



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 2617/2010

In the matter between:

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

PLAINTIFF

and

JACOBUS FREDERICK JANSEN

DEFENDANT

Neutral citation: *The Government of the Republic of Namibia v Jansen* (I 2617/2010) [2013] NAHCMD 171 (20 June 2013)

Coram: PARKER AJ

Heard: 29 May 2013

Delivered: 20 June 2013

Flynote: Landlord and tenant – Eviction from land not forming part of the leased property and which defendant occupies without statutory permission.

Summary: Landlord and tenant – Eviction of defendant (lessee) from land not forming part of leased property – Defendant (lessee) occupying the plaintiff's (lessor's) land that adjoins leased property but which falls outside the leased property – Court finding that defendant's occupation without the plaintiff's written permission is illegal as the occupation contravenes s 18(1)(a) of the Nature Conservation Ordinance 4 of 1975 – Court concluding that plaintiff has proved its claim and so ordered defendant from the land in question.

ORDER

- (a) The defendant and any livestock belonging to him are hereby evicted from the land appearing as Portion C, Portion D and Portion E, marked on the diagram in Exh C, and any other land which is the property of the plaintiff and which is not covered by the lease.
- (b) The order in para (a) must be executed by a Deputy Sheriff with the assistance of Namibia Police (NAMPOL).
- (c) The defendant must pay the plaintiff's costs of suit.

JUDGMENT

PARKER AJ:

[1] The provenance of the dispute between the parties in this matter lies in a lease that the Government of the Territory of South West Africa (since Independence, the Government of the Republic of Namibia; see Article 140 of the Namibian Constitution), the lessor, entered into with the defendant, the lessee respecting the property referred to in para 3.1 of the amended particulars of claim being the property approximately 70 hectares, located in the district of Karasburg (registration division 'V' which is part of measured ground next to the confluence areas of the Orange River and the Fish River as indicated on the contour plans, addendum 'A' and addendum 'B' to the lease agreement ('the property')). The averment of the plaintiff is that the defendant is trespassing on land depicted on Exh C and reflected thereon as Portion C, Portion D and Portion E of which the plaintiff is the owner ('the land'). The aggregate area of the land is 593347 hectares which the defendant refuses to vacate despite demand for him to do so. The contention of the plaintiff is that the land does not form part of the property that the lease covers.

[2] In his amended plea, the defendant pleaded a special plea which was basically that the land falls under the jurisdiction of a foreign sovereign country, namely, the Republic of South Africa, and so the court has no jurisdiction to grant the eviction order sought by the plaintiff. The defendant then pleaded 'over unto the merits' in the event that the special plea was not upheld.

[3] On 12 February 2013 the special plea was dismissed, and these are the reasons for that decision. At the status hearing held on 15 November 2012, I made an order that the legal representatives of the parties must jointly obtain from the Surveyor General a certificate or suchlike document under his hand indicating the territorial limits of Namibia as at 28 July 2010 when the combined summons issued from the registrar's office. The certificate that was obtained is merely an elaboration of the relevant provisions of Article 1(4) of the Namibian Constitution. Without saying it; the Constitution binds the court. And so parts of the certificate that is relevant to the point under consideration was accepted by the court.

[4] In para 3 of the order dismissing the special plea the court ordered that the parties or their legal representatives (if represented) must attend a case management conference in open court at 09h00 on 28 March 2013, and in that behalf, their attention was drawn to rule 37(4) and (5) of the rules of court; and the order was served by registered post on the defendant.

[5] At the last JCM conference the set-down trial date of 10h00, 29 – 30 May 2013 was ordered. The defendant did not appear at the trial by himself or by counsel, and no explanation was placed before the court, establishing why there was no such appearance at the trial. And I accept counsel's submission that his instructing counsel made many serious and bona fide attempts telephonically to no avail to get hold of the defendant in order to remind him of the set down trial date. Taking into account these factors and also the fact that any delay in the trial of the matter would seriously prejudice the plaintiff in its development of the tourism and

agricultural industry in that part of the country, I exercised my discretion to proceed with the trial for the plaintiff to prove its claim.

[6] The first plaintiff witness is Mr Karl Mutani Aribeb. Aribeb is presently employed by the Ministry of Environment and Tourism: Directorate Parks and Wildlife ('the Ministry') as a park warden at the Ai-Ais Hotspring Game Park. He placed before the court a witness statement upon which counsel adduced his evidence. I accept Aribeb's evidence that no written permission has been granted to the defendant in terms of s 18(1)(a) of the Nature Conservation Ordinance 4 of 1975 ('the Ordinance') to occupy the land and the area opposite these agricultural fields where the defendant has erected the dwelling structures. Indeed, there is nothing in the papers placed before the court by the defendant which establishes that he has been granted such permission.

[7] The second plaintiff witness is Mr Mendes Paolo Vinte. He is a colleague of Aribeb and he is employed at the same workplace. He also placed before the court a witness statement, and counsel adduced his evidence upon the witness statement. Vinte corroborates in material respects the evidence of Aribeb.

[8] The third and last plaintiff witness is Mr Richard Tondeni Nyatoti. He is a land surveyor in private practice presently. In 2010–2012 he was employed as a professional surveyor by the Ministry of Lands and Resettlement: Directorate Survey and Mapping in the Surveyor General's office. He also placed before the court a witness statement, and in like manner as with the first two plaintiff witnesses, counsel adduced his evidence upon the witness statement. I accept Nyatoti's evidence that the land fell outside the property covered by the lease, and the defendant's dwelling house and paddock are situate opposite Portion C and are also outside the leased property.

[9] On the evidence I am satisfied that the plaintiff has proved its case; and so it is entitled to judgment. Whereupon; I grant judgment for the plaintiff, and I make the following order:

- (a) The defendant and any livestock belonging to him are hereby evicted from the land appearing as Portion C, Portion D and Portion E, marked on the diagram in Exh C, and any other land which is the property of the plaintiff and which is not covered by the lease.

- (b) The order in para (a) must be executed by a Deputy Sheriff with the assistance of Namibia Police (NAMPOL).

- (c) The defendant must pay the plaintiff's costs of suit.

C Parker
Acting Judge

APPEARANCES

PLAINTIFF : N Marcus
Instructed by Government Attorney, Windhoek

DEFENDANT: No appearance