

SOUTH AFRICA / JUDGMENT

Atkatrading 266 (Pty) Ltd and Others v Williams and Others (LANC32R/2024) [2024] ZALCC 46 (27 November 2024) [2024] ZALCC 46

COURT
Land Claims Court

BEFORE
Mabasa

CASE / FILE NUMBER
LANC32R/2024

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IN
THE LAND COURT OF SOUTH AFRICA
HELD
AT RANDBURG
CASE
NO: LANC32R/2024
MAGISTRATE
CASE NO: 3454/2022
(1)
REPORTABLE: NO
(2)
OF INTEREST TO OTHER JUDGES: NO
(3)
REVISED.
Delivered

On: ATKATRADING
266 (PTY) LTD
First Applicant
(REGISTRATION NUMBER:
2009/0088907)
HOEKSTRA
FRUIT FARMS (PTY) LTD
Second Applicant
(REGISTRATION
NUMBER: 1977/003846/07)
BAREND
FREDERIK MOUTON
Third Applicant
and
GABRIEL
WILLIAMS
First Respondent
EVIE
COETZEE
Second Respondent
AND ALL UNKNOWN
PERSONS RESIDING WITH
OR UNDER 1st
to 2nd RESPONDENTS IN THE PREMISES
ON
WINDMEUL FARM, PAARL
Third Respondent
DRAKENSTEIN
MUNICIPALITY
Fourth Respondent
PROVINCIAL DIRECTOR OF
THE DEPARTMENT
OF AGRICULTURE, LAND
REFORM AND RURAL
DEVELOPMENT
Fifth Respondent
ORDER
The order of the

magistrate is set aside
and replaced with the
following order:

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

JUDGMENT

MABASA AJ

Introduction

- [1] This is an automatic review conducted in terms of section 19(3) of the Extension of Security of Tenure Act 62 of 1997 (ESTA).[1] It concerns the eviction of occupiers under section 11 of ESTA.

Parties

- [2] The First Applicant is Atka Trading 266 (Pty) Ltd, the registered owner (Atka) of the farm Nr 1415, also known as Windmeul farm, in the Drakenstein Municipality since 2009. The Second Applicant is HOEKSTRA FRUIT FARMS (Pty) Ltd (Hoekstra), the operating entity through which all farming activities are conducted. The Third Applicant is Barend Frederik Mouton, the person in charge of housing, and the day-to-day farming activities on the farm.
- [3] The First Respondent is Gabriel Williams (Mr. Williams). The Second Respondent is his co-habitation partner, Evie Coetzee (Ms. Coetzee). The Third Respondent is all other persons residing with or under the First to Second Respondents in the premises on Windmeul Farm, Paarl. The Fourth Respondent is the Drakenstein Municipality. The Fifth Respondent is the Provincial Director of the Department of Agriculture, Land Reform and Rural Development.

Background

- [4] The applicants launched eviction proceedings against Mr. Williams and Ms. Coetzee on 17 November 2022, to vacate the farm dwelling at House No. 8 on Windmeul Farm, Paarl, Western Cape (the premises).
- [5] It is common cause that the farm previously known as Goedgenoeg, changed its name to De Heuvel in 2018. De Heuvel was bought by Cecilia Boerdery in 2016, after which Hoekstra took effective control over the farming activities.[2] Atka is the owner of both De Heuvel and Windmeul farms. Hoekstra is the operating entity.
- [6] It is also common cause that Mr. Williams started occupying De Heuvel farm in 1994 when he was employed by the previous owner, and that the house on Goedgenoeg farm, where Mr. Williams was residing, was dilapidated. He was relocated by Hoekstra to Windmeul farm to take up shared residence with his friend, Mr. Otto during November 2019.[3]
- [7] Mr. Otto was a permanent employee of Hoekstra. He passed away on 2 July 2022.

Applicants' case

- [8] The applicants argue that both Mr. Williams and Ms. Coetzee were seasonal farm workers. Mr. Williams was dismissed from his employment with Hoekstra on 6 March 2020, and Ms. Coetzee's contract ended on 5 January 2021.
- [9] They further argue that the respondents' right to reside on Windmeul farm stemmed solely from the employment relationship between Hoekstra and Mr. Otto. Accordingly, the respondents' right to occupy the premises automatically terminated on the date of Mr. Otto's passing.

Respondents' case

- [10] Mr. Williams avers that he commenced residence on the farm Goedgenoeg, more than twenty (20) years ago as an employee of the previous owner of the farm.[4] The name of the farm changed to De Heuvel in 2018. The new owner was Atka, and the operating entity was Hoekstra. In 2019, he was moved by Hoekstra to Windmeul farm in order to take up shared residence with his friend, Mr. Otto.
- [11] He agrees that it was explained to him that he will only be entitled to occupy the house on the farm for the duration of Mr. Otto's

employment. However, He asserts that they were not told that they would only be entitled to continue living on the farm for as long as Mr. Otto was residing on the farm.[5]

- [12] Mr. Williams was employed on a seasonal basis by Hoekstra until his dismissal on 6 March 2020, following a disciplinary hearing where he was accused of being under the influence of alcohol at work. He contends that Ms. Coetzee (his wife) never worked on the farm. This is confirmed by her.

Disputes of fact

Length of residence on the farm

- [13] The applicants aver that Mr. Williams and Ms. Coetzee have only been residing of the farm since 2018, and therefore they are occupiers as defined in section 11 of ESTA.[6]
- [14] Mr. Williams, disputing the length of residence, avers that he commenced employment with the previous owner more than 20 years ago, and was relocated by the applicants in 2018. If he was an occupier since 1994, the provisions section 10 of ESTA would be applicable.[7]

Status as workers

- [15] Further, the applicants contend that Ms Coetzee was employed as a seasonal worker on the farm. This is denied by the respondents who aver that she never worked on the farm.

Residence status

- [16] The applicants argue that the respondents' residence on the farm was solely dependent on Mr. Otto's employment, and that their right ended upon Mr. Otto's death. This averment is disputed by Mr. Williams. He acknowledges being informed that his residence was contingent on Mr. Otto's employment but contends that he was not made aware that he would need to vacate if Mr. Otto ceased residing on the property.

Discussion

- [17] Where the affidavits reveal certain disputes of fact, and the applicants nevertheless decide to proceed by way of motion proceedings without resorting to oral evidence, the law is clear; the principles enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[8] is applicable. The general rule is that an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.[9]

- [18] This rule was further crystallised by the Supreme Court of Appeal in *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another*[10] where Heher JA said:

"A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them, and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied".[11]

- [19] Mr. Williams' claim that he has been residing on Goedgenoeg farm for over 20 years, until it was taken over by Hoekstra has not been effectively countered by the applicants, who have not provided evidence to discredit his assertion.

- [20] The takeover of the farm is not disputed by Hoekstra, and no evidence to the contrary is provided by them. As held in *Wightman*, a bare denial is insufficient where the applicant is in a position to provide evidence but fails to do so. The applicants'

inability to dispute Mr. Williams' employment and residence history with the previous owner adds credibility to his assertion

that he has a long-standing connection to the farm, which may impact his status under ESTA.

[21] Insofar as the employment status of Ms. Coetzee is concerned the applicants' assertion that she was a seasonal worker is categorically denied by her. This denial is unambiguous and plausible, and it would be insufficient for the applicants to rely on an uncorroborated

assertion of her employment without providing specific evidence, such as employment records.

[22] Further, with regard to the contingency of their residence on Mr. Otto's employment, I am not satisfied that it was seriously addressed by the applicants. While Mr. Williams agrees that he was informed his residence was linked to Mr. Otto's employment, he disputes being told that his right to stay on the premises would end with Mr. Otto's departure.

[23] The applicants have not provided compelling evidence to show that the respondents' claims are implausible or far-fetched. The ineluctable conclusion is that the respondents' allegations cannot be rejected by this court.

[24] Since no request was made for oral evidence or to refer the matter to trial the order for the eviction of the respondents under section 11 of ESTA should not have been granted by the magistrate's court.

[25] The order of the magistrate is set aside and replaced with the following order:

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

MABASA D

Acting Judge of the Land Court

[1]19. Magistrates' courts

(3) Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the Gazette, shall be subject to automatic review by the Land Court, which may—

- (a) confirm such order in whole or in part;
- (b) set aside such order in whole or in part;
- (c) substitute such order in whole or in part; or
- (d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Court may think fit.

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 - (c) substitute such order in whole or in part; or
 - (d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Court may think fit.
- [2] Founding Affidavit para 28.
- [3] Founding Affidavit para 56.
- [4] Opposing Affidavit para 19.1
- [5] Opposing affidavit para 37
- [6] 11. Order for eviction of person who becomes occupier after 4 February 1997
- (1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, the Court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.
 - (2) In circumstances other than those contemplated in subsection (1), the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.
 - (3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to-
 - (a) the period that the occupier has resided on the land in question;
 - (b) the fairness of the terms of any agreement between the parties;
 - (c) whether suitable alternative accommodation is available to the occupier;
 - (d) the reason for the proposed eviction; and
 - (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.
- [6] 11. Order for eviction of person who becomes occupier after 4 February 1997
- (1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, the Court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.

(2) In circumstances other than those contemplated in subsection (1), the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.

(3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have

regard to-

- (a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties;
- (c) whether suitable alternative accommodation is available to the occupier;
- (d) the reason for the proposed eviction; and
- (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.

[7] 10. Order for eviction of person who was occupier on 4 February 1997

(1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-

- (a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
- (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar months' notice in writing to do so;
- (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship;
- (d) the occupier-
 - (i) is or was an employee whose right of residence arises solely from that employment; and (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act; or
- (e) the owner or person in charge or the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.

- (2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, the Court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.
- (3) If-
- (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
 - (b) the owner or person in charge provided the dwelling occupied by the occupier; and
 - (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge, the Court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to-
 - (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.
- [7] 10. Order for eviction of person who was occupier on 4 February 1997
- (1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-
- (a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
 - (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar months' notice in writing to do so;
 - (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably

restore the relationship;

(d) the occupier-

(i) is or was an employee whose right of residence arises solely from that employment; and

(ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act; or

(e) the owner or person in charge or the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.

(2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, the Court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.

(3) If-

(a) suitable alternative accommodation is not available to the occupier within a period of nine months after the

date of termination of his or her right of residence in terms of section 8;

(b) the owner or person in charge provided the dwelling occupied by the occupier; and

(c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,

the Court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to-

(i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure

suitable alternative accommodation for the occupier; and

(ii) the interests of the respective parties, including the comparative hardship to which the owner or person in

charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

[8] Plascon-Evans Paints Ltd v Van Riebeeck Paints (PTY) Ltd 1984 (3) SA 623 (A).

[9] Ibid at p634-635.

[10] Wightman t/a J W Construction v Headfour (Pty) Ltd and Another [2008] 2 All SA 512 (SCA).

[11] Ibid para 13.

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