

SOUTH AFRICA / JUDGMENT

Gregory and Others v Mathebula and Others (LCC29R/2016) [2016] ZALCC 13 (18 August 2016)

[2016] ZALCC 13

COURT

Land Claims Court

BEFORE

Yacoob AJ

CASE / FILE NUMBER

LCC 29R/2016

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IN

THE LAND CLAIMS COURT OF SOUTH
AFRICA

RANDBURG

In

chambers: YACOOB AJ

Case

No: LCC 29R/2016

Magistrate's

Court Case No: 09/12

In the

matter between:

MORGAN
JENKINS GREGORY N.O.
First
Plaintiff
ANDRIES
DANIEL CORNELIUS GREGORY
N.O.
Second Plaintiff
JOHANNES
JAN CURRIE
N.O. Third
Plaintiff
and
M S
MATHEBULA

First Defendant
DANNHAUSER
MUNICIPALITY
Second Defendant
DEPARTMENT
OF LAND
AFFAIRS
Third Defendant

JUDGMENT

Yacoob AJ:

1. This matter is before me for automatic review in terms of section 19(3) of the Extension of Security of Tenure Act, 62 of 1997 ("ESTA"), from the Magistrate's Court at Dannhauser.
2. The plaintiffs are trustees of the Grecur Trust, which owns Portion 4 (of
2) of the farm Waterfall number 2160, Registry Division G.S., in Kwa-Zulu Natal ("the farm"), and the first plaintiff is the person in charge of the farm. The first defendant lives on the farm, and this is a review of the decision of the Dannhauser Magistrate's Court evicting him and his immediate family. Neither the second defendant (the Dannhauser Municipality) nor the third defendant (The Director General for the Department of Land Affairs) appear to have taken any part in the proceedings, despite the fact that an order was sought against them in the summons to provide land or alternative accommodation to the first defendant. For convenience, I refer to the first defendant simply as "the defendant", and the first plaintiff as "the plaintiff", as they are the only active parties.
3. The order evicting the defendant and his family includes an order for costs against the defendant. The question of alternative accommodation is not dealt with in the judgment, nor is any order made against the second or third defendant. However, in light of the approach I take in this matter, these issues are not, for the present, relevant.
4. There is a complicated matrix of facts in this matter, but for purposes of this judgment it is not necessary for me to deal with the factual background in detail. It is sufficient for present purposes to note that the defendant was born on the farm, that his father worked on the farm, and that the defendant worked on the farm while he was a youth. There were disputes of fact about when the defendant left, why he left, and whether the farm was still his home after he left. Because of the manner in which the trial was dealt with, which I examine below, it is my view that the manner in which these disputes were resolved is unsatisfactory.
5. The defendant was initially represented by the Land Rights Legal Unit, which filed a plea on his behalf. The attorney who represented the defendant at the hearing, Mr Mbatha, attempted to amend the plea, and filed a document that purports to be an amended plea. In fact, the document only reflects the manner in which the plea is amended, and does not contain the amended pages. The matter was apparently postponed once to permit

amendment, and when the matter was in court again, the plea was disallowed by the Magistrate on the basis that it had not properly been amended. At this hearing, Mr Mbatha indicated that the existing plea was not a proper plea, as it had not been signed by an admitted attorney. It is worth noting that, later in the proceedings, the defendant himself disavowed the content of the plea, and indicated that the persons who had prepared it had not taken proper instructions.

6. The plaintiff attempted then to take default judgment. The Magistrate refused default judgment, on the basis that the Court had the power to condone non-compliance with the Rules, and that considering that ESTA is "social context legislation, that guarantees a person his right to a home", he would hear the matter.
7. The matter proceeded, with the defendant being prevented from testifying in any way that was at all inconsistent with the plea that he had already disavowed, and sometimes, even where the consistency of the evidence with the plea was open to doubt, to the extent that, in my view, all relevant matters were not properly ventilated before the Magistrate. The defendant was even prevented from testifying as to whether he had lodged an application in terms of Chapter III of the Land Reform (Labour Tenants) Act, 3 of 1996 ("the Labour Tenants Act").
8. It is also my view that the Magistrate could, and ought to, have exercised his discretion to permit the amendment of the plea to stand. This would have permitted the defendant's contention that he was a labour tenant to be dealt with, and would also have prevented the unusually constraining approach that was taken in the proceedings, which prevented the defendant from testifying fully about issues which were, on a generous interpretation, consistent with the plea that both he and his attorney disavowed.
9. Had the Magistrate permitted the amendment, this would have been in the interests of justice. It would also have been consistent with the approach approved by this Court in *Mwelase and Others v Hiltonian Society* 2001 (4) SA 100 (LCC) at [6].
10. I therefore propose to make an order that deems the defendant's plea to be amended in accordance with the "amendment" that was filed.
11. Section 13(1A) of the Labour Tenants Act provides that the Land Claims Court has exclusive jurisdiction in the interpretation and application of the Labour Tenants Act, except in issues concerning the definition of "occupier" in section 1(1) of ESTA. The exception to this is where an issue requiring the interpretation or application of the Labour Tenants Act after oral evidence has already been led in another Court. In those circumstances, that court shall decide the matter in accordance with the Labour Tenants Act.
12. In this case, although the defendant sought to raise the Labour Tenants Act in the flawed amendment of his plea, before evidence had been led, as a matter of fact evidence has been led in the Magistrates Court before the amendment was permitted. The Magistrates Court shall therefore decide the matter in terms of section 13(1A) of the Labour Tenants Act. It

would also not be in the interests of justice for all the evidence to be led afresh in this Court. I therefore remit the matter to the Magistrate to deal with in terms of the Land Reform (Labour Tenants) Act, 3 of 1996.

Order:

13.1 order as follows:

- a) The order of the Magistrate, Dannhauser on 25 January 2016 in case number 09/12 is set aside.
- b) The defendant's plea is deemed to be amended in accordance with the so-called "Amended Plea" at pages 72-74 of the pleadings bundle, dated 25 March 2014.
- c) The plaintiff is permitted to amend its replication within 15 days of this order.
- d) The matter is remitted to the Magistrate, Dannhauser on 25 January 2016, to hear further evidence in accordance with the amended plea, and to decide the matter afresh.

YACOOB AJ

LAND CLAIMS COURT OF SOUTH AFRICA

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Prepared on 11 October 2026 · Esheria