

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NUMBER: 32771/03

28/4/2005

In the matter between:

M W MOGOLEGO

APPLICANT

and

S MATHE

1ST RESPONDENT

MINISTER OF AGRICULTURE AND

LAND AFFAIRS

2ND RESPONDENT

REGIONAL CLAIMS COMMISSIONER

3RD RESPONDENT

MEC FOR LAND AFFAIRS,

MPUMALANGA

4TH RESPONDENT

JUDGMENT

TOKOTA A. J.

[1] The applicant seeks a final interdict in terms of which he claims that the first respondent's cattle should be removed from farm Unit 311, Kameelpoort, KwaMhlanga, within 48 hours of the court order. Pending

the final determination of his rights in and to said Unit 311, Kameelpoort, KwaMhlanga by the second and/or third and/or fourth respondent, the applicant seeks an interim interdict prohibiting the first respondent and members of his family from;

- (a) entering the said farm without the applicant's express permission;
- (b) allowing any of their cattle to graze on the said farm;
- (c) cutting or damaging any boundary fences of the said farm.

[2] On 16 October 1990, the applicant concluded a lease agreement with the erstwhile Kwandebele Government in terms of which he leased the said farm for a period of 9 years and 11 months commencing from 1 August 1989. He had been paying rent in terms of clause 3 the agreement until 1994. The lease expired on or about July 1999. In terms of clause 4.12 of the lease agreement the applicant was precluded from sub-letting the said farm.

[3] The applicant concluded a lease agreement with one Alpheus Mathe, the father of the first respondent, in terms of which he sub-let a portion of the farm to him to graze 68 cattle on the farm. He collected

rentals from Mr Mathe. It is not clear as to when this agreement was concluded. Mr Mathe died in 2001 and the first respondent refused to pay rentals demanded by the applicant. The first respondent has also refused to vacate the farm or remove the cattle he inherited from Mr Mathe. After the lease expired by effluxion of time it was never formally renewed.

[4] Mr Geach argued that this is a matter which falls within the jurisdiction of the Land Claims Court. His argument, as I understood him, is based on the premise that effectively what the applicant is seeking is an eviction of the first respondent. I think there is merit in this argument. The matter can however, be decided even on the basis of an interdict, which is purportedly sought. That then brings us to the issue whether or not the applicant has shown a clear right to the said farm. The applicant derived his rights to the farm from the expired lease agreement. In argument Mr De Klerk, who appeared for the applicant, submitted that the applicant is a *bona fide* possessor of the farm by virtue of the lease agreement on a month to month basis as indicated in letter dated 3 September 2002 from the Department of Land Affairs. I do not agree. A lease is a contract by which one party, usually in consideration for rent, conveys land to another for a specified period of time (See The Concise

Oxford Dictionary). From his own version the applicant is not paying rent for the farm.

[5] If one has regard to a letter from the same Department of Land Affairs annexure "D" to the answering affidavit it is clear that the present dispute between the applicant and the first respondent was the subject of discussion. The department resolved that " *RE: MR MATE AI MAGOLEGO GRAZING RIGHT ON UNIT 311 LAMEELPOORT 202 JR (t)he families still on the land will be dealt with by the DLA and DACE in terms of their long term occupiers (ESTA) rights. According to your letter your client form (sic) part of this category ... A final decision from the Government can soon be expected. The matter of sub-leasing by Mr Magolego will also be addressed during negotiations. In the meantime the status quo should remain and your patience will highly appreciated.* " From the contents of this letter it is clear that the owner of the land in question has expressly permitted the first respondent to remain in the farm. The owner of the land has permitted the first respondent to remain in the farm. The applicant has not shown that he has better rights than the owner. He has even breached the terms of the original agreement by, *inter alia*, failing to pay rent and sub-letting. It is in dispute as to whether he has ever occupied the said farm in terms of the agreement. There is a

strong possibility that he hired the farm for purposes of sub-letting but I refrain from deciding this aspect, as it is irrelevant for purposes of the relief claimed.

[6] Mr Geach has referred me to the case of NDLOVU v NGCOBO; BEKKER AND ANOTHER v JIKA 2003 (1) SA 113 (SCA) at 139 where it was stated thus *"If the tenant sublet the premises concerned, and did not therefore use them as his home, s 4 of PIE would not necessarily protect him, because he would not strictly be in 'occupation' of the land concerned, and for the purposes of s 4(7) at any rate, there would be no question of enquiring into whether other land is available for his occupation. If he failed to pay the rental, an order for his eviction might therefore be made. But the sublessee, who used the premises for his home would not be in the same position: he would not necessarily be liable to eviction at the instance of either the landlord or the tenant."* It seems to me that the facts of this case are such that this principle is applicable here as well. In order for the applicant to succeed for the relief claimed in prayer 3 he must show, *inter alia*, that he has a prima facie right though open to some doubt. In my view the applicant has failed to show that he has any rights over the said farm and accordingly his claim cannot

succeed. It follows in my view that the applicant is not entitled to interim interdict as well. In the result the application is dismissed with costs.

B R TOKOTA

ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 28 APRIL 2005.

DATE OF JUDGMENT: 28 APRIL 2005.

Appearance for the Applicant Adv L.S. De Klerk

Instructed by Grutter and Grobbelaar Attorneys

Appearance for the First Respondent Adv B Geach SC

Instructed by G P Venter Attorneys