

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **MOLOTO AJ**

CASE NUMBER: LCC 67R/00

MAGISTRATE'S COURT CASE NUMBER: 1134/00

Decided on: 8 September 2000

In the review proceedings in the case between:

GARTMORE FARM (PTY) LTD

Plaintiff

and

MAHLABA, S

Defendant

JUDGMENT

MOLOTO AJ:

[1] This is an automatic review in terms of section 19(3) of the Extension of Security of Tenure Act¹ (“ESTA”) of an order of the Magistrate, Howick granted by default of appearance to defend on 16 August 2000, evicting the defendants from the property of the plaintiff. The said property is described as “Gartmore Farm, Sub 9 (a sub of Elderslie) of the farm Welgevonden, number 969, situate in the county of Pietermaritzburg, province of KwaZulu-Natal”.

[2] I have just handed down a judgment in a virtually identical matter.² The plaintiff is the same and the attorneys for the plaintiff are the same. The defendant differs, as do some of the facts but for the purposes of this judgment the papers are substantially the same. I do not intend to repeat myself.

[3] I propose dealing very briefly with the defects I find with the papers.

- Form E (the notice in terms of section 9(2)(d)(i)) in English and Zulu is not included in the papers.

1 Act 62 of 1997, as amended.

2 *Gartmore v Ndlovu and others* LCC 68R/00, 8 September 2000. This will soon be reported on our internet website. See <http://www.law.wits.ac.za/lcc/lccalph.html>.

- There is no indication that Form F (the notice in terms of section 9(2)(d)(ii)) was ever served on the Chief Executive Officer of the Ndlovu Regional Council.
- Only 5 days notice was given to the defendant within which to enter appearance to defend.
- There is no indication as to when the consent to reside on the land was given.
- There is no indication that section 13 has been complied with.

[4] I make the following order:

The order made by the Magistrate, Howick on 16 August 2000 in case number 1134/00, evicting the defendant and granting other relief is hereby set aside in its entirety.

ACTING JUDGE J MOLOTO

For the plaintiff:

Austen Smith Attorneys, Pietermaritzburg.

For the respondent:

No appearance.