IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on 16 May 2000 **CASE NUMBER**: LCC24/00
before **Dodson J**

Decided on: 22 May 2000

In the case of:

BADIRI HOUSING ASSOCIATION Applicant

and

BHEKUYISE DLAMINI Respondent

and 8 other similar matters

JUDGMENT

DODSON J:

Introduction

[1] The applicant is Badiri Housing Association, a non-profit organisation formed with the purpose of providing low cost housing. Respondent has purchased an erf in a development of the applicant's, namely the Tanganani Township in Diepsloot, Gauteng Province. This is an application for the eviction of the respondent from the house in terms of the Extension of Security of Tenure Act.[1] I will refer to this Act as "ESTA".

[2] Originally the application was brought as an urgent application for the final eviction of the respondent in terms of section 9 of ESTA. The applicant applied to amend its notice of motion. The respondent opposed this amendment when the matter was heard. He has not, however, shown any prejudice and I am satisfied that the amendment should be allowed. In terms of the amended notice

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1 Act 62 of 1997

of motion (as I interpret it[2]), applicant now seeks an urgent interim order of eviction of the respondent in terms of section 15 of ESTA, together with a rule nisi requiring the respondent to show cause on a date to be determined by this Court why a final order of eviction should not be made in terms of section 9 of ESTA.[3] The parties are in agreement that this court has jurisdiction to hear the matter and there is no reason to doubt the correctness of their conclusion.[4] Also before the court are eight similar matters. The parties agree that the facts in those matters do not differ materially from the facts in this matter and that the outcome of this matter will be determinative of the outcome in those matters.

Factual background

[3] On 9 December 1997, the applicant and respondent entered into an agreement of purchase and sale in respect of erf 402 in Tanganani Township. The material terms of the agreement were as follows :

(i) The respondent purchases the erf from the applicant for an amount of R38 500.00.

(ii) From beneficial occupation until transfer, the respondent must pay occupational rental of R425,00 per month.

(iii) The agreement is subject to the respondent being able to secure a bond or bonds in the total amount of the purchase price within 21 days of the signature of the agreement.

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2 Respondent's interpretation of the applicant's amended notice of motion was that both interim and final evictions are sought in terms of section 15 of ESTA. This, as his counsel correctly pointed out, has been held, in numerous decision of this Court, not to be permitted by ESTA . Section 15 only provides for an urgent *interim* order of eviction. If the respondent's interpretation of the amended notice of motion is correct, I am in any event entitled to consider the relief as I have interpreted it, under the prayer for alternative relief.

3 The relevant parts of section 9 and 15 are quoted later in the judgment.

4 Although the land concerned is a township, the respondent was an occupier immediately before the proclamation of the township. See section 2(1)(b) of ESTA.

(iv) In the event of the respondent not being able to secure a bond within the stipulated time period or extended time period agreed to in writing, the agreement would become null and void.

(v) In the event of any breach and a failure to remedy same within 7 days of being given notice to do so, the applicant has the election to cancel the agreement and retake possession of the erf or to recover the full balance of the purchase price then outstanding.

(vi) The agreement is the complete record of the consensus reached between them and representations, warranties and the like not contained in the agreement do not bind the parties.

[4] On the same day, the parties signed an addendum to the purchase agreement. The recordal at the beginning of the agreement states that a separate agreement has been entered into by the respondent for the construction of an erf on the property. Clauses 4 and 5 of the addendum read as follows (it is a verbatim transcription):

> "4.The granting of bond(s) refereed to in Clause 11 of the original agreement, will include not only the capital required to purchase the land, but also to cover the costs of the building contract refereed to above as well as all sundry costs. The interest due on these costs will be capitalised from the day on which the cost is paid out, until the day that the Purchaser takes occupation of the dwelling (and occupational rental becomes due) or until the day of registration, which ever day comes first.
>
> It is specifically noted that the source of the funding for the purchase and construction will be as follows;
>
> > An application for 75% of the Purchaser's value of investment in the Hospitality Industry pension and Provident Fund will be made as a 15 year loan at 12% per annum.
> >
> > An application for the Provincial Housing Board Subsidy will be made.
> >
> > A loan application will be made to the Seller for a 15 year loan at 15% per annum.
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> > A loan application will be made to the Purchasers employer.
>
> It is further understood that due to the Purchaser's low income level, should the Purchaser be unable to access finance from the abovementioned sources, no other means of funding will be investigated and the agreement will be viewed as null and void.

> In this case it is specifically agreed, that should the Purchaser have taken occupation of the property, the Purchaser shall vacate the property within 21 days of receiving written notification to do so.
> Any costs to reinstated the property to its original condition shall be for the account of the Purchaser.
>
> 5. The Seller will assist the Purchaser in the completion of all documentation required in terms of this agreement."

[5] The addendum also records that the respondent has entered into a separate contract for the construction of a dwelling on the erf and that the applicant will act as agent and project manager for the respondent in all aspects of the construction of the dwelling.

[6] Although the affidavits are somewhat cryptic, it appears that the dwelling was duly constructed and occupied. Occupational rental was paid, although not in the full amount due, until July 1998. Payments then stopped, save for a single payment in November 1999. Transfer has still not been effected. It appears to be common cause that this is the consequence of the failure to secure any form of mortgage bond or other financing in respect of the purchase price. Broadly speaking, the respondent and other persons similarly situated contend that the applicant has breached the agreement in failing to assist them in securing finance. They also seek to justify the non-payment of occupational rental on this basis and because of complaints about the quality of the construction work on the dwellings. The applicant contends that it was the respondent's obligation to secure finance and that his conduct is aimed at securing free accommodation and frustrating the applicant from going about its business.

[7] These disputes formed the subject matter of mediation before the Landlord Tenant Dispute Resolution Board created by the Gauteng Provincial Government. The mediation involved approximately four meetings before the board during September, October and November 1999. The mediation failed.

[8] During December 1999, the applicant delivered a letter to the respondent which is dated 10 December 1999. The letter refers to the clause in the main agreement which requires the respondent to secure a bond within 21 days and renders the agreement null and void in the event of failure to do so. It records that as a "gesture of goodwill and without prejudice to our rights" the respondent is given a period of one month to obtain a bond. Failing this, the letter records that the applicant will cancel the contract of sale and institute appropriate legal proceedings. No finance was raised in response to this

letter. A letter dated 5 February 2000 was then delivered to respondent which refers to the letter dated 10 December 1999 and reads:

> "You have failed to comply therewith and the agreement is hereby cancelled. In the circumstances, kindly vacate the premises forthwith."

[9] The respondent has not vacated the premises.

Urgent relief

[10] Section 15 of ESTA reads as follows:

> **"Urgent proceedings for eviction**
>
> (1) Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that occupier if it is satisfied that -
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> (a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land;
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> (b) there is no other effective remedy available;
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> (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted; and
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> (d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.
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> (2) The owner or person in charge shall beforehand give reasonable notice of any application in terms of this section to the municipality in whose area of jurisdiction the land in question is situated, and to the head of the relevant provincial office of the Department of Land Affairs for his or her information."

[11] It is not in dispute that section 15(2) is complied with in that the necessary notice has been given to the municipality and the head of the relevant provincial office of the Department of Land Affairs.

[12] In relation to section 15(1), this court has previously held that paragraphs (a) to (d) must all be complied with before relief can be granted.[5] As proof of the real and imminent danger of substantial injury or damage which the applicant faces if the respondent is not evicted immediately, the applicant points to the following. Firstly, it refers to the serious financial losses which it is incurring as a result of the stalemate which it has reached with the respondent and other respondents similarly situated, none of them are paying occupational rent. Secondly, the applicant refers to certain threats and aggressive conduct to which the applicant's officials have been subjected when trying to go about their business in relation to the development. This includes incidents where crowds have gathered for various reasons, including an incident where a crowd gathered to prevent the enforcement of an eviction order against an occupant of the township. Thirdly the applicant refers to the fact that it had to employ a security company to maintain security at the property at great expense, something which it has since dispensed with because of the expense. Fourthly, it attributes residents' complaints about the quality of the housing to neglect of the properties by the residents. This neglect is then presented as proof of the danger of substantial injury or damage. Fifthly, the applicant contends that the continued occupation of the erf by the respondent and the consequential denial of access to the applicant is in itself a serious injury.

[13] I will deal with these in sequence. As far as the applicant's financial loss is concerned, I will assume for purposes of this decision, without deciding the point, that such loss is contemplated by section 15(1)(a). If that is so, then the wording of the paragraph requires that the applicant shows a causal connection between an eviction order under section 15(1) and the prevention of the financial loss referred to. The difficulty which the applicant faces in this regard is something of a catch-22. In order to comply with section 15(1)(d), it has undertaken not to rent out the dwelling to another person and to keep it available pending a final order of eviction in terms of section 9. It is accordingly unable to show that its financial position will in any meaningful way be ameliorated by an interim eviction order.

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5 *Slaley Farms (Pty) Ltd v Swarts* LCC 49R/99, 8 October1999, [1999] JOL 5522 (LCC); internet web site address http://www.law.wits.ac.za/lcc/1999/slaley2sum.html at para [14].

[14] As regards the second, third and fourth forms of harm to which the applicant refers, the primary difficulty which the applicant faces, on its own admission, is that it is unable to connect the respondent himself with any of the unlawful conduct complained of. It is so that in the opposing affidavit the respondent concedes that he has on certain occasions participated in protest action, but he insists that such participation has been completely peaceful. The applicant did argue that the respondents against whom it had chosen to bring proceedings in the Land Claims Court were the ringleaders of the unlawful actions, but there is no such allegation in the applicant's affidavits. It is therefore not possible to attribute any threatening conduct of the groups which have gathered, or any other damage, to the respondent. As far as the fifth contention of the applicant is concerned, I do not accept that the mere occupation of a dwelling (and consequential denial of access to the applicant's officials) in itself constitutes a real and imminent threat of substantial injury and damage to person or property.

[15] On the basis of the applicant's failure to comply with paragraph (a) alone, the applicant's application in terms of section 15 fails and it is not necessary for me to consider whether or not there is compliance in relation to paragraphs (b), (c) and (d).

Rule *nisi*

[16] The applicant also seeks a rule *nisi* calling on the respondent to show cause why he should not be evicted in terms of section 9 of ESTA. Section 9(2) sets out the requirements which must be complied with before a court may make an order of eviction in terms of ESTA. It reads as follows :

> "(2) A court may make an order for the eviction of an occupier if-
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> (a) the occupier's right of residence has been terminated in terms of section 8;
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> (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
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> (c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and
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> (d) the owner or person in charge has, after the termination of the right of residence, given-
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> (i) the occupier;

> (ii) the municipality in whose area of jurisdiction the land in question is situated; and
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> (iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,
>
> not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based : Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with."

[17] The first difficulty which the applicant faces is that it has not given notice as contemplated in section 9(2)(d)(i) to (iii). Nor were the respondent, the municipality and the head of the relevant provincial office of the Department of Land Affairs given 2 months advance notice of the commencement of the hearing of this application (as contemplated in the proviso in section 9(2)(d)). Service was only effected on these parties on 13, 14 and 12 April 2000 respectively and commencement of the hearing was on 16 May 2000. The applicant, however, refers to those cases where such omissions have been cured by the grant of a rule nisi returnable after 2 months.[6] The applicant also argued that, in calculating the 2 month period for purposes of a return day in this case, that period must be considered to have started running from the date of service.

[18] In the case of *City Council of Springs v Occupants of the Farm Kwa-Thema,210*[7] this Court was concerned with a review of similar proceedings in a magistrate's court. The magistrate had made a final order of eviction under section 15 of ESTA. On review, it was common cause that she should not have done so. However, counsel for the City Council argued that a case was in any event made out on the papers for a final eviction order in terms of section 9 of ESTA. However, the notice requirements of section 9(2)(d) had not been complied with. The Court, nonetheless, held as follows :

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6 See for example *City Council of Springs v Occupants of the Farm Kwa-Thema 210* LCC 10R/98, 3 September 1998, 2000 (1) SA 476 (LCC);[1998] 4 All SA 155 (LCC) and *Wessels v September and family*, 11R/00, 17 March 2000, internet web site http://www.law.wits.ac.za/lcc/2000/11r00.sum.html.

7 See above n 6.

" [14] The object of section 9(2)(d) is twofold. Firstly, it ensures adequate notice to persons who may want to object or otherwise protect their rights. Secondly, it gives the municipality and the provincial office of the Department of Land Affairs sufficient time to take the steps which they may consider necessary to deal with the situation. Notice of at least two calendar months is required. If the objective of adequate notice is met, there might well be sufficient compliance with the section, despite the absence of exact compliance. If the required notice can be achieved in some other manner, such as by the issue of a rule *nisi*, the purpose of section 9(2)(d) will also be met. In this connection the Court ought to adopt a robust approach, as was suggested by Hoberman AJ in *Msoki v Minister of Law and Order and Others:*

> 'I am mindful of the fact that, as stated by Holmes JA, in *Commercial Union Assurance Company of South Africa Ltd v Clarke* 1972 (3) SA 508 (A) at 516B-C, *`a robust and practical approach as distinct from a legal one'* is to be adopted in dealing with legislative provisions which require a claimant to give due notice prior to the institution of proceedings.'

[15] On the view which I take of the matter, any deficiency in the notice to the occupiers of the Council's intention to apply for an eviction order can be cured by the issue of a rule *nisi* with a return date more than two calendar months later, and by requiring the Council to serve the rule *nisi* on the occupiers. This approach is in line with the proviso to section 9(2)(d), which recognises that the eviction litigation may commence during the notice period."

[19] The court was prepared to grant a rule *nisi* provided that there was *prima facie* compliance with section 9(2)(a) to (c). The question is whether there is such *prima facie* compliance in this case. Of necessity, all of the views expressed in regard to this issue in this judgment are preliminary, both in relation to the facts and the law.

Compliance with section 9(2)(a)

[20] Compliance with this paragraph requires that the occupier's right of residence has been terminated in terms of section 8 of ESTA. Section 8(1) is relevant in this case. It reads:

"(1) Subject to the provisions of this section, an occupier's rights of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to-

(a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;

(b) the conduct of the parties giving rise to the termination

(c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;

(d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and

(e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence."

[21] In relation to paragraph (a), I was not referred to anything in the agreement or addendum that is patently unfair. In relation to paragraph (b), the parties have conflicting views as to their respective culpability. Whatever the rights and wrongs may ultimately be found to be in this regard, what is not in dispute is that the respondent has continued to occupy the erf without paying a cent of occupational rental. *Prima facie*, this factor seems to weigh in the applicant's favour. The non-payment of rental, weighed against the financial loss to the applicant, is also one of the factors relevant to the weighing of the interests of the parties required by paragraph (c). In the respondent's favour is the fact that he says he has nowhere else to go by way of suitable alternative accommodation. On the other hand, the time he has had to find alternative accommodation and the time that he will have is something which must be weighed against this. *Prima facie*, the balance weighs in favour of the applicant.

[22] Paragraph (d) does not apply. Paragraph (e) requires me to consider the procedure followed by the applicant in relation to the termination of the right of residence. Again, *prima facie*, the applicant does not appear to have acted unfairly. It subjected itself to an extended mediation process and provided the respondent with an opportunity to comply with the agreement which went beyond the strict terms of the agreement. An opportunity to make representations was provided by the mediation process.

[23] What is also relevant to the evaluation of section 8(1) is the contention made on behalf of the respondent that the contract has in fact not been lawfully terminated. This, it was argued, was because the letter of 10 December 1999 referred, as a basis for the threat of cancellation, to a clause in the main agreement (clause 11) which no longer applied. The clause deals with the duty to secure a mortgage

bond. Counsel for the respondent argued that clause 11 had been replaced by clause 4 of the addendum. The failure to base the letter on clause 4 of the addendum, so it was argued, meant that the agreement had in fact not been cancelled. It was argued further that the non-compliance by the respondent with the amended version of the clause was the consequence of the applicant's failure to comply with its contractual obligation to assist the respondent in securing finance.[8]

[24] The difficulty with this argument is that both clause 4 of the addendum and the clause 11 of the main agreement contain resolutive conditions, whereby failure to secure finance results in the lapsing of the agreement. There is no need for a breach followed by a cancellation. *Prima facie*, therefore, it seems to me that the right of residence has fallen away because of the resolutive condition and not because of any cancellation of the contract. This resolutive condition was referred to in the letter of 10 December 1999. I am accordingly satisfied that there is *prima facie* compliance with section 9(2)(a).

Compliance with section 9(2)(b)

[25] It was pointed out on behalf of the respondent that the letter dated 5 February 2000 requiring vacation of the erf does not provide any period of notice, but rather calls for vacation "forthwith". The applicant argued that the prior letter threatening cancellation read with the letter to vacate constituted compliance with this section. In my view, however, the matter is, *prima facie*, resolved by reference to that part of clause 4 of the addendum which provides that in the event of the resolutive condition not being fulfilled (i e the securing of the necessary finance), "the Purchaser shall vacate the property within 21 days of receipt of written notification to do so".

[26] In my view, the letter requiring vacation forthwith constituted the written notification to vacate and the contract then imposed a 21 day period within which to vacate. It is common cause that the respondent did not vacate the erf within this 21 day period. I am accordingly satisfied that, *prima facie*, there is compliance with section 9(2)(b).

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8 See clause 5 of the addendum referred to in paragraph [4].

Compliance with section 9(2)(c)

[27] In this case, where respondent became an occupier after 4 February 1997, compliance with section 9(2)(c) requires compliance with section 11 of ESTA, more particularly sections 11(2) and (3). They provide as follows:

> "(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.
>
> (3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to-
>
> (a) the period that the occupier has resided on the land in question;
>
> (b) the fairness of the terms of any agreement between the parties;
>
> (c) whether suitable alternative accommodation is available to the occupier;
>
> (d) the reason for the proposed eviction; and
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> (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land."

[28] *Prima facie*, it seems to me that an order of eviction in this case would be just and equitable if regard is had to the five factors referred to. In relation to paragraph (a) the respondent has occupied the erf for between two and three years. Paragraph (b) has already been evaluated in relation to section 8(1). There is a shortage of information in relation to the issue of suitable alternative accommodation referred to in paragraph (c), the applicant only going so far as to say that it has no obligation itself to provide alternative accommodation in the circumstances. More information will be needed to enable the court to properly exercise its discretion in this regard.[9] I am not persuaded that the absence of this information at this stage is sufficient to upset the *prima facie* case which applicant seeks to make out. This shortfall in information is likely to be remedied once there is compliance with section 9(3) of ESTA. Section 9(3) reads as follows:

> "(3) For the purposes of subsection 2(c), the Court must request a probation officer contemplated in section 1 of the Probation Services Act, 1991 (Act No 116 of 1991), or an officer of the department

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9 *De Kock v Juggels* 1999 (4) SA 43 (LCC) at para [24].

> or any other officer in the employment of the State, as may be determined by the Minister, to submit a report within a reasonable period-
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> (a) on the availability of suitable alternative accommodation to the occupier;
>
> (b) indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children, if any, to education;
>
> (c) pointing out any undue hardships which an eviction would cause the occupier; and
>
> (d) on any other mater as may be prescribed."[10]

[29] In relation to paragraph (d) of section 11(3), the financial predicament in which the applicant finds itself and the non-payment of occupational rental would, *prima facie*, seem to be fair reasons to seek the eviction of the respondent. The balance of interests contemplated by paragraph (e) is referred to above in relation to section 8(1). I am satisfied that the applicant has indeed shown *prima facie* compliance with sections 9(2)(a) to (c).

Order

[30] In the circumstances, I intend granting a rule *nisi*. As I have said, the applicant argued that the 2 month period should for these purposes run from the date of service. I do not agree. This would leave only 3 weeks for the furnishing of the report in terms of section 9(3) of ESTA. The parties would also have to file any evidence in answer to the probation officer's report within this time. Moreover, the rule *nisi* approach already represents a departure from the strict terms of section 9(2)(d). Going along with the applicant's suggestion would only undermine the provision further. It is also relevant in this regard that the form of the application once it was argued was materially different to the form of the application at the time of service. The question of costs can stand over for determination on the return day.

[31] In so far as the report in terms of section 9(3) of ESTA is concerned, I have no information as to the practicalities of the implementation of this provision. No-one approached the Court before it was

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10 This subsection was introduced by the Land Affairs General Amendment Act, 11 of 2000, which came into force on 24 March 2000.

included in the relevant amendment Bill. The Court's researcher has learned from an official of the Department of Land Affairs that the department or departments responsible for probation officers are reluctant to assist in co-ordinating the preparation of these reports for various reasons, including the pressure of work which the probation officers face in the criminal justice system. It is clear that Parliament has passed this provision without the executive being properly prepared for its implementation. I do not know whether the Ministerial designation in section 9(3) applies only to the last of the three categories of potential report preparers, or to the last two, or to all three. This issue has not been argued before me. The subsection is poorly drafted, as I pointed out in *Lusan Premium Wines (Pty) Ltd v Stoffels and others*.[11] It seems to me that the best I can do at this stage is to record the Court's request in the same terms as the wording of the provision and request that the Minister of Land Affairs urgently ensure that a person as contemplated in the subsection prepares a report within the time limit which I specify. I cannot compel the Minister to do this as she is not a party before the Court, nor is she the person ultimately responsible for the preparation of the report.

[32] Finally, I must record my concern that the parties were not able to resolve their differences amicably through the mediation process which they have already been through. It may be that circumstances have changed sufficiently in the interim for the parties' attitudes to have changed. This Court has the power in terms of section 35A of the Restitution of Land Rights Act[12] to appoint a mediator to attempt to settle the dispute. If the parties are in agreement that such a process may be fruitful, they may approach the Court informally in chambers for an order in terms of that section. If they wish to adopt this course of action, they should do so without delay, so that the period while the section 9(3) report is being prepared could be used for this purpose. The Court would, at this stage, not be willing to stay the proceedings pending the mediation process.

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11 LCC 25R/00, 19 April 2000, internet web site http://www.law.wits.ac.za/lcc/2000/25r_00sum.html.

12 Act 22 of 1994.

[33] I accordingly make the following order:[13]

(i) The application for an urgent order of eviction in terms of section 15 of the Extension of Security of Tenure Act, No 62 of 1997 is dismissed.

(ii) A rule *nisi* is issued calling on the respondent to show cause, on a date to be determined at the conference referred to in paragraph (vi), why a final order of eviction should not be granted in terms of section 12 read with section 13 of the Extension of Security of Tenure Act.

(iii) The date referred to in paragraph (ii) must be a date not less than 2 months after the date of compliance with the service of this order required in terms of paragraph (vii).

(iv) The Court requests that a probation officer as contemplated in section 1 of the Probation Services Act, 1991 (Act No 116 of 1991), or an officer of the Department of Land Affairs or any other officer in the employment of the State, as may be determined by the Minister of Land Affairs, submit a report as contemplated in section 9(3) of the Extension of Security of Tenure Act within one month of the date of service of this order on the Minister of Land Affairs in terms of paragraph (vii).

(v) The Minister of Land Affairs, or a person with appropriate delegated authority, is requested to ensure that a report as contemplated in paragraph (iv) is prepared by an appropriate officer within the time period specified.

(vi) The further conduct of the proceedings must be decided at a pre-trial conference to be held immediately after receipt of the report referred to in paragraph (iv).

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13 Identical orders will be made in the 8 similar matters.

(vii) The applicant must serve this order on the Minister of Land Affairs, the Northern Metropolitan Local Council and the head of the Gauteng Provincial Office of the Department of Land Affairs.

(viii) The question of costs stands over for determination on the return day.

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JUDGE A DODSON

For the applicant:
Adv J Heher instructed by *Hirschowitz Flionis, Johannesburg*.

For the respondent
Adv J Botha instructed by *Noko Mokate Incorporated*.