

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

**RANDBURG**

In chambers: **MOLOTO**

Decided on: 20 January 2000

**CASE NUMBER: LCC 3R/00**

**MAGISTRATE'S COURT CASE NUMBER: 9324/99**

In the review proceedings in the case between:

**PAUL DE VILLIERS**

Applicant

and

**HENDRIK ADONIS**

First Respondent

**JOLENE JOHANISSEN**

Second Respondent

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## JUDGMENT

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**MOLOTO J:**

[1] This matter comes before me on automatic review in terms of section 19(3) of the Extension of Security of Tenure Act<sup>1</sup> (I will refer to it as "ESTA"). The magistrate for the district of Paarl granted an eviction order on 7 January 2000. The action itself was instituted in the magistrate's court on 6 December 1999.

[2] The respondents did not oppose the granting of the eviction order. A reading of the papers reveals that the applicant was entitled to an order for eviction and that the magistrate correctly granted it.

[3] The only problem is with the formulation of the order. It reads : -

**"BEVEL:**

Met inagneming van die bepalings van artikel 12 van Wet 62/97 word die volgende bevel gemaak:

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1 Act 62 of 1997, as amended.

Dit word beveel dat die eerste en tweede respondente en hulle kinders die huis op die plaas Sandwyk ontruim voor of op 7 Februarie 2000 by gebreke waarvan 'n lasbrief vir uitsetting van die partye gemagtig word.”

[4] The magistrate’s order, although said to be made taking into account the provisions of section 12 of ESTA, fails to provide for two distinct dates as prescribed in section 12(1)<sup>2</sup>. Section 12(1) reads as follows:

“12 **Further provisions regarding eviction:**

- (1) A court that orders the eviction of an occupier shall -
  - (a) determine a just and equitable date on which the occupier shall vacate the land; and
  - (b) determine the date on which an eviction order may be carried out if the occupier has not vacated the land on the date contemplated in paragraph (a).”

[5] In terms of section 19(3) of ESTA, I set aside the order made by the magistrate on 7 January 2000 in whole and substitute it with the following order : -

- “(1) The respondents, together with their children, must vacate the farm Sandwyk (officially known as Remaining extent of the farm 832 in the Division of Paarl, Province Western Cape, held under deed of transfer no T28649/1991) on or before 7 February 2000.
- (2) If the said respondents and their children have not vacated the farm by 7 February 2000, the eviction order may be carried out on 14 February 2000.”

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**JUDGE MOLOTO**

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2 See *J S Beukes (Edms) Bpk h/a Dennegeur Boerdery v A Jagers & Others*, LCC1R/00, 18 January 2000, as yet unreported, at para [5] and authorities cited there.

For the applicant:

*D Blackburn of Basson Blackburn Inc, Paarl*

For the respondents:

Unrepresented