

IN THE LAND CLAIMS COURT OF SOUTH AFRICA



HELD IN RANDBURG

Case No.: LCC200/2016

Before: The Honourable Justice Ncube

Heard On: 09 March 2018

Delivered: 15 June 2018

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
15/06/2018 DATE	 SIGNATURE

In the matter between:

**AQUARIUS PLATINUM (SOUTH AFRICA) PTY LTD**

**Applicant**

**and**

**BONENE S & ANOTHER**

**1 167 Respondents**

**RUSTENBURG LOCAL MUNICIPALITY**

**168 Respondent**

**THE PROVINCIAL DIRECTOR, DEPARTMENT  
OF RURAL DEVELOPMENT & LAND REFORM**

**169 Respondent**

**CIRCLE CATERTING AND ACCOMMODATION PTY  
LIMITED**

**170 Respondent**

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**JUDGMENT**

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**NCUBE AJ**Introduction

[1] This is opposed application for the eviction of the 1st to 167th Respondents ("Occupiers") from the hostel which they occupy on farm Kroondal 203 JJ Q, ("the farm"). It is common cause that the 1st to 167th Respondents are occupiers as defined in the Extension of Security of Tenure Act<sup>1</sup> ("the Act"), as they were so declared in the judgment of this court ("the 2009 judgment of Bam JP").<sup>2</sup> All, but 55 occupiers have left the farm. The Applicant seeks eviction of the 55 occupiers in terms of Section 9(2) of the Act. They were former employees of the Applicant, their employment with the Applicant was terminated and all legal processes pertaining to their labour dispute have been exhausted.

Parties

[2] Johan Wenhold ("171 Respondent") is the owner of the farm, which is, together with the hostel, managed by the Circle Catering and Accommodation (Pty) Limited ("Circle Catering"). The Applicant is in charge of mining operations on the farm as well as Marikana Platinum Mines.

Background Facts

[3] On 12 June 2008, the Applicant entered into a contract with Murray and Roberts Cementation (Pty) Ltd ("MRC"). In terms of that contract, MRC was

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<sup>1</sup> Act 62 of 1997

<sup>2</sup> See National Union of Mineworkers and Another v Murray and Roberts and Another (Unreported Judgment)

going to take over the mining operations on the farm and Marikana Platinum Mines. MRC employed people, including the occupiers, to do the work and provided them with free accommodation in the hostels.

[4] On 21 June 2012, the contract between MRC and the Applicant was terminated. The Applicant took over the mining operation together with employees. The Applicant allowed occupiers to continue staying in the hostel as long as they continued to be its employees. The Applicant was renting the hostels from Circle Catering.

[5] In 2009, employees, including the occupiers, participated in unprotected strike which led to termination of their employment relationship with MRC and subsequently with the Applicant. Protracted labour litigation ensued and lasted for seven years. All labour disputes between the Applicant and employees were settled on 26 April 2016, when the arbitration ward was finalised.

[6] As a result of the finalisation of labour disputes, the Applicant commenced the present eviction proceedings.

#### The Probation Officer's Report

[7] The Probation Officer compiled a report in terms of Section 9(3) of the Act. The Probation Officer avers that only 45 occupiers completed her questionnaire. The rest of the occupiers had vacated the hostels. According

to the Probation Officer, there are no children who will be affected by the eviction order. The Probation Officer recommended that the 168<sup>th</sup> Respondent ("the municipality") be afforded time to intervene and arrange emergency accommodation for the occupiers.

### The Municipality's Report

- [8] The municipality report places much emphasis on Constitutional Court's decisions respecting evictions and the duty to provide alternative accommodation. The report concludes in the following words:

"In addition, it would not ordinarily be just and equitable for the honorable court to order eviction when suitable accommodation is presently not available. In this regard the court should take into consideration the lengthy periods the occupiers has (sic) been staying; the fact is that should they be evicted they will be homeless."

- [9] The Constitutional Court has found that municipalities have a duty to provide alternative accommodation where occupiers are threatened with evictions. In that regard, Pretorius AJ expressed himself in the following terms:

"46 it is quite clear that a constitutional duty rests on the city, where occupiers are legally evicted and rendered homeless to provide suitable alternative accommodation. The city cannot escape this obligation by simply submitting reports indicating that there are no TRA housing units available. The city is constitutionally obligated, not

only in terms of the provisions of ESTA, but even more so in terms of Section 26 of the Constitution, upon the eviction of the applicants and their families as occupiers, to provide the applicants with suitable alternative accommodation<sup>3</sup>.”

### Justice and Equity

[10] A Court may grant an eviction order against occupiers only in those cases where it will be just and equitable to do so. In *Hatting and Others v Juta*<sup>4</sup>, Zondo J albeit in regard to section 6(2) rights, said:

“That the requirement in s 6(2), that the occupier’s rights be balanced with the rights of the owner or the person in charge, has the effect of infusing justice and equity into s 6(2) is not surprising, because, for some time now, there has been movement by parliament towards infusing justice and equity or fairness into certain legal relationships..... The relationship of landowner and unlawful occupier has also been infused with an element of justice and equity..... The result is that a court will not issue an eviction order against an unlawful occupier of land if it is unable to find that the eviction will be just and equitable. The relationship of landlord and tenant has also been infused with justice and equity.....”

### Termination of the Right of Residence

<sup>3</sup> *Baron and Others v Clay Tile (Pty) Ltd and Another* 2017 (5) SA 329 CC

<sup>4</sup> 2013 (3) SA 275 (CC) at Para 33

[11] Section 8 of the Act deals with the termination of the occupier's right of residence and it provides:

"8(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) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;
- (b) the conduct of the parties giving rise to the termination;
- (c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated.
- (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
- (e) the fairness of the procedure followed by the owner or person in charge including whether or not the occupier had or should have been granted an effective opportunity to make representation before the decision was made to terminate the right of residence.

(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may<sup>5</sup> be terminated if the occupier resigns from

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<sup>5</sup> My own emphasis

employment or is dismissed in accordance with the provisions of the Labour Relations Act.

(3) .....

(4) .....

(a) .....

(b) .....

(5) .....

(6) .....

(7) .....

(a) .....

(b) .....

[12] On the other hand, section 9 of the Act deals with limitations on eviction and it provides:-

**"9 Limitations on eviction**

(1) Notwithstanding provisions of any other law, an occupier, may be evicted only in terms of an order of court issued under this Act.

(2) A court may make an order for the eviction of an occupier if:-

(a) the occupier's right of residence has been terminated in terms of section 8;

(b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;

(c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and

(d) the owner or person in charge has, after the termination

of the right of residence, given:-

- (i) the occupier;
- (ii) the municipality in whose area of jurisdiction the land in question is situated; and
- (iii) the head of the relevant provincial office of the Department of Rural Development and Land Reform, for information purposes, not less than two calendar months' written notice of the intention to obtain an order for eviction, which 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, this paragraph shall, be deemed to have been complied with.'

### Discussion

[13] Mr Botha, Counsel for 1<sup>st</sup> to 167<sup>th</sup> Respondents, argued that the occupiers' right of residence was not terminated. He argued further that the Applicant has no *locus standi* to bring this application. Mr Mokoena, Counsel for the Applicant, seems to suggest that since the occupiers' right of residence was



arose solely from their employment, which employment has been terminated, there was no need for a formal termination of the occupiers' right of residence in terms of section 8 of the Act.

- [14] It is not in dispute that the former employees are occupiers. It is equally not in dispute that their right of residence in the hostels situated on the farm, flowed from their employment with the Applicant. It is not in dispute also that, the occupiers' employment has been terminated and that all labour disputes have been settled. The question is whether or not, after termination of employment, the Applicant was still obliged to give occupiers a formal notice of termination of their right of residence in terms of section 8 of the Act.
- [15] It is important to scrutinize section 9 of the Act, which provides for limitation on evictions. Section 9 (2) (a) enjoins the court to make an order for eviction of an occupier, if the occupier's right of residence has been terminated in terms of section 8 of the Act. Without termination of the right of residence in terms of section 8, there can be no order of eviction. It is only after compliance with section 8 that the owner or person in charge can proceed and issue section 9 (2) (d) (i) (ii) and (iii) notices. In this sense, termination of the right of residence is a prerequisite for an order of eviction.
- [16] In my view, termination of employment does not necessarily and automatically lead to termination of the occupier's right of residence. The Act envisages a two-stage procedure before an order of eviction may be granted. The first stage is the giving of notice of termination of the right of residence in terms of

section 8. The manner in which this kind of notice is to be given is not prescribed.<sup>6</sup> The second stage is the giving of notice of eviction in terms of section 9 (2) (d). The manner in which this second notice is to be given, is prescribed in accordance with section 28 (i) (b) of the Act.

[17] My view is fortified by the use of the words "*may be terminated*" in section 8 (2). Section 8 (2) provides that 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 that occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act. The use of the phrase "*may be terminated*" postulates a situation where the owner or person in charge has a discretion. In other words, there will be cases where, despite the fact that the employment has been terminated, but the owner still in his or her discretion decides to permit the former employee to continue to reside on the premises. Therefore, termination of employment does not automatically lead to termination of the occupier's right of residence. A separate and specific notice of termination of right of residence is required.

[18] In the present case, the Applicant started the process by issuing a section 9 (2) (d) notice. Notice required in terms of section 8, terminating the occupiers' right of residence, was never issued. The difficulty facing the Applicant in this regard is that section 9 (2) (a) enjoins the court to make an order for the eviction of the occupier, if the occupier's right of residence has been terminated in terms section 8 of the Act. Therefore, the Applicant has failed to

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<sup>6</sup> *Starkleweis (Pty) Ltd v Msimang* 2013 (3) All SA 655 (SCA) Para 16

satisfy the first statutory requirement for the granting of an order of eviction.

[19] I turn now to deal with the second issue raised by the occupiers. That is the *locus standi* of the Applicant to prosecute the present application. The Founding Affidavit, at paragraph 13.2 thereof states:-

“Circle Catering manages the hostel on behalf of the owner and is for purposes of Esta the person in charge as defined in section 1”

The Applicant is not the owner and as stated in the Founding Affidavit, it is also not the person in charge and therefore it has no authority to bring this application. The anomaly of this case is that both the owner and the person in charge are cited as Respondents.

[20] The Applicant is renting the hostels on behalf of occupiers. Applicant pays rent to circle catering which manages the hostels on behalf of the owner. I do not agree with Mr Mokoena's suggestion that in a landlord and tenant relationship, the Applicant as lessee is competent to evict the occupiers. That would have been competent in a subletting situation which is not applicable in this case. Therefore, the Applicant has no *locus standi* to bring this application without a mandate from the owner or person in charge.

### Costs

[21] Neither party has asked for costs. In any event, the practice of this court is not to make cost orders unless there is good reason for doing so and there is

none in this case.

Order

[22] In the circumstances, I make the following order:

1. The application is dismissed.
2. There is no order as to costs.

A handwritten signature in black ink, appearing to read 'T M Ncube', written over a horizontal line.

**T M Ncube**

**Judge of the Land Claims Court**

Appearances

**For Applicants: Adv. Mokoena SC**

**Adv. M Majazi**

**Instructed by: Werks Mans Attorneys**

**SANDTON**

**For 1<sup>st</sup> to 167<sup>th</sup> Respondents: Adv. JJ Botha**

**Instructed by: Matshitse Attorneys**

**POTCHEFSTROOM**