

IN THE LAND CLAIMS COURT OF SOUTH AFRICA  
HELD AT RANDBURG

Case No. LCC 283/2015

Before: Judge Ngcukaitobi

In the matter between:

FARM GOEDGEDACHT 228 (PTY) LTD

Applicant

and

THE ILLEGAL INVADERS AND/OR OCCUPIERS  
ON PORTION 4 (A PORTION OF PORTION 1) OF  
THE FARM GOEDEGEDACHT 228

First Respondent

VICTOR KHANYE LOCAL MUNICIPALITY

Second Respondent

MEC OF THE DEPARTMENT OF RURAL  
DEVELOPMENT AND LAND REFORM,  
MPUMALANGA

Third Respondent

MEC FOR THE DEPARTMENT OF HUMAN  
SETTLEMENTS, MPUMALANGA

Fourth Respondent

STATION COMMANDER, SAPS DELMAS

Fifth Respondent

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JUDGMENT

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applicant sought a combination of an eviction and an interdict. It claimed that its property had been invaded by persons unknown to it, described as the illegal invaders and/or the occupiers on portion 4 (a portion 1) of the farm "Goedgedacht 228 and Others".

- 2 The application was not formally opposed. However, at the day of the hearing two gentlemen, Mr Pieter Morane and Mr Dingane Masilela, attended court. They identified themselves as being duly authorised to represent the occupiers and other people likely to be affected by the order living on the farm. I permitted them to represent themselves and to make representation to court, notwithstanding their failure to present written affidavits. They explained essentially that there are two categories of persons likely to be affected by the order. The first category is people who have resided on the farm for long periods of time and with the consent of the owner and the second category where recent occupiers whom it appeared were involved in some sort of orchestrated campaign to invade the property. The legal representatives of the applicants as well as the two gentlemen aforementioned entered into discussions to find an amicable resolution to the dispute.
- 3 The outcome of the discussions was that a draft order was presented to me for my endorsement on 10 December 2015. The essential elements of the draft order were the following:
  - 3.1 An interdict against further occupation of the property;
  - 3.2 An eviction order in relation to those persons who had invaded and taken occupation on the farm; and

- 3.3 A process whereby there would be identification of the persons, together with any family members, occupying the property without the consent of the owner.
- 4 While appreciative of the efforts by the parties who attended I expressed my concern against issuing an eviction order that could be used to deny people who have lived on the land for long periods their right of occupation. In this regard, I suspended the execution of any interim order regarding the eviction pending the filing of answering affidavits by any affected party. These included the occupiers and/or the alleged invaders and the third respondent. The matter was postponed by agreement to 26 January 2016.
- 5 In the intervening period, between 10 December and 26 January 2016, I requested information with regard to the identities of the persons living on the land, their circumstances and the potential availability of alternative land in the event of an eviction. A report was prepared by the Department of Rural Development and Land Reform in Mpumalanga. It purported to record the personal circumstances of the persons residing on the farm and likely to be affected by the order. It concluded by pointing out that there is no alternative accommodation available and accessible to the occupiers within the area.
- 6 Affidavits were also filed specifically on behalf of the occupiers as well as the Department of Rural Development and Land Reform, cited as the third respondent in the matter. But the matter could not be heard on 26 January 2016 because the answering affidavit and the report of the Department were delivered late without an explanation. It was postponed to 8 February 2016 and the applicant was afforded an

opportunity to file its replying affidavit and both parties to present their heads of argument for the hearing of the matter. The matter was called again on 8 February 2016. During the hearing, it became apparent to me that it would not be possible to make a determination on the papers. Particularly the following were areas of concern:

- 6.1 The identities of persons likely to be affected by the order. The distinction between the persons who had resided on the property prior to the alleged invasion of December 2015 and those who were invaders proper was not clear to me. It was not clear how, if any eviction order or demolition order were to be executed by a sheriff, he or she would know which structures to be demolished and which structures should be left.
- 6.2 The precise facts surrounding the invasion were unclear on the papers. Specifically it was not clear what period the invasion took place. I could not work out whether the alleged invasion took the form of a gradual occupation of the land without the owner noticing, largely because he does not reside in the property, or whether the invasion amounted to an over land grab.
- 6.3 The circumstances of the individuals residing on the property were also not set out properly. It was not clear if there were families headed by children or whether any vulnerable categories of persons were likely to be affected by any interdict or eviction that may be confirmed.
- 6.4 The cumulative effect of the lack of clarity was that I could not be satisfied that the requirements of the statute, the Extension of Security of Tenure Act 62 of 1997 (ESTA) were fulfilled. It will be recalled that under that Act, an eviction is permissible in limited circumstances. That Act draws a distinction between long-

term occupiers, i.e. persons who were in occupation when the legislation took effect on 4 February 1997, and those who took occupation after the legislation came into operation. More stringent requirements must be proven in relation to persons who were in occupation by 4 February 1997 owing from the fact of the duration of their occupation. But even in relation to persons who came to occupy property after 4 February 1997, the overall test is that of justice and equity. In other words, I had to be satisfied that any eviction order would meet the test of justice and equity.

- 7 In these circumstances, where the case of the applicants and the defence put up by the occupiers did not provide a sufficiently clear picture of the true facts, I directed an inspection *in loco* to be conducted. The inspection was indeed held on 15 February 2016. As a consequence of that inspection, the facts have largely become common cause. And the material parts of the draft order prepared by the counsel for the applicants, and which are I intend making final are no longer contested. Importantly, occupiers who have lived on the property with the knowledge and consent of the owner are not affected by the order sought. To the extent that they were included in the original notice of motion, it is now clear that the applicant does not pursue their eviction or interdict against their continued occupation of the property. The relief now sought is confined properly speaking against people who invaded the land recently. The circumstances of the invasion require some recounting, as appear from the papers, and indeed narrated by Mr Driver and corroborated by Mr Morane during the inspection. Over a period of time, the applicant permitted persons employed at the farm to reside therein. The terms of the residents were apparently in the form of a lease or rental agreement.

- 8 During the course of 2012 to 2013 it appears that the applicant embarked on a retrenchment process, in terms of which a number of employees were dismissed for operational requirements in terms of the Labour Relations Act 66 of 1995.
- 9 Some of these employees remained in occupation of the farm. It appears that others voluntarily left the farm. Some of those who left entered into some arrangements with certain persons to occupy the farm on some reciprocal arrangement.
- 10 The applicant has been engaged in discussions with the Department of Rural Development and Land Reform in Mpumalanga with the object of selling the farm to the Department. The applicant wishes to sell the farm to the Department and the Department wishes to acquire the farm from the applicant. However, negotiations in this regard have not yet been finalised.
- 11 Between 2013 and 2014 there have been a number of new arrivals at the farm which were not permitted by the applicant. It is not clear precisely when the applicant became aware of the occupations between 2013 and 2014. However, the occupiers that have resided on the property for periods prior to 2013 also appear to be opposed to the recent occupations of the farm. In December 2015 the occupation of the farm escalated. New arrivals came. A self-appointed group of persons have apparently been allocating stands. Those who have been allocated stands have been putting up temporary structures, which are essentially shacks.
- 12 During the inspection, there were visible signs of recent allocations of stands on which the erection of structures had not yet taken place. Furthermore, there were new shacks

either fully built or partially constructed throughout the area.

13 Faced with these bare facts, the denial of an invasion could no longer be sustained on a credible basis. It was clear that the land had been invaded on a grand scale. The discussion then turned on two questions. The first is the proper identification and separation of the invaders from the "occupiers". The second is the protection of the invaders pursuant to section 26 of the Constitution of South Africa, 1996 (the right of access to adequate housing) and the duty of this court to grant an order which is just and equitable. The order that I will give will not affect occupiers as such. It will affect people who have been identified by the applicant, the occupiers and the third respondent as invaders of the farm. These are persons whom it was objectively verified during the *in loco* inspection as persons who recently took occupation of the property without the consent of the applicant and apparently without the knowledge of the relevant committee of occupiers.

14 In effect, the order I grant is by consent. I must record that the order granted on 10 December 2015 is hereby discharged and for all intents and purposes replaced by the order granted hereby which is final in nature.

15 The order granted is the following:

1. The land known as: PORTION 4 (A PORTION OF PORTION 1) OF THE FARM GOEDGEDACHT 228 REGISTRATION DIVISION JR, PROVINCE OF MPUMALANGA, situated along the R555 in the Delmas district, on the area to the east of the tarred road (the R555), are occupied with illegal invaders and/or

occupiers who have no consent thereto by the owner of the land (herein after referred to as "the invaded property").

2. Unlawful invaders and/or occupiers are to remove markings demarcating stands that are vacant and to break down and remove building material from stands on which building work has not commenced and/or is not complete by 1 March 2016.
3. In the event that the above materials are not being removed voluntary, that the Sheriff be authorised to break down and remove the following within 48 hours from the date in paragraph 2 above:
  - a. Material demarcating vacant stands,
  - b. Building material on stands on which building work has not commenced and/or where building work is incomplete.
4. The Sheriff, within 2 days from the order, must identify the following people and mark the following households or stands (hereinafter referred to as "the 15 households"). The households are:
  - a. Household 1: Sarah Mabiletsa (ID [7.....]) with N. M., a child of about 7 years.
  - b. Household 2: Elsie Mahlangu with the following children: N. M. (about 9 years), N. M. (about 6 years) and N. M. (about 6 years).
  - c. Household 3: Grace Mtshweni with Roger Nkuma (about 20 years of age)

- d. Household 4: Olivia Masco with two children: E. M. (about 11 years) and V. M. (about 8 years)
- e. Household 5: Thokozile Mthombeni with L. M. (about 8 years of age)
- f. Household 6: Maria Kgomo (ID No: [8.....]) with N. K. (about 16 years) and P. K. (about 10 years of age)
- g. Household 7: Promise Nzimande (ID No: [8.....]) with C. N. (about 9 years) and N. N. (about 7 years of age)
- h. Household 8: Elvis Mahloko (ID No: [8.....]) with G. M. (10 years of age)
- t. Household 9: Mariam Masilela (ID No: [8.....]) with T. M. (about 8 years of age)
- J. Household 10: Catrina Simelane with G. S. (about 12 years) and A. S. (about 5 years).
- k. Household 11: Dineo Mofokeng (ID No: [4.....]) with W. M. (about 6 years old).
- l. Household 12: Mbali Nkambule with N. N. (about 11 years of age)
- m. Household 13: Takalane Mthai (ID No: [6.....]) with N. M. (about 7 years old)

- n. Household 14: Fuduka Masilela (ID No: [8.....]) with S. M. (Age 6) and M. M. (Age 10)
  - o. Household 15: Koos Masombuka (ID No: [6.....]) with T. M. (Aged about 14), K. M. (Age about 7) and M. M. (Age about 9)
5. Save for the above 15 households, the remainder of the occupiers on the invaded property (hereinafter referred to as "the remainder of the occupiers") are ordered to vacate the said property by 1 March 2016.
6. In the event of the remainder of the occupiers not having vacated the invaded property by the date set above, and in the event of the Sheriff or his Deputy or sub-contractor having been tasked to carry out this order, the Sheriff or his Deputy or sub-contractor, with the assistance of the South African Police, if necessary is authorised to:
- a. Effect an eviction of the remainder of the occupiers on the invaded property ;
  - b. Demolish and remove any and all unlawful structures found on the invaded property, save for the 15 households. After the eviction of each such structure, the Sheriff is ordered to secure and store such materials for a period of 30 days to enable the remainder of the occupiers to collect same from the sheriff s office failing which the sheriff or his deputy or sub-contractor may dispose of same to defray expenses;
  - c. The Sheriff of this Court, or his lawfully appointed Deputy or sub-

contractor, is authorised to, other than the 15 households, remove any person from the invaded property, prevent any construction from taking place at the invaded property, prevent any building materials from being delivered to the invaded property and removing any structures erected at the invaded property.

7. The third respondent is ordered to provide emergency housing to the 15 households within 60 days of this order.
8. The third respondent is ordered to report to Court within 30 days of the date of this order on the emergency housing that will be made available as ordered above, as well as on alternative accommodation.
9. The 15 households are ordered to vacate the invaded property within 15 days of the provision of emergency housing, failing which the Sheriff is authorised to evict them within 7 days.
10. In the event of the 15 households (and anyone else claiming a right to occupation as a result of the said households) not having vacated the invaded property by the date set above, and in the event of the Sheriff or his Deputy or sub-contractor having been tasked to carry out this order, the Sheriff or his Deputy or sub-contractor, with the assistance of the South African Police, if necessary is authorised to:
  - a. Effect an eviction of the 15 households and anyone claiming any further right to occupy the invaded property;

- b. Demolish and remove any and all unlawful structures found on the invaded property. After the eviction of each such structure is secured, to store such materials for a period of 30 days to enable the unlawful occupants to collect same from the sheriff's office failing which the sheriff or his deputy or subcontractor may dispose of same to defray expenses.
- c. The Sheriff of this Court, or his lawfully appointed Deputy or subcontractor, is authorised to remove any person from the invaded property, prevent any construction from taking place at the invaded property, prevent any building materials from being delivered to the invaded property and removing any structures erected at the occupied property.

11. The Sheriff or his lawfully appointed Deputy or sub-contractor is authorised to approach the South African Police Service for whatever assistance he may require in the circumstances and the South African Police Service is required to give whatever assistance that may be required by the Sheriff.

12. If an agreement of sale for the applicant's land is concluded within 30 days providing for the continued occupation of the 15 households and should all suspensive conditions contained in such agreement of sale be met prior to the eviction date set for the 15 households, the eviction order against the 15 households will lapse.

13. Each party is granted leave, with supplemented papers, to approach this Court for an order seeking the variation of any terms of this order, if it is just and equitable to do so.

14. Save for the costs order made on 8 February 2016, there shall be no order as to costs.

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/✓, **TEMBEKA NGCUKAITOBI**  
ACTING JUDGE OF THE LAND CLAIMS COURT

23 February 2016