

SOUTH AFRICA / JUDGMENT

Chagi v Singisi Forest Products (227/2006_) [2007] ZASCA 63; 2007 (5) SA 513 (SCA) (29 May 2007) [2007] ZASCA 63

COURT

Supreme Court of Appeal

BEFORE

Harms, Lewis, Van Heerden, Jafta, Musi

CASE / FILE NUMBER

227/2006

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THE

SUPREME COURT OF APPEAL

OF SOUTH

AFRICA

Reportable

CASE NO 227/2006

In

the matter between

NOMTHANDAZO CHAGI &

OTHERS Appellants

and

SINGISI FOREST

PRODUCTS (PTY) LTD

Respondent

Coram: Harms ADP,

Lewis, Van Heerden, Jafta JJA and Musi AJA

Heard: 9 MAY 2007

Delivered:

29 MAY 2007

Summary: Act 62 of 1997 – land – meaning thereof – s 9
applies only to evictions from the registered piece of land
as a
whole.
Neutral
citation: This judgment may be referred to as Chagi
v Singisi Forest Products [2007] SCA
63 (RSA)

JUDGMENT

JAFTA JA

- [1] The central issue in this matter is whether the employer's relocation of its workers from one set of houses to another on the same piece of land constitutes an eviction as contemplated in the Extension of Security of Tenure Act 62 of 1997. Claiming to be occupiers of land as defined in the Act, the appellants instituted an application in the magistrate's court of Harding for an interdict, restraining the respondent from relocating them from Kynoch Village to Weza Sawmill Village on the same registered land unit in Singisi Forest, Harding without complying with the requirements of the Act. They also sought an order interdicting the respondent from deducting R648 per month from their wages as rent for the houses they presently occupy. The magistrate dismissed the application with costs. Their appeal to the Land Claims Court was also dismissed with costs. This appeal comes before us with leave granted by the court below.
- [2] The facts are largely not in dispute. The appellants are employees of the respondent which conducts business in the forestry and sawmilling industry, on a piece of land described as Lot St Mary's B No 5043ES Singisi Forest, in the district of Harding, KwaZulu-Natal. The appellants were previously employed by the South African Forestry Company Limited (SAFCOL) which sold its business, as a going concern, to the respondent in August 2001. As required by s 197 of the Labour Relations Act 66 of 1995, the appellants' employment contracts were transferred from SAFCOL to the respondent simultaneously with the business. The section provides for an automatic transfer of rights and obligations between the seller and each employee to the purchaser, on the same terms and conditions. In essence the purchaser replaces the seller as the employer without the need to conclude new employment contracts (*National Education Health and Allied Workers Union v University of Cape Town* 2003 (3) SA 1 (CC)). However, the workers may decide to terminate their employment or enter into new agreements with the purchaser.

- [3] In this matter the appellants accepted transfer of their employment agreements by concluding new agreements incorporating the terms and conditions which applied to their employment with SAFCOL. SAFCOL's conditions of employment provided, inter alia, that '[h]ousing on a tenancy basis as approved by the Chief Executive shall be arranged where necessary at the discretion of the Company'.

Consistently with this term the parties included the following clause in their agreement:

' 6.3 Depending on your position, the Company may provide you with housing or accommodation for which a reasonable market-related rental will be charged (presently 2.5% of pensionable remuneration for married quarters and 1% of pensionable remuneration for single quarters). This rental may be reviewed from time to time. You will pay a fixed subsidised amount per electricity unit for electricity usage, and this amount will be adjusted when necessary.'

- [4] Before the respondent became the employer, SAFCOL had separate accommodation for the salary earning and the wage earning employees. The rent fixed at 2.5 per cent and 1 per cent of pensionable wages applied to the married and single wage-earning employees such as the appellants. However, at some point there were vacant houses at Kynoch Village where the salary-earning employees were accommodated. Fearing that they would be vandalised, SAFCOL permitted the appellants to occupy them at the rental rate applicable to wage-earning employees. This was a temporary arrangement between the employer and the employees. But the arrangement continued even after the takeover of the business by the respondent. Upon becoming the employer, the respondent excused all wage-earning employees from paying rent.
- [5] The salary-earning employees were required to pay a market-related rent which amounted to R648 per month as at the time the present dispute arose, whereas the appellants were paying nothing for the same accommodation. This caused discontent among the salary-earning employees. The other wage-earning employees were also dissatisfied with the fact that the appellants continued to enjoy accommodation to which they had no access. In order to resolve the conflict the respondent asked the appellants to vacate the houses they are occupying and take occupation of houses earmarked for wage-earning employees at Weza Sawmill Village, situated on the same piece of land. The appellants declined to vacate. As an alternative solution, the respondent proposed that the appellants pay rent in the sum of R648 like the other employees occupying the same type of houses. Once again the appellants refused. Instead they proposed to pay rent fixed at R140 per month.
- [6] When their counter-offer was rejected and the amounts of R648 were deducted from their wages, as already mentioned, they instituted an application in the magistrate's court for an interdict restraining the respondent from deducting the sum of R648 from their wages, and relocating them to the new houses. The respondent opposed this and brought a counter-application for an order declaring that the proposed relocation did not constitute an eviction as envisaged in the Act. It argued that the Act does not apply to the case. As stated above, the magistrate dismissed their application and granted a declarator in favour of the respondent.

Since the respondent had given an undertaking to the effect that deductions would no longer be made from their wages, the magistrate apparently saw it unnecessary to deal with that part of the case. The approach by the magistrate was, in my view, correct because the need for an interdict had fallen away.

- [7] In refusing to vacate the appellants do not claim any legal entitlement justifying their continued occupation of the houses in question. Indeed their contracts of employment do not entitle them to occupy those particular houses. Their occupation was based on the consent given by SAFCOL which the parties on both sides understood to be a temporary arrangement. The respondent, as SAFCOL's successor, was entitled to withdraw such consent and the appellants do not argue otherwise. But they contend that since their occupation was based on the owner's consent, the source of their right to reside on the land is s 6 of the Act and this right can only be terminated and their eviction authorised in terms of the relevant sections of the Act. Accordingly, so they argue, the respondent can only evict them upon compliance with the requirements of s 9 of the Act. This argument is based on the assumption that the respondent's demand for them to vacate constitutes an eviction as contemplated in the Act.
- [8] The procedural safeguards provided for in s 9 are available only to occupiers who are evicted from land occupied with consent of the owner or a person in charge or with another right in law to reside on the land. In other words the Act protects lawful occupiers of land belonging to another person. But before s 9 can be invoked there must be a termination of the right of residence as envisaged in s 8 of the Act. Although the appellants have not shown that such termination has taken place in this matter, I shall assume in their favour that the respondent's withdrawal of the consent constitutes the requisite termination.
- [9] The question that arises for consideration is whether the proposed relocation amounts to an eviction as contemplated in the Act. The answer to this question lies in the true meaning of the word 'land' as used in the definition of 'evict'. In terms of s 1 of the Act, "evict" means to deprive a person against his or her will of residence on land or the use of land or the use of water which is linked to a right of residence in terms of this Act, and "eviction" has a corresponding meaning'. The definition makes it clear that the object of the right of residence is land and not a dwelling house.
- [10] Section 6 in turn confers upon occupiers such as the present appellants the right to reside on land that belongs to another person. It provides:
- ' (1) Subject to the provisions of this Act, an occupier shall have the right to reside on and use the land on which he or she resided and which he or she used on or after 4 February 1997, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.
- (2) Without prejudice to the generality of the provisions of section 5 and subsection (1), and balanced with the rights of the owner or person in charge, an occupier shall have the right-

- (a) to security of tenure;
- (b) to receive bona fide visitors at reasonable times and for reasonable periods: Provided that—
 - (i) the owner or person in charge may impose reasonable conditions that are normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land; and
 - (ii) the occupier shall be liable for any act, omission or conduct of any of his or her visitors causing damage to others while such a visitor is on the land if the occupier, by taking reasonable steps, could have prevented such damage;
- (c) to receive postal or other communication;
- (d) to family life in accordance with the culture of that family: Provided that this right shall not apply in respect of single sex accommodation provided in hostels erected before 4 February 1997;
- (dA) to bury a deceased member of his or her family who, at the time of that person's death, was residing on the land on which the occupier is residing, in accordance with their religion or cultural belief, if an established practice in respect of the land exists;
- (e) not to be denied or deprived of access to water; and
- (f) not to be denied or deprived of access to educational or health services.
- (3) An occupier may not—
 - (a) intentionally and unlawfully harm any other person occupying the land;
 - (b) intentionally and unlawfully cause material damage to the property of the owner or person in charge;
 - (c) engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or
 - (d) enable or assist unauthorised persons to establish new dwellings on the land in question.
- (4) Any person shall have the right to visit and maintain his or her family graves on land which belongs to another person, subject to any reasonable condition imposed by the owner or person in charge of such land in order to safeguard life or property or to prevent the undue disruption of work on the land.
- (5) The family members of an occupier contemplated in section 8(4) of this Act shall on his or her death have a right to bury that occupier on the land on which he or she was residing at the time of his or her death, in accordance with their religion or cultural belief, subject to any reasonable conditions which are not more onerous than those prescribed and that may be imposed by the owner or person in charge.'

- [11] Section 9 restricts the landowner's authority to evict persons who occupy its land in terms of s 6. It provides that such occupiers can only be evicted in terms of an order issued under the Act by a court of law. But what does 'land' mean in the present context? I now turn to this question.
- [12] The appellants' counsel argued that 'land', as contemplated in the definition of eviction and also in s 6(1), refers to the particular piece of land on which the house occupied by the occupier has been erected and not the entire registered piece of land. The difficulty with this particular construction is that it is incompatible with the exercise of other rights conferred on the occupier by s 6. On this interpretation, for example, the occupier would be required to bury a deceased member of his or her family on the particular piece of land on which the dwelling house is situated. Faced with this problem, the appellants' counsel argued that in subsection (1) the word 'land' was used in a context different to the other subsections. He submitted that in the other subsections it refers to the entire registered land unit whereas, in subsection (1), it refers to a particular piece of land within the registered unit.
- [13] It is trite that a word repeatedly used in a statute must generally carry the same meaning throughout the statute unless it is clear from its language that such word is used in different contexts, warranting that different meanings be attached to it. In the latter event, a different meaning which is consistent with the context would be given to the word. But before such meaning can be attributed to it, it must be clear from the language that the lawmaker had intended a different meaning, especially where the same word is repeated in one section. In *Minister of Interior v Machadodorp Investments* 1957 (2) SA 395 (A) Steyn JA said (at 404D-E):
- ‘Where the Legislature uses the same word, in this case the word “race”, in the same enactment, it may reasonably be supposed that out of a proper concern for the intelligibility of its language, it would intend the word to be understood, where no clear indication is given, in the same sense throughout the enactment. This applies with greater force when the same word is repeated in the same sentence.’
- [14] The appellants' counsel argued that in this matter two factors indicate that the lawmaker intended 'land' to have different meanings. The first is the reference to 'homes' in the preamble to the Act, the relevant part of which reads: 'WHEREAS many South Africans do not have secure tenure of their homes and the land which they use and are therefore vulnerable to unfair eviction'. Secondly, he submitted that, if land is taken to mean the registered unit, the right of occupiers who are relocated from one building to another on the same unit, would not be protected. This, he argued, could not have been intended by the lawmaker.
- [15] I do not agree that these factors manifestly show the intention contended for by the appellants. If the lawmaker had intended to protect occupiers from being forced to vacate their homes, it could have easily said so as it in fact did in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. This latter Act forms part of the

cluster of statutes to which the present Act belongs. In that statute the definition of ‘evict’ includes the forced deprivation of occupation of a building or structure, or the land on which such building or structure is situated.

- [16] Returning to the language of s 6, it must be read in its entirety in order to determine whether or not the word ‘land’ was used in different contexts in different subsections thereof. A careful reading of the section reveals that the word was used in one context only. So, for example, while subsection (1) confers on the occupier the right to reside on land, subsection (2) gives him or her, in subparagraph (b)(i), the right to receive visitors onto the same land provided they comply with reasonable conditions ‘normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land’. That the two subsections refer to the same piece of land as a unit is, in my view, indisputable. The same applies to the other rights in respect of ‘land’ conferred on the occupier by the remaining paragraphs of subsection 6(2).
- [17] Section 6 must be restrictively interpreted because it encroaches upon the landowner’s right of ownership. Statutes such as the present must be construed, if possible, in a manner that least interferes with existing rights. The interference must be limited to the extent necessary and no further. In *Dadoo Ltd v Krugersdorp Municipality* 1920 AD 530 Innes CJ said (at 552):
- ‘It is a wholesome rule of our law which requires a strict construction to be placed upon statutory provisions which interfere with elementary rights. And it should be applied not only in interpreting a doubtful phrase, but in ascertaining the intent of the law as a whole.’
- [18] Furthermore, s 6 places a limitation on the landowner’s right of ownership. This right is guaranteed by s 25 of the Constitution and as a result such limitation is permissible only to the extent that it is ‘reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom’. In construing the present Act, we are of course obliged to promote the spirit, purport and the objects of the Bill of Rights of which s 25 forms an integral part (s 39(2) of the Constitution). In *Investigating Directorate: Serious Offences v Hyundai Motor Distributors (Pty) Ltd : In re Hyundai Motor Distributors (Pty) Ltd v Smit* NO [2000] ZACC 12; 2001
- (1) SA 545 (CC), the Constitutional Court described the interpretive role of s 39(2) in the following terms (para 21):
- ‘This means that all statutes must be interpreted through the prism of the Bill of Rights. All law-making authority must be exercised in accordance with the Constitution. The Constitution is located in a history which involves a transition from a society based on division, injustice and exclusion from the democratic process to one which respects the dignity of all citizens, and includes all in the process of governance. As such, the process of interpreting the Constitution must recognise the context in which we find ourselves and the Constitution’s goal of a society based on democratic values, social justice and fundamental human rights. This spirit of transition and transformation characterises the constitutional enterprise as a whole.’

See also *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* [2004] ZACC 15; 2004 (4) SA 490 (CC) in paras 88-92.

[19] Consistently with the protection of the right of ownership, the word ‘land’ as used in s 6 and in the definition of eviction means the registered unit as a whole. This interpretation does not subtract anything from the occupier’s right of residence on land as envisaged in s 6. In preferring this particular interpretation, I am fortified by the decision of this court in *Dlamini v Joosten* 2006

(3) SA 342 (SCA). There Cachalia AJA said (at para 14):

‘The contention that the meaning of words in a statute may vary, depending on the facts of a particular case, has no legal foundation. The word “land” is not defined in the Act. But it is apparent that in the context within which it is used it can refer only to land that is registered in the name of the owner. This is because the Act regulates the relationship between occupiers of land and owners of the same land.’

The learned judge continued (at para 16):

‘The burial right in s 6(2)(dA) of the Act is an incidence of the right of residence contained in s 6(1), which creates a real right in land. Such a right is in principle registrable in a Deeds Registry because it constitutes a “burden on the land” by reducing the owner’s right of ownership of the land and binds successors in title. The burial right is in the nature of a personal servitude which the occupier has over the property on which he possesses a real right of residence at death of a family member who at the time of death was residing on the land. These rights are claimable against the owners of registered land only. And the only objective determination of the extent of the land which has been registered by an owner is by reference to its cadastral description.’

[20] It follows that the court below erred in making the finding that ‘land’ as used in s 6(1) means the actual piece of land used by the occupier and not the entire registered land unit. The proposed relocation of the appellants to Weza Sawmill Village does not constitute an eviction as contemplated in the Act and the respondent is not obliged to comply with its requirements before effecting the relocation.

[21] In the result the appeal is dismissed with costs.

C N JAFTA

JUDGE OF APPEAL

CONCUR) HARMS ADP

) LEWIS JA

) VAN HEERDEN JA

) MUSI AJA

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