

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

CASE NUMBER: LCC 42R/02

In chambers: **MEER AJ** **MAGISTRATE'S COURT CASE NUMBER: 6955/01, 6956/01**

Decided on: 24 May 2002

In the review proceedings in the case between:

DE VILLIERS FAMILIE TRUST

Applicant

and

HERMANUS, J

First Respondent

TIMOTHEUS, D

Second Respondent

JUDGMENT

MEER AJ:

[1] This is a review in terms of section 19(3) of the Extension of Security of Tenure Act¹ ("the Act") of the order by the Additional Magistrate, Paarl, on 26 March 2002 for the eviction of the respondents from the applicant's farm, Portion 1 of the Farm No. 1534, district Paarl.

[2] I am unable to confirm the eviction order on review because of the non-compliance with some of the peremptory requirements for an eviction order, as set out below.

Section 9(2)(a)

[3] From the founding affidavit it appears that the first respondent was employed by the applicant and that his right of residence flowed from the employment relationship. The second respondent's right of residence was based on her relationship with the first respondent. Whilst the applicant makes the bald allegation that the first respondent's right of residence was terminated in terms of section 8(2) of the Act, he does not provide sufficient information to enable a finding to be made that this was indeed the case. The magistrate erred in the

1 Act 62 of 1997, as amended.

circumstances in accepting that the right of residence was terminated in accordance with section 8(2). It is necessary for an applicant to place all the necessary facts before the court for a finding, this not having occurred, a finding that section 9(2)(a) has been complied with could not have been made.²

Section 9(2)(c)

[4] Whilst the applicant alleges that the first respondent absented himself and thereby caused a fundamental breach to the employment relationship, he once again fails to provide sufficient information to enable a finding to be made that this was indeed the case. In this regard the comments of Moloto AJ in *Henri N R du Plessis Trust v Kammies*³ are apposite particularly:

“... the only reason proffered for the assertion that the respondent committed such a fundamental breach of the relationship that it is not practically possible to remedy it, is the fact that he (the respondent) absented himself from work without leave for four days. Without any further explanation of how the respondent's absence caused a fundamental breach of the relationship, I am not satisfied that absence *per se* constitutes a fundamental breach as contemplated in section 10(1)(c) of the Act. In my view the breach complained of is of the type contemplated in section 10(1)(b). If it falls within the ambit of section 10(1)(b) then there is a further requirement of a month's notice to remedy the breach, which was not given.”

It is in the circumstances not possible for a finding to be made that the grounds for an eviction order as set out at section 10(1)(c) are present.

Order

[5] The eviction order granted by the Additional Magistrate, Paarl on 26 March 2002 is accordingly set aside in its entirety.

ACTING JUDGE Y S MEER

2 See *Karabo and Others v Kok and Others* 1998 (4) SA 1014 (LCC), [1998] 3 All SA 625 (LCC) at para [13] and *De Kock v Juggels and Another* 1999 (4) SA 43 (LCC) para [13].

3 LCC 77R/01, 3 September 2001, available from www.law.wits.ac.za at para [5].

For the applicant:

Cluver Markotter Incorporated, Stellenbosch.

For the respondents:

Absent.