

SOUTH AFRICA / JUDGMENT

Normandien Farms (Pty) Ltd and Another v Twala and Another (CC24/2010) [2010] ZALCC 7 (12 April 2010) [2010] ZALCC 7

COURT
Land Claims Court

BEFORE
N Conjwa

CASE / FILE NUMBER
LCC24/2010

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

Case Number:	LCC24/2010
	HELD
	AT DURBAN
	BEFORE:CONJWA
	AJ
	IN
THE MATTER BETWEEN:	NORMANDIEN
	FARMS (PTY) LTD FIRST APPLICANT
	STELLA
	DELPORT SECOND APPLICANT
	And
	JAMES
	TWALA FIRST RESPONDENT
	ZAKHE
	TWALA SECOND RESPONDENT

JUDGMENT

Conjwa AJ

[1] The applicant launched an urgent application for interim relief, pending the outcome of an action to be instituted for the eviction of the first and second respondents from the farm Millvale, Newcastle, KwaZulu-Natal. As temporality relief the applicant seeks an order on the following terms: -

That first and second respondents be ordered to forthwith reduce their joint number of cattle to fourteen head of cattle;

That the first and second respondents be ordered to forthwith graze their fourteen head of cattle only on the designated area marked “A2” on the cadastral map annexed to the founding affidavit papers marked Annexure “A”.

[2] The Application is opposed by the two respondents.

[3] The first applicant, NORMANDIEN FARMS (PTY) LTD, a company with limited liability, is the lessee of the farm Millvale hereunder referred to as the “farm”. The second applicant is the owner of the farm, which she had inherited from her father during or about May 2007. Second applicant’s father had leased the farm to Mr Rupert Gebers for a period of 30 years. The lease was notoriously registered against the title deed of the portions of Millvale comprising the farm Millvale measuring 523 hectares. Mr. Gebers ceded the lease to Mondi Limited, who in turn ceded the lease to the first applicant in October 2009.

[4] The two respondents are brothers residing on the farm.

[5] What is of paramount importance in the lease agreement, for the purposes of the present enquiry, is Clause 15.1 of the timber lease which reveals that the two employees on the farm at the time, namely in 1997, were James Twala, the first respondent and Madoliamos Shabalala. The timber lease recorded that James Twala was permitted to have two head of cattle and three horses.¹

[6] It is applicant’s case that when a head count was conducted on 17 November 2009, it was discovered that the respondents owned sixty head of cattle, eight horses, a fowl as well as six goats amongst the two of them.

7] The first applicant wishes to plant pine trees on the farm commencing on 1st February 2010. The applicant contends further that it is imperative, for operational reasons,² that the first and second respondents’ cattle numbers firstly be reduced and, secondly, be moved to a designated area on the farm as the animals tend to eat the tips of the pine seedlings and damage the seedlings by trampling on them.

- [8] The expert report commissioned by the applicant states that the area allocated to the respondents for their cattle by the applicant has a carrying capacity of 1.9 LAU/HA “this area is large enough to accommodate the cattle with the proviso that in certain instances, such as abnormally dry season, some supplementary fodder may well be required during the long cold winter months”.³
- [9] The first applicant has, for the purpose of this application conceded that the first respondent is a labour tenant and that, therefore, he and his brother the second respondent fall to be dealt with in terms of the Land Reform (LABOUR TENANTS) Act 3 of 1996.
- [10] The two respondents allege that they came to live with their parents on the farm in 1976. Their father worked for the previous owner of the farm, Mr Gibson, without wages in exchange for the right to build a home on an allocated piece of land on the farm, to plant a vegetable garden, and to graze his livestock. He had approximately 30 cattle at the time.
- [11] When the respondents’ father became too weak to work, one of his sons started working for the owner of the farm in his place. In 1983 the first respondent started working for the owner of the farm for no wage and under the same conditions as a labour tenant.⁴ In 1997 the second respondent began working for the owner as a labourer. When the farm was leased to Mr. Gebers at the end of 1997,

the two respondents continued to work on the farm. The same obtained when Mondi took over the farm.

- [12] It is common cause between the parties that, at the least, first respondent does have grazing rights. It is also not in dispute that cattle and pine seedlings are incompatible unless the cattle are kept away from the seedlings. The respondents have also indicated their willingness to sell their goats.
- [13] There is, however, a dispute of fact between the parties as to the number of cattle that the respondents are allowed to graze. The respondents contend further that the designated area is not necessarily the only area that their cattle can be moved to. Save for stating that they have to be moved closer to their home, they do not state to where the cattle should be moved.
- [14] It is correct that, where in proceedings on notice of motion a dispute of fact has arisen on the affidavits, a final order whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant’s affidavit which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact. If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross examination under Rule 6(5)(g) of the Uniform Rules of Court and the court is satisfied as to the inherent credibility of the applicants’ factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines

whether the applicant is entitled to the final relief which he seeks.⁵

[15] From the papers filed of record it appears that Mr Gebers in clause 15 of the lease agreement sought to set out the rights of the labourers. It is unfortunate that he has since passed on and can therefore not be cross-examined about the said clause. There is nothing on the papers nor do the respondents suggest that Mr Gebers told an untruth. What the respondents allege is that their right to have cattle on the farm obtains from an agreement which their father had with Mr. Gebers to keep 50 head of cattle at the time. It is highly improbable that Mr. Gebers would, after having decided to set out the rights of the labourers, make a round about turn and change the number that they are allowed to keep. When one considers the size of the farm in question, the confirmatory affidavit, Mr. Esterhuyze's affidavit, as well as the fact that it is a timber farm, it casts some doubt as to whether the respondents would be allowed to keep the number that they allege as this would leave little room for the owner to farm.

[16] It is trite that an applicant seeking an interim interdict is required to establish four requirements namely, a prima facie right, a well grounded apprehension of irreparable harm if the interdict is not granted, a balance of convenience in favour of

granting of an interim interdict, and the absence of any other satisfactory remedy.⁶

[17] In relation to the establishment of a prima facie right, the first applicant states as follows "The first applicant has, as lessee, the clear right for operational reasons to relocate any labour tenant. This right would include the reduction and moving of cattle to a designated area on a farm if operational

reasons require such steps".⁷ The test has been stated as follows: In determining whether a prima facie right has been established, the right need not be shown on a balance of probabilities. If it is prima facie established, though open to some doubt, that is sufficient.⁸ Applicant's right to relocate the labour tenants stems from his right as lessee of the farm to farm with timber.

[18] The applicant is required to show that there is a well grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing his right. A reasonable apprehension of injury is one which a reasonable man might entertain on being faced with certain facts. The test is an objective one. The applicant is not required to establish that, on a balance of probabilities flowing from undisputed facts, injury will follow: he only has to show that it is reasonable to apprehend that injury will result. On the basis of the facts presented to him the judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant.⁹ The defence argues that the applicant has not made out even a prima facie case of harm. I am satisfied that the applicant has managed to show that he will suffer a loss of income as well as a loss relating to the cost of the seedlings that have already been purchased to the amount of R1.6m.

[19] In as far as the requirement of a balance of convenience the court is called upon to weigh the prejudice that the applicant will suffer if the interim relief is not granted against the prejudice to the respondent if it is. The essence of the balance of convenience is to try to assess which of the parties will be least seriously inconvenienced by being compelled to endure what may prove to be a temporary injustice until the just answer can be found at the end of the trial.¹⁰ In my judgement, the loss that the applicants stand to suffer if the order is not granted vis a vis the loss that the respondent will suffer if the order is granted, justify a finding that the balance of convenience favour the applicants.

[19] No alternative remedy has been suggested on the papers.

[20] Order:

In the light of the above the following order is made;

Pending the outcome of an action to be instituted within 30 days from the date of this order against the first and second respondents

The first and second respondents are ordered to forthwith reduce their joint number of cattle to nineteen head of cattle;

The first and second respondents are ordered to forthwith graze their nineteen head of cattle only on the designated area marked

“A2” on the cadastral map annexed to the founding papers marked annexure “A”

That the orders in 1.1 and 1.2 operate with immediate effect pending the outcome of the action envisaged in prayer 1.

Costs are reserved for the decision of the court hearing the action.

Given this 12 day of April 2010

N. CONJWA AJ

LAND CLAIMS COURT

Appearances

For the Applicants: Advocate De Wet. Instructed by De Jager Baqwa Maritz Attorneys

For the Respondents: Mr PJ Misselhorn

1 Para 12 of Applicant’s founding affidavit See also clause 15 of Annexure B2

1 Para 12 of Applicant’s founding affidavit

See also clause 15 of Annexure B2

2 This submission is presumably based on Section 8 of Land Reform (Labour Tenants Act 3 of 1996)

3 Annexure C to the founding affidavit – page 58

4 Para 12.2.7 supra

5 Plascon – Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd

[1984] ZASCA 51; 1984 (2) All SA 366 (A) @370

6 Camps Bas Residents and Association v Augostides 2009 (6) SA 190 @ 195 para E, as well as C.B. Prest SC: The law of Interdicts

7 Para 30 of applicants founding affidavit

8 Camps Bay Residence and Rate Payers Association v Augoustides 2009

(6) SA 190 @ 195

9 C.B.Prest SC The Law and Practice of Interdicts

10 Supra @ page 72

8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALCC/2010/7.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/normandien-farms-pty-ltd-and-another-v-twala-unknown-topic-alcc-2010>

Prepared on 12 October 2026 · Esheria