

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

**CASE NUMBER: LCC 31R/2011  
MAGISTRATE'S COURT CASE NUMBER: 670/2011**

In Chambers  
Before **MPSHE AJ**

Decided on: 6 March 2012

In the matter between:

**HEXROS PLASE (EDMS) BPK**

Applicant

and

**JANWELL VERMEULEN**

Respondent

**EN ALLE ANDER OKKUPAERDERS WAT OKKUPASIE  
VERKRY HET DEUR DIE RESPONDENT**

**JUDGMENT**

**MPSHE AJ**

***Background***

[1] This is an automatic review under section 19(3) of Extension of Security of Tenure Act as amended, (“hereinafter referred to as ESTA”) of an order granted by the Magistrate, Worcester on 3 June 2011. The order was for the eviction of the respondent and all those who claim occupation under his title from the applicant’s farm Wyserdrift, Worcester. This judgment is rather academic as the

respondent and all those occupying the farm under his title had voluntarily vacated the farm before the passing of this judgment.<sup>1</sup> However this Court is compelled to exercise its review powers in terms of ESTA.<sup>2</sup>

[2] The applicant brought the application on motion for the eviction of the respondent and his family on grounds that the respondent was no longer working for the applicant. The applicant did not cite all the other parties who live with the respondent it simply cited “*en alle ander persone wat okkupasie verkry het deur die respondent*”.

[3] According to papers before this Court, the respondent is said to be a 27 year old married male with 2 minor children. Part of the delay in finalizing this review was caused by the probation officer’s report that this Court has caused to be compiled. Although the notice of motion did not tell us about the respondent’s parents, the Court has learnt that the respondent is residing with his parents who are pensioners and one of them has worked on the farm for over 30 years and without a doubt, she is the long term occupier in terms of ESTA.<sup>3</sup>

[4] The respondent started working for the applicant during 2008 and as part of his employment contract; the respondent was allowed to occupy the farm. The employer – employee relationship started to be sour in year 2010 when the respondent was charged with misconduct and later dismissed from his

---

1 This was indicated on the probation officer’s report that was compiled at the request of this Court.

2 Section 19 of ESTA

3 Section 1 of ESTA

employment. The respondent had not challenged the fairness or unfairness of his dismissal in terms of Labour Relations Act.<sup>4</sup>

[5] The eviction proceedings were instituted by the applicant at the magistrate's court Worcester. At all material times the respondent was unrepresented. Before the matter could go any further, the parties concluded a settlement agreement in terms of which the respondent agreed to vacate the farm by the 30 June 2011 and should he fail to do so by that date, the sheriff of the court was authorised to remove the respondent and those who live with him by the 6 July 2011. Parties further agreed that the respondent will pay the sheriff fees should the sheriff be instructed to remove him from the farm. It is against this background that the magistrate Worcester ordered the settlement agreement to be an order of the court.

***Compliance with section 8(2) of ESTA***

[6] The applicant alleged that the respondent's right of residence was derived from his employment status with the applicant. As the respondent was unrepresented no affidavits were filled by him. The applicant further alleged that the termination of the respondent's employment automatically terminates his right of residence on the farm. It is said that the respondent was charged with misconduct on or about August 2010 and a disciplinary hearing was called wherein the respondent was found guilty of working whilst under the influence of alcohol. The respondent was then dismissed from his employment on those grounds.

---

<sup>4</sup> Act 66 of 1995

[7] The respondent never challenged his dismissal in terms of Labour Relations Act and this Court is satisfied that the termination of the respondent's employment was lawful in accordance with the provisions of section 8(1) and (2) of ESTA.<sup>5</sup>

***Non compliance with section 9***

[8] Section 9 of ESTA provides for instances where the granting of eviction order may be limited by the court. In terms of section 9(2) the applicant is required to serve at least two calendar months' written notice to the occupier; the municipality in whose jurisdiction the land in question is situated; and to the head of the relevant provincial office of the Department of Rural Development and Land Reform, for information purposes. The said 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 a 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 Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application.

[9] After perusing the records this Court is not satisfied that the provision of section

---

5 Section 8 provides:- (1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to-

- a) ...;
- b) the conduct of the parties giving rise to the termination;
- c) ...;
- d) ...;
- e) ...;

(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.

9(2) has been complied with.

***Judgments by default***

[10] The records show that the respondent had indicated to the magistrate that he does not agree with the settlement agreement and that he needs an attorney. The magistrate never bothered to investigate or enquire as to what exactly is the respondent's problem with the agreement. The magistrate has not even advised the respondent on legal aid, considering the fact that the respondent is a farm dweller. This Court on *Vooraus Beleggings EDMS (BPK) v Molefe and Another* said that there is a duty on the magistrate to make suitable enquiries from the parties before granting eviction orders".<sup>6</sup>

[11] Over the years this Court has developed a jurisprudence of not granting defaults judgments in cases involving security of tenure. In the case of *Nkunzi Development Association v Government of the RSA and Another*<sup>7</sup>, this Court said that defaults judgments in cases involving security of tenure are very antithesis of a fair trial precisely because the occupier is helpless.<sup>8</sup> Although the *Nkunzi*<sup>9</sup> case focused specifically on the need for legal representation, the underlying principle applies with even greater force in applications for default judgments.

[12] The magistrate had a duty to enquire with the respondent as to what exactly is the

---

<sup>6</sup> LCC 9R/2000 unreported decided on 7 March 2000

<sup>7</sup> Nkunzi 2002 (2) SA 733 (LCC)

<sup>8</sup> Above n 7

<sup>9</sup> Supra N3

respondent's problem with the settlement agreement. Furthermore the magistrate should have assisted the respondent with advising him on how to access legal representation. The result of such investigation should then form the basis of the motivation for proceeding by default.<sup>10</sup> I am not satisfied that the magistrate acted fairly in presiding over these proceedings and for that reason alone the eviction order stands to be set aside.

[13] Lastly, I would like to mention my dissatisfaction with clause 1.4 of the settlement agreement.<sup>11</sup> ESTA deals with social matters it is not general practice that the court makes costs orders<sup>12</sup> in matters involving indigent people.

**Order:**

The order of the Magistrate, Worcester granted on the 3 June 2011 for the eviction of the respondent and all those who are occupying under his title is hereby set aside in its entirety.

---

**ACTING JUDGE MPSHE**

**APPEARANCES**

---

<sup>10</sup> Du Plessis v Mosia LCC 117R/04 unreported case decided on 12 May 2005

<sup>11</sup> Clause 1.4 says that the respondent will pay 100% sheriff fees should the sheriff be instructed to vacate him.

<sup>12</sup> New Adventure Investments 19 (PTY) LTD and Another v Mbatha and Others 1999 (1) SA 776 (LCC)

For the applicant:

Muller Terblanche & Beyers

For the respondent:

unrepresented