

# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

**RANDBURG**

**CASE NUMBER: LCC97R/04**

In chambers: **MOLOTO J**

**MAGISTRATE'S COURT CASE NUMBER: 180/2003**

Decided on: 26 October 2004

In the review proceedings in the case between:

**S A BAARD BOERDERY**

Applicant

and

**GRIETJIE POFADDER**

Respondent

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## JUDGMENT

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**MOLOTO J:**

1]This is an automatic review of an order of the additional magistrate, Upington, evicting the respondent from Erf 288, Keimoes, the property of the applicant. The automatic review is in terms of section 19(3) of the Extension of Security of Tenure Act<sup>1</sup> (“the Act”).

1.

2]I am in agreement with the magistrate’s order on the merits of the case. There are only two issues I wish to raise. These are:

2.

3]costs; and

4]the order.

3.

4.(1) **Costs**

5.

6.The magistrate granted the order with costs, yet did not mention any special circumstances justifying the award thereof. This Court as stated

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1 Act 62 of 1997, as amended.

in a number of judgments<sup>2</sup> that except under special circumstances, costs are not to be awarded as the court is here dealing with social legislation.

7.

8.(2) **The order**

9.

10. The magistrate ordered that should the order be confirmed the respondent must vacate Erf 288, Keimoes within 10 days of such confirmation. Section 12 of the Act stipulates that two dates must be determined, the one being on which the respondent must vacate and the other on which the eviction may be executed, should the respondent not have vacated on the first-mentioned date. Once again this Court has, in a number of cases<sup>3</sup> emphasised the importance of following the provisions of section 12 in this regard. The magistrate's order does not mention a second date.

11.

12.[3] The following order is made:

13.

a) The order of the magistrate dated 13 October 2004 is set aside in part.

14.

b) The order evicting the respondent is confirmed.

15.

c) The respondent is ordered to vacate Erf 288 Keimoes on or before 30 November 2004.

16.

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<sup>2</sup> *City Council of Springs v The occupants of the Farm Kwa-Thema*, 210 [1998] 4 All SA 155 (LCC) at 165; *Karabo and Others v Kok and Others* 1998(4) SA 1014 (LCC); *Ntuli and Others v Smith and Another* 1999(2) SA 540 (LCC); *Serole and Another v Pienaar* 2000(1) SA 328 (LCC).

<sup>3</sup> *Karabo & Others v Kok & Others* 1998 (4) SA 1014 (LCC); [1998] 3 All SA 625 (LCC) at para [16]; *Ferguson v Buthelezi & Another* [2001] 4 All SA 439 (LCC) at para [17]-[21]; *Beukes JS (Edms) Bpk v Jagers & Others*, LCC1R/00, 18 January 2000 at para [3]-[5]. Unreported. Available at [www.law.wits.ac.za](http://www.law.wits.ac.za); *Alberts v Sibiya* LCC 66R/99, 4 November 1999 at para [3]. Unreported. Available at [www.law.wits.ac.za](http://www.law.wits.ac.za).

- d) Should the respondent fail to vacate the said Erf 288 Keimoes by the date  
aforementioned in paragraph (c), the sheriff, Keimoes is hereby authorized  
and ordered to execute the eviction on or after 10 December 2004.

17.

- e) No order is made as to costs.

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**JUDGE J MOLOTO**

For the applicant:

*Lange Carr & Wessels Inc*, Upington

For the respondent:

*Lawyers for Human Rights*, Upington