

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Heard at RANDBURG on 24 June 2002
before Gildenhuys AJ

CASE NUMBER: LCC 62/01

Decided on: 24 June 2002

In the case between:

**KLOOF GOLD MINING LIMITED t/a
LEEUDOORN GOLD MINE**

Applicant

and

**MNENGELE, J Q
MNENGELE, G N**

First Respondent
Second Respondent

JUDGMENT

GILDENHUYS AJ:

[1] This is an application for the eviction of the respondents from premises in the married quarters of the Leeudoorn Gold Mine. The matter was set down for hearing on Monday 24 June and Wednesday 26 June 2002. On Friday afternoon 21 June 2002 at 16:42, the respondents' attorneys faxed a notice of withdrawal to the registrar of this Court. Mr Snider, for the applicants, informed me from the bar that a similar notice was forwarded to the applicant's attorneys at approximately the same time.

[2] The last minute withdrawal of the respondents' attorneys is objectionable. In the case of *S v Ndima*¹ it was held as follows:

"It is quite plain that an attorney must, if he is going to withdraw from a case, withdraw from it timeously and inform his client that he is withdrawing so that the client can make other arrangements or, if there are none which he can make and if he wishes to do so, so that he may appear in person to argue his appeal. If an attorney wishes to carry on hoping that at the last minute he will be given funds and does not wish to withdraw at an earlier stage of the case because he will jeopardise his chance of being paid, then he must be willing to take the risk that he will find himself financing the appeal and go on with it. In other words, he either withdraws at an appropriate stage or he takes the risk and carries on and does the work. *Prima*

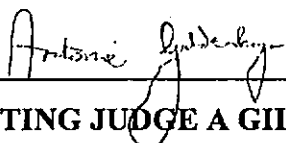
1 1977 (3) SA 1095 (N) at 1097A-D.

facie, and I emphasise those words because I do not have the attorneys' explanation before me, . . . the attorneys in this case are guilty of gross discourtesy and a neglect of their duty as officers of the Court."

This *dictum* was quoted with approval by Didcott J in the case *Macdonald t/a Happy Days Café v Neethling*.²

[3] The first and second respondents are in Court in person. The first respondent informed me (through the recording machine operator, who acted as impromptu interpreter) that he does not understand English at all. Mr Snider assured me that the first respondent does indeed understand English and offered to present evidence to that effect. He also told me that he can arrange for an interpreter to be present within an hour. The first respondent intimated that he does not know why his legal representatives are not in Court today. In my view, it will be unfair to the respondents to proceed with the hearing today, particularly because they might have been left in the lurch by their attorneys.

[4] For the above reasons, the hearing will be postponed to 14:00 on Wednesday 26 June 2002. I will ask the recording machine operator to explain my postponement order to the respondents, and to tell them that they must call upon their erstwhile attorneys and that they must arrange for legal representation at the resumed hearing. I will also direct the registrar to forward a copy of this judgment to the respondents' erstwhile attorneys.



ACTING JUDGE A GILDENHUYS

For the applicants:

Adv A Snider instructed by *Leppan Beech Attorneys, Woodmead*.

For the respondents:

In person.