



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Molusi and Others v Voges N.O. and Others**

**CCT 96/15**

**Date of hearing: 12 November 2015**

**Date of judgment: 1 March 2016**

---

### **MEDIA SUMMARY**

---

*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down judgment in a matter concerning the eviction of Ms Sophy Molusi and five others “the applicants” from their homes on Boschfontein farm.

The applicants occupy premises on a farm outside Rustenburg, through written and verbal lease agreements. The farm is owned by a family trust and the trustees are the respondents. The applicants paid rent on a monthly basis until May 2008 when the respondents refused to accept the payment. The respondents, by way of a notice served by the Sheriff in 2009, purported to terminate the lease agreements due to the non-payment of rent, and sought an order evicting the applicants from the farm.

In the Land Claims Court, the respondents initially argued that the non-payment entitled them to terminate the lease agreements and the applicants’ right to reside on the farm. The applicants argued that they were not in breach of the leases as they had tendered payment of the rental. The respondents argued that the reason for termination of the lease agreements was not relevant as they were not fixed term leases, and therefore could be terminated on reasonable notice under the common law. The Land Claims Court held that the termination of the leases was just and equitable under the Extension of Security of Tenure Act (Act) and that the notice of termination had been served by the Sheriff under the Act. It therefore granted the order for eviction.

On appeal, three Judges of the Supreme Court of Appeal upheld the decision of the Land Claims Court. They held that the ground for termination of the lease agreements was not

relevant to determining whether the termination of the right of residence was just and equitable, and that the respondents were entitled, at common law, to terminate the leases on reasonable notice. The appeal was dismissed and the applicants were ordered to vacate the property. Two other Judges would have found for the applicants because the respondents impermissibly altered their case from reliance on a breach of the terms of the lease agreements to termination because of the need for further development.

Before the Constitutional Court, the applicants argued that the requirements of the Act were not complied with, both in terms of the termination of the right of residence, and the procedure required for the issuing of an eviction order. It was contended by the applicants that the reason for termination of a lease plays an important role in determining whether termination of the right of residence is just and equitable. Additionally, the applicants argued that they were denied the opportunity to make representations in terms of the Act before their residence was terminated. The respondents contended that none of the lease agreements were for definite periods, and were therefore validly terminated by notice at common law. The respondents argued that all of the requirements under the Act were complied with, including that appropriate notice was served by the Sheriff on the relevant municipality and applicants.

In a unanimous judgment, written by Nkabinde J, the Court found that the matter raised constitutional issues of importance relating to the application of the Act. The Court held that the notice to the applicants of the termination of their right of residence clearly stated that the reason for the termination was non-payment of rental. The respondents based their claim for eviction on this ground but during the trial in the Land Claims Court switched to a reliance first on a need to develop the land and ultimately on the common law ground of termination of the leases on reasonable notice.

The Court found this 'change of tack' was impermissible as the case made in the notice and pleadings, and the case made at trial were different. The change regarding the basis on which the eviction was sought was unjust to the applicants as they were only called on to meet the case on the basis of non-payment of rental, which case they met. The respondents' reliance on the common law could not exonerate them from compliance with the Act and the Court concluded that the requirements of the Act were not met.

Accordingly, the appeal was upheld and the eviction of the applicants set aside.