

SOUTH AFRICA / JUDGMENT

Mjoli v Greys Pass Farm (Pty) Ltd (LCC45R/2018) [2019] ZALCC 25 (15 October 2019) [2019] ZALCC 25

COURT

Land Claims Court

BEFORE

Ncube

CASE / FILE NUMBER

LCC45R/2018

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD

AT RANDBURG

CASE

NO: LCC 45R/2018

In

the matter between:

ANGELINA
NOMVULA
MJOLI Applicant
And
GREYS
PASS FARM (PTY)
LTD Respondent

JUDGMENT

NCUBE AJ

Introduction

[1] This is an application for leave to appeal to the Supreme Court of Appeal. Leave to appeal is brought against the whole of the order of this court made in terms of Section 19(3) of the Extension of Security of Tenure Act, 62 of 1997 (ESTA), on 12 March 2019. This court order of 12 March 2019, effectively confirmed on review, the order made by the Clanwilliam Magistrates' Court in favour of the Respondents against the Applicants. The Magistrate's order effectively relocated the Applicants from one dwelling to another

portion of the same farm, where the house was going to be built for the applicants in case she agreed to relocate.

[2] Initially the Respondent opposed this application but subsequently conceded that leave to appeal should be granted. The concession was made in terms of a written submission by the Respondents dated 19 September 2019.

Grounds of Appeal

[3] The grounds of appeal can be summarised thus:

3.1 The Land Claims Court had no Jurisdiction in terms of Section 19 (3) of ESTA to confirm the Magistrate's order as it was not an eviction order but a relocation order from one building to another building on the same farm.

3.2 The order was too vague and incapable of implementation.

Facts

[4] The Respondent (applicants at the Magistrate court) applied at the Magistrates' Court for an order for the applicant and other occupiers to vacate the house or houses which the applicant and other occupiers occupied on the Modderfontein farm ("the farm") outside Citrusdal. The application was heard. Oral evidence was led and an inspection in loco was conducted.

[5] During the inspection in loco, the Magistrate noted that the circumstances in which the occupiers were living were shocking. The main building had partially collapsed. There was no sanitation. The building posed a danger to the occupants. The adjoining zinc building which the applicant occupied was better but was clearly not of the standard required for human habitation.

[6] The Magistrate noted that at the inspection in loco, the respondent (farm owner or person in charge) had indicated that alternative

accommodation could be made available to the occupiers on another part of the farm. The Magistrate together with all the parties

proceeded to that other part of the farm where alternative accommodation could be provided. At that part of the farm there were

houses occupied by employees of the Respondent. The Magistrate noted that conditions at that part of the farm were conducive to human habitation. The place was equipped with running water and sanitation facilities. The Respondents undertook to provide housing for the occupiers at that part of the farm if the occupiers agreed to move to that part of the farm. The applicants refused to move to that place. It is not clear if other occupants agreed to move.

[7] The Magistrate made an order in the following terms:

“Bevel:

(I) – uitsetting van die 1ste, 2de en 3de respondente en almal wat deur hulle okkupasie verkry het vanaf die woning en aangrensende sinkgeboue wat geleë is op die grond wat beskryf is as plaas Moddefontein NS 549 in die Munisipaliteit Cederberg Afdeling, Clanwilliam Provinsie Wes-Kaap.

(II)– Alle respondente en almal wat deur hulle okkupasie verkry het die woning en sinkgeboue op die plaas Moddefontein NR 549 Clanwilliam Wes- kaap moet ontruim voor of op 31 Januarie 2019.

(IV) – By versuim om genoemde woning te ontruim voor of op 31 Januarie 2019 te die bevel op 7 Februarie 2019 uitgevoer kan word deur die balju, met dien verstande dat die alternatiewe akkomodasie beskikbaar is.

(V) – Geen koste bevel word gelas.

Hierdie bevel word opgeskorte hangende bekragtiging deur die Grondeise hof”

[8] The matter was accordingly referred to the Land Claims Court for review purposes in terms of Section 19 (3) of ESTA. The Land Claims Court (Per Ncube AJ) confirmed the Magistrate’s order but changed the date on which the occupiers were to vacate the building.

THE LAW

[9] The application for leave to appeal is dealt with in Section 17 of the Superior Courts Act[1] (“the Act”). The Act provides:

“17(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 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) and

(C) Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal will lead to a just and prompt resolution of the real issues between the parties.”

[10] In *S v Smith*[2], the Supreme Court of Appeal (“SCA”) held:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”

[11] The SCA has conclusively decided that an eviction in terms of the ESTA is confined to an eviction from land, not from one dwelling to another and that a relocation cannot amount to an eviction in terms of ESTA[3]. In casu, the Magistrate’s order was one of relocation of the applicant from one dwelling on one portion of the farm, to another portion on the same farm. There was no house on the second portion of the farm. The Magistrate ordered the owner to provide the applicant with a house on the second portion to which the applicant could relocate. The Magistrate’s order effectively put the applicant’s

relocation in abeyance until the farm owner made alternative accommodation on the second portion of the farm available.

[12] The Magistrate’s order of relocation did not amount to an eviction in terms of ESTA and it was consequently not reviewable in terms of Section 19(3) of ESTA. To that end, the applicant has a reasonable prospect of success on her first ground of appeal.

However, in my view, the applicant has no reasonable prospect of success on the second and third grounds of appeal.

[13] In her second ground of appeal the applicant avers that the Magistrate’s order requiring her to be relocated to alternative

accommodation to be provided by the Respondent, “Op die gedeelte van die plaas soos uitgewys deur die applikante” is so vague that it is incapable of execution. I do not agree. The piece of land on which alternative accommodation was to be provided was shown to the parties at the inspection in loco. Parties know exactly where the alternative dwelling was going to be constructed. Therefore the exact location of the alternative dwelling to be constructed was ascertainable. Therefore to say the order is vague and incapable of execution in that regard is somewhat ill- conceived.

[14] I have not dealt with the third ground relating to non-compliance with statutory requirements in terms of Section 9 of ESTA because in any event the application should succeed on the first ground of appeal.

ORDER

[15] In the result, I make the following order:

- (1) Leave to appeal to the SCA is granted to the extent that a relocation order is not an eviction and therefore not reviewable in terms of Section 19(3) of ESTA.
- (2) Costs to be costs on the appeal.

T.M NCUBE

Acting Judge, Land Claims Court

Appearances:

For the Applicant:

P. Hathorn SC

Instructed by:

Regan Brown Inc, Cape Town

For the Respondent:

JJ Rysbergen

Instructed by:

Leidig Attorneys, 13 Long Street, Riebeeck West

[1] Act 10 of 2013

[2] 2012 (1) SACR 567 (SCA) Par 7

[3] Oranje & others v Rouxlandia Investments (PTY) ltd 2019 SA 108 (SCA) Par 10

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