

SOUTH AFRICA / JUDGMENT

Umcebo Properties (Pty) Ltd and Another v Masango and Others (LCC175/2014) [2016] ZALCC 3 (10 March 2016)

[2016] ZALCC 3

COURT
Land Claims CourtBEFORE
Baloyi AJCASE / FILE NUMBER
LCC175/2014

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IN
THE LAND CLAIMS COURT OF SOUTH AFRICA
(HELD
AT RANDBURG)
CASE
NO: LCC175/2014

DATE: 10 MARCH 2016
In
the matter between: UMCEBO
PROPERTIES (PTY)
LTD.....First
Applicant
UMCEBO
MINING (PTY)
LTD.....Second
Applicant
And
SUHLA
SPRINGKAAN
MASANGO.....First
Respondent
THE
MINISTER OF RURAL DEVELOPMENT
&
LAND
REFORM.....Second
Respondent

HEAD
OF THE PROVINCIAL OFFICE OF THE DEPARTMENT OF RURAL DEVELOPMENT
&
LAND REFORM,
MPUMALANGA.....Third
Respondent

JUDGMENT

BALOYI AJ

Introduction

- [1] The Applicants are the owners of the property known as Portion 3 of the farm Grootpan 456 JS, Mpumalanga (“Grootpan”). The First Respondent lives on the farm and the Applicants accept, for the purpose of this application, that he is an occupier in terms of the Extension of Security of Tenure Act 62 of 1997 (“ESTA”).
- [2] The orders sought by the Applicants in this application may be conveniently restated as follows: (i) interdicting the First Respondent from keeping more than 14 (fourteen) head of cattle and 10 (ten) goats on Grootpan and from allowing his livestock to graze outside areas allocated to him; (ii) compelling the First Respondent to remove from Grootpan all livestock in excess of 14 (fourteen) head of cattle and 10 (ten) goats; (iii) authorising the First Applicant to impound or cause to be impounded by the Sheriff or Pound Master all cattle in excess of the number permitted by the Applicants and any livestock straying outside the allocated areas, in the event that the First Respondent does not comply with the court order to remove excess and/or straying livestock; (iv) authorising the First Applicant to impound and remove or have impounded and removed by the Sheriff or Pound Master, any livestock owned by or under the control of the First Respondent which is found outside the permitted areas; (v) authorising the sale of the impounded livestock.
- [3] The First Respondent opposes the relief claimed by the Applicants. The Second and Third Respondents are not participating in these proceedings. The Second Respondent opposes the relief claimed on the following grounds:
- (i) the Applicants in fact seek his eviction by way of an interdict;
 - (ii) the First Respondent has the right to keep and to graze an unlimited number of cattle and goats;
 - (iii) the harm suffered by the Applicants is not irremediable;
 - (iv) the Applicants have alternative remedies available; and
 - (v) the relief claimed by the Applicants is unconstitutional.

[4] The First Respondent also seeks certain orders by way of a counter-claim.

Relevant

background

[5] The following facts are not contested:

5.1 The First Respondent came to live at Grootpan upon employment by Mr Spies (jnr) ("Spies (jnr)"), a commercial farmer, sometime between 1985 and 1988 (there is a dispute between the parties whether the earlier or later date is the correct date, but for the purpose of this application, I do not consider that anything turns on any of the disputed dates). The First Respondent was paid a fixed wage in exchange for his labour and was allocated a house on the farm. Fie was also allocated grazing land on the farm for his cattle. Spies (jnr) leased Grootpan from his father, Mr Spies (snr) ("Spies (snr)") and kept dairy cows, cattle and operated a dairy on the farm.

5.2 In 1996, the Deolene Trust (the "Trust"), represented by Mr Gideon Jacobus Van Rooyen ("Van Rooyen"), purchased Grootpan from Mr Spies (snr), took over the farming operations on the farm and the employment of the First Respondent. The employment of the First Respondent by Van Rooyen was in terms of a written agreement renewable every 12 (twelve) months.

5.3 In 2009, the First Applicant purchased Grootpan from the Trust for the purpose of relocating two communities, the Combrink and Van Rooyen communities, from the Applicants' Klippan farm where the Applicants conduct mining activities.

5.4 At the time that the Applicants purchased Grootpan, the First Respondent lived on the southern portion of Grootpan. Mr Moses Sibanyoni and his family also lived on the southern portion of the farm. The Van Rooyen community was relocated to the southern portion of Grootpan. Certain litigation pertaining to the relocation of the Combrink and Van Rooyen communities has come before this court but it is not necessary, for the purposes of this judgment, to discuss the litigation, save to state that the two communities have since been relocated to Grootpan.

The dispute about the First Respondent's livestock

[6] There is a dispute between the parties about the number of livestock the First Respondent is permitted to keep on Grootpan. The Applicants contend that he is permitted to keep only 14 (fourteen) head of cattle and 10 (ten) goats, whilst the First Respondent contends that there is no limitation to the quantity of livestock he is entitled to keep and that any limitation is determined only by the size of grazing land available to him.

[7] The following appears from the Applicants' papers:

7.1 A written agreement signed by Van Rooyen and the First Respondent titled "Dienskontrak vir Sesionewerkers", dated 1 November 1996, states that the First Respondent is permitted to keep not more than 4 (four) cattle (on the face of the document the following also appears "5 skape").

Two further documents which bear the same date as the document titled "Diesnkontrak vir Sesionewerke", titled "Behuisingsooreenkoms" and "Bywonerskontrak" respectively, state that the First Respondent is allowed to keep a maximum of 4 (four) cattle, with the latter document also stating the following: "Soos aangedui op behuisingsooreenkoms". The document titled "Behuisingsooreenkoms" bears the names of Van Rooyen and the First Respondent but only the signature of Van Rooyen and the document titled "Bywonerskontrak" does not record the names of the parties thereto but bears the signatures of Van Rooyen and the First Respondent.

7.2 In a letter to the First Respondent dated 31 March 2000, Van Rooyen records, inter alia, that: (i) the First Respondent has not adhered to the agreement that he keeps only 4 (four) cattle on the farm and records that as a temporary measure, he may keep 4 (four) cows and 4 (four) calves, a total of 8 (eight), until the number is again reached; (ii) that he has not adhered to the agreement that he will pay R15.00 for each head of cattle in excess of the permitted 4 (four); (iii) that on inspection, Van Rooyen found that the First Respondent has 15 (fifteen) cattle on the farm, including a bull, which is prohibited; (iv) a request that the First Respondent reduce his cattle to the agreed number within a period of 3 (three) months and to pay all the arrear monies. The letter also records that Van Rooyen spoke with the First Respondent and that the First Respondent agreed to reduce his cattle. The letter

is not signed by the First Respondent.

7.3 A document dated 30 November 1998, which bears what appears to be the signature of Van Rooyen and a thumbprint of the First Respondent, records that the First Respondent does not wish to sign the document, wants first to speak with his father and that the contract will remain as is. The document also records in manuscript "Tyd limiet 2 weke vanaf vandag se datum", presumably, the period within which the First Respondent was required to revert to Van Rooyen after discussion with his father.

7.4 An undated document which bears the names of Van Rooyen, the First Respondent and what appears to be the signature of Van Rooyen and the thumbprint of the First Respondent stipulates, inter alia, that it is an agreement for the period November 1998 to November 1999 and that the number of cattle will remain as originally agreed. The number of cattle is not specified.

7.5 A document dated 30 November 2001, with the heading "Aanhangsel tot oorspronklike ooreenkoms van Springkaan Ma" (the rest of the writing on the document appears to have been cut-off during copying), which bears what appears to be the signature of Van Rooyen and a thumbprint of the First Respondent, records that it is a new agreement for the period 2001 to 2002 and states, inter alia, that the original agreements remain as is.

7.6 A document with the heading "Nuwe Ooreenkoms 2002/2003" The document is dated 30 November 2002, bears what appears to be the signature of Van Rooyen and a thumbprint of the First Respondent. The document states, inter alia, that livestock must not exceed 9 (nine) big cattle.

- [8] Van Rooyen later permitted the First Respondent to keep 14 (fourteen) head of cattle, including calves. They also allege that upon purchase of the farm from the Trust, they recognised and respected the arrangements between the First Respondent and Van Rooyen and that, in addition, they permitted the First Respondent to keep 10 (ten) goats.
- [9] In breach of the agreement with Van Rooyen and what was later permitted by the Applicants upon purchase of the farm, in the period from 2002 to 2014, the First Respondent has kept livestock in excess of the permitted number, totalling 105 cattle and 50 goats, as follows: (i) by May 2004, to 41 (forty one) cattle and 26 (twenty six) goats; (ii) by July 2011, to 44 (forty four) cattle and 36 (thirty six) goats; (iii) by December 2011, to 67 (sixty seven) cattle and 23 (twenty three) goats; (iv) by September 2012, to 52 (fifty two) cattle and 48 (forty eight) goats; (v) by October 2013, to 75 (seventy five) cattle; and by September 2014, to 105 (one hundred and five) cattle and 50 (fifty) goats. The First Respondent's livestock enter neighbouring properties and graze without the consent of the neighbouring farmers, who complain to the Applicants.
- [10] In August 2011, the Second Applicant called upon the First Respondent to reduce his livestock to 14 (fourteen) cattle and 10 (ten) goats by 30 November 2011. The First Respondent has failed to keep his livestock to the permitted limit. In the light of the First Respondent's refusal or failure to reduce his cattle as demanded by the Applicants and in an attempt to resolve the stand-off with the First Respondent, the Applicants have offered him residence on another farm, on the basis that he would pay a reduced annual rental of R60.00 per hectare for year 1 (one) of the lease and R120.00 per hectare in year 2 (two). The First Respondent has refused the offer on the basis, inter alia, that: (i) it does not secure his tenure; (ii) he would now be required to pay rent when previously he did not do so and as a result he will not be able to sustain his family. Further options put to the Applicant include, (i) that the First Respondent becomes part of the community settled on Grootpan and to whom the property will eventually be transferred in ownership; (ii) he lease other land where his excess cattle could be moved to; (iii) he reduce his cattle to the agreed number and keep them within the area allocated to him (approximately 30 hectares).
- [11] On 7 December 2011, the Applicants served upon the First Respondent a notice in terms of section 7(1) of ESTA, calling upon him to remove all excess cattle within 72 (seventy two) hours, failing which the excess cattle would be impounded. The First Respondent refused to accept delivery of the notice.
- [12] As at 9 March 2012, the First Respondent was an Applicant and shortlisted for the Black Economic Empowerment Farmer's Programme of the Department of Land Reform (the "BEEFP"). The First Respondent has informed the Applicants through his Attorneys that he will move off Grootpan when he becomes a recipient of the BEEFP. The Applicants have rejected this arrangement and have continued their efforts to reach settlement with the First Respondent, pending his relocation under the BEEFP. Again, in a letter dated 14 June 2012,

the Applicants called on the First Respondent to reduce his livestock to 14 (fourteen) cattle and 10 (ten) goats by no later than 31 July 2012.

[13] In his papers opposing the orders sought by the Applicants, the First Respondent alleges that:

13.1 when he first came to live and work at Grootpan, Spies (jnr) did not place any limit on the amount of livestock he was permitted to keep;

13.2 he was allocated specified areas for grazing his livestock and the number of livestock he could keep was limited only by the amount of grazing land available to him;

13.3 he has never agreed to a limitation of the livestock he can keep, notwithstanding attempts by previous owners to get him to agree to keep only a limited number of cattle;

13.4 the agreement which bears his signature and which states that he is only allowed to keep 4 (four) heads of cattle was not explained to him when he signed;

13.5 the relocation of the Combrink and Van Rooyen communities to Grootpan, without consultation with him and without his consent, constitutes an eviction because it has interfered with his peaceful enjoyment of the farm, having

reduced the land that was available to him previously for his enjoyment and that this constitutes constructive eviction without a court order;

13.6 the demand that he reduce his livestock constitutes an eviction and the Applicants must comply with the requirements of ESTA which are applicable to eviction proceedings;

13.7 he has made a claim to the land in terms of the Land Reform (Labour Tenants) Act 3 of 1996 ("the Labour Tenants Act") and cannot be evicted pending the determination of his claim;

13.8 he does not wish to be part of the community of Grootpan; and

13.9 he rejected the offer that he lease another farm at reduced rental because the offer does not protect his right to land and property' and would leave him in

a "drastically worse position than he currently finds himself in".

The First Respondent's right to keep livestock

[14] The First Respondent's rights, as safeguarded by ESTA, must be considered with regard to the recognition that whilst the legislature

has, by means of, inter alia, ESTA, permitted inroads into the constitutionally enshrined right to property, any inroads must not go further than is reasonable and justifiable[1]. Accordingly, any

inroads must strike a balance between the interests of the owner and the occupier. ESTA is the instrument selected to achieve such a balance[2].

- [15] The First Respondent does not dispute that the signature and thumbprint that appear on the agreements “Dienskontrak vie Sessionewerkers”, the “Behuisingsooreenkoms” and the “Bywonerskontrak” are his. The agreements state specified numbers of livestock the First Respondent is permitted to keep. The First Respondent’s contention that he did not understand the contents of the agreements when he signed them, is of no assistance to him. The agreements stand and are binding on the parties until they are set aside or cancelled by the parties. In any event, I do not consider the terms of the agreements unfair or otherwise unreasonable. In the result, the First Respondent is bound by the agreements that he signed. The First Respondent is accordingly permitted to keep only 14 (fourteen) head of cattle and 10 (ten) goats. It follows that he has no right to keep and/or graze more than the agreed and permitted number and that the demand that he reduce his livestock to the agreed and permitted number does not constitute an eviction.
- [16] On his own account, the First Respondent has refused all attempts to get him to agree to keep only a limited number of livestock. It must follow therefore, that there is no consent from any of the previous owners of Grootpan that the First Respondent can keep an unlimited number of livestock, limited only by the size of the available grazing land.
- [17] From Van Rooyen’s correspondence to the First Respondent, it is clear and free of any doubt, that Van Rooyen persisted in his position that the First Respondent was entitled to keep only a limited number of livestock. Van Rooyen did not accept that the First Respondent was entitled to keep more cattle than the quantity specified by Van Rooyen. There is no evidence that the First Respondent, at any stage during the exchanges with Van Rooyen, contested Van Rooyen’s demand that he reduce his head

of cattle.

- [18] There is no evidence before me that the First Respondent was, at any stage, permitted to keep an unlimited number of livestock. The evidence indicates quite the contrary. Accordingly, I find that the First Respondent fails in this defence.
- [19] In any event, I find it improbable that the First Respondent would have been permitted to keep an unlimited number of livestock as he alleges:

19.1 On his own account, the First Respondent resisted the previous owners’ attempts to get his agreement to keep a limited number of livestock. This in itself points to the absence of an agreement as contended for by the First Respondent.

19.2 On his assertion, the First Respondent has the right to unilaterally determine the number of livestock he can keep on the farm, regardless of the needs of the Applicants. It is improbable that a landowner would permit a situation where it, in effect, competes with an occupier for the use of the land. The First Respondent is not a co-owner of Grootpan. Without the consent of the owner, he has no right to use the land as he wishes.

19.3 The First Respondent admits that he was allocated specified areas for grazing, therefore limited land to graze his livestock. This is inconsistent with an agreement that he could keep whatever number of cattle he wished. It is not open to the First Respondent to say that the agreement to keep unlimited livestock was obviously subject to the available grazing land when there is simply no evidence of an agreement on those terms. The probabilities do not admit of this.

19.4 The previous owners of Grootpan, including Spies (jnr) who denies that the First Respondent was granted permission to keep an unlimited number of livestock, were cattle farmers who kept cattle and a dairy on the farm. I agree with and accept Spies (jnr)'s assertion that it is improbable that a commercial farmer, such as he was, would permit a farmworker to retain cattle on the same farm without any control or say over the amount that he could retain on the farm.

[20] In the event, I do not accept that an agreement, such as is contended for by the First Respondent, was agreed to with the previous owners of Grootpan or indeed that he was at any stage allowed to keep an unlimited number of cattle limited only by the amount of grazing land availed to him. Accordingly, I find that the First

Respondent is permitted and entitled to keep only 14 (fourteen) head of cattle and 10 (ten) goats. It follows that the First Respondent must fail in this defence.

[21] ESTA does not grant an occupier the right to accumulate wealth on another's property to prepare for retirement. It follows that any such right asserted by the First Respondent does not enjoy the protection afforded to occupiers by ESTA. Any expectation to the contrary can only be realised with the consent of the owner. It is otherwise unreasonable and unjustified. Such consent is lacking in this instances and the First Respondent is in the result, limited to the number agreed with and permitted by the Applicants and their predecessors. There is no evidence that the First Respondent must keep more than the permitted number of his

livestock to practice his culture and to provide for his family as contemplated by ESTA. Put differently, the First Respondent has not shown that the rights protected by ESTA as he asserts are realisable only if he is not limited in the amount of livestock he can keep on the farm and that such right is worthy of protection under ESTA.

[22] The right asserted by the First Respondent, to keep more livestock on the farm than agreed with and permitted by the Applicants, is not protected by ESTA. The demand that the First Respondent keep only the number of livestock agreed with and permitted by the Applicants does not constitute an eviction. Fie is not required to dispose of all his livestock and the demand that he retains only what is permitted is not unreasonable or unfair. I accordingly find that the provisions of ESTA applicable to evictions are not applicable.

[23] The First Respondent alleges that he has made a claim as a labour tenant in terms of section 16 of the Labour Tenants Act. He contends that the Applicants claim cannot succeed until his land claim has been determined. Chapter III, section 16 of the Labour Tenants Act provides -

“ 16.Right to acquire land.—(1) Subject to the provisions of this Act. a labour tenant or his or her successor may apply for an award of—

- (a) the land which he or she is entitled to occupy or use in terms of section 3;
- (b) the land which he or she or his or her family occupied or used during a period of five years immediately prior to the commencement of this Act, and of which he or she or his or her family was deprived contrary to the terms of an agreement between the parties;
- (c) rights in land elsewhere on the farm or in the vicinity which may have been proposed by the owner of the farm: and
- (d) such servitudes of right of access to water, rights of way or other servitudes as are reasonably necessary or are reasonably consistent with the rights which he or she enjoys or has previously enjoyed as a labour tenant,

[24] Section 14 of the Labour Tenant Act precludes the eviction of a labour tenant who has made a claim in terms of section 16. It provides that “A/o labour tenant may be evicted while an application by him or her in terms of Chapter III is pending: Provided that the Court may order eviction if it is satisfied that special circumstances exist which make it fair, just and equitable to do so, taking all the circumstances into account

[25] Having found that the demand that the First Respondent reduce his livestock to the permitted number does not constitute an eviction, it is not necessary that I express any views on the alleged claim in terms of the Labour Tenants Act. Accordingly, I do not say any more on this defence.

Alternative remedy

[26] The First Respondent contends that the Applicants have an alternative remedy, namely to impound the livestock in terms of section 7(1) of ESTA and that the application must be dismissed on this basis.

[27] Section 7 (1) reads:

“7. Rights and duties of owner. —

- (1) The owner or person in charge may have a trespassing animal usually or actually in the care of an occupier impounded and removed to a pound in accordance with the provisions of any applicable law, if the owner or person in charge has given the occupier at least 12 hours’ notice to remove the animal from the place where it is trespassing and the occupier has failed to do so: Provided that the owner or person in charge may take reasonable steps to prevent the animal from causing damage during those 72 hours."

[28] Quite clearly, on its terms, section 7(1) only permits the impounding and removal of trespassing livestock. Section 7(1) remedies a transgression that has occurred. The relief claimed by the Applicants in this application, seeks not only to impound and remove the excess and trespassing animals, they seek also to interdict the First Respondent from

keeping more than the permitted numbers of animals. Such an order is not available under section 7(1). This, in my view, is the material difference between the remedy provided in section 7(1) and the relief claimed by the Applicants

and it is this difference which, in my view, defines whether section 7(1) is an effective alternative remedy.

[29] In any event, were section 7(1) an effective alternative remedy and could be resorted to without a court order, which the First Respondent contends cannot be, the Applicants could not be faulted for seeking the intervention of the court to authorise the impounding, removal and disposal of the trespassing animals. On the contrary, the resort to court adds the additional layer of a court supervised removal and affords the First Respondent to deal fully with the alleged basis for the removal of the animals. This would not be available to the First Respondent with the procedure in section 7(1). Undeniably, this is especially beneficial in a contested matter such as this is.

[30] Whilst I accept that section 7(1) is a remedy available to the Applicants, I do not agree that it is an alternative remedy that must defeat the Applicants claim for the relief claimed. I find that there is no merit in this ground for opposition and accordingly dismiss same.

[31] With respect to the challenge to the constitutionality of the relief claimed, I do not consider it necessary to determine the issue on that basis. I am satisfied that an order for removal, impounding and sale can be crafted in a manner that sufficiently addresses any concerns about the fairness of that procedure and potential prejudice to the First Respondent. Such an order will ensure that the First Respondent's livestock, if impounded, is dealt with in a manner which is fair to the First Respondent. I shall endeavour to craft such an order.

The counter-application

[32] The First Respondent seeks the following

orders:

32.1 declaring that the relocation of the Klippan community to Grootpan constitutes a constructive eviction of the First Respondent without a court order and is therefore unlawful;

32.2 directing that the First Respondent is entitled to compensation and damages in terms of section 14 of ESTA, alternatively section 38 and 172 of the Constitution of the Republic of South Africa 108 of 1996 ("the Constitution") and that the First Respondent is entitled to compensation in kind, land of equivalent size and quality as he occupied, alternatively in money sufficient to purchase land of equivalent size and quality as he occupied before the relocation of the Klippan community. The nature and extent of compensation to be determined on the directions of the court.

[33] The First Respondent contends that the Applicants were required and obliged to seek his consent to relocate the Klippan community to Grootpan, alternatively, to obtain a court order authorising his eviction. This is so because the relocation of the Klippan community to Grootpan has resulted in an attenuation of the incident of occupation in that it has had the effect of reducing his use and enjoyment of the property, viz, the entire southern portion of the farm which he had the right to use as agreed with the previous owners.

[34] There is no evidence before me that the First Respondent at any stage had the right to use the entire southern portion of the farm and to keep and graze unlimited number of livestock. I am therefore unable to find that the relocation of the Klippan community to the southern portion of Grootpan constitutes an eviction. In the absence of evidence in support, it follows that the counter-application must fail. I find accordingly.

Costs

[35] Whilst I am mindful of the reluctance of this court not to easily grant costs orders against unsuccessful parties, I see no reason in this case to depart from the principle that costs must follow the cause. The successful party must recover its costs.

Order

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

- (1) The First Respondent is interdicted and restrained from keeping more than 14 (fourteen) head of cattle and 10 (ten) goats on the farm Grootpan, Portion 3 of the farm Grootpan 456 JS, Mpumalanga.
- (2) The First Respondent is ordered to remove from the farm Grootpan all livestock in excess of 14 (fourteen) head of cattle and 10 (ten) goats within 1 (one) month after the date of this order.
- (3) The First Respondent is interdicted and restrained from allowing his livestock to graze on any other portion of the farm Grootpan, save for portions marked B, C, D, E and F on the southern portion of the farm Grootpan as indicated on Plan A attached to the notice of motion.
- (4) The First Applicant is authorised to impound or cause to be impounded by the Sheriff of the district and/or the Pound Master, all livestock which is in excess of 14 (fourteen) head of cattle and 10 (ten) goats in the event of the First Respondent failing to comply with order 2 above.
- (5) The First Applicant is authorised to impound and remove or cause to be removed and impounded by the Sheriff of the district and/or the Pound Master, any livestock belonging to the First Respondent or under his control which is found outside the areas in order 3 above after the period of 1 (one) month referred to in order 2 above.

- (6) The Sheriff for the district and/or the Pound Master, are authorised to sell by way of public auction, any and all of the First Respondent's livestock impounded in terms of orders 4 and 5 to defray their costs in the event the

First Respondent does not, within 1 (one) month after the date of impoundment, remove his livestock from the place where they are kept, or failing to pay the Sheriff's and/or Pound Master's costs upon demand. Any balance after such sale shall be paid to the First Respondent into the Trust Account of the First Respondent's Attorneys of record.

- (7) The Sheriff for the district and/or the Pound Master must give written notice to the First Respondent of the place, date and time of the public auction, such notice to be given not less than 7(seven) days before the date of the public auction.
- (8) The First Respondent's counter-application is dismissed.
- (9) The First Respondent is to pay the costs of this application.

BALOVl AJ

Appearances:

Counsel for the 1st to 2nd Applicant:

Attorneys for the 1st to 2nd Applicant:

Counsel for the 1st to 3rd Respondent:

Attorneys for the 1st t Date of Hearing:

[1] Magodi and others v Janse van Rensburg [2001] JOL 9145 (LCC) at paragraphBl

specific reference to sections 5 and 6, that the provisions which govern the rights and duties of owners and occupiers enjoins that a just and equitable balance be struck between the competing rights.

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