

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **MOLOTO J**

CASE NUMBER: LCC69R/04

MAGISTRATE'S COURT CASE NUMBER: 41/2004

Decided on: 28 June 2004

In the review proceedings in the case between:

DPG DU TOIT

Applicant

and

**HANSIE FIELIES
LUSBET FIELIES**

First Respondent
Second Respondent

JUDGMENT

MOLOTO J:

[1] The applicant launched an application in the Magistrate's Court, Bonnievale in terms of the Extension of Security of Tenure Act¹ ("ESTA"), for the eviction of the respondents from his farm Concordia. An acting magistrate granted the application in the following terms :

"Toegestaan soos in bede gevra. Partye tot 25 Junie 2004 om plaas te verlaat."

[2] The magistrate, Swellendam sent the file to this Court on automatic review in terms of section 19(3) of ESTA. The magistrate's covering letter reads in part:

"2 Op 26 Mei 2004 is die aangeleentheid hanteer deur Landdros Andre Maqubu, 'n aflosbeampte. Hy het geen uitspraak gegee nie en slegs voor op die stukke genotuleer : "Toegestaan soos in bede gevra. Partye tot 25 Junie 2004 om plaas te verlaat". Dit is duidelik dat die bepalings van Artikel 12(1)(b) van bogenoemde Wet nie nagekom is nie. Dit is nie bekend watter partye op 26 Mei 2004 by die hof was nie. Dit blyk nie uit die stukke of die respondente se regte insake regsverteenvoording en regshulp aan hul verduidelik is nie. Dit is nie bekend of die Landdros gehandel het met die verpligtinge opgelê in artikel 13 van Wet 62/1997 nie.

2 Dit is dan my submitisie dat hier nie gehandel is ooreenkomstig die reg nie. Sy Edele die Hersieningsregter word versoek om die vonnis tersyde te stel, alternatiewelik om die saak na die Landdros terug te verwys of te handel soos u goeddunk."

[3] I agree that the matter was not handled according to law. To the reasons in the magistrate's letter, the following need to be added:

1 Act 62 of 1997, as amended

- (1) There is no evidence to show compliance with section 9(2)(d)(ii) and (iii).
- (2) Although it is alleged at paragraph 8 of the founding affidavit that the respondents were given written notice to vacate the farm (presumably in compliance with section 9(2)(a) and (b)), no copy of the notice is attached.
- (3) Reference is made, at paragraph 9(3) of the founding affidavit, to the requirement that suitable alternative accommodation must be available before an eviction order can be granted. The deponent then proceeds to state that the first respondent obtained employment on another farm and he (the deponent) is aware that accommodation is available on that farm. There is no certainty whether there is accommodation for the respondents on that other farm.
- (4) There was also no compliance with section 9(3) of ESTA which provides that a probation officer's report be obtained on, amongst others, the availability or otherwise of suitable alternative accommodation.

[4] The application ought, accordingly, not to have succeeded.

[5] The following order is made:

The order of the magistrate made on 26 May 2004 in this matter is set aside in whole and the following is substituted therefor:

- “(1) The application is dismissed.
- (2) There is no order made as to costs.”

JUDGE J MOLOTO

For the applicant:
Muller Baard Du Toit Inc, Robertson

For the respondents:

Unknown