

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

CASE NUMBER: LCC35R/04

In chambers: **MOLOTO J**

MAGISTRATE'S COURT CASE NUMBER: 1142/03

Decided on: 30 April 2004

In the review proceedings in the case between:

MAGDALENA ELIZABETH BOTHA

Applicant

and

**TADANA FRANCIS MOROBANE
MASABETHA MARIA MOROBANE**

First Respondent
Third Respondent

**TADANE FRANCIS MOROBANE NO and
MASABETHA MARIA MOROBANE NO**
(in their capacity as guardians of Ouma Morobane,
Lerato Morobane, Matseditso Morobane
Poppie Morobane (hereinafter referred to as the
minor children)

JUDGMENT

MOLOTO J:

[1] This is a review in terms of section 19(3) of the Extension of Security of Tenure Act¹ (“the Act”) of an order of the Magistrate, Ladybrand, evicting the respondents from the farm Boomplaats 319, district Ladybrand, Free State Province (“the farm”), the property of the applicant.

[2] The magistrate determined that the provisions of section 10(2) of the Act are applicable to the case. Section 10(2) provides that:

“(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] The applicant stated the following about the respondents’ alternative accommodation:

1 Act 62 of 1997, as amended

“Na die beste van my kennis en wete beskik òf die eerste òf die tweede respondente (sic) oor ‘n onroerende eiendom in die woongebied te Hobhouse welke hulle klaarblyklik verhuur. Die respondente beskik dus oor alternatiewe huisvesting.”²

[4] There is no answering affidavit in the file. It appears the eviction order was obtained by default. However, in the probation officer’s report obtained in terms of section 9(3) of the Act, the following is said about alternative accommodation :

“AVAILABILITY OF SUITABLE ALTERNATIVE ACCOMMODATION

- The shack house at Hobhouse belongs to Mrs Morobane. It is suitable for her children to live in because it is nearby to their school.
- According to Mrs Morobane it will not be suitable for he husband to live in Hobhouse because he will be very far from his work place.
- That there is no available transport from Hobhouse to Middlepunt farm.³
- Mr Morobane is the breadwinner he cannot afford to loose (sic) his job.
- Mr Piet Marais⁴ is unable to accommodate him at Middlepunt farm because he does not own the land.”

[5] Section 1 of the Act defines “suitable alternative accommodation” as :

“alternative accommodation which is safe and overall not less favourable than the occupiers’ previous situation, having regard to the residential accommodation and land for agricultural use available to them prior to eviction, and suitable having regard to -

- (a) the reasonable needs and requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use, and, services;
- (b) their joint earning abilities; and
- (c) the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active;”

2 Paragraph 9 of the Founding Affidavit.

3 Middlepunt farm is a farm 2 km from the farm and on which the first respondent is employed.

4 Mr Piet Marais is the first respondent’s employer on Middlepunt farm.

[6] It is not clear what kind of accommodation the respondents currently occupy. However, the applicant concedes that the first respondent made improvements to the said accommodation.⁵ The only dispute is on the value of such improvements. The first respondent demanded R10 000,00 for the improvements, whereas the applicant values them at R2 500,00. The Magistrate ordered that the applicant compensates first respondent for such improvements in the sum of R3 500,00. Be that as it may, it does not appear as if the alternative accommodation at Hobhouse is suitable, within the definition of that term in the Act.

[7] There is no evidence that the applicant ever offered the respondents employment which they turned down. All that the applicant states is that -

“Op die datum wat die eiendom op my naam registreer is het ek aan die eerste respondent gemeld dat hy en sy gesin nie langer op die plaas kan bly nie en het ek ook aan hom gemeld dat ek hulle drie maande sou gun om ander heenkome te vind.”

[8] It is, therefore, not surprising that the first respondent sought and found employment elsewhere. According to the section 9(3) report, the first respondent has lived on the farm since 1980, when, at the age of 15, he worked for the then owner, one Flip Coetzee.

[9] The following order is made:

The order of the Magistrate Ladybrand that it is just and equitable that the respondents vacate the farm is set aside in whole and the following order is substituted therefor: -

- “(1) The application is dismissed.
- (2) No order as to costs is made.”

JUDGE J MOLOTO

For the applicant:
Buys & Maré Attorneys Ladybrand

For the respondents:

In default.