

SOUTH AFRICA / JUDGMENT

Zuma v Sinclair and Others (LCC09/2008)

[2022] ZALCC 14 (20 May 2022)

[2022] ZALCC 14**COURT**

Land Claims Court

BEFORE

M T Ncube

CASE / FILE NUMBER

LCC09/2008

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Source record**REPUBLIC****OF SOUTH AFRICA****IN THE LAND CLAIMS****COURT OF SOUTH AFRICA****HELD AT DURBAN****CASE NO: LCC09/2008****REPORTABLE: YES****OF****INTEREST TO OTHER JUDGES: YES****REVISED:**

YES

20 May 2022

In

the matter between:

MOTHI

EVELINA ZUMA

Plaintiff

and

IAN

SINCLAIR

First

Defendant

THE

DIRECTOR GENERAL, DEPARTMENT

Second

Defendant

OF

RURAL DEVELOPMENT AND LAND REFORM

SUNSHINE

STREET INVESTMENT 65 (PTY) LTD

Third
Defendant

JUDGMENT

NCUBE J

Introduction

[1] This is an action instituted in terms of section 33(2A) of the Land Reform (Labour Tenants) Act, Act No. 3 of 1996, (I shall refer to it hereinafter as “the Act”), in which the Plaintiff seeks a declaration that she is a labour tenant. The affected land is Portion 14 (of 1) of Maritzdal 940, commonly known as Beinn Mheadhon (“the

farm”), situated in Dargle, in the district of Umgeni, in the province of KwaZulu-Natal. The Plaintiff Mothi Evelina Zuma, a pensioner of 76 years of age, resides on the farm and she has been residing there since her birth, which was on 20 April 1945. The Third Defendant is the owner of the land on which the Plaintiff resides. The First Defendant farms that land. The First and Third Defendants oppose this action. The Second Defendant abides the decision of the court.

[2] The Plaintiff also applied to the Second Defendant in terms of section 16 of the Act for the acquisition of that land on the farm, which she was entitled to use as on 02 June 1995. That application is irrelevant for purposes of the present judgment.

Definition of Labour Tenant

[3] Section 1 of the Act defines Labour Tenant thus:

“labour tenant” means a person-

- (a) who is residing or has the right to reside on a farm;
- (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
- (c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm,

including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3(4) and (5), but excluding a farmworker;”

[4] Section 3 (1) of the Act makes provision for the right of the labour tenant to occupy and use land, it states as follows:

“3. Right to occupy and use land

- (1) Notwithstanding the provisions of any other law, but subject to the provisions of subsection (2), a person who was a labour tenant on 2 June, 1995 shall have the right with his or her family members-
- (a) to occupy and use that part of the farm in question which he or she or his or her associate was using and occupying on that date;
- (b) to occupy and use that part of the farm in question the right to occupation and use of which is restored to him or her in terms of this Act or any other law.”
- [5] On the other hand, section 1 of the Act defines a farmworker as follows:

“farmworker” means a person who is employed on a farm in terms of a contract of employment which provides that-

- (a) in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land; and
- (b) he or she is obliged to perform his or her services personally.”

Presumption

- [6] The fundamental principle of our law is that he who alleges must prove. Therefore, ordinarily, the Plaintiff would have been expected to prove that she is a labour tenant and not a farmworker. However, the onus resting on the Plaintiff to prove that she is a labour tenant not a farmworker, is eased by section 2(5) of the Act. That section states: -

“(5) If in any proceedings it is proved that a person falls within paragraphs (a), (b) and (c) of the definition of “labour

tenant” that person shall be presumed not to be a farmworker, unless the contrary is proved.”

- [7] Before the Act was amended, the labour tenant applicant was required to prove, both that he or she falls within paragraphs (a), (b) and
- (c) of the definition and also that he or she is not a farmworker.[1] Section 2(5) was added to the Act by a 1997 amendment which was introduced by the Land Restitution and Reform Laws Amendment Act, Act No. 63 of 1997. The effect of the amendment is that once an applicant proves that he or she falls within paragraphs (a), (b) and (c) of the definition of labor tenant, the onus shifts to the Respondent to prove that the applicant is a farmworker.[2] Paragraphs (a), (b) and (c) are to be interpreted conjunctively.[3]

- [8] Therefore, in casu, should the Plaintiff prove that she falls within paragraphs (a), (b) and (c) of section 1, the presumption kicks in and she will be presumed not to be a farmworker unless the contrary is proved. The onus shifts to the First and Third Defendants to prove that the Plaintiff is in fact not a labour tenant, but a farmworker. However, in casu, Mr Combrick, counsel for First and Second Defendants, conceded that the Plaintiff proved that she falls within paragraphs (a),
- (b) and (c), however he argued that the Plaintiff still has to prove that she is not a farmworker since that is the allegation which the Plaintiff made in her pleadings, that she is not a farmworker.
- [9] Against the legal framework background, I now turn to look at the evidence led to ascertain if each party was able to discharge respective onuses resting on them. Eight witnesses testified in this matter. Plaintiff's case consists of the evidence of the Plaintiff, her two daughters, Dr Ndlovu, the Antropologist and Dr Boshoff, the valuer. The Defendant's case consists of the evidence of the First Defendant, Dr Patterson, the Animal Scientist and Dr Stephenson, the valuer.

Evidence of the Plaintiff

- [10] The Plaintiff testified that she was residing on the farm in question. Initially the farm was known to the workers as KwaNgonya. Her grandfather was Bhoyi Zuma ("Bhoyi"). Her grandmother was Harriet Mangubane Zuma ("Harriet"). Her mother was Letta Zuma ("Letta"). Bhoyi and Harriet were residing and working as labour tenants on the farm, working for six months and another six months off. At some stage, Letta worked on the farm as a nanny for the First Defendant. When Letta got married and left the farm, the Plaintiff was taken out of school at the age of twelve (12) years in order to provide labour on the farm. The Plaintiff was performing domestic duties. She was cooking and cleaning the house.

She was not paid. She was required to work for six months at a time. As the First Defendant's mother was running a school as a teacher, the Plaintiff was working in the house. She stopped working after the death of the First Defendant's mother.

- [11] During cross examination, Plaintiff testified that her parents and grandparents were cropping beans and mealies. When she knocked off from work, she would go for weeding in the family fields. The family also got vegetables from the First Defendant's mother. The Zuma family also survived on selling indigenous green herbs known as "Imbuya." Bhoyi grazed many cattle on the farm. At some stage the Plaintiff also grazed 28 herd of cattle on the farm. Seventeen

- (17) cattle were hers and eleven (11) belonged to her late grandson.

Evidence of Vera Zuma

[12] Vera is the Plaintiff's daughter. She testified that she knew her great grandparents Bhoyi and Harriet. They were residing on the farm kwaNgonya. They had a right to crop and graze cattle. They cropped beans, maize and other vegetables and kept livestock in the form of cattle and horses. The great grandparents died when Vera was 7 or 8 years old. She knew her grandmother Letta who also worked on the farm, but at some stage moved to Scottsville. Vera testified that at one stage her aunt Jennet, also worked on the farm, but got married and left the farm. As there was no one else working, Vera was taken out of school at the age of nine (9) years to provide labour, looking after the First Defendant's children, so the family could continue residing on the farm.

[13] Vera testified that the Plaintiff worked on the farm for a longer time as a domestic worker for the First Defendant's mother. The Plaintiff was cropping mealies, potatoes, cabbage and beans at the place called Umngeni, which was the Zuma family's cropping land. During questioning by the court, Vera testified that the First Defendant's house was separate from his parents' house. The Plaintiff was working for the First Defendant's mother, whilst Jennet was working for the First Defendant, looking after four of the First Defendant's children. The family was told to leave the farm, in case there was no one providing labour.

Evidence of Elizabeth Mthombo Zuma

[14] Elizabeth is the daughter to the Plaintiff. She testified that her grandmother Letta was working for the First Defendant's father ("Donald Junior"). Letta was not paid. Letta fell ill and could no longer render services to Donald Junior. The Plaintiff took over. The Plaintiff was also not paid. The reason why both Letta and Plaintiff were not paid is that they were cropping at Emngeni. They were working as labour tenants. It was compulsory for them to work on the farm so that the family could continue residing on the farm. Elizabeth further testified that the Plaintiff worked for six months

and went to crop her fields for another six months. That was the procedure on the farm. When Donald Junior fell ill and taken to old age home, the Plaintiff stopped working. Elizabeth confirmed under cross examination that she and the Plaintiff were always threatened with eviction from the farm if they did not provide labour. Elizabeth denied, when it was suggested in cross examination that whenever a cow died, it was given to workers to eat. She testified that the cow was buried, but workers used to dig it up and eat the meat.

Plaintiff's Expert Witnesses

[15] Apart from the three factual witnesses, two expert witnesses testified for the Plaintiff. The first such witness was Ndukuyakhe Ndlovu ("Dr Ndlovu"). Dr Ndlovu holds a Doctorate (PhD) in Ecology, acquired from the University of New Castle in the United Kingdom and a Master's Degree in Ecology from Wits University. Dr Ndlovu testified that by being an Ecologist, he is very much a historian. He testified on the report he had compiled on the history of the Zuma family on the farm in question. The information, which he obtained from the Plaintiff herself, was that the Zuma family arrived

on the farm in 1800's. The condition of residence on the farm, was that for the Zuma family to continue residing there, it had to provide labour to the farm owners. The Zuma family was allowed to crop and graze livestock. Cattle belonged to Bhoyi. When Bhoyi passed away, Plaintiff's uncle took over the ownership of the cattle and he later relocated to Sweet Waters in Pietermaritzburg.

- [16] Dr Ndlovu confirmed the testimony given by the Plaintiff that she (Plaintiff) left school at the age of 12 years, to work on the farm, so that the family could continue staying there. Bhoyi and Harriet were still alive, but no longer able to provide labour to the farm owners and Letta got married and left the farm. As a result, there was no one from the Zuma family who was providing labour on the farm. Plaintiff worked on a six months' basis providing labour to Donald Junior. Dr Ndlovu testified that he could not attach value to Plaintiff's residence, grazing and cropping rights as he is not an economist or agricultural expert.
- [17] The next expert witness for the Plaintiff, was Dr Douw Boshoff ("Dr Boshoff"). Dr Boshoff is a professional valuer, working for Metgovis TM Integrated Property Solutions. His qualifications are not in dispute. He compiled a report on the determination of the status of the Plaintiff whether she is a labour tenant or a farm worker based on the assessment of her remuneration, as against the value of her right of residence, grazing and cropping on the farm. Dr Boshoff

handed in his report and it was marked exhibit "N."

- [18] Dr Boshoff, in his report, developed a hypothesis. He called his hypothesis a "null-hypothesis (HO)." He also developed an alternative hypothesis (HI). The null hypothesis postulates the Plaintiff as a farm-worker. The alternative hypothesis postulates the Plaintiff as a labour tenant. Dr Boshoff testified that if the null hypothesis is rejected, the alternative must be accepted. As a starting point, working with the null hypothesis and in accordance with the definition of a farm worker, Dr Boshoff looked at whether there was a contract of employment between Donald Junior and the Plaintiff. There was no contract of employment. Any contract between Donald Junior and a girl of twelve (12) years, would have been null and void as the minor of that age lacks contractual capacity.
- [19] Having found with reference to the null hypothesis, that the Plaintiff was not a farm-worker, Dr Boshoff then proceeded to test the alternative hypothesis to see if it could be accepted that the Plaintiff was a labour tenant. In that regard Dr Boshoff found that the Plaintiff had resided on the farm since her birth in 1945. The Plaintiff and other family members had the right to crop and graze cattle on the farm. The Zuma family members were required to provide labour to the farm owner if they wanted to continue residing on the farm; hence the need for the Plaintiff to leave school at the age of 12 to provide labour to Donald Junior when her mother got married and moved out of the farm. At the end Dr Boshoff opined that the alternative hypothesis was acceptable that the Plaintiff was a labour tenant.

- [20] The defence case comprises of the testimony of the First Defendant and two expert witnesses. The First Defendant testified that he was born in 1945, the same year in which the Plaintiff was born. He confirmed that the Plaintiff was born and grew up on the farm, they grew up together. The First Defendant testified that his grandfather (“Donald Senior”) arrived in South Africa in 1862. Donald Senior leased the farm in question until 1891 when he took title thereof. When Donald Senior had ownership of the farm, he employed the Indian slave labour. Later, Donald Junior inherited the farm. The Zuma family was introduced to the farm round about 1930 or 1935 when the farm was still leased out to the tenants. There was also a Makhathini family which had been resident on the farm since 1920.
- [21] According to the First Defendant, cropping land was about four kilometres away from the house, near the Umgeni River where families planted white maize. The farm owner provided rations to kraal heads of the families that were resident on the farm on a monthly basis. The First Defendant’s version is that Zuma and Makhathinis’ family members were paid an equitable wage on a monthly basis for the services they rendered on the farm. When the farm was leased out to tenants, the grazing land on the farm was overgrazed. As a result, both Zuma and Makhathinis’ were allowed to graze only five cattle per family.
- [22] The First Defendant testified that whilst the Makhathini family was allowed to crop at the area called Naleni, the Zuma family was cropping at the different area near Umgeni River. Both these families also planted white maize to supplement the rations they received from the farm. Families bought their own seed and fertilizer but the farm owner did the ploughing for them. The First Defendant further testified that the workers on the farm received milk rations. He could not remember if workers also got meat rations. All he could recall was that in case a cow fell sick and died on the farm, it was given to the workers to skin and eat the meat.
- [23] The First Defendant, purchased the farm from his father Donald Junior in 1974. The Plaintiff continued with her residence on the farm. She occupied a five room house constructed of wattle logs with mud walls, corrugated iron roof and concrete screeded floor with no finishing and no ceiling board. Later a kitchen built with concrete blocks was added. The rations given to the Plaintiff included 2kg of sugar and 500g of salts per month. The First Defendant, surmised that the Plaintiff, being in the employ of Donald Junior, would have got 80kg of maize meal, she would have got milk and Christmas bonus. The First

Defendant produced copies of wage books, to prove that the Plaintiff received remuneration each month. No record of payment made to the Plaintiff was found from 1986 to 1995. The First Defendant testified that the Plaintiff worked as a domestic servant for Donald Junior. He does not know what the Plaintiff’s salary was if any, during that period. Other domestic servants, like the Plaintiff’s daughter Elizabeth, were paid seventy (70) cents a day and it went up to ninety (90) cents per day. Therefore, according to the First Defendant, the Plaintiff must have received the same salary which other domestic servants received.

[24] According to the First Defendant, the Sinclair family had a vegetable farm. They were planting cabbage and potatoes. After harvesting, farm residents helped themselves to the residues that were left over. The same applied to the maize crop. Again there was no record of those rations with reference to the Plaintiff. No record of bonus paid to the Plaintiff could be produced. The First Defendant assumed that since other domestic servants, Sizakele and Ezalina, according to the bonuses wage book, were paid R10 bonus, the Plaintiff, being in the employ of Donald Junior would have been paid more. From 1974 to 1986,

the Plaintiff, according to the First Defendant, had no cattle. She was the only kraal head who had no cattle. The First Defendant, out of generosity, gave the Plaintiff a heifer. Donald Junior passed away in 1995. From April to July 1996, the Plaintiff was working as a “tog” worker for the First Defendant.

Testimony of Dr Alastair Gavin Patterson (“Dr Patterson”)

[25] Dr Patterson was the first expert witness who testified on behalf of First and Third Defendants. It is immediately clear from his CV that he has a Doctorate in Animal Production. He holds several qualifications including livestock production, agricultural extensions, land redistribution, agricultural finances, veld evaluation, business plans and biodiversity conservation. For a period of 24 years, Dr Patterson was working with stock owners in KwaZulu-Natal at an economic or labour level.

[26] Dr Patterson testified that he was requested to assess the Plaintiff’s status as either a labour tenant or a farm-worker and to determine the value to be attached to the Plaintiff’s remuneration received in cash as opposed to the value to be placed on her right to occupy and use the First and Third Defendants’ land. He compiled a schedule in which values of pay and perks as opposed to the value of residence and use of land were set out. The schedule was admitted into evidence and marked exhibit “H”. In arriving at the values set out in the schedule, Dr Patterson took into account the evidence as well as facts supplied to him by the First Defendant. He also considered the prevailing prices at a certain period in time, like rentals based on 3.5% of land value. He considered milk prices as sourced from the KwaZulu-Natal Department of Agriculture, also the prices of maize, meat prices as well as house rentals and the value of land. At the end, Dr Patterson opined that the total value of pay and perks exceeded the value of residence, cropping and grazing.

Testimony of Alan Stephenson

[27] Mr Alan Stephenson (“Mr Stephenson”) was the second expert and the last witness for the First and Third Defendants. Mr Stephenus is a professional valuer with vast experience in valuations. He was called because of concerns raised by the court as to the expertise of Dr Patterson in the determination of the value to the Plaintiff of the right to reside, and use land on the farm. Mr Stephenson calculated the current value of the grazing land on the farm where the Plaintiff is resident. He also calculated the value of usable land where the Plaintiff resides as well as the value of rental in respect of accommodation in which the Plaintiff reside on the farm. Apart from above-mentioned exercise, Mr Stephenson applied the

Consumer Price Index (“the CPI”) in order to calculate the historic values as from 1960. What is important and surprising, is that the values which Mr Stephenson attributed to the grazing, residential and cropping rights of the Plaintiff, were higher than those of Dr Patterson, but still opined that the value of pay and parks was predominant to the value of residential, grazing and cropping rights of the Plaintiff.

Discussion

[28] The pertinent question which begs an answer is whether the Plaintiff is a labour tenant or a farmworker. It is common cause that the Plaintiff worked on the farm at different stages in her life. It is not in dispute that the Plaintiff started working on this particular farm in 1957 when she was 12 years old. She left school to provide labour on the farm, since her grandparents were old and could not provide labour. The Plaintiff’s mother Letta, who had been providing labour on behalf of the Plaintiff’s grandparents got married and left the farm. Had the Plaintiff not left school to provide labour, the Zuma family would have lost the right to reside on the farm. That is the characteristic of labour tenancy.

[29] The First Defendant contends that in 1957, the Plaintiff was still learning the work and that she started to work in 1960. That is immaterial, learning or not, but she was working, providing labour to Donald Junior the owner of the farm at the time. What is important, is that the First and Third Defendants have failed to prove that the Plaintiff, whilst working for Donald Junior was paid in cash and that the cash payment was predominant to the right to reside, and use land on the farm. The wage book produced did not show any cash payment by Donald Junior to the Plaintiff. It is unfair to say that since other

people were paid in cash therefore, the Plaintiff also must have been paid in cash when there is no evidence to substantiate such an averment.

[30] In terms of the definition of a farmworker, to qualify as a farmworker the person must be employed on a farm in terms of a contract of employment[4] which provides that in return for the labour which she provides to the owner or lessee, she shall be paid predominantly in cash or some other form of remuneration and not predominantly in the right to occupy and use land. Therefore, in terms of the definition, the first requirement, is the contract of employment. In casu, the Defendants failed to prove the existence of the contract of employment with the terms prescribed by the Act. The First Defendant

mentioned other rations which were given to the Plaintiff, but failed to state if those rations formed part of the Plaintiff’s

remuneration. He even mentioned that if a cow died on the farm it was given to the workers to skin and eat. I do not know what value, if any, to attach to that kind of meat.

[31] Mr Combrick conceded that the Plaintiff falls within paragraph (a),

- (b) and (c) of the definition of labour tenant, but still argued that the onus was still on the Plaintiff to prove that she is not a farm worker, since that is what the Plaintiff pleaded in her papers. I do not agree. As stated earlier, in this judgement, the presumption created by section 2(5) of the Act operates in favour of the Plaintiff. Once it is proved or admitted that the Plaintiff falls under paragraphs (a),
- (b) and (c) of the definition of labour tenant, the onus shifts to the Defendant to prove that Plaintiff is a farmworker. That is what the Defendants have failed to prove in this case.
- [32] The testimony of Dr Patterson is not of much help to the court. His report is based on the evidence and facts supplied to him by the First Defendant. He did not interview the Plaintiff. Therefore, Dr Patterson's report is not objective, it is based on wrong information obtained from the First Defendant about cash remuneration and Christmas bonuses allegedly paid to the Plaintiff when the wage book does not show such payments. The other problem with the evidence of Dr Patterson is that he is not a valuer, but an agricultural economist. The acceptable valuation is that one provided by Mr Stephenson, who is a professional valuer. However, Mr Stephenson in his report, to a certain extent, relies on the opinion of Dr Patterson, which opinion is in itself based on the wrong information provided by the First Defendant.
- [33] The credible and reliable valuation is that one provided by Dr Boshoff. The integrity of the methodology he used, cannot be faulted. In any event, nothing seems to be more valuable to the Plaintiff than the right to reside, crop and graze livestock on the piece of land allocated to her family. She has the roof over her head. She brought up her children on that land. She cultivated the land and got food to feed her children, she grazed livestock which she could sell and get money to buy food for her children and she buried her deceased loved ones on that piece of land.
- [34] In *Department of Land Affairs v Goedgelegen Tropical Foods Pty Ltd*[5], Moseneke DCJ as he was then was, expressed himself in the following terms[6]:
- "Finally, it is appropriate to observe that the rights of the individual applicants [labour tenants] were not merely economic rights to graze and cultivate in a particular area. They were rights of family connection with certain pieces of land, where the aged were buried and children were born and where modest homesteads passed from generation to generation. And they were not simply there by grace and favour. The paternalistic and feudal-type relationship involved contributions by the family, who worked the lands of the farmer. However unfair the relationship was, as a relic of past conquests of land dispossession, it formalised a minimal degree of respect by the farm owners for the connection of the indigenous families to the land. It had a cultural and spiritual dimension that rendered the destruction of the rights more than just economic loss."*

In my view and as conceded by the defence counsel, the Plaintiff succeeded to prove that she falls within paragraphs (a), (b) and

- (c) of the definition of labour tenant. The onus was on the First and Third Defendants to prove that the Plaintiff was a farm worker. This, they failed to do.

Costs

[35] The Plaintiff seeks costs of this action from the First and Third Defendants. The First and Third Defendants did not seek an order of costs. The practice in this court is not to make cost orders in matter such as this, matters which fall within the genre or ambit of public interest litigation, unless there are exceptional reasons to do so. I cannot find any exceptional reasons in this case which warrant a deviation from the usual practice.

Order

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

1. It is declared in terms of section 33(2A) of the Land Reform (Labour Tenants) Act, Act No. 3 of 1996, that the Plaintiff is a labour tenant.
2. There is no order as to costs.

M T NCUBE

Judge of the Land Claims Court of

South Africa, Randburg

Appearances

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WESTVILLLE

- [1] Mahlangu v De Jager 1996 (3) SA 235 LCC at 241 E-F
- [2] Mlifi v Klingenberg 1999 (2) SA 674 LCC at 683 A-B
- [3] See Ngcobo and Others v Salimba CC; Ngcobo v Van Rensburg 1999 (2) SA 1057 (SCA) para 11.
- [4] My own emphasis
- [5] 2007
- (6) SA 199 (CC)
- [6] Para 86.
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