

SOUTH AFRICA / JUDGMENT

Jansen van Rensburg v Khumalo and Others (LCC39R/07) [2007] ZALCC 17 (12 June 2007)

[2007] ZALCC 17

COURT

Land Claims Court

BEFORE

Gildenhuys

CASE / FILE NUMBER

LCC39R/07

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IN THE LAND CLAIMS COURT OF SOUTH
AFRICA

HELD AT RANDBURG

CASE NUMBER: LCC39R/07

Decided on : 12 June 2007

In case between:

WILLEM JOHANNES JOUBERT JANSEN VAN
RENSBURG

Applicant

and

LESAYA KHUMALO First

Respondent

MAKHUBEKA KHUMALO Second

Respondent

MASHABANGU KHUMALO Third
respondent

ELLIOT KHUMALO Fourth

Respondent

GIDEON KHUMALO Fifth

Respondent

NHLAMVANA KHUMALO Sixth

Respondent

MANZIMA KHUMALO Seventh

Respondent

JUDGEMENT

Gildenhuys J

- [1] The applicant is the owner of the remainder of subdivision 1 of the farm Rensburg 282. The first to sixth respondents live on the farm. They are occupiers as defined in the Extension of Security of Tenure Act, 62 of 1997 (“ESTA”). The Magistrate: Utrecht granted an eviction order against them in terms of ESTA. The seventh respondent passed away before the order was granted. The matter came before me on automatic review in terms of section 19(3) of ESTA.
- [2] The prerequisites for an eviction order in cases where ESTA is applicable are set forth in section 9(2). The first requirement, contained in section 9(2)(a) read with section 8, is that the respondents’ right of residence must have been terminated on lawful grounds. The respondents derived their right of residence through the late Mr Alfred Khumalo, who worked for a previous owner of the farm, Mr D Wright and obtained consent from him to live on the farm with his family (which include the present respondents).
- [3] After Mr Alfred Khumalo passed away, the right of residence of his family could have been terminated under section 8(5), but only upon 12 calendar months’ written notice. The letter of notice upon which the respondents rely for compliance with section 9(2)(a) contains a demand calling upon the respondents to vacate the farm. It does not purport to terminate an existing right of residence, nor does it provide for the necessary twelve months’ notice.
- [4] The applicant alleges in his founding affidavit that Mr Wright, a previous owner of the farm, said that all the respondents had been given notice to vacate the farm. This hearsay allegation does not establish that section 9(2)(a) was complied with.
- [5] I am driven to the conclusion that section 9(2)(a) was not complied with, neither fully nor substantially. That alone prevents me from confirming the Magistrate’s eviction order. There is, however, another reason why the order cannot be confirmed.
- [6] The applicant relies on section 10(2) for compliance with section 9(2)(c). Section 10(2) reads as follows:

“10(2) Order for eviction of person who was occupier on 4 February 1997-

Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.”

The term “suitable alternative accommodation” is defined in section 1 of ESTA as follows:

“suitable alternative accommodation means alternative accommodation which is safe and overall not less favourable than the occupiers’ previous situation, having

regard to the residential accommodation and land for agricultural use available to them prior to eviction, and suitable having regard to-

- (a) the reasonable needs and requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use, and services;
- (b) their joint earning abilities; and
- (c) the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active.”

[7] The undertaking by the applicant to buy a vacant site for the respondents cannot satisfy the requirements of section 10(2), because a vacant site does not provide “suitable alternative accommodation” for the respondents. I must therefore conclude that section 9(2)(c) was not complied with.

[8] For the reasons given above, the entire eviction order granted by the Magistrate: Utrecht on 23 March 2007, including the cost order, is hereby set aside.

A GILDENHUYS

JUDGE OF THE LAND CLAIMS COURT

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