

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

CASE NO: LCC23R/03

In chambers: **Moloto J**

MAGISTRATES COURT CASE NUMBER: 779/02

Decided on: 12 May 2003

In the review proceedings in the case between:

EIKENBOSCH FARM (PTY) LTD

Applicant

and

MATTHEWS, P

Respondent

JUDGMENT

MOLOTO J:

[1] This is an automatic review in terms of section 19(3) of the Extension of Security of Tenure Act¹ (“the Act”) of the order of the Magistrate, Worcester, made on 28 February 2003, evicting the defendant from Eikenbosch Farm, Rawsonville, in the district of Worcester (“the farm”). The plaintiff is the person in charge, as defined in the Act, of the farm.

[2] I caused a query to be sent to the magistrate on 17 March 2003 requesting a copy of the written notice of termination of the defendant’s right of residence referred to in paragraph 7.4 of the plaintiff’s particulars of claim. I mention here that the defendant had specifically denied that he was notified in writing of the termination of his right of residence. While awaiting the magistrate’s reply I received documentation from the representatives of the defendant. The documentation, or at least part of it, appeared to be new facts which had not

1 Act 62 of 1997, as amended.

been placed before the magistrate at the time of hearing the case. I sent this documentation to the magistrate under cover of a letter which, among others, asked the magistrate the following:

- “(a) Whether this court should review the magistrate’s order on the strength of facts which were not placed before him/her.
- (c) Whether the plaintiff should not be given notice of these matters and be given an opportunity to react to them.
- (d) Whether the proper cause of action for the defendant at this stage is not to apply for rescission of judgment.”

[3] The magistrate replied to both my queries as follows:-

(a) In response to the query asking for the written notice the magistrate enclosed with his reply a letter from the plaintiff’s attorney with which was enclosed an affidavit by one Mark Stevens. The written notice was not enclosed. There is no allegation that an oral notice was given.

(b) In response to the second query relating to the new facts on behalf of the defendant, the magistrate stated that correspondence received after delivery of judgment may not be used for purposes of review. I agree with the magistrate that I cannot now consider such facts, as I am of the view that the plaintiff must be given notice of these matters and given an opportunity to respond. For the same reason I will not consider new facts and affidavits filed on behalf of the plaintiff as explained in (a) above particularly because such affidavit does not explain any unclear issue in the particulars of claim, but rather contradicts the said particulars and seeks to amend same. That is tantamount to introducing new facts. This must also be done on notice to the defendant, so that the defendant may respond appropriately.

[4] The following order is made:

- (a) The order of the Magistrate, Worcester, made on 28 February 2003 in this

matter is set aside in whole.

- (b) The matter is remitted to the Magistrate to hear the additional evidence received.
- (d) Any new eviction order that the magistrate may make must be submitted to this court for automatic review in terms of section 19(3) of the Extension of Security of Tenure Act, 62 of 1997.
- (d) No order is made as to costs.

JUDGE J MOLOTO

For the applicant

Conradie Davids & Vennote, Worcester.

For the respondent:

Maritz, Murray & Fourie, Worcester.