

SOUTH AFRICA / JUDGMENT

Wessels v Normandien Farms (Pty) Ltd and Another (LCC168/2022) [2024] ZALCC 13 (2 April 2024)

[2024] ZALCC 13

COURT

Land Claims Court

BEFORE

Ncube

CASE / FILE NUMBER

LCC168/2022

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD

AT RANDBURG

CASE

NO: LCC168/2022

Before:

Honourable Ncube J

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED. NO

In

the matter between:

ANET

WESSELS

Applicant

and

NORMANDIEN

FARMS (PTY) LTD

GEORGE

SCHNEISANSZ

First

Respondent

Second

Respondent

Heard: 22
February 2024

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 be 02 April 2024 at 15h00.

JUDGMENT

Ncube J

Introduction

- [1] This is opposed application in which the applicant seeks relief in the following amended form;

“An order compelling First and Second Respondents to restore Applicant’s electricity supply of House No. 16 of Portion 41 of Farm Onverwacht No 143, in the Municipality and Division of Oudstshoorn in terms of section 5 and 6 of ESTA”

- [2] The original Notice of Motion sought “An order compelling restoration of the applicant’s electricity supply of house No 16 on Portion 41 of Farm Onverwacht No 143 in the Municipality and division of Oudstshoorn in terms of section 5 and 6 of ESTA”

This judgement concerns itself with the relief sought in its amended form.

Factual

Background

- [3] The Applicant Anet Wessels (“Mrs Wessels”) resides on Onverwacht No 143 farm. (“the farm”). The First Respondent is the owner of the farm. The Second Respondent is the person in charge. Mrs Wessel’s father Karel Kortjie was, in 1993 employed on the farm as a general labourer. He was allocated house No 12 to stay in with his family including Mrs Wessels, who was also later in 1995 employed as a casual labourer, becoming permanently employed in 1998, still staying with her parents, who are still resident on the farm. In 2008, Mrs Wessels was allocated a house to occupy on the farm.

- [4] In 2007, Mrs Wessels got married to Hendrick Wessels (“Mr Wessels”). Mr Wessels passed away in 2017. Mrs Wessels continued working on the farm, until she was retrenched in 2019. She is currently unemployed but continues residing on the farm in the same house. The First Respondent supplied electricity to Mrs Wessels house. Electricity was supplied from a power point in a distribution box situated behind the Church building on the farm. Since 2019, the year in which she was retrenched, Mrs Wessels has not paid for electricity.
- [5] It is common cause that at some stage the electricity distribution box was moved from its original place to a site 50 or 100 meters away from the original site. The reason for the removal of the distribution box, the date of removal as well as the person responsible for disconnection is a subject of a dispute between the parties. However, there is no disputes about the fact that Mrs Wessels enjoyed electricity supply in terms of an agreement between herself and the previous owner. She continued enjoying electricity supply during her period of employment with the first Respondent until she was retrenched in 2019. There was no agreement between Mrs Wessels and the First Respondent for the supply of electricity after her retrenchment.

Issues

- [6] The main issue to be adjudicated upon is whether Mrs Wessels is entitled to the relief she seeks. The nature of the relief sought is also not clear from the papers. However, paragraph 3 of the Applicants Heads of Argument states that “this is a spoliation application in which the applicant seeks to compel the respondents to restore the electricity supply at her house”

In this Judgement therefore, I shall proceed from the premise that what Mrs Wessels is seeking is a possessory remedy of mandament van spolie. There are of course other pertinent issues involved. Those are issues regarding the date of disconnection of electricity supply to Mrs Wessels’ house as well as the person responsible for such disconnection. Those are material disputes of fact which cannot be resolved on the papers. Those disputes of fact should have been foreseen by the applicant

Discussion

- [7] It is trite that disputes of fact are not resolved in motion proceedings. If the applicant realises that there are disputes of

fact, she may choose to proceed by way of action. If she persists to proceed by way of motion, the Judge has three options. The first option is to dismiss the application. The second option is to refer the application for hearing of oral evidence on those specific issues. The last option is to refer the matter to trial. Therefore, this application should have been dismissed on the basis that there are disputes of fact which cannot be resolved on the papers. However, because of the view I take of this matter, I have decided not to dismiss the application on those basis.

- [8] Mrs Wessels in the relief sought, further relies on section 5 and 6 of the Extension of Security of Tenure Act 62 of 1997 (“ESTA”) Section 5(a) of ESTA provides’

“5 Fundamental Rights- Subject to limitations which are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, an occupier, an owner and person in charge shall have the right to-

- (a) Human dignity;
- (b) Freedom and security of person;
- (c) Privacy;
- (d) Freedom of religion, belief and opinion and expression;
- (e) Freedom of association;
- (f) Freedom of movement with due regard to the objects of the Constitution and this Act”

It is clear that section 5 (a) of ESTA mirrors fundamental rights enshrined in the Constitution. In casu there is no evidence that the Respondents denied Mrs Wessels of her rights that she has in terms of ESTA or the Constitution.

- [9] In terms of section 6 of ESTA an occupier has a right to basic services like water supply but electricity supply is not one of them. Be that as it may, electricity is now regarded as one of the basic necessities of modern life. In *TM Sibanyoni and Sibanyoni Family v Marianne Van Der Merwe and Others*[1]

Meer AJP said;

“Electricity has become to be recognized as a basic necessity and implicit in the exercise of pre-existing rights to inter alia housing and health as discussed in the texts which appear below”

- [10] However there is no duty on the Respondents to provide free electricity to Mrs Wessels after the supply thereof, had been disconnected by thieves. It is the duty of the local government to provide basic municipal services like electricity. In *Joseph and Others, v City of Johannesburg and Others*[2] the court held;

“there are constitutional and statutory obligations on local government to provide basic municipal services, which include electricity. The applicants are entitled to receive these services. Although in contrast to water, there is no specific provision in respect of electricity in the Constitution, electricity is an important basic municipal service which local government is ordinarily obliged to provide”

- [11] In casu the position would have been different had the Respondents been responsible for the disconnection of electricity supply to Mrs

Wessels’s house or if there had been a contract between the Respondents and Mrs Wessels to supply her with electricity. There is none. As mentioned earlier in this Judgement, restoration of electricity disconnected by thieves does not fall within the ambit of mandament van spolie.

- [12] Mandament van spolie is a remedy, which is available when there is unlawful deprivation of another person's rights of possession. The aim of spoliation is to prevent self-help[3]. Two requirements must be complied with, before a person can avail himself of this possessory remedy. Firstly, the applicant must allege and prove that he was in undisturbed and peaceful possession of the goods[4] Secondly the applicant must allege and prove unlawful deprivation of possession by the respondents[5]
- [13] Disconnection of electricity supply is an act of spoliation. However the applicant must prove that electricity supply was an incident of his possession of the property[6]
- [14] As a result of theft of electrical cables, all people were without electricity. The distribution box had to be relocated and electricity had to be restored or reconnected. When electricity was restored, Mrs Wessels house was not connected. Ms Williams, counsel for the applicant, argued that Mrs Wessels house was left out because she was not paying for electricity and she refused to install a pre-paid meter.
- [15] Ms Williams seems to concede, in her submissions, that the electric cables were stolen, not disconnected by the Respondents. Ms Williams argues that they base their case on failure by the Respondents to reconnect electricity to Mrs Wessels house when other houses were reconnected. The problem facing Mrs Wessels is that failure to restore electricity supply which was disconnected by someone else is not and can never be described as spoliation. It can be something else e.g. interdict in the form of mandamus but not spoliation.
- [16] It is common cause that Mrs Wessels is an occupier in terms of ESTA. She avers in her Founding Affidavit that she has rights in terms of Section 5 (a) of ESTA. However, Mrs Wessels bases her relief on spoliation, which does not find favour with facts of this case.

Costs

- [17] The general practice in this court is not to make cost orders unless there are special circumstances justifying an award of costs, which there is none in this case.

Order

In the circumstances, I make the following order

- 1: The application is dismissed
- 2: There is no order as to costs

M.T Ncube

Judge of the Land Claims Court

Date of hearing: 22 February 2024

Date of judgment: 02 April 2024

Appearances

For the Appellants: Adv J Williams

Instructed by Ighsaan Sadien Attorneys

For the Respondents 1 & 2: Adv E. Roberts

instructed by Vinnicombe & Associates

[1] [2021] ZALCC 33 (7 September 2021)

[2] 2010(4) SA 55 CC para 34

[3] Ivanold v North West gambling Board and Others 2012 (6) SA 67 (SCA)

[4] Kgosana and Another v Otto 199(s) SA 113 (W)

[5] Lou v Red Time Investments 165 CC (GP) Unreported case 50134/2019 dated 23-07-2019

[6] Eskom Holding Soc Ltd v Masinda 2019 (5) SA386 (SCA) para's 24 and 25

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Prepared on 14 October 2026 · Esheria