IN THE LAND CLAIMS COURT OF SOUTH AFRICA

NEWCASTLE **CASE NUMBER:** LCC45/05

Before Pienaar AJ

7-10 May 2007, 27-30 August 2007, 13 June 2008

Decided on: 26 November 2008

In the case between

CORNELIUS GREYLING	First Applicant
WILLEM HENDRIK GREYLING	Second Applicant
JACOBUS MINNAAR VERPLOEGH	Third Applicant

and

KHULU NKOSI	First Respondent
SHAPI NKOSI	Second Respondent
KHAWULANI NKOSI	Third Respondent
ALFRED VILAKAZI	Fourth Respondent
LINDA ZWANE	Fifth Respondent
DIRECTOR-GENERAL, DEPARTMENT OF LAND AFFAIRS	Sixth Respondent

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JUDGMENT

PIENAAR AJ

[1] This is an application for an eviction order of the First to Fifth Respondents under section 7 of the Land Reform (Labour Tenants) Act, No 3 of 1996 (hereafter "Labour Tenant Act"), alternatively section 13

of the Extension of Security of Tenure Act, No 62 of 1997 ("ESTA"). The First and Second Applicants are father and son and the lessees (later owners) of the farm Roodepoort No 38, located in the district of Wakkerstroom in Mpumalanga, where the First to Fifth Respondents are residing, claiming to be labour tenants. The Third Applicant was the registered owner of the property in question when eviction proceedings were instituted and supports this application.[1] The relevant property was since eviction proceedings started, sold to the First and Second Applicants. The Sixth Respondent is the Department of Land Affairs that was joined under Rule 12(3) of the Land Claims Court Rules.

Background to present proceedings

[2] Before the facts of the case are discussed, it is necessary at this stage to set out the background to these proceedings. The initial eviction application was lodged under the Labour Tenant Act, alternatively ESTA. The hearing was scheduled to take place on 7-11 May 2007 in Volksrust being the convenient court venue in light of the location of the farm in question. After four days in court it transpired that labour tenants' claims had been lodged under section 16 of the Labour Tenants Act. Said claims had already been lodged in 2000 with the Ermelo office of the Department of Land Affairs ("DLA"). Apparently the Fourth and Fifth Respondents had lodged their own labour tenant claims whereas in relation to the First to the Third Respondents labour tenant claims had been lodged on their behalf by family members. These family members have in the meantime passed away. The passing of two of the section 16-applicants goes some way in explaining why the present Respondents before the court at this hearing were initially ignorant about the claims. Why the Fourth and Fifth Respondents did not raise the lodgement of labour tenancy claims earlier, is yet unclear, although the fact that these respondents are illiterate, somewhat elderly and are unfamiliar with legal matters may shed some light on the matter.

[3] Under section 14 of the Labour Tenant Act persons who lodged claims under section 16 can as a rule not be evicted, except if special circumstances are present. In light of the fact that the Applicants in the eviction proceedings had up to that stage not instituted their eviction application on the basis of special circumstances, the court by agreement ordered a postponement of the case. A postponement was further motivated by the following: (a) it would enable the DLA to find alternative land which may result in a settlement thereby enabling the Respondents to relocate to said land; and (b) it would enable the Respondents to redraft their pleadings in light of the section 16-application lodged previously, thereby raising the defence that the Respondents are labour tenants under the Labour Tenant Act and that they could accordingly only be evicted in special circumstances. Since the DLA was instrumental in attempting to settle the matter, it was joined as the Sixth Respondent under Rule 12(3) of the Land Claims Court Rules.

[1] As required by section 6(1) of the Labour Tenant Act.

[4] The hearing was accordingly postponed until the last week of August 2007, although the understanding was that the officials from the DLA would attempt to find suitable alternative land for relocation and that a settlement would be negotiated. Months passed during which time all parties involved were still attempting a settlement to the satisfaction of everyone. When the set date for the continuation of the hearing arrived, the hearing was transformed into a pre-trial conference under Rule 30 of the Land Claims Court Rules to finally discuss the possibility of a settlement. During this meeting it became clear that the DLA had focussed on one parcel of land only, namely that of the farm Roodepoort presently being occupied by the Respondents and the subject property in the eviction proceedings. The DLA was under the impression that the land owner at that stage, the Third Applicant in the eviction proceedings, was considering selling the property to the State. Had that been the case, the farm Roodepoort would be utilised for redistribution purposes in line with Chapter III of the Labour Tenant Act. A formal offer was, however, neither negotiated nor on the table at the time of the pre-trial conference. The existing lease agreement between the First (and Second) Applicant and the Third Applicant incorporated an option to purchase. In the mean time the First and Second Applicants decided to exercise their rights under the existing option and negotiated a purchase agreement with the Third Applicant. Hence a purchase agreement had been entered into and the First and Second Applicants were in the process of becoming the new owners of Roodepoort. Accordingly the land focussed on by the DLA was no longer available for purchase and redistribution purposes. Since the DLA had not done an overall survey in order to establish whether other parcels of land may be available, the possibility of a settlement fell away and the hearing proceeded.

[5] This case is particularly disconcerting from the perspectives of both the Applicants and the First to Fifth Respondents. The labour tenancy claims had already been lodged in 2000 at the Ermelo office of the Department of Land Affairs. Section 17 of the Labour Tenant Act prescribes the procedure to be followed after the claim had been lodged. For more than 7 years the DLA had done nothing to process the claims. The registered land owner had received no notification of the claim, nor had the claim been published in the Government Gazette as required under section 17(2)(a) and (c) of the Labour Tenant Act. When the family heads who had lodged the claims passed away, the applications seemed to have fallen through the cracks. Those claims that were lodged by the Fourth and Fifth Respondents respectively were similarly ignored. This had the following result: the Third Applicant, being the land owner at that stage, let the land without knowledge of the claims lodged on the one hand and the First and Second Applicants entered into lease agreements with an option to purchase, on the other. Obviously they entered into these agreements with a particular use of the land in mind. It is arguable that they would not have negotiated these agreements had they been aware of the claims lodged in relation to the land.

[6] On the other hand the Respondents had been living on the land for many years. Most of the Respondents were in fact born on the farm and many family members are buried there. Had their claims been processed as it ought to have been under the Act, they could arguably by now have been land owners in their own right in accordance with Chapter III of the Labour Tenant Act, either in relation to land presently being occupied by them or other portions of land. It is accordingly arguable that the present hearing could have been avoided had the DLA fulfilled its duties as prescribed under the Act.

[7] After the hearing in August 2007 all parties were afforded the opportunity to submit additional heads of argument on identified issues. These proceedings were aimed at placing as much information as possible before the court in order to enable it to reach a just and equitable result. Part of these proceedings entailed the DLA to submit a Report setting out its attempts to find suitable available land in the area. Such Report was submitted on 19 February 2008 – "SS1". The Report submitted was very general, superficial and incomplete and concluded that no land was available. This stance by the DLA was thereafter confirmed in follow-up telephone conferences. The Applicants, did, however manage to submit a Report setting out full details of parcels of land that are indeed available – "A" and "D". Additional information was also handed up during argument relating to the question whether restitution claims had been lodged in relation to these farms.

I now turn to the facts of this case.

Family background and relation to land of the First to Fifth Respondents

[8] Four homesteads are located on the farm Roodepoort. The First Respondent, Khulu Nkosi, is the 37 year old son of Elijah Nkosi who instituted a labour tenant claim in relation to Roodepoort with the Ermelo office of the DLA on 18 January 2000. According to testimony the deceased Elijah Nkosi's father (the First Respondent's grand father) arrived on Roodepoort during the 1900s. He died in 2005 and was buried on the farm. In exchange for services rendered to the land owner the First Respondent's grand father and father had occupational rights as well as cropping and grazing rights. The First Respondent was born on the farm and had been living there his whole life. According to the pleadings the First Respondent was employed although a formal contract had never been entered into. He has always assisted the land owner or lessor when required to do so and has always had residential, cropping and grazing rights in relation to the farm.

[9] The Second Respondent, Shapi Nkosi, is 43 years old and the brother of the First Respondent. Accordingly a labour tenant claim had also been lodged on behalf of him by his late father Elijah Nkosi. Like the First Respondent he was also born on the farm. He was employed by the land owner for the period

1984-1990 and rendered services in exchange for occupational, cropping and grazing rights although he was also paid the sum of R34 per month when employed.

[10] The Third Respondent, Khawulani Nkosi, is a 43 year old male and son of the late Dayi Andries Nkosi who lodged a labour tenant claim at the Ermelo office of the DLA on 18 January 2000. Both the Third Respondent and his father, the late Dayi Andries Nkosi, were born on Roodepoort. The last-mentioned was also buried on the farm. The Third Respondent's mother, Vina Hleziphe Shongwe, is still alive and resides with the Third Respondent on Roodepoort. The Third Respondent's grand father is Ezekiel Nkosi who also rendered services on the farm. The Third Respondent testified that he always had occupational, cropping and grazing rights and that he was employed under Mr Johnny Labuschagne, a former tenant of the farm.

[11] The Fourth Respondent is Alfred Vilakazi, a 57 year old male. He claimed that he himself lodged a labour tenancy claim on 18 January 2000. The Fourth Respondent resides on the farm with his mother, Benina Vilakazi. According to testimony the Fourth Respondent arrived on the farm with his parents, although the exact date of their arrival is unclear. His deceased's father, Freddy Vilakazi, is buried on the farm. He testified that his father rendered services in exchange for residential, cropping and grazing rights.

[12] Linda Zwane, the Fifth Respondent in the proceedings, is an adult male who lodged a labour tenant claim in 2000. He resides with his wife, Lizbeth Fikile Bheka and other family members. He arrived on the farm in 1984 and rendered services to Mr Johnny Labuschagne, the person who leased the farm from the Third Applicant prior to the lease agreement with the First and Second Applicants. In exchange for his services he likewise received occupational, cropping and grazing rights in relation to Roodepoort. The pleadings indicate that the Fifth Respondent's parents were also labour tenants, although exact details were not provided.

Control of the farm for the period prior to 1 September 2004

[13] Prior to 1 September 2004 the above Respondents were residing on Roodepoort providing services, as described above, to a Mr Johnny Labuschagne who had been renting the farm from the Third Applicant for a period of approximately thirty years. It would seem that the relationship between the Respondents and the tenant, Mr Labuschagne, was good and that Mr Labuschagne rarely, if at all, interfered with the daily lives of the respondents – especially during the last few years of the lease agreement when Mr Labuschagne fell ill and later had a stroke. During that period a Mr Hendrik Christoffel Marthinus Botha, a family

member of Mr Labuschagne, who acted as a witness for the Applicants, was also involved in the running of the farm.

[14] Conflicting evidence was placed before the court concerning the exact details of the agreement relating to the number of cattle the Respondents were allowed to keep on the farm on the one hand, and the responsibilities of the Respondents in rendering services on the other. The Third Applicant testified that the Respondents were only allowed to keep a certain number of cattle on the farm. This evidence was supported by that of Mr Christo Botha who assisted Mr Labuschagne at some point in time. The First to the Fifth Respondents however, testified that they could keep an unlimited number of cattle. It is possible that when Mr Labuschagne fell ill cattle numbers may have increased and were not monitored. It certainly seems as if the Respondents almost had free roam over the farm and could, in a sense, utilise the land as they pleased under the previous tenant.

A new lease agreement

[15] When the lease agreement between the Third Applicant and Mr Labuschagne lapsed, the Third Applicant negotiated a new lease agreement with new tenants, namely with the First and Second Applicants. The lease agreement included a lease term of three years at R26 000 per annum and an option to purchase, commencing on 1 September 2004. The land was specifically leased for the purposes of farming cattle. The new lessors had knowledge of the Respondents occupying the land at the time when the lease was negotiated.

[16] After negotiating the lease agreement, but before the commencement of the lease period, an employee of the First and Second Applicants, a one Galela Nkosi, was sent on 18 August 2004 to the Respondents to (a) inform them that there is going to be new tenants; and (b) that the tenants wanted to meet the Respondents to discuss their occupational and other rights in relation to the farm. Conflicting evidence was placed before the court as to what precisely happened on that occasion. This matter will be dealt with in more detail below.

[17] On 23 August 2004 the Second Applicant went to Roodepoort where he encountered someone repairing a gate. He again sent a message to the Respondents to the effect that they should come and see him. The Second Applicant testified that at this occasion the Fourth Respondent acted aggressively towards him, which was denied. Nevertheless, none of the farm occupants responded to these invitations. During testimony the First to Fourth Respondents explained that they were insulted when the messenger, Mr Galela

Nkosi first visited them, resulting in them not responding to any of the invitations. This matter too will be dealt with in more detail below.

Veld fire in the area and on the farm Roodepoort

[18] An important incident in the series of events that led to the institution of eviction proceedings, is that of a veld fire on 31 August 2004. The fire, so the Respondents argued, was started by the Applicants' employee, a one Zuake Dlamini, with the sole objective to cause damage to the Respondents. This, so the argument went, would entice the Respondents to vacate the farm, thereby leaving the Applicants free to utilise the farm as they planned.

[19] A Fire Report was indeed filed on 27 October 2004, Exhibit D, and forms part of the Court File. In accordance with the Report as filed by Khulu Benson Nkosi, being the First Respondent, stated that he was woken by his brother Izak Nkosi at about 5:00 or 6:00 on the morning of 31 August 2004 and was informed that there was a fire on the neighbouring farm. At that stage the fire was still a long way off from their homes. He and his brother immediately gathered the cattle and goats, although some goats still remained in the pasture. At about 9:30 the First Respondent noticed a white land rover in the area and two persons, one being Zuake Dlamini, an employee of the First and Second Applicants. The First Respondent watched as Mr Dlamini burnt the grass and "pulled" the fire with a rake over the stream towards the adjoining portion of land. At that stage the wind direction changed. Whereas the wind was previously blowing from the house towards the stream, it was then blowing from the stream towards the house. Although the First Respondent was able to protect the dwellings by parking a tractor in a strategic position, about 20 goats were subsequently killed in the fire. Damage caused was estimated to be about R10 000. During testimony I got the impression that the Report was primarily lodged in order to confirm that there was indeed a fire and that damage to a certain amount of money was suffered. What is important however, is that the Report is a version given by the First Respondent as to what happened that day, in his own words. At the hearing certain portions of this Report were however, disputed by the First Respondent.

[20] Before the Fire Report was filed in October 2004 a charge was laid at the Wakkerstroom Police Station by the First, Second and Third Respondent against the First and Second Applicants on 6 September 2004 – Exhibit B. Summarised it confirms that the Second Applicant burnt the Respondents' grazing camp, that 20 goats have been killed and that they did not want to see the Second Applicant on the farm. Certain portions of this Exhibit were also later placed in dispute by the Respondents.

Intimidation

[21] Immediately after the veld fire and before 15 September 2004 the First and Second Applicants' families received numerous life-threatening telephone calls from an unidentified person. This person warned them not to go to the farm Roodepoort as a visit would pose serious danger to their lives. The First and Second Applicants were also accused of starting the veld fire described above and causing damage to the Respondents. After a police investigation a Mr Veli Nkosi, a family member of the Respondents was arrested on 14 September 2004 and thereafter prosecuted and found guilty of intimidation.

Encounter on the farm on 15 September 2004

[22] 15 September 2004 was the first time the First and Second Applicants inspected the farm after the lease commenced. According to the testimony of the Applicants they felt it was safe to visit the farm at that stage since an arrest in the intimidation case had been made the previous day. Exactly what happened during this encounter is not clear, since conflicting testimony was presented to court. Both Applicants testified that two persons, of whom one was the Second Respondent, approached them while they were still in their vehicle and appeared and spoke aggressively to them. Testimony was that one had a "knopkierie" and the other a dropper. This person or these persons accused the Applicants of arson and burning the Respondents' goats referring to the veld fire described above. Harsh words were exchanged between the parties which ended in an argument. The Applicants felt threatened to such an extent that they had to make a speedy departure. When the Applicants returned *via* the same route from their inspection of the farm a group of people waited for them in the road thereby blocking their exit. In order to leave the farm safely they had to make their own route of escape through bush and undergrowth so as to avoid the gathering crowd. The Respondents, however, disputed this version and insisted that there was only one person whom the Applicants encountered when they entered the farm, that they were not aggressive and that there was no crowd that hindered the Applicants from leaving the farm peacefully.

Lodging of eviction proceedings

[23] Accusations of burning the Respondents' goats led to dockets being opened at the local police station on 6 September 2004 by the First, Second and Third Respondents on the one hand and letters written on behalf of the Applicants in which they objected to these allegations stating that they were defamatory, on the other. The latter letters were dated 15 September 2004. While the relationship between the Applicants and the Respondents continued to deteriorate, no one responded to the initial invitations to come and see the Applicants in order to discuss occupational rights and concomitant labour responsibilities. This led to the

Applicants employing the services of counsel to draft official notices in terms of section 7(2)(a) of the Labour Tenant Act that labour had to be rendered within one calendar month. Said notices were served on the Respondents on 26 September 2004 by the sheriff of Volksrust. On 15 October 2004 the Respondents filed a charge at the police station against the First and Second Applicants for damage of property. By January 2005 there was still no response from the Respondents regarding the 15 September and 26 September correspondence. Section 11-notices were accordingly served on 25 January 2005 on the various Respondents that, in light of the former section 7-notices, residential and other rights were cancelled and that eviction proceedings would commence in due course. Again there was no response to these notices.

[24] During cross-examination of the First Respondent it became clear that all documents delivered at his homestead were read and explained to him by a family member who was literate. The other Respondents testified that all of these notices and correspondence were taken to the DLA at the Ermelo office where they were all handed over to a Mr Mahalalela, the official on duty at the time. Apart from the First Respondent, the other Respondents testified that the content of these notices were never explained to them, either when it was served or when it was handed over in the care of the DLA official. This, so they explained, was why they never responded to any of the notices. Eviction proceedings were henceforth initiated under both the Labour Tenant Act and ESTA and the required notices under both Acts were served on the relevant parties.

Relief claimed

[25] The applicants seek the eviction of the First to Fifth Respondents under section 7(2)(a) and 7(2)(b) of the Labour Tenant Act which application is opposed by said Respondents. In this regard the Applicants claim that (a) the section 16 labour tenant application is of no force and effect since the prescribed provisions of the Act had not been followed; alternatively (b) if the court finds that the claim had been lodged and is acceptable, the Respondents should still be evicted on the basis that the special circumstances render an eviction order just and equitable. The Respondents seek in their counter claim that (a) they are to be declared labour tenants; and that (b) their labour tenant application had been lodged in accordance with the Act and that section 14 would thus prevent an eviction order being granted on the basis that no special circumstances would allow an eviction order as just and equitable.

Legal questions and argumentation

[26] The following questions need to be answered: What is the status of the First to Fifth Respondents? If it is found that they are labour tenants for purposes of the Labour Tenant Act, it follows that the next issue to be dealt with, is whether they may be evicted in these particular circumstances. The lodgement or not, of

a section 16-application will be relevant in this event in light of the impact of section 14 of the Labour Tenant Act. If indeed special conditions are present that would warrant the granting of an eviction order it would further have to be established whether the formal requirements in this regard had been complied with.

The status of the First to Fourth Respondents

[27] The term "labour tenant" is defined in the Labour Tenants Act as follows:[2]

> "labour tenant" means a person –
> (a) who is residing or has the right to reside on a farm;
> (b) who has or had the right to use cropping or grazing land on the farm, referred to in para (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
> (c) whose parent or grand parent 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 farm 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…."

[28] All of the First to Fifth Respondents claim that they are indeed labour tenants for purposes of the Act. The Applicants contest the status of the First, Second and Fourth Respondents.

[29] It is common cause that all of the First to Fifth Respondents are presently residing on the farm. I am satisfied that section 1 (a) has been complied with. Similarly all of these Respondents have cattle and other livestock on Roodepoort and all of them are exercising their rights to grazing. These Respondents also had cropping rights previously under Mr Labuschagne's tenancy and cultivated mainly mealies and beans for personal consumption. Excess yield was sold. When the First and Second Applicants took over the farm, the cropping stopped for many reasons, *inter alia* allegations that the new tenants drove their cattle into the cultivated lands, that gates were closed so that access to the fields were barred, the non-availability of seed and the high cost of planting. Since all of the First to the Fifth Respondents still have cattle on the land and all of them did have cropping rights at an earlier stage I find with regard to this element in favour of the

[2] Section 1 of the Labour Tenant Act.

Respondents. However, in order to be regarded a labour tenant, *all* of the elements as set out in section 1 have to be met.[3] I now turn to the individual cases.

[30] During the hearing it transpired that the First Respondent never entered into a formal contract with the land owners or lessors. He did, however, lend assistance when particularly asked to do so by Mr Labuschagne. The Supreme Court of Appeal recently handed down the judgement of *Brown v Mbhense and Another* ((119/07) [2008] ZASCA 57 (28 May 2008)) in which the particular approach to interpreting these kinds of arrangements and agreements was highlighted as being the following: (para [30]):

> "To gauge the existence of a labour tenancy agreement in the technical and precise manner akin to that applicable to usual residential or commercial tenancies is far too restrictive an approach and one that goes against the objective and general tenor of the Act."

I am thus satisfied that, even without a formal contract, the First Respondent did render services for purposes of the Labour Tenant Act. It is further common cause that the First Respondent's father and grand father lived and worked on Roodepoort in exchange for cropping and grazing rights. It is arguable that after the death of the First Respondent's father in 2005, the First Respondent succeeded his father in line with section 3(4) and (5) of the Labour Tenant Act and would arguably have been able to fulfil the required duties had the particular turn of events been different. Official succession was not, however, argued before the court. It was the First Respondent's father that lodged the labour tenant claim. It is arguable that the claim now vests in the deceased estate. A similar provision contained in section 2 of the Restitution of Land Rights Act 22 of 1994 providing for successors being applicants for purposes of restitution claims, is non-existent in relation to labour tenancy claims. It is thus not clear from the wording of the Act how cases similar to this one, where the claimant passed away after lodging the claim, have to be dealt with, especially in relation to the heirs of the deceased. The First Respondent was furthermore born on the farm and had been living there his whole life. Accordingly, in light of all the circumstances in this particular case, I am satisfied that the First Respondent is a labour tenant for purposes of the Act.

[31] The Second Respondent testified that between 1990-1999 he had been employed in a bank. As on 2 June 1995 he himself was thus not rendering any services on the farm Roodepoort. He had however *previously* rendered services on the farm, before 1990, in exchange for which he received cropping, grazing and occupational rights. Keeping in mind that the wording of the Act is both in the present and in the past tense, I am willing to accept that the Second Respondent, is a labour tenant on the basis that (a) he is residing on the farm with his family, (b) he previously had the right to use cropping or grazing land on the farm in consideration of which he provided labour to the owner or lessee and (c) his father and grandfather were both labour tenants. In the papers it was also stated that, when employed previously, before his

[3] *Ngcobo and Others v Salimba, Ngcobo v Van Rensburg* 1999 (2) SA 1057 (SCA).

appointment at the bank, he also earned R34 per month. Clearly the monetary compensation of R34 per month cannot outweigh the value of residential, cropping and/or grazing rights. I therefore find that the Second Respondent is a labour tenant for purposes of the Labour Tenant Act.

[32] The Fourth Respondent arrived on the farm with his parents. His father was the person who rendered services in exchange for residential, cropping and grazing rights. He testified that he took over from his father when his father died and that he rendered services in his stead. Official succession was not however, argued before the court. In light of the fact that he is residing on the land, that he had rendered services and his father too was a labour tenant, I am willing to find that he too, his a labour tenant for purposes of the Act. *Brown v Mbhense* ([2008] ZASCA 57 of 28 May 2008), already referred to above, also emphasised that labour tenant contracts entered into may mutate over time and that these contracts are usually entered into by persons who are illiterate and without legal assistance.[4] These kinds of contracts should thus be approached differently to other contracts under the Law of Contract. Accordingly, the First, Second, Third, Fourth and Fifth Respondents are found to be labour tenants for purposes of the Labour Tenant Act.

Application for eviction

[33] The First and Second Applicants lodged the eviction application under section 7(2)(a) and section 7(2)(b) of the Act. Section 7(2)(a) reads as follows:

> "(2) 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;…"

[34] The Respondents refuse to provide labour to the First and Second Applicants. They argue the following reasons for not rendering service: (a) the Applicants called them "rogues" ("skelms"); and (b) had killed their livestock by causing the veld fire. Except for the First Respondent who testified that the content of the correspondence and notices had been read and explained to him, the other Respondents further testified that they could not respond to these notices since they did not know their contents. Accordingly they did not know they had to render services. This is strange indeed, especially in relation to the Second Respondent who was at some point in time employed in a bank, was literate and would have no difficulty in understanding and translating the content to family members.

[4] See paras [27]-[28].

[35] Providing labour is part and parcel of being a labour tenant for purposes of the Labour Tenant Act. The provision of labour is generally provided for in section 4 of the Act. It also provides for the nomination of persons if the particular labour tenant is unable to provide labour in which case the substitute appointed may not be unreasonably refused by the land owner or tenant. It is after all this rendering of services that is in exchange for the residential, cropping and/or grazing rights. Legal counsel for the Respondents argued that there are very good reasons for not rendering services in these particular circumstances. The main point of departure form the perspective of the Respondents was that the First and Second Applicants made it impossible for the Respondents to provide labour. I am first going to deal with the reasons linked with the alleged conduct of the Applicants themselves and thereafter the reason linked with the incomprehensibility of the official notices.

[36] Galela Nkosi, the person who was initially sent to deliver the invitation to come and see the Applicants and to discuss labour details, testified that he had never called the Respondents "skelms". Mr Galela Nkosi impressed me as an honest, reliable person. There is no part of his testimony that I find to be unreliable, unacceptable or untrue, nor has any shortcomings in his testimony been pointed out by counsel for the Respondents, Mr Sekoaila. It is highly unlikely that the person intending to employ persons would insult the same person whose services he is in need of. Both Mr Galela and the First Respondent testified that they drank tea after Mr Galela Nkosi delivered his message. After being insulted the messenger who brought the damning message was invited to tea. This conduct is not in line with a person who is extremely upset and aggrieved at being insulted to such an extent that he refused to answer the invitation. The formal charges filed against the First and Second Applicants which form part of the Court Record make no mention of this insult. Furthermore, this initial invitation was not the only opportunity for the Respondents to state their side of the story or to approach the First and Second Applicants to set the record straight. If the Respondents were called rogues, which I doubt, why did they not approach the tenants to clarify the issue? If they did not want to approach the Applicants personally they too could have sent messengers.

[37] The Third Applicant testified that he received a telephone call from one of the Respondents, possibly the Second Respondent, informing him about their (the Respondents') disappointment in the new tenants. In reply the Third Applicant advised the Respondents to go and see the First and Second Applicants to discuss the matter. The Respondents' version was a bit different, namely that some of them went to Pretoria to see the Third Applicant personally to complain about the new tenants. Irrespective of whether they communicated *via* telephone or in person, the important matter is that the Third Applicant advised the Respondents to clarify the matter with the First and Second Applicants themselves. This never happened.

Damage to livestock

[38] The other reason offered for not rendering services is that the veld fire that caused damage to the Respondents, was started by the First and Second Applicants. I need not go into too much detail in this matter as it was clear during testimony that the Respondents had already refused to provide labour for the new tenants before the fire occurred. The content of the Fire Report filed by the First Respondent had already been referred to. After hearing evidence as well as studying the Fire Report, I am satisfied that there was already a fire on the neighbouring farm and that the fire that so sadly caused damage to the Respondents was part of the usual efforts of making fire breaks in order restrict fire damage as far as possible. I am satisfied that the Applicants' employer acted reasonably in these circumstances.

The incomprehensibility of correspondence and official notices

[39] The Respondents, except for the First Respondent, testified that they had no idea what these letters and notices contained and could therefore not respond. They accordingly did not know that they had to render services. Forming part of the Court Record before me are the various return of services when the respective letters and notices were served. They are the following: in relation to the First Respondent: letter relating to the defamation claim – CLG 1; Labour Tenant Act notice – CLG 6 and section 11-notice – GLC 9, in relation to the Second Respondent: letter relating to the defamation claim – CLG 2 and section 11-notice – CLG 10, in relation to the Third Respondent: letter relating to the defamation claim – CLG 3 and the section 11-notice – CLG 11, in relation to the Fourth Respondent: letter relating to the defamation claim – CLG 4; Labour Tenant Act notice – CLG 7 and section 11-notice – CLG 12 and in relation to the Fifth Respondent: letter relating to the defamation claim – CLG 5; Labour Tenant Act Notice – CLG 8 and the section 11-notice – CLG 13. These return of services state in each case on whom the particular document or notice was served as well as that it had been read and explained to the recipient in Zulu. The person acting as interpreter was furthermore identified by name. According to *Deputy Sheriff, Witwatersrand v Goldberg* 1905 TS 680 a return of service is a legal document with legal effect. It is thus generally accept *prima facie*. If contested, very specific evidence needs to be placed before the court to disprove its veracity.[5] This was not done in the present proceedings. I furthermore have difficulty believing that the contents of the letters were not explained and translated as stated. It is also highly unlikely that, after the First Respondent was informed of the contents of these letters and notices by the family member, he would not have informed the other Respondents who were in the same boat. Probably more unsettling, is the allegation that the DLA official merely took the correspondence but did not explain the content thereof. Apparently more than one visit was undertaken to the Ermelo office, each time with the same result. It is extremely unlikely that, when

[5] *S v Watson* 1969 (1) SA 151 (K).

specifically asked about the content of a document, the official would repeatedly not divulge the information. I find it inconceivable that the content of these documents was never divulged to the Second, Third, Fourth and Fifth Respondents, either by word of mouth *via* the First Respondent, the sheriff or the DLA official.

[40] I requested further argument on the issue whether a person who had lodged a section 16 application still needed to render services. In this regard it was argued that the mere lodging of a section 16 application did not in itself alter a person's status thereby making the requirement of rendering labour redundant. A person loses his or her status as a labour tenant (and the concomitant obligation to provide services) in the following instances: when the labour tenant waives his or her rights under the Act (section 3(2)(a)); where the labour tenant dies (section 3(2)(b)); where the labour tenant is evicted (section 3(2)(c)); and where the labour tenant acquires land and/or rights in land in terms of Chapter III of the Act (section 3(2)(d)). I agree that the mere lodging of a section 16 application does not in itself suspend the provision of labour. That obligation remains in tact for the duration of the Chapter III-proceedings.

[41] I cannot on the facts and the testimony before me accept the reasons offered by the Respondents for not providing labour. There was more than one opportunity to set the record straight. I am further satisfied that at no stage during the train of events did the First and Second Applicants make it impossible for the Respondents to still meet their responsibilities if they were eager to do so.

Non-compliance with section 7(2)(b)

[42] Applicants further base their eviction application on non-compliance of section 7(2)(b). This section enables the granting of an eviction order if

> "*(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."

[43] The First and Second Applicants argue that the relationship between them and the Respondents have broken down irretrievably, based on the following: the refusal to respond to requests and invitations; the various threats voiced and posed by the Respondents, the continued confirmation that they would not accept

instructions from the First and Second Applicants and the refusal of the Respondents to restrict their livestock numbers. By refusing to bring down their livestock numbers counsel for the Applicants argued that the Respondents are in the process of effectively taking over the land in order to satisfy their needs only. Since entering into the lease agreement which commenced on 1 September 2004 the First and Second Applicants have not been able to utilise the property in accordance with their initial plan, namely that of cattle farming. The carrying capacity of the farm is estimated on 3 ha per large livestock unit. The farm, being 600ha, can thus only carry 200 head of cattle. At the time of the hearing the Respondents had approximately 200 animals on the farm which included cattle and horses, but excluding goats. This does not leave much room for the Applicants to utilise the land for which it was leased and later purchased.

[44] On the evidence it is clear that a new dispensation dawned for the Respondents when the new lease agreement was negotiated. The new tenants immediately drove their cattle on the land when the lease commenced. From the start it was clear that the new tenants had particular ideas in mind concerning the utilisation of Roodepoort. In contrast to the period when Mr Labuschagne was the tenant and the Respondents hardly experienced interference, I can understand that this may have been upsetting to the Respondents. The Applicants' cattle were thereafter driven from the land, more than once. Since then, the gates on the farm have been left open on more than one occasion, resulting in the cattle having to be driven back to the Roodepoort on a regular basis.

[45] It seems to me as if the relationship between the First and Second Applicants and the Respondents was in fact rather fragile from the start. The other events discussed above, coupled with the aggressive and non-responsive conduct of the Respondents further contributed to the deterioration of the relationship. I cannot see how, after all that has happened, the Applicants and Respondents would be able to work and farm on Roodepoort peacefully. Under these circumstances I have no option than to find that the breakdown in the relationship between the parties is irretrievable.

[46] I therefore find that there are indeed grounds for granting an eviction order. The next matter to address is whether the Respondents may, however, be evicted in these particular circumstances in light of section 14.

Section 16 application

[47] Counsel for the Respondents argued that section 16 applications have been lodged at the Ermelo office of the DLA on behalf of the First and Second Respondents by their deceased's father, and on behalf of the Fourth Respondent by his deceased's father. It was further claimed that the Third and Fourth

Respondents lodged their own labour tenancy claims under section 16. Generally section 14 prohibits eviction in these circumstances:

> "No labour tenant may be evicted while an application by him or her in terms of Chapter III is pending: Provided that the Court may order eviction if it is satisfied that special circumstances exist which make it fair, just and equitable to do so, taking all the circumstances into account."

[48] It is not clear whether an application under Chapter III is in fact "pending". The Court File contains photo copies of said applications. These documents are in Zulu. No translations have been provided, nor have evidence to their content or effect been led at the hearing. The question before the court is whether these documents in itself, are sufficient for the protective measures of section 14 to become operative or whether the process, as set out and prescribed in section 17 of the Act has to be completed or at least commenced, before section 14 becomes operative. Section 17 provides the following:

> "(1) An application for the acquisition of land and servitudes referred to in section 16 shall be lodged with the Director-General.
> (2) On receiving an application in terms of subsection (1), the Director-General shall-
> *(a)* *forthwith* give notice of receipt of the application to the owner of the land and to the holder of any other registered right in the land in question; (own emphasis)
> *(b)* in the notice to the owner, draw his or her attention to the contents of this section and section 18;
> *(c)* cause a notice of the application to be published in the *Gazette*; and
> *(d)* call upon the owner by written request, to furnish him or her within 30 days-
> (i) with the names and addresses of the holders of all unregistered rights in the land in question, together with a copy of any document in which such rights are contained, or if such rights are not contained in any document, full particulars thereof;
> (ii) with any documents or information in respect of the land in question and the rights in such land as the Director-General may reasonably require.
> (3) A notice in terms of subsection (2) *(a)* or *(d)*, may be given by way of registered mail or through service in the manner provided for the service of summons in the Rules of Court made in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944), read with section 6 (3) of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985).
> (4) The owner of affected land shall within one calendar month of receipt of the notice referred to in subsection (2) *(a)*, inform the Director-General in writing-

(a) whether he or she admits or denies that the applicant is a labour tenant within the meaning of this Act; and

(b) if he or she denies that the applicant is a labour tenant, the grounds on which he or she does so.

[Sub-s. (4) amended by s. 27 of Act 78 of 1996.]

(5) If the owner fails to inform the Director-General within the period referred to in subsection (4) that he or she denies that the applicant is a labour tenant, the applicant shall be presumed to be a labour tenant, unless the contrary is proved.

[Sub-s. (5) substituted by s. 35 of Act 63 of 1997.]

6) If the owner does not inform the Director-General within the period referred to in subsection (4) that he or she admits that the applicant is a labour tenant, the Director-General shall, at the request of either party, refer the application to the Court.

(7) Any person whose rights are affected by the application shall have the right to participate in the proceedings before the arbitrator and the Court, in the manner provided in the rules.

(8) Should the owner, without good reason, fail to give to the Director-General any information or documents requested in terms of subsection (2) *(d)* within 30 days of receipt of a written request-

(a) the Court may order him or her to do so;

(b) the Court may make an order for costs against him or her; and

(c) he or she shall be liable for any loss which the Director-General or the applicant or any person may suffer as result of such failure, and the Court may, on application by the affected person concerned, give judgement against him or her for such loss."

[49] Counsel for the Applicants argued that the mere completion of forms does not in itself constitute a pending claim. It was argued that there should at least be some recording of the application in the Department's registers, that the claim should at least have a serial number and that the steps prescribed in section 17 ought at least to have been started or should already be in progress. As set out in the background to this judgement, these applications were for a period of seven (7) years never processed.

[50] It was argued that words normally have their ordinary grammatical meaning, except if circumstances require otherwise.[6] It was further argued that no circumstances require otherwise, accordingly one can accept that the meaning of the word "forthwith" in section 17(2)(a) should have its ordinary meaning, namely "immediately or at once".[7] Seven years after completing the forms is clearly not in line with the normal meaning of the word. An application would thus be "pending" only when the steps required in

[6] *Union Government v Mack* 1917 AD 731 at 739.
[7] *Oxford Advanced Dictionary* Cowie (ed) at 486.

section 17 were at least in progress if not yet completed. Respondents' counsel argued that his clients had lodged their claims when they did what was required from them, namely to submit a set of documents at the DLA office with the assistance of its staff. He further argued that failure on behalf of the DLA to process these applications expeditiously should not be to the detriment of his clients. I tend to agree.

[51] The DLA has in the mean time published said claims in terms of section 17(1) of the Labour Tenants Act under GN 714 in *GG* 29950 of 8 June 2007. In these circumstances I am willing to accept, without deciding the issue, that section 16 applications have been lodged for purposes of this judgment.

[52] The First, Second and Third respondents did not lodge labour tenancy claims in their own capacity. The First and Second Respondents are the sons of the deceased Elijah Nkosi who lodged the claim. The Third Respondent's deceased father, Dayi Andries Nkosi, lodged a labour tenancy claim. It is thus important to ascertain whether the present respondents before the court are deemed to be applicants in relation to section 16 claims. According to section 1 an "applicant" means

> *(a)* a labour tenant, an associate or his or her successor who has lodged an application in terms of section 17 (1); and
>
> [Para. *(a)* substituted by s. 1 of Act 51 of 2001.]
>
> *(b)* for the purposes of the award of land or a right in land to an applicant by the Court, any other person nominated by the applicant and approved by the Court;
>
> [Definition of 'applicant' substituted by s. 32 of Act 63 of 1997.]

'associate' means a family member of a labour tenant, and any other person who has been nominated in terms of section 3 (4) as the successor of such labour tenant, or who has been nominated in terms of section 4 (1) to provide labour in his or her stead.

'family member' means a labour tenant's grandparent, parent, spouse (including a partner in a customary union, whether or not the union is registered), or dependant;

[53] An associate or successor would thus also qualify as persons who lodged claims for purposes of section 16. It would seem however that (a) the requirements for appointing a successor would have to be met and (b) that there can arguable only be one successor per claimant, usually the elder person. The claims lodged by the deceased applicants would thus fall within the deceased estate. The First Respondent can also benefit from the claim lodged if he is the successor, as appointed. The Second Respondent may also benefit from the claim, but not necessarily as a successor, possibly as an associate as he is a family member of the deceased applicant. The Third Respondent may benefit from the claim lodged as the successor appointed.

[54] In order to be deemed a successor for purposes of the Act, the following is required:

Section 3. Right to occupy and use land

> "(4) If a labour tenant dies, becomes mentally ill or is unable to manage his or her affairs due to another disability or leaves the farm voluntarily without appointing a successor, *his or her family may appoint a person as his or her successor* and shall, within 90 days after being called upon in writing to do so by the owner, inform the owner of the person so appointed. (emphasis added)
>
> (5) A person who is not a family member of a labour tenant, may only be appointed as the successor to such labour tenant if he or she is acceptable to the owner, who may not unreasonably refuse such appointment."

Accordingly the family may appoint a successor after the death of the labour tenant. The appointment of a successor as such does not involve the co-operation of the land owner (or person in charge) if a family member is appointed. The mere fact that communication between the land owners and labour tenants has broken down resulting in the second part of section 3(4) not being complied with, (namely that the name has to be forwarded to the land owner when called on to do so) does not negate the appointment of a successor. I am thus satisfied that the necessary succession has taken place in relation to the First and Third Respondents and that the Second Respondent qualifies as an associate. All of the respondents accordingly qualify as applicants for purposes of section 16 applications.

Special circumstances?

[55] Section 14 generally prohibits the granting of eviction applications when section 16 claims are pending. An eviction order may, however, be granted in *special circumstances.* Judge Meer of this court handed down a judgement in 1999 dealing with eviction orders under section 14. In *Van Zuydam v Zulu* 1999 (3) SA 736 (LCC) the court emphasised the role and function of section 14 as that of protecting labour tenants (and not aspirant labour tenants), but at the same time, underlined that labour tenants may be evicted if the special circumstances allow it.[8]

[56] In the *Van Zuydam* case the court found that, despite a section 16 application pending, an eviction order could be granted because it was just and fair in those particular circumstances. Of major concern was the fact that the labour tenant had breached material provisions of various agreements and refused the land owner access to the property which effectively resulted in the labour tenant "taking over" the property. An

[8] At para [39].

eviction order was not, however granted in that case because the formalities, as required in the notice requirements, had not been complied with.

[57] In order to decide whether special circumstances warrant an eviction order, the circumstances of both the Applicants and the Respondents have to be considered. In the present case the Respondents had been living on the land for many years. The majority of them were born on the land and had family members buried there. They had generally good relationships with the previous tenant and land owners. The fact that they were in a sense left over to their own means in that they occupied and utilised the land as they wanted to and in accordance with their needs with the minimal interference from the former tenant, go a long way in explaining the pleasant lifestyle they had. This changed when a new lease agreement was negotiated. The new tenants endeavoured to utilise the farm actively for cattle farming and wanted to re-negotiate the working and living conditions. This also involved cutting back livestock numbers and possibly re-orienting the Respondents' farming enterprises. At least that is how it must have seemed to the Respondents. The fact that the Respondents were called to come and see the new tenants in stead of the tenants approaching them, who, after all had been living on the land for many years, was not welcomed. Both human and natural elements further impacted on the consequent series of events. A subsequent fire and losses suffered by the Respondents upset them greatly. An initial personal encounter between the parties ended badly and further invitations and notices to set the record straight were ignored. The relationship continued to deteriorate. This culminated in this hearing during which it became clear that the Respondents were still unwilling to render labour and to reduce their cattle numbers. During the hearing I got the distinct impression that the Respondents have strained to imprint their authority over Roodepoort and that they were in earnest to utilise the farm for their own ends and needs.

[58] I have already stated that the mere lodging of a section 16 application does not in itself suspend the rendering of services. I am, however, doubtful that the non-provision of services *only* would qualify as "special circumstances" for purposes of section 14. On the facts, however, this issue need not be decided since the Respondents have also effectively taken over the farm and have acted aggressively and hostile towards the Applicants. I am thus satisfied that the cumulative effect of all of these considerations embodies "special circumstances" and that the granting of an eviction order in these circumstances is just and fair.

Formal requirements

[59] Although I have found that an eviction order is just and fair in these circumstances the only matter left to deal with is whether the formal requirements under section 11 have been complied with. Section 11 provides the following:

"(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."

[60] For the reasons stated above, I am satisfied that the notices were served on the First to the Fifth Respondents in accordance with the Act. Concerning the required service on the Director-General, the return of service is also part of the Court Record before me – CLG 13. I thus find that all of the formal requirements have been complied with.

Conclusion

[61] I find that the First to the Fifth Respondents are labour tenants for purposes of the Labour Tenant Act. For the reasons set out above, I find that, despite a section 16 application being lodged, the special circumstances in this particular case, warrant the granting of an eviction order as just and equitable. The granting of the eviction order need not impact negatively on the section 16 application since information placed before the court underlines that alternative land in the area is available.

[62] It is regrettable that the DLA has failed the Respondents. A period of 7 years has passed in which the labour tenant claims had not been processed. Had the DLA attended to these claims as they ought to have done, I would arguably not have made this order. It is again emphasised that suitable land is available in the area concerned. In light of these particular circumstances the Registrar of the Land Claims Court is hereby requested to provide copies of this judgement to the Director-General (Land Affairs) and the Minister of Land Affairs and Agriculture respectively.

[63] As is tradition in this court being a court involved in social legislation, no costs order will be made, except if the circumstances require it. I see no reason to deviate from the tradition in these circumstances.

Herewith the order:

1. The First, Second, Third, Fourth and Fifth Respondents are declared to be labour tenants for purposes of the Labour Tenant Act.

2. The eviction application in relation to the First, Second, Third, Fourth and Fifth Respondents as well as their family members and associates, is granted under section 14 of the Act.

3. The First, Second, Third, Fourth and Fifth Respondents and their family members and associates are hereby ordered to vacate the land in question no later than 15 May 2009. If the property is not vacated voluntarily on 15 May 2009 an eviction order may be executed on 31 May 2009.

4. No order as to costs.

PIENAAR AJ