IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT RANDBURG

LCC Case Number: 81/2015

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED: YES / NO

....
DATE SIGNATURE

In the matter between:

DAVID TSEMA MOLOI **First Appellant**

ANDRIES WESTI MOLOI **Second Appellant**

SAMUEL ENTE MOLOI **Third Appellant**

and

GERT HENDRIK PETRUS STEYN N.O. **First Respondent**

ELIZABETH ENGELA JOUBERT N.O. **Second Respondent**

HESTER MARIE MOSART LOUW N.O. **Third Respondent**

DANIEF FREDERICK JACOBS N.O. **Fourth Respondent**

JOHANNES PETRUS KOTZE N.O. **Fifth Respondent**

JUDGMENT

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1. This is an appeal against a judgment by the Magistrate's Court for the district of Vrede. On the 21st November 2014 that Court granted a default judgment at the instance of the respondents against the second appellant, evicting the latter from the farm [E.....], district Vrede ('the farm"), ordering him to leave the farm on or before 31 December 2014, failing which the sheriff for the district of Vrede was authorised and ordered to effect the eviction, with the assistance of members of the South African Police Service if need be.

2. The respondents' cause of action arose from a written agreement of lease entered into between them in their capacities as joint trustees of the MARTHA MAGDALENA KOTZE TESTAMENTARY TRUST and the second appellant. In terms of the agreement the farm, registered in the Trust's name, was let by the Trust to the second appellant for a period of three years from 1 December 2011 to 30 November 2014.

3. It was a term of the lease agreement that the second appellant as lessee was not entitled to sublet the farm or any part thereof to any other person or entity without the respondents' written permission. The respondents alleged that the

second appellant had breached the lease agreement by subletting the farm, cancelled the agreement and sought the lessee's eviction.

4. As the cause of action arose from a commercial transaction the provisions of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 were applicable to the manner in which any eviction by an order of court could be obtained. Proper notice was given to the second appellant and the local authority of the intended application in terms of section 4 (2) of Act 19 of 1998, which notice was served by the sheriff. Service of the summons followed. The second appellant did not file a notice of opposition and judgment was granted by default.

5. On 7 January 2015 the first, second and third appellants, as applicants purported to launch an urgent application in the court below for the suspension of the execution of the eviction order and the rescission of the judgment of the 21st November 2014. In flowery language the first appellant deposed to the founding affidavit, asserting that he and his two brothers were labour tenants of the farm's previous owner, that their status had not changed since and that they were therefore entitled to remain in occupation, even though he and the third appellant had not lived on the farm for some years preceding the date of the eviction order. Legal argument was advanced in the affidavit why the provisions of the Land Reform (Labour Tenants) Act 3 of 1996 and the Extension of Security of Tenure Act 62 of 1997 were applicable to the matter. It should be underlined that the second appellant did not depose to an affidavit when the rescission application was launched. He only swore to

a laconic supporting affidavit of the first appellant's supplementary replying affidavit. At no stage did he attempt to explain his failure to oppose the eviction application launched against him, nor did he attempt to set out even the barest defence to the respondents' cause of action.

6. The respondents opposed the rescission application, which was dismissed by the court *a quo.*

7. The appellants launched an appeal based on the same grounds as the application before the trial court.

8. On the papers filed in the proceedings before the trial court it appears to be open to more than a little doubt that the appellants' assertion of being labour tenants is sustainable. This is not the appellants' real problem, though. They completely misconceived the nature of the proceedings that were instituted by the respondents against the second appellant only. The action to have the latter evicted was based on a purely commercial transaction that had not the slightest bearing whatever upon any of the real or purported rights the appellants might enjoy arising from any occupation of whatever nature of the farm concerned. In addition, the first and third appellants were no parties to the dispute and never took the trouble to apply for leave to join the proceedings – which application would have been doomed to fail. The first and third appellants at no stage had, and still do not have, any interest in their brother's dispute arising from the contract of lease.

9. By the same token the first and third appellants lack any semblance of *locus standi* or standing in this court. There simply is no case before the court that involves them in any way. They have no tree to bark up, let alone a wrong tree to do so.

10. The second appellant's position is no different. If he and his brothers have any rights arising from labour tenancy or occupation in terms of the Extension of Security of Tenure Act, these rights were not challenged or attacked in the court *a quo* and no relief was sought at any stage that might have impacted upon such rights. Second appellant has offered no defence to the case against him, neither in the original proceedings, nor did he purport to do so in this abortive application.

11. It follows that the appeal must be dismissed. Given the fact that the respondents were dragged to court on a non-existent premise with no prospect of success, and dragged through appeal proceedings in spite of the fact that the trial court correctly identified the error of the appellants' ways, it is only fair that the normal approach of not awarding costs in land claim matters should not be followed in this instance.

12. The Court gave an *ex tempore* judgment immediately after argument on the appeal had concluded. The recording of that judgment is however so poor that it is virtually inaudible, hence the need for a written judgment, which may not

be a *verbatim* reproduction of the oral version but is certainly to the same effect.

The following order is therefore made:

The appeal is dismissed with costs.

Signed at Randburg on this day of 1st March 2016.

E Bertelsmann

Judge of the Land Claims Court

I agree.

M Mpshe

Acting Judge of the Land Claims Court.