



**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
..... DATE SIGNATURE

Heard on: 12 August 2019

Delivered on: 09 September 2019

CASE NO.: LCC 58/2017D

In the matter between:

FW ORTMANN TRUST

First Applicant

ORTMANN BROTHERS

Second Applicant

and

LUCY GUMEDE

First Respondent

BONGIWE GUMEDE

Second Respondent

BONGINKOSI GUMEDE

Third Respondent

THULANI GUMEDE

Fourth Respondent

THANDIWE GUMEDE

Fifth Respondent

JABULISILE GUMEDE

Sixth Respondent

SIFISO GUMEDE

Seventh Respondent

SANELISIWE GUMEDE

Eighth Respondent

XOLANI GUMEDE

Ninth Respondent

JUDGMENT

NCUBE AJ

INTRODUCTION

[1] This is an urgent application for the interim removal of the First to Ninth Respondents from the farm land. The said land is described as the remainder of Sub 12 (of 3) of the farm Kruisfontein HO 1143, New Hanover, KwaZulu – Natal. I shall refer to it as (“the farm”). The First to Ninth and the Thirteenth Respondents oppose the application. The Tenth, Eleventh and Twelfth Respondents were served with the papers but did not respond. Although the Thirteenth Respondent opposes the application, he did not file any answering affidavit, but Mr Chiti appeared and argued the application on behalf of the Thirteenth Respondent having been briefed on the morning of the hearing of the application.

[2] The Applicants seek relief in the following terms:

- “1. *That this matter be heard as one of urgency and that the Rules, form and service requirements and time limits be dispensed with in terms of Rule 34(1)(a) and (b) of the Rules of this Honourable Court, read with*

section 15 of the Extension of Security of Tenure Act No. 62 of 1997 (“ESTA”), alternatively section 15 of the Land Reform (Labour Tenants) Act No. 3 of 1996 (“LTA”).

- 2. The first to ninth respondents, together with all his/her associates and/or persons claiming a right of residence through the first to ninth respondents, be and are permanently evicted from the farm Kruisfontein HO 1143, New Hanover District (“the farm”) as contemplated by section 9(2) of ESTA and/or section 7 of the LTA.*
- 3. The twelfth and thirteenth respondents are ordered to take all reasonable measures to fulfil their respective constitutional and statutory obligations in terms of section 41 of the Constitution and the Intergovernmental Relations Framework Act No. 13 of 2005 and the National Housing Code to provide urgent emergency housing for the first to ninth respondents upon their eviction from the farm in terms of paragraph 2 above.*
- 4. The first to ninth respondents and all his/her associates and/or persons claiming a right of residence on the said farm are ordered to vacate the farm within 14 (fourteen) days after the final order for eviction is granted, alternatively, within such other period as the Court may deem just and equitable in terms of section 12(1)(a) of ESTA and/or section 7 of the LTA and they are ordered to remove all their possessions, moveables and all other building material with which unlawful building structures had been erected on the farm Kruisfontein within house number 12’s homestead area.*

5. *In the event that the first to the ninth respondents fail to comply with the order contemplated in paragraph 4 above, the Sheriff or his deputy, with the assistance of the South African Police Services, be and are hereby authorised to carry out the eviction order and evict the first to ninth respondents together with all their associates and their moveables and unlawful structures which had been erected within house number 12's homestead area, from the farm Kruisfontein.*

6. *That pending the outcome of the proceedings for a final eviction order against the first to ninth respondents, referred to in paragraphs 2,3 and 4 above, the Sheriff or his deputy, with the assistance of the South African Police Services, be and are hereby ordered and directed to forthwith remove the first to ninth respondents from house number 12 situated on the farm Kruisfontein HO 1143, New Hanover District ("the farm") in terms of the provisions of section 15 of ESTA and/or section 15 of the LTA.*

7. *Pending eviction from the farm the first to ninth respondents and all their associates are hereby interdicted and restrained from:*
 - 7.1 *Assaulting, harassing or threatening to assault the trustees of the first applicant and/or the partners of the second applicant and/or any of them and/or their employees and/or to commit any act of violence and/or arson on the farm and/or inciting, intimidating or colluding with any person to commit any of the aforesaid;*

- 7.2 *Damaging or vandalising any property belonging to the applicants or under their control;*
- 7.3 *Entering the farms of the applicants without permission being granted by the applicants in writing.*
8. *Costs on the attorney and client scale be granted to the first and second applicants.*
9. *Further or alternative relief.”*

[3] Relief sought in terms of paragraph 7.1 and 7.2 above was immediately granted *ex parte* and the First to Ninth Respondents have indicated that they accept that order and will abide with it.

PARTIES

[4] The First Applicant is the FW Ortmann Trust, which is the owner of the farm in question. The Second Applicant is the Ortmann Brothers Partnership. The partnership is leasing the farm from the First Applicant.

[5] The First Respondent is Lucy Gumedede, a female residing in house number 12 on the farm and the mother of the Second to Eighth Respondents. The Ninth Respondent is a member of the Gumedede family.

HISTORICAL BACKGROUND

[6] According to the answering affidavit of the First Respondent in response to the application in case number LCC 58/2017B, the First Respondent was born on the farm in 1950. She was married to her now late husband, Alson Bangaliphi Gumede, who worked and resided on the farm together with First Respondent. During the subsistence of their marriage the First Respondent gave birth to the Second to Eighth Respondents.

[7] The First Respondent with other occupiers instituted an action in this Court under case number LCC 58/2017 for them to be declared labour tenants. That action is still pending. Therefore for purposes of the present application, I shall regard the First to Ninth Respondents as being occupiers in terms of the Act.

FACTUAL MATRIX

[8] The First Respondent resides in the house no. 12 on the farm. House no. 12 is owned by the First Applicant. The First Respondent is not employed on the farm. The Second to Ninth Respondents are also not employed on the farm.

[9] The Second Applicant conducts timber and sugar cane farming businesses on the farm. The First Applicant houses its employees in the staff quarters. The timber and sugar cane plantations are insured against fires. The First to Ninth Respondents extended the area around their dwelling and encroached on the area which the Applicants were required to make fire belts as required by their insurance company and the National Veld and Forest Fires Act, 101 of 1998.

[10] The insurance company visited the Applicants' farm and insisted on a fire belt that was 18 metres wide. They also insisted on the clearance of all combustible material around the First to Ninth Respondents' homestead encroaching on the fire belt, otherwise the insurance company was not going to be liable to compensate the Applicants in the event of a fire. The Applicants felt constrained to approach the Court for an order requiring the Respondents to remove all rubble around the Respondents' homestead that was encroaching on the fire belts. In addition, the First to Eighth Respondents were to be ordered to remove the fence which they had erected, which reduced the space where the fire belts had to be established.

[11] On 5 of July 2019, the Applicants applied for an order interdicting the First to Eighth Respondents to remove the fence and combustible material from the area where the fire belts were to be made, and to stop making fires in that specific area. An interim order was granted on 5 July 2019 and confirmed on 16 July 2019. The First to Eighth Respondents were also interdicted from interfering with the Applicants' employees or contractors and were further restrained from re-erecting the fence once such fence had been demolished by the Sheriff.

[12] On 9 of July 2019, the Sheriff, his deputy, members of the SAPS and Mr. Scot, employed by the First Applicant to remove obstructions placed by the First to Ninth Respondents, went to house no. 12 to execute the interim Court order. The occupants of house no. 12 leaned against the poles which were to be cut off in compliance with the Court order thereby preventing the removal of the said poles. The situation became volatile. Warrant Officer Mngadi, who was in charge of the members of the SAPS, decided to withdraw and returned to the police station. The Sheriff and his deputy also withdrew and went to the police station. They received

assistance from the neighbouring police station and later returned to house no. 12 and were able to execute the Court order.

[13] On 17 July 2017, the Sheriff, his deputy, the farm manager Mr. Smith and other employees of the First Applicant went to the Respondents' house. The Sheriff and the deputy went to execute the final Court order as the rule *nisi* had been confirmed. The employees went to clear the fire belts. The poles removed on 9 July 2019 had been re-erected in anticipation of extending the Respondents' fencing. New poles had been erected. The Second and Sixth Respondents armed themselves with beer bottles and threatened to assault the Sheriff. The Second Respondent threw a bottle at the driver of the bell loader which was there to remove the Respondents' fence. The splinter of the bottle injured the driver on his eye and he had to seek medical treatment.

[14] The Seventh Respondent retrieved his firearm from the car. He inserted a magazine and threatened to shoot the farm manager Mr Smith. He also threatened the driver of the bell loader and demanded that he leave. Eventually, the Seventh Respondent was arrested as he was threatening people in the presence of the police. He was later released on bail. On three occasions, the Second Respondent pulled down her pants and defecated in front of all the people. She further exposed her buttocks to everyone present at the scene. Photograph DL4 clearly depicts the second respondent pulling down her pants armed with a bottle in her right hand.

[15] On 9 July 2019, the Eight Respondent armed herself with a brick and threatened to assault the Sheriff and his deputy.

[16] The Respondents are deliberately setting fires on the First Respondents cane plantations. On 12 July 2019, four fires were deliberately started on the sugar cane plantation. On 13 July 2019, the Ninth Respondent and Siyabonga Gumede, his relative, were caught in the act of setting fire to the Applicants' sugar cane plantation and photographs were taken of them. Siyabonga was arrested but was later released on bail. The Ninth Respondent absconded but later handed himself over to the police. When the farm manager Mr Smith followed Siyabonga and the Ninth Respondent in a fire truck, a bottle was thrown at the truck and it broke on the side of the truck.

[17] The Ninth Respondent slapped his hand against the left side window of the vehicle which Mr Ortmann (the deponent to the founding affidavit) was driving and threatened to kill him. Siyabonga and the Ninth Respondent also threatened to kill Mr Rupert Ortmann, a partner of the Second Applicant. They also hurled a brick at him.

[18] I am mindful of the fact that the First to Ninth Respondents have denied the above facts, but they have just tendered a bare denial without substantiating their denials. Unsubstantiated bare denials in motion proceedings are not sufficient. In fact, the First to Ninth Respondents concede in the answering affidavit that there were heated exchanges when the Sheriff and his deputy came to execute the Court order. However, whilst the Applicants have given the details of what transpired, the Respondents have failed to elaborate on the nature and extent of the heated exchanges.

URGENT REMOVAL OF AN OCCUPIER FROM THE LAND

[19] Section 15 of the Act permits an owner or person in charge of land to bring an urgent application for the removal of an occupier from the land, provided that certain requirements have been complied with. The order is interlocutory in nature and it is made pending the outcome of the proceedings instituted for a final eviction order in terms of section 9 of the Act¹.

[20] Section 15 of the Act reads:

“Urgent proceedings for eviction

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 -

- (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;*
- (b) there is no other effective remedy available;*
- (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship*

¹ *Mahlangu v Presiding Magistrate (Springs)* [1998] 3 All SA 610 (LCC) at para 5, *Karabo and Others v Kok and Others* 1998 (4) SA 1014 (LCC) at 1021E.

to the occupier against whom the order is sought, if an order for removal is granted; and

(d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.

[21] Section 15(2) of the Act enjoins the owner or person in charge as a prerequisite for granting an order in terms of section 15 to serve notice of the application on the municipality in whose area of jurisdiction the land in question is situated. Notice should also be served on the head of the relevant Provincial Office of the Department of Rural Development and Land Reform. The municipality is the relevant functionary which is in a position to secure suitable alternative accommodation should one be required by the respondents. On 19 July 2019, the Applicants duly complied with section 15(2) by serving the application on the Eleventh and Twelfth Respondents.

FACTORS UNDER SECTION 15(1) OF THE ACT

[22] It is clear that the occupiers do not live in harmony with the Applicants. Tension is running high. In fact, animosity between the two factions has reached alarming proportions. The situation is volatile. The First to Ninth Respondents have deliberately prevented the Sheriff and his Deputy, officials of this Court, from executing Court orders. The founding affidavit deposed to by Mr Ortmann speaks volumes of the atrocities committed by the First to Ninth Respondents. Mr Ortmann himself has been threatened with death. On 17 July 2019, the Second and Sixth Respondents armed themselves with beer bottles threatening to assault the Sheriff.

The Second Respondent threw a beer bottle at the driver of the bell loader and he was injured. The Seventh Respondent fetched his firearm, loaded it and threatened to shoot Mr. Smith. This is evidence of real and imminent danger of substantial injury to Mr. Smith and Mr Ortmann.

[23] On 12 July 2019, the Applicants' farm was deliberately set on fire. On 13 July 2019, a further fire was deliberately started in the sugar cane plantations. The Ninth Respondent and Siyabonga Gumede were caught red-handed making a fire in the sugar cane plantation. This is evidence of a real and imminent danger of substantial damage to the Applicants farm. What is worse is that the Ninth Respondent and Siyabonga were arrested and later released on bail. They could possibly set the farm on fire again.

[24] In *Hildenbrand v Plaatjies*² it was held that a threat to kill constitutes sufficient compliance with section 15(1)(a). Moloto J expressed himself in the following terms:

“In this regard the applicants’ affidavit attests to a real and imminent danger to her family and other persons on the farm if the respondents are not removed. Therefore I am satisfied that there is compliance with section 15(1)(a).”

Likewise in *Du Preez v Tserema*³ Meer AJ (as she then was) stated:

“In this regard the applicants’ affidavits attest to a real and imminent danger to his family and property if the respondents are not removed and to no other effective remedy being available.”

² 2000 JDR 0614 (LCC) at para 3.

³ [2000] 3 All SA 374 (LCC) at para 4.

In the present case, danger and injury are not only imminent but have actually occurred. The driver of the bell loader was injured and the sugar cane plantation was set on fire. I am therefore satisfied that section 15 (1)(a) has been complied with.

[25] The Applicants have tried everything possible to follow the right channels and comply with the law. The Respondents have persisted with their violent attitude and deliberate disobedience of the Court orders. There is no other effective remedy available to the Applicants except the removal of the Respondents from the farm.

[26] If the Respondents are not removed, there is a real likelihood that Mr. Ortmann, Mr. Smith or any of their employees may be killed. There can be no hardship which is greater than death. The Applicants have suffered damage as a result of their sugar cane plantation being set on fire. This will continue if the Respondents are not removed from the farm. The Respondents have not demonstrated by any acceptable evidence that a removal from the farm will render them homeless. In fact, the Applicants have established from the Deeds Office that the First Respondent has a house in New Hanover which is registered in her name, house no. 183. Photographs show two rondavels at the back of that house. There is another house, house no. 142, which the First Respondent inherited. In any event, the availability of alternative accommodation is not a requirement for the granting of an order of removal in terms of section 15(1)(a) of the Act. In *Grand Valley Estates (Pty) Ltd v Nkosí⁴ Dodson J* held that even a tent is suitable accommodation under section 15(1)(a) of the Act.

[27] I am of the view that adequate arrangements have been made for the reinstatement of the Respondents should a final eviction order not be granted. The

⁴ 1999 (3) All SA 435 (LCC).

Applicants undertook to barricade the Respondents' house with a steel gate and keep it intact in the event of a final order not being granted.

[28] The First to Ninth Respondents adopted the wrong approach to the nature of these proceedings. In fact, in their heads of argument they approached the matter as though this was an application for a final order of eviction. That approach is wrong. The application is for the interim removal of the First to Ninth Respondents pending the outcome of an application for eviction in terms of section 9 of the Act. Ms Smart, counsel for the First to Ninth Respondents, did not put up any serious argument against the granting of the relief sought by the Applicants.

LABOUR TENANCY CLAIM

[29] As stated earlier in this judgment, the Respondents' labour tenancy claim is still pending in this Court. For now, the First to Ninth Respondents are regarded as occupiers in terms of the Act. In any event, even if the Respondents were labour tenants, the Applicants have made out a case for the temporary removal of the Respondents from the farm in respect of both ESTA and the LTA.

COSTS

[30] Adv. Roberts, counsel for the Applicants, asked for an award of costs on an attorney and client scale and asked that such costs should include the costs of two counsel as he appeared with his junior counsel. The practice in this Court is not to award costs unless there are good reasons to do so. The conduct of the First to Ninth Respondents towards the Sheriff and his Deputy can be described as

reprehensible. The Respondents interfered with the execution of the Court orders carried out by two officers of the Court. In fact, the conduct of the Respondents bordered on contempt of Court. One of the fundamental values of our Constitution is the rule of law. The rule of law requires that the dignity and authority of the courts should be upheld. Disobedience of Court orders makes a mockery of our Courts' judicial authority⁵.

[31] Considering principles laid down in cases such as *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging*⁶ it seems to me that this is one of those cases where the Court would be justified to express its disapproval of the Respondents' conduct by ordering them to pay costs on an attorney and client scale. However, I am unable to agree that such costs should include the costs of two counsel. This was not a complex matter. The nature of the application did not justify employment of two counsel.

ORDER

[34] In the circumstances, I make the following order: -

1. Pending the outcome of the proceedings for a final eviction order against the First to Ninth Respondents, referred to in paragraph 2 below, the Sheriff or his Deputy, with the assistance of the South African Police Services and/or members of a private security company of the Applicants choice, are hereby ordered and directed to forthwith remove the First to Ninth Respondents from house number 12, situated on the farm

⁵ *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 at para 1.

⁶ 1946 AD 597 at 607.

Kruisfontein No. 1143, New Hanover District, in terms of the provisions of section 15 of the Extension of Security of Tenure Act, 62 of 1997 and/or section 15 of the Land Reform (Labour Tenants) Act, 3 of 1996.

2. The relief set forth in paragraphs 2, 4 and 5 of the Notice of Motion pertaining to the eviction of the First to the Ninth respondents, are adjourned *sine die*.
3. Pending eviction from the farm the First to Ninth Respondents are interdicted and restrained from:
 - 3.1. Assaulting, harassing or threatening to assault the trustees of the First Applicant and/or any of their employees and/or commit any act of violence and/or arson on the farm and/or inciting, intimidating or colluding with any person to commit any of the aforesaid.
 - 3.2. Damaging or vandalising any property belonging to the Applicants or under their control;
 - 3.3. Entering the farms of the Applicants without permission being granted by the Applicants in writing.
4. The Twelfth and Thirteenth Respondents are ordered to take all reasonable measures to fulfil their respective constitutional and statutory obligations in terms of section 41 of the Constitution and the Intergovernmental Relations Framework Act, 13 of 2005 and the National Housing Code to provide urgent/emergency housing for the First to Ninth

Respondents should they be evicted from the farm as contemplated in paragraph 2 above.

5. The First to Ninth Respondents are jointly and severally, the one paying the other to be absolved, ordered to pay the Applicants' costs on the scale as between attorney and client.

T.M Ncube

Acting Judge: Land Claims Court

Appearances

For the Applicants: Adv. MG Roberts SC

Adv. E Roberts

Instructed by: Moolman & Pienaar Inc. Attorneys, Potchefstroom

For the 1st – 9th Respondents: Adv. CSA Smart

Instructed by: MC Ntshalintshali Attorneys, Durban

For the 13th Respondent: Adv. MM Chiti

Instructed by: The State Attorney, Durban