

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

**RANDBURG**

In Chambers: **MEER J**

**CASE NUMBER: LCC10R99**

In the review proceedings in the case between

**H D RETIEF**

Plaintiff

and

**SEUN DLADLA also known as  
ZWELIBANZI CHRISTOPHER MADLALA**

Defendant

---

## JUDGMENT

---

**MEER J:**

[1] This case was sent to the Land Claims Court for automatic review under section 19(3) of the Extension of Security of Tenure Act, No 62 of 1997 (hereinafter referred to as “the Act”). On 30 November 1998, the Additional Magistrate, for the district of Klip River, granted an order for the eviction of the defendant from the plaintiff’s farm, Reproach, Van Reenen, Klip River. The order was granted by way of default judgment. The plaintiff sought the eviction under the common law and it is clear from the record and pleadings that both at the pleading and hearing stage the matter was dealt with as an eviction under the common law as opposed to one under the Act.

[2] The pleadings contain no reference to the Act. The defendant did not plead that he was an occupier under the Act. This is understandable, as indeed he could not then have done so (except by way of an amendment of his pleadings) for pleadings closed on 10 October 1997, before the Act came into being on 11 November 1997, by which stage the case was pending. The Act had been in operation for over a year by the time the case was heard on 30 November 1998. The pleadings were, however, not amended pursuant to the promulgation of the Act. The Magistrate ordered the eviction under the common law. Four months later, in March 1999, unbeknown to him, the Clerk of the Court referred the record of proceedings and pleadings to this Court for automatic review in terms of

section 19(3), as is done with evictions granted by magistrates' courts under the Act. This was an unusual step given that this Court reviews evictions under the Act and not common law evictions.

[3] It is only an order for an eviction by a magistrate under the Act that this court is permitted to review under section 19(3). In order for me to review the eviction order, I must therefore find that the eviction in this case fell to be dealt with in terms of the Act. The difficulty I have is that there is nothing in the information at my disposal which enables me to conclusively find that the Act does apply in this case. With regard to the land all I know is that it is a farm. This in itself does not bring the land within the ambit of the Act. Section 2 of the Act provides:

**“2 Application and implementation of Act**

(1) Subject to the provisions of section 4, this Act shall apply to all land other than land in a township established, approved, proclaimed or otherwise recognised as such in terms of any law, or encircled by such township or townships, but including-

- (a) any land within such a township which has been designated for agricultural purposes in terms of any law; and
- (b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment, approval, proclamation or recognition.

(2) Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved.”  
[my emphasis]

I cannot exclude the possibility that the land in this matter may be in a township (although this is very unlikely in the present case) or encircled by a township, in which case the Act does not apply to it. Neither am I able to establish that the land falls within the ambit of section 2(1)(a) or (b). Moreover, I cannot presume the land to fall under the Act by virtue of section 2(2), as the proceedings were not in terms of the Act.

[4] I am further unable to conclusively find that the defendant is an occupier in terms of the Act. The definition of occupier at section 1(xi) of the Act states:

“occupier’ means a person residing on land which belongs to another person and who has or on 4 February 1997 or thereafter had consent or another right in law to do so , but excluding-

- (a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No 3 of 1996);
- (b) a person using or intending to use the land in question mainly for industrial , mining, commercial or commercial farming purposes but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
- (c) a person who has an income in excess of the prescribed amount;”

I cannot exclude the possibility that defendant is excluded from being an occupier by virtue of paragraph (a) in that he might be a labour tenant; paragraph (b) unlikely though that may be and (c) in that his income might be in excess of R5 000,00 the prescribed amount stipulated in the regulations<sup>1</sup> promulgated under the Act.

[5] This being the case, I cannot say with certainty that the eviction fell to be dealt with under the Act and accordingly that I have the requisite jurisdiction to review the judgment. I make no order in terms of the review powers accorded to me under section 19(3) of the Act.

---

**JUDGE Y S MEER**

**Handed down on:** 20 April 1999

**Amended on:** 28 April 1999

---

1 Regulation 2(1) of Regulation 6377 contained in Government Notice No R1632 in Government Gazette No 19587 of 18 December 1998.