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Eviction of long-term occupiers following a material breach in relationship

By Clarissa Pienaar, Moolman & Pienaar Incorporated

The case of *Nimble Investments (Pty) Ltd vs Johanna Malan and Others (556/2020) [2021] ZASCA 129* (the *Nimble* case) was recently heard in the Court of Appeal. The Court had to consider whether the actions of the farm dwellers, one of whom was a long-term occupier, constituted a material breach in the relationship between the farm owner and occupiers.

Long-term occupiers (people who have lived on the farm for more than ten years and are over 60) enjoy special protection against eviction proceedings. Long-term occupiers should therefore view this ruling in a serious light before acting in a way that does irreparable damage to their relationship with the farm owner.

Facts in the *Nimble* case

Elsie Malan (first respondent) and her late husband had resided on the farm owner's land since 1974. Mr Malan worked on the farm until his death at the age of 61 in 2005. Cottage 1 was awarded to him under his service agreement for the duration of his contract. The couple's children and grandchildren also resided in the cottage.

In 2006, the previous owner instituted eviction proceedings against the Malan family. The Stellenbosch Law Clinic assisted Elsie in arranging a lease agreement between herself and the previous owner, in terms of which Elsie would be responsible for paying the monthly rent. The current farm owner, Nimble Investments, took over the farm

and lease agreement in 2008. The Malan family never paid any rent to Nimble Investments.

In 2012, Nimble Investments needed the land on which Cottage 1 was located in order to meet their contractual obligations towards a long-term tenant. Although negotiations took place regarding Elsie vacating the farm, these negotiations failed. After further negotiations, she agreed to move from Cottage 1 to Cottage 5. However, she did not comply with this undertaking and a court order was obtained for the move to Cottage 5.

The move to Cottage 5 was not without difficulty. On 28 November 2016 members of the Malan family removed the roof tiles, roofing sheets and building materials from Cottage 1. The site manager and director of Nimble Investments, in the presence of police officers and Elsie herself, requested the family members to stop their actions, which they refused to do.

Elsie therefore knowingly, without permission and in violation of the building regulations, even after criminal charges were laid, allowed an illegal structure to be erected next to Cottage 5. She bluntly refused requests to demolish the structure and return the building materials. Furthermore, an action was instituted to have the family members evicted from the farm.

Court findings

The Court of Appeal had to determine, among other things, whether there had been a material breach in the relationship between

Nimble Investments and the Malan family. Elsie qualified as a long-term occupier.

The Court found that, prior to the incident, a relationship of mutual trust and co-operation existed between Elsie and the farm manager. However, Elsie's sanctioning of unauthorised people erecting the illegal structure, and her persistent refusal to demolish it and return the building materials, violated the relationship to such an extent that it could not be repaired.

The Court of Appeal found that an eviction order was indeed fair, and that Nimble Investments could not be expected to keep on providing the Malan family with free housing and services. The Court confirmed that the *Extension of Security of Tenure Act, 1997 (Act 62 of 1997)*, or *ESTA*, was not promulgated to promote opportunistic farm dwellers' security of tenure at the expense of the rights of farm owners.

Farm dwellers (even long-term occupiers who enjoy special protection) who persistently refuse landowners' efforts to provide security of tenure to farm dwellers, are treading on dangerous ground. Such actions, in combination with other factors, can contribute to a material breach in relationships that could lead to eviction proceedings. 📍

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