SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM	The Registrar, Supreme Court of Appeal
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STATUS	Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Sandvliet Boerdery (Pty) Ltd v Maria Mampies & another (107/2018) [2019] ZASCA 100 (08 July 2019).

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal from the Land Claims Court (the LCC). The issue on appeal was whether the respondents had the right to bury a deceased family member on registered land owned by the appellant, in terms of s 6(2)(*dA*) of the Extension of Security of Tenure Act 62 of 1997 (ESTA).

The appellant, Sandvliet Boerdery (Pty) Ltd, owns various, adjacent parcels of registered land commonly known as Bo-Plaas and Middel-Plaas. They form part of a historic trilogy collectively referred to as the Montina farms, which included Onder-Plaas presently owned SnyBar Developments (Pty) Ltd. The respondents, a married couple, were close relatives of the late Ms Magdalene de Wee (the deceased), who was the daughter of Mrs Mampies' biological brother, Mr Petrus de Wee, and Mrs Katriena de Wee.

The respondents are occupiers on the Remaining Extent of the Farm Landgoed Number 359. Mrs Mampies was born in Montina farms and has lived and worked on them all her life. Her husband moved to Onder-Plaas in 1997 to work for the erstwhile owner, Mr Engelbrecht who owned all the farms, as a permanent employee. The deceased started working at Onder-Plaas in 2009 and

resided on it with her four young children after her retrenchment in 2014, until her death on 22 February 2017. The respondents regarded the Montina farms as one unit. They were allowed use of an unrestricted movement across the farms, working, living as families, rearing and grazing their livestock and burying their dead on them. Mrs Mampies' mother, predeceased her father and was buried in a graveyard next to their home at Onder-Plaas. When that graveyard reached full capacity, Mr Engelbrecht allocated the occupiers of Montina farms another burial site on Middel-Plaas. Mrs Mampies' father, two children and other members of her extended family are buried in that graveyard with other deceased family members of the occupiers of the Montina farms.

In 1991, ownership of the farms passed from Mr Engelbrecht to several successive owners of the years. Despite these changes, the occupiers' living and employment conditions remained unchanged in the beginning and they continued to have unfettered access to the Middel-Plaas graveyard until 2015 when the new successive owners launched eviction proceedings against some of the occupiers who did not include the respondents.

The deceased passed away during that conflict. The respondents and her parents wished to bury her in the Middel-Plaas graveyard which they considered their ancestral burial site in accordance with their religion, cultural belief and practice so that she could be buried among her deceased family members near her home. The appellant refused to give permission for the burial in Middel-Plaas on the ground that the respondents lived on Onder-Plaas and could not invoke the burial right contained in s 6(2)*(dA)* against it in respect of its land, Middel-Plaas, to which they had no connection.

The SCA had to determine whether the respondents met the requisites for the right to bury envisaged by s 6(2)(*dA*), ie (a) they are occupiers within the definition of ESTA; (b) the deceased resided on the land at the time of her death; and (c) there was an established practice in terms of which the owner or person in charge or his or her predecessors routinely gave permission to people residing on the land to bury deceased members of their family on that land in accordance with their religion or cultural belief.

The SCA held that the answer depended on whether the respondents and the deceased resided on the land in which it was sought to bury her, ie Middel-Plaas, at her death. According to the SCA, the legislature could not have intended to deprive vulnerable occupiers in the respondents' position of a critical right, which was specifically enacted to formally attach the right to bury an occupier's right to residence and thus fortify their right of security of tenure. The court held that on a contextual interpretation, which balanced the occupier's right to security of tenure with the rights of the owner, the meaning of the term 'reside', which ESTA does not define, must include the use of a graveyard in the circumstances of this case. The SCA reiterated that once permission to bury was granted, it could not be unilaterally withdrawn either by the original grantor or his successors in title, including the appellant, which was aware of the existence of the Middel-Plaas graveyard when it purchased the farm in June 2015.

The SCA ordered that the appeal is dismissed with no order as to costs.