

SOUTH AFRICA / JUDGMENT

Mnguni v Damview Trust and another (LCC60/2015) [2022] ZALCC 11 (11 April 2022)

[2022] ZALCC 11

COURT

Land Claims Court

BEFORE

Ncube

CASE / FILE NUMBER

LCC60/2015

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REPUBLIC
OF SOUTH AFRICA
IN THE LAND CLAIMS
COURT OF SOUTH AFRICA
HELD AT DURBAN
CASE NO: LCC60/2015

REPORTABLE:

YES/NO
OF INTEREST TO OTHER
JUDGES: YES/NO
REVISED.
YES/NO
In

the matter between:

BHEKUMUZI
SAMUEL MGNUNI
Plaintiff
and
DAMVIEW
TRUST
First Defendant
DIRECTOR
GENERAL OF DEPARTMENT OF
RURAL
DEVELOPMENT & LAND REFORM
Second Defendant

JUDGMENT

NCUBE J

Introduction

[1] This is an action in which the Plaintiff seeks an order declaring him a labour tenant, in terms of section 33(2A) of the Land Reform (Labour Tenants Act, Act No 3 of 1996 (“the Act”). The action is opposed by the First Defendant. The affected land is Paboom Farm (“the farm”), in Bergville, in the province of Kwa Zulu-Natal. The matter was heard on 30 July 2018 and adjourned sine die, by agreement, as parties wanted an opportunity to attempt a settlement. Settlement negotiations failed. The matter was again set

down for closing arguments. The Plaintiff was the only witness who testified in support of the relief sought. Mr Tony Braitwaite was also the only witness who testified on behalf of the First Defendant.

The Legal Matrix

[2] Section 1 of the Act defines a Labour Tenant as follows:

“labour tenant’ means a person-

- (a) who is residing or has the right to reside on a farm;
- (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a) or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
- (c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm;

Including a person who has been appointed successor to the labour tenant in accordance with the provision of section 3(4) and (5), but excluding a farmworkers.”

[3] On the other hand, a farm worker is defined in section 1 of the Act as follows:

“farmworker’ means a person who is employed on a farm in terms of a contract of employment which provides that-

- (a) in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land; and
- (b) he or she is obliged to perform his or her services personally.”

[4] Section 3(1) of the Act refers to the right of the Labour tenant to occupy and use land and it states as follows:

“3. Right to occupy and use land

(1) Notwithstanding the provisions of any other law, but subject to the provisions

of subsection (2), a person who was a labour tenant on 2 June 1995 shall have the right with his or her family members-

- (a) to occupy and use that part of the farm in question which he or she or his or her associate was using and occupying on that date;
- (b) to occupy and use that part of the farm in question the right to occupation and use of which is restored to him or her in terms of this Act or any other law.”

[5] Section 2(5) of the Act sets out the onus resting upon the Plaintiff to prove that he is a labour tenant and it states thus:

“If in any proceedings it is proved that a person falls within paragraphs (a), (b) and (c)

of the definition of “labour tenant” that person shall be presumed not to be a farmworker, unless the contrary is proved.”

Section 2(5) was added to the Act. It was added by a 1997 amendment introduced by Act 63 of 1997. Prior to the amendment the Plaintiff

bore the onus to prove both that he fell within paragraphs (a), (b) and (c) of the definition of labour tenant and that he was not a farm workers.[1] The effect of the amendment is that once the Plaintiff has proved that he falls within paragraph (a), (b) and (c) of the definition of labour tenant, the onus shifts to the defendant to prove that the Plaintiff is a farm worker.[2]

[6] It is apparent from the onus stated in section 2(5) that once the Plaintiff proves that he falls under paragraph (a), (b) and (c) of the definition of labour tenant, he will be presumed to be a labour tenant, not a farm worker, the onus then will shift to the defendant to rebut the presumption by leading evidence to the contrary that the Plaintiff is in fact a farm worker not a labour tenant.

[7] Against the legal framework background it is now important to examine the evidence presented with a view of determining if each party was able to discharge the requisite onus which they bear.

The Plaintiff's Testimony

[8] The Plaintiff testified that he resides on the farm. He was born there on 11 June

1967. He is the youngest son of his father Mgijimi and Buselaphi, his mother. Both his parents are late. The parents resided on the farm and they provided labour to Mr F.C Hall, (“Mr Hall”) the owner of the farm at the time. The father was ploughing the fields and performed

various other duties. The Plaintiff's mother was a domestic worker, she was cleaning the house and the premises. According to the Plaintiff, his father was paid a salary for the work he was doing. The mother was not paid. The Plaintiff testified that his father grazed unlimited number of cattle on two communal camps set aside for use by workers. Cropping was also allowed. There was also a communal cropping area used by all workers. Apart from his parents, the Plaintiff had two sisters, Khanyisile and Bhejile who were also working for Mr Hall.

- [9] The Plaintiff could not say if his grandparents ever worked on the farm, but his father told him that they resided on the farm. The grandfather was Dingindawo. The grandmother was known as Kamazibuko according to the information the Plaintiff got from his father. Both his grandparents were buried on the farm.
- [10] The Plaintiff's father passed away in about 1984, while the Plaintiff was 17 years old and attending school. The Plaintiff had to leave school at the age of 17 in order to work on the farm so that the Mnguni family could continue residing on the farm. When the Plaintiff began working on the farm, Mr Peter Britz ("Mr Britz") had taken over the ownership of the farm. Plaintiff was milking cows but later Mr Britz got him a driver's licence and he drove trucks on the farm. According to the Plaintiff he received a monthly salary for the duties he performed on the farm. When the Plaintiff started working on the farm, he was paid a salary R15-00 per month. Apart from the R15-00, the Plaintiff testified, he got thirty
- (30) bags of 80kg each per year in July which was the end of the harvesting period.
- [11] Grazing and cropping were allowed for all families on the farm. There were two communal grazing camps and a demarcated cropping area for use by Black workers. In 1984 the Plaintiff had 25 herd of cattle and 10 goats. When cattle reached 30 he would sell others to keep the numbers at 10. They were also milking the cows. If they had to sell, they would sell the cows which they were not milking.
- [12] In 1993 Mr Britz sold the farm to the First Defendant. At the present, Mr Tony Braitwaite ("Mr Braitwaite") on behalf of the First Defendant, is conducting operations on the farm. In 1993 the Plaintiff was working as a truck driver. He was paid a monthly salary of R150-00. In addition to R150-00, the Plaintiff received 12 bags of 80kg maize per year. Apart from 12 bags the Plaintiff, like other workers, got 12 rows of fresh mealies. Over and above that, the Plaintiff got 500g of mealie-meal per week. Cropping had stopped but grazing of cattle continued. Mr Braitwaite identified the camp where cattle could graze.
- [13] The Plaintiff stopped working in 2003, when he was earning a salary of between R1000-00 and R1400-00 per month, depending on the number of days he had worked. 12 rows of fresh mealies also stopped in 2003. If the Plaintiff requested mealie-meal from Mr Braitwaite in 2003, the value thereof was deducted from his salary. All other families, except the Plaintiff's family have left the farm. The Plaintiff still resides there and he is still grazing his herd of 8 cattle and 12 goats around his homestead.

Mr Braitwaite's testimony

- [14] Mr Braitwaite testified on behalf of the First Defendant. The First Defendant purchased the farm in 1993 from Mr Britz. When he took over operation on the farm all families except the Plaintiff's family, left the farm. Mr Braitwaite employed the Plaintiff because he had a licence to drive a truck. Mr Braitwaite could not remember how much the Plaintiff was paid but he was the top paid worker because of his skill as a truck driver. He denied that the Plaintiff was paid R150-00. According to Mr Braitwaite, the Plaintiff was paid more than R150-00 per month.
- [15] In addition to his salary the Plaintiff was given 12 bags of maize per year. He was also given 12 rows of mealies in another farm known as Dalmore Farm. According to Mr Braitwaite the salary in cash which the Plaintiff received was more than all the other rights he had. The Plaintiff was allowed to graze 6 herd of cattle on the farm but he grazed more. He was not allowed to keep goats.
- [16] The farm in question is small, it is developed with irrigation, feedlot and abattoir. Mr Braitwaite testified that he is prepared to relocate the Plaintiff to another site. He is also prepared to sell the farm to the Government and get back his purchase price. In cross examination by Mr Chithi Counsel for the Plaintiff, Mr Braitwaite averred that the Plaintiff is a farmworker not a labour tenant.

Discussion

- [17] As stated earlier in this judgement to qualify as a labour tenant, the Plaintiff must prove that he falls within paragraph (a), (b) and
- (c) of the definition of labour tenant the onus will then shift to the First Defendant to prove that the Plaintiff is not a labour tenant but a farm worker. If the Plaintiff fails to prove that he falls within paragraph (a), (b) and (c) of the definition of labour tenant the onus does not shift to the defendant to prove that the Plaintiff is a farm worker.
- [18] In the case the Plaintiff's evidence falls short of proving that the Plaintiff falls under paragraphs (a), (b) and (c) of the definition of a labour tenant. There is no doubt that the Plaintiff satisfies the requirement of paragraph (a) as he is resident on the farm and was residing there on 02 June 1995. However, the Plaintiff failed to prove that labour which he provided to the farm owner be it Mr Britz or Mr Braitwaite was in consideration for the right to reside, crop and graze cattle on the farm. The Plaintiff himself, referring to R15-00 he received from Mr Britz said,

"It was salary for work that you would have done. Over this R15-00 we were given ration of mealies. It was 30 bags of 80 kg each per year, not per month."

- [19] Referring to payment he received from Mr Braitwaite, the plaintiff said:

“I think I was earning about R150-00 since it was less than R200-00. I was paid monthly. It was my salary. In addition, we got 12 bags of maize per year. He also gave us a jam tin (sic) of mealie-meal 500g per week depending on the number of days you had worked.”

By 2003 when he stopped working, the Plaintiff testified, he was earning between R1000-00 to R1400-00. Mr Braitwaite might be correct that the Plaintiff was the highest paid worker.

[20] It is possible that the Plaintiff’s father was a labour tenant as when he stopped working, the Plaintiff left school at the age of 17, to work on behalf of his father, so that the family could continue staying on the farm. However, at that time the Plaintiff was not the Head of the Mnguni family and he had no independent right to crop and graze the cattle on the farm, in fact there is no evidence that he owned live stock at that time.

[21] It is true that Mr Braitwaite did not plead in his papers that the Plaintiff is a farm worker. However as stated earlier in this judgement, the onus to prove such, has not shifted to the First Defendant since the requirement is that the Plaintiff himself, must first prove that he falls within paragraphs (a), (b) and (c) of the definition of labour tenant which he has failed to prove. What is clear though is that the Plaintiff is an occupier but not a labour tenant.

Order

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

1. The Plaintiff’s claim is dismissed.
2. There is no order as to costs.

M T NCUBE

Judge of the Land Claims Court of

South Africa, Randburg

Appearances

For Plaintiff: Adv.

Chiti

Instructed by: Nompumelelo

Hadebe Inc.

Durban

For First Defendant Mr Marshall

Instructed by:

Macalilay & Riddel Attorneys

Bergville

[1] Mahlangu v De Jager 1996 (3) SA 235 LCC at 241 E-F

[2] Mlifi v Klingenberg 1999 (2) SA 674 LCC at 683 A-B

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