IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT RANDBURG

CASE NO.: **LCC75/2018**

Before: The Honourable Ngcukaitobi AJ

Heard on: 20 June 2019

Delivered on: 21 June 2019

In the matter between:

JONNY ELIOPOLOUS	**Applicant**
and	
BUKHALI ELIZABETH ZONDI	**1st Respondent**
UNLAWFUL OCCUPIERS	**2nd Respondent**
EKURHULENI METROPOLITAN MUNICIPALITYY	**3rd Respondent**
DEPARTMENT OF LAND AND RURAL DEVELOPMENT	**4th Respondent**

JUDGMENT

Ngcukaitobi AJ:

1. This matter was scheduled to be heard on 20 and 21 June 2019. On the morning of 20 June 2019, the legal representatives of the applicant and the first respondent

approached me in Chambers. They stated that the parties were engaged in settlement discussions and for that reason, the matter should be postponed.

2. The nature of the proposed settlement discussion is that the fourth respondent, the Department of Rural Development and Land Affairs, will purchase the portion of the land owned by the applicant, which is occupied by the first respondent, for the benefit of the first respondent. The context in which this occurs is that the applicant brought an application for the eviction of the first respondent from its farm in terms of the Extension of Security of Tenure Act 62 of 1997. For his part, the first respondent brought a counter application for a declaratory order that he is a "labour tenant" as defined in Land Reform (Labour Tenants) Act 3 of 1996.

3. It is these applications that were scheduled for a simultaneous hearing before me, and about which settlement discussions were being held. I pointed out my concern to the parties, namely that the Department of Rural Development and Land Affairs is not present in court and despite having been cited, did not file any papers. Particularly, my concern was the apparent conflict of interest in the attorney of the first respondent, also speaking on behalf of the Department in the settlement discussion. In my view, the Department should have been separately represented and any settlement discussions should be held with its involvement and participation.

4. There is a further concern, namely the amount to be paid in the purchase of the land. Ordinarily, if the first respondent had succeeded in proving that they are a labour tenant as defined, the subsequent enquiry would have been whether or not the applicant is entitled to compensation in the event that an award in land is made. The compensation is not necessarily market related. It is to be calculated on the basis of the formula of justice and equity is provided in section 25(3) of the Constitution. It is

unclear to me on what basis the Department proposes buying the land on behalf of the first respondent. Buying land for labour tenants is not the mandate of the Department under the Labour Tenants Act. Its mandate is to pay compensation to the land owner, on the basis of a just and equitable compensation formula. Yet, this is the second case that has come before me in two months where the Department appears to buy land for labour tenants, using opaque methods and procedures.

5. Here, it is notable that in about 2015 the land owner was prepared to sell the disputed portion of the farm to the first respondent for the amount of R850 000.00. Barely one year later, that amount had increased to R1, 8million. On the face of it this appears to be an arbitrary increase, not reflective of any realistic assessment of the true value of the land on the just and equitable compensation which could be in terms of the Constitution. Despite this, the parties appear to be in agreement (with the Department). about the purchase of the land for an amount in excess of R1 million, without a valuation and with no just and equitable formula having been applied. Hence I was reluctant to endorse any settlement in the absence of departmental officials. They are required to shed light on the basis on which they have informed the attorney for the first respondent that they will buy the land for the first respondent for an amount in excess of R1 million.

6. If it is intended by the settlement discussions to secure payments disproportionate to what would be permissible in law, then I do not believe that this court should approve such agreements. Nevertheless, at this point no amount has been offered to "purchase" the land by the Department for the first respondent.

7. It was in these circumstances that I granted an order requiring the Department to explain its role in the settlement negotiations and specifically, its proposal on the settlement amount.

8. The following order is therefore issued.

8.1 The application for the eviction of the first respondent is postponed sine die.

8.2 The counter application by the first respondent to be declared a labour tenant is postponed sine die.

8.3 It is noted that the parties are engaged in settlement discussions which entail the purchase of the land that is the subject of dispute by the fourth respondent.

8.4 The fourth respondent is directed to submit an affidavit to this Court in which it explains its role in the proposals about the settlement of the matter, including any amount which it proposes to pay to the applicant and the basis upon which such amount has been decided.

8.5 Further directions may be issued.

8.6 There is no order as to costs.

TEMBEKA NGCUKAITOBI

JUDGE OF LAND CLAIMS COURT