

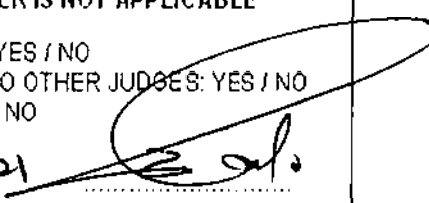


**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NO: LCC123/2018

FIRST DATE HEARING: 13 NOVEMBER 2020

DELIVERED ON: 13 APRIL 2021

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
20/8/2021	
DATE	SIGNATURE

Heard on: 29 JULY 2021

Delivered on: 23 AUGUST 2021

In the matter between:

FIRST REALITY (KRUGERSDORP) PTY LTD

APPLICANT

and

GERTJIE MITCHELL

First Respondent

BETTIE MITCHELL

Second Respondent

MICHELLE HAARVOOR

Third Respondent

GERHARD MITCHELL	Fourth Respondent
WILLEM JANUARIE	Fifth Respondent
DOLFINA JANUARIE	Sixth Respondent
ANNA-MARIE VAN WYK	Seventh Respondent
JEREMY JANUARIE	Eighth Respondent
NAZEEM LENNERTS	Ninth Respondent
MARY LENNERTS	Tenth Respondent
KAYLA GOOSEN	Eleventh Respondent
HENNIE BAILEY	Twelfth Respondent
KATRINA BAILEY	Thirteenth Respondent
FAIZA BAILEY	Fourteenth Respondent
ABSOLON VAN WYK	Fifteenth Respondent
TRUITJIE GOOSEN	Sixteenth Respondent
SHIRLEY GOOSEN	Seventeenth Respondent
JEROME ARENDSE	Eighteenth Respondent
SARA ARENDSE	Nineteenth Respondent
LEE-HANO JONATHAN	Twentieth Respondent
WILLEM JANUARIE	Twenty First Respondent
ANNA JANUARIE	Twenty Second Respondent
ALETSEA MITCHELL	Twenty Third Respondent
WELMARIE MITCHELL	Twenty Fourth Respondent

FRANKLIN MITCHELL

Twenty Fifth Respondent

ALL THOSE HOLDING TITLE THROUGH

FIRST TO TWENTY SIXTH RESPONDENTS

OR OCCUPYING COTTAGES 1, 3, 5, 7, 8, 9 &10

FARM HAMMANSDANS, PORTION 6 OF FARM

NO 191, DIVISION PAARL, WESTERN CAPE

Twenty Sixth Respondent

DRAKENSTEIN MUNICIPALITY

Twenty Seventh Respondent

HEAD: WESTERN CAPE PROVINCIAL

DEPARTMENT

OF RURAL DEVELOPMENT AND LAND AFFAIRS

Twenty Eighth Respondent

JUDGMENT

CARELSE J

[1] On 13/4/2021, I granted an order in the following terms:

1. *The application for eviction is dismissed.*
2. *The application to strike out is dismissed.*
3. *No order for costs is made in line with the usual practice of this Court.*

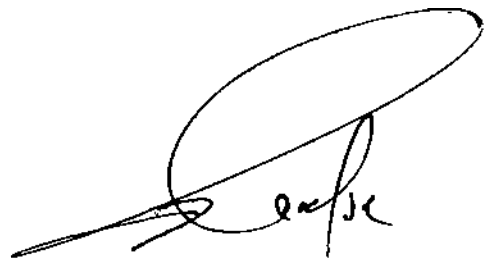
- [2] The test for the grant of leave to appeal in terms section 17(1)(a)(i) and (ii) of the Superior Courts Act No 10 of 2013 requires that " the appeal would have a reasonable prospect of success" and if there is any compelling reason why the appeal should be heard. The test does more than encompass the old common law test and a higher threshold is set forth implying that the degree of prospects must be better than being simply arguable.

The application for leave to appeal

- [3] The appellant advances a number of grounds which are set out in the notice of appeal. I have no intention of repeating same.
- [4] The common thread of appellant's complaint is that I have not only misdirected myself in fact but also in law. My judgment essentially was premised on the failure by the appellant to comply with S9(2) of ESTA read with S8 and pertinently the non-compliance with S8(1)(e) of ESTA.
- [5] The submissions are a repeat of the submissions made during the hearing. There is nothing new that was advanced by the appellant to persuade me that there are reasonable prospects of success on appeal if leave is granted
- [6] The appellant conceded that S8(1)(e) and the Judgment in Snyderos which is binding on this court finds application.
- [7] The attack is largely on my factual findings. I am of the view that the submissions advanced in this application for leave to appeal are essentially the same as those advanced during the hearing of the matter. Nothing new has been advanced by the appellant to persuade me that there are reasonable prospects of success on appeal and neither is in the interest of justice to grant leave to appeal.
- [8] In so far as costs are concerned the application was set down on 22 July 2021 for hearing but had to be postponed because of non-compliance with the practice directive No 4 as amended dated 2/8/2016 which requires heads of argument to be filed no later than 15 days before the hearing. The applicants filed its heads of argument 5 days later. As a result, the Respondents are not prepared. For this reason, the matter was postponed until 29 July 2021.

In the result:

The application for leave to appeal is dismissed with costs, which costs includes the wasted costs occasioned by the postponement of the matter on the 22 July 2021



CARELSE

Acting Judge: Land Claims Court

APPEARANCES

For the Applicant: Adv G Elliot SC instructed by F J Schoeman Attorneys

For the First to Twenty Sixth Respondent: (Save for the Second and Third Respondents) Mr A Mahomed, Ashraf Mahomed Attorneys