

IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LCC03R/14

In the matter between:

JACOBUS JOHANNES RAMSAUER N.O. 1st Applicant

MARIA SUSANNA RAMSAUER N. O. 2nd Applicant

WERNER HELMUT RAMSAUER N.O. 3rd Applicant

and

KLAAS OLIVIER Respondent

REVIEW JUDGEMENT

A. INTRODUCTION

1. This matter comes before me on automatic review in terms of Section 19(3) of the Extension of Security of Tenure Act 62 of 1997 (“the Act”).
2. Magistrate T. Theron of the Magistrate’s Court in Worcester, under case number U6550/13, granted an eviction order against the respondent on 13 January 2014 by default, respondent having failed to turn up at court or to signal an intention to oppose the application.

B. THE FACTUAL BACKGROUND

3. The applicants in this matter are all trustees of Die Werner Ramsauer Trust, the owner of a farm known as Jan du Toitsrivier Plaas, Goudini.

4. Respondent lived and worked on the farm since 2009, allegedly in terms of a written employment agreement with conditions of service similar to the one which was attached to first applicant's founding affidavit.
5. Respondent's employment on the farm was terminated on 05 June 2013 following a disciplinary hearing, which respondent failed to attend.
6. Following the hearing, first applicant caused a copy of the ruling as well as a notice demanding respondent and his fellow residents to vacate the house he was occupying by 28 June 2013, to be served on the respondent.
7. For reasons set out in some detail in first applicant's founding affidavit, respondent failed to vacate the premises on the date ordered. Various discussions involving, *inter alia*, a member of the South African Police Services, first applicant's attorney and a representative of the Department of Rural Development and Land Reform (the "Department") then ensued, resulting in respondent being granted an extension to stay on the premises pending him securing alternative accommodation.
8. Respondent failed to secure alternative accommodation and first applicant then caused his attorney to send respondent a demand to vacate the premises, failing which, an application for his eviction would be launched. The said letter of demand is dated 30 July 2013 and was served, on the same day, by the Sheriff on a farm worker who was occupying the premises during respondent's temporary absence therefrom.
9. The application was lodged, with the Clerk of the Civil Court, Worcester, on 21 October 2013 and was served personally on the respondent as well as on the representative of the Breede Valley Municipality on 25 October 2013.

10. The Sheriff's returns of service evidencing this are annexed to the founding affidavit. There is no evidence that the papers were served on or reached the Department.

11. Neither the Breede Valley Municipality nor the Department appear to have filed papers indicating whether or not they would participate in the matter or would simply abide the court's decision.

C. **THE APPLICANTS' CASE**

12. The applicants' case for the relief set out in their notice of motion is dealt with in fair detail in first applicant's founding affidavit and, prima facie, the facts in support of the application make out a strong case for respondent's eviction.

13. However, there are a few procedural hurdles which have to be overcome before applicants can succeed with their matter which the magistrate ought to have taken into consideration before reaching the decision that she did. The magistrate did not have the benefit of a probation officer's report which is required by Section 9(3) of the Act. It is also not clear whether there was proper service on the head of the provincial offices of the Department as is required by subsection 9(2)(d) of the Act.

14. This court is concerned that, despite there being evidence in the founding affidavit that first applicant and his attorney had dealings with a representative of the Department, applicants have failed to provide satisfactory evidence that the papers actually reached the Department.

D. **CONCLUSION**

15. This court is satisfied that respondent had sufficient notice of this application. It is also evident from the founding affidavit that respondent had access to resources in the form of persons with some influence in his community, namely, *inter alia*, Mr. Patrick Januarie, allegedly an ANC Councillor and Mr. Lionel Beerwinkel, a representative of the Department. Respondent could therefore, *prima facie*, have opposed this application for his eviction as the aforementioned persons could have advised him of the consequences of his failure to do so.

16. Respondent is alleged to have become an occupier since 2009 and accordingly falls to be dealt with under Section 11 of the Act, which in terms of subsection 11(2) requires the court to be satisfied that a contemplated eviction is just and equitable.

17. In deciding whether it is just and equitable to grant an eviction in a particular matter, the Act, in Section 11(3) sets out the inquiry a court should conduct before coming to such a decision. Although Section 9(3) of the Act directs the court to request a probation officer's report to assist it with some aspects of the inquiry set out in Section 11(3), there is case law that a judicial officer may proceed to consider an application for an eviction if a probation officer's report is not received within a reasonable time¹. It has, however, also been held that a judicial officer should consider the circumstances of the case before deciding whether to proceed in the absence of a report².

18. Given the apparent failure by the applicants to prove that the papers were properly served on a responsible person at the Department, particularly

¹ Thee Waterskloof Holdings (Edms) Bpk, Glaser Afdeling v Jacobs en Andere 2002(3) SA 401 (LCC)

² El Rio Farming (Pty) Ltd v Phillipus Jacobs LCC 36R/2011

given the erratic service of the South African Postal Services, this court is of the view that justice might not be properly served if the eviction order were to stand.

19. There is no satisfactory evidence that addresses the issue of the availability of the suitable alternative accommodation for the respondent or what hardships an eviction would cause him. Whilst the first applicant attempts to deal with the issue of alternative accommodation at paragraphs 5.10, 7.3.3 and 7.3.4 of his founding affidavit, I'm not convinced that the requirement for suitable alternative accommodation has been met. Neither does the magistrate appear to have considered these factors in the "NOTULES VAN HOFVERRIGTINGE". Accordingly, this court is of the view that a probation officer's report would be of assistance in this matter.

20. In my view, the eviction order should be set aside and the matter referred back to the magistrate in order for her to satisfy herself that the papers were served on the Provincial Director of the Department and to request a probation officer's report, the contents of which she should consider before deciding whether the granting of an eviction order is just and equitable in this matter.

E. **THE ORDER**

21. In the result, the following order is made: -

1. Paragraphs 1, 2 and 3 of the order made by the magistrate on 13 January 2014 are set aside.

2. The case is remitted to the magistrate in terms Section 19(3)(d) of the Extension of Security of Tenure Act, Act 62 of 1997 (the Act) to determine the following:
 - 2.1 whether there was proper service of the notice of motion and founding affidavit in this matter on the head of the Provincial Department of Rural Development and Land Reform; failing which to order that such service be effected; and
 - 2.2 Whether granting the eviction order is just and equitable having regard to the provisions of Sections 11(3) of the Act.
3. The magistrate shall receive such further evidence as is necessary to make the determinations set out in paragraph 2 of this order.
4. The magistrate must ensure that a probation officer's report in terms of Section 9(3) of the Act is furnished.

M. P. Canca A. J.