IN THE LANDS CLAIMS COURT OF SOUTH AFRICA

CASE NUMBER: LCC 158/2009

Heard on 25 January 2010
Delivered on

In the matter between:

Gert Willem Pietersen **Appellant**

And

Ludwig Erasmus van Deventer **Respondent**

JUDGMENT: 25 March 2010

CARELSE J:

[1] This is an appeal against a judgment and order of the Stellenbosch Magistrate's court for the eviction of Appellant from Respondent's farm under the Extension of Security of Tenure Act No 67 of 1997("the Act"). On 20 May 2009, the Court granted the following order:

> " Die Hof bevind dat die belange van die Applikant opweeg as die belange van die Respondente en gelas uitsetting van die Respondent en almal wat onder hom okkupeer vanaf Bloomendal Plaas, Stellenbosch voor of op 31 Augustus 2009 by

versuim word die Balju gelas om die Respondente na 07 September 2009 uit die woning te sit."

[2] The grounds of appeal are as follows:

1. the court *a quo* erred in finding that it was not necessary to join the following parties:

   (a) The Department of Land Affairs;
   (b) The Local Municipality and
   (c) Eva Booysen, the live in partner of the Appellant;

2. the court *a quo* erred in failing to have regard to the provisions of Section 8 (1) of the Act.

3. the court *a quo* erred in finding that the provisions of section 9 (2) (c) and 10 (1) (c) of the Act were complied with.

Factual Background and circumstances leading up to the eviction of the Appellant and all those who occupy under him.

[3] It is common cause that the Appellant commenced occupation on Respondent's farm Bloemendal, Plaas No 266 in the district of Stellenbosch, Western Cape,('the farm') before 4 February 1997. It is also common cause that Appellant's right of residence arose from his employment contract and that Eva Booysen derived her right of residence through the Appellant.

[4] On 15 February 2005, during harvest time the Appellant failed to report to work. Respondent's Manager, Mr. Steenkamp sent an employee to look for the Appellant. Mr. Steenkamp was told that Appellant was injured in a fight. A week later a certain Koch went to Appellant's house to make further enquiries. The Appellant was not at home. On 14 March 2005, Steenkamp wrote a letter to Appellant

informing him that if he did not report to work by 16 March 2005, he would be dismissed. Appellant did not report to work. A further attempt was made to enquire why Appellant was not at work. This proved unsuccessful. The Appellant was dismissed during March 2005. Thereafter it appears that Appellant only reported to work on or about 15 May 2005, explaining his absence on account of ill health. He produced no medical certificate. According to Mr. Steenkamp, Appellant had a history of absenteeism and had received several warnings.

[5] The Appellant referred his dismissal to the CCMA. On 5 September 2005, the CCMA found that his dismissal was substantially fair but procedurally not so. The decision of the CCMA was reviewed by the Labour Court and on 5 December 2006, the Labour Court found that the Appellant's dismissal was both procedurally and substantiively fair.

[6] On 3 July 2007 in compliance with Section 9 (2) (b) of the Act, Appellant received a notice to vacate his residence by 3 August 2007. He did not oblige and continues to reside on the farm four years after his dismissal. The Appellant presently works elsewhere two days a week earning R300.00 per week. Against this background I turn to consider each of the grounds of appeal

Joinder

[7] The non joinder of the Department of Land Affairs, the Local Municipality and Eva Booysen was raised as a point *in limine* before the court *a quo.* It was argued they ought to have been joined on the basis of their direct and substantial interest. However, at no stage did the Appellant bring a joinder application.

Joinder of the Department of Land Affairs and the Local Municipality

[8] Mr. Geyser for Appellant referred to several cases dealing with the Prevention of Illegal Eviction from Unlawful Occupation Act No 19 of 1998 ("Pie") where the issue of joinder was raised.These are distinguishable from the present case in which an eviction under the Act is sought. I note moreover that at issue in *The Occupiers of Erf 101,102,104 and 112, Shorts Retreat, Pietermaritzburg v Daisy Dear Investments*

(Pty) Ltd & others [2009] JOL 23840 (SCA) were considerations of sanitation, electricity and crime on land occupied by a community as opposed to premises occupied on a farm devoid of such issues by a single occupier.

[9] Mr. Combrink for Respondent argued that it was not necessary to join the Department of Land Affairs, and the Local Municipality because section 9 (2) (d) of Esta provides for notice to be given to them. The section states:

> " A court may make an order for the eviction of an occupier if -
>
> > the owner or person in charge has, after termination of the right of residence, given –
> >
> > (i) the occupier;
> >
> > (ii) the municipality in whose area of jurisdiction the land in question is situated; and
> >
> > (iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,
> >
> > not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with."

[10] From the section it is clear that the legislature recognised the need for the Municipality and the Department of Land Affairs to be notified about eviction proceedings in their areas of operation, short of them being joined. Their mandatory notification acknowledges their direct and substantial interest as it were. Joinders of these organs of state, in every eviction case under the Act would in the circumstances be redundant unless there were compelling reasons therefor, which in the instant case has not been demonstrated. Their joinder could also prove to be practically inconvenient, costly and result in unnecessary delays. Given the

requirement that these bodies be notified, their non joinder does not result in prejudice to occupiers whose eviction is sought. The Court *a quo* correctly in my view, found it was not necessary to join the Department of Land Affairs and Local Municipality in the present case.

Joinder of Eva Booysen

[11] It is not in dispute that Eva Booysen received notices in terms of section 9(2) of the Act. She even attested to an affidavit. Her direct interest was therefore adequately catered for and the fact that she did not apply to be joined herself, attests to that. No prejudice arose from her non joinder.The court *a quo* correctly rejected the argument that she too, ought to have been joined.

Compliance with Section 9 (2) (a), Section 8 (2) and the applicability of Section 8(1) of the Act

[12] The court *a quo* was satisfied that the requirements of Sections 9 (2) (a),and 8 (2), were met.

Section 9 (2) (a) states:

'A court may make an order for the eviction of an occupier if-
"the occupier's right of residence has been terminated in terms of section 8;"

Section 8 (2) provides:

"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."

[13] As Appellant's right of residence arose from his employment, it is Section 8 (2) and not Section 8 (1) of the Act that is applicable to him, and which was correctly found to be so by the Learned Magistrate. It is common cause that Appellant was

dismissed in accordance with the Labour Relations Act. This being so there was compliance with Section 9 (2) (a) of the Act.

Compliance with Sections 9 (2) (c) and 10 (1) (c) of the Act

Section 9 (2) (c) provides:

> 'A court may make an order for the eviction of an occupier if-
> the conditions for an order for eviction in terms of section 10 or 11 have been complied with;'

Section 10 (1) (c) provides:

' An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-

> "the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship;"

[14] The court *a quo* found there to have been a material breach as contemplated at Section 10 (1) (c) of the Act, from the facts and circumstances leading up to Appellant's dismissal, as elucidated above. It is difficult to comprehend how the relationship between Appellant and Respondent can be restored in the light of all that has transpired between them, the hearing before the CCMA, review in the Labour Court, the current litigation and the fact that Appellant has continued to reside rent free on Respondent's farm for several years contrary to Respondent's wishes, whilst in employment elsewhere. I am in agreement that there was a material breach as contemplated at Section 10 (1) (c). It is to be noted that the Appellant simply denies that he committed a material breach but does not deny the reasons attributed by Respondent for the breach.

[15] Appellant argued that suitable alternative accommodation was not available and an eviction order should not be granted. In terms of Section 10(2) of the Act. It is not necessary for a court to consider suitable alternative accommodation in

circumstances like the present where there has been a material breach as contemplated in Section 10 (1) (c).

Section 10(2) provides:

> " (2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned."

[16] I note that were suitable alternative accommodation to have been a factor for consideration, close on to five years have lapsed since the termination of Appellant's right of residence, a period well in excess of the nine months period referred to at section 10 (3) (a) which states:

> " If –
>
> (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
>
> (b) the owner or person in charge provided the dwelling occupied by the occupier; and
>
> (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,
>
> a court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependant on his or her right of residence if it is just and equitable to do so, having regard to –
>
> (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and
>
> (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted."

[17] Had Section 10 (3) been applicable in this case, a balancing of the rights of the Respondent against those of Appellant, would in my view have favoured the former, given all the circumstances and especially the fact that Appellant has enjoyed rent free accommodation on Respondent's property for so many years after his dismissal, whilst employed elsewhere. Appellant's argument that he should be allowed to stay indefinitely on Respondent's property, simply cannot be sustained.

[18] In the light of all of the above I am satisfied that the substantive and procedural requirements prescribed at Section 9 (2) of the Act for the termination of Appellant's right of residence, were complied with. I am unable to find that the Court *a quo* erred in granting the order for the eviction of Appellant and all those occupying through him.

[19] I would accordingly dismiss the appeal with costs. As the eviction dates specified in the order of the Court a quo have passed, it is necessary to prescribe new eviction dates. I accordingly order as follows:

> The Appellant and all those occupying Bloomendal Farm No 266 in the district of Stellenbosch through him, shall vacate the said farm by ~~12 April~~ 4 MAY 2010. In the event of their failing to vacate on such date the Sheriff for the area is authorized to secure their eviction on ~~14 April~~ 5 MAY 2010.

CARELSE J

I agree.

MEER J

Appearances:

Appellant :	**Mr Geyser**
	University of Stellenbosch Law Clinic
Respondent:	**Mr Combrink**
Instructed by:	*Malan Lourens Arendse Incorporated.*