

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

In chambers: **MOLOTO J**
1417/2004

CASE NUMBER: LCC110R/04
MAGISTRATE=S COURT CASE NUMBER:

Decided on: 29 November 2004

In the review proceedings in the case between:

MORCEAUX BOERDERY TRUST

Applicant

and

STEPHEN VERGOTINE

First Respondent

MINA KAMFER

Second 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 an order of the Magistrate Ceres, evicting the respondents from the property of the applicant. The applicant's property is known as Remainder of erf 7915 Ceres, in the Witzenberg Municipality, Region Ceres, Province of the Western Cape, commonly known as "Morceaux".

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2] The requirements for an eviction order are found in section 9(2) of the Act, which reads:

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3]"(2) A court may make an order for the eviction of an occupier if-

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a) the occupier's right of residence has been terminated in terms of section 8;

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b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;

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1 Act 62 of 1997, as amended

c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and

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d) the owner or person in charge has, after the termination of the right of residence, given –

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e) the occupier;

f) the municipality in whose area of jurisdiction the land in question is situated; and

g) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,

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10]not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based : Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with."

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3]The respondents did not defend the application, although a notice of intention to defend was filed by the second respondent. For compliance with section 9(2)(a), the applicant's deponent relies on section 8(2) of the Act. Section 8(2) provides that –

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14]"(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act."

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4] In order to prove compliance with section 8(2), the founding affidavit refers, at paragraph 9 thereof, to the first respondent's employment agreement having been ended on 18 March 2000 due to repeated absenteeism without leave. In support of this allegation an annexure "AVR3" is referred to which is said to be a notice of a disciplinary inquiry. However, annexure "AVR3" is not such notice; it is a notice to vacate the company's house. There is no evidence of a disciplinary inquiry being held except the abovementioned incorrect reference. The first respondent is alleged to have been employed by the applicant, hence his right of residence may be terminated if his employment agreement had been terminated in accordance with the provisions of the Labour Relations Act. It has not been shown that such termination took place. In the result, the allegations made in paragraphs 10, 11, 12 and 13 of the founding affidavit cannot be accepted as fact. The magistrate erred in accepting them as facts on which he based his order.

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17]The following order is made:

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19]The order of the magistrate made on 27 October 2004 is set aside in whole and the following order is substituted therefor:

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21]"(1) The order is set aside.

22] (2) No order as to costs is made."

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JUDGE J MOLOTO

For the applicant:

Rauch Van Vuuren Inc, Ceres.

For the respondents:

No appearance.