

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held in Randburg on 4 March 2004
before **MOLOTO J**

CASE NUMBER: LCC 92/01

Decided on: 8 March 2004

In the matter between :

ANGLO OPERATIONS LIMITED
BOMBARDIE BOERDERY (PTY) LTD
and
J JIYANE & OTHERS

First Plaintiff
Second Plaintiff

Defendants

CASE NUMBER : LCC93/01

ANGLO OPERATIONS
BOMBARDIE BOERDERY (PTY) LTD
and
T N MTHOMBENI & OTHERS

First Plaintiff
Second Plaintiff

Defendants

CASE NUMBER : LCC95/01

ANGLO OPERATIONS LIMITED
BOMBARDIE BOERDERY (PTY) LTD
and
B W MAHLANGU & OTHERS

First Plaintiff
Second Plaintiff

Defendants

CASE NUMBER : LCC01/02

ANGLO OPERATIONS LIMITED
BOMBARDIE BOERDERY (PTY) LTD
and
M S MKHALIPE & OTHERS

First Plaintiff
Second Plaintiff

Defendants

JUDGMENT

MOLOTO J:

[1] The plaintiffs instituted actions for the eviction of the defendants from a farm known as the Remaining Extent of Portion 1 of the farm Goedgevonden No 10, Registration Division IS, District of Witbank (“the farm”), in terms of the Extension of Security of Tenure Act¹ (“the Act”). The facts in the cases and the grounds of eviction are similar, hence I combine them in one judgment.

1 Act 62 of 1997, as amended

[2] For reasons that do not need elaboration here, the first plaintiff withdrew from the cases at the hearing of the cases. The second plaintiff leases the farm and joined in the action in that capacity, being the person in charge² of the farm as defined in the Act. The defendants are four families, each of whose head of the family had been employed by the first plaintiff sometime before 4 February 1997. The right of residence of each such head of the family arose solely from the employment relationship between the first plaintiff and such family head. The right of residence of the family members of each such family head arose from and was dependent upon the right of residence of the family head. At the time of the employment of each of the family heads, the first plaintiff was the owner of the farm. The defendants did not enter appearance to defend.

[3] Before dealing with the merits of the case I want to refer to the question of service of the summons. There was proof of service of the summons on three of the defendants. There was no return of service with respect to the Mkhali phe family. The instructing attorney for the plaintiff testified that he did receive the return of service from the sheriff but that it got lost. Inquiries from the Sheriff revealed that the sheriff had lost his copies and had no record of the return anywhere else in his books. Various meetings had been held with the defendants in an attempt to settle the matter. The last meeting was held some three weeks before the date of hearing when the trial date was discussed. Mr Mkhali phe was present at all these meetings. In any case Mr Mkhali phe had been served with the notices in terms of section 8 and section 9(2)(d)(i). I am satisfied that Mr Mkhali phe was aware of the action against him and specifically of the date of hearing.

[4] I turn now to the merits. The requirements for an order of eviction are set out in section 9 of the Act. The relevant subsection reads as follows : -

- “(2) A court may make an order for the eviction of an occupier if -
- (a) the occupier’s right of residence has been terminated in terms of section 8;
 - (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
 - (c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and

2 See section 1(1) of the Act.

- (d) the owner or person in charge has, after the termination of the right of residence, given -
- (i) the occupier;
 - (ii) the municipality in whose area of jurisdiction the land in question is situated; and
 - (iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,

not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with."

[5] A notice was delivered to the defendants on or about 15 December 1998 terminating the right of residence and giving them three months' notice starting from 1 January 1999 to vacate the farm. This notice complied with the requirements of section 9(2)(a).

[6] The defendants did not vacate the farm within the notice period and are, indeed, still on the farm. Section 9(2)(b) has thus been complied with.

[7] The defendants were employed at various times before 4 February 1997. Therefore, for purposes of complying with section 9(2)(c), they all stand to be dealt with in terms of section 10. The plaintiff specifically relied on section 10(3). It reads thus : -

"3 If-

- (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
- (b) the owner or person in charge provided the dwelling occupied by the occupier; and
- (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,

a court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to-

- (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and

- (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

[8] The evidence tendered on behalf of the plaintiff was to the effect that the right of residence of all the defendants was terminated in December 1998 when they were retrenched. Some 2000 employees were retrenched at the time. The employer at the time donated a village in Vereeniging built to the same standards as the houses in which the defendants live on the farm. Most of the retrenched staff took the offer and relocated. Those who relocated were said to be a thriving business community. They have schools, clinics, shopping facilities and employment opportunities within reach. The defendants turned down the offer. Various other attempts to find suitable alternative accommodation for the defendants in the vicinity of the farm came to naught. The houses in which the defendants live on the farm were provided by the employer. The defendants effected no improvements to the houses. The second plaintiff offered employment to the defendants at various times since their retrenchment, but all offers have been turned down. The second plaintiff runs a labour intensive farming business on the farm, but cannot employ additional labour as he has no accommodation for them. Once an employee who did not stay on the farm was employed, but he was always late for work and ended up resigning. The second plaintiff requires the houses occupied by the defendants to house prospective employees. Unless the defendants' houses are available for new employees the efficient carrying on of his operations will be seriously prejudiced.

[9] The defendants have caused an influx of people on the farm who do not work for the second plaintiff. They did so by renting out stands to such people. As a result a shack village has mushroomed on the farm. The end result of all this is that discipline among the second plaintiff's staff is undermined, there is illegal selling of alcohol, and the presence of the shack village is a real threat to the second plaintiff's lease of the farm. The interests of the second plaintiff are so threatened that he may lose his farming business through cancellation of the lease agreement. As against the interests of the second plaintiff, the defendants are said to be employed on neighbouring farms, and some of them were offered accommodation by their current employers. They took occupation of such accommodation but left their families on the farm. On being asked to relocate their families from the farm, they chose to give up the accommodation where they are employed and returned to the farm. That, in broad outline, was the evidence on behalf of the second plaintiff.

[10] It is clear that the plaintiffs have satisfied the requirements of section 10(3).

[11] The notices required to be served in terms of section 9(2)(d) were served to the satisfaction of the requirements of that section.

[12] Nothing is owing to the defendants in terms of section 13 of the Act. Their severance packages were paid to them. They have effected no improvements and have no standing crops on the farm.

[13] The families of the dependents are large, ranging from 7 to 13 in number. Whilst mindful of the fact that they have lived on the farm since December 1998 without paying rent, they nevertheless need sufficient time to arrange their affairs. This factor must be taken into account in determining the dates in terms of section 12 of the Act.

[14] The following order is made:

- (1) The defendants, in each of case numbers LCC92/2001; LCC93/2001; LCC95/2001 and LCC1/2000, together with all people occupying the farm Remaining Extent of Portion 1 of the farm Goedgevonden No 10, Registration Division IS, district Witbank, through them, are ordered to vacate the said farm on or before 4 May 2004.
- (2) Should the defendants and all those occupying the farm through them as referred to in (1) above, fail to vacate the said farm on or before the aforesaid date of 4 May 2004, then the sheriff is hereby authorised and ordered to evict the defendants and all those occupying the said farm through them on or after 10 May 2004.
- (3) No order as to costs is made.

For the plaintiff:

Adv A P J du Plessis instructed by *Leon Kotze Attorneys*, Potchefstroom.

For the defendants:

In default.