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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG HIGH COURT. PRETORIA**

CASE NUMBER: 24851/2008

DATE: 14 OCTOBER 2009

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between

ROSALINE BLOUW

Applicant

And

A.M. MAREE ALGEMENE

1st Respondent

CONSTRUCTION CC

THE CITY OF TSHWANE

2nd Respondent

METROPOLITAN MUNICIPALITY

JUDGMENT

1. The applicant and eight other applicants apply for the rescission of an order granted by this Court on the 20th June 2008, evicting them from premises described as Sectional Title [.....] in a sectional title scheme known as [.....].

2. The immovable property is also known as [.....].

3. The applicants were evicted as unlawful occupiers in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

4. The applicants assert that the eviction was unlawful as they occupied the land in question as lawful occupiers in terms of the Extension of the Security of Tenure Act 62 of 1997 (“ESTA”). They allege that the land is in fact agricultural land in spite of the development of a sectional title scheme thereupon. In addition, some if not all of them are alleged to have been in lawful occupation of the premises prior to 4th February 1997 and all applicants allege that they have been in occupation with the owner's consent.

5. If the land is indeed zoned as agricultural land, the High Court has no jurisdiction and ESTA applies in terms of section 2 thereof.

6. The question whether the land concerned is agricultural land occasioned some concern during argument, rather unnecessary so as it turns out. The court is indebted to the parties for the additional research they conducted at the court's request into the history of the zoning and transfer of the property concerned.

7. It emerged from the records at the Registrar of Deeds' office that the property has always been zoned as an agricultural holding, even though a sectional title register was opened in respect thereof prior to the promulgation of ESTA.

8. Although the existence of a sectional title scheme on agricultural land may not be the norm, neither ESTA nor the Sectional Titles Act 95 of 1986 prohibits the establishment thereof on land zoned as such. On the other hand, the development of a share block scheme on agricultural land is specifically outlawed by the Share Blocks Control Act 59 of 1980.

9. In spite of diligent research, neither party could find any evidence that the zoning of the property concerned had been changed to any other than agricultural.

10. In the light of this fact, the court must conclude that the land is indeed agricultural land in spite of the development that occurred thereon, which means that the eviction in terms of Act 19 of 1998 was unauthorised as this court has no jurisdiction to evict occupiers protected by ESTA.

11. This finding makes it unnecessary to deal with the disputes regarding the alleged consent or termination of the right to occupy that emerge from the papers.

12. The judgment evicting the applicants is therefore rescinded.

13. The applicants incurred unnecessary costs by launching nine individual applications, which was entirely unwarranted.

14. Only the costs of one founding affidavit of one of the applications should therefore be allowed although the second respondent has tendered to pay the applicants' costs.

The following order is therefore made:

1. The application succeeds and the judgment granted against the applicants under the above case number is rescinded.

2. It is noted that the second respondent has tendered to pay the applicant's costs.

3. The respondents are to pay their own costs and the costs of one application

only if the second respondent fails to pay the applicants' costs.

Signed at Pretoria on this 13th day of October 2009

E Bertelsmann

Judge of the High Court