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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 10535/24

In the matter between

HERMANUS LAMBERTUS LE ROUX NO

1st APPLICANT

HELIUS LE ROUX NO

2nd APPLICANT

JOHANNA DALENA TREURNICHT NO

3rd APPLICANT

AND

J[...] J[...] B[...]

1st RESPONDENT

S[...] B[...]

2nd RESPONDENT

**THE OCCUPIERS OF ERF 5[...], VAN WYKSVLEI,
WELLINGTON THROUGH OR UNDER 1st and 2nd
RESPONDENT**

3rd RESPONDENT

DRAKENSTEIN LOCAL MUNICIPALITY

4TH RESPONDENT

Date of Hearing: 27 February 2025

Date of Judgment: 17 March 2025 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] This is an opposed application for the eviction of the respondents from immovable property owned by the Groenewald Trust. The applicants are the trustees. Only the 1st and 2nd respondents opposed the application. The 1st and respondents occupied the property on the basis of a one-year lease agreement which thereafter became a month to month lease. The Trust cancelled the lease on a month's notice as envisaged in the lease agreement. The respondents remain in occupation of the property. 1st and 2nd respondents (the respondents) entered an appearance to defend. Their application to be represented by Legal Aid South Africa (LASA) was declined for lack of merit. They conducted their own defence.

[2] The respondents raised various grounds in their opposition. They alleged that the house which they occupied was built through the self-build project of the Wellington Municipality (the Municipality) for the underprivileged people that could not afford to buy their own property. The court asked the Municipality, which had a representative in court during the proceedings, to investigate the allegations and the matter was postponed for amongst others that investigation. The report back from the Municipality was that the property in question was not acquired by the respondents through any government housing subsidy scheme. That ground of opposition was untrue. The second ground was that the lease agreement was a sham. It was only not in truth a lease, but was a intended to deceive the South African Revenue Services, and they were promised by the 1st applicant to stay at the property indefinitely. This was denied by the 1st applicant,

who pointed out that the rental was deducted weekly from the 2nd respondent's emoluments, when she worked on the farm. 1st respondent did not work on the farm. Furthermore, the lease agreement had a clause which provided for amendments, but for such to be reduced to writing and signed by the parties. There was no written agreement for the respondents to stay indefinitely on the farm.

[3] The alleged verbal agreement for the respondents to stay indefinitely on the farm, exposed respondents as persons who presented a serious challenge on honesty. In his answering affidavit in opposing the application, made under oath, the 1st applicant alleged that the 1st applicant convinced them not to put their names on the housing waiting list of the Municipality. The 2nd respondent made a confirmatory affidavit, in other words, confirmed these allegations by 1st respondent. According to their case, they were therefore not on the waiting list. This case somewhat changed during the hearing of the matter. The investigation that the court asked the Municipality to undertake included whether the applicants had applied for State Housing. The Municipality reported that the respondents applied for registration on the waiting list on 31 January 2002. The Municipality indicated that the respondents did not qualify for government housing subsidy scheme at the Municipality since their applications for such housing scheme were with Beaufort West Municipality. As regards emergency housing, the Municipality was only able to respond once all the socio-economic information of the respondents were determined since factors like their income determine their qualifications or otherwise.

[4] The Municipality presented a report on the question of emergency accommodation provided by the Municipality. Basically, the respondents did not qualify for emergency accommodation provided by the Municipality on two main grounds. The first is that the applicant should appear on the Municipality's Housing Demand Data base. I understand that to mean that the person must be one who met all the requirements to be eligible for Housing provided by the Municipality's housing schemes. The respondents did not meet these criteria as indicated earlier in this judgment. The second was that the respondents did not meet the Municipality's Indigent Support Policy. To qualify, the household must

inter-alia meet the definition of an indigent household and household income, which was currently an income of R4500-00 per month. Although the 2nd respondent was unemployed, the first respondent earned R9000-00 per month. The household's monthly income was R9000-00 per month. As a consequence, the respondents did not qualify for emergency accommodation through the Municipality.

[5] The respondents were 57 and 50 years old respectively and married to each other. They were both did not have special needs. They had two children who were both in the Primary school close to their home. The respondents were not forthcoming to the Municipality when it enquired as to whether they received social grants for the children. The children were 13 and 11 respectively. It follows that the eviction of the parents would have an impact on the children. The first and second applicants and the respondents were no strangers to each other and knew each other from childhood. The first respondent's parents and the second respondent's father had worked on the farm. The first respondent's mother and second respondent worked in the house on the farm, where the second respondent had worked since she was 17 years. The first applicant's brother had helped the first respondent to secure the employment where he was currently working.

[6] The Trust cancelled the lease.¹ The respondents did not raise a valid defence. The respondents were unlawful occupiers.² I am enjoined to grant an eviction order.³ Whilst I am cognizant of the interruption of the schooling of the children, as a change of a home necessarily would occasion, I should also consider the rights and needs of the Trust, which includes obtaining possession, benefits and use of its own property.⁴

[7] For these reasons I make the following order:

¹ Section 5(5) of the Rental Housing Act, 1999 (Act No. 50 of 1999).

² *Resnick v Government of the RSA and Another* 2014 (2) SA 337 (WCC) at 339B-C.

³ Section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998).

⁴ *Absa Bank Ltd v Murray* 2004 (2) SA 15 (C) at para 33.

(a) The 1st respondent, 2nd respondent and all those occupying through or under them are ordered to vacate Erf 5[...], Van Wyksvlei, Wellington situated at 5[...] S[...] Way, Van Wyksvlei, Wellington (the property) on or before 30 June 2025.

(b) Should the 1st respondent, 2nd respondent and any of those occupying through or under them fail to vacate the property on or before 30 June 2025, the Sheriff or his or her Deputy are authorized to evict the 1st respondent, 2nd respondent and all those who occupy the property through or under them on 06 July 2025.

(c) Should it be necessary, the Sheriff or his or her Deputy is authorized to engage the services of the South African Police Services (SAPS) to assist him or her or them in execution of their duty to evict.

(d) The 1st and 2nd respondents shall pay the costs jointly and severally, the one to pay the other to be absolved.

DM THULARE
JUDGE OF THE HIGH COURT