

SOUTH AFRICA / JUDGMENT

Mtshali v Bencor Eiendoms (Pty) Ltd and Another (LCC39/2024) [2024] ZALCC 24 (18 July 2024)

[2024] ZALCC 24

COURT

Land Claims Court

BEFORE

Ncube

CASE / FILE NUMBER

LCC39/2024

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IN

THE LAND COURT OF SOUTH AFRICA

HELD

AT RANDBURG

CASE

NO: LCC39/2024

Before:

Honourable Ncube J

1.

REPORTABLE: YES/NO

2.

OF INTEREST TO OTHER
JUDGES:

YES NO

3.

REVISED. YES/ NO

In

the matter between : NHLANHLA
 VINCENT MTSHALI
 and
 BENCOR
 EIENDOMS(PTY) LTD
 MR
 BEN BESTER
 Applicant
 First
 Respondent
 Second
 Respondent

Heard:

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via E-mail.
 The date and time for hand-down is deemed to 18 July 2024 at 15h00.

JUDGMENT

Ncube J

Introduction

[1] This is urgent application in which the applicant seeks the following relief:

- a) A declaration that the applicant is an occupier of Wagendrft farm which is also referred to as the Lowlands Farm and that his rights
are protected by the Extension of Security of Tenure Act 62 of 1997 ("ESTA")
- b) Declaring the removal or prohibition of entry of 31 cattle from the designated camp to be wrong and unlawful and that cattle should be returned to the camp
- c) Interdicting the first and second respondents or any one acting under their direction from interfering with the applicant's rights to graze (sic) on the Lowlands farm
- d) The first and second respondents to be directed to do all that is necessary to ensure that the applicant's cattle are returned to the designated grazing land at the Wagendrft Farm which is also referred to as Lowlands farm.

The application is opposed by the first and second respondents.

Factual Background

- [2] The applicant's grandfather Mzanywa Mtshali at some stage, arrived and established the Mtshali Homestead at Wagendrift also known as Lowlands farm ("the farm"). Some of the members of the Mtshali family were working for the then farm owners, Mark Phil and David-Mark Phil. Later, Vaughen Alan Skead ("Mr Skead") became the owner of the farm and a member of the entity known as the Lowlands Beef CC. The applicant was employed by Lowlands Beef CC and resident at the Mtshali Homestead with his siblings and other members of the Mtshali family.
- [3] Prior to 2019, the applicant and Lowlands Beef CC, represented by Mr Skead, entered into an agreement. In terms of the said agreement, the applicant was authorised to keep a certain number of cattle on the farm. The applicant's cattle were restricted to graze in a demarcated grazing camp. The applicant had to pay rent of R50-00 per head per month. In 2000 or 2001, the applicant terminated his employment with Lowlands Beef CC. According to the applicant he was retrenched by Mr Skead in 2021. However the applicant chose not to challenge Mr Skead's affidavit in his Replying Affidavit, saying the applicant voluntarily terminated his employment with Lowlands Beef CC.
- [4] When the applicant's employment with Lowlands Beef CC ended, Mr Skead withdrew his consent for the applicant to keep livestock on the farm. There was a family feud between the applicant and his younger brother Dumisani Willton Mtshali ("Willton"). As a result of that family feud, Willton approached the Escourt Magistrate Court for a protection order in terms of the Domestic Violence Act.[1]. The Magistrate granted a final protection order against the applicant on 30 October 2023. In terms of the final Protection order, the applicant was prohibited from entering the Mtshali Homestead on the farm.
- [5] As the applicant could no longer stay at the Mtshali Homestead, in terms of the protection order, he asked Mr Skead for an alternative place to stay. Mr Skead gave the applicant the permission to occupy an empty house situated at the Lowlands Station, for which house Mr Skead was also responsible. In 2020 the applicant left the house at Lowlands station and established his own homestead on Roode Poort Spruyt, which is owned by Transnet. The applicant has erected a house and three rondavels built of cement blocks and corrugated iron roof at the Roode Poort Spruyt. There is also a livestock kraal there and a parking area for his vehicle. The buildings are of a permanent structure.
- [6] On 29 August 2023 a provisional liquidation order was granted against the Lowlands Beef CC. The final liquidation order was granted on 23 October 2023. Peter Carolus, Eugene Nel, Sharon Amy Potgieter and Glen Vivian Usher were appointed as liquidators. Subsequent to the provisional liquidation of Lowlands Beef CC, Mr. Skead was appointed by the liquidators to act as their agent to take control, protect the assets and take charge of the cattle on the farm.

- [7] A quarantine notice by the State Veterinarian was issued on 13 April 2023. The Lowlands farm was, as a whole, placed under quarantine. As a result of that quarantine notice, no livestock may be removed or introduced into the farm. At the present moment, the applicant's livestock is at Rhoode Poort Spruyt where the applicant resides. The first respondent is now the owner of the farm having purchased it as from 01 February 2024.

Issues

- [8] The first issue for determination by this court, is whether the applicant is the occupier of Lowlands Farm in terms of ESTA and therefore entitled to protection under ESTA. The second issue, if the applicant is an occupier, whether applicant has a right to keep livestock on the farm and if he has such a right what is the source of that right.

Discussion

- [9] ESTA defines "occupier" as meaning " a person residing on land which belongs to another person and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding-

- a)
- b)
- c) "

Paragraphs

- (a) to (c) are not relevant for purposes of this judgement. It suffices to say that, to qualify as an occupier, the person must be residing[2] on land which belongs to another person with consent or another right in law to do so. To reside means " to live permanently in a place, to have one's home"[3] Whilst the original version of ESTA does not define the term "reside", the amended version of ESTA[4] defines the term "reside" thus:

'reside' means to live at a place permanently, and 'residence' has a corresponding meaning"

Therefore, for a person to reside at a certain place, he must stay at that place permanently or he must have his permanent home at that place.

- [10] The applicant in this case has his home and he lives permanently at Roode Poort Spruyt. The applicant's house structures at Roode Poort Spruyt are of a permanent nature. It will be impossible for the applicant to return to his parental home since in terms of the protection order, he is prohibited from entering that homestead. He was offered an alternative accommodation on the farm, but he voluntarily left that accommodation and went to establish his own permanent homestead consisting of three rondavels built of cement blocks and corrugated roof. There is also a permanent house built with cement blocks and congregated iron roof.

In addition, the applicant has a livestock kraal on his yard where he keeps his livestock. These structures signal intention to stay at Roode Poort Spruyt on a permanent basis. The applicant is therefore an occupier of Roode Poort Spruyt not Lowlands farm as he claims to be.

[11] The finding that the applicant is not the occupier of Lowlands's farm, should be the end of the enquiry. However, I proceed ex abundanti cautela. The applicant does not seek the relief restoring his residence on the farm, but he seeks restoration of his right to use the grazing camp on the farm in order to graze his cattle there whilst he is residing on another farm. The law in regard to grazing of livestock on the farm belonging to another person is settled. The right to keep and graze livestock on another person's land is not an ESTA right. It is a personal right. The source of that right is the consent given by the owner of the land or the person in charge.

[12] In *Adendorffs Boerderye v Shabalala and Others*[5] Mathopo JA expressed himself in the following terms:

"In the present matter the first respondent conceded that he did not reside in the property and further concede that he was granted

grazing rights by the appellants' predecessor. It thus follows that his rights of grazing does (sic) not derive from ESTA. He has a personal right to use the land for the purpose of grazing"

[13] In *Margre property Holdings CC v Jewula*[6] Pickering J said:

"The right of an occupier of a farm to use the land by grazing livestock thereon is a right of a very different nature to those rights specified in s6(2) [in ESTA]. In my view such use was clearly not the kind of use contemplated by the Legislature when granting to occupiers the right to use the land on which they reside. Such a right would obviously intrude upon the common law rights of the farm owner and would in my view, thereby amount to an arbitrary deprivation of the owner's property. There is no clear indication in the Tenure Act such an intrusion was intended. It is relevant in this regard that respondent is neither an employee not(sic) a labour tenant as defined by a section 1 of the Land Reform (Labour Tenants) Act 3 of 1996. His right, if any, to graze stock on the farm does not derive from the Act. In my view, the use of land for purposes of grazing stock is pre-eminently a use which would be impossible to regulate in the absence of agreement between the parties. I am satisfied in all the circumstances that an occupier is not entitled as of right to keep livestock on the farm occupied by him as an adjunct of his right of residence. His entitlement to do so is dependent on the consent of the owner of the property having been obtained."

[14] Therefore in the present case, even if the applicant was an occupier on Lowlands farm, he would not have been entitled to graze his cattle on the farm as he had no consent to do so. Mr Skead deposed to an affidavit stating that he had withdrawn his consent to the applicant to graze cattle on the farm. That affidavit was not challenged. The liquidators also did not give the applicant consent to graze livestock on the farm, not even the new owner of the farm. This is not the kind of the case which should detain me for long. The applicant failed to prove that he is entitled to relief he is seeking.

Costs

[15] Parties did not argue for costs and there are no exceptional circumstances in this case justifying an award of costs.

Order

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

1. The application for condonation of the late filing of the applicant's Replying Affidavit and Heads of Argument is granted.
2. The application brought by the applicant on the Notice of Motion with the Relief sought therein is dismissed.
3. There is no order as to costs

M.T Ncube

Judge of the Land Court

Date of hearing: 27 May 2024

Date of judgment: 18 July 2024

Appearances

For the Applicant: Mr. M. Sikhosana Legal aid South Africa Pietermaritzburg For the Respondent: Adv MG Roberts SC Adv E Roberts Instructed by Christopher Walton & Tatham Inc Ladysmith

[1] Act 116 of 1998

[2] My own emphasis

[3] See Collins Concise English Dictionary (6th ed 2006) Page 1379

[4] Extension of Security of Tenure Amendment Act 2 of 2018 which came into effect on 01 April 2024

[5] (997/15)

[2017] ZASCA 37 (29 March 2017) Paras 27 &28

[6] [2005] 2 All SA 119 E Par 7

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Prepared on 12 October 2026 · Esheria