



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 24 March 2022

Status: Immediate

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Dr Hubert Adendorff and Another v Daniel Phunyula Kubheka and Other (Case no 463/20) [2022] ZASCA 29 (24 March 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing the appeal against a decision of the Land Claims Court, Randburg (the LCC).

The issues before the SCA were whether the respondent proved that as at 2 June 1995 he was a labour tenant in terms of the Land Reform (Labour Tenants) Act 3 of 1996 (Labour Tenants Act), whether the appellants proved that the respondent is a farmworker, whether the respondent lodged a valid claim before 31 March 2001 in terms of ss 16 and 17 of the Labour Tenants Act and whether the LCC should have ordered just and equitable compensation in terms of s 23 of the Labour Tenants Act.

The LCC, per Barnes AJ, declared the respondent a labour tenant in terms of s 33(2A) of the Labour Tenants Act and awarded him a portion of portion 1 of the farm Cadie No 12399 (Cadie), Registration Division HS, in the district of Newcastle, Kwa-Zulu Natal. This land included the two grazing camps, which the respondent were using as at 2 June 1995 in terms of s 16 of the Act. Dissatisfied with the outcome of the trial, the appellants appealed to this Court.

The respondent has resided on Cadie since 1975 prior to which he worked for the same family on another farm, Glenbarton, and instituted action proceedings against the appellants in the LCC. In addition to seeking a declaration that he was a labour tenant and that he be awarded the relevant portion of Cadie, an order was sought that monies be made available to compensate the appellants. The LCC did not order the Department of Rural Development and Land Affairs (the Department) to make available such funds. Rather, the Department elected not to participate in the trial, but gave an undertaking that it would be ready to facilitate the purchase of the land if an award of land was so ordered by the LCC.

The SCA found that the respondent's undisputed evidence was that his parents were, in exchange for their labour, given cropping and grazing rights by the owner of Glenbarton, the same arrangement which passed on to him. This Court held that the respondent had cumulatively complied with the definition of 'labour tenant' and was correctly declared a labour tenant.

In respect of the question of whether the respondent was a farmworker, the SCA held that the definition of a 'farmworker' requires an evaluation of cash and other forms of remuneration earned by a worker on the one hand, and the value of his rights to occupy and use the land on the other. The SCA held that the appellants failed to prove that the respondent was a farmworker in terms of s 2(5) of the Labour Tenants Act.

Furthermore, the SCA also found that the respondent had timeously submitted and lodged a valid application on or before 31 March 2001. It was common cause that the Department had failed to gazette the claim, a failure which could not be laid at the door of the respondent.

Lastly, on whether the LCC should have granted just and equitable compensation in terms of s 23 of the Labour Tenants Act, the SCA held that the LCC could only make such an order if the parties failed to agree on the amount of compensation. The SCA held further that there was no evidence that the parties were unable to reach an agreement on the amount of compensation.

In the result, the appeal was dismissed.

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