

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **DODSON J**

Decided on: 18 January 2000

CASE NUMBER: LCC 1R/00

MAGISTRATE'S COURT CASE NUMBER: 485/99

In the review proceedings in the case between:

J S BEUKES (EDMS) BEPERK t/a DENNEGEUR BOERDERY

Applicant

and

ABE JAGERS

1st Respondent

ANGELINE JAGERS

2nd Respondent

CHARL JAGERS

3rd Respondent

JULIANA JAGERS

4th Respondent

ZELDA JAGERS

5th Respondent

JUDGMENT

DODSON J:

[1] In terms of section 19(3) of the Extension of Security of Tenure Act¹ (I will refer to it as "ESTA") any eviction order made by a magistrate in proceedings instituted before 31 December 1999 is subject to automatic review by this Court. On 17 December 1999, the magistrate for the district of Grabouw made an order for the eviction of the 1st, 2nd, 4th and 5th respondents. An order was not sought against 3rd respondent who appears to have left the farm concerned. The eviction order has been sent to this Court on automatic review.

[2] The respondents did not oppose the application for their eviction. I have perused the record of the proceedings. I am satisfied that the applicant was entitled, in terms of ESTA, to an order of eviction against the respondents referred to in the order.

1 Act 62 of 1997.

[3] There is only one criticism and that relates to the formulation of the order of eviction. Section 12(1) and (2) of ESTA provide as follows:

“12 Further provisions regarding eviction

- (1) A court that orders the eviction of an occupier shall-
 - (a) determine a just and equitable date on which the occupier shall vacate the land; and
 - (b) determine the date on which an eviction order may be carried out if the occupier has not vacated the land on the date contemplated in paragraph (a).
- (2) In determining a just and equitable date the court shall have regard to all relevant factors, including-
 - (a) the fairness of the terms of any agreement between the parties;
 - (b) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land; and
 - (c) the period that the occupier has resided on the land in question.”

[4] According to the record of proceedings, the magistrate’s eviction order reads as follows:

“Uitsettingsbevel teen respondente no. 1, 2, 4 en 5 verleen.

Hof gelas dat uitsetting geskied na een maand kennisgewing aan respondente nadat uitslag van die Hersiening bekend is.”

In framing the order in this way, the magistrate was, quite properly, attempting to accommodate the review process. Magistrates have previously been criticised for setting eviction dates which do not allow sufficient time for the automatic review proceedings.² The rules of the Land Claims Court now also require magistrates to take this into account.³

2 See, for example, *Lategan v Koopman and others* 1998 (3) SA 457 (LCC) at 465F-466A; *Roux v Lekekiso* LCC 13R/98, 16 November 1998, [1998] JOL 4157 (LCC) at para [9]-[10]; internet web site address: <http://www.law.wits.ac.za/lcc/lccalph.html> at para [9]-[10].

3 Rule 35A(1)(a) of the Land Claims Court rules published in Government Gazette 17804, 21 February 1997, as amended by GN 345, Government Gazette 18728, 13 March 1998 and GN 20049, Government Gazette 594, 7 May 1999.

[5] However, the order still fails to comply with section 12(1) and (2) which are peremptory.⁴ Firstly, it fails to provide two distinct dates. Section 12(1)(a) requires the court formulating the eviction order to determine a date by which the occupier must vacate. Section 12(1)(b) requires the court to determine a separate date on which an eviction order may be carried out if the occupier fails to vacate on the date determined in terms of section 12(1)(a).⁵

[6] Secondly, the date which is determined by the magistrate is not clear. It requires the giving of a month's notice by an unspecified person (presumably the applicant) after the outcome of these review proceedings is known. Again, it does not say whose attention it must have come to before the notice can be given. Must the outcome be known to the registrar of the Land Claims Court, or the magistrate, or the applicant, or the respondents, or all of these persons, before the month's notice can be given? The order is accordingly defective on the basis that it fails clearly to determine any date.⁶

[7] It is arguable that the magistrate's order is also defective on the basis that it allows a party other than the court to determine the eviction date. I say this because the date would be dependant on the date when the person obliged to give the month's notice chose to do so. This may amount to an abdication of a power which is vested only in the court giving the eviction order. However in *City Council of Springs v Occupants of Kwa-Thema 210*⁷ this Court in effect allowed a party other than the Court to determine the dates referred to in section 12(1), subject to compliance with the Court's order, and there were good reasons for doing so. I consider myself bound by that decision. The

4 *Ferguson v Buthelezi* LCC 41R/99, 23 September 1999, internet web site address: <http://www.law.wits.ac.za/lcc/1999/fergusonsum.html> at para [18]; *Alberts v Sibiyi* LCC 66R/99, 2 November 1999, internet web site address: <http://www.law.wits.ac.za/lcc/1999/albertsum.html> at para [3].

5 See, for example, *Karabo and others v Kok and others* [1998] 3 All SA 625 (LCC) at 631h-632a.

6 In making this finding, I do not mean that a magistrate would always have to specify particular calendar dates in terms of section 12(1)(a) and (b). It may constitute compliance with those subsections if clearly ascertainable dates were specified, such as a fixed number of days after the date of confirmation of the magistrate's order by the Land Claims Court. The only danger with this approach may be that an unrepresented person may have some difficulty in working out what date is in fact intended. In such cases, specific calendar dates which comply with rule 35A(1)(a) (above n 3) may be preferable.

7 LCC 10R/98, 2 September 1999, [1999] JOL 5280 (LCC); <http://www.law.wits.ac.za/lcc/1999/springs99sum.html>.

decision is, however, the subject matter of a pending appeal to the Supreme Court of Appeal.⁸ In any event, given that I have already found the order to be defective for other reasons, it is unnecessary for me to decide this point.

[8] In terms of section 19(3)(c) of ESTA, I may substitute the magistrate's order in whole or in part. I will substitute the whole of the magistrate's order. In doing so, I accept the magistrate's assessment that the requirements of justice and equity as contemplated in section 12(1) and (2) dictate a period of one month for the respondents to vacate the land concerned. The Court's order is as follows:

The whole of the magistrate's order made on 17 December 1999 is substituted with the following order:

- “(i) The 1st, 2nd, 4th and 5th respondents must vacate the farm Remaining Extent 19 (Marne) (a portion of Portion 5) of the farm Krom River No 317, Division Caledon, Province Western Cape, otherwise known as Linqenda Farm, on or before 20 February 2000.
- (ii) If the said respondents have not vacated the farm by 20 February 2000, the eviction order may be carried out on 28 February 2000.”

JUDGE DODSON

For the applicant:

G J Claughton of Claughton & Wehmeyer, Grabouw

For the respondents:

Unrepresented

8 The judgment relating to the application for leave to appeal is *City Council of Springs v Occupants of Kwa-Thema 210* LCC10R/98, 16 November 1999, internet web site address: <http://www.law.wits.ac.za/lcc/1999/springssum.html>.