



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: 31 May 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Goedverwachting Farm (Pty) Ltd v Adriaan Johannes Roux and Others (641/2023) [2024] ZASCA 83 (31 May 2024)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Land Claims Court, Randburg (LCC). The order of the LCC was set aside and substituted with an order that: 'the first and second respondents are to be evicted from portion 17 of the farm Goedverwachting, number 442, Registration Division IR, Gauteng Province on or before 31 July 2024; the sheriff of the Court, together with the assistance of the South African Police Services, if necessary, is authorised to execute the eviction proceedings against the first and second respondents should the respondents fail to vacate the property by 1 August 2024; there is no order as to costs.'

Johannes Roux and those occupying the property through him (the respondents) together with members of Deneys Swiss Dairy (Pty) Ltd (Deneys), had approached the previous owner of the farm, Mr Keet, to purchase the property and operate a dairy business on the land. They were afforded temporary consent to occupy the property subject to the agreed purchase price being paid. However, according to Mr Keet the purchase agreement was breached and any right to occupy the property was subsequently terminated. The respondents however, failed to vacate the property. The sale agreement was cancelled and the property was thereafter sold to Goedverwachting Farm (Pty) Ltd, the appellant. By that stage Deneys had gone into liquidation and the dairy business was no longer operating.

The respondents refused to vacate the property even after the sale and the appellant dispatched a notice in terms of section 8 of the Extension of Security of Tenure Act (ESTA) to the respondents. The respondents however, failed to provide a response.

The present eviction application was launched in terms of section 9 of ESTA on the basis that the statutory requirements in terms of section 8 of ESTA were complied with. The appellant argued that it intended to operate a cattle farming business and was losing substantial amounts of money due the continued occupation of the respondents. Mr Roux however, maintained that the respondents were in legal occupation of the land by virtue of their indigenous title to the land based on the 'Gonas Customary & Indigenous Law System' and that the members of Deneys gave them 'permission to look after the farm' and 'paid' for the farm.

The LCC held that the respondents did not fall within the purview of ESTA because it was not an occupier as defined. This was on the basis it was conducting commercial farming on the land. The LCC's decision was based solely on the statement in the probation officer's report which held that, 'during the 7 years residing on the farm [Mr Roux] has also indicated that he has been farming with livestock which consist of 200 pigs and 18 cattle'. The LCC, therefore, found that a commercial enterprise was being conducted and that the respondents were therefore excluded from the definition of occupier in terms of ESTA.

The SCA held that the probation officer's report cannot override the court's discretion as to whether an eviction should be granted and it does not amount to evidence. The role of a probation officer's report is to assist a court in determining whether an eviction is just and equitable. In any event the probation officer's report contained several inconsistencies and inaccuracies which did not support the LCC's finding that a commercial enterprise was being conducted thus excluding the respondents from the definition of occupier in terms of ESTA. The only defence put up by the respondents was that, they occupied the property by virtue of their indigenous right to the land and because they had purchased the land. However, no evidence was submitted in support of these defences.

The Court emphasised that the function of judicial officers is to determine the issues before them and to confine themselves to such issues. The LCC impermissibly made a finding on an issue that was not in dispute between the parties and without hearing either party on the issue. In doing so, the LCC erred in its finding that the respondents were excluded from the definition of occupier.

As a result, the SCA upheld the appeal.

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