues to reside on the farm. The wording of section 3(2) supports this view. It provides that, on acquisition by a labour tenant of ownership

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10 Section 1 of the Labour Tenants Act.

or other rights to land, his right to occupy and use part of a farm shall terminate; it does not state that he shall cease to be a labour tenant.

[8] I now turn to the Extension of Security of Tenure Act[11] ("ESTA"), which protects the rights of "occupiers". An "occupier" is defined in ESTA as follows[12]:

> "**'occupier'** means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding -
> (a) . . .
> [Para. (a) deleted by s. 6(a) of Act No. 51 of 2001.]
>
> (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
>
> (c) a person who has an income in excess of the prescribed amount; "[13]

Before para (a) was deleted, it read as follows:

> "A labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 . . ."

On the information contained in the founding affidavit, the respondent meets the requirements of the definition of "occupier" as from the date on which para (a) of the definition was deleted.[14]

[9] Lastly, I come to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act[15] ("PIE"). This Act is concerned with "unlawful occupiers". An "unlawful occupier" is defined as follows:

> "**'unlawful occupier'** means 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, 1977, and excluding a person whose

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11 Act 62 of 1997.

12 Section 1(1) of ESTA.

13 The "prescribed amount" is R5 000 per month. See regulation 2(1) of the Regulations published in Regulation R1632 *Government Gazette* 19587, 18 December 1998.

14 The Land Affairs General Amendment Act, Act 51 of 2001, came into operation on 5 December 2001.

15 Act 19 of 1998, as amended.

> 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 (Act 31 of 1996)."

Since the respondent's right to reside on the remaining extent of Uitkyk farm has terminated, he falls within the definition of "unlawful occupier", unless the fact that the respondent might also be an "occupier" as defined in ESTA excludes him. It is noteworthy that a "labour tenant" is not excluded from the definition.

[10] Each of the Labour Tenants Act, ESTA and PIE restricts a landowner's right to evict people from his land. Each of the Acts has widely divergent procedural requirements for obtaining an eviction order. Different courts have jurisdiction to grant eviction orders under each of the Acts.[16] The Acts and their interrelationship with each other constitute a legal quagmire for the landowner, who has to decide what procedure to follow, what criteria to meet and in what court to institute eviction proceedings. In the present case, the applicant did not follow the procedural requirements of any of the three Acts. It is evident from what I have stated above that the applicant cannot get an eviction order based merely on his ownership of the land. It is also by no means clear that this Court, being a creature of statute with limited powers, would have jurisdiction to grant such an order. Even though I cannot grant an eviction order on the papers before me, I can give the applicant some relief. In order to do so, I will have to consider the effect of the overlaps between the different Acts.

[11] The majority judgment of the Supreme Court of Appeal in *Ndlovu v Ngcobo; Bekker and Another v Jika*[17] contains the following *dictum* relating to the three Acts and a fourth one, the Rental Housing Act:[18]

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16 The Land Claims Court has jurisdiction under the Labour Tenants Act. The Land Claims Court and the Magistrate's Courts have jurisdiction under ESTA. The High Court and the Magistrate's Courts have jurisdiction under PIE.

17 Above n8.

18 Act 50 of 1999.

> "If one examines these laws even cursorily it is obvious that they were not intended to form a mosaic in the sense suggested by counsel: they deal with related matters in often completely different ways and there are at the same time overlapping and uncovered areas."[19]

[12] Where the Acts overlap, different requirements and different procedures may be applicable to a proposed eviction, and different courts will have jurisdiction to hear them. Because of the wide divergence of requirements and procedures, it will generally be impractical, confusing and overly expensive to follow them all. It is doubtful whether, in the case of most if not all of the overlaps, the legislature intended that the eviction requirements of more than one Act should be followed. Nevertheless, the overlapping and uncovered areas give rise to uncertainty.[20] Also, many of the procedures required by the Acts are needlessly complex, time consuming and costly. A single Act of Parliament governing all evictions from homes has long been overdue.[21]

[13] Prof AJ van der Walt, in an illuminating article under the title "Exclusivity of ownership, security of tenure, and eviction orders: a model to evaluate South African land-reform legislation",[22] proposes a model for the analysis and evaluation of the eviction provisions in the post-apartheid land reform laws. He bases the model on a distinction between each of the categories of occupiers of land and on the way in which the different categories are affected by the relevant legislation. He describes the bounds of the Labour Tenants Act and of ESTA as follows:

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19 At para [22], *per* Harms JA.

20 The haphazard approach to this very sensitive problem might have been justified by the urgent need for tenure reform after the political transformation in South Africa. That justification is no longer valid.

21 Dodson J also made a plea for uniform legislation on evictions in *Khuzwayo v Dludla* 2001 (1) SA 714 (LCC) at para [11], by stating:
"Ideally, the entire statutory and common law regime relating to evictions ought to be reviewed and dealt with by way of simplified and, as far as possible, uniform legislation. The current situation, with a range of different statutes 25 applicable in different areas and conferring jurisdiction on different courts against the backdrop of a variety of potentially relevant constitutional provisions, 26 is fraught with uncertainty and the potential for injustice."

22 2002-2 *Tydskrif vir die Suid-Afrikaanse Reg* at 254.

> "C occupiers who qualify as labour tenants: the Land Reform (Labour Tenants) Act 3 of 1996 applies to the exclusion of other land-reform statutes and provides protection against eviction, and it probably does not override the common-law right to eviction;
> C occupiers with consent: for rural land, the Extension of Security of Tenure Act 62 of 1997 applies to the exclusion of other land-reform statutes and provides protection against eviction, and it probably does not override the common-law right to evict."[23]

Prof van der Walt, in developing his model, does not deal with overlaps between the different laws. In this case, there are overlaps between the Labour Tenants Act and ESTA, and also between the Labour Tenants Act and PIE. I shall first deal with overlaps between the Labour Tenants Act and ESTA.

[14] By amending the definition of "occupier" in ESTA, the legislature included a smaller category of persons who are "labour tenants" into a larger category of persons who are "occupiers".[24] This inclusion created incongruities which the legislature did not address. For example, section 5 of the Labour Tenants Act provides:

> ". . . a labour tenant or his or her associate may only be evicted in terms of an order of the Court issued under this Act"
> (my underlining)

Against that, section 9(1) of ESTA (which is a later enactment) reads:

> "Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act"
> (my underlining)

Under which Act must a person who is both a labour tenant and an occupier be evicted? It could hardly have been the intention of the legislature that an order be obtained under both Acts.

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23 At 266.

24 Not all labour tenants are necessarily "occupiers". A labour tenant who earns more than R5 000 per month will not be an "occupier". See para [8] and n13 above.

[15] It was held by Lord Selborne in the British case of *Seward v The Vera Cruz*:[25]

> "'Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.'"

This *dictum* was quoted with approval by Farlam AJ (as he then was) in *Cogmanskloof Besproeiingsraad v Land- en Landboubank van Suid-Afrika en 'n Ander*[26] and by Trollip JA in *Gentiruco AG v Firestone SA (Pty) Ltd.*[27] It encapsulates the well-known maxim *generalia specialibus non derogant*.[28] Because ESTA was enacted subsequent to the Labour Tenants Act and because it provides general protection to a much wider group of persons than labour tenants, I do not think it was intended to override the special eviction provisions of the Labour Tenants Act. It is clear that both sets of eviction provisions cannot be applicable to labour tenants. The provisions are quite dissimilar.[29] To apply all of them would be absurd. Legal provisions must be interpreted in a manner that would, in the words of Brand AJA in *Barnard NO v Regspersoon van Aminie en 'n Ander*,[30] avoid "onsinnige gevolge". Thus a labour tenant who is also an "occupier" under ESTA will be subject to eviction under the Labour Tenants Act, whilst an "occupier" who is not a labour tenant stands to be evicted under ESTA.

[16] I will now proceed to consider overlaps between the Labour Tenants Act and PIE. I have already concluded that the respondent falls within the definition of "unlawful occupier" contained in PIE, unless he can be excluded on the ground that he is also an "occupier" under ESTA. Not

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25 (1884) 10 App Cas 59 at 68, quoted in *Cogmanskloof Besproeiingsraad v Land- en Landboubank van Suid-Afrika en 'n Ander* 1990 (3) SA 126 at 145B.

26 Above n25.

27 1972 (1) SA 589 (A) at 603C-D.

28 "General provisions do not derogate from special provisions."

29 The eviction provisions of the Labour Tenants Act are contained in sections 5 - 11, whilst the eviction provisions of ESTA are to be found in sections 8-13.

30 2001 (3) SA 973 (SCA) at para [27].

all labour tenants are simultaneously "occupiers" under ESTA.[31] A labour tenant who is not also an occupier under ESTA, whose right to occupy and use land has expired and who is holding out against the owner of the land, will remain a labour tenant but will at the same time fall within the definition of "unlawful occupier" under PIE. Under which of the two laws must the landowner apply for his eviction? It cannot be under both, because only the Land Claims Court can grant an eviction order under the Labour Tenants Act, and only the High Court or a Magistrate's Court can grant an eviction order under PIE. The Supreme Court of Appeal held in a majority decision that the protection given to an "unlawful occupier" under PIE overrides the common law rights of a landlord against a tenant whose lease has expired and who holds over,and of a purchaser of land sold in execution against a previous owner who fails to vacate.[32] The Court did not find that the protection given by PIE would override or replace the protection given by any other post-*apartheid* tenure reform law.

[17] Where laws which seemingly deal with the same matter can reasonably be reconciled, they must be reconciled.[33] That is not possible in this case. Section 4(1) of PIE reads:

> "Notwithstanding anything to the contrary provided in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier."

I have already pointed out that section 5 of the Labour Tenants Act provides that a labour tenant may be evicted only by an order of this Court made under the Labour Tenants Act. There is, in my view, an irreconcilable conflict between the eviction provisions of the Labour Tenants Act and those of PIE, not only procedurally, but also in respect of the Courts which have jurisdiction to grant eviction orders. The only way the conflict can be resolved is as I have suggested in respect of the conflict between the Labour Tenants Act and ESTA.[34] In this respect, useful

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31 A labour tenant who earns more than R5000 per month will not be an "occupier", since he will be excluded by par (c) of the definition. See para [8] and n 13 above.

32 *Ndlovu v Ngcobo; Bekker and Another v Jika*, above n8.

33 *Sedgefield Ratepayers' and Voters' Association and Others v Government of the Republic of South Africa and Others* 1989 (2) SA 685 (C) at 700J - 701B.

34 See para [15] above.

reference can be made to the following *dictum* of Lord Hobhouse,[35] quoted by Gutsche J in *R v Gwantshu*:[36]

> "'When the Legislature has given attention to a separate subject and made provision for it the presumption is that a subsequent general enactment is not intended to interfere with the special provision, unless it manifests that intention very clearly.'"[37]

The Labour Tenants Act provides protection against eviction for a special category of persons, namely labour tenants. It was already in existence when PIE was enacted. PIE caters for a much broader group of people. It must therefore be presumed, particularly in the light of the conflicting provisions of the two Acts, that the eviction provisions of PIE were not intended to apply to labour tenants. This conclusion accords with the view expressed by Olivier JA in his dissenting judgment in *Ndlovu v Ngcobo; Bekker and Another v Bosch*,[38] to the effect that PIE was not intended to apply to a category of persons already dealt with in another law.[39] There is another reason why PIE might not apply to the defendant in this case. He is not only a labour tenant but also an "occupier" as defined in ESTA. "Occupiers" under ESTA are excluded from the PIE definition of "unlawful occupier". Because I have already concluded that the eviction provisions of PIE were not intended to apply to labour tenants, I need not decide whether this exclusion is a further reason to put the defendant beyond the reaches of PIE.

[18] Having concluded that the Labour Tenants Act applies to this case to the exclusion of ESTA and PIE, it is now necessary to consider whether the Labour Tenants Act allows an eviction order to be granted against the respondent in the circumstances of this case. This Court has the general power to make eviction orders against labour tenants.[40] Such orders are explicitly authorised in only two circumstances, these being a failure by a labour tenant to provide labour

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35 Contained in *Barker v Edger* [1898] AC at 754.

36 1931 EDL 29. See also the discussion of this case by Devenish in *Interpretation of Statutes* (Juta, Cape Town 1992) at 280-281.

37 At page 31.

38 Above n 8.

39 At para [64], last section.

40 Section 7(1) of the Labour Tenants Act.

and a material breach by a labour tenant of the relationship between himself and the owner.[41] It might be argued that the respondent committed a material breach of the relationship between himself and the applicant which it is not practically possible to rectify, and that he therefore stands to be evicted under section 7(2)(b) of the Labour Tenants Act. I need not decide that because this Court has been given the general power to determine any justiciable dispute which arises from the provisions of the Labour Tenants Act.[42] That power is broad enough to make it possible for this Court to grant an eviction order against a labour tenant whose right to occupy and use land has terminated.[43] This wide interpretation is justified in order to secure a remedy for a landowner against a labour tenant who holds out against him. Although the saying *ubi ius, ibi remedium*[44] may not express any principle of law,[45] it does indicate that where the legislature creates a right (in this case, a right to have a labour tenant removed), it will ordinarily be possible to find a remedy for enforcing that right.

[19] Although this Court has the power to grant an eviction order against the respondent, it remains necessary that the applicant must have given the prior notices required by section 11 of the Labour Tenants Act. Section 11 reads as follows:

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41 Section 7(2) of the Labour Tenants Act, which reads as follows:
"No order for eviction in terms of section 5 shall be made unless it is just and equitable and -
(a) subject to the provisions of section 9(1), the labour tenant has, contrary to the agreement between the parties, refused or failed to provide labour to the owner or lessee and, despite one calendar month's written notice having been given to him or her, still refuses or fails to provide such labour; or
(b) the labour tenant or his or her associate has committed such a material breach of the relationship between the labour tenant or associate and the owner or lessee, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship."

Section 5 of the Labour Tenants Act is quoted in para [14] above.

42 Section 33(2) of the Labour Tenants Act.

43 Section 33(1)(eB) of the Labour Tenants Act also indicates that the Court's power to grant eviction orders extends further than the two specified instances. That subsection empowers the Court "in proceedings for the eviction of a person averred to be a labour tenant, where it is not proved that such person is a labour tenant, [to] make such order as it deems just".

44 "Where there is a right there is a remedy."

45 See *Trade Fairs and Promotions (Pty) Ltd v Thomson and Another* 1984 (4) SA 177 (W) at 193H - 194G.

> "(1) An owner who intends to evict a person in terms of the provisions of this Chapter, shall give the labour tenant and the Director-General not less than two calendar months' written notice of his or her intention to obtain an order for eviction.
>
> (2) The notice referred to in subsection (1) shall, in addition to any prescribed particulars, also contain the grounds on which such intended eviction is based.
>
> (3) The Director- General shall during the period referred to in subsection (1) convene a meeting between the labour tenant and the owner in order to attempt to mediate a settlement of the dispute between the labour tenant and owner."

The applicant has hitherto given no such notices to the respondent or to the Director-General of the Department of Land Affairs. Section 11 of the Labour Tenants Act does not require the applicant to give the notices before commencing legal proceedings.[46] The notices must, however, be given at least two calender months before the granting of an eviction order. The omission can be remedied by postponing the hearing to enable the applicant to give the lacking notices.

[20] Provided the procedural requirements of the Labour Tenants Act have been met, the applicant is entitled to approach the Court on the basis of his ownership of the land and the respondent's unlawful occupation. That is so because the Labour Tenants Act does not provide a new right of eviction to replace the common law right.[47] It does no more than place restrictions on the common law right. The restrictions include a number of circumstances which the Court is enjoined to consider before granting an eviction order. If there are any legally relevant circumstances which incline against the granting of an eviction order, it is for the respondent to raise them. In this respect the remarks of Harms JA in *Ndlovu v Ngcobo; Bekker and Another v Jika*[48] concerning PIE are also relevant for evictions under the Labour Tenants Act:

> "Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties. Whether the ultimate onus will be on the owner or the occupier we need not now decide."[49]

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46 If a landowner initiates legal proceedings before the notices were given, it could result in an adverse cost order in the event of the labour tenant deciding, after service of the notices, to vacate the land.

47 See Prof van der Walt's model, para [13] above.

48 Above n8

49 At para [19]. See also *Ntuli and Others v Smit and Another* 1999 (2) SA 540 (LCC) at para [21].

[21] For the reasons set out above, I conclude as follows:

(a) the hearing is postponed *sine die*;

(b) the applicant may re-enroll the matter for hearing on a date to be arranged with the registrar after the provisions of section 11 of the Land Reform (Labour Tenants) Act, 1996, have been complied with;

(c) if the matter is re-enrolled, the applicant must cause a notice of set down to be served on the respondent, together with copies of all documents filed with the Court which were not previously served on the respondent; the notice of set down must contain the date, time and venue of the hearing and set out the relief to be sought.

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ACTING JUDGE A GILDENHUYS

For the applicants:
Adv MG Roberts, instructed by *Maree & Pace, Ladysmith*

The respondent was absent.