IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LCC 38/2018B

Heard on: 06 May 2019

Delivered on: 28 May 2019

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED: ~~YES~~ / NO

28/05/2019
DATE

SIGNATURE

In the matter between:

JOSEPH BHIKI SITHEBE	First Applicant
SHADRACK PETROS TSHABALALA	Second Applicant
VUKANI KHUMALO	Third Applicant
BHEKI KHUMALO	Fourth Applicant

and

NORMANDIEN FARMS (PTY) LTD	First Respondent

THE DIRECTOR GENERAL FOR THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM Second Respondent

---

JUDGMENT

NCUBE AJ

INTRODUCTION

[1] This is urgent application for an interim interdict, pending the determination of the Applicants' status as labour tenants. The affected land is Portion 1 of the farm Dumblane No 3317 ("the farm"), in the District of Newcastle in the Province of KwaZulu-Natal. The application is opposed by the First Respondent.

RELIEF SOUGHT

[2] The Applicants seek relief in the following terms: -

> *"2. That pending finalisation of the Applicants' action to be declared labour tenants:*
>
> *2.1 The First Respondent is restrained and interdicted from erecting a fence around the Applicants' grazing land that is located to the left of the First Applicant's homestead;*

2.2 The First Respondent is restrained and interdicted from blocking the Applicants' access to the river that is at the bottom of their allocated grazing land;

2.3 The First Respondent is restrained and interdicted from curtailing and/or interfering with the Applicants' existing rights in any manner by:

2.3.1 insisting that the Applicants' cattle be grazed in the mountains where there is no grass or water;

2.3.2 refusing that the Applicants access the (sic) their allocated grazing camps and water streams;

2.3.3 cultivating any other trees so close to the Applicants' homestead, that their road access and view is blocked.

2.4 The First Respondent is directed to restore possession to Applicants of the portion of their grazing land that he fenced and rented out to unknown third parties forthwith.

2.5 The First Respondent is directed to pay costs of this application on attorney and client scale.

3. That orders in paragraphs 2.1 – 2.4 shall operate as interim relief with immediate effect.

4. Further or alternative relief".

PARTIES

[3] The First Applicant is Joseph Bhiki Sithebe ("Mr Sithebe"), a pensioner who resides on the farm. The Second Applicant is Shadrack Petros Tshabalala who also stays on the farm. The Third Applicant is Vukani

Khumalo who is also resident on the farm. The Fourth Applicant is Bheki Khumalo who is also resident on the same farm.

[4] The First Respondent according to the citation on the the notice of motion is Normandien Farms (Pty) Ltd. According to the founding affidavit, the First Respondent is represented by Rod Hoatson, an adult male residing at Dumblane Farm, Newcastle, who is the latest owner of the farm. The Second Respondent is the Director General for the Department of Rural Development and Land Reform.

BACKGROUND FACTS

[5] Mr Sithebe arrived on the farm in 1970. He worked on the farm for different owners including the First Respondent, who purchased the farm from Bouwer Bouwer in 2014. Before that, the First Respondent had been leasing the farm since 2001. Before that lease, Mondi Forest was the lessee of the farm since 1996. Mr Sithebe had consent from the owners and the persons in charge to keep and graze cattle on the farm. Mr Sithebe and other Applicants were allocated a grazing camp of 210 hectares to use as grazing area for their cattle. There are two streams of water traversing the allocated camp. Between 1991 and 1996, Mr Sithebe and others were allowed to keep 15 (fifteen) cattle. From 1996 to 2000, Mondi Forest gave occupiers consent to keep only 10 (ten) cattle. No goats were allowed.

[6] The Second to Fourth Applicants were never employed on the farm. In 2001, the First Respondent gave consent to the Second to Fourth

Respondent to keep their cattle within the allocated camp just like those of Mr Sithebe. The First Respondent did not consent to Applicants grazing cattle outside the allocated fenced camp.

[7] On 19 November 2014, Mr Hoatson, being the Director of the First Respondent, convened a meeting with all the people resident on the farm. At the meeting, Mr Hoatson confirmed the agreements which the residents had with previous farm owners and persons in charge. Those residents who had cattle were informed to keep them within the allocated camp. Occupiers were informed that the allocated camp was the only camp on which their cattle would be grazing. At the meeting Mr Sithebe indicated he had 33 (thirty three) cattle on the grazing camp. The Second Applicant had 33 (thirty three) plus 6 (six) calves. The Third and Fourth Applicants had 8 (eight) cattle grazing on the allocated camp, making a total of 80 (eighty) cattle on the camp. That was suitable for the carrying capacity of the allocated camp.

[8] Mr Sithebe, being the only occupier who kept goats, was told to remove his 14 (fourteen) goats from the camp as no consent was given to keep goats. He complied and removed his goats. The other three occupiers had no goats. In addition, Mr Sithebe made a request which was granted to keep three cows for milking purposes within the area which is around his homestead. The Second Applicant was happy with the allocated camp. The Third and Fourth Applicants did not raise concerns.

[9] On 4 February 2019, the Applicants' Attorney addressed a letter to the First Respondent's Attorney contending that the First Respondent was

denying the Applicants access to the camp which Applicants had been using for 20 (twenty) years and that the First Respondent had been denying access to that camp for 3 (three) years. The First Respondent's Attorneys replied to the above mentioned letter on 11 February 2019. In the reply it was clear that the First Respondent could not heed the call to let the Applicants have access to the grazing camp complained of.

POINTS *IN LIMINE*

[10] I turn now to deal with the points *in limine* raised by the First Respondent. It raised the following points *in limine*: -

(i) NON-JOINDER

Mr Hoatson contends that there is non-joinder because the heading of the application does not cite him as one of the Respondents. The heading of the application only cites Normandien Farms (Pty) Ltd as the First Respondent. However, in paragraph 6 of Mr Sithebe's founding affidavit, Mr Hoatson is cited as the First Respondent. This is indicative of the Attorney's recklessness in drafting the papers. There are many other instances where relief is sought against the First Respondent without evidence to substantiate the same in the First Applicant's founding affidavit. In fact the Attorney drew up the papers in a very haphazard manner.

However, having said this, both Respondents are before court. Mr Hoatson is in any case the director of the First Respondent. In

terms of the resolution (annexure "RAH 1") taken on 11 April 2019, Mr Hoatson was mandated to depose to an answering affidavit , sign documents and instruct attorneys on behalf of the First Respondent. Mr Hoatson is the only director who signed the resolution on behalf of the First Respondent. Therefore, even if Mr Hoatson was cited as one of the Respondents on the heading of the application, he alone would have been mandated to sign documents on behalf of the First Respondent in this application. For that reason, this point *in limine* cannot stand and it is accordingly dismissed.

(ii) LACK OF URGENCY

Mr Hoatson contends correctly in my view that the matter is not urgent, in view of the fact that on the First Applicant's own version, the alleged dispossession of the grazing area happened four (4) years ago. In addition, in the letter to the First Respondent's Attorney, it was made clear that the transgressions complained of had been going on for three (3) years. The Applicants took no action against the First Respondent for a period of three (3) years. Again, the First Respondent's Attorney's letter of 11 February 2019 made it clear that the First Respondent was denying the allegations levelled against it and had no intention to stop the fencing operations on the farm. Despite this, the Applicants waited until the 1st of April 2019 to institute this application. The Applicants are required in terms of the Rules of this Court to set out the circumstances which render the matter

urgent and the reasons why they could not obtain substantial redress at a hearing in due course[1]. No such circumstances are given in the First Applicant's founding affidavit. This application could have been struck off the roll of urgent matters on the ground of non-urgency. However, I am of the view that it is just and equitable to deal with this matter to its finality.

(iii) UNENFORCEABILITY OF RELIEF SOUGHT

Mr Hoatson in his answering affidavit has given various reasons why he thinks the relief sought is unenforceable. Some of those reasons do not hold water. Others do. I disagree that the relief is unenforceable as a result of non-joinder of Mr Hoatson as a respondent in the heading of the application. Mr Hoatson is the director of the First Applicant. In a case of non-compliance with the Court order by the First Respondent, contempt of court proceedings may be instituted against the First Respondent as represented by Mr Hoatson as the director of the First Respondent. Regarding lack of particularity in the description of the farm concerned, Mr Hoatson has given the correct description and ownership thereof. One cannot expect illiterate and unsophisticated litigants to be accurate in their description of the farm. Most, if not all farm dwellers know the farms by names and not by portion numbers. Farm dwellers cannot be faulted for failure to identify the farm by its portion number. This point *in limine* is also dismissed.

---

[1] Rule 34(2).

DISCUSSION

[11] The entire application is premised on the claim that the Applicants are labour tenants in terms of Land Reform: Labour Tenants Act, 3 of 1996 ("LTA"). The application is based on the alleged infringement of labour tenancy rights. It is common cause that the action in which the Applicants seek a declaration as labour tenants is still pending. The Applicants' status as labour tenants has not been finally determined. The Applicants cannot therefore at this stage claim to have rights as labour tenants, rights which are worthy of protection.

[12] It is common cause that the Applicants are occupiers on the farm. Miss Robert, Counsel for the First Respondent, argued correctly that the Applicants at this stage can be treated as occupiers in terms of the Extension of Security of Tenure Act, 62 of 1997 ("ESTA"). The Applicants have consent from the First Respondent to reside and graze cattle on the farm. Therefore the Applicants have no real right but a personal right to keep and graze cattle on the farm. The source of that right is the consent given to them by the First Respondent. Such right does not derive from the provisions of ESTA[2].

[13] In ***Margre Property Holdings CC v Jewula***[3], Pickering J expressed himself in the following terms:

---

[2] *Adendorffs Boerderye (Pty) Ltd v Shabalala and Others* [2017] ZASCA 37 at para 28.
[3] [2005] 2 All SA 119 (E) at 7.

"The right of an occupier of a farm to use the land by grazing livestock thereon is a right of a very different nature to those rights specified in s 6 (2) [in ESTA]. In my view such use was clearly not the kind of use contemplated by the Legislature when granting to occupiers the right to use the land on which they reside. Such a right would obviously intrude upon the common law rights of the farm owner and would, in my view, thereby amount to an arbitrary deprivation of the owner's property. There is no clear indication in the Tenure Act such an intrusion was intended. It is relevant in this regard that respondent is neither an employee nor (sic) a labour tenant as defined by section 1 of the Land Reform (Labour Tenants) Act 3 of 1996. His right, if any, to graze stock on the farm does not derive from that Act. In my view the use of land for purposes of grazing stock is pre-eminently a use which would be impossible to regulate in the absence of agreement between the parties. I am satisfied in all the circumstances that an occupier is not entitled as of right to keep livestock on the farm occupied by him as an adjunct of his right of residence. His entitlement to do so is dependent on the prior consent of the owner of the property having been obtained".

[14] In *casu*, the Applicants were given consent to graze their cattle on the allocated camp. They could not, without the consent of the First Respondent, use any other land on the farm for purposes of grazing their cattle. It is disturbing to note that the Applicants did not stick to the number of cattle which they were allowed to graze on the farm. The equally disturbing feature of this case is that Mr Sithebe has been very economical with information in his founding affidavit, so scanty to the extent that it nearly borders on deliberate attempt to withhold certain information from the court.

[15] The founding affidavit does not state how many cattle each Applicant keeps on the farm at the present moment. Mr Sithebe himself was

allowed to keep 15 (fifteen) head of cattle in 1995 and 10 (ten) head of cattle from 1996 to 2001. Despite this, in a meeting held in 2014, Mr Sithebe indicated he was grazing 33 (thirty three) head of cattle, the same as the Second Applicant. The founding affidavit does not even mention the meeting of 19 November 2014, at which meeting the Applicants were asked if they were happy with all the arrangements on the farm and they agreed. In addition Mr Sithebe made a request which was granted, to keep the 3 (three) milking cows in the vicinity of his homestead. He has not disclosed this in his founding affidavit. In motion proceedings, affidavits constitute evidence. All relevant information should be disclosed.

[16] There is no credible evidence to show that even with the previous owners the Applicants grazed their cattle in any other land on the farm except the demarcated camp. Even if there was such an agreement, the First Respondent or Mr Hoatson was under no obligation to honour the same. The right to graze cattle on the farm is a personal right that is enforceable against specific individuals, those who are party to that specific arrangement. A personal right has a corresponding obligation. A person, who creates a personal right, by consent, in this case has a corresponding obligation to honour that right. Should the Applicants keep the number of their cattle within the carrying capacity of the allocated grazing camp, they will have no problem.

COSTS

[17] The general rule in this Court is not to make cost awards unless there are good reasons to do so. However, the First Respondent has askd for costs on a punitive scale against either the Applicants or against the Attorney. This application was not urgent. The Applicants are basing this application on labour tenancy, well knowing that the issue of labour tenancy is still pending. The Applicants withheld crucial information from the court regarding the number of cattle they are presently grazing on the farm. They did not disclose that they attended a meeting on 19 November 2014 where they indicated they were keeping more cattle than what they were allowed to keep. The Applicants failed to disclose that although they were previously allowed to keep 10 (ten) cattle, they were keeping 33 head of cattle. Mr Hoatson allowed the First and Second Applicants to keep 33 (thirty three) head of cattle each, nothing more. That was in 2014. It is possible that today, First and Second Applicants have more than 33 head of cattle on the farm, which might be the reason why they do not disclose in their founding affidavit, the number of cattle they are grazing on the farm. The Applicants also failed to disclose that the Fourth Applicant has no cattle grazing on the farm. it is not clear why the Fourth Applicant is still part of this frivolous litigation.

[18] For all the above reasons, I feel compelled to allow costs. However, I do not agree that costs must be on a punitive scale. I am tempted to order payment of costs against the Attorney who drafted the papers taking into account the reckless manner in which he/she drafted the papers. However, I have found that the failure to cite Mr Hoatson as a Second

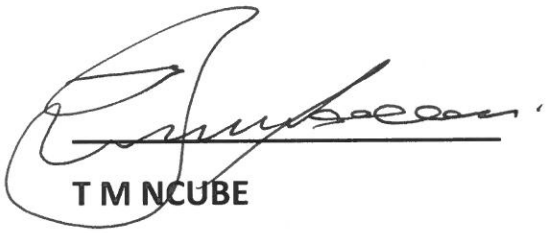
Respondent was not fatal. For that reason, only the Applicants will be ordered to pay the costs of this application.

ORDER

[19] In the circumstances, I make the following order: -

1. The application is dismissed.

2. Applicants are jointly ordered to pay the costs of this application on party and party scale.



T M NCUBE

Acting Judge

Land Claims Court