

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

**Case Number:** 15R /98

In the matter between:

**N KGAPHOLA**

Applicant

and

**S MOGASHOA**

Respondent

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## JUDGMENT

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**MEER, J:**

- [1] This is a review of a “final order” granted on an urgent basis in terms of section 15 of the Extension of Security of Tenure Act No 62 of 1997 (hereinafter referred to as “the Act”), for the removal of the respondent from the applicant’s farm, Portion 2 of the farm Richmond, situated at Steelpoort. The final order was handed down in the Lydenburg Magistrate’s Court.
- [2] I am obliged to set aside the final order in whole, on review, in terms of the authority granted to me under section 19 (3) (b) of the Act for the following reasons:
- [2.1] A final order is not permitted under Section 15 of the Act. It is only an interim order, pending the outcome of proceedings for a final order that is permitted under section 15. A final eviction order is permitted under section 9 of the Act and in the instant case the prerequisites for the granting thereof were not present. The learned magistrate accordingly erred in granting a final eviction order under section 15. That section reads as follows:

**“Urgent proceedings for eviction**

**15.** Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land *pending the outcome of proceedings for a final order*, (my emphasis) and the court may grant the removal of the occupier if it is satisfied that –

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land;
- (b) there is no other effective remedy available;
- (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier

- (d) against whom the order is sought, if an order for removal is granted; and adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.”

[2.1.1] In the following judgments of this Court in automatic review proceedings under section 19(3) of the Act, it was held that a final order was not permitted in urgent eviction proceedings under section 15, and that the final order referred to in that section, is a final eviction order under section 9: *City Council of Springs v Occupants of the Farm Kwa-Thema* 210 [1998] 4 All SA 155 (LCC) at 157; *Uitkyk Farm Estates (Edms) Bpk v Visser* LCC60/98, at paragraph 29, 6 November 1998, as yet unreported.

[2.1.2] In the latter case, *Uitkyk Farm Estates*, the following rationale was provided for the view that final orders were not permissible under section 15, and I quote the relevant excerpts:

[2.1.2.1] “Rule nisi proceedings are in order under section 15 provided the confirmed rule remains an interim order and is not made final. Were a final order permitted under section 15 it would be open to landowners to evict under that section in total disregard not only of the provisions requiring notice to obtain an eviction order to be given to the Municipality and the Department of Land Affairs, as specified at section 9(2)(d) (ii) and (iii), but other provisions of the Act as well. This would undermine and subvert the intention of the legislature.<sup>1</sup>”

[2.1.2.2] “Relief granted under section 15 should make provision for an interim order for removal pending the outcome of proceedings for a final order under section 9. Section 15 read with section 9 in my view, envisages the commencement of an application for urgent relief under section 15 after, just before or simultaneously with the commencement of eviction proceedings under section 9.<sup>2</sup>”

[2.1.2.3] “In the present case the applicant upon the commencement of the urgent application for removal ought to have applied to court for an order for the eviction of respondents and served a notice of such court application upon the Municipality and the Department of Land Affairs not less than 2 months before the commencement of the eviction hearing. The interim order for their urgent removal under section 15, ought then to have been granted pending the final eviction order. In practical terms this would mean that respondents would have been temporarily removed from the farm in terms of an interim order with immediate effect, pending the final hearing for their evictions 2 months thereafter. The order granted by the learned magistrate not being in compliance herewith, I find that I am unable to

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<sup>1</sup> Paragraph 29.2, page 11

<sup>2</sup> Paragraph 29.4 page 11

confirm it and must accordingly set it aside.<sup>3</sup>”

- [2.1.3] It is to be regretted that despite the fact that this court has pronounced in judgments that final orders are not permissible in urgent eviction proceedings under section 15 of the Act, final orders continue to emanate from Magistrates’ courts under that section.
- [2.2] The order granted in this matter must also be set aside in whole for another reason, namely that the court could not have been satisfied that requirements (c) and (d) of Section 15 were present. These are two of the prerequisites specified at section 15<sup>4</sup> for the granting of an urgent order for removal. Applicant’s affidavit in support of the section 15 application fails to allege that the likely hardship to himself if an order for removal is not granted, exceeds the likely hardship to the respondent if an order for removal is granted, as is required at section 15 (c). Nor does he allege that adequate arrangements have been made for the reinstatement of respondent if the final order is not granted, as is specified at section 15 (d). The record of the court proceedings also does not indicate that the court was satisfied on these matters.
- [3] I accordingly set aside the whole of the order granted in the Lydenburg Magistrate’s court under case no 1458/98 for the eviction of the respondent.

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**JUDGE Y S MEER**

**Handed down on : 19 January 1999**

For the applicant:  
Mammule Chidi Attorneys.

For the respondent:  
Unrepresented.

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<sup>3</sup> Paragraph 29.5, page 11-12

<sup>4</sup> See paragraph 2.1 above

