

SOUTH AFRICA / JUDGMENT

Juta v Hattingh and Others (LC145/2010) [2011] ZALCC 23 (30 March 2011)

[2011] ZALCC 23

COURT

Land Claims Court

BEFORE

Y S Meer, A Gildonhuys

CASE / FILE NUMBER

LC145/2010

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

(HELD

AT CAPE TOWN)

Appeal

Case No.: LC145/2010

Heard

on: 23 March 2011

Decided: 30 March 2011

In

the matter between:

LAURENCE

EDWARD

JUTA.....Appellant

And

MICHAEL

HATTINGH.....First

Respondent

ED

WIN A JIJNITA

HATTINGH.....Second

Respondent

PETER

HATTINGHThird

Respondent

THE

NATIONAL MINISTER OF LAND AFFAIRS.....First

Third Party

THE

NATIONAL MINISTER OF HOUSING.....Second

Third Party
THE
MUNICIPALITY OF STELLENBOSCH.....Third
Third Party

JUDGMENT

MEER J.

- [11] This appeal arises from an application instituted by the Appellant for the eviction of Respondents from Appellant's farm under the Extension of Security of Tenure Act 62 of 1997 ("the Act1"), the application for eviction which was brought in the Stellenbosch Magistrate's Court was dismissed with no order as to costs. The Court a quo found that Respondents were entitled to remain in occupation by virtue of their mother's right to family life in accordance with section 6 (2) (d) of the Act. It is against this finding that Appellant now appeals.
- [2] The Appellant, Laurence Edward Juta, is the owner of the farm, Fijnbosch, in the district of Stellenbosch. The Respondents have been residing in a dwelling on the farm since December 2002. The First, Second and Third Third Parties were joined at the instance of Respondents as interested parties in an application for eviction of Respondents under the Act

The

facts

- [3] The facts of the matter may be summarised as follows.
- [4] During December 2002 Mrs. Magrieta Hattingb and her late husband moved into a dwelling on Appellant's farm, Fijnbosch. Their occupation was the result of their respective employment agreements with the Appellant. Magrieta Hattingh is currently 63 years old and not in the pink of health. First Respondent and his wife, the Second Respondent, both aged 29, their minor child and the Third Respondent, also a son of Magrieta Hatting, aged 37, moved into the dwelling in December 2002 with Appellant's consent. According to Appellant there was an agreement between the parties that the three Respondents would only reside in the dwelling temporarily, for a period of three months until 31 March 2003.
- [5] According to the Respondents, as set out in an affidavit of First Respondent, the agreement was that the Respondents could live with their parents indefinitely on the farm, it would seem, in exchange for working on the farm, which they allege they did.
- [6] Whilst Appellant disputed that First and Third Respondents worked on the farm, it is common cause that the Second Respondent was in service on the farm until about February 2006.

- [7] Mrs Magrieta Hattingh's employment was terminated in 2005. It would seem that by that stage she was no longer in a position to carry out her duties for health reasons. Mrs Magrieta Hattingh and her husband were however allowed to continue to reside on the farm. In 2006 Magrieta Hattingh's husband died from lung cancer. At that stage the person living with Magrieta Hattingh in her dwelling were the first, second, and third Respondents, 3 minor children of First and Second Respondent, and Ricardo Hattingh, another adult of Magrieta Hattingh.
- [8] On 18 July 2006 Appellant commenced eviction proceedings against the Respondents by serving upon them a notice to vacate the dwelling by 31 August 2006. This was followed by an application for their eviction in the Stellenbosch Magistrate's Court in June 2008. The Respondents successfully resisted the application for their eviction on the basis that Magrieta Hattingh had a right to family life in accordance with her culture, as specified at Section 6 (2)
- (d) of the Act.
- [9] Notwithstanding the disputes of fact there was agreement between the parties that all the requirements for the eviction of Respondents as occupiers in their own right under the Act have been complied with. It remained to be determined whether they could remain in occupation because of Magrieta Hattingh's right to family life.
- [10] The parties agreed that the sole issue for determination on appeal is whether the Respondents, having taken occupation of the property in question by agreement with the Appellant, are entitled to remain in occupation thereof by virtue of their mother's right to family life in accordance with her culture. Put differently, is an eviction order competent against the major children of an occupier under the Act in circumstances where the occupier, their mother, is not being sought to be evicted, and relies on her right to family life in terms of Section 6 (2) (d) of the Act. On appeal to us the argument revolved around this issue.
- [11] Section 6 (2) (d) of the Act stipulates as follows:
- "6
- (2) Without prejudice to the generality of the provisions of Section 5 and Sub- Section (1), and balanced with the rights of the owner or person in charge, an occupier shall have the right --
- (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;"

The question which arises is what the content of this right is, and specifically, does it entitle the occupier in this case, Mrs.

Hattingh, to have her adult children occupy the property of Appellant with her as a result of her right to family life.

[12] Whilst it is so, as contended by Mr. Moller on behalf of Respondents, that South Africa is a party to several International Instruments specifically protecting the right to family life and the Constitutional Court has commented on the right to pursue family life, there would appear to be no definition of the substance of the right and hence no insight as to the content of this right. In the Certification case it was stated at para 99 “that constitution-makers appear frequently to prefer not to regard the right to marry or to pursue family life as a fundamental right that is appropriate for definition in constitutionalised terms. They thereby avoid disagreements over whether the family to be protected is a nuclear family or an extended family, or over which ceremonies, rites or practices would constitute a marriage deserving of constitutional protection. Thus, some cultures and faiths recognise only monogamous unions while others permit polygamy. These are seen as questions that relate to the history, culture and special circumstances of each society, permitting of no universal solutions.”

[13] Respondents themselves provided no insight or evidence as to the content of the right to family life in accordance with the culture of their family. Similarly, they provided no evidence that the culture of their family was that major children may reside with their parents. Nor did Respondents tender any medical evidence that Magrieta Hattingh was so seriously ill that this necessitated their living with her as care-givers.

[14] Turning to the Act itself for guidance, insight as to whether the right to family life of an occupier (as defined) of land belonging to

Another entitles her to have her adult children occupy the property with her can be gleaned from the contents of Section 8 (5) of the Act, read with Section 8 (4) thereof. These Sections state as follows:

“8

- (4) The right of residence of an occupier who has resided on the: land in question or any other land belonging to the owner for 10 years and- ki) has reached the. Age of 60 years; or
- (b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge,

May not be terminated unless that occupier has committed a breach contemplated in section 10 (1) (a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

- (5) On the death of an occupier contemplated in subsection (4), the right of residence of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10 (1).”

[15] Section 8 (5) deals with the rights of the family of an occupier protected by age or disability after the death of that occupier. This Section, in specifically referring to a spouse or a dependent, infers that these are the family members that the Act contemplates would be entitled to live with an occupier pursuant to the occupier's right to family life. In the balancing of rights of a land owner and an occupier as is required by Section 6 (2) of the Act, restricting family members to a spouse and dependants is an equitable formulation. For were it otherwise, land owners would have the onerous and intolerable burden of housing adult members of occupiers' extended families indefinitely. This could not have been intended by the legislature.

[16] I note that it might well be that in a specific situation a wider interpretation could be accorded to the right to family life as protected in Section 6 (2) (d) of the Act, permitting other family members to reside with an occupier. In such a case, evidence in support of a wider interpretation will be required. We have no evidence in the case before us which will support a wider interpretation. See *Wichmann NO and Another v Langa and Others* 2006

(1) SA 102 (LCC) at 112 F — G.

[17] In view of my finding that the right to family life at Section 6 (2)

(d) of the Act does not entitle the Respondents, as members of the family of Mrs. Magrieta Hattingh but who are not her dependants, to reside on Appellant's property with Mrs Magrieta Hattingh, I conclude that Respondents are not protected from eviction. I note, however, that my finding will not result in Mrs. Magrieta Hattingh being left to live alone in her dwelling as her son Ricardo, whose eviction is not being sought, will continue to live with her.

Costs

In keeping with the practise of the Land Claims Court not to grant costs orders generally, and inter alia in matters under the Extension of Security of Tenure Act No 62 of 1997, such matters being of the ilk of social litigation, it is appropriate that no order as to costs be granted on appeal.

[18] I accordingly grant the following order.

The appeal is upheld. The order of the Court a quo is set aside and substituted as follows.

1. The Respondents are ordered to vacate the premises they occupy on the farm Fijnbosch by 12 May 2011.
2. In the event of the Respondents not vacating the premises they occupy on the farm by 12 May 2011, the Sheriff for the area is authorised and directed to secure their eviction on or after 13 May 2011.
3. There is no order as to costs.

JUDGE Y S MEER

1 agree and If is so ordered.

A GILDONHUYS

Judge

Counsel for Appellant : Adv Lawrie Wilkin

Instructed by : Messers Bouwer Potgieter Attorneys

(Ref) B.D Bouwer)

Counsel for Respondent : Adv Theuns Moller

The University of Stellenbosch

Legal Aid Clinic

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