

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **Randburg** on 26 February 2001
before **Moloto AJ**

CASE NUMBER: LCC 110/99

Decided on: 27 February 2001

In the matter between

KESWA, F A

Applicant

and

VAN DYK, N

1st Respondent

**POUNDKEEPER OF THE DUNDEE POUND
IN THE DISTRICT OF DUNDEE**

2nd Respondent

JUDGMENT

MOLOTO AJ:

[1] The parties agreed on the resolution of this matter but for the question of costs. I gave an order on 26 February 2001 to the effect that each party pays its own costs. What follows are my reasons for that order.

[2] Mr Krüger, for the first respondent (the case against the second respondent was withdrawn) argued that the applicant should pay the costs because of his failure to comply with the rules in that the applicant did not file heads of argument and did not paginate and index the court file. In response to a question from the bench he agreed that there was no prejudice suffered by the first respondent. Mr de Klerk, for the applicant, argued that he could not explain why the rules were not complied with in the two respects as he had only been instructed by the Campus Law Clinic in Durban on Friday, 23 February 2001. He asked that the applicant not be punished with an order for costs.

[3] The essential allegations in support of the applicant's case were not disputed by the first respondent, that the respondent had the applicant's cattle impounded and removed from his, the first respondent's farm. What is in dispute is whether the applicant had the right to keep his cattle on the first respondent's farm and that is the subject of a subsequent action which the applicant intends to institute. The applicant lived on the first respondent's farm and alleges that he is a labour tenant. The first respondent disputes this allegation. Therefore I am satisfied that where the first respondent removed the cattle without a court order, the applicant was justified in bringing this application. As to the failure to comply with the rules, this Court has the power to condone such failure.¹ Particularly where, as in this case, there is no prejudice to the other party, the attorney explains that he had only been instructed three days prior to the hearing and the former attorneys for the applicant are not before the Court to explain the non-compliance.

[4] This Court has also held² that dealing as it does with social legislation it ought to be reluctant to order costs, except in exceptional circumstances. Our case law³ is replete with statements indicating that rules should not be used to raise technicalities and incur unnecessary costs.

ACTING JUDGE J MOLOTO

For the applicant:

Mr W de Klerk from the Wits Law Clinic, Johannesburg.

For the first respondent:

Adv T Krüger instructed by S J Coetzee Attorneys, Pretoria.

1 See rule 32(4)(b) of the Rules of Court.

2 See, for example, *City Council of Springs v The Occupants of the Farm Kwa-Thema*, 210 [1998] 4 All SA 155 (LCC), 2000 (1) SA 476 (LCC) at para [24]; *Karabo and Others v Kok and Others* 1998 (4) SA 1014 (LCC), [1998] 3 All SA 625 (LCC) at para [30] and *New Adventure Investments and Another v Mbatha and Others* 1999 (1) SA 776 (LCC) at para [6].

3 See *Motaung v Makubela and Another, NNO; Motaung v Mothiba, NO* 1975 (1) SA 618 (O) at 625; *Marigold Ice Cream Co (Pty) Ltd v National Co-operative Dairies Ltd* 1997 (2) SA 671 (W) at 681; *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278 F-G.