

SOUTH AFRICA / JUDGMENT

Hupp Properties (RF) (Pty) Ltd and Others v Moneni and Others (LCC308/2017) [2019] ZALCC 18 (10 May 2019)

[2019] ZALCC 18

COURT
Land Claims Court

BEFORE
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CASE / FILE NUMBER
LCC308/2017

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD

AT RANDBURG

BEFORE: CANCA AJ
CASE
NO.: LCC 308/2017
In

the matter between:

HUPP
PROPERTIES (RF) (PTY)
LTD
First Applicant
GHB
FARMS (PTY)
LTD
Second Applicant
GERARD
HENDRIK BRAAK N.O. (ID:
[...])
Third Applicant
(In
his capacity as trustee of the GH Braak Trust with IT 12185]
CHARLOTTE
ELIZABETH BRAAK N.O. (ID: [...])
Fourth Applicant
[In
her capacity as trustee of the GH Braak Trust with IT 12185]
GERARD
HENDRIK BRAAK N.O. (ID:
[...])
Fifth Applicant
[In
his capacity as trustee of the GH Braak Trust with IT 12185]
MAITLAND
FIDUCIARY LIMITED N.O.
(OBO
MICHEL
LINGERER)
Sixth Applicant
(ID:
[...])
[In
her capacity as trustee of the GH Braak Trust with IT 121851
and
MADIMABE
DAVID
MONENI
First Respondent
AND
ALL OTHER PERSONS CLAIMING A RIGHT OF
RESIDENCE
THROUGH HIM ON PORTION 118
OF
THE FARM MOOIPLAATS 367 JS
PULEMA
MOGIDI MBONANI MONENI
Second Respondent
CITY
OF TSHWANE METROPOLITAN MUNICIPALITY

Third Respondent
THE
HEAD OF THE DEPARTMENT OF RURAL
Fourth Respondent
DEVELOPMENT
AND LAND REFORM, GAUTENG

JUDGMENT

CANCA AJ

Introduction

[1] This is an application for the eviction of the first and second respondents (and all persons occupying through the first respondent)

from the first applicant's farm, Portion 118, a portion of Portion 15 of the farm Mooiplaats 367, Registration Division JR1 Gauteng

Province ("the farm"). The eviction order is sought in terms of section 11 of the Extension of Security of Tenure Act No. 62 of 1997 ("ESTA").

[2] The applicants also seek an order in the following terms, namely:

"2. That the first and second respondents and all persons claiming a right of residence through them vacate the farm within a month of the grant of the order granted in paragraph 1 above and to remove all their possessions and movables, including all livestock, from the said farm on or before such a date;

3. That the first respondent is authorized to demolish any structures which he or his family members have erected and to remove any materials so salvaged;

4. That the Sheriff for Pretoria and/or any other Sheriff who has jurisdiction, is authorized and ordered to execute the eviction order granted in paragraph 1 above and to remove any movables left by the first respondent and his family, at any time following the period mentioned in paragraph 2 above in the event of any of the respondents or any of their family members not vacating the farm within the said period, including any structure or building rubble which might remain on the property;

5. That the third respondent is ordered to offer to and provide temporary accommodation to the first respondent or any of his family members or other persons occupying the farm through them¹ should they at the time of their eviction be in need of housing or assistance with their relocation to a temporary settlement area as described in Chapter 12 of the National Housing Code¹ within the municipal area of the second respondent¹ which temporary accommodation is to consist of a place where they are able to erect temporary structures for their accommodation.

6. That the third and fourth respondents are ordered to take all steps required and which maybe necessary to obtain land through any other organ of State or belonging to any other organ of State for purposes of the relocation of the first respondent and any of his family members in as far as it maybe necessary, to comply with their constitutional duties in terms of Section 26(1) of the Constitution.”
- [3] The first and second respondents oppose the application and have raised two points in limine which I deal with later in this judgment. They have also lodged a counter application in which they seek the restoration of water and electricity supply to their dwelling on the farm. The water was restored before the matter was ripe for hearing, rendering that aspect of the counter application moot. Insofar as the issue of the restoration of electricity to their dwelling is concerned, they seek an order directing either the applicants or the third respondent to effect such restoration.
- [4] The third respondent has not indicated its stance to this matter nor was it represented at the hearing.
- [5] The fourth respondent was represented by Mr. Mathebula, from the State Attorneys' Office, who appeared on the second day of the hearing and indicated that the fourth respondent would abide the Court's decision. Notwithstanding the fourth respondent's stance, I directed one of its officials to testify on a limited aspect of the matter, namely, the issue of alternative accommodation. This official was involved in attempts by the applicants to secure alternative accommodation for the first and second respondents prior to this matter being referred to Court for adjudication.

The Parties

- [6] The applicants are:

6.1. The first applicant is Hupp Properties (RF) (Pty) Ltd, a company duly registered and incorporated in terms of the Company Laws of the Republic of South Africa and with registration number 2012/128156/01 with registered office address at Heron View Building, Hazeldean Office Park, 687 Silver Lakes Road, Hazeldean, Pretoria, Gauteng. The first applicant is the registered owner of the farm, which farm was previously owned by the GH Braak Trust ("the Trust") which is represented in this application by the third to fifth applicants in their respective capacities as trustees of the Trust.

6.2. The second applicant is GHB Farms (Pty) Ltd ("GHB Farms"), a company duly registered and incorporated in terms of the Company Laws of the Republic of South Africa and with registration number 2005/008504/07 and principal place of business at 687 Silver Lakes Drive, Hazeldean Office Park, Heron View Building, Pretoria, Gauteng. GHB Farms took over the farming operations from the GH Braak Trust IT 12185 ("the Trust") represented herein by the third, fourth, fifth and sixth applicants.

6.3. The third applicant is Gerard Hendrik Braak N.O. ("Braak") with identity number [...], in his capacity as trustee of the Trust with employment address at 687 Silver Lakes Drive, Hazeldean Office Park, Heron View Building, Pretoria, Gauteng.

6.4. The fourth applicant is Charlotte Elizabeth Braak N.O. with identity number [...], in her capacity as trustee of the Trust.

6.5. The fifth applicant is Gerard Hendrik Braak N.O. ("Braak Jnr") with identity number [...], in his capacity as trustee of the Trust. He is the son of Braak and is also involved in the farming operations on the farm.

6.6. The sixth applicant is Maitland Fiduciary Limited, represented by Michel Ungerer N.O. with identity number [...], in her capacity as trustee of the Trust.

[7] The respondents are:

7.1. The first respondent is Madimabe David Moneni ("Moneni"), an adult male currently residing on the farm. Moneni resides in a dwelling on a portion of the farm with the second respondent, and at times, with persons who; according to the applicants, appear to be family members.

7.2. The second respondent is Pumela Mogidi Mbonani Moneni ("Mrs. Moneni"), also known as Butikwe Paulina Mgidi, an adult female. She is Moneni's wife.

7.3. The third respondent, the City of Tshwane Metropolitan Municipality ("the Municipality") is a legal entity established in terms of the relevant legislation and has its head office at Isivuno House, 135 Lilian Ngoyi Street, Corner Madiba and Lilian Ngoyi Streets, Pretoria, Gauteng. It is cited herein as an interested party by virtue of the fact that the land which is the subject of this application falls within its area of jurisdiction. The Municipality also has constitutional obligations towards persons residing in its area of jurisdiction and who may be in need of housing following an eviction order.

7.4. The fourth respondent, The Head of the Department of Rural Development and Land Reform, Gauteng ("the Department") is situated at 266 Pretorius Street, Corner Pretorius and Thabo Sehume Streets, Centre Walk Building (West Block), Pretoria, Gauteng and cited as the Government department with jurisdiction in respect in of the Extension of Security of Tenure Act, No. 62 of 1997 ("ESTA").

The farm

[8] The farm is situated immediately south of the N4 Highway opposite Mamelodi Township in Pretoria where the K54 provincial road is due to be constructed. A slipway from the proposed road giving access to the farm and properties to the east of the K54 road will run right past the dwelling currently occupied by Moneni and Mrs. Moneni.

[9] The applicants, who intend constructing a commercial development on the farm, contend that the dwelling occupied by the Moneni couple will either be in the K54 road reserve or very close to it.

Background facts

- [10] The Trust employed Moneni as a general worker during 1999 to assist with its farming operations. These operations included large scale commercial pig farming which took place on the farm.
- [11] The farming operations, which were initially conducted by the Trust, were taken over by GHB Farms on 26 June 2015. GHB Farms also took over the liabilities and duties of the Trust relating to employment and the business as of that date. The applicants, in the founding affidavit deposed to by Braak, aver that, due to the diverse nature of the Trust's farming operations on the different farms, it was often necessary to relocate employees from one farm to another. The employees were therefore not granted any permanent right of residence on any specific farm or any particular building, so the averment continued.
- [12] Moneni's employment was terminated during September 2012 following a disciplinary hearing where he was found guilty of the theft of stock from his employer. Moneni denied the charge and the allegation that his dismissal was preceded by a disciplinary enquiry. He challenged his dismissal and turned to the Commission of Conciliation Mediation and Arbitration ("the CCMA") for assistance.
- [13] According to the record of the CCMA award, the Trust was not represented at the hearing held by the CCMA. Moneni was awarded

compensation equal to eight months' remuneration. At the time, he was earning R2240.00 per month and the award amounted to R17 920.00. The award was subsequently rescinded on 30 September 2012 following an application for its rescission by the Trust. Thereafter the protagonists concluded an agreement which was supposed to settle the dispute between them. The CCMA award was reduced, by agreement, to R13 440.00.

- [14] The Trust is of the view that that agreement settled the dispute regarding Moneni's dismissal. Moneni, on the other hand, is of the opinion that the award was in respect of him having been wrongfully arrested for theft. He denies having given his employer cause for dismissing him and terminating his right of residence on the farm. This, notwithstanding the fact that he only sought compensation and not re-employment at the CCMA. Also, in a letter dated 10 August 2016 requesting details of Moneni's pension and unemployment insurance fund from the Trust, his attorney at the University of Pretoria Law Clinic, in part, states that:

"We advise that we act on behalf of Mr Madimabe David Monene [sic], on whose instructions we are addressing this letter to you.

It is our instructions that our client was dismissed from his employment by your good self. It is our further instructions that a Settlement Agreement was reached at the CCMA between the parties regarding the dismissal."

It is our client's concern that he never got his Pension Fund and UIF respectively. Our client informs us that he was under your employment for a period of 20 years. It is our request that you furnish us with your Pension Fund details in which you were deducting our client's money.

You are further requested to give our client UIF application forms in order for him to claim his money at the Department of Labour.

....”

The prosecuting authorities failed to prosecute Moneni and his co-accused after their arrest for the alleged theft of the applicants' pigs.

[15] A number of factual disputes are raised in Moneni's answering affidavit and in particular with regard to the facts surrounding the reasons and circumstances of his dismissal. Although it is not this Court's remit to determine the fairness or otherwise of a farm worker's dismissal, I thought it prudent to examine the facts surrounding the dismissal in this matter as that would assist in establishing whether or not Moneni's right of residence was lawfully terminated.[1]

[16] In the light of my decision set out in paragraph [15] above, I ordered the hearing of oral evidence on two limited aspects, namely, the alleged theft of stock by Moneni and the disciplinary hearing allegedly held on 1 September 2012.

The Evidence

[17] Five witnesses testified in this matter. Messrs Braak and Andries Du Plessis ("Du Plessis") testified on behalf of the applicants. Mr. and Mrs. Moneni also gave oral evidence as well as Ms. Alexandria Ramlagan ("Ramlagan"), the official from the Department, whose testimony I deal with under the heading "Alternative Accommodation" later in this judgment.

[18] Braak, who deposed to the founding affidavit, testified that he is a director of the first and second applicants as well as a trustee of the Trust. According to him, he has intimate knowledge of the applicants' farming operations and was made aware of the incident that led to Moneni's dismissal. He stated that prior to his taking up residence on the farm on 1 April 1999, Moneni was employed by the Trust as a welder on the farm Aidamil during or about 1997. Aidamil was owned by the Aidamil Trust, so the evidence continued. Braak testified that he also participated in the early stages of a staff relocation process, following their retrenchment, which was initiated in order to secure the exit of employees from the farm. According to Braak, Moneni and his wife, although their right to reside on the farm had already been terminated, were also offered a package of approximately R130 000.00 and alternative accommodation. These offers were refused by them.

[19] In addition to confirming most of the facts set out in the Background Facts portion of this judgment, Braak also testified that the Trust and its successor's policy was that the right of persons to reside on the farm and on its other properties was dependent on existing employment agreements. The right to reside on the farm terminates when a person was no

longer employed and that in this case Moneni, despite his contract of employment having been terminated, still remains on the farm. This, notwithstanding the fact that several notices formally terminating both his and his wife's right to occupy the farm were served on them, so Braak's evidence continued.

[20] Braak further stated that, in anticipation of a commercial development on the farm, the farming operation was wound down some

time back and that all employees were offered a retrenchment package which they accepted. These employees were assisted by the applicants to relocate elsewhere. Moneni, despite having already been dismissed and thus, no longer an employee, was also offered a relocation package of R130 000.00 which he refused and continues to reside on the farm without any right to do so, Braak testified.

[21] Du Plessis was the second witness to testify on behalf of the applicants. He testified that he was the Operations Manager for GHB Farms and that he was in charge of the farm during 2012 when the incident which led to Moneni and his co- employee's dismissal. He stated that, on the day in question, he went to search the staff accommodation after receiving information that some of the employees were in unauthorized possession of pig carcasses. Employees were, according to Du Plessis, prohibited from removing pigs from the piggery whether same were dead or alive.

[22] Du Plessis also testified that he found Mrs. Moneni at the staff quarters and obtained her permission to search their dwelling,

although this was denied by her. He states that once inside the dwelling, he found carcasses of young breeding sows in a chest

freezer. He was able to identify the young sows as belonging to the applicants by virtue of the unique tattoos on their ears, so the testimony continued.

[23] His further testimony was that he arranged for Moneni to come to the staff quarters and that when he got there confronted him with the pig carcasses. Moneni informed him that the pigs had died and that he had decided to keep same for his dogs as the mortality pit, where the carcasses of dead pigs were stored, was full. A co-worker of Moneni was, according to Du Plessis also found in possession of pig carcasses. Du Plessis then contacted the Cullinan Stock Theft Unit of the South African Police Service. The police confiscated the carcasses and arrested Moneni and his co-worker, so his testimony continued.

[24] Du Plessis then stated that on their return from the Police Station, Moneni and his co-worker were suspended and given a notice to attend disciplinary hearings on 1 September 2012. The hearings were conducted by an independent person, one Gerrit Duvenhage

("Duvenhage"), known as Jim Trekker to the employees. He did not testify but the relevant portions of his handwritten notes of the disciplinary enquiry are quoted below.

[25] Du Plessis, who testified on behalf of the Trust at the disciplinary enquiry, stated that Moneni gave the same version at the disciplinary hearing as to how the pigs ended up in his dwelling. The proceedings at the disciplinary enquiry are, in relevant parts, recorded as follows in Duvenhage's handwritten notes:

"Mortaliteitspuntin eenheid wasbaie vol.

Ek had vleis gevat om vir my hondtjie te gee.

Die beeste vat dit andersins (van die eenheid) na buurman se gras.

DOE: 1999

Dependants (sic): ?

Sole Breadwinner

Dismissed. Employee may refer [the] matter to the CCMA within 30 days from 01 Sept. 112 therefore before 30 Sept. 2012

Weier om te teken."

[26] The CCMA, in the absence of a representative from the Trust, found the dismissal to have been unfair and ordered the Trust to pay Moneni compensation in the amount of R17 920.00 referred to earlier in this judgment.[2]

[27] When the contents of the CCMA's award came to the Trust's attention, it launched a successful rescission application. The Trust and Moneni then entered into the agreement referred to in paragraph

[13] above.

[28] According to du Plessis, he repeatedly engaged Moneni regarding his continued unlawful stay on the farm following the formal termination of his right of residence on the farm. The brittle relationship between him and Moneni reached breaking point when Moneni not only laid a spurious charge of assault against him but also sought and obtained a Protection Order in terms of section 2(1) of the Protection from Harassment Act, Act No. 17 of 2011 during December 2016 against Braak Jnr. The Order was subsequently rescinded, so the testimony continued.

[29] Both witnesses called to testify on behalf of the applicants were credible and reliable. I could not find any contradictions between their oral evidence and their versions of how the events unfolded as deposed to in their affidavits.

[30] Mrs. Moneni deposed to a confirmatory affidavit to her husband's answering affidavit and was the first to testify on behalf of herself and Moneni. Her evidence mostly centered around the events that took place at their residence where the pigs were found. It is not disputed that she was never employed by the Trust.

- [31] Mrs. Moneni testified that none of the occupants of the various staff houses, including herself, was present when Du Plessis broke into and searched their house. However, when confronted during cross-examination as to how she knew that it was Du Plessis who broke into the dwelling, she gave contradictory explanations. She initially stated that she was given that information by the other female occupants of the houses. Then, on being asked how those women knew that it was Du Plessis given that she had earlier testified that there was no one there, she changed her version and stated that it was her husband's fellow workers who gave her that explanation.
- [32] The caliber and cogency of Mrs. Moneni's evidence was further undermined when, on being confronted with evidence that she and her husband owned a freezer, she stated that same was not in a working condition at the time of the incident as the electricity to the staff quarters had been cut off. However, when it was put to her that there was in fact electricity supplied to all the staff at the time, she changed her version and stated that they had only acquired the freezer at a later stage.
- [33] Mrs. Moneni also contradicted the averment in Moneni's answering affidavit that she informed him that Du Plessis entered and searched their house. She denied that she said that to Moneni even though he repeated this during his oral evidence.
- [34] This witness did not come across well in evidence or cross-examination. Her demeanor in the witness box was also poor. And, as can be noted from the above, her evidence was in some respects improbable. I do not consider her to have been a credible or a reliable witness.
- [35] Moneni did not fare better than his wife as there were a number of contradictions in his evidence as well. These relate to the alleged theft of the pigs, the disciplinary hearing, the proceedings at the CCMA and the settlement at the CCMA. I now consider these in turn.
- [36] While testifying on the events surrounding the alleged theft, the following contradictions in Moneni's evidence manifested themselves:

36.1 According to the record of the CCMA proceedings, Moneni states that Du Plessis broke into their dwellings and charged him and his co- employee, Rantho, with stealing a pig. However, in his answering affidavit, he avers that he was informed by his wife that Du Plessis entered and searched their house without permission. On the latter version, this was no longer a break-in as, on the face of it, this occurred in his wife's presence.

36.2 During his evidence in chief, he testified that Du Plessis and a white police officer came to his workplace and told him that he had stolen a pig which was found his house. During cross-examination, he said that he was called from the pig unit to the office where the police officer accused him of having stolen a pig.

[37] Regarding the disciplinary enquiry, Moneni offered different versions as to what had transpired at the CCMA. In the answering affidavit, heavers that he and his co-employee, Rantho, both attended the CCMA on 20 September 2012. In evidence he stated that he went to the CCMA alone and spoke to someone who gave him a statement and then left. On being prompted by his counsel that he had been awarded a sum of approximately R17 000.00, he denied this and said that he was only awarded R13 000.00.[3]

[38] Insofar as the settlement is concerned, Moneni denies in the answering affidavit that there was a settlement. A copy of the

settlement agreement was subsequently attached to Braak's relying affidavit. His averment that there was no settlement is further

contradicted by his attorney in the letter from the University of Pretoria Law Clinic quoted earlier in this judgment. He could not explain this discrepancy in cross-examination. His evidence in regard to this aspect of the matter was further tainted when, in cross-examination, Moneni admitted that the contents of the settlement agreement were interpreted and explained to him by the

CCMA's interpreter. This contradicted his evidence in the replying affidavit and his evidence in chief.

[39] Moneni also contradicted himself during his testimony regarding where he received the cheque issued to him by the Trust in settlement. He initially stated that the aforesaid cheque was given to him by the legal representative of the Trust at the CCMA. Later, he stated that he received the cheque, as per the settlement agreement, at Braak's corporate offices at Silver Lakes, Pretoria. The cheque was cashed on 19 July 2013, the same day it was issued to him. Moneni even disputed his signature on the answering affidavit during cross-examination.

[40] I find that Moneni was not a credible witness and that his evidence was unreliable, when viewed in its totality. The versions presented by Moneni and his wife therefore stand to be rejected and that of the applicants accepted. The testimony of Ramlagan, the official from the Department, is dealt with later in this judgment.

Points in limine

[41] The first point in limine concerns the alleged non-compliance with section 9(2)(a) of ESTA by the applicants[4]. Reliance for this contention is based on the finding by the CCMA that Moneni's dismissal was procedurally and substantively unfair. The right of residence could, therefore, not have been terminated based on the alleged theft, so Mr. Malatji, for Mr. and Mrs. Moneni, contended.

[42] Mr. Havenga, for the applicants, argued that the aforementioned contention was misplaced in the light of the successful application

for the rescission of the CCMA award and the conclusion of the settlement agreement by the protagonists. When regard is had to

Moneni's oral evidence and the letter from the Law Clinic, it can reasonably be supposed that the labour dispute between the parties

has, indeed, been settled. Consequently, I find no merit in the first preliminary point.

[43] The second point raised in limine is that a dispute of fact was foreseeable in this matter given that Moneni contends that section 10 (1) is applicable to him. Moneni relies on his prior employment on the other farms associated with the

Braak family before settling on farm for the contention that section 10 is applicable to him.

[44] It is not disputed that Moneni and his wife have been residing on the farm since 1 April 1999. Braak's evidence, alluded to in paragraph

[18] above, is that the previous farms on which Moneni worked and/or lived were not owned by the Trust or the other applicants. Rather, one of the farms was owned by a different entity and another by Braak's late father personally and that he had no interest in Mooiplaats. Section 10 is, on this basis, not applicable in this matter. This contention also has no merit.

[45] However, even if I am wrong in finding that section 10 is not applicable in this eviction, I agree with the submission made on behalf of the applicants that, should section 10 find application, the eviction is just and equitable in the circumstances. This is so because Moneni's conduct in stealing from his employer and bringing what appears to have been spurious charges against Du Plessis and Braak Jnr constituted a material breach of the relationship between the parties as contemplated in section 10(1)(c) of ESTA[5].

[46] It was also argued on behalf of the applicants that, even if Moneni was a long- term occupier as contemplated in section 8(4) of ESTA, the termination of his right of residence was still accordance with the provisions of ESTA, since his conduct constituted a breach of section 10(1)(c) of ESTA. I agree with Mr. Havenga that, within the context of this case, it is of little relevance whether section 10 or 11 is applicable. In the light of the above, I find no merit in the argument advanced on behalf of the first two respondents in support of the second point in limine.

Termination of the right of residence

[47] The requirements which must be complied with before a Court can order the eviction of an occupier under ESTA are set out in section 9(2) of that Act. Section 9(2) provides as follows:

"(2) A court may make an order for the eviction of an occupier if-

"(a) the occupier's right of residence has been terminated in terms of section B;

(b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;

- (c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and
- (d) the owner or person in charge has, after termination of the right of residence, given-
 - (i) the occupier;
 - (ii) the municipality in whose area of jurisdiction the land in question is situated; and
 - (iii) the head of the relevant provincial office of the Department of Rural Development and Land Reform, for information purposes, not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to court has, after the termination of the right of residence, has been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with."

[48] Section 9(2)(a) requires that the occupier's right of residence must have been terminated in terms of section 8 which, in relevant part, reads as follows:

"8. Termination of right of residence

- (1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to-
 - (a) the fairness of any agreement, provision in an agreement, or provision in an agreement, or provision of law on which the owner or person in charge relies;
 - (b) the conduct of the parties giving rise to the termination;
 - (c) the interests of the parties, including the comparative hardships to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;
 - (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
 - (e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.
- (2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the labour Relations Act.

(3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act."

[49] A preliminary question in relation to section 8 is whether section 8(2) or (3) apply in this matter. Moneni has not disputed that his right of residence arose solely from his employment with the Trust. What he has taken issue with, if I understood his case correctly, is that his employment was not terminated in accordance with the provisions of the Labour Relations Act ("the LRA"). This "issue" or contention has, however, been debunked by, not only the fact that there was a properly constituted disciplinary enquiry but also by the conclusion of the settlement agreement at the CCMA.

Was the termination just and equitable?

[50] The answer to this question requires a consideration of the criteria listed in subparagraphs (a) to (e) of section 11 (3). This subsection reads as follows:

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

[51] As regards subparagraph (a) of section 11(3), it is common cause that Moneni and his wife have been residing on the farm since 1 April

1999. As regards subparagraph (b), the reason given by the applicants for the Monenis' eviction is that their right of residence was dependent on Moneni's continued employment with the Trust. The fairness of that agreement is not challenged by Moneni and his wife. Rather, Moneni, opportunistically, according to the applicants, avers that he and Braak's late father concluded a verbal agreement in 1998 in terms of which he "... [would] work on his farm until retirement and that after my retirement I will live/reside on his farm as I will not be able to seek employment elsewhere and live there." I agree with Mr. Havenga that this allegation is far- fetched as, not only did Braak's late father never own the farm but no employee could ever reasonably think that he or she would be afforded lifelong residence rights on a farm without offering his or her labour in return. See *Mpedi & Others v Swanevelder & Another* 2004 (4) SA 344 (SCA) at 347D where the Supreme Court of Appeal stated that a farmer "does not usually give a person a potentially permanent place of

residence without expecting such person to offer his labour in return.' In any event, an employee who has been dismissed, particularly for theft, cannot expect the owner or person in charge to continue accommodating him or her on a farm.

[52] As regards subparagraph (c), the Department has testified that suitable alternative accommodation would in due course be made

available to Moneni and his wife. The issue of alternative accommodation is discussed in greater detail later in this judgment.

[53] As regards subparagraph (d), when viewed objectively, Moneni's conduct in stealing from his employer, the laying of harassment

charges, which turned out to be false, against Braak Jnr, whom he had never met and his uncooperative attitude every time Du Plessis sought to discuss their relocation from the farm contributed to what is clearly a fractured relationship between him and the applicants.

Insofar as the termination of the right of residence is concerned, Moneni is clearly the author of his and his wife's fate.

[54] Regarding subparagraph (e), I am of the view that failure to grant the relief sought by the applicants would create undue hardship for the applicants as their ability to develop the farm to its best potential will be affected. The presence of the Monenis, who are the only ones remaining on the farm, where no farming operations have taken place for quite a while now, has severe cost implications for the applicants who are required to bear same without getting anything in return.

[55] Moneni and his wife, on the other hand, turned down an offer of R130 000.00 to relocate despite having been lawfully dismissed for theft, instead he sought approximately R300 000.00 to relocate elsewhere. They also turned down an offer for alternative accommodation from the Department on the basis that same was, inter alia, too small, was situated far from the city and did not have amenities such as running water and the like.

[56] When the potential hardships of the protagonists are compared, that of the applicants outweigh those of Moneni and Mrs. Moneni, who have been promised alternative accommodation, whereas the applicants would suffer significant financial loss should the development potential of the farm not be fully exploited due to the presence of the Monenis on the farm. The issue of alternative accommodation is dealt with later in this judgment.

[57] The fairness of the procedure followed by the applicants in terminating the Monenis' right of residence cannot be faulted. Not only were several notices terminating the right of residence sent to them but Du Plessis also engaged Moneni on the issue of the termination of their right of residence. There were also active attempts by the applicants to secure Moneni and his wife alternative

accommodation with the assistance of the Department when he spurned the retrenchment and relocation packages offered by the applicants.

This offer remained open for acceptance until the matter was enrolled. It is now trite that landowners are not expected to provide

housing indefinitely to occupiers. See *Westminster Produce (Pty) Ltd v Simons* 2001 (1) SA 1019 (LCC) and *Rand Water v Tshabalala & Others* (LCC 50/05) [2007] ZALCC 3 (16 February 2007) at paragraph 14.

[58] For all the reasons set out above, I find that the termination of the Monenis' right of residence was just and equitable. The applicants have complied with the requirements of section 9(2).

Alternative accommodation

[59] Ramlagan, a Deputy Director: Land Tenure Implementation Systems at the Department, confirmed during her testimony that she and the Department were involved in attempts to settle the disputes between the protagonists. She also advised that the Department has offered and will make available alternative housing for Moneni and his wife should they be evicted. Ramlagan also stated that there is a house (albeit that same is currently in a state of disrepair and that it would take months to repair) on land (Portion 4 of Farm Kameelzynkraal) which has been earmarked as a permanent settlement which the Moneni and his wife can occupy once it has been repaired. She further stated that there was a school and a clinic close-by and that the Municipality could make water available.

[60] Mr. Havenga argued that Moneni and his wife are not entitled to "suitable alternative" accommodation but rather emergency housing to ensure that they are not homeless when evicted. The offer of the alternative accommodation by the Department had the prospect of affording Moneni and his wife security of tenure in the long run, so the argument continued.

[61] I agree with Mr. Havenga. The Monenis have had free use of the dwelling and water for approximately seven years after Moneni's

dismissal. In any event, there is no duty on an owner or person in charge to furnish an occupier who has been lawfully dismissed from employment with accommodation for an indefinite period. That duty falls on the State, which I am ordering hereunder to provide

emergency housing to Moneni and Mrs. Moneni. See *Goosen v Mont Chevaux Trust* 2017 JDR 1135 (SCA) at para 33. Therefore, failure to grant an eviction order would, in my view, not be just and equitable towards the applicants in the circumstances.

The counter application.

[62] As stated earlier, the first portion of the counter application has been rendered moot by the applicants restoring water to the Moneni dwelling. The only issue to be considered now is that of the electricity supply. Moneni and his wife ask that either the applicants or the Municipality be ordered to restore electricity to their dwelling.

[63] The applicants deny having discontinued the electricity supply. Rather, they allege that the cables supplying electricity to the portion of the farm where the staff quarters are situated were stolen. It would appear that those cables were dug up from Moneni's

dwelling in the direction of the farming infrastructure further north on the farm. It was contended on behalf of the applicants that, in view of the fact that farming operations on the farm had ceased and all infrastructure, save the dwelling occupied by the Monenis, had been demolished, the exorbitant costs of re-installing the electricity cables to that dwelling cannot be justified. I agree.

[64] Not only are the Monenis the only remaining occupiers on the farm but the supply of electricity is not one of the rights guaranteed to an occupier under section 6 of ESTA.[6] See *Leboko & Others v Strydom & Others* (177/2014)

[2015] ZALCC (27 March 2015). Importantly, Moneni and Mrs. Moneni have not laid any legal basis for this relief, rendering the relief sought against the applicants in respect of electricity, incompetent and is, as a result, dismissed.

Conclusion

[65] In the light of all of the above, I am satisfied that the applicants have out a case that it is just and equitable to grant the relief sought by them.

[66] In the result, I order as follows:

1. The first and second respondents (and all persons occupying through them) are evicted from the first applicant's farm, Portion 118, a portion of Portion 15 of the farm Mooiplaats 367, Registration Division JR, Gauteng Province ("the farm").
2. The first and second respondents are, in addition, ordered to vacate the farm by not later than 12 August 2019 and to remove all their possessions and movables, including all livestock, from the said farm on or before that date. The execution of this eviction order is suspended until 13 August 2019.
3. In order to achieve the eviction referred to above, the third and fourth respondents, jointly and severally, have to provide the first and second respondents with suitable alternative accommodation by not later than 12 August 2019.
4. In the event that the suitable alternative accommodation as referred to in paragraph 3 above is not available, the third respondent will provide the first and second respondents with temporary accommodation within 80 days of this order should they at the time of their eviction be in need of housing or assistance with their relocation to a temporary settlement

as described in Chapter 12 of the National Housing Code, within the municipal area of the second respondent, which temporary accommodation is to consist of a place where they are able to erect temporary structures for their accommodation.

5. The first respondent is authorized to demolish any structures which he or his family have erected and to remove any materials so salvaged.
6. The Sheriff for Pretoria and/or any other Sheriff who has jurisdiction, is authorized and ordered to execute the eviction order granted in paragraph 1 above and to remove any movables left by the first respondent and his family, at any time following the period mentioned in paragraph 2 above in the event of any of the respondents or any of their family members not vacating the farm within the said period, including any structure or building rubble which might remain on the property.
7. The counter application is dismissed.
8. There is no order as to costs.

MP Canca

Acting Judge, Land Claims Court

Appearances:

For the Applicants: Adv. H Havenga SC

Instructed by: JW Botes Inc. Attorneys, Pretoria

For the 1st and 2nd Respondents: Adv. TM Malatji

Instructed by: Borman Duma Zitha Attorneys, Johannesburg

- [1] See the discussion of Rule 6 in Erasmus: Superior Court Practice (2nd Ed. Vol 2 at p D1-76), that a Court should, in deciding

disputed facts in application proceedings always be cautious about deciding probabilities in the face of conflicts of facts in

affidavits.

- [2] The applicants allege that they did not receive notice of the CCMA hearing.
- [3] The amount of R17920.00 awarded by the CCMA was reduced by agreement to R13440.00.
- [4] Section 9 of ESTA, which deals with the limitation on eviction, provides at sub-section (2)(a) that "A court may make an order for the eviction of an occupier if-
- (a) The occupier's right of residence has been terminated in terms of section 8".

- [4] Section 9 of ESTA, which deals with the limitation on eviction, provides at sub-section (2)(a) that "A court may make an order for the eviction of an occupier if-
- (a) The occupier's right of residence has been terminated in terms of section 8".
- [5] This sub-section reads as follows: "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;"
- [5] This sub-section reads as follows:
- "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;"
- [6] Section 6 sets out the various rights and duties of an occupier. Subsection 6(e), in particular, states that an occupier has a right "not to be denied water".

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