

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In Chambers: **Bam AP**

CASE NUMBER: LCC 94R/01

MAGISTRATE'S COURT CASE NUMBER: 70/2001

Decided on: 13 December 2001

In the review proceedings in the case between:

PRETORIUS, C F

Applicant

and

BEGINSEL, J

First Respondent

BEGINSEL, C

Second Respondent

JUDGMENT

BAM AP:

[1] This is an automatic review in terms of section 19(3) of the Extension of Security of Tenure Act¹ (hereinafter referred to as **ESTA**) of a settlement agreement relating to an eviction application, which was made an order of court by the Magistrate, Calitzdorp on 8 October 2001. Both parties were legally represented. In *Ferguson v Buthelezi and Another*² Dodson J held that settlement agreements between parties relating to eviction orders in terms of ESTA, which have been made orders of court, are reviewable by this Court.³

1 Act 62 of 1997, as amended.

2 LCC 41R/99, 23 September 1999, [1999] JOL 5408 (LCC), Internet web site address <http://www.law.wits.ac.za/lcc/1999/fergusonsum.html> at para [7].

3 See *Skhosana and Others v Roos t/a Roos se Oord and Others*, reported as *Skhosana v Roos* 2000 (4) SA 561 (LCC); [1999] 2 All SA 652 (LCC) at para [7] - [18] for a discussion on the interpretation of the phrase **in terms of** and the conclusion reached by Gildenhuys J that it means **within the sphere of law established by this Act**, where **this Act** refers to ESTA.

[2] The Magistrate, in his covering letter to the Court, made the following remark:

Wegens die aard van die hofbevel wat in hierdie saak gemaak is, is 'n uitsettingsbevel nie deur die hof verleen nie. Daarom is die oorkonde myns insiens nie ingevolge Artikel 19(3) Wet 62 van 1997 soos gewysig, hersienbaar nie.®

The settlement reached (which was made an order of Court) reads:

By ooreenkoms van partye, saak geskik as volg : -

- a) Respondente stem in om applikant se alternatiewe behuising van soortgelyke gehalte te die Kampies Calitzdorp te aanvaar.
- b) Applikant stem in om respondente se meubels daarheen te vervoer.
- c) Applikant onderneem om 1ste respondent weer in diens te neem vanaf datum hiervan.
- d) Applikant onderneem om die woning te Die Kampies se dak te herstel indien dit steeds lek.
- e) Elke party betaal sy eie koste.®

In *Pharo's Properties and Others v Kuilders and Others*⁴ Goldenhuys AJ held that an order which rearranges the accommodation on the same farm of the applicant, is not an eviction order in terms of ESTA and therefore not reviewable on automatic review by this Court.⁵ In the present case I am satisfied that the respondents agreed to relocate to the same agricultural unit and therefore for all purposes there is a relocation on the same farm.

[3] The effect of the above settlement is that the applicant is not continuing with the application for eviction of the respondents. I am therefore in agreement with the Magistrate, Calitzdorp, that the settlement agreement is not reviewable by this Court.

ACTING PRESIDENT F C BAM

For the applicant:

Barry & Mouton Attorneys, Calitzdorp.

For the respondents:

Ramona van Vuuren Attorneys, Calitzdorp.

4 2001 (2) SA 1180 (LCC); [2001] 2 All SA 309 (LCC).

5 At para [11] - [14].