

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD IN RANDBURG

Heard on: 23, 24, 25 November 2009
9, 14 December 2009
28 January 2010

Decided on:

In the matter between:

BOSCHBANK PLAAS (PTY) LTD First Applicant

L J KRYNAUW Second Applicant

and

B. P MAHLANGU First Respondent

J MAHLANGU AND THEIR DEPENDANTS Second Respondent

JUDGEMENT

MIA A J:

[1] The matter is an application for eviction in terms of the Extension of Security of Tenure Act 62 of 1997 (hereafter referred to as “ESTA”) for the eviction of the first and second respondents from Boschbank Farm, Belfast (being the Remainder Portion 1 of the farm Groenvlei No. 353J.T, Portion 1 of the Southern Portion of the farm Groenvlei No. 353J.T., Remainder of the Eastern portion of the farm Groenvlei No. 353J.T., Portion 3 of portion C of the farm Groenvlei No. 353 J.T. and Remainder of Portion marker “C” of the farm Groenvlei No. 353 J. T. (hereafter referred to as “Boschbank”).

- [2] The first applicant is Boschbank Farm (Pty) (Ltd), a company with limited liability incorporated in terms of the company Laws of the Republic. It is the registered owner of the farm Groenvlei in terms of the Title Deed Number T3498/1973 since 1993. The applicants' ownership was not in dispute.
- [3] The second applicant is an adult male farmer, a businessman and the director of the first applicant. The second applicant is the director of the first applicant and the person in charge of the premises. The second applicant conducts farming and an eco-tourism business under the name Krynauw Boerdery.
- [4] There are two respondents cited in this application, B.P Mahlangu (also known as first respondent) and Joyce Mahlangu. Both respondents were residing on the farm at the time the application was lodged in 2006.
- [5] A pre-trial conference was convened was presided over by Ncube AJ on 27 June 2007 and an order was granted as follows:
1. That the application be referred to oral evidence.
 2. That all deponents appear personally to be examined as witnesses.
 3. That the following issues be clarified in evidence:
 - 3.1 Whether or not the Respondents parents occupied the

applicant's premises as farm workers or as labour tenants.

- 3.2 Whether or not the second respondent occupied the premises with her parents and was in Pretoria only for work purposes.
- 3.3 Whether the first respondent's right of residence arises solely from an employment agreement with the applicant.
- 3.4 Whether or not the second respondent is an authorized person in terms of section 6(3) (d) of the Extension of Security of Tenure Act 62 of 1997.
- 3.5 Whether or not the second respondent had established a new dwelling on the land in question in terms of section 6(3) of ESTA.
- 3.6 If the second respondent has in fact established a new dwelling if she was authorized by the first respondent to do so.
- 3.7 Whether or not the house occupied by the first respondent during her period of employment with the applicant and in respect of which was paid was different from the family house.

[6] Mr. Havenga SC appeared for the applicants. The respondents were assisted herein by Mr. Frans Nkosi from the Middelburg Justice Centre for the first four days of evidence. The first respondent's evidence was led where after the court was informed that the

mandate of the Middelburg Justice Centre was terminated by the brother of the respondents, Isaac Mahlangu. The first respondent indicated in court that she was satisfied with the representation afforded by Mr. Nkosi from the Middelburg Justice Centre. The second respondent, who was due to testify on the 9 December 2009, indicated that she was directed by her brother Isaac Mahlangu to terminate the mandate of the Middelburg Justice Centre. The court was informed that Mr. Mahlangu as the head of the family would be making decisions regarding the family and attending to giving instructions to attorneys.

- [7] In the interim, the applicant brought an interlocutory application to evict Mr. Isaac Mahlangu who had returned to the farm. Mr. Mahlangu requested a remand to appoint an attorney. On the 14 December 2009, Mr. Mahlangu had not secured the services of an attorney and the matter was remanded to 28 January 2010. On the 28 January 2010 the first and second respondent did not attend court. Mr. Mahlangu informed the court that his attorney had indicated that the respondents need not attend at court as they would be requesting a remand in the matter. Neither Mr. Nkosi of the Middelburg Justice Centre nor the attorney instructed by Mr. Mahlangu appeared in court. Mr. Mahlangu indicated that he had called his attorney to ascertain where he was but could not reach his attorney per telephone.

- [8] On this day Mr. Havenga also indicated that they would not be proceeding with the interlocutory application against Isaac Mahlangu. The Court has considered the evidence herein in light of the issues referred to oral evidence and the formal requirements for an eviction.
- [9] The second applicant was the first witness for the applicants and testified that the first respondent resided with her parents on the farm Boschbank when he purchased it from Dr Strauss. The first respondents' father, John Mahlangu was employed by Dr Strauss. The second applicant testified that he retained most of Dr Strauss' employees and especially John Mahlangu. He testified further that he had a good relationship with John Mahlangu and employed the first respondent at John Mahlangu's request. Initially the first respondent cleaned the family home on the farm and later he employed her to clean and service the guesthouses established on the property. The first respondent was employed by the second applicant on a casual basis initially as a domestic worker in 1994. She was then permanently employed from May 2000 and as part of her remuneration package was provided with a staff house, which she occupied in 2000.
- [10] The second respondent, testified that her parents were paid very little and therefore were labour tenants. The second applicant's evidence was that he paid the employees well and that they were not labour tenants. The second respondent did not present evidence to support

her statement that her parents were labour tenants. There was also no evidence tendered by the second respondent that she was a labour tenant. She did not dispute the second applicant's statement that he paid her a good wage.

[11] According to the second applicant he experienced problems with the first respondent from about December 2004 onwards. The problems related to the first respondent bringing cattle onto the farm without permission which resulted in disciplinary action being taken against her. The second applicant testified that he removed all cattle from the premises in view of his decision to convert the premises into a game farm, ecotourism farm and a guesthouse. He testified that cattle and game could not be kept on the same farm.

[12] The second applicant says he introduced employment contracts as required by law in about 2003. He testified that the first respondent refused to sign the employment contract. The second applicant testified that the first respondent was provided with accommodation as part of her employment contract and her residence on the property was related to her continued employment on the farm. The first respondent testified that she arrived on the farm with her parents from the evidence it appears that the nature of her relationship with the second applicant changed when she became employed and her relationship with the second applicant was then independent of her father's relationship to

the second applicant. There was no evidence led that the first respondent was a labour tenant or provided labour in exchange for cropping or grazing rights. There was also insufficient evidence led to establish that the first respondent's father's relationship with the second applicant was that of a labour tenant. The second applicant testified that he paid his employees well. In terms of the employment contract the first respondent's accommodation was linked to her continued employment. The second applicant also testified that John Mahlangu requested that his daughter be employed on the farm and the underlying intention was to secure her an income and accommodation on the farm.

- [13] The second applicant testified that he experienced problems with the first respondent consistently thereafter as she refused to sign for her salary advice. As a result arrangements were eventually made to pay her salary into a bank account. According to the second applicant, the first respondent claimed a salary for days on which she effected no work at all. He stated that first respondent was required to deactivate the alarm and enter the house to clean during the week in their absence. She did not do so. He was able to ascertain that she did not enter the house as he accessed the alarm company records. The record indicates that no access was gained to the house during the week as the alarm had not been deactivated. This was not disputed by first respondent in cross examination or when she gave evidence.

- [14] The second applicant further testified that he wished to build an ablution facility on the premises for the workers. The first respondent refused to permit the builder access to the room. She stored her extra belongings therein and refused to open the room and later refused to remove her goods. This resulted in second applicant paying the builders costs for the day when no work was affected. When the ablution facility was finally complete the first respondent fought with the other workers and refused them access to the ablution facility. The second applicant testified that the occupiers in the adjacent rooms left as a result of arguments with first respondent. He is unable to persuade his current employees to occupy the premises as they are afraid of first respondent.
- [15] The second applicant also testified that first respondent called him to bring cattle onto the premises which she was paid as lobola. He refused as the farm was a game reserve and could not accommodate cattle. He testified that despite his refusal she brought the cattle onto the farm. The first incident occurred in December 2004. A further incident occurred again in October 2005. The second time no permission was sought.
- [16] According to the second applicant disciplinary proceedings were instituted against the first respondent for having unauthorized visitors on the premises and also due to a dereliction of her duties. The first respondent was given a final written warning valid for three months.

During both disciplinary proceedings the first respondent attended and left whilst the proceedings were in session without giving any input. The presiding officer recommended dismissal on the last occasion. This was accepted by second applicant who informed first respondent that her services were terminated. The first respondent referred the matter to the CCMA. The records at the CCMA reflect that neither party arrived for the "con/arb". The second applicant testified that the application was dismissed. Further that first respondent requested further action namely to rescind the first decision. The second applicant testified that this application was also dismissed.

[17] The second witness for the applicants was Mr. Lucas Mills. Mr. Mills is the foreman and employed since 2006. He testified that the first respondent vacated the premises in October 2006 and returns to visit family on the farm and on a neighboring farm. Mr. Mills testified there was an occasion where there was a fire on the farm. The occupiers were aware of the fire and he instructed them to put out the fire as it was not permitted in terms of the National Veldt and Forest Act. He was not sure who started the fire but believes the occupiers were aware of the fire and who had started it.

[18] Werner Krynauw was the third witness for the applicant and testified that he assists with the management of the farm in between his studies. He visits the farm two to three times per month as it fits in with his studies. He testified that he was not on the farm on the first

occasion when cattle were brought onto the premises. On the second occasion he was present and the Pound Master was called to collect the cattle. He testified that Isaac Mahlangu behaved aggressively towards them and called them racists and swore at them. He testified that some of the guests left and did not return to the farm thereafter. Werner Krynauw also testified about an initiation ceremony celebration which occurred on the farm without the applicant's knowledge. He testified that a number of unknown persons were present on the farm. He recognized a member of the Mahlangu family who he knows as "Vus". Werner Krynauw testified that "Vus" apologized for any offence created.

[19] The second respondent is an adult female and the sister of the first respondent. The second respondent rented accommodation at her place of employment and returned to reside on the farm with the first respondent after her employment contract ended. According to the second applicant this was after January 2005. The respondents' evidence particularly the first respondent was that they hold occupation under their deceased father. The house they reside in has always been their family home.

[20] Having regard to the evidence of both the second applicant and the first respondent it was apparent that the relationship between the first respondent and the second applicant had broken down. The first respondent testified that she refused to sign for salary advices because

she did not trust the second applicant. The extent of the breakdown in communication is demonstrated further by the second applicant serving the notice of the disciplinary enquiry on the first respondent via the sheriff. The first respondent attended the hearing but refused to participate and walked out of the proceedings.

[21] The second respondent initially testified that she made a statement to the police regarding a complaint against the second applicant. She then changed her evidence when presented with the statement during cross examination and denied having signed the statement she made to the police. Further conduct on her part led to a further disciplinary hearing and again she left the hearing without participating. The recommendation was dismissal and this was applied by the applicant.

[22] According to the second applicant the first respondent's accommodation was dependant on her employment on the farm Boschbank.

[23] In applying for a final eviction order the applicant must show that all the prerequisites of an eviction order have been complied with in terms of section ((2) of ESTA.

Section 9(2) (a) and (b)

[24] Section 8 (2) of ESTA states that

Section 8(2)

The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act

[25] The applicants rely on the oral notice of termination of employment given to the first respondent on 6 November 2005 to support the notice of termination of residence. In view of the first respondent's employment being linked to her accommodation on the farm in staff quarters, Mr. Havenga submits that it is common cause that her right of residence was terminated when she was informed of the dismissal.

[26] The second applicant also informed the first respondent orally on 6 November 2005 that she was required to vacate the premises within 30 days and again in writing communicated the decision to dismiss and the requirement to vacate the premises in a letter dated 30 November 2005.¹

Section 9(2) (c)

[27] The first respondent was an occupier on the premises before February 1997 and consequently section 10 is applicable. It is submitted on behalf of the applicant that the relationship has broken down due to first respondent's behaviour resulting in a fundamental breach of the relationship between the applicant and the respondent. The second

¹ Annexure F attached to the Founding Affidavit, Page 34 of the paginated bundle.

applicant testified that the first respondent consistently ignored orders given to her, refused to sign her employment salary advices, was not on the premises when she was meant to be at work and brought cattle onto the farm after he had removed all his cattle to convert to a game reserve.

[28] As indicated above it is clear that the relationship has broken down between the second applicant and the first respondent. The first respondent did not dispute the evidence that she claimed payment for services not rendered or that she used the applicant's resources without permission. From the evidence it appears that the first respondent did not accept the rules introduced by the new owner which did not suit her. From the evidence it was apparent that the first respondent's relationship with the applicant had broken down. She testified that she refused to sign for salary advices because she did not trust the second applicant. The extent of the breakdown in communication is evidence by the applicant serving notice of the disciplinary enquiry on the first respondent via the sheriff. The first respondent attended the hearing but refused to participate and walked out of the proceedings.

[29] The second respondent also moved onto the farm with her father in 1976. She later was employed in Pretoria and resided at her place of employment until she lost her employment. Thereafter she returned to reside on the farm with her sister. There was no evidence tendered that

the second respondent established a new dwelling on the farm.

- [30] The second applicant testified that he did not give the second respondent permission to move onto the farm.

Section 9(2) (d)

- [31] The applicant served the papers herein on the respondents on 27 July 2007 with the appearance date being 26 September 2006.² Notice of the application was served on the Department of Land Affairs on 25/07/2006³ and on the Chief executive Officer Town Clerk, Belfast on 27 July 2006⁴. This matter only having being heard in December 2009, I am satisfied that there has been compliance with this section. Neither the municipality nor the Department of Land Affairs filed a notice to participate herein.

Section 9(3)

- [32] A Probation Officer's report was requested on 1 August 2007 and again on 3 September 2007. When this matter appeared before me in 2009 there was still no Probation officers report filed. This Court has previously indicated that matters cannot be delayed indefinitely due to a failure to file a report. The referral to oral evidence by Ncube J also enabled the parties to place relevant information before this Court. With regard to the availability of alternative accommodation, evidence

² Annexures K1, K2, K3, K4, K5 attached to the founding affidavit.

³ Annexure K attached to the founding affidavit.

⁴ Annexure K8 attached to the founding affidavit.

was led that the first respondent has a home in a nearby township where she resides with her spouse. On the 28 January this court was informed that the second respondent has also vacated the premises in which she and the first respondent resided. The conclusion the court was requested to draw was that she had alternative accommodation. There was no evidence placed before this court that either of the respondent's children would be negatively affected with regard to education. Neither of the respondent's children were schooling on or near the farm. In view of the first respondent having moved into her husband's home there appears to be hardship she will suffer should this Court grant an eviction order. The second respondent did not testify and elected not to attend the hearing on the 29 January 2010. No evidence was placed before this Court that the second respondent would suffer any hardship as a result of an eviction order.

- [33] The Court is satisfied that all the formal requirements have been met and that it is just and equitable in the present circumstances to grant an eviction order. The papers having being served in July 2006, the matter having been heard In December 2009 and January 2010. The 10 August 2010 affords the respondents sufficient time to vacate the property should they have returned and to remove all belongings still on the premises. The eviction order may be carried out on 17 August 2010.

Section 13

[34] There was no evidence led that the first or second respondents planted crops due for harvest or that they effected improvements to the property or erected buildings at their cost. There was also no evidence indicating that there were wages outstanding.

ORDER

- [35]
1. The eviction order is granted.
 2. The first and second respondents and all who hold occupation under them including their minor children and children in their custody are to vacate the residence situated at Boschbank Farm, Belfast (being the Remainder Portion 1 of the farm Groenvlei No. 353J.T, Portion 1 of the Southern Portion of the farm Groenvlei No. 353J.T., Remainder of the Eastern portion of the farm Groenvlei No. 353J.T., Portion 3 of portion C of the farm Groenvlei No. 353 J.T. and Remainder of Portion marker "C" of the farm Groenvlei No. 353 J. T. (hereafter referred to as "Boschbank"), occupied by them on or before **10 August 2010.**
 3. The Sheriff of this court is authorized to remove the respondents and their dependants from the premises should they not comply with the order in paragraph 2 above on the **17 August 2010.**

4. There is no order as to costs.

**SC Mia
Acting Judge
Land Claims Court**

APPEARANCES

For the Applicants

Advocate H Havenga SC

Instructed by Pieter Moolman Attorneys

For the Respondent

Mr Nkosi (Middleburg Justice Centre)