IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

Heard on: Wednesday, 16 April 2014

Case No.: **LCC 05/2013**

In the matter between:

MGRO PROPERTIES (PTY) LTD	First Applicant
MOUTON CITRUS (PTY) LTD	Second Applicant

and

ABRAHAM SNYERS	First Respondent
KATRINA SNYERS	Second Respondent

JUDGMENT delivered 17 **APRIL 2014**

MEER J.

[1] The applicants apply in terms of the Extension of Security of Tenure Act No 62 of 1997 ("the Act") for the eviction of the respondents from the dwelling they occupy, being House no. 3 on the farm Houtkaprus, ("the farm") Citrusdal, in the Western Cape. The first applicant is the owner of the farm whilst the second applicant is the entity which conducts the farming operations thereon.

[2] The first respondent, aged 48, is an erstwhile farmworker on the farm. He is an occupier on the farm as defined in the Act and resides in the dwelling together with the second respondent, his wife aged 45, their 2 daughters and 2 grandchildren.

[3] The first respondent has been working on the farm since 1982, the date when he was employed by the previous farm owners. He has resided there since 2000. In terms of contacts of employment with the previous farm owner, the first respondent's right of residence would terminate upon the termination of his employment, whereafter the first respondent would have to vacate the dwelling he occupied.

[4] When the first applicant acquired the farm in 2010 the second applicant concluded an employment contract with the first respondent, dated 9 November 2010. Clause 6 thereof specified that the contract could be terminated by either party on 4 weeks' notice. The first respondent simultaneously entered into a housing agreement with the second applicant. Clause 4.3 of that agreement stipulated that the housing agreement would be terminated upon termination of the employment contract, whereafter the occupier would be obliged to vacate the premises on 2 month's notice by the owner.

[5] On 17 December 2010, about 5 weeks after the first respondent concluded his employment contract with the applicants, he handed in a letter of resignation in which he stated that he would stop working on 17 January 2011.

In the letter he cited as reasons for his resignation his difficulties with, and I quote, "bestuurstyl, bestuurlede, en menseverhouding." His letter also states "Eerstens wil ek vir julle baie dankie se vir die tydjie wat ek saam met julle gewerk het. Ek sien daar is tallente mense op die plaas, maar my talent wat die Here vir my gegee het, kan ek nie uitoefen op Mouton se plek nie".

[6] The first respondent's resignation was accepted and he stopped working on Friday 13 January 2011. I pause here to consider the respective stances of the parties on the resignation.

[7] In his answering affidavit the first respondent contended that the applicants and their representatives asked him to resign "onder voorwendsel dat dit 'n vereiste is sodat ek my pensioengeld kan ontvang". This is denied by the applicants in reply. The replying affidavit of Mr Mouton the manager of the second applicant, contends that the first respondent resigned of his own free will and that there was no pressure on him to do so. Mr Mouton states that shortly after he was employed by the applicants, the first respondent asked for his pension payment in respect of his previous employment with his previous employers. Mr Mouton states that it was explained several times to the first respondent that he could only get his pension payment in the event of his death, resignation or dismissal, and that the first respondent had thereafter of his own volition resigned, as appears from his letter of resignation.

[8] The question which must be posed is why, if pressure was brought on the first respondent to resign to get his pension, did the first respondent omit to mention this important factor in his letter? The letter is silent on this issue. There is also no mention of being pressurised to resign in the referral of the dispute to the CCMA. The details about the dispute provided in the referral form states that he was informed that he must decide what he wants to do. In the condonation application the first respondent stated that his unfair dismissal followed upon his enquiry about his pension payment. He does not state he was forced to resign. The probabilities do not in my view favour the finding contended for by the first respondent that he was forced to resign. I am accordingly inclined to accept the applicants' version that the first respondent voluntarily resigned.

[9] A form referring a dispute to the CCMA was signed by the first respondent on 13 January 2010. The dispute was however referred to the CCMA out of the prescribed time. This is apparent from the application for condonation which states that the referral is 53 days late. This is a reference to lateness under Section 191 of the Labour Relations Act No 66 of 1995 which provides for a dispute about the fairness of a dismissal to be referred within 30 days of a dismissal. Section 191 (2) of that Act provides for an employee to apply for an extension of the thirty day period on good cause. On 1 June 2011 the CCMA made the following ruling:

"The application for condonation is refused. Consequently the CCMA lacks jurisdiction in this matter"

[10] On 7 March 2011 the first respondent was served with a notice to vacate the premises he occupied by 17 March 2011, being two months after the termination of the contract of employment, being the notice period as specified at clauses 4.2 and 4.3 of the housing agreement. The notice referred to these clauses and stated that the housing agreement had terminated with the termination of the employment agreement. The first respondent refused to sign in acknowledgement of receipt of this notice, indicating thereon that he was waiting for a date from the CCMA before he would sign. The first respondent did not vacate the dwelling. A further notice to vacate the premises by 16 June 2011, and terminating the right of residence, was served on the respondent on 16 May 2011. The first respondent also did not sign to acknowledge receipt of this notice.

[11] I pause here to deal with the submissions by Mr Hathorn for the respondents that the notices of 7 March 2011 and 16 May 2011 were invalid notices for purposes of Section 9 (2) (b) as they were served on the first respondent before the dispute about the termination of the dismissal was determined by the CCMA on 1 June 2011. In this regard Mr Hathorn referred to Section 8 (3) of the Act which states:

" Any dispute over whether the occupier's employment has terminated as contemplated in Subsection (2) shall be dealt with in accordance with the provisions of the Labour Relations Act. and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act."

He drew attention to the case of *Sterklewies v Msimanga* 2012 (5) SA 392 SCA where at 399 F-G Wallis JA stated:

" .. ss 8(2) and 8(3) were included in the Act to ensure that eviction orders could not be obtained against dismissed workers in these areas until all disputes about the validity of the termination of their employment had been resolved through the mechanisms of the LRA"

[12] In considering the validity of the notices, it must firstly be noted that on the respondent's version, the dispute was referred fifty three days late to the CCMA. This would mean that when the first notice to vacate and terminating the right of residence was given on 7 March 2011, no dispute would have been referred to the CCMA. That notice was therefore not an invalid Section 9 (2) (b) notice. Thereafter, I am of the view that the dispute once referred, was not properly before the CCMA, given the absence of condonation, as a result of which the CCMA found it lacked jurisdiction. In the circumstances it cannot be said that the notices were invalid. I am further of the view that even if the dispute had been properly referred and determined on 1 June 2011,the service of the eviction application thereafter upon the first respondent, in the circumstances of this case, comprised sufficient compliance with a notice in terms of Section 9 (2) (b).

The second respondent's position

[13] It is common cause that immediately before the first applicant acquired ownership of the farm, the second respondent was taken on as a seasonal worker only for the harvesting season in 2010 by the previous owner. Her contract of employment came to an end before the first applicant acquired the farm and she has never worked for the first applicant. The applicants' stance is that her right of residence was dependant solely upon the first respondent's rights to reside on the farm. In contrast, in her answering affidavit the second respondent contends that she derived rights of residence through her family bond with the farm, independently of the rights of the first respondent. She however does not substantiate how this came to be with evidence in support of her contention. I am inclined to agree with Mr Joubert for the applicants that her submissions in this regard are bald and vague.

[14] Mr Hathorn argued that the fact that the notice letter of 31 October 2011 to the second respondent refers to her right of residence being dependent upon her contract of employment, is destructive of the applicants' claim that the second respondent's right of occupation derived solely from her husband's employment on the farm. She, the argument goes is entitled to live on the farm as an occupier in her own right. I am unable to agree.

[15] Once the second respondent's contract of employment and accordingly her right of residence flowing therefrom was terminated, there was only one basis upon which she could continue to reside on the farm independently of her employment, and that was as a family member or spouse of the first respondent. Her rights of residence therefore, post her employment contract, flowed from the rights of residence of the first respondent and continue to do so.

[16] In the light of the above I now turn to consider whether the mandatory requirements for the granting of an eviction order as specified at Section 9 (2) the Act 62 have been complied with.

Compliance with Section 9 (2)(a)

[17] Given my finding that the first respondent voluntarily resigned, I am satisfied that the first respondent's right of residence has been terminated in terms of Section 8. The first respondent's right of residence was terminated upon his voluntary resignation he was notified thereof, and there is no outstanding dispute under the Labour Relations Act. The termination of his right of residence is accordingly in terms of Section 8 (2) read with Section 9 (2)(a). In view of my finding that the second respondent's right of residence flowed from that of the first respondent, her right of residence was accordingly also terminated.

Compliance with Section 9 (2)(b)

[18] In view of my finding that the notices given to first respondent were valid notices in terms of Section 9 (2)(b), and moreover that the respondents have not vacated the land within the period specified in the notice, there has been compliance with Section 9 (2)(b).

Compliance with Section 9 (2)(c)

[19] Section 9 (2) (c) of the Act requires compliance with the conditions for an eviction in terms of Section 10 or 11. As the respondents commenced their residence before 1997 Section 10 is applicable in the circumstances of this case. Given my finding that the first respondent voluntarily resigned, Section 10 (1)(d)(ii) of the Act is applicable to his circumstances. The section permits the eviction of an occupier like him who has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act. There has thus been compliance with Section 9 (2) (c).

[20] The requirement of suitable alternative accommodation does not have to be considered under Sections 10 (2) and 10 (3) in relation to an occupier who voluntarily resigns under Section 10 (1) (d). However this is a factor that the probation officer's report must address in terms of Section 9 (3) and therefore falls to be considered. The applicants have engaged the local municipality in an attempt to obtain suitable alternative accommodation but without success. There is no indication what steps if any the respondents have taken to secure alternative accommodation. The probation officer's report indicates that the

respondents are prepared to pay rental of R100 per month to remain on the premises. The report also refers to the comparative hardships of the parties.

[21] In balancing the rights of the respondent occupiers with the interests of the applicant owners, I am mindful of the fact that the respondents have stayed rent free on the property for just over 3 years. The applicants require the dwelling the respondents occupy for another employer.

Compliance with Section 9 (2)(d)

[22] I am satisfied that the procedural requirements specified at Section 9 (2)(d) have been complied with. This is not contested.

[23] In view of all of the above I find that the requirements for the granting of an eviction order as specified at section 9 (2) of the Act have been complied with. I am further of the view that regard being had to all of these factors and especially that the respondents have benefitted from rent free accommodation in excess of 3 years at the applicants' expense, that the balance of convenience favours their eviction. As has been said previously by this Court a right of access to housing does not lie against a private land owner but is enforceable as against the state. See *Theewaterskloof Holdings (Edms) Bpk, Glazer Afdeling v Jacobs en Andere* 2002(3) SA 401 (LCC) at 411 E. In *Modderfontein Squatters v Modderklip Boerdery* (Pty) Ltd 2004 (6) SA40 SCA at paragraph 31 Harms JA qualified that,

" Circumstances can indeed be envisaged where the right would be enforceable horizontally, but the present is not such a case."

These words are apposite in the instant case. The fact that the applicants own many farms as alluded to on behalf of the respondents does not detract from this.

[24] In keeping with the practice of this Court not to award costs in matters such as these, being in the genre of social action litigation, save in exceptional circumstances, of which I find none, there is no award as to costs.

I accordingly order as follows:

1. The respondents and all persons occupying through them shall vacate the premises they occupy being, House no. 3 on the farm Houtkaprus, Citrusdal, Western Cape, on 17 June 2014.

2. In the event of the respondents failing to vacate the dwelling referred to in paragraph 1 above on 17 June 2014, the Sheriff for the area is authorised to secure their eviction on 18 June 2014.

3. There is no order as to costs.

Y S MEER

Acting Judge President

Land Claims Court

For the Applicants:	Adv. C. Joubert
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	Johannesburg
For the Respondents:	Adv. P. Hathorn
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