

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on 3 November 1998  
before **BAM, P and MEER, J**

**CASE NUMBER : 2/97**

In the matter between:

**ENNIS MLIFI**

Plaintiff

and

**OTHARD JOHANN KLINGENBERG**

Defendant

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## JUDGMENT

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[1] It is well established that the test for granting leave to appeal is a reasonable prospect of success on appeal.

[2] There exist divergent opinions in judgments of various High Courts including the Land Claims Court as to what constitutes the definition of a labour tenant. In this particular case, paragraphs “(b)”<sup>1</sup> and “(c)”<sup>2</sup> were debated. I am aware that other divisions of the High Court have favoured the interpretation preferred by the Defendant.

This suggests to me that I cannot disregard the prospect that their interpretations may be favoured on appeal.

[3] I add moreover that well drafted legislation does not require copious, intricate and arduous exercises in semantics and speculation on what the legislator intended. It is regrettable that the Land Reform Labour Tenants Act provides such opportunity for speculation. It is in my view undesirable that the niceties and logistics of paragraph (a), (b) and (c) continue to be ventilated *ad infinitum* before this and other Courts. I believe all of our time can be better utilised.

[4] It is desirable for there to be legal certainty on the definition of a labour tenant, a certainty which only the Supreme Court of Appeal can confer. It is, put simply essential at this stage for a higher authority to resolve the divergence that exists in different divisions of the High

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<sup>1</sup> (and the reference therein to the past tense)

<sup>2</sup> (and the question as to whether the farm referred to therein has to be the same farm on which a parent or grandparent of a prospective labour tenant lived and worked)

Court on this issue.

[5] For all of the above, I find that there is a reasonable prospect of success on appeal. Leave to Appeal is accordingly granted.

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**JUDGE Y S MEER**

I agree

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**JUDGE F BAM**

**Heard on:** 3 November 1998

**Handed down on:** 3 November 1998

For the applicant:

*Ms F Kathree* instructed by *Legal Resources Centre, Johannesburg.*

For the defendant:

*Mr Dreyer* instructed by *Buitendags Inc.*