**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Not Reportable**

Case no: 390/2021

In the matter between:

| | |
|---|---|
| **LOSKOP LANDGOED BOERDERY (PTY) LTD** | **FIRST APPELLANT** |
| **WILLEM ADRIAAN PIETERS** | **SECOND APPELLANT** |
| **RIAAN PIETERS** | **THIRD APPELLANT** |

and

| | |
|---|---|
| **PETRUS MOELESO** | **FIRST RESPONDENT** |
| **DAVID M MOFOKENG** | **SECOND RESPONDENT** |
| **MAKIE MOELESO (TSHABALALA)** | **THIRD RESPONDENT** |
| **NINI MABE** | **FOURTH RESPONDENT** |

**Neutral citation:** *Loskop Landgoed Boerdery (Pty) Ltd and Others v Petrus Moeleso and Others* (390/2021) [2022] ZASCA 53 (12 April 2022)

**Coram:** VAN DER MERWE, MOCUMIE, NICHOLLS, MBATHA, and CARELSE JJA

**Heard:** 8 March 2022

**Delivered:** This judgment was handed down electronically by circulation to the parties' legal representatives via email. It has been published on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down is deemed to be at 10h00 on 12 April 2022.

**Summary:** Land – Extension of Security of Tenure Act 62 of 1997 – occupiers – overgrazing of land – remedies of owner – removal of livestock does not constitute 'eviction' of occupier – both owner and occupier have duty to prevent overgrazing in terms of Conservation of Agricultural Resources Act 34 of 1983 – court orders not sought by applicants and not supported by pleadings – respondents not afforded opportunity to state case – livestock removed without sanction of court – self-help remedy – *mandament van spolie*.

---

**ORDER**

---

**On appeal from:** Land Claims Court, Randburg (Yacoob J, sitting as court of first instance):

1 The appeal succeeds in part.

2 The appeal in respect of para 1 of the Land Claims Court's order is dismissed.

3 The appeal succeeds in respect of para 2 of the Land Claims Court's order which is set aside and replaced with the following:

'The respondents are ordered to forthwith restore possession of the two grazing camps on the farm Barnea 231 within the district of Bethlehem, Free State Province allocated to the applicants prior to dispossession.'

4 The appeal succeeds in respect of para 4 of the Land Claims Court's order, which is set aside and replaced with the following:

'Each party to pay its own costs.'

5 No order as to costs of the appeal is made.

---

**JUDGMENT**

---

**Carelse JA (Van der Merwe, Mocumie, Nicholls and Mbatha JJA concurring):**

[1] The primary issue in this appeal involves the reduction of the respondents' grazing area from two camps to one camp, on the farm Barnea 231 within the district of Bethlehem, Free State Province (the farm) This appeal arises from proceedings

instituted in the Land Claims Court, Randburg (LCC) by the respondents (who were the applicants in the court a quo) for certain declaratory orders.

[2] The owner of the farm is the second appellant, Mr W A Pieters. On 1 March 2018, however, the first appellant, Loskop Boerdery (Pty) Ltd, took over the farming operations on the farm. The third appellant, Mr Riaan Pieters, is the son of Mr W A Pieters and the sole director of the first appellant. It may safely be assumed that he at all relevant times acted on behalf of the first and second appellants. The first respondent, Mr Petrus Moeleso, was born in 1974 and has, since birth, resided on the farm with his parents and continues to do so. In 1999, Mr Petrus Moeleso started working on the farm for Mr W A Pieters. In 2008, his contract of employment was terminated and he has since not worked on the farm. The second respondent, Mr David Mofokeng; the third respondent, Ms Maki Moeleso; and the fourth respondent, Ms Nini Mabe, reside on the farm.

[3] According to the respondents, they inherited 24 cattle and initially had the use of three grazing camps for their livestock. Mr Petrus Moeleso alleged that in 2002, Mr W A Pieters informed him that he intended reducing the three camps to two grazing camps and offered to feed the first respondent's cattle during the winter months. These allegations, including the number of cattle the respondents own, were disputed by the appellants but do not require determination because they are not material to the outcome of this appeal.

[4] It was not disputed that the respondents were occupiers in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA)[1] on the farm. It was also not disputed that as on 1 March 2018 the respondents had consent to keep cattle on the farm and were allocated two grazing camps for the purposes of grazing. It was further not disputed that the camps allocated to the respondents became overgrazed and required rehabilitation for a period of two years.[2]

[5] In the LCC, the applicants sought the following orders:

---

[1] Section 1 of ESTA defines '*occupier*' as follows: 'a person residing on land which belongs to another person, and who has or [sic] on 4 February 1997 or thereafter had consent or another right in law to do so . . .'.

[2] See para 8 below.

> '1. THAT the Respondents be ordered to restore the Applicants' rights at the farm known as Barnea 231 in the District of Bethlehem, Free State Province.
>
> 2. THAT the Respondents unilateral conduct reducing the applicant's grazing camp and stopped feeding [the respondent]'s cattle in winter seasons as previously agreed and practiced for a long period be declared unlawful.
>
> 3. THAT the Respondents conduct of preventing Applicants cattle access to water be declared unlawful.
>
> 4. GRANTING the Applicants further and/or alternative relief.'

As a result of the reduction of the grazing area that was allocated to the respondents, they were left with only one small camp on which to graze their cattle. The effect of this, so the respondents alleged, was an eviction through the back door as well as self-help.

[6] Pursuant to the provisions of the Conservation of Agricultural Resources Act 43 of 1983 (CARA), the appellants obtained a report, dated May 2018, from an ecological specialist, Mr Rikus Lamprecht of Eco Focus, who opined that the grazing camps used by the respondents were 'seriously overgrazed'. A copy of the report and a letter, dated 30 May 2018, were sent to the respondents and the Department of Rural Development and Land Reform (the Department), demanding that the respondents remove their cattle from the farm. In the event that the respondents refused to comply, the appellants warned that '[]f the cattle of the occupiers are not removed from the farm within 7 (SEVEN) days after the date of this correspondence, we put on record that we have received instructions from our client to urgently approach the Court with an urgent application for an order that the occupiers' cattle is to be removed from our client's farm as per the recommendations of the specialist appointed by our client, with reference to the report by Eco Focus annexed hereto.'

[7] Because the respondents refused to comply with the demand, the appellants removed the cattle from the two overgrazed camps to another camp on the same farm. This was done to avoid being criminally charged for contravening the provisions of CARA, so the appellants submitted. The removal was therefore effected despite the refusal of the respondents to consent thereto.

[8] It was common cause that the appellants did not bring an application to relocate the respondents' cattle to another camp on the same farm. However, the appellants launched proceedings in the magistrates' court to remove the respondents' cattle from the farm. This application is still pending. Pertinently, Mr Riaan Pieters in his answering affidavit in the present matter stated the following:

'I admit that I later *reduced* the grazing area of the Applicants by one camp due to the fact that that specific grazing camp is totally overgrazed, which is a serious contravention of the provisions of *inter alia* the so called CARA Act. Despite the request made to the Applicants to *remove* their cattle from the farm, the Applicants refused to adhere to the request whereafter I *removed* the cattle of the Applicant's out of that specific camp which was severely overgrazed.(My emphasis)

[9] On 2 December 2020, the LCC per Yacoob J found in favour of the respondents and granted an order in the following terms:

'1. The respondents' conduct in reducing the grazing available to the applicants in the absence of a court order is unlawful.

2. The respondents are ordered to restore to the applicants the right to graze on a camp of at least similar capacity to the camp from which the applicant's livestock has been removed, on the farm known as Barnea 231 in the District of Bethlehem, Free State Province.

3. The applicants are granted leave to institute action proceedings to determine their entitlement to winter fodder.

4. The respondents are to pay the costs of this application, jointly and severally.'

The application for leave to appeal was granted by Yacoob J in respect of paragraphs 1, 2 and 4 (costs order) of its order. Leave to appeal against para 3 of the court's order was not granted on the basis that it was not a final order.

[10] The LCC understood that one of the issues it had to decide was whether the reduction of the grazing area that the respondents had the use of was unlawful or wrongful. The appellants contended that because of the non-compliance with CARA, its reduction of the grazing area and the removal of the respondents' cattle was not unlawful and that any order restoring the status *quo ante* would have the effect of the appellants acting unlawfully.

[11] It is trite that where a landowner needs to rehabilitate farmland, because of overgrazing, the landowner is entitled (within the law) to remove the cattle for such purpose, and after the land is rehabilitated, the cattle can be returned.[3] It is also not disputed that the provisions of CARA impose an obligation on both the landowner and anyone who utilises farmland for grazing to protect the area from overgrazing.

[12] Before I deal with the primary issue in this case, I deal with the finding by the LCC at paras 43-44 of the judgment that 'the actions of [the appellants] in reducing the grazing area available to [the respondents] do amount to an attempt to evict in terms of the definition in ESTA. The order I propose to make would not amount to an order requiring anyone to commit an offence, since I simply order [the appellants] to ensure that grazing of similar capacity and quality is made available. It does not have to be the same camp that has been overgrazed'. I disagree with this finding for the reasons set out herein below.

[13] It was common cause that the respondents' cattle were not removed from the farm, but were relocated to another grazing area on the same farm. ESTA defines 'evict' to mean: 'to deprive a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence in terms of this Act, and "eviction" has a corresponding meaning'.

[14] In *Adendorffs Boerderye v Shabalala and Others* [2017] ZASCA 37 (SCA), it was held that:

'It thus follows that his rights of grazing [do] not derive from ESTA. He has a personal right to use the land for the purpose of grazing. I agree with the remarks by Pickering J in *Margre Property Holdings CC v Jewula* [2005] 2 All SA 119 (E) at 7 when he said the following:

"The right of an occupier of a farm to use the land by grazing livestock thereon is a right of a very different nature to those rights specified in s 6(2) [in ESTA]. In my view such use was clearly not the kind of use contemplated by the Legislature when granting to occupiers the right to use the land on which they reside. Such a right would obviously intrude upon the common law rights of the farm owner and would, in my view, thereby amount to an arbitrary deprivation of the owner's property. There is no clear indication in the Tenure Act such an

---

[3] See *Adendorffs Boerderye v Shabalala and Others* [2017] ZASCA 37 (SCA); and *Minister of Rural Development and Land Reform v Normandien Farms (Pty) Ltd and Others; Mathimbane and Others v Normandien Farms (Pty) Ltd and Others* [2017] ZASCA 163 (SCA); 2019 (1) SA 154 (SCA); [2018] 1 All SA 390 (SCA).

intrusion was intended. It is relevant in this regard that [the] respondent is neither an employee [nor] a labour tenant as defined by section 1 of the Land Reform (Labour Tenants) Act 3 of 1996. His right, if any, to graze stock on the farm does not derive from that Act. In my view the use of land for purposes of grazing stock is pre-eminently a use which would be impossible to regulate in the absence of agreement between the parties. I am satisfied in all the circumstances that an occupier is not entitled as of right to keep livestock on the farm occupied by him as an adjunct of his right of residence. His entitlement to do so is dependent on the prior consent of the owner of the property having been obtained.”.’[4]

[15] Section 6 of ESTA provides:

‘Rights and duties of occupier –

(1) Subject to the provisions of this Act, an occupier shall have the right to reside on and use the land on which he or she resided and which he or she used on or after 4 February, 1997, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.

(2) Without prejudice to the generality of the provisions of section 5 and subsection (1), and balanced with the rights of the owner or person in charge, an occupier shall have the right–

*(a)* to security of tenure;

*(b)* to receive bona fide visitors at reasonable times and for reasonable periods;

*(c)* to receive postal or other communication;

*(d)* to family life in accordance with the culture of that family;

*(dA)* . . .

*(e)* not to be denied or deprived of access to water; and

*(f)* not to be denied or deprived of access to educational or health services.’

[16] In *Serole and Another v Pienaar* [1999] 1 All SA 562 (LCC); 2000 (1) SA 328 (LCC), the court, correctly in my view, held that:

‘Section 6(2) sets out some instances of use. All of them relate to the occupation of the land, and do not bear upon the land itself. . . Although the specific instances of use in section 6(2) are set out “without prejudice to the generality” of the provisions of sections 5 and 6(1), they still serve as an illustration of what kind of use the legislature had in mind when granting to occupiers the right to “use the land” on which they reside. . . A Court will not interpret a statute in a manner which will permit rights granted to a person under that statute to intrude upon the common-law rights of another, unless it is clear that such intrusion was intended.’[5]

[4] Paragraph 28.

[5] Paragraph 16.

[17] This Court, in *Minister of Rural Development and Land Reform v Normandien Farms (Pty) Ltd and Others, Mathibane and Others v Normandien Farms (Pty) Ltd and Others* [2017] ZASCA 163; [2018] 1 All SA 390 (SCA); 2019 (1) SA 154 (SCA), held that:

'In my view Normandien was not seeking to "evict" the occupants within the meaning of the LTA. The term "eviction" in the LTA connotes a deprivation of the right of occupation or use of land as a result of the purported termination or repudiation of that right by the person in control of the land, whether the owner or lessee. This is apparent from the circumstances which must be present in order to justify an eviction, as specified in s 7(2), and from the fact that, in terms of s 6, proceedings for eviction can only be instituted by the owner or by someone else (e.g. the lessee) with the owner's sworn support.

In the present case Normandien did not purport to terminate or repudiate the relationship between itself and the occupants as labour tenants. Normandien did not contend that the occupants no longer had the right to reside on the farm. Normandien did not contend that the occupants' right, as between themselves and Normandien, to graze their livestock on the farm as an incident of their occupation was at an end. Normandien asserted that the continued presence of the livestock on the farm contravened CARA and this was damaging Normandien's land and causing Normandien to be in violation of its obligations under CARA. If the Agriculture Minister had brought proceedings to enforce CARA through the removal of the livestock, it could hardly have been contended that he was applying for the occupants' "eviction" for purposes of the LTA. Such a contention would imply that the Agriculture Minister would be powerless to act without the owner's sworn support, which would be untenable. The position is no different where a private party with locus standi seeks to enforce CARA.'[6] Although this dictum was made in the context of the Land Reform (Labour Tenants) Act 3 of 1996 it is equally applicable to this matter.

[18] Furthermore, para 2 of the LCC's order[7] was misconceived. As a general principle a court should not range beyond that on which it has been asked to adjudicate. In other words, it should adjudicate the case made out in the papers and the issues raised therein. The LCC did not forewarn the appellants that it was contemplating such an order. The LCC simply granted the order without affording the appellants an opportunity to respond. Importantly, the papers did not disclose any

[6] Paragraphs 59-60.

[7] 'The respondents are ordered to restore to the applicants the right to graze on a camp of at least similar capacity to the camp from which the applicant's livestock has been removed, on the farm known as Barnea 231 in the District of Bethlehem, Free State Province.'

legal basis for a right to alternative grazing. Paragraph 2 of the order was also impermissibly vague and prejudicial, and cannot stand.

[19] The LCC and the parties have mischaracterised the issues[8] for determination in this appeal. As I see it, the real dispute between the parties was whether the respondents were in peaceful and undisturbed possession of the grazing camps prior to being spoliated, and not whether the respondents' possession was based on any right. The respondents in para 1 of its notice of motion sought a restoration order. In other words, the respondents sought relief in the form of the *mandament van spolie*.

[20] On the appellants' own version, the respondents were deprived of possession of the two grazing camps that they had been given consent to use. In *Nino Bonino v De Lange* 1906 TS 120, the court stated that:

'It is a fundamental principle that no man is allowed to take the law into his own hands; no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so, the Court will summarily restore the *status quo ante*, and will do that as a preliminary to an inquiry or investigation into the merits of the dispute. It is not necessary to refer to any authority upon a principle so clear.'[9]

In a decision of this Court, in *Bon Quelle (Edms) Bpk v Munisipaliteit van Otavi* [10] it was specifically held that the *mandament van spolie* is available for the restoration of the lost possession (in the sense of quasi-possession, which consists of the actual use of the servitude) of a right of servitude. In this case, a right of servitude of grazing could therefore be spoliated. The dispossession of the actual possession of the two camps or the quasi-possession in respect thereof by the respondents without consent or a court order, was unlawful and amounted to a spoliation.

[21] In light of the aforegoing, and on the basis that the respondents had been spoliated, para 1 of the LCC's order was correctly granted. Paragraph 2 of the LCC's order should be reformulated to provide that the respondents' possession of the camps, of which they had been dispossessed, should be restored forthwith.

---

[8] See para 10 above.

[9] At 122.

[10] *Bon Quelle (Edms) Bpk v Munisipaliteit van Otavi* 1989 (1) SA 508 (A); [1989] 1 All SA 416 (A).

[22] In addition, something needs to be said about the manner in which the legal representatives of both parties have pleaded their case. It is expected that at the very least legal representatives should ensure that the essential facts of the case should be pleaded with sufficient clarity and particularity. In this case the pleadings of both parties alleged the bare minimum. As a result of the lack of the essential averments, it is not surprising that the issues in this case have been mischaracterised.

[23] Finally, the LCC ordered costs against the appellants. In terms of the jurisprudence of the LCC, costs should only be ordered in exceptional circumstances.[11] In my view, there were no circumstances warranting a departure from the ordinary rule. A costs order against the appellants was not warranted and each party should pay its own costs in the proceedings in the LCC. The second issue is the costs of the appeal. The usual order is that costs should follow the result. In the appeal, the appellants have had partial success, therefore no order as to costs of the appeal is made.

[24] I therefore make the following order:

1 The appeal succeeds in part.

2 The appeal in respect of para 1 of the Land Claims Court's order is dismissed.

3 The appeal succeeds in respect of para 2 of the Land Claims Court's order which is set aside and replaced with the following:

'The respondents are ordered to forthwith restore possession of the two grazing camps on the farm Barnea 231 within the district of Bethlehem, Free State Province allocated to the applicants prior to dispossession.'

4 The appeal succeeds in respect of para 4 of the Land Claims Court's order, which is set aside and replaced with the following:

'Each party to pay its own costs.'

5 No order as to costs of the appeal is made.

---

[11] See *Hlatshwayo & Others v Hein* 1999 (2) SA 834 (LCC); *Tsotetsi & Others v Raubenheimer NO and Others* 2021 (5) SA 293 (LCC).

Z CARELSE

JUDGE OF APPEAL

APPEARANCES

| | |
|---|---|
| For Appellants: | J S Stone |
| Instructed by: | Niemann Grobbelaar Attorneys, Bethlehem |
| | Phatshoane Henney Attorneys, Bloemfontein |
| | |
| For Respondents: | G Shakoane SC |
| Instructed by: | Finger Attorneys, Bloemfontein |