

**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
RANDBURG**

**CASE NUMBER: LCC 26R/2012
MAGISTRATE'S COURT CASE NUMBER: 1204/2011**

In Chambers
Before **MPSHE AJ**

Decided on: 30 May 2012

In the matter between:

OUDEPONT (EDMS) BPK

Applicant

and

JOHAN COETZEE

Respondent

JUDGMENT

MPSHE AJ

Background

- [1] This is an automatic review under section 19(3) of Extension of Security of Tenure Act as amended ("hereafter referred to as ESTA") of an order granted by the Magistrate, Wellington on 15 March 2012. The order was for the eviction of the respondent from the applicant's farm known as Kleinpontplaas, in the district of Paarl, Western Cape.

[2] The applicant is Oudepont (EDMS) a private company represented in these proceedings by its director Andries Andriaan Krynauw. The respondent is a 31 year old male who has been working and staying on farm Kleinpont since 2003. The respondent's right of residence is said to emanate from his employment relationship with the applicant.

[3] The applicant brought the application on notice of motion for the eviction of the respondent on grounds that the respondent's employment was lawfully terminated in terms of section 8 of ESTA, and that the respondent no longer works on the applicant's farm. The applicant further alleged that the right of residence of the respondent was lawfully terminated in accordance with the provisions of the Labour Relations Act.¹ The record shows that the labour dispute between the parties was finally laid to rest by Commission for Conciliation Mediation and Arbitration²

[4] The application proceeded at the magistrate's court Wellington wherein both parties were represented by their respective legal representatives. Even though the record suggests that the respondent was represented, no opposing papers were filed with the court *a quo*. The matter proceeded in terms of section 11 of ESTA and the following order was granted on the 15 March 2012 by the magistrate:

*Die bogenoemde Hof vind dit regverdig en billik dat genoemde
1.respondent, die Kleinpont Plaas, gelee in die Afdelling Wellington, Provinsie Wes-
Kaap moet ontruim op 31 April 2012*

¹ Act 66 of 1995

² CCMA

2. dat, indien die respondent nie die plaas sou ontruim op die datum na verwys in die vorige paragraaf nie, die Balju van hierdie Agbare Hof gemagtig word om 'n uitsettingsbevel uit te voer op 7 Mei 2012

3. afskrifte van die uitsettingsbevel op die respondent persoonlik gedien word deur voormelde Balju;

4. verdere en/of alternatiewe regshulp

Settlement agreements

[5] The records indicates that the order under review was granted after the applicants' attorney requested the court *a quo* to order the settlement agreement reached between the parties an order of the court. It is noted that the legal representative representing the respondent agreed to the said request made by the applicant's attorney. ESTA provides for instances wherein the right of residence of an occupier may be terminated by way of settlement agreements.³ Parties are permitted to enter into agreements regarding their removal from the farm as well as agree on dates of eviction. Section 25(2) of ESTA provides for the court to have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of ESTA.

[6] In this case however, the settlement agreement is said to have existed between the parties. After perusing the court record I could not find any agreement of some sought except for the settlement agreement entered into by the parties at the CCMA. I instructed my registrar to investigate the existence of the settlement agreement with the clerk of the court *a quo*. On the 25 April 2012 the clerk of the court advised my registrar that there was never a written settlement agreement

³ Section 8 (1)(a)

reached by the parties in this matter. For this reason alone I find it difficult to confirm the order that is based on a non- existing written agreement.

Compliance with section 9

[7] Section 9(2)(d)(i) of ESTA provides for instances wherein the granting of eviction order may be limited by the court. In terms of this section the applicant is required to serve at least two calendar months' written notice to the occupier. The said notice shall contain the prescribed particulars⁴ and set out the grounds on which the eviction is based. The said notice must be in the language that the respondent best understands. The regulation 11⁵ provides for the proof of service or acknowledgement receipt as to whether the requisite notices in terms of section 9(2)(d) were properly served on the respondent. In this case there are no records to suggest that the respondent was served with the required notices, and that should be reason enough to set aside the magistrate's order.

Probation Officer's report

[8] Section 9(3) of ESTA provides that the Court must request a probation officer or an officer of the Department of Land Affairs or any other officer in the employment of the state to submit a report on matters such as: the availability of suitable alternative accommodation; constitutional rights of any affected person, including the rights of children, if any; and on any undue hardships which an eviction would cause the occupier. There is no indication on papers that this

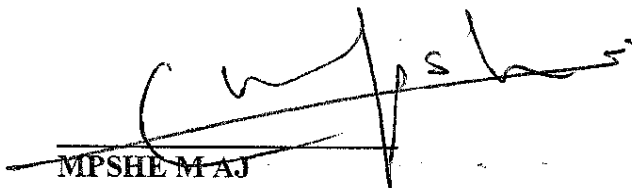
⁴ Form E is the prescribed form

⁵ ESTA regulations

section was complied with. In a leading case of *Port Elizabeth Municipality v Various Occupiers*⁶ it was said that the court is to have regard to the circumstances that is, to give them due weight in making its judgment just and equitable, meaning that the court cannot fulfill its responsibilities if it does not have the requisite information at its disposal.

Order

The order by the magistrate, Wellington granted on the 15 March 2012 for the eviction of the respondent is hereby set aside in its entirety.



MPSHE M AJ

For the applicant: Johan Bezuidenhout Attorneys

Fax: 023 2301052

For the respondent: Faure & Faure attorneys

Fax: 021 8725800

⁶ 2005 (1) SA 217 (CC)