



## 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** 08 May 2015  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***Molusi v Voges NO (1008/13) [2015] ZASCA 64 (08 May 2015)***

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#### **MEDIA STATEMENT**

Today, the Supreme Court of Appeal (SCA) dismissed an appeal by Sophy Molusi and 5 others (the appellants) and upheld the eviction order of the Land Claims Court, Randburg (LCC) granted in favour of Francois Voges and Frederika Voges, acting in their capacity as trustees of a family trust (the respondents).

In the context of an eviction from a farmhouse following the termination of the appellants' lease agreements, the issues before the SCA were (i) whether the appellants' rights of residence had been lawfully terminated in terms of s 8(2) of the Extension of Security of Tenure Act 62 of 1997 (the Act) in a situation where the respondents sought to rely on a different ground for cancellation of the lease at the LCC hearing from what had been stated in the founding papers; (ii) whether the appellants had been adequately notified of the termination of the lease agreements; and (iii) whether it was just and equitable to order the eviction.

The appellants leased certain rooms in a farmhouse from the respondents. Subsequently, the respondents wished to develop the property, and in April 2010 they launched an application for the eviction of the appellants.

In the respondent's founding papers, they alleged that the lease agreements had been cancelled and notices of termination of the leases were handed to each occupier by the Sheriff. The basis for termination in the founding papers was cancellation for breach of contract in that the appellants had failed to pay rent due in terms of the lease agreement. However, this was denied by the appellants, who alleged that the respondents had refused to accept payment despite tender. At the hearing of the

case at the LCC, the respondents sought to rely on another basis for cancellation, being cancellation on reasonable notice. As a separate defence, the appellants denied that notice of termination was validly served on them, because although the Sheriff had visited them and attempted to serve the notice they had understood it to be an eviction order, which they had refused to accept as it did not appear to be a formal order of court.

The majority judgment by Mpati P (Ponnan and Saldulker JJA concurring) held as to (i) that the respondents were entitled under common law to cancel the lease agreements upon reasonable notice, and they were further entitled to rely upon this ground for cancellation at the LCC hearing even if a different initial ground for termination was pleaded, but provided that for an eviction order to be granted there had to be compliance with the provisions of the Act. On the facts of the case, the majority held that there had been compliance with the provisions of the Act..

As to (ii), the majority held that the Act did not require notice of termination to be in writing or for it to be 'served' on the occupiers. What is necessary is simply that the termination must be adequately communicated to the occupiers, which had occurred in this instance.

As to (iii), the majority held that in the result, the eviction was just and equitable and complied with the provisions of the Act, and accordingly the eviction order should be granted.

The dissenting judgment of Shongwe JA (Bosielo JA concurring) would have upheld the appeal and dismissed the eviction application.

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