

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **MEER J**

CASE NUMBER: LCC 109R/03

MAGISTRATE'S COURT CASE NUMBER: 3507/03

Decided on: 11 February 2004

In the review proceedings in the case between:

W P OLIVIER

Applicant

and

S CHOMA

1st Respondent

L MAGALULA

2nd Respondent

JUDGMENT

MEER J:

1. This is an automatic review in terms of section 19(3) of the Extension of Security of Tenure Act¹ ("the Act") of an order granted by the Magistrate, Lydenburg for the eviction of the Respondents from the farm Rustenburg 9, Badfontein.
2. I am unable to confirm the whole order as the applicant has not complied with the following mandatory requirements for an eviction order as set out at Section 9 of the Act:

2.1 Non compliance with Section 9(2)(a)

Insufficient information is provided to determine that section 9(2)(a) has been complied with.² The applicant has not shown that the 1st respondent's service was terminated in accordance with the Labour Relations Act³ and that there was compliance with section 8(2) of the Act. The applicant merely makes mention

1 Act 62 of 1997, as amended.

2 *Van den Berg v Skosana* LCC10R/03

3 Act 66 of 1995

that the service of the 1st respondent was terminated.

2.2 Non compliance with Section 9(2)(c)

It is unclear whether the 1st respondent was an occupier before or after February 1997 and accordingly whether the conditions for an order for eviction in terms of section 10 or section 11 of the Act are applicable. This being so, section 9(2)(c) has not been complied with.

2.3 Non compliance with Section 9(3)

A probation officer's report as prescribed by section 9(3) of the Act was not requested or received by the Court in accordance with the section.

3. I note my concern that an eviction order such as the present can emanate in disregard of mandatory provisions of the Act notwithstanding the clear letter of the law and the numerous judgments of this Court.

4. The following order is made:

(1) The eviction order of the Magistrate: Lydenburg, is set aside in whole.

JUDGE Y S MEER

For the applicant: JC Marnevic Attorney, Lydenburg

For the respondent: Nelspruit Justice Centre, Nelspruit