



## CONSTITUTIONAL COURT OF SOUTH AFRICA

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

**CCT 96/15**

**Date of hearing: 12 November 2015**

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### **MEDIA SUMMARY**

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*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.*

On Thursday, 12 November 2015 at 10h00, the Constitutional Court will hear a matter concerning an eviction order granted by the Land Claims Court.

The applicants, Ms Sophy Molusi and five others, 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 leases 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 lease was just and equitable under the Extension of Security of Tenure 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 of the 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 agreement 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 of the 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 submit 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 is contended 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 argue that they were denied the opportunity to make representations in terms of the Act before their residence was terminated. The respondents contend that none of the lease agreements were for definite periods, and were therefore validly terminated by notice at common law. The respondents argue 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.