

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

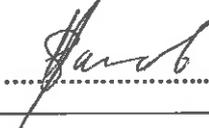
RANDBURG

In chambers: YACOOB AJ

Case No: LCC 23R/2016

Magistrate's Court Case No: 289/2015

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


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19 April 2016
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In the matter between:

WILGERWEG TRUST

Applicant

and

NIKLAAS OCKHUIS

Respondent

JUDGMENT

Yacoob AJ:

1. This matter is before me for automatic review in terms of section 19(3) of ESTA.

2. The applicant, a Trust, applied successfully for the eviction of the respondent in the Clanwilliam Magistrate's Court. The application was granted after oral evidence was heard on the question of the termination of the respondent's employment.

3. I have examined the papers, the transcript and the magistrate's judgment, and am satisfied that the eviction order should be confirmed. However there is one matter with which I wish to deal, and for that reason am writing this judgment.

4. The respondent did not contest the applicant's ownership of the property, on which the applicant relied to found *locus standi*. However, the founding affidavit, commissioned in April 2015, does not properly support a conclusion that the applicant was in fact the registered owner of the property. The deponent to the founding affidavit, who also gave *viva voce* evidence, states in paragraph 2.2 that the trust is the registered owner of the property. He relies on annexure JPK3, a deeds office search, in support of that allegation. Annexure JPK3 states that the owner of the property is Clanwilliam Besproeiing CC, and not the trust.

5. In his *viva voce* evidence, in November 2015, Mr du Preez (the deponent to the founding affidavit), confirmed that the property "behoort aan die trust".

6. I requested submissions from the parties in terms of Rule 3A(2)(b), on the question of *locus standi*, taking into account that the deeds office search on

which the applicant relied to prove its ownership shows that it is not the owner of the property.

7. Only the applicant responded. The applicant's submissions were that the applicant was in possession of the property from December 2012, but that the applicant only became the registered owner of the property in January 2016. This is inconsistent with the evidence given on oath twice, once in the founding affidavit, and once in oral testimony.

8. It is clear from the common cause evidence that the applicant would have had *locus standi* in terms of ESTA as the person in charge of the property. However, it is a matter of concern that the applicant, and/or its legal representative, appear to have seen fit for the deponent to the founding affidavit to make a misrepresentation under oath. The applicant was NOT the registered owner of the property, either at the time the founding affidavit was deposed to, or at the time *viva voce* evidence was given. It appears from the papers, in particular the deeds office search annexed to the founding affidavit, that the applicant's representatives were aware of this.

9. The submissions from the applicant's attorneys make no apology for the fact that the information provided under oath was not true. They simply state that the applicant took possession of the property on 1 December 2012, and the transfer only went through on 13 January 2016. The failure to reflect the true position in evidence given under oath, and in fact the assertion under oath of something that

is untrue, is not something over which the applicant's attorneys express any disquiet.

10. I find this state of affairs to be a matter of grave concern. It shows a lack of respect for the Courts and for the Administration of Justice, and is *prima facie* evidence of contempt of court and perjury. The Registrar will be directed to bring this judgment to the attention of the relevant Law Society and the relevant Director of Public Prosecutions, to undertake the necessary investigations.

11. Despite this, and as I have stated above, the papers disclose that the applicant had *locus standi* to bring this application as the "person in charge" of the property. The further requirements, under sections 9 of ESTA, have been complied with, and the eviction can be confirmed.

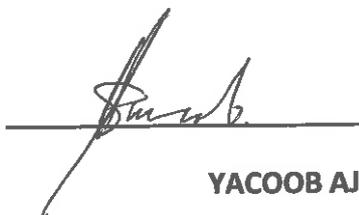
12. In view of the delay occasioned by my request for submissions, I substitute new dates in the order for eviction.

Order:

13. I order as follows:

- a) The order of the Magistrate, Clanwilliam on 1 March 2016 in case number 289/2015 is confirmed, save for the substitution of dates set out below.

- b) If the first respondent has not yet vacated the premises which are the subject of the Magistrate's order, he is ordered to vacate the premises by 16 May 2016, together with all those who occupy through him.
- c) If the first respondent has not vacated the premises by 16 May 2016, the Sherriff is authorized to evict him and all persons who occupy through him on 30 May 2016 or any date thereafter.
- d) The Registrar of this Court is directed to transmit copies of this judgment to the relevant Law Society and Director of Public Prosecutions, for their attention.



YACOOB AJ

LAND CLAIMS COURT OF SOUTH AFRICA