

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG
Court : **MOLOTO J**

CASE NUMBER: LCC13R/99

In the review proceedings in the case between:

ALMA EMILIE EGGERSGLUSZ
ALMA EMILIE EGGERSGLUSZ NO

First Applicant
Second Applicant

and

TRAYISHILE KETSHESE

First Respondent

**THE FURTHER OCCUPIERS OF PORTION 1 OF
FARM 696, DIVISION OF EAST LONDON, PROVINCE
OF THE EASTERN CAPE, KNOWN AS "HAPPY REST"**

JUDGMENT

MOLOTO J:

[1] The judgment of the Magistrate's Court for the district of East London in the case of *Alma Emilie Eggersglusz and Another v Trayishile Ketsheese and Others*, case number 5376/99, was brought to my attention on 6 April 1999. It consists of the applicants' founding affidavit only (i e without annexures referred to therein) and correspondence between the attorneys for the applicants and respondents. It is stated in the correspondence that the respondents be removed, by force if necessary, on 6 April 1999.

[2] The application is brought under the Extension of Security of Tenure Act, 62 of 1997 ("the Act"). Reliance is placed on section 15 thereof to bring the proceedings on an urgent basis. The Magistrate granted the application as prayed, and these proceedings now come before me for automatic review in terms of section 19(3) of the Act.

[3] In a number of judgments of this Court¹ has stressed the need to allow time for review before implementation of the magistrate's court order. In this particular case, the order is implemented before the

¹ *De Kock v Juggels and Another*, LCC7R/99, 11 March 1999, as yet unreported at par [29], internet web site address: <http://www.law.wits.ac.za/lcc/1999/dekocksum.html>; *Roux v Lekekiso*, LCC13R/98, 16 November 1998, as yet unreported at par [9], internet web site address: <http://www.law.wits.ac.za/lcc/lccalph.html>; *Karabo and Others v Kok and Others* 1998 (4) SA 1014 (LCC) at 1020G-1021A, [1998] 3 All SA 625 (LCC) at 631g-632a; *Lategan v Koopman and Others* 1998 (3) SA 457 (LCC) at 465G-466A, [1998] 3 All SA 603 at 609f-g.

review because, so it seems to be argued, the matter is urgent. The reasons put forward for urgency are not in compliance with section 15 of the Act. The matter is not urgent at all and should not have been brought under section 15. The other provisions of the Act with regard to notice on the respondents individually, the municipality and provincial office of the Department of Land Affairs have not been complied with. The irregularities are too many to go into in this judgment, given the fact that the eviction is taking place today.

[4] I accordingly give the following order-

- (1) In terms of section 19(3)(b) of the Extension of Security of Tenure Act, No 62 of 1997, the order of the Magistrate's Court for the district of East London in case number 5376/99 is hereby set aside in whole.
- (2) The sheriff or his authorised representative is hereby authorised and ordered, to the extent that he has implemented the court order referred to in (1) above, to re-instate the respondents on the farm Portion 1 of Farm 696, Division of East London, Province of the Eastern Cape, known as "Happy Rest", in the same position as they were before their ejection.
- (3) The applicants to bear the sheriff's costs of the re-instatement referred to in (2) above.
- (4) The matter is referred back to the magistrate for re-trial in terms of the provisions of the Extension of Security of Tenure Act.

JUDGE J MOLOTO

Handed down on: 6 April 1999