



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Case CCT 186/15**

In the matter between:

**KAREL SNYDERS**

First Applicant

**SOFIA SNYDERS**

Second Applicant

**MINOR CHILDREN**

Third Applicant

and

**LOUISA FREDERIKA DE JAGER**

Respondent

**Neutral citation:** *Snyders and Others v de Jager* [2016] ZACC 53

**Coram:** Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J

**Judgments:** Zondo J (unanimous)

**Heard on:** 2 February 2016

**Decided on:** 21 December 2016

**Summary:** Contempt of court — order requiring manager of property to take all necessary steps to restore peaceful possession — new occupant refusing to vacate — manager deciding against instituting eviction proceedings — seeking guidance from court — absence of *mala fides* — no contempt of court

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## ORDER

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On an application for contempt of the court order handed down by this Court on 16 October 2015:

1. The application is dismissed, with no order as to costs.

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## JUDGMENT

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ZONDO J (Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J and Nkabinde J concurring):

### *Introduction*

[1] The background to this matter is to be found in a judgment relating to an application for leave to appeal and an appeal between the same parties which is being handed down at the same time as this judgment.<sup>1</sup> For that reason I do not propose to give any details of that background. This judgment relates only to a contempt of court application that the applicants brought against the respondent.

[2] The Supreme Court of Appeal handed down its judgment on 30 September 2015. On 1 October 2015 Ms de Jager caused the Sheriff to evict Mr Snyders and his family from the house without any warning or notice. On the same day Ms de Jager invited Mr Willem Breda to immediately move into that house with his family. Mr Breda and his family moved into the house on the same day.

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<sup>1</sup> *Snyders and Others v de Jager* [2016] ZACC 55.

[3] On the application of Mr Snyders and his family, on 16 October 2015 this Court made the following order:

- “(1) Pending the outcome of the applicants’ application for leave to appeal to this Court against the judgment of the Supreme Court of Appeal and or judgment of the Land Claims Court and or of the Magistrate’s Court in this case:
- (a) The respondent is ordered to take all the necessary steps to restore to the applicants on or before Tuesday, 20 October 2015 peaceful possession of the dwelling which they occupied before 1 October 2015.
  - (b) The issue of costs is reserved.”

[4] Peaceful possession of the house was not restored to Mr Snyders and his family within the stipulated time or thereafter. Ms de Jager said that she asked Mr Breda to move out of the house and go back to the “*saaltjie*”<sup>2</sup> so that Mr Snyders and his family could move back into the house but Mr Breda refused. She asked Mr Breda on two or three occasions on different days to move back into the “*saaltjie*” and each time Mr Breda refused. Ms de Jager said that she then did not know what else she could do to ensure the restoration of peaceful possession of the house to Mr Snyders and his family.

[5] Ms de Jager said that she thought about instituting court proceedings for Mr Breda’s eviction but decided against it because she did not think that there were reasonable prospects of success. She wrote to the Registrar of this Court to inform the Court what steps she had taken to try and give effect to the interim order of this Court and asked for directives or guidance from this Court as to what else she was expected to do. She says that she did not get any guidance or directive from this Court. Mr Snyders and his family then brought an application for contempt of court against Ms de Jager. Ms de Jager opposed the application. Both sides filed affidavits in support of their respective cases.

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<sup>2</sup> Literally translated, “small hall”.

[6] It was submitted on behalf of Ms de Jager that she acted *bona fide* in taking the steps that she took to comply with the interim order of this Court. It was pointed out that Ms de Jager had asked Mr Breda to move out of the house and go back to the “*saaltjie*” and Mr Breda had refused. In support of the contention that Ms de Jager had acted *bona fide*, reliance was placed upon the fact that Ms de Jager wrote to the Registrar of this Court seeking to establish whether there were any other steps she was required to take but no directive or guidance was given to her.

[7] In the view I take of this matter, I do not consider it necessary to discuss in any detail the principles relating to contempt of court. It will suffice to make one point. This is that one of the elements of the crime is that the person said to be guilty of contempt of court must be shown to have acted *mala fide* in not complying with the order of court. If the person’s failure to comply with the court order came about as a result of a *bona fide* belief that, in doing what he or she did or in not doing what he or she did not do, she was not in breach of the court order, then that person will not be guilty of contempt of court.

[8] The interim order of this Court required Ms de Jager to take all the necessary steps to restore peaceful possession of the house to Mr Snyders and his family. It did not specify which steps nor could it so specify. Ms de Jager says that she spoke to Mr Breda and asked him to move back into the “*saaltjie*” but Mr Breda refused. She says that she thought about instituting eviction proceedings but decided against such a course of action because she thought that there were no reasonable prospects of success for such proceedings. She draws attention to the fact that she even wrote to the Registrar of this Court asking in effect for guidance as to what more she was required to do to ensure that peaceful possession of the house was restored to Mr Snyders and his family.

[9] There is no evidence that Ms de Jager may not have really wanted to move Mr Breda and his family out of the house to make way for Mr Snyders and his family. There is, thus, no evidence to justify a conclusion that she acted *mala fide*. That being

the case she cannot be found guilty of contempt of court. This, therefore, means that the application for an order declaring her to be in contempt of court falls to be dismissed.

[10] I do not think that considerations of justice and equity justify that an order of costs be made against Mr Snyders and his family. Mr Snyders is an illiterate man and a farm worker. He has been living in a goods shed with his family as a result of Ms de Jager's conduct. A proper order on costs is for each party to pay their own costs.

*Order*

[11] In the result the application is dismissed, with no order as to costs.

For the Applicants:

P R Hathorn SC with U K Naidoo  
instructed by J D van der Merwe  
Attorneys.

For the Respondent:

J J Botha instructed by Blyth &  
Coetzee.