



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 947/2010

In the matter between:

RUDOLF P. STEENKAMP

Applicant

And

LEROMICA TRUST

Respondent

Neutral citation: *Rudolf P. Steenkamp v Leromica Trust (947/2010) [2013] SZHC 224 (9th October 2013)*

Coram: **M. Dlamini J.**

Heard: **5th September 2013**

Delivered: **9th October, 2013**

Farm dweller – meaning – interpretation of statute should be in line with common law principles unless legislature clearly stipulates or it can be inferred from the language of the legislation that legislature intended to abrogate common law principle.

Summary: Serving before me is an application for rescission or stay of ejectment order pending determination of applicant's status in terms of the Farm Dwellers Act.

Chronology

[1] The respondent purchased the farm which is the subject matter from the beneficiaries of the late Mr. Bennett.

[2] In March 2010, respondent instituted action proceedings against the applicant for ejectment who (applicant) occupied the farm by virtue of a lease agreement existing between Mr. Bennett who died thereafter but before the expiry of the lease agreement between himself and the applicant. The applicant filed its notice to defend and a plea. It cited the South African High Commission as an address of service of processes as he appeared in person. On 7th October 2010 he was served with an order for ejectment. This order has led to the present proceedings.

Applicant's contention

[3] The applicant contends as follows:

- That his right to be heard had been violated as he was not notified of the date of hearing which led to the order of ejectment against him;
- That the file which bears the order of ejectment has been missing and thus his delay in filing the present application;

- That he is a farm dweller and is therefore entitled to be treated in terms of the Farm Dwellers Act.

Respondent's

- Respondent disputes that applicant was never served with notices of hearing. It states that respondent was served at the suggested address being the South African High Commission. Respondent informs the court that a number of pleadings exchanged between applicant and respondent by use of the said address before the order was taken.

[4] On merits, the respondent reveals:

- applicant informed him that he was a tenant in the farm. A lease agreement is attached indicating that the applicant was a lessee of Mr. Bennett, the now deceased and former owner of the farm;
- later applicant in an interview with a local newspaper informed the public that he had occupied the farm by permission of his Majesty King Sobhuza II, respondent attached the said article;
- applicant by correspondence attached to the pleadings, undertook to vacate the piece of land;
- At sometime applicant negotiated a further lease agreement with respondent but it was declined;

- By correspondence to the Master of the High Court's office, applicant demanded a deed of transfer based on the lease agreement between the late Mr. Bennett and himself;
- In his plea applicant had contended that the respondent has no title to the property but the Crown;
- The applicant has never before mentioned that he was a farm dweller. Had he mentioned this prior, respondent was ready and willing to treat him as such.

Adjudication

[5] With the time lapse from the date of filing this application, it appears that both parties were no longer interested in pursuing their points *in limine*. Both Counsel argued on the merits of the case. I do not intend to burden this judgment on the same.

Ad merits

[6] The issue before court is whether the applicant is a farm dweller and therefore entitled to the rights outlined in the Farm Dwellers Control Act 1982 as amended.

[7] The Act under Section 2 defines a farm-dweller. It highlights:

“farm-dweller” means a person who reside on a farm other than-

- a) *The owner thereof; or*
- b) *A usufructuary or fiduciary; or*
- c) *A lessee under a written agreement of lease; or*

- d) *The holder of a registered servitude which gives the right of occupation; or*
- e) *The manager or agent of a person referred to in paragraph (a), (b), (c) or (d); or*
- f) *A member of the family or a guest of a person mentioned in paragraph (a), (b), (c) (d) or (e) ; or*
- g) *A person who is in the full time employment of an owner if it is a condition of his employment that the owner shall provide him or his family with residential accommodation.”*

[8] It is not in issue that the applicant concluded a lease agreement with Mr. R. D. Bennett in 1987. The monthly rentals were fixed at E100.00. It is not clear as to the period of this lease. However, it is common cause as shown during arguments that at the death of Mr. Bennett, the lease between him and applicant was subsisting.

[9] It appears that the executors of Mr. Bennett’s estate then sold the said farm to the respondent in 2010. By this time, the lease agreement had long expired. The applicant, however, was still residing in the farm. It is the respondent’s contention that had the applicant indicated to him that he was a farm dweller, he would have treated him as such as he did with other residents.

[10] Applicant in reply to respondent’s opposition that applicant has been alleging a number of defences such as he was owner by virtue of lease, that the land belonged to the Crown and that he was given right to use same and the offers to vacate at one point in time, states:

“15. Notwithstanding all that I am alleged to have said and done particularly the representations made to Kirk, I remain a farm

dweller by reason of expiration of the lease agreement with Bennett (full text annexed to Founding Affidavit, not the brief Annexure “LB” of the Answering Affidavit). Kirk being so well versed with the Farm Dwellers Control Act (See Paragraph 12 of his affidavit), knew I am a dweller of the farm. He was only annoyed that I am assertive of my right to first preference in the sale of the farm in terms of Annexure “LB” of his Answering Affidavit.”

[11] It is not in issue that the applicant came to reside on the farm as a lessee.

[12] The poser that begs for an answer is, can a lessee be converted into a farm dweller under the Act upon expiry of the lease agreement or termination by virtue of the death of the lessor? I do not think so. Logic dictates that the answer should be in the negative. Should such a position hold, it would create anarchy and acrimony among contracting parties. It would mean, for instance, as soon as the lease expires, one would assert these rights under the Act. This would throw into total disarray the efficacy of contracts between parties, with former lessee’s taking advantage and better claim over their landlords. In fact, in the eyes of the lessee, there would be no need to renew such contracts. It is my considered view that a former lessee who wishes to have a successful claim under the Act should allege more than what the applicant has *in casu*. For instance, he may have to show that the lessor after the expiry of the lease, either by conduct or inference allowed or acquiescence to his continued habitation as a farm dweller. The period of undisturbed stay will also be considered. It would further bring to an end the common law principle that where parties who held a lease for a specific period and that lease expired with the lessee however continuing to occupy the property, such lease subsists on a month to month basis.

[13] I take this line of interpretation following the *dictum* in **Professor Lowrens du Plessis. (The Interpretation of Statutes) (1986)** at 69:

“This implies that, as a starting point, an enactment must be interpreted in view of the common law in that its provisions must as far as possible be reconciled with related precepts of common law: the provisions that stands to be interpreted must be so construed that they are capable of co-existing with similar and/or related provisions of common law.”

[14] In the premises there are no merits in applicant’s application.

[15] Before I dispose of the matter, I must however, point out that during the hearing, Counsel for applicant informed the court that he was appearing *pro bono* as applicant was indigent and without any relatives to support him. In fact applicant was in court and the court observed that he was a very elderly person.

[15] On these factors together with respondent’s willingness as demonstrated in its answering affidavit and during arguments, to treat the applicant as a farm dweller, this court can only urge respondent to do so only on humanitarian grounds and commends respondent and his counsel for such willingness.

[16] However, in the final analysis, I enter the following order:

1. Applicant’s application is dismissed.

2. No order as to costs.

M. DLAMINI
JUDGE

For Plaintiff: M. G. Dlamini

For Defendant: T. E. Fakudze