IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held in **Chambers** on **23 June 2006** **CASE NUMBER**: LCC71R-06
Before **Ncube AJ**

Decided on: 26 June 2006

In the matter between :

UMOBA FARMS (PTY) LTD Applicant

and

GANTSHO MACEBO AND 60 OTHERS Respondents

JUDGMENT

NCUBE A J :

[1] This matter came before me as an automatic review in terms of Section 19(3) of the Extension of Security of Tenure Act, 62 of 1997 (hereinafter referred to as "the Act").

[2] The applicant, Umoba Farms (Pty) Ltd is the owner of a farm known as Lewisham Farm. I shall refer to it as "The farm". Umoba undertakes the business of sugar cane farming on the farm.

[3] The sixty one respondents are erstwhile employees of the Applicant. The respondents were employed on seasonal basis, they attended to processing of sugar cane during the period from April to December every year.

[4] All 61 respondents were previously employed by a company known as Illovo Sugar Ltd, also on seasonal basis. Illovo Sugar Ltd was the previous owner of Lewisham farm. In 2005, the applicant bought the said farm from Illovo Sugar Ltd.

[5] As seasonal employees, respondents arrived at the farm in March 2006 as the harvesting period was about to begin in April 2006. The applicant, having bought the farm in question,

entered into a contract of employment with the respondents at the end of March 2006. This contract would operate from the 5th of April 2006 to December 2006, by which time, the harvesting period would have come to a close.

[6] Included in respondents' contract of employment was the right of occupation of either single or hostel rooms on the farm. The right of occupation of the said rooms ran concurrently with the period of employment. On termination of employment at the end of the harvesting season, the right of residence in the applicant's farm, would also come to an end.

[7] On 5 April 2006, the respondents commenced work on the farm. On 6 Aril 2006, some of the respondents embarked on an industrial action. They staged a peaceful stay-away. They remained in occupation of the applicant's rooms on the farm. The reason is that, when the employees signed a contract of employment with the applicant, they were assigned new employee numbers. The employees entertained a belief (reasonable or unreasonable) that the assignment of new numbers could affect some of their employment benefits which they enjoyed with their previous employer as long term seasonal employees.

[8] All attempts to persuade the employees to return to work were unsuccessful. Employees continued with their stay-away, pending resolution of the administrative problem of assignment of new numbers.

[9] On 7 April 2006 the employees who had taken part in the stay-away were given notice of a disciplinary hearing. The hearing was set down for 8 April 2006. This hearing was conducted and finalized in the absence of the respondents. The respondents were found guilty and they were subsequently dismissed and ordered to vacate the premises on the farm by the 10th of April 2006.

[10] Respondents did not vacate the premises as ordered and they remained in occupation of their rooms on the farm.

[11] On 13 April 2006, the applicant made an application to the Magistrate, Scottburgh, on urgent basis in terms of Section 15 of the Act, for the removal of the respondents from the farm. Mr Koekemoer, an administrative director of the applicant, filed a founding affidavit in support of the application. On 13 April 2006 the application was postponed to 19 April 2006 to enable

the respondents to obtain legal representation which they secured. The application was opposed by the respondents.

[12] The opposing affidavit was deposed to by one Mr Amos Shinga, an organizer of the Food and Allied Workers Union of which the respondents are members. The gist of the objection to the application was that no case of urgency had been made out in the applicant's founding affidavit and the application had, therefore, not complied with the provisions of Section 15 of the Act.

[13] The application was heard and finalized on the 17th of May 2006. Both parties were legally represented. Application for an eviction order was granted. The respondents were ordered to vacate the farm. The order was, in terms of Section 19(5) of the Act suspended pending the outcome of the present review.

[14] When I perused the papers placed before me, I was not satisfied that the requirements of Section 15(1)(a) to (d) of the Act had been satisfied. I therefore asked the magistrate to favour me with his submissions with specific reference to the following questions :

> "1.1 Did the Magistrate satisfy himself that the requirements of Section 15(1)(a) to (d) had been proved?
>
> 1.2 On what evidence did the Magistrate make a finding of a 'real' and 'imminent' danger of 'substantial' injury or damage to any person or property?
>
> 1.3 Was there no other effective remedy available – e.g. interdict against striking workers or approaching the Labour Court to declare the strike unlawful.
>
> 1.4 Were the arrangements for the re-instatement adequate bearing in mind that such arrangements must include the removal of the workers' belongings?
>
> 2 On what evidence did the Magistrate make a finding of a threat to Potgieter. No such threat to Potgieter is mentioned in the applicant's founding affidavit."

[15] I have received submissions from the magistrate and I am indebted to him. The learned magistrate has referred me to his judgment except for few submissions he has added to his judgment. On page 10 of his judgment, the magistrate says the following :

> "I have no doubt in my mind that the applicant has made out a case for a provisional order for the urgent removal of the Respondents"

He gave the following reasons : -

"[1] the threats to *inter alia* Potgieter;
[2] the intimidation of existing workers and also prospective workers;
[3] the very real possibility that 200 workers might loose their jobs due to financial restraints on the Applicant;
[4] the unlawful occupation of accommodation allocated to the workers;
[5] the financial losses the Applicant suffers and might still suffer;
[6] the looming possibility of damage to property and harm to people if the correct procedures are not followed;
[7] the reasonable inference that the relationship between the Applicant and the Respondents was irreparably damaged by the events leading up to the application for their eviction;
[8] the Respondents do not work and the Applicant does not remunerate any of them. I have yet to think of a more striking example of contra-productiveness;
[9] the deterrent effect the behaviour of the Respondents has on workers and prospective workers;
[10] I have nothing in the papers before me to show that the Respondents can't find employment which suits their needs as far as conditions of employment are concerned or any hardship they will suffer;
[11] they refused to participate in meetings when they could have aired their objections, expectations and personal views e.g. on the issue of new employment numbers;
[12] the likely hardship of the Applicant if the order for removal is not granted, exceeds the likely hardship to the Respondents;
[13] there is no other effective remedy available to the Applicants;
[14] provision is made for the re-instatement of the Respondents in the event that a final order is not granted."

[16] Section 15 of the Act reads as follows : -

"(1) Notwithstanding any other provision of this Act, the owner or persons in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that occupier if it is satisfied that –

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land;
(b) there is no other effective remedy;
(c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted; and
(d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.

(2) The owner or person in charge shall beforehand give reasonable notice of any application in terms of this section to the municipality in whose area of jurisdiction the land in question is situated, and to the head of the relevant provincial office of the Department of Land Affairs for his or her information."

[17] From the above, it is apparent that there must be compliance with every one of paragraphs (a) to (d) of subsection (1). The magistrate must properly apply his mind to determine whether or not the evidence made out a case in relation to each of the requirements mentioned in

paragraphs (a) to (d) of subsection (1) of the Act. (See *Slayley Farms (Pty) Limited v Swarts* (unreported) LCC49R/99 page 7 para 14).

[18] It is clear from the very first requirement in paragraph (a) of subsection (1), that Section 15 procedure, is an extraordinary procedure which cannot be easily resorted to. With regard to this requirement, the Court must be satisfied that there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land. In his submissions on this requirement the magistrate said the following :

> "Experience has shown that people who are on strike, do not shrink from violence towards people who are not part of their cause and even towards innocent people. They likewise do not care to damage property. An example that comes to mind is the recent strike of security officers who went on rampage where people were killed and private property damaged regardless of who the victims were. *In casu*, various members of the Respondents were being coerced in the strike and they feel intimidated by the presence of the so-called leaders"

I do not agree. Each case must be decided on its own merits. In the present case, there is no evidence of violence, not even a threat thereof. According to the evidence, there are people who have complained to the senior management that they were coerced to participate in a stay away. Those people did not file affidavits in substantiation of those allegations. The respondents did not become violent/riotous, they peacefully withdrew their services and stayed away from work.

[19] Real and imminent danger of substantial injury to person or damage to property must exist. These terms are not defined in the Act. The first step in the interpretation of these terms will be, to give the words their ordinary grammatical meaning. The ordinary grammatical meaning of a word is found in the dictionary. The *Concise Oxford Dictionary* 7th edition defines these words thus :

Real - "actually existing as a thing or occurring in fact, objective, genuine, rightly so called, not merely apparent or nominal or supposed or pretended or artificial or hypocritical"

Imminent - "impending, soon to happen, overhanging"

Substantial - "having substance, actually existing, not illusory"

With these definitions in mind, it cannot be said that there was, in the present case, a "real" and "imminent" danger of "substantial" injury to person or damage to property, when people simply stayed away from work and staged a peaceful sit-in in their rooms. Unsubstantiated threats of violence or damage to property are not sufficient. See *Serfontein v Molar and Ohters* (unreported) LCC53R/99 Page 6, Para 13. Also [1999] 3 All SA 236 (LCC) at 244 par [31].

[20] The hardship to the applicant if the order was not granted appears to be greater than that which could be suffered by the respondents if the order is granted. This will be in the form of financial hardship. However, this is the only requirement which is supported by evidence and as I have said earlier on, satisfaction of one requirement is not enough. Each and everyone of them must be proved.

[21] The fourth and last paragraph requires adequate arrangements to be made for reinstatement of the respondents in case the final order is not granted. The applicant states in his founding affidavit that he can get other employees to occupy the hostels on the farm. If the final order is not granted, those employees will return to their previous places and the respondents can then be reinstated at the hostels. The Act requires "adequate" arrangements, not just arrangements. Adequate arrangements include for instance the transportation of respondents' belongings in case they should be reinstated. Respondents' accommodation should not be given to someone until the final order has been granted. See *Karabo and Others v Kok and Others* 1998 (4) All SA 625 LCC.

[22] I am mindful of the fact that Mr Koekemoer states in paragraph 49 of his replying affidavit that some of the respondents adopted an intimidating and threatening stance towards Mr Potgieter when he asked them to vacate the bachelor quarters. This is unacceptable. Firstly, because no mention is made of what the respondents did and why they stance hey took is described as being threatening. Secondly, because this is mentioned in the replying affidavit, not founding affidavit. The applicant must make out his case in the founding affidavit. As a general rule, the applicant's case must be made out in the founding affidavit. The applicant must stand and fall by his affidavit. It is therefore necessary to examine the founding affidavit in order to establish whether the *facta probanda* have been properly set out and whether there is sufficient admissible supporting evidence.

[23] I come to the conclusion that the applicant did not make out a case of urgency. The matter did not fall within the ambit of Section 15 of the Act. The application for removal of the respondents ought to have been dismissed. The applicant must follow the usual procedure in terms of the Act.

[24] I accordingly order that :

(i) the magistrate's order on 17 May 2006 be, and it is hereby set aside in its entirety.

(ii) the magistrate's order is substituted with the following order :

i. the application is dismissed
ii. no order is made as to costs."

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ACTING JUDGE M T NCUBE

For the applicant :
Adv I Pillay instructed by the *Deneys Reitz Attorneys,* Durban.

For the respondents :
Adv R Pillemer