



**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED: YES / NO	
17/10/2019 DATE	<i>[Signature]</i> SIGNATURE

BEFORE: THE HONOURABLE CANCA AJ

CASE NO.: LCC 98/2019

In the matter between:

MOLIBELI AZAEL RAMPAI

Applicant

And

JOHAN DANIEL CLAASEN

Respondent

Heard on: 19 July 2019

Delivered on: 17 October 2019

JUDGMENT

CANCA AJ

[1] The applicant in this matter approached the Court on 08 July 2019 in which he sought certain urgent relief. Directions in terms of Rule 34(3)(b) were duly granted and by agreement, the matter was heard on 19 July 2019.

[2] Following argument, I urged the parties to attempt to settle the matter within a certain period of time. Settlement talks failed which now requires me to write this judgment.

[3] The Notice of Motion in relevant part, reads as follows:

"1.

2. *That a rule nisi be issued, calling upon the respondent to show cause on _____ 2019, why the following order should not be made final:*

2.1. *That the respondent be interdicted and restrained from removing or causing to be removed by any person, the cattle and sheep belonging to the applicant, that are kept at Farm Elandsnek, district Reitz, Free State Province, pursuant to a Notice in terms of Section 7(1) of the Extension of Security of Tenure Act 1997, issued by the respondent, dated 1 July 2019;*

2.2. *That the respondent be ordered (sic) the costs of this application on the scale as between attorney and client;*

2.3. *That the order set out in paragraph 2.1. above shall serve as an interim order pending the finalisation of this application;*

3. *That the court order, the Notice of Motion and all other documents affixed thereto, shall be served on the respondent by the Sheriff, where after all processes shall be done in terms of the Rules*

4.

The relief sought above is opposed by the respondent.

PARTIES

[4] The applicant is Molibeli Azael Rampai ("Rampai"), an adult male who in the founding affidavit is said to be residing at the Farm Elandsnek, District Reitz, Free State Province ("the Farm").

[5] The respondent Johan Daniel Claasen ("Claasen"), describes himself as an admitted attorney and a farmer who currently resides at 11 Strydom Street, Frankfort, Free State Province.

BACKGROUND

[6] Claasen does not, in specific terms state that he is the owner or person in charge of the Farm. I shall, however, for purposes of this judgment assume that he is the owner or the person in charge thereof as he, *inter alia*, states in his answering affidavit that: (1) he is "*not seeking the eviction/removal of the applicant from the farm*", (2) the applicant is "*an unlawful occupier of the farm*" and (3) he has "*over a long period of time*" attempted to get the applicant to vacate the farm.

[7] There is a history of litigation between the parties in the Magistrate's Court for the District of Reitz spanning from April 2014 and June 2017. In the former matter, Claasen sought the eviction of Rampai from the Farm and in the latter, he sought damages arising from Rampai grazing his cattle on the Farm.

[8] Having been unsuccessful in the abovementioned matters, Claasen caused a notice for the removal of Rampai's "*trespassing animals*" to be issued in terms of section 7(1) of the Extension of Security of Tenure Act 62 of 1997 ("ESTA")¹. It is this section 7(1) notice that appears to have prompted the launch of this application. The notice is hereinafter referred to as the Section 7(1) Notice.

[9] A perusal of the Section 7(1) Notice reveals that the basis for the removal of the livestock from the Farm is that Rampai:

".....has no legal right and/or permission to occupy the land as he has no contract and/or any other permission to occupy the land and is therefore trespassing on the land."

It is not disputed that Rampai and his wife have lived on the Farm since at least September 1997 and that their livestock graze on a certain portion thereon.

POINTS IN LIMINE

¹ Section 7(1) reads as follows:

"The owner or person in charge may have a trespassing animal usually or actually in the care of an occupier impounded and removed to a pound in accordance with the provisions of any applicable law, if the owner or person in charge has given the occupier at least 72 hours' notice to remove the animal from the place where it is trespassing and the occupier has failed to do so: Provided that the owner or person in charge may take reasonable steps to prevent the animal from causing damage during those 72 hours."

[10] The first point *in limine* raised by Mr Wannenburg, for the respondent, is that the application was not launched by Rampai but rather by Mr Phalatsi, his attorney. He argued that because the founding affidavit was not accompanied by a confirmatory affidavit deposed to by Rampai, all the facts deposed to by Mr Phalatsi constitute inadmissible hearsay evidence as he did not have personal knowledge of the facts.

[11] It is appropriate to examine the 6 page founding affidavit before commenting on whether there is merit in the point raised by Mr Wannenburg.

[12] The first two pages of the founding affidavit simply consists of Mr Phalatsi averring that he is an attorney practising as such in Bloemfontein, that he has acted for Rampai in various matters in the Reitz Magistrate's Court and consequently considered himself duly authorised to depose to the affidavit on his behalf. The reasons for him doing so appear later in the affidavit.

[13] The second page sets out the names of the parties, the jurisdiction of this Court to hear the matter and concludes with the purpose of the application.

[14] The third page sets out the history of the aforementioned Magistrate's Court matters.

[15] On page four is a narration of when the respondent issued the Section 7(1) Notice, namely, on 1 July 2019 and how the said notice ended up at his offices on 5 July 2019.

[16] It is worth noting that at paragraph 5.9, it is averred that:

“as it is apparent from Annexure “E” [this is the Section 7(1) Notice], receipt of same was not signed by the applicant as he refused to sign and take it, but told the person who brought it to send it to his attorneys.”

[17] In paragraph 5.12 of his affidavit, Mr Phalatsi further avers that:

“I immediately called the applicant and after advising him of the implications of the document, he instructed me to bring this application on his behalf. I therefore aver that this application was brought at the very first opportunity and no time elapsed between the instruction and preparation of the application.

[18] The rest of the founding affidavit deals mostly with the requirements for an interdict and why the matter was considered urgent.

[19] It is clear from the above that the contention that the facts deposed to by Mr Phalatsi are “impermissible hearsay evidence” has no merit. The only instance which the respondent may possibly raise as being hearsay, is the averment set out in paragraph [16] above, where it is said that *“but told the person who brought it to send it to his attorneys”*. However, I do not find this particular evidence to be contentious or crucial, given the nature of the dispute before me and consequently disregard this piece of evidence. The facts deposed to by Mr Phalatsi are clearly within his personal knowledge and not hearsay.

[20] It is understandable that, in the light of the distance between where Rampai lived and where his attorney practised, apparently some 362 km, the fact that he is unemployed, apparently indigent and an unsophisticated litigant, his attorney deposed

to the founding affidavit. In any event, Rampai has, in reply, confirmed that he did in fact instruct Mr Phalatsi to launch this application on his behalf.

[21] The second point *in limine* raised on behalf of the respondent relates to the nature of the relief sought by the applicant.

[22] Mr Wannenburg contends that prayer 2 of the Notice of Motion envisages final relief. This is clearly not so from a plain reading of prayer 2 and especially sub-clause 2.3 thereof. In sub-clause 2.3, Rampai seeks interim relief pending finalisation of the application. Moreover, Mr Phalatsi's founding affidavit is directed solely at interim relief and at various stages refers to an order sought "*pending the finalisation of the application*". I therefore find no merit in the second point *in limine* raised by Mr Wannenburg.

[23] I now turn to the merits of the matter.

[24] At the outset I note that Claasen is not seeing the eviction of Rampai. It is also clear from the papers that Rampai's livestock is grazing in the area agreed upon with Claasen and that now Claasen now seeks to reclaim that area for grazing purposes of his own livestock.

[25] The following is a brief summary of the facts filed of record:

25.1. Rampai entered into a contract of employment with Claasen or an entity controlled by him during September 2009. He was entitled to keep a number of livestock for which he had to pay a certain amount in exchange for grazing rights.

- 25.2. Rampai was dismissed during 2013. The parties settled their dispute through the intervention of the Commission for Conciliation, Mediation and Arbitration (“the CCMA”).
- 25.3. In terms of the settlement agreement, Rampai would vacate the farm at the end of September 2013 and Claasen in turn would, *inter alia*, assist Rampai to find alternative accommodation, pay him R 5 000.00 towards such accommodation and also find him alternative grazing fields for his livestock.
- 25.4. For reasons that are not relevant for purposes of this judgment, the settlement collapsed and on 7 February 2014, Claasen informed Rampai that his stay on the Farm was no longer with his consent and that his number of livestock was larger than that to which they had agreed.
- 25.5. At some point, Claasen sought the assistance of an official from the Department of Rural Development and Land Reform to assist in relocating the Rampai family. His efforts were unsuccessful.
- 25.6. I have already mentioned the fact that Claasen has, thus far, been unsuccessful in evicting Rampai from the Farm in the Reitz Magistrate’s Court.
- 25.7. In his answering affidavit Claasen avers, *inter alia*, that:

“The applicant has no right or entitlement to remain on at (sic) the farm, regardless of whether previous applications/actions have been unsuccessful. These applications/actions of mine were dismissed on technical grounds. However, it does not afford the applicant any right.”

[26] The aforesaid averment follows one where having described the size of the Farm and the number of his own livestock on it, Claasen states that Rampai's livestock are overgrazing the Farm. He then avers that:

"The applicant is using 100 hectares, i.e. one (1) camp for his livestock to graze. This being winter, my livestock need every piece of land available to graze"

[27] I find that a case has been made for the main order prayed for. There are certain legal remedies which Claasen can resort to if he feels that his land is being overgrazed by an occupier or a labour tenant. The remedy he has chosen in this case is not the appropriate one.

[28] In the light of all of the above, I find as follows:

1. The Respondent is interdicted and restrained from removing or causing to be removed by any other person, the cattle and sheep belonging to the applicant kept on the farm Elandsnek, District Reitz, Free State Province, pursuant to the notice issued in terms of Section 7(1) of the Extension of Security of Tenure Act, 62 of 1997 dated 1 July 2019.
2. No order as to costs.



M.P Canca

Acting Judge: Land Claims Court

Appearances:

For the Applicant: Mr NW Phalatsi

Instructed by: NW Phalatsi & Partners Attorneys

For the Respondent: Adv. W Wannenburg

Instructed by: Claasen Attorney, Frankfort