

SOUTH AFRICA / JUDGMENT

Goedverwaching Farm (Pty) Ltd v Roux and Others (LCC 129/2022) [2023] ZALCC 20 (21 June 2023) [2023] ZALCC 20

COURT

Land Claims Court

BEFORE

L Flatela

CASE / FILE NUMBER

LCC 129/2022

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IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT RANDBURG

CASE NO: LCC 129/2022

In the matter between:

GOEDVERWACHTING FARM (PTY) LTD Applicant And ADRIAAN JOHANESS ROUX First
Respondent ANY AND ALL UNLAWFUL OCCUPIERS OF THE PROPERTY Second Respondent THE
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Third Respondent THE MINISTER
OF AGRICULTURE AND LAND AFFAIRS Fourth Respondent

JUDGMENT ON LEAVE TO APPEAL

FLATELA J:

[1] This is an application for leave to appeal against the judgment I delivered on 28 April 2023, wherein I dismissed the Applicant's

eviction application against the First and Second Respondents. The dismissal of the application was premised on my view that this Court lacks jurisdiction to deal with this eviction as I was of the opinion that the Respondents were not occupiers as defined by the Extension of Security of Tenure Act 62 of 1997 (ESTA).

[2] The Applicant is Goedverwaching Pty Ltd, a private company with limited liability duly incorporated within the laws of the Republic of South Africa. The Applicant became the property's registered owner on 24 June 2021.

- [3] The First Respondent is Adriaan Johannes Roux, a major male businessman currently residing on the property. The First Respondent conducts farming activities on the property.
- [4] The second respondent is all those who occupy the property under Roux or by association with him. The respondents have occupied the property since 2017 through Denneys Swiss Diary (Pty) Ltd (Denneys). Denneys intended to purchase the property from Mr. Barend Frederik Keet, the previous owner. Denneys was given the conditional right of occupation by Keet pending the payment of a purchase price. The transaction did not go through, and in 2019, the right of occupation of the farm was canceled by Keet; in 2020, the previous owner sold the property to the Applicant.
- [5] The Applicant approached the Court to seek eviction of the respondents on the basis that the respondent's right to occupation on the farm had been terminated and that they are in unlawful occupation.
- [6] The First Respondent opposed the application on the grounds that he was given permission to reside on the property by the directors of Denneys Swiss Diary and they also gave him a job of being in charge of the farm. Denneys Diary is in liquidation.
- [7] The Probation Officer's report stated that the First Respondent was conducting a commercial farming business on the property.
- [8] Having considered the purpose of ESTA, I held that the respondents were not Occupiers as defined by Section 1 of ESTA. ESTA excludes from the definition of an occupier a person using or intending to use the land in question mainly for industrial, mining, commercial, or commercial farming purposes.
- [9] On the facts of this case, I found that the respondents have been occupying the premises since 2017 through Denneys Diary, which intended to purchase the farm for commercial purposes. The first respondent was granted consent to occupy the farm pending purchase price payment. In my view, the transaction was commercial, and the fact that it did not go through did not bring the respondents into the ambit of occupiers in terms of ESTA. I held that ESTA is not applicable and therefore held the jurisdiction of this Court to be ousted from adjudicating the matter.
- [10] In their leave to appeal, the Applicant argued that the eviction was against the respondents and those who occupy the property under him. The first respondent had no dealings with the previous owner or the Applicant, and in his papers, he was given consent to reside on the farm by the company, which is in liquidation. The Applicant submits that the First Respondent is merely conducting farming activities, not a commercial farming enterprise. Furthermore, the applicant argued that even if it may be accepted that he is conducting commercial farming, he is working the land by himself. He has not employed any person who is a member of his family, and therefore, he is not excluded by the ESTA.

[11] An application for leave to appeal is regulated by s 17(1) of the Superior Courts Act 10 of 2013, which provides:

‘(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a)

(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.’

[12] Section 17(1) of the Superior Courts Act is to be read holistically with s17(1)(a), which further adds that a Court may only grant leave to appeal where it is satisfied that the Applicant has shown reasonable prospects of success to suggest that a different court would come to a different outcome.

[13] In *The Mont Chevaux Trust v Tina Goosen & 18 Others*[1] Bertelsmann J held as follows:

It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court might come to a different conclusion. See *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 342H. The use of the word "would" in the new statutes indicates a measure of certainty that another Court will differ from the Court whose judgment is sought to be appealed against.’

[14] The Applicant appeals my judgment on findings of fact. These are inextricably linked to the question of law whether the respondent conducts a commercial farming business or not, as opposed to mere farming activities, in which the former would exclude him from the ambit of ESTA and the latter not. Furthermore, the Applicant contends that even if it is accepted that the respondent conducts commercial farming activities, he is still under the confines of ESTA because he works the land himself.

[15] Considering the Applicant's submissions, the Applicant's case holds reasonable prospects of success of a different Court reaching a different

conclusion.

[16] In the result, the following order is made:

1. Leave to Appeal is granted to the Supreme Court of Appeal.
3. The costs of the application for leave to appeal will be the costs in the appeal.

L Flatela

Judge of the Land Claims Court

APPEARANCES

For the Applicant: Adv Van Gass Instructed by : Van Grueunen & Associates For the Respondents:
In person

Date Heard: 8 June 2023

Date Delivered: 21 June 2023

[1] The Mont Chevaux Trust v Tina Goosen & 18 Others 2014 JDR 2335 (LCC) at para 6.

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