

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

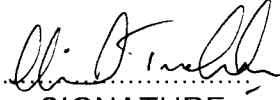
2013/14  
CASE NO: 38325/13

In the matter between:

**ALANZA BOERDERY (EDMS) BEPERK**

Applicant

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
	<u>19/03/14</u> DATE	 SIGNATURE

**JACOBUS NICOLAAS RISSEEUW NO**

First Respondent

**JACOBUS NICOLAAS RISSEEUW NO**

Second Respondent

**JAN CELLIERS RISSEEUW NO**

Third Respondent

**GERHARD RISSEEUW NO**

Fourth Respondent

---

**JUDGMENT**

---

Tuchten J:

- 1 The applicant brought motion proceedings for the ejectment of the Risseeuw Boerdery Trust from a farm owned by the applicant. The defendants are the trustees of the Trust and are cited in their capacities as such.

- 2     The Deeds Office description of the farm is “Gedeelte **43** van die plaas Wolvenkraal ...” in the province of Limpopo. Unfortunately a typing error crept into the applicant’s papers. It described the farm as “Gedeelte **34**”. The respondents seized upon the applicant’s error. They delivered an answering affidavit in which they denied that they had had any dealings with the applicant in relation to Gedeelte 34. They made no reference to Gedeelte 43.
- 3     However, the applicant and the first respondent, claiming to act with the authority of the other respondents were, when the notice of motion for eviction in this issued, already locked in litigation in this court, under case no. 36448/13. The respondents were perfectly well aware that the applicant had misdescribed the farm in the present application. The dispute relates to the interpretation and effect of a written lease between the applicant and the first respondent, claiming to represent the Trust. The lease contains an option to buy Gedeelte 43, the very farm from which the applicant seeks to evict the Trust in this case. The first respondent claims to have exercised this option and in case no 36448/13 claims specific performance of what he asserts are the present applicant’s obligations arising from the agreement of sale which he claims arose upon his exercise of the option on behalf of the trust. The present applicant noted exceptions to the first respondent’s particulars of claim in that case. The

exceptions came before me together with the present case. I shall give judgment in both cases in the same session of court.

- 4 When the applicant's attorneys realised they had made a mistake, the applicant applied for the necessary amendment to substitute the correct Portion number for the wrong one. To add, as it were, insult to injury, the respondents objected to the amendment and opposed the consequent application to amend on the ground that the applicant had not adequately explained how it and its attorney had made the mistake in question. The attorney explained under oath that the mistake was a "tikfout".
- 5 In my view the resistance to the amendment is wholly frivolous. A typing error carries within its description a complete explanation. In this case the numbers of the Portion were transposed. Leave to amend must be granted. That means, in accordance with rule 28(7), that if the applicant wishes to proceed with the amendment, the applicant must deliver amended pages.
- 6 The next question which arises is what must happen to the application for eviction, which was also properly on the roll before me. Counsel for the respondents pointed to the fact that the respondents had dealt in their answering affidavit only with the case made by the applicant. And

that the case so made by the applicant related to a Portion in respect of which the parties had not contracted and which the respondents said, perfectly truthfully, they were not occupying and therefore could not be required to vacate. Now that the applicant had obtained leave to amend, counsel argued, his clients should be given an opportunity to deal with the claim as amended.

7 In strict law, in my view, the respondents are correct in their contentions that the matter should be postponed. I find the point, and the entire approach of the respondents consequent upon the mistake I have described, morally deplorable. But I do not sit in judgment upon the respondents' morals. Their point is good in law. I must give the respondents the further time for which they have asked. The main application, for eviction, must be postponed.

8 Although I have found that the respondents' argument on time to respond is good in law, that is not the end of the enquiry in relation to costs. I must consider who must pay the costs of the application for amendment and the wasted costs arising from the postponement of the application for eviction.


9 I have found that the objection to the amendment was entirely frivolous. The applicant should never have been put to the expense of an application for amendment. It was quite obvious that there had been a mistake in the description of the farm in the papers. The respondents seized upon this point to harass the applicant and delay the day the true issues between the parties are resolved. I disapprove of such conduct by litigants and their lawyers. I shall mark my disapproval by ordering the respondents to pay the costs of the application for amendment and the wasted costs arising from the postponement. In coming to this conclusion I have not overlooked the fact that the applicant, in applying for an amendment, seeks an indulgence. Both sides retained senior counsel. The issues are weighty enough to justify the costs of senior counsel.

10 Counsel for the applicant asked, if a postponement was granted, for specific orders relating to the filing of papers. I think it would be appropriate to give such directions.

11 I make the following order:

1 The applicant is granted leave to amend paragraph 1 its notice of motion by the substitution of the expression "Gedeelte 34" by the expression "Gedeelte 43".

- 2 The main application for the eviction of the respondents is postponed *sine die*.
- 3 The respondents must deliver any further affidavits which they may wish to file within 15 days of the date upon which the applicant serves its amended pages upon the respondents under rule 28(7).
- 4 The Risseeuw Boerdery Trust, represented by its trustees, must pay the costs of the application for amendment and the wasted costs occasioned by the postponement of the application for eviction, including the costs consequent upon the employment of senior counsel.

  
NB Tuchten  
Judge of the High Court  
19 March 2014