

SOUTH AFRICA / JUDGMENT

Quantum Foods (Pty) Ltd v Jansen and Others (LCC88/2021) [2024] ZALCC 18 (16 May 2024)

[2024] ZALCC 18

COURT

Land Claims Court

BEFORE

SJ Cowen

CASE / FILE NUMBER

LCC88/2021

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD

AT RANDBURG

CASE

NO: LCC88/2021

Before:

The Honourable Judge Cowen

Heard

on: 16

February 2024

Delivered

on: 16 May 2024

1.

REPORTABLE:

NO

2.

OF

INTEREST TO OTHER JUDGES: NO

3.

REVISED.

NO

16

May 2024

In

the matter between

QUANTUM

FOODS (PTY) LTD

Applicant

(Reg.No.2012/124966/07)
and
DANIEL
JANSEN
First Respondent
BRONJA
JANSEN
Second Respondent
JOHANNES
JONAS Third
Respondent
NANCY
JONAS Fourth
Respondent
NATALIE
JONAS Fifth
Respondent
JOAN-ANNE
VAN ROOYEN Sixth
Respondent
MARIO
OLIVIER Seventh
Respondent
MORNE
ISODORE DEDAA Eighth
Respondent
BURTON
QUASHU Ninth
Respondent
BERENIQUE
QUASHU Tenth
Respondent
CHARLES
EGEN AWERIES Eleventh
Respondent
ANNAMARIE
PIETERSE Twelfth
Respondent
ALL
OTHER OCCUPANTS OF
COTTAGES
1,3,4,6 AND
THE
SUPERVISORS HOUSE, EGGLAND FARM,
UITENHAGE Thirteenth
Respondent
NELSON
MANDELA BAY MUNICIPALITY
Fourteenth Respondent

HEAD: EASTERN CAPE PROVINCIAL
DEPARTMENT
OF AGRICULTURE, LAND
REFORM
AND RURAL DEVELOPMENT Fifteenth
Respondent
KOUGA
MUNICIPALITY Sixteenth
Respondent

JUDGMENT

COWEN J

1. The applicant, Quantum Foods (Pty) Ltd (Quantum Foods), has applied to this Court to evict the first to thirteenth respondents from property known as Egglan Farm, Uitenhage in the Eastern Cape (the property). Quantum Foods is the owner of and in charge of the property, which is used for agricultural purposes, specifically the production of hen's eggs and the propagation of wildlife for sale.
2. For purposes of these proceedings, Quantum Foods accepts that the respondents are occupiers in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA) and the eviction application is subject to its provisions. The first and second respondents, Mr Daniel Jansen and Mrs Bronja Jansen, are husband and wife and live together in the supervisor's house on the property. The third and fourth respondents, Mr Johannes Jonas and Mrs Nancy Jonas, are also married and live together in cottage number 3 on the property, with their adult daughter, Ms Natalie Jonas who is some twenty years old. The sixth and seventh respondent, Mrs Joan-Anne van Rooyen and Mario Olivier, live together in cottage number 6 on the property. The eighth respondent is Mr Morne Dedaa, who lives in cottage number 1. The ninth and tenth respondents are Mr Burton Quashu and Ms Berenique Quashu. They are, however, now deceased. They were siblings and lived in cottage number 4. The eleventh and twelfth respondents, Mr Charles Egen Aweries and Mrs Annamarie Pieterse, reside together in cottage number 7. The thirteenth respondent is 'all other persons who might occupy the above mentioned premises under the first to twelfth respondents', in other words, in one of the five affected households.
3. The fourteenth respondent is the Nelson Mandela Municipality, which was erroneously joined. The sixteenth respondent (which was only subsequently joined) is the relevant municipality, the Kouga Municipality (the Municipality). The fifteenth respondent is the Head of the Eastern Cape Provincial Department of Agriculture, Rural Development and Land Reform (the Department).
4. I am unable to determine the application for eviction on the papers at this stage for two related reasons.

5. First, in the report delivered to Court in terms of section 9(3) of ESTA, the probation officer pointed out that amongst the persons living on the property in the five affected households are various adults who have not been served with termination notices. There are several adults so affected who are identified in the probation officer's report and mentioned in the answering affidavit. I am mindful that the applicant cited the thirteenth respondent as all other persons who occupy the cottages. But it is clear from a consideration of the papers that the applicant did not terminate any of these adult persons' rights of residence. Moreover, on the information before me it appears that at least most and possible all have been continuously and openly residing on the property for a period of a year before proceedings were instituted, and in consequence are presumed to have consent to do so.[1] Each adult is sought to be evicted. In the circumstances, the applicant has not, at least at this stage, made out a case for their eviction whether under section 8 or section 9.
6. Secondly, I am not satisfied on the information before me that there has been meaningful engagement regarding suitable alternative accommodation for all of the affected occupants with the relevant State parties.[2] In this regard, the report submitted by the Municipality is dated August 2022 and was compiled on the strength of the information

contained in the founding affidavit. The answering affidavit was delivered in November 2022 and there are material issues that are disputed including regarding earnings. While the timing is not on its own necessarily problematic, in context of this case problems do arise. The earnings are disputed and materially different information manifests from the answering affidavit and the probation officer's report dated October 2022, yet the content of the Municipal report is at least partly informed by the information in the founding affidavit. There are other difficulties. The respondents dispute the Municipality's claim that they have no wish to be or are not registered on the housing database and the consultation that ensued between the Municipality and the respondents did not include all affected respondents and their family members.

Moreover, there is no suggestion on the papers that there has been any engagement, whether with the applicants or the State parties,

regarding the possible invocation of State assistance to the occupiers through section 4 of ESTA regarding on or off site developments. To that end, the Department would also need to be involved.

7. The precise timing and manner in which engagement must ensue to be meaningful will depend on the facts and circumstances of a case.

However, it must ensue in a manner that can serve its purposes, which include to limit homelessness.[3]

8. In *Miradel*[4] this Court held:[5]

‘The value of meaningful engagement is two-fold. It facilitates participatory democracy in resolving housing rights disputes, allowing occupiers a stake in decision-making which fundamentally affects their lives and it carries the potential to achieve the resolution of housing disputes in a pragmatic, humane and sustainable manner.’

9. In Miradel, the Court was focused on the process of engagement at the stage of termination of rights in terms of section
8. The facts of this case are different in that the applicant did attempt, in this case, to engage with the respondents before proceeding with the process of terminating rights and thereafter. Nevertheless, in view of my first conclusion, that process may still ensue in respect of, at least, certain persons residing on the property broadly cited as the thirteenth defendant. But even in respect of the current named respondents, there remains a need for the State parties meaningfully to engage with the respondents before the eviction application can be determined. The applicants would need to continue to be involved in that engagement.
10. Not only will this serve the purposes of meaningful engagement, including to limit homelessness, but, if the matter proceeds further, it will mean that the Court can in due course be better informed of information relevant to potential homelessness and available alternatives. The Municipal Report, as it stands, read with the probation officer’s report and the answering affidavits, do not suffice.
11. I am mindful that the applicant has been waiting a long time to resolve the dispute it has with the respondents. However, the applicant itself delayed the process initially and there is no reason why the matter needs to be unduly further delayed if the parties comply with the order I make.
12. The following order is made:
 - 12.1. The Municipality, Department, the applicant and the first to thirteenth respondents still residing on the property (including all adults residing in the supervisor’s cottage, cottage number 3, cottage number 6, cottage number 1 and cottage number 4) are directed to engage meaningfully about the availability of suitable alternative accommodation for the respondents and available emergency accommodation.
 - 12.2. The above engagement must be completed within a period of two months of the date of this order, whereafter the Municipality must, no later than 31 July 2024 deliver a supplementary report to this Court.
 - 12.3. Should the applicant thereafter wish to persist with the application:
 - 12.3.1. The applicant is granted leave to supplement its papers on or before 31 August 2024;

12.3.2. Each adult person residing on the property joined as the thirteenth respondent may be regarded as joined but must be separately cited and served, and their circumstances dealt with in a supplementary affidavit.

12.3.3. The respondents whose evictions are ultimately sought must, when answering the supplemented papers, detail their work experience, their current income and income over the past three years, information relevant to their efforts to identify possible alternative accommodation and details about the impact of any eviction on their ability to access their current or prospective employment and their children's ability to access their current schools.

12.3.4. Supplementary answering affidavits must be delivered by no later than 30 September 2024, whereafter the applicant may reply within 10 days.

12.3.5. The matter is provisionally re-enrolled for 6 November 2024 for further argument, which enrolment must be confirmed by the applicant delivering a notice of set down upon supplementing its papers in terms of paragraph 12.3.1.

12.3.6. The parties may deliver supplementary heads of argument dealing only with additional matter fifteen days (applicant) and ten days (respondents) before the hearing.

12.3.7. Costs are reserved.

SJ Cowen

Judge, Land Court

Date reserved:

16 February 2024

Date of

judgment:

16 May 2024

Appearances:

Applicant: Adv L Wilkin instructed by du Plessis & Mostert Attorneys

Respondent: Adv C Macomzoma instructed by Bate Chubb & Dickson Inc

[1] Section 3(4) of ESTA.

[2] Diedericks v Univeg Operations South Africa (Pty) Ltd t/a Heldervue Estates [2011] ZALCC 11; Miradel Street Investments CC v Mnisi and others [2017] ZALCC 13 (Miradel); Occupiers of 51 Olivia Road and 197 Main Street, Johannesburg v City of Johannesburg (Olivia Road) para 5.

[3] Diedericks supra n2.

[4] Para 56.

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- [5] With reference to Liebenberg S Socio-Economic Rights: Adjudication under a Transformative Constitution (Juta 2010) at p 314 and Olivia Road at para 1.
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