



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 3 April 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Moladora Trust v Mereki and Others* (189/2023) [2024] ZASCA 37 (3 April 2024)

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Today the Supreme Court of Appeal (SCA) upheld an appeal with no order as to costs. It further set aside and substituted the order of the Land Claims Court (LCC).

The appellant, the Moladora Trust (the trust) is the owner of the property described as the Remainder of the farm Wildebeeslaagte number 282, district Dr Kenneth Kaunda, North West Province (the farm). The first, second and third respondents (the Mereki Children) are occupiers as defined in the Extension of Security of Tenure Act No 62 of 1997 (ESTA), by virtue of the right of their mother, the late Mrs Mereki, to occupy a portion of the farm in terms of s 3(4) of ESTA. The Mereki children are the major children of Mrs Mereki, who was employed on the farm and who died in or before 2017. They resided on the farm with Mrs Mereki and, since her death, have continued to do so. The Department of Agriculture, Rural Development and Land Reform is the fifth respondent but has not taken part in the proceedings to date.

On 11 May 2022, the trust launched an application in the LCC seeking, essentially, that the Mereki children, remove all their animals grazing on the property and be interdicted and restrained from returning and keeping any number of livestock on the farm, without prior arrangement with the trust. No relief was sought for the eviction of the Mereki children and their occupation of the farm. The application was served on the Mereki children, but they did not appear at the hearing, nor did they file any affidavits in response to the application. Accordingly, the facts alleged by the trust remained uncontested. It was not disputed that the Mereki children had never sought nor obtained express consent to keep livestock on the farm and that no express agreement was concluded with the trust in this regard.

The LCC held that a tacit agreement had been concluded and tacit consent had been granted to the Mereki children to keep the livestock and exercise grazing rights on the farm. This, despite no such case being advanced by the children and the uncontested version of the trust that no agreement, express or tacit had been concluded.

In the result, the SCA held that the conclusion reached by the LCC rested on a foundation that was conjecture, not foreshadowed in the papers and of which the appellants had not been forewarned. The SCA accordingly upheld the appeal with no order as to costs and set aside and substituted the order of the LCC. It granted the trust's application ordering the children to remove their livestock from the farm.

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