

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at PRETORIA on 20 October 2003
before **Moloto J** and **Wiechers** (Assessor)

CASE NO: LCC 3/00

Decided on: 22 October 2003

In the matter of

THE NDEBELE-NDZUNDZA COMMUNITY

concerning

THE FARM KAFFERSKRAAL NO 181 JS

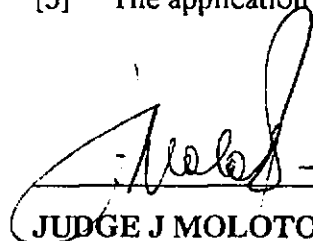
JUDGMENT

MOLOTO J:

[1] This is an application by M G Prinsloo and the Botha Family Trust ("the opposing parties") for leave to appeal to the Supreme Court of Appeal against the whole of the judgment of this Court handed down on 23 December 2002. The grounds of appeal are set out in the application and need not be repeated here.

[2] It is well established that the test for the grant of leave to appeal is whether there are prospects of success. In order to determine whether such prospects do exist, the question is often asked whether another Court might come to a different finding from the one appealed against. Having heard argument in the matter this Court is not satisfied that another court might come to a different finding.

[3] The application for leave to appeal is refused.


JUDGE J MOLOTO

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I agree



PROF M WIECHERS (ASSESSOR)

For the claimants:

Adv P J J De Jager instructed by *De Wet du Plessis Inc*, Pretoria.

For the landowners:

Adv H S Havenga, instructed by *Grütter & Lombard Attorneys*, Pretoria.

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on 26 August 2003
before **Moloto J**

CASE NUMBER: LCC 17/02

Decided on: 28 August 2003

In the case between:

KEBATLADITSE CORNELIUS MAGOME

Applicant

and

PANNAR RESEARCH FARMS (PTY) LTD
PANNAR RESEARCH SERVICES (PTY) LTD

First Respondent
Second Respondent

JUDGMENT

MOLOTO :

[1] The first applicant brought an application for leave to appeal and an application for condonation of the late noting of the appeal on 12 February 2003. The leave to appeal is against the judgment of this Court handed down on 17 July 2002, evicting the first applicant from house number 1 on the farm known as the Remaining Extent of Portion 8 (a portion of portion 5) of Kafferskraal 400, Registration Division IP, Transvaal, the property of the first respondent. The eviction was in terms of the Extension of Security of Tenure Act¹ ("the Act"). The application for condonation of the late noting of the appeal was refused. Following are the reasons for such refusal.

[2] The applicant had been represented by the Centre for Community Law and Development ("CCLD") of the Potchefstroom University for Christian Higher Education, which had in turn briefed counsel.

¹ Act 62 of 1997, as amended.

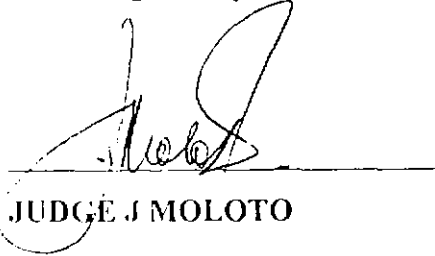
[3] The main reason given for the delay in noting the appeal was that the CCLD, which is a non-profit organisation, had limited resources "to handle cases being heard by the High Courts, let alone the Supreme Court of Appeal." The attorney at the CCLD deposed that he received the judgment by facsimile on 17 July 2002 and consulted with the applicant a few days thereafter. The applicant expressed a wish to lodge an appeal against the judgment. The attorney sought counsel's opinion which he received on 25 July 2002. Although the deponent was of the view that there were prospects of success, application for leave to appeal was not made as the CCLD did not have funds. The CCLD received a letter from the Rural Legal Trust ("RLT") on 9 September 2002 that the latter renders assistance to people who face eviction. No explanation is given as to how the RLT came to write the letter or what the CCLD or the applicant did between 25 July 2002 when counsel's opinion was received and 9 September 2002 when the letter from the RLT was received. An application for funding was sent to the RLT on 20 September 2002 because it had to be motivated in detail and the deponent had other "heavy workload". The application for funding was finally approved in a letter dated 7 October 2002, but briefs to counsel were only dispatched on 5 November 2002. Again no explanation is tendered for the inactivity between 7 October and 5 November 2002. Counsel posted the papers to the CCLD on 5 December 2002 by way of South African Post Office's Speed Services, but for an unknown reason the papers did not reach the CCLD. Instead, they were returned to counsel and were only received at the CCLD on 17 January 2003. Photocopies of the front and rear of the envelope which contained the papers from counsel were annexed to the affidavit. The envelope had been correctly addressed and the sender wrote his own Pretoria address on the rear. Yet the addressee's address is cancelled and an endorsement entered stating :

"To LSD queries Bloemfontein 9300."

[4] Mr Sithole, for the applicant, was not able to explain the endorsement. Finally, having received the brief from counsel on 17 January 2003, the application was only filed on 12 February 2003. Yet again there is no explanation for the inactivity in the period 17 January 2003 to 11 February 2003 when the application was signed. The delay in noting the appeal and applying for condonation of the late noting of the appeal was inordinately long and is not satisfactorily explained.

[5] Mr Sithole further argued that the applicant had prospects of success on appeal in that there is a reasonable prospect that the Supreme Court of Appeal will disagree with the finding that the matter could proceed without a probation officer's report as provided for in section 9(3) of ESTA. I disagree.

[6] The factors mentioned in *United Plant Hire (Pty) Ltd v Hills a.o.* 1976 (1) SA 717(A) at 720E weigh, in my view, heavily against the grant of condonation.



JUDGE J MOLOTO

For the applicant :

Adv M N S Sithole SC, and Adv J J Botha instructed by Centre for Community Law and Development, Potchefstroom University for Christian Higher Education, Potchefstroom.

For the respondents:

Adv P D Quinlan instructed by Cox Yeats Attorneys, Durban.