



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

Case number: **LCC77/2024**

- (1) REPORTABLE: **NO**
 (2) OF INTEREST TO OTHER JUDGES: **NO**
 (3) REVISED.

11 October 2024

SIGNATURE

In the matter between:

P4 BOERDERY (PTY) LTD

Applicant

and

**UNKNOWN PERSONS AT PORTION 2
OF THE FARM WELGEDACHT 3349 G.S.,
NORMANDIEN**

First Respondents

THOKO GERTRUDE RADEBE

Second Respondent

**THE STATION COMMANDER
DANNHAUSER POLICE STATION**

Third Respondent

**HEAD OF THE DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT AND LAND REFORM,
KWAZULU-NATAL**

Fourth Respondent

JUDGMENT

SPILG, J

11 October 2024

INTRODUCTION

1. On 9 May 2024 the applicant, P4 Boerdery (Pty) Ltd, brought an urgent application seeking *inter alia* the following relief;
 - "2. *That the first and second respondents be ordered and directed to forthwith restore the applicant's undisturbed use and vacant possession of the farm and the homestead situated on Portion 2 of the Farm Welgedacht, Normandien, KwaZulu-Natal Province (the "farm") and more specifically identified as "X" on the aerial photograph attached hereto and be directed and ordered to remove their belongings, if any, brought onto the farm and to the homestead on the farm.*
 - 3 *That the first and second respondents be interdicted and restrained from disturbing, interfering with and/or taking occupation and using the farm and the homestead on the farm until such time that the first and/or second respondents have established the right to use and possession of the farm in the proceedings under case number: LCC 27/2022.*
 - 4 *In the event of the first respondents failing to comply with the order as set out in paragraphs 2 and 3 above, that the Sherriff or his deputy, with the assistance of the South African Police Services, be authorized and directed to restore vacant possession of the farm to the applicant by removing the first and second respondents from the homestead, together with their belongings, if any,.*
 - 5 *That the first respondents be ordered to pay the cost of the application, jointly and severally, the one paying the other to be absolved*
2. The deponent to the founding affidavit, Mr. D Potgieter, who is the director of the applicant, alleged that the farm on which the homestead is situated, was acquired from Mr. Dirk Adendorff in October 2023. The Adendorff family had owned the farm since 1993.
3. The applicant had however already leased the farm since 2022 and has been conducting commercial crop farming since then.

4. In the founding papers it is alleged that no one was residing in the homestead when Mr. Potgieter took possession in 2022 and that prior to that only a former farm worker had been resident there. This was Mr. J Zwane. It was said that he had been a farm worker, but due to age had retired and since retirement in 2017 had resided alone in the homestead.
5. It was also alleged that Zwane's wife, Ophikile, had left the farm prior to 2017 in order to live in Dannhauser on another farm with her daughter who is the second respondent, Ms Thoko Radebe.
6. Due to his age and because none of the family members remained on the farm to care for him, Adendorff had arranged for one of his farm workers, Mr. Derek Shabalala to temporarily relocate to the farm in order to care for him. This arrangement persisted until Zwane's death in 2020. It is alleged that since his death, the homestead remained "*unoccupied and deserted*".¹
7. In its founding affidavit the applicant described the events which took place on 19 April 2024, and since, which he alleged precipitated the need for the application.
8. In short, two men, then unknown to him, were in the applicant's livestock camp on the farm. They said that they were members of the Zwane household and lived at the homestead which had been occupied by the late Zwane. Mr. Pretorius disputed this. It was alleged that later the same day the two men were seen to be erecting structures at the homestead.
9. A trespassing notice was then prepared by the applicant's attorneys and in the company of the police was handed to the two men. They said that they intended to stay at the homestead only for five nights until the next taxi arrived to enable them to return home. This was to be on 24 April. They also said that the second respondent had requested them to search for four of her missing cattle that were on the farm.
10. The two men were later identified as Thulani and Lindo Shabalala.
However, by 25 April they were still there, but now accompanied by a third

¹ See also paras 30 to 32

person. The police were called and informed the persons that they had no right to be on the farm, take possession of the homestead or graze their cattle, which now numbered 6 head,

11. The applicant then revealed that there was in fact a labour tenancy claim brought under case number LCC27/2022 by the second respondent and her mother, the late Zwane's wife.

12. Mr Potgieter then stated that the three persons were no longer there by 26th April. However there remained 20 head of cattle that were grazing close to the homestead. These were branded with the second respondents identification mark, seven of which also bore the late Zwane's original branding ("JPZ").

13. On 26 April the respondents' attorney sent a letter to the applicant's attorneys disputing that the applicant was unaware that there were people occupying the homestead and that the homestead belonged to their client, it being the subject matter of a labour tenant claim under the Land Reform (Labour Tenants) Act 3 of 1996 (*"the Labour Tenants Act"*). The letter informed the applicant that any eviction or impounding of livestock was illegal and that the applicant had erected a gate to enclose the respondents' livestock.

This was responded to by the applicant's attorneys who denied the allegations,

14. The next event took place when the second respondent came on to the farm.

This was on 6 May 2024. She claimed that the homestead belonged to her parents, that she was going to settle there and that Lindo and a certain Zamokuhle would also take up occupation.

15. The applicant's case was that the second respondent was not born on the farm, did not grow up on the farm and never lived on the farm. The same was alleged in respect of the other persons who had come on to the farm. It was only the late Zwane who, according to the applicant, had resided there but that his rights terminated on his passing in 2020.

16. The grounds for seeking an interdict included an allegation that the respondents were attempting to establish occupation for the purposes of the labour tenancy

claim, which was in dispute. It was again asserted that none of the respondents had rights *"to possess, use and occupy the farm and/ or the homestead. As such, the aforesaid acts of interference on the farm constitute unlawful acts of deprivation of possession and will seek return of undisturbed and vacant possession of the farm and the homestead"*

17. It was asserted that the respondents' acts constituted an attempt to establish a form of permanent residency at the homestead under circumstances where no such right to reside existed and would in all probability result in an eviction dispute.
18. The applicant added that if the second respondent is found to have established her labour tenancy claim, she will be entitled to exercise her right to occupy the homestead but until such time, the respondents act of spoliation and attempts to occupy the farm or the homestead were premature.
19. Finally, it was asserted that the respondents clearly have places of abode and until such time that they have established a right to possess the farm or homestead, their conduct remained unlawful and that an order directing them to restore the status quo ante could not prejudice them.

INITIAL ORDER

20. Based on these allegations, the court considered that the matter was sufficiently urgent to be heard with abbreviated times and processes but declined to grant any interim relief prior to affording the respondents an opportunity to be heard.

THE RESPONDENTS' ALLEGATIONS

21. The second respondent confirmed that she was the daughter of the late Zwane. She said that he had arrived on the farm in the late 1950s. There followed allegations which would support her father being a labour tenant. She alleged that she was born on the farm and that she was in fact married at a ceremony

conducted at the farm in 1988. She and her married sister had children who attended school while residing with both the late Zwane and the second respondents' mother on the farm. The children from the families of the late Zwane's daughters are the Radebes and the Chabalalas. The men who came to the farm in April were therefore the grandchildren of the late Zwane and his wife.

22. The second respondent contended that her mother, sister and the grandchildren are "*associates*" as that term is understood in the Labour Tenants Act. She disputed that her father lived alone before he died and contended that her mother was residing with him at the time. She reasserted that his grandchildren would stay on the farm with them during the school holidays and weekends and that she herself would visit her parents at the farm and sleep over.

23. According to the second respondent, after the funeral of her father Mr. D Adendorff informed her mother and then that they had to vacate the farm and had no right to occupy it. Her mother alleged that the farm was her permanent home, that she had no alternative accommodation and wished to be buried next to her husband on the farm, where his grave is situated.

If this is indeed the case, then Mr. Adendorff we'll have to answer for contravening the clear provisions of the Labour Tenants Act since it appears that there was already an application made under that Act for the land, provided of course that he had notice of the application.

24. It was only in January 2022 that the second respondent and her sister decided that their mother could no longer stay on the farm because she was unable to look after herself due to her age and health. She therefore came to reside with the second respondent. In the meanwhile, the cattle that were there needed attending and Lindo as well as Philane and Musa would sleep over at the homestead to take care of the livestock and that this has been ongoing since the second respondents mother left the farm in January 2022.

25. It was alleged that the applicant subsequently erected a fence in August 2023 around the homestead leaving the entrance gate next to the gravel road. He also

constructed a small temporary bridge for access by them. He however removed the livestock from the alleged allocated grazing area across the gravel road to a new grazing area around the homestead. If proven, this too would contravene the Labour Tenants Act, provided the applicant was aware of the application.

26. The second respondent alleged that since 2023 the livestock had been grazing on the newly designated grazing area around the homestead and that effectively their right to occupy and use the farm has not been terminated.
27. The second applicant then relates how, according to her, they wish to swap their four bulls for heifers and approached Mr. Potgieter. This was in March 2024. He however did not have heifers but was prepared to buy the bulls. The second respondent produced proof of the transaction and alleged that they then purchased 5 heifers with the money received from the applicant to replace the four bulls and took them back to the farm to graze with the remainder of their cattle.
28. The reason for family members being on the farm on 17 April was, according to the second respondent, for the purposes of attending to the inoculation of the new heifers to prevent any disease because they were from another area and Lindo and Philane then stayed at the farm for a few days to monitor the new heifers.

THE REPLYING AFFIDAVIT

29. In the replying affidavit Mr. Potgieter explained how the transaction in relation to the bulls occurred. It puts a different gloss on the events. He also denies that either the late Zwane, his wife or any family member had rights under the Labour Tenants Act.
30. The applicant confirmed that after the late Zwane's death his cattle remained on the farm he however alleges that they were supervised by Nhanhla Zwane who worked and resided on the neighbouring farm and who apparently was the late Zwane's nephew.

31. Furthermore the applicant explained that the order sought is not concerned with the cattle that are grazing on the homestead but only in relation to the respondents' attempts to occupy the homestead, which the applicant still believed was for the purpose of trying to establish residency.

GENERAL

32. There is clearly a dispute in relation to whether the respondents have continued to effectively exercise rights in relation to the homestead and the grazing of cattle on the farm since the late Zwane passed away. The applicant denies that there was any occupation while the respondents contend that both the previous owner (D Adendorff) and Pretorius are aware of their occupation. The respondents rely both on the labour tenants act and the Extension of Security of Tenure Act in the alternative.

It is also abundantly clear that at no stage since the passing of the late Zwane, did the applicant or its predecessor in title seek to remove the Zwane cattle, only to move them closer to the homestead. Huh please tell me

LABOUR TENANCY CLAIMS

33. This case and the relief claimed must be informed by the fact that a labour tenancy claim was made and is before the court for final determination.
34. Two significant features of such a claim are that it can only be made provided It was applied for by 31 March 2001, and that in terms of Section 5 a labour tenant, or his or her associate, may only be evicted in terms of a court order (the proviso not being applicable in the present case) but the right to occupy and use the land is respected under the provisions of Section 3 of that Act.
35. Ultimately it is evident that where there has been a referral by the Director General of an application for a right to acquire land under s 16 as read with s 19, affected parties are not permitted to do anything to prejudice the outcome of those proceedings. In particular, in terms of s 14:

“ No labour tenant may be evicted while an application by him or her in terms of chapter 3 is pending: provided that the court may order eviction if it is satisfied that special circumstances exist which make it fair, just and equitable to do so, taking all these circumstances into account.”

THE HEARING

36. It became evident during the course of the proceedings that the second respondents were not asserting for anything more than the continuation of what they claimed were sleepovers by two or three members of the family as well as the second respondent or her mother at a time, in order to care for the cattle.

37. The respondents' claim that they were doing so approximately every fortnight. The stayover was necessitated because the taxi could only transport them on a Monday, Wednesday and a Fridays. It was however evident that the late Zwane's wife had not been to the farm for a considerable time even on their version.

38. The one issue which could readily be resolved was whether the homestead had in fact been occupied at any stage during 2024 or had remained vacant and unoccupied throughout. The court therefore directed that the legal representatives arrange to go out to the farm and establish whether there were any signs of occupation at the homestead.

39. The report back indicated that there were personal effects in the form of clothing and that there was also bedding in the homestead.

The court considers it significant that the key for the homestead had to be obtained from the second respondent.

40. But as stated earlier, it was clear that the respondents were not contending that they had *de facto* permanent residence in the homestead at the time the application was brought or for any substantial period after their mother left.

41. They were contending that they were currently exercising rights over the homestead without permanent occupancy and that they attended at the homestead for the purposes of tending their cattle.

This however could not be achieved by a day visit because transport between their residence and the farm was only on Mondays, Wednesdays and Fridays. In other words, either a two-night stay or a three-night stay over a weekend.

42. As already stated, the applicant confirmed in argument that the application was not in regard to the grazing of the cattle but only in respect of the homestead and that it was precipitated because of concern that the respondents were seeking to secure a permanent presence to advance a labour tenancy claim. The respondents deny that this was the intention and persist that the *status quo* at the time of the application was that they came to the farm and slept over for a few nights in order to tend their cattle.

43. However, a further difficulty which subsequently arose was that Nhlanhla, who had been residing at the nearby farm, Skilpadkloof and could tend to the cattle had been hospitalised in March.

And even the question of which nights the respondents should be permitted to sleep over presented problems because the only person who was now regularly able to tend the cattle was Lindo. He is still at school and therefore, save over school holidays, would be jeopardizing his schooling if he were to come to the farm in the week.

MATERIAL CONSIDERATIONS

44. I am satisfied that the applicant is entitled to ensure that the *status quo ante* prevails in relation to the respondents not permanently residing at the homestead until that dispute is resolved under the labour tenancy case.
45. It is however evident that the respondents did enjoy the ability to tend to their cattle in the following manner. Nhlanhla, who is a close relative, had been near at hand at all times to look after the respondents' interests in the cattle and their

grazing. Two other members of the family, being children of either the second respondent or her sister, would also sleep over from time to time and that these sleepovers at times included the weekend because of the intermittent taxi schedule. On occasion either the second respondent or her mother would also stay over with them.

46. The difficulty which now arises is that Nhlanhla is indisposed and the respondents have no one to regularly tend to the cattle.
47. The applicant acknowledges that the application, irrespective of how the notice of motion may have been interpreted, was not intended to deal with the grazing of the cattle around the homestead itself. If any of the respondents are to be successful in the labour tenancy claim then they will be entitled to the rights which come with it, including the right to graze their cattle. That too should therefore not be jeopardised until the finalisation of the labour tenancy case.

Accordingly it is unnecessary to engage the question of continued grazing in relation to an ESTA occupier, only how the cattle can be properly tended while grazing pending the resolution of the labour tenancy dispute.

48. The relatively easy part of this matter is to address the applicant's concern that any occupation of the homestead was intended to solidify an alleged right of residents for purposes of the labour tenancy claim. I believe that this can be achieved by ordering that whatever time the court may allow the respondents to sleep over, it is to enable them to tend their cattle.
49. The more difficult part is how to implement the stayover, bearing in mind the exigencies that have arisen, and may still arise with regard to who can in fact tend the cattle bearing in mind the transport difficulties and the need to preserve and care for them if Nhlanhla continues to be indisposed.
50. This court is asked at this stage to only make an interim order and it seems to me that the only protection to which the applicant is allowed at this stage is one that will address the fears that the respondents have come to permanently reside in

the homestead, whereas this is a contentious issue in the labour tenancy application.

51. The applicants however have certainly not made out a case which satisfies the requirements for interim introductory relief which entitles them to undisturbed use and vacant possession of the homestead.

The fact that the key to the homestead had to be obtained from the second respondent is enough at the interim interdict phase to thwart the applicant demonstrating even a *prima facie* right to such an extensive remedy which would deprive the respondents of temporary use for the purposes of a sleep over in order to tend to their cattle.

ORDER

52. The court accordingly makes the following order:

1. *Pending the final determination of the proceedings relating to an application for a right to acquire land or a right in land under case number LCC 27/2022:*
 - a. *the first and second respondents are interdicted from living permanently in the homestead situated on Portion 2 of the Farm Welgedacht, Normandien, KwaZulu-Natal Province ("the homestead");*
 - b. *The first and second respondents shall however be entitled to occupy the homestead at their discretion from either a Friday to the following Monday morning or from a Monday to the Wednesday of the same week or from a Wednesday to the Friday of the same week save in cases where there is a long weekend, in which event they may occupy for one extra day;*

- c. *Each period of occupation shall not be less than two completed weeks after the end of the previous period of occupation, subject to any exigency in relation to any head of cattle which may require urgent attention, in which event their respondents shall immediately notify the applicant or the applicants attorney by way of a text message or e-mail of the need to urgently attend to the cattle at the homestead;*
- d. *The occupation as provided for herein shall be for a maximum of two males and one female, subject to any exigency in relation to any head of cattle which may require more persons attending to them, in which event the respondents shall immediately notify the applicant as aforesaid, and immediately the exigency has been attended to such number of persons shall be reduced to the maximum set out earlier;*
- e. *In the event that the applicant considers that any of the provisos contained in the preceding two subparagraphs is being abused, it shall be entitled to approach this court on these same papers duly supplemented on not less than five days' notice;*
- f. *The occupation by the respondents as provided for herein is for the purposes of tending their cattle and the applicant shall not take any steps whether directly or indirectly which may inhibit or frustrate the respondents' cattle from grazing in the area currently provided for them*
- g. *This order does not affect Nanhla Zwane's continued tending to the cattle as he previously did, should he no longer be indisposed and return to the nearby farm, Skildpadkloof,*
- h. *Either party may approach this court on not less than five days written notice on the same papers duly supplemented, to amend*

or vary this order should exigencies change or if there is a breach of its provisions

2. *Each party shall bear its own costs.*



SPILG, J

DATE OF JUDGMENT AND ORDER: 11 October 2024

FOR APPLICANT: Adv I Oshman
Velile Tinto & Associates Inc

FOR RESPONDENT: Mr Nethsivera
Legal Aid South Africa