IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Case No.: **LCC 03/12**

RANDBURG

Before: **Sidlova AJ**

Decided: 06 March 2012

In the matter between:

NGIDI BRAAI SIBANYONI	First Applicant
BRANANZA JOHN SUAHATSI	Second Applicant
and	
UMCEBO MINING (PTY) LIMITED	First respondent
UMCEBO PROPERTIES (PTY) LIMITED	Second respondent
THE REGIONAL MANAGER	
DEPARTMENT OF MINERALS & ENERGY	
MPUMALANGA	Third Respondent
THE REGIONAL DIRECTOR	
DEPARTMENT OF RURAL DEVELOPMENT	
AND LAND REFORM, MPUMALANGA	Fourth Respondent

JUDGMENT

SIDLOVA AJ:

[1] The applicants brought an urgent application for an interdict against the first and second respondents to stop them from carrying out any mine related blasting activities within 500m of the applicants' homes on portion 2 of the farm Klippan ("the farm"). The first and second respondents have responded with a counter application in which they seek

the urgent eviction of the applicants from the farm in terms of Section 15 of Act 62 of 1997 ("the Act").

The parties

[2] The applicants have been occupiers on the farm for over 20 years together with their families. The first respondent is a mining company owned by the second respondent. Coal mining operations are conducted on the farm by the first and second respondents. No relief is sought against the third and fourth respondents who are cited because of their potential interest in the matter. These respondents have not filed notices to participate.

The facts

[3] The applicants were employed by one, Mr Van Rooyen, the previous owner of the farm. It was a term of their employment that they would be entitled to reside on the farm. Several structures were built in the area identified for them and in time the applicants built on additional structures, enlarging their homesteads to include kraals for their livestock.

[4] Upon the sale of the farm to the respondents, Mr Van Rooyen informed the applicants of the sale and stated that they would be relocated and their needs taken care of. The Respondents took control of the farm and in 2008 the first respondent started negotiations with the applicants and the other families residing on the farm for their removal. Several meetings were held and according to the opposing respondents it was agreed that the applicants would be relocated to an area known as Grootpan and that houses would be built for them there by the first respondent. The applicants deny that they were parties to such an agreement. According to the opposing respondents it was also agreed that the first respondent would pay the relocation costs excluding the transportation of livestock. In time the houses were built after the applicants were shown a sample house on another project.

[5] The applicants have in the interim continued living on the farm after the commencement of mining and blasting activities. It is common cause that this poses a danger to the applicants' lives. Once the houses were complete the other families on the farm moved to the new houses. It is thus only the two applicants in this case that continue to reside on the farm and who have refused to move to the new houses.

[6] The applicants have refused to move because they are dissatisfied with the quality and size of the alternative accommodation that has been built for them. As opposed to the wattle and daub dwellings in which the applicants currently reside, the alternative accommodation comprises brick houses. Each house has 3 bedrooms, a lounge, a kitchen and bathroom. In addition there is running water, electricity, flushing toilets and a windmill. The first applicant is being offered 2 houses because of the size of his family and the second applicant is offered a single house. The applicants are not happy with this and they demand an additional house each. The opposing respondents have offered also to take care of the relocation costs. Also they initially offered a compensation amount of R5 000,00 to each household and undertook to maintain the houses for a period of 2 years. The applicants rejected the offer of R5 000, 00, initially demanded R50 000, 00 and later a sum of R500 000,00 per household. The applicants complain that the houses are not large enough for their furniture and fittings. It is common cause that to accommodate this concern, the respondents have offered in addition to provide containers to be placed beside each house, each container being large enough to accommodate additional furniture and fittings.

The interdict

[7] In seeking to interdict the opposing respondents from continuing with mining and blasting operations until such time as a resolution to the dispute containing their alternative accommodation and relocation is reached, the applicants argued that the blasting and mining activities were endangering their lives and that of their livestock. They contended also that the opposing respondents are in breach of the law in continuing mining under such circumstances. The opposing respondents counter that stopping the mine is not an option. This will not only put the continued existence of the first and second respondents in danger, but will also cause untold mystery to hundreds of others who are dependant for their livelihood on the mine's existence. Opposing respondents point out also that the economy is dependent on the delivery of coal to large power plants, the majority of the coal from this mine goes to Eskom and the mine can accordingly not afford to suspend its operations.

[8] At a conference convened with the parties by the Court, undertakings relating to certain interim safety measures, especially during blastings, were given. At the conference

it was also recorded on behalf of the applicants that they were not opposed to moving to Grootpan *per se*, but would only do so once their concerns were addressed.

[9] The conference revealed that the cryptic issue in dispute was the terms and conditions of the relocation of the applicants and in particular the suitability of the alternative accommodation at Grootpan and the size thereof. This and the suitability of the alternative accommodation was indeed the focus at the hearing before this Court.

[10] It is clear to me and indeed was common cause to the parties that there is a real imminent danger of substantial injury or damage to the applicants and their property if they continue to remain on the premises they occupy on the farm. In so far as the applicants concede that they are not opposed to moving to Grootpan as long as their concerns are addressed and the thrust of the dispute has crystallised to be the terms and conditions of their relocation, it can be accepted that in essence there is agreement between the parties about a relocation. This being so, and given the undertakings concerning interim safety measures, and importantly the fact that there is accommodation to which the applicants can be relocated, suggests to me that there is an alternative remedy available to the applicants and they accordingly cannot succeed in the interdict they seek. The alternative remedy is their interim relocation to the alternative accommodation which in effect is sought in the urgent eviction by the opposing respondents, and which will remove the applicants from the dangers pending the resolution of the disputes about the terms and conditions of their relocation. The prejudice to the opposing respondents should they stop mining viewed against these circumstances, is in my view another factor which militates against the granting of the interdict.

[11] Section 15 of the Act, under which the opposing respondents have brought the urgent eviction application, provides for the urgent removal of occupiers like the applicants who face imminent danger pending the outcome of proceedings for a final order. I am satisfied that the requirements as set out in paragraphs 15 (1) (a) – (d) of the Act have been complied with. For there is real and imminent danger to the occupiers; there is in my view no other effective remedy other than their removal; the likely hardship to the respondents if their removal is not granted, I believe, exceeds the likely hardship to the applicants, given

that they have alternative accommodation to go to, and the opposing respondents have undertaken to make adequate arrangements for their reinstatement.

[12] I am of the view that an interim and urgent order of eviction would address the immediate urgency and be just and equitable to both parties. Given the dispute concerning the terms and conditions of the agreement to relocate, I am loath to grant the alternative order proposed by the opposing respondents which seeks a recordal that the parties have reached agreement that the applicants would relocate to accommodation provided by the respondents. I note also that the alternative order is akin to a final order for eviction which I cannot at this stage grant, given that the existence of all the requirements for a final eviction order as specified at section 9 (2) of the Act may not have been complied with and were not tested before me. Section 9 (3) of the Act has to my knowledge not been complied with.

[13] The disputes covering the terms and conditions of the agreement to relocate as well as the issue of suitable alternative accommodation are aspects which can be determined at the final eviction proceedings.

[14] I grant the following order:

1. The first and second applicants and all persons claiming rights of residence through them are ordered to vacate Portion 2 of the farm Klippan 452 by 19 March 2012 and to relocate to the housing made available for them by the first and second respondents on Portion 3 of the farm Grootpan 456 IS, district Belfast;

2. The Sheriff for the district of Middelburg is authorised to remove the applicants and their families from the said farm Klippan on 21 March 2012 if they have not complied with the order in paragraph 1 above, and to relocate them to the housing made available for them by the first and second respondents on Portion 3 of the farm Grootpan 456 IS, district Belfast;

3. The first and second respondents shall pay for the relocation costs of the applicants, excluding the costs for the transportation of their livestock;

4. The first and second respondents shall provide containers adjacent to each applicants' new house. Such containers shall be large enough for storage as required by the applicants. Such containers shall remain the property of the respondents;

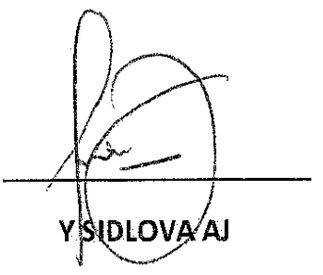
5. The applicants are authorised to salvage any material they wish from their existing dwellings and to remove such material to the farm Grootpan to reconstruct their traditional dwellings within the area allocated to them;

6. Pending the relocation of the applicants and their family members, the applicants are ordered to comply with any direction given to them by the first respondent's mine manager or other authorised official to move to a safe place during blasting operations;

7. The first respondent is ordered as an interim measure to pay to the applicants an amount of R5000.00 each in order to enable the applicants to reconstruct traditional dwellings at the farm Grootpan within the area allocated to each such family;

8. The eviction order granted above shall remain effective pending the outcome of proceedings to be instituted by the first and second respondents within one (1) month after the date of this order for a final order for eviction as contemplated in Section 15 of the Act, or for an order for the enforcement of the relocation agreement that the first and second respondents allege has been reached;

9. There is no order as to costs.



Y SIDLOVA AJ

APPEARANCES

For the Applicants: *Mr. Spoor of Richard Spoor Attorneys*

For the Respondents: *Adv. Havenga instructed by Pieter Moolman Attorneys*