

# Removal of Grazing Animals from Farm - Moladora case

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

By **Phathutshedzo Tshindane** (Candidate Attorney), and **Chantelle Gladwin-Wood** (Partner)

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## INTRODUCTION

The case of *Moladora Trust v Mereki and Others (189/2023) [2024] ZASCA 37 (3 April 2024)* concerns the connection between occupation of land in terms of Extension of Security of Tenure Act 62 of 1997 (ESTA) and cattle grazing.

## BACKGROUND

The appellant is the owner of the property. The first, second, third and fourth respondents were the occupiers as defined in the ESTA by virtue of their late mother of of a portion of the farm in terms of s3(4) of ESTA. They resided on the farm with the deceased until her death and have continued to do so. The appellant launched an application in the Land Claims Court (LCC) seeking for the removal of all grazing animals on the property and the respondents were interdicted and restrained from returning and keeping any number of livestock on the farm without prior arrangement with the appellant. No relief was sought for the eviction of the respondents and their occupation of the farm has not been threatened or terminated. The application was served on the respondents, but they did not appear at the hearing, nor did they file any affidavits in response to the application. There was no dispute that the respondents had never sought nor obtained express consent to keep livestock on the farm and that no agreement was concluded with the appellant. The fifth respondent had not taken part in the proceedings to date.

## CENTRAL ISSUE

Whether the LCC was correct in its finding that according to section 3(4) of ESTA there was a presumption that the respondent had consent to graze animals by virtue of them openly residing on the farm.

## COURT'S INTERPRETATION

The Supreme court of Appeal stated that that after the mother passed away, attempts by the representative for the appellant were made to inform the respondents of their lack of consent to keep livestock on the farm.

The appellant's representative contends that during these incidents the respondents were aggressive and abusive towards him and informed him that they would not remove their livestock. The attempts to engage with the children proved fruitless. A letter was addressed to each of the children individually informing them that they had never obtained permission to keep livestock on the farm and they were given notice. It was not disputed by the respondents, and it was accepted by the LCC, that express consent to graze livestock was not given and the rights under the agreement with the deceased did not automatically devolve upon the respondents upon her death.

The appellant contended and the SCA agreed that the LCC's finding that tacit consent to graze livestock had been granted and that there was a tacit agreement with the appellant to that effect, was not based on any proper factual foundation. The test to be applied when dealing with whether there was tacit consent or tacit agreement is whether the party alleging the existence of the tacit contract has shown a balance of probabilities unequivocal conduct on the part of the other party that proves that it intended to enter into a contract with it. This issue did not arise in this case, as the appellant's version (which was that there was no agreement, either express or tacit between the parties) was not contested.

## CONCLUSION

It followed that neither the approach, nor the conclusion reached by the LCC can be supported on appeal, consequently the appeal succeeded and the respondents were ordered to remove all their grazing animals, including but not limited to cattle, horses, goats and sheep from the appellant's farm, they were also interdicted and restrained from returning and keeping any livestock on the farm without the prior consent of the applicant.

*Please note: Each matter must be dealt with on a case-case basis, and you should consult an attorney before taking any legal action.*



**Chantelle Gladwin-Wood**  
(Partner)



**Phathutshedzo Tshindane**  
(Candidate Attorney)