

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

**RANDBURG**

In chambers: **Moloto J**

**CASE NUMBER: LCC71R/99**

**MAGISTRATE'S COURT CASE NUMBER: 423/98**

Decided on 2 December 1999

In the review proceedings in the case between:

**REMHOOGTE FARMS (PTY) LTD**

Plaintiff

and

**DAWID MENTOOR**

Defendant

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## JUDGMENT

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### **MOLOTO J:**

[1] On 9 April 1999 I handed down a review judgment<sup>1</sup> in this case as a result of it having been referred to this Court by the Magistrate, Grabouw for automatic review in terms of section 19(3) of the Extension of Security of Tenure Act 62 of 1997<sup>2</sup> (hereinafter referred to as "ESTA"). The order I gave was to set aside the magistrate's order in whole and refer the case back to him for re-trial. My reasons for setting the magistrate's order aside appear in the judgment of 9 April 1999 and will not be repeated here. The matter was duly re-tried before the magistrate, who again has ordered the eviction of the defendant. The matter once again comes before me for automatic review under section 19(3) of ESTA.

[2] Subsequent to the judgment I gave on 9 April 1999, this Court handed down a judgment in the case of *Conradie v Hanekom & Another*.<sup>3</sup> I will refer to it as the *Conradie* case. In that case applicant sought to evict the two respondents who were husband and wife, and who had both

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1 *Remhoogte Farms (Pty) Ltd v Mentoer*, LCC12R99, 9 April 1999, website address : <http://www.law.wits.ac-za/lcc/1999/remhoogtesum.html>

2 Act No. 62 of 1997 as amended.

3 [1999] 2 All SA 525 (LCC).

been employed (and in the case of the wife, continued to be employed) by the applicant. The reason for wanting to evict both respondents was the breach by first respondent of his residence agreement. The husband's employment had also been terminated. This Court found that the wife, being an occupier in her own right, could not legally be evicted for the misdemeanours of her husband and that her husband, although his rights as occupier were declared forfeited, could remain in the house as a family member of his wife.

[3] In view of that judgment I asked for submissions from the parties and for reasons for judgment from the magistrate for the purposes of this second review. My request for submissions from the respondent was sent to the magistrate for transmission to him as this Court has no way of contacting him. A telefax was received from the magistrate's office stating that the magistrate is away on leave but would attend to the matter on his return on 22 November 1999. That was the date by when I had asked to be furnished with submissions and reasons for judgment. I have, to date, not heard from either the magistrate or the defendant. Plaintiff's submissions were timeously received. It bears mention that the magistrate's and the parties' attention was specifically drawn to the *Conradie* case.

The facts of the present case are that -

- (1) The action is against Mr Dawid Mentoer alone;
- (2) Mr Mentoer is married and lives with his wife on the premises;
- (3) Mr Mentoer had occupation rights whilst employed by plaintiff.
- (4) Mrs Mentoer is also employed by plaintiff. Annexure "C" to plaintiff's particulars of claim is a notice to defendant of plaintiff's intention to sue for eviction. The notice reads in part:

“ Let wel op hierdie punt wil ons dit onderstreep dat u vrou wat werksaam is op die plaas se posisie as werknemer geensins `n probleem is nie, maar die feit dat u vrou ons behuising beset is onaanvaarbaar”.

[4] Plaintiff being aware of Mrs Mentoor's residence on the premises, presumably since Mr Mentoor came on the farm, must be presumed to have consented to her stay<sup>4</sup> and Mrs Mentoor must be deemed to have lived on the premises with the knowledge of the owner or person in charge<sup>5</sup>.

[5] Based on the above, Mrs Mentoor is an occupier in her own right, whose eviction is not sought by plaintiff. Plaintiff submitted that this case must be distinguished from the *Conradie* case because plaintiff in the present case seeks the eviction of defendant only and not defendant's wife as well. It is further submitted the interests of the owner or person in charge should be taken into account in terms of section 11(3)(e) of ESTA, particularly because defendant did not defend the case. Furthermore, Mrs Mentoor was retrenched on 15 October 1999. In the alternative, plaintiff submitted that a declarator be made that defendant is not an occupier and that his rights to reside on the property derive from his family relations with his wife. The right to stay would terminate, in any case, because the wife has been retrenched. I deal with the various submissions hereinafter.

[6] This case is not distinguishable from the *Conradie* case. On the contrary defendant in this case is in a stronger position than first respondent in the *Conradie* case by virtue of the fact that no action was taken against the wife in the present case. Therefore the wife's rights on the premises are not remotely threatened. According to the particulars of claim, defendant started working for plaintiff in February 1990 and by a written housing agreement dated 12 November 1996, the defendant was allowed to occupy the premises he is being evicted from. Therefore, defendant's position does not fall to be dealt with in terms of section 11<sup>6</sup> but rather section 10<sup>7</sup>. Plaintiff's submission that the owners interests should be taken into account in terms of section 11(3)(e), is therefore out of place. To suggest that defendant must be evicted because he did not

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4 Section 3(4) of ESTA.

5 Section 3(5) of ESTA.

6 Section 11 of ESTA is applicable to people who became occupiers after 4 February 1997.

7 Section 10 is applicable to people who were already occupiers by 4 February 1997.

put up a defence is to ask the Court to ignore legal requirements. Defendant must be evicted if plaintiff has made a case for eviction, not because defendant failed to defend.

[7] As regards the declarator, this Court finds that defendant lost his rights as an occupier on the premises, but the loss of such rights is merely academic as he would be entitled to stay as a family member of his wife. The couple - defendant and his wife - may not be summarily removed from the premises by reason of the wife's retrenchment. There are no facts placed before me to suggest that Mrs Mentoor is not an occupier in her own right. Therefore, having been retrenched, she is entitled to a notice of termination of the right of residence in terms of section 8, a notice in terms of section 9(2)(d), an action, should she fail to vacate the premises, for eviction and review of any such order before she can be evicted. During all that time, she is entitled to live under family conditions with her husband on the premises<sup>8</sup>.

[8] I make the following order:

- (a) The eviction order against the defendant is set aside in whole,
- (b) A declaratory order is made that the defendant in his own right, does not qualify in terms of the Extension of Security of Tenure Act to stay on the premises, but that any right to use the residence occupied by him derives from his family relationship with his wife until the latter's right of residence is lawfully terminated and she is legally evicted .

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**JUDGE J MOLOTO**

For the applicant:  
*Mr Brett Carnegie of Findlay & Tait, Cape Town*

For the respondent:

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8 *Conradie v Hanekom & Another* above at n2.

Unrepresented.