

SOUTH AFRICA / JUDGMENT

Bango and Others v Boschpoort Ondernemings (Pty) Ltd (LCC74/20057) [2007] ZALCC 18 (27 July 2007)

[2007] ZALCC 18

COURT

Land Claims Court

BEFORE

Gildenhuys

CASE / FILE NUMBER

LCC74/20057

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IN THE LAND CLAIMS COURT OF SOUTH
AFRICA

HELD AT PHALABORWA

CASE NUMBER: LCC74/20057

Heard on: 18 July 2007

Decided on : 27 July 2007

In case between:

MOTSAMARENI EPHLINA BANGO
1st
Applicant
PHINEAS TJANKI MOKOENA 2nd
Applicant
THE FURTHER APPLICANT 3rd
to 78th
Applicant
and
BOSCHPOORT ONDERNEMINGS (PTY)
LTD Respondent

JUDGEMENT

Gildenhuys J

- [1] This matter relates to the relocation of occupiers living in a wildlife estate near Hoedspruit. The matter came before me on several occasions. The owner of the estate, Boschpoort Ondernemings (Pty) Ltd, wants to relocate Mr M E Bango and his family, and Mr P T Mokoena and his family. The estate is situated on the property known as the remaining extent of portion 7 of the farm Welverdiend 243KT, Limpopo Province. I will refer to the respective parties as Bango, Mokoena and Boschpoort.
- [2] The Bango and Mokoena families each live in a cluster of huts on the estate within a camp stocked with buffalo. The free roaming buffalo poses some danger to them. Boschpoort wants to relocate them to a track of land, about 2 hectares in extent, on the north-western corner of the property. This tract of land does not form part of the buffalo camp, and will be dedicated to the exclusive occupation of the Bango and Mokoena families.
- [3] The Bango and Mokoena families are unwilling to relocate. Litigation ensued. In the course of the litigation, a settlement was reached.
- [4] On 16 May 2007, and by agreement between the parties, I made an order containing inter alia the following provisions:

“4. All the applicants shall be relocated to that portion of the farm Welverdiend (hereinafter

the farm) described more fully in prayer 2.1 of the respondent’s notice of motion:

counterclaim upon completion of the structures described hereinafter;

The respondent shall erect at the portion indicated above two units consisting of 6 rooms each; each room being 9 square meters in extent and each unit will be equipped with a separate ablution facility (being one toilet, one shower and one basin), a pantry of 6 square meters and a separate covered cooking area outside;

The above structures will be fitted with the necessary fixtures and fittings for electricity and sanitation;

Once the above structures have been completed, the applicants will receive 14 days written notice addressed to their attorney of record of the date of relocation to the new portion described above;

In the event of the applicants failing to relocate on the date referred to in paragraph 11 above, the sheriff is authorized to take all steps necessary to effect their relocation.”

- [5] Pursuant to the Court Order, Boschpoort erected structures on the tract of land to which the Bango and Mokoena families agreed to relocate. Boschpoort thereupon gave the families written notice to relocate to the new portion. They were unwilling to relocate, and alleged that the structures erected by Boschpoort do not comply with the Court Order of 16 May 2007. Further litigation was initiated by Mr Bango and Mr Mokoena to restrain Boschpoort from forcefully relocating them.
- [6] In the course of the further litigation, I told the attorney acting for Boschpoort (Mr Vorster) that if his client contends that the structures were completed in accordance with the Court Order of 16 May 2007, it should file an affidavit to that effect, and apply for authorisation of a writ of ejectment to be issued by the Registrar of this Court so as to compel the Bango and Mokoena families to relocate.
- [7] A formal application by Boschpoort for authority to have a writ of ejectment issued, was served on the attorneys acting for the Bango and Mokoena families on 18 June 2007. Originally, there was no reaction from the attorneys. During the week of 2 July 2007, which falls within the court recess period, Mr Vorster submitted several drafts of a writ of ejectment to secure the relocation of the Bango and Mokoena families. I was not in chambers at the time. The drafts were, however, forwarded to me, and I commented on the shortcomings of the drafts. Eventually, at the end of the week, I received an acceptable draft. On Monday 9 July 2007 I informed the Registrar and that I am satisfied with the form and contents of the latest draft.
- [8] Unbeknown to me, but known to Mr Vorster, the attorneys for the Bango and Mokoena families delivered a notice of appearance to defend on Friday 6 July 2007. Notwithstanding the notice of appearance to defend, Mr Vorster caused a writ of ejectment to be issued by the Registrar on 9 July 2007, and the sheriff commenced executing the writ.
- [9] On 12 July 2007, whilst the writ was in the process of being executed but before the execution was complete, Mr Phaswane, who appeared for the Bango and Mokoena families, brought an oral application on an urgent basis for the writ to be suspended. I suspended the writ, and fixed times for answering and replying affidavits to be filed. Answering and replying affidavits were filed and the matter was heard by me on 25 July 2007. Boschpoort argued that the suspension of the writ should be uplifted, whilst the Mr Bango and Mr Mokoena submitted that the suspension must continue because (according to them) Boschpoort has not complied with the Court Order of 16 May 2007. In their answering affidavits, they listed several aspects in respect of non-compliance. I will deal with each of them in turn.
- [10] The first complaint of Mr Bango and Mr Mokoena is that insufficient rooms were built. According to the Court Order, there must be 2 units each consisting of 6 rooms of 9 square meters each, together with a separate ablution facility, a pantry of 6 square meters and a covered cooking area. In his argument before me, Mr Phaswane alleged that each unit has only 4 rooms of 9 square meters each, not 6 rooms. Boschpoort alleged that, at the request of

Mr Bango and Mr Mokoena, the two units were constructed to contain four buildings each, three of them with two rooms of 9 square meters each and the fourth containing the ablution facility, the pantry and the cooking area.

[11] In his opposing affidavit, Mr Mokoena says the following (paragraph 7.1):

“It is apparent, in terms of paragraph 5 of the order of this Honourable Court that the Respondent/Applicants undertook to build two units consisting of 6 rooms each. A unit is a house that is complete and united. The Respondent/Applicants instead has built three separate units of 2 rooms each and another three separate units of 2 rooms each.”

[12] This statement supports the version of Boschpoort. According to the affidavit, Mr Mokoena’s complaint is not that there are insufficient rooms, but that they are contained in three separate buildings instead of one building. I am persuaded to conclude that six rooms (not including the ablution facility, pantry and cooking area) have been built for each unit, as required under the Court Order. If a lesser number of rooms were in fact built, this should have been stated explicitly in the answering affidavits. Putting the six rooms into three buildings instead of into one building, even if it was not done at the request of Mr Bango and Mr Mokoena, constitutes substantial compliance with the Court Order.

[13] The next complaint relates to the quality of the structures. Mr Mokoena says that the units have been built in a single layer of bricks, which is sub-standard. Boschpoort points out that the Court Order says nothing about how many layers of bricks should be used, and alleges that the structures were built in accordance with accepted building guidelines and that they are safe to live in. Photographs of the houses were attached to the papers. They give no indication of sub-standard work. The only evidence that the building work is sub-standard is the say-so of Mr Mokoena. In my view, this complaint is not justified.

[14] Thirdly, Mr Mokoena says that the pantries are only 4 square meters in extent, whilst the Court Order requires 6 square meters. Boschpoort alleges that each pantry is 3 meters in length and 2 meters in width, giving a total floor service area of 6 square meters. The alleged discrepancy, if there is a discrepancy, is de minimis and not sufficient reason to suspend the relocation.

[15] The fourth complaint is that the houses-

“... have electrical fittings in terms of plastic pipes that carry the electricity impulse but such pipes do not have electrical cables which carry on electrical impulse. The aforesaid electrical pipes are not inserted to the wall, but expose which creates a danger to the children” (paragraph 7.4 of the answering affidavit, quoted verbatim)

[16] Boschpoort explained that due to the high incidence of theft and vandalism, electrical cable feed had not been installed in the pipes, but will be installed as soon as the units are occupied. The pipes which will carry the electrical wires and the plug and light switch fittings have been installed in accordance with accepted building regulations and guidelines. There is, in my view, good reason for delaying the installation of the electrical cable feed

until the units are occupied. There are photographs included in the record, showing the installed plastic pipes which will carry the electrical cables. I see nothing untoward on the photographs, and I cannot imagine how cable feed in the pipes can create any danger to children.

- [17] Lastly, Mr Mokoena complains that Boschpoort has built the units in a “small enclosure surrounded by an electrical fence”. There are photographs of the fence in the record. The fence is a perimeter fence enclosing the game area. It is, according to Boschpoort, electrified in accordance with standard practice utilised in every game farm where the so-called “big five” is kept. According to the photographs, the wires which will carry electric current are on the inside of the fence, facing the game area. Boschpoort furthermore points out that many other residents on the estate live in close proximity to the fence and none of them raised any concern regarding the fence. I cannot see how the fence will, as alleged by Mr Mokoena, put the lives of the families, including that of the children, in danger.
- [18] Boschpoort also denies that the enclosure to which the families have to relocate is too small. According to Boschpoort it is two hectares in extent, as was always the understanding of how large it should be. The size of the enclosure was not put in dispute in the papers before the Court, and Mr Phaswane did not pursue this issue. Access to the enclosure is through a gate over which only the families have control. This gate allows unfretted access to and egress from the residences.
- [19] I conclude that there has been essential, if not full compliance by Boschpoort with the Court Order of 16 May
2007. It follows that the Bango and Mokoena families have no good reason not to relocate to the two hectares tract of land. Insofar as they may fail to do so, execution under a writ of ejectment will be fully justified. Having said that, I must point out that Mr Vorster had the writ issued and executed well knowing that the application for authorising the writ was being defended. He should have alerted me to the fact that the application was defended, and he should not have had the writ issued before the defended application was finalised. Had it not been for this unjustifiable act on the part of Mr Vorster, I would have made a cost order in favour of Boschpoort. The refusal of the Bango and Mokoena families to relocate is indefensible. Taking everything into account, I have decided to make no cost order.

[20] For the reasons set out above, I make the following order:

The order of 12 July 2007 suspending the writ of ejectment dated 9 July 2007, is uplifted; and

It is declared that Boschpoort Ondernemings (Pty) Ltd is entitled to have the writ of ejectment executed against Mr M E Bango and Mr P T Mokoena, and against all those who occupy Welverdiend through or under them.

A GILDENHUYS

JUDGE OF THE LAND CLAIMS COURT

Appearances

For Boschpoort Ondernemings:

Mr A Vorster

Vorster, du Plessis Attorneys

Pretoria

For Mr Bango and Mr Mokoena

Mr Phaswane

instructed by

Mabuse, Bokaba Attorneys

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Prepared on 9 October 2026 · Esheria