

IN THE LAND COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: LanC: 03R/2025

MAGISTRATE'S COURT CASE NO: 140/2022

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

—	<u>14/ 03 / 2025</u>	_____
DATE	SIGNATURE	

In the matter between:

DREYER & DREYER CC

(Registration Number: 1998/057983/23)

Applicant

and

N[...] J[...] M[...]

First Respondent

N[...] J[...] M[...] N.O

Second Respondent

R[...] M[...]

Third Respondent

L[...] M[...]

Fourth Respondent

M[...] M[...]

Fifth Respondent

PHUMELELA LOCAL MUNICIPALITY

Sixth Respondent

ORDER

The following order is made:

1. The order of the Magistrate's Court under case number 140/2022 is set aside and replaced with the following order:
 - (a) The application is dismissed.
 - (b) There is no order as to costs.
2. There is no order as to costs.

JUDGMENT

TEBEILE AJ

Introduction

[1] This is an automatic review in terms of section 19(3) of the Extension of Security of Tenure Act (the Act)¹ of an order granted on 06 January 2025 by the Magistrate for the District of Vrede, in terms of which the Magistrate's Court ordered the eviction of the First to Fifth Respondents from the farm commonly known as THE REMAINDER OF THE FARM ZAMENKOMST, DISTRICT VREDE, FREE STATE PROVINCE (the farm).

¹ Act 62 of 1997, as amended.

[2] The matter is decided on papers filed with this Court and which papers served before the Magistrate's Court.

Parties

[2] The Applicant is Dreyer & Dreyer CC (Registration Number: 1998/057983/23), a closed corporation with principal place of business on the Farm Skulpspruit, District Vrede, Free State Province and situated at 08 Church Street, Vrede, Free State Province.

[3] The First Respondent is N[...] J[...] M[...], an adult male person residing at the farm.

[4] The Second Respondent is N[...] J[...] M[...] N.O cited in his representative capacity as the father and guardian of the minor children residing on the farm.

[5] The Third Respondent is R[...] M[...], an adult female person residing on the farm and she is the wife of the First Respondent and the mother of the minor children residing on the farm.

[6] The Fourth Respondent is L[...] M[...], an adult female person residing on the farm and the sister of the First Respondent.

[7] The Fifth Respondent is M[...] M[...], an adult male person residing on the farm and a family member of the First Respondent.

[8] The Sixth Respondent is Phumelela Local Municipality, a local municipality cited in this application in terms of section 9(2)(ii) of the Act.

[9] The Seventh Respondent is the Department of Agriculture, Land Reform and Rural Development.

Factual Background

[10] The Applicant entered into a lease agreement with the owners of the farm since August 2001. Upon the expiry of the abovementioned lease agreement, the Applicant entered into further lease agreement with the owners of the farm.

[11] Although it is disputed by the Applicant, it appears from the report in terms of section 9(3) of the Act that the First Respondent arrived at the farm with his parents in 1993 and has been residing at the farm since then.² This is confirmed in the First to Fifth Respondents' answering affidavit in the Magistrate's Court. It is common cause that the First Respondent's parents also resided on the farm in terms of the agreement with the owner of the farm.³ Nowhere in the Magistrate's Court did the Applicant object to the section 9(3) report, in particular, paragraph 2.1.1 wherein it is stated that the First Respondent arrived on the farm "in 1993 with his parents and has been residing there for the past 30 years".⁴ The Applicant does not have any knowledge of any other place where the First Respondent resided except at the farm.

[12] During his stay on the farm, the First Respondent's father had permission to keep the cattle on the farm as per agreement between the owner of the farm and the First Respondent's father. Other occupiers who were residing on the farm had similar agreement with the owner of the farm. The First Respondent's father died in the year 2017 and "at the time of his death kept more cattle on the farm as agreed upon with the owner of the farm".⁵ Upon the death of his father, the First Respondent inherited his late father's cattle and kept them on the farm together with his own cattle.

[13] The First Respondent was employed by the Applicant as the cattle herder from the year 2012 and was dismissed in 2019. The First Respondent's wife and children live with the First Respondent and were permitted to do so by the Applicant.⁶ There are other family members and relatives of the First Respondent who often visit the First Respondent on the farm. However, the Applicant alleges that such persons also reside with the First Respondent.

² See para 2.1.1 of the report in terms of section 9(3) of Act.

³ See para 6.6 of the Applicant's founding affidavit in the Magistrate's Court.

⁴ See para 2.1.1 of the report in terms of section 9(3) of the Act.

⁵ See para 6.6 of the Applicant's founding affidavit in the Magistrate's Court.

⁶ See para 6.1 of the Applicant's founding affidavit in the Magistrate's Court.

[14] In September 2020, the First Respondent's mother died, and the Applicant requested the First Respondent to remove his parents' cattle from the farm.⁷ Following the death of the First Respondent's parents and his dismissal from his employment by the Applicant, the relationship between the Applicant and the First Respondent deteriorated and there was a dispute between the parties relating to the grazing area for the cattle and the First Respondent's right to residence.⁸

[15] The Applicant accused the First Respondent of unlawfully keeping his father's cattle on the farm on the basis that the First Respondent and his mother had no permission to keep any cattle on the farm, and which they refused to do.⁹ The Applicant maintains that the First Respondent's right to keep any livestock on the farm was terminated at the time of termination of his employment.¹⁰

In the Magistrate's Court

[16] The Applicant approached the Magistrate's Court seeking an order for eviction of the respondents, including the First Respondent's minor children who live on the farm and attend school at the neighbouring farm.

[17] The Applicant relied on section 8(2) of the Act and contended that the First Respondent's right of residence solely arises from the employment agreement. The First Respondent submitted that his right of residence was not attached to his employment agreement as he was already an occupier in 1993 before commencement of his employment in 2012.¹¹ It was further submitted by the First Respondent that he could only be evicted in terms of section 10 of the Act and the Applicant has failed to establish compliance with any of the requirements contained in section 10(1)(a) to (d) of the Act. The Magistrate's Court found that:

⁷ See para 6.12 of the Applicant's founding affidavit in the Magistrate's Court.

⁸ See paras 6.16 to 6.21 of the Applicant's founding affidavit in the Magistrate's Court.

⁹ See para 6.6 of the Applicant's founding affidavit in the Magistrate's Court.

¹⁰ See para 6.7 of the Applicant's founding affidavit.

¹¹ See paras 3.1 and 3.2 of the First to Fifth Respondents' answering affidavit in the Magistrate's Court.

'The First Respondent's employment was also terminated on the 30th October 2019, and because of that, it is the court's admission that the second and the third respondents are not occupiers in their own right, but that it was coupled with that of the First Respondent, **who has stated that his employment was terminated.**

Okay, then, regarding point number 3. It is further submitted that the first respondent is an occupier, as contemplated in terms of section 8(2) of the ESTA Act. That is with regard to point 3.'¹² (Emphasis added)

[18] The Magistrate's Court accepted that the First Respondent is an occupier in terms of section 8(2) of the Act and that for a reason that the First Respondent's employment agreement has been terminated, the Second and Third Respondents occupied the farm not on their own right.

[19] Whilst the Applicant submitted that the First to Fifth Respondents have alternative accommodation at the Thembalihle, Vrede, Free State Province,¹³ the First Respondent submitted that he has no alternative accommodation but a mere site with no house/structure for dwelling. The Applicant submitted that it is not its duty to provide the First to Fifth Respondents with alternative accommodation.¹⁴ The First Respondent admitted that he has a vacant land which has no house built on it.¹⁵ This is confirmed by the report in terms of section 9(3) wherein it is stated in paragraph 3.1 that "the respondents [have] been allocated a site by Phumelela Local Municipality in Thembalize EXT 4: however, the site has no structure/house where the occupiers can reside".

[20] The Magistrate's Court found as follows:

'I now turn to point 5. Do the first to the third respondent have suitable alternative accommodation available, should they be evicted? Now, **site 3654, Thembalihle, Extension 4**, Vrede, according to the probation officer's report, **is registered in the name of the First Respondent**, and it is the court's admission that alternative

¹² P 10 of the judgment of the Magistrate's Court.

¹³ See para 10.1 of the Applicant's founding affidavit in the Magistrate's Court.

¹⁴ See para 10.3 of the Applicant's founding affidavit in the Magistrate's Court.

¹⁵ See para 4.4 of the First to Fifth respondents' answering affidavit in the Magistrate's Court.

accommodation is available to the first to the third respondent, if evicted'.¹⁶
(Emphasis added)

[21] The Magistrate's Court proceeded to grant an eviction order against the First to Third Respondents and that the date of 26 February 2025 be fixed as a date on which the First to Third Respondents should vacate the farm. It was further ordered that should the First to Third respondents fail to vacate the property on 28 February 2025, the 7th of March 2025 be fixed as the date on which the Sheriff of the Court be ordered to evict the respondents, and that the eviction order is suspended pending confirmation by this Court. The Magistrate's Court ordered that each party must pay their own costs, and which approach to costs I will take in this Court as apparent below.

In this Court

[22] The matter served before this Court in terms of section 19(3) of the Act. This Court must determine whether to confirm the eviction order of the Magistrate's Court in terms of which an eviction order was granted.

[23] Having considered the papers before me, the following seem to be issues for determination in deciding whether to confirm the eviction order granted by the Magistrate's Court.

- a. Whether the First Respondent is an occupier in terms of section 8(2) of the Act.
- b. Whether the First to Third Respondents have alternative accommodation.
- c. Whether the constitutional rights of the First to Third Respondents were considered.
- d. Whether continued occupation will violate the Applicant's right to property in section 25(1) of the Constitution.
- e. Whether the minor children's constitutional rights were considered.

¹⁶ P 11 of the judgment of the Magistrate's Court.

f. Whether the First Respondent's right of residence was in fact terminated.

Whether the First Respondent is an occupier in terms of section 8(2) of the Act

[24] The Applicant's basis for the First Respondent's eviction is premised in section 8(2) of the Act in that the Applicant alleges that the First Respondent's right of residence arises solely from an employment agreement and that the aforesaid employment agreement has been terminated,¹⁷ and consequently the First Respondent has no further right to reside on the farm.¹⁸ The First Respondent contended that he is not an occupier in terms of section 8(2) of the Act because he was an occupier on, and before, 4 February 1997 and that he can only be evicted in terms of section 10 of the Act.

[25] It is important to note that paragraph 2.1.1 of the report filed in terms of section 9(3) plays a significant role in the eviction proceedings under the Act. Paragraph 2.1.1 of the report stated:

'The First Respondent, N[...] J[...] M[...], arrived on the farm Zamenkomst No 400 in 1993 with his parents and has been residing there for the past 30 years. Mr M[...] was employed on the farm for 7 years from 2012 to 2019 as a general worker.'

[26] It was contended by the Applicant in the Magistrate's Court that the First Respondent only started residing at the farm from the year 2012 when he started his employment with the Applicant. Having considered the matter and the papers, in particular paragraph 2.1.1 of the report in terms of section 9(3) served before the Magistrate's Court, it is my view that the First Respondent has been an occupier prior to 04 February 1997 in that he started residing at the farm in 1993 with his parents. It appears from the report in terms of section 9(3) that the First Respondent has been an occupier on or before 4 February 1997, and consequently the First Respondent is not an occupier in terms of section 8(2) of the Act.

¹⁷ See para 9.1 of the Applicant's founding affidavit in the Magistrate's Court.

¹⁸ See para 9.2 of the Applicant's founding affidavit in the Magistrate's Court.

[27] The Magistrate's Court failed to take into consideration the report in terms of section 9(3) and erred in not finding that the First Respondent is not an occupier in terms of section 8(2) of the Act.

Whether the First to Third Respondents have alternative accommodation

[28] It is trite that when the private owners seek to evict unlawful occupiers, the court must determine whether it is just and equitable to grant such an order. In determining whether an eviction order is just and equitable order, one of the relevant facts to be considered is the impact that such an order will have on the occupiers by rendering them homeless.

[29] In this case, the Magistrate's Court found that the site at Thembalihle, Extension 4, Vrede, according to the probation officer's report, is registered in the name of the First Respondent, and for that reason the Magistrate's Court found that the alternative accommodation is available to the First to the Third Respondents, if they are evicted.

[30] However, taking into consideration the part of the report in terms of section 9(3) dealing with the issue of whether the First to Third Respondents will have alternative accommodation, clearly the report noted that although the First Respondent has been allocated a site by the Phumelela Local Municipality, the site has no structure/house where the occupiers can reside. The Magistrate's Court should not have ignored this fact when determining whether it is just and equitable to evict the First to Third Respondents.

[31] In *Occupiers of Erven 87*¹⁹ the Constitutional Court held:

'Furthermore, Adams AJ accepted that the Court that had granted the eviction order did not conduct an enquiry as enjoined by the Constitution and PIE. That should have been the end of the enquiry and a sufficient factor to justify

¹⁹ *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another 2017 (8) BCLR 1015 (CC)*.

rescission. In reasoning further that, even if the eviction court had conducted the requisite enquiry, it would still have been satisfied that the eviction was just and equitable, the Court committed a further error. This is because on the facts before it homelessness was an undisputed risk. An order that will give rise to homelessness could not be said to be just and equitable, unless provision had been made to provide for alternative or temporary accommodation. That risk triggered the duty to join the City as the authority that would have to take reasonable measures within its available resources to alleviate homelessness.’²⁰ (Emphasis added)

[32] In *Port Elizabeth Municipality*²¹, the Constitutional Court per Sachs J dealing with an issue of suitable accommodation in terms of section 6(3) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act²² (the PIE) held that section 6(3) of the PIE states that the availability of a suitable alternative place to go to is something to which regard must be had, not an inflexible requirement.²³

[33] I am of the view that the court dealing with litigation involving eviction of occupiers must have regard to availability of alternative accommodation before granting an order for eviction. Availability of alternative accommodation should not mere mean a site with no house for dwelling as it is the case with the First Respondent. A mere availability of site cannot justify an order for eviction if such available site has no house or structure for dwelling. The occupiers must not be evicted if eviction will result in homelessness, especially when this homelessness is set out in the report in terms of section 9(3). In the present case, the First Respondent to Third Respondents will be without a place to stay if they are evicted, and the Magistrate’s Court’s finding that a site is alternative accommodation is a misdirection on the part of the court.

[34] In *Port Elizabeth Municipality*, the Court stated:

²⁰ Ibid para 57.

²¹ *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC).

²² Act 19 of 1998.

²³ *Port Elizabeth Municipality* supra n 23 para 28.

'The approach by Horn AJ has been described both judicially and academically as sensitive and balanced. I agree with that description. The phrase 'just and equitable' makes it plain that the criteria to be applied are not purely of the technical kind that flow ordinarily from the provisions of land law. The emphasis on justice and equity underlines the central philosophical and strategic objective of PIE. Rather than envisage the foundational values of the rule of law and the achievement of equality as being distinct from and in tension with each other, PIE treats these values as interactive, complementary and mutually reinforcing. The necessary reconciliation can only be attempted by a close analysis of the actual specifics of each case.'²⁴ (Emphasis added and footnote omitted)

[35] In the present case, in my view, the Magistrate's Court adopted a more technical criterion when finding that the site at Thembalihle, Extension 4 constitutes available accommodation to the First to Third Respondents if they are evicted. In my view, properly considered, and taking into account that there is no house/shelter or structure at the said site for the purpose of dwelling, the site at Thembalihle will only constitute alternative accommodation if the First to Third Respondents are able to immediately dwell on the site upon their eviction, and which is not the case because there is no house/structure for dwelling on the site at Thembalihle.

[36] The Court in *Port Elizabeth Municipality* correctly observed that the court in eviction cases is "called upon to balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourliness and shared concern". The Court correctly stated that the spirit of *ubuntu* combines individual rights with a communitarian philosophy and serves as a unifying motif of the Bill of Rights.

[37] Given the far-reaching consequences of homelessness, and most importantly, on the part of the minor children in this case on their right to education and also on their right to shelter enshrined in 28(1)(c) of the Constitution, it was unjustifiable for the Magistrate's Court to merely find that the site at Thembalihle constitutes

²⁴ *Ibid* para 35.

alternative accommodation to the First to Third Respondents if they are evicted, notwithstanding the fact that there is no house/structure at the site at Thembalihle.

[38] In the present case, taking into consideration the evidence on availability of alternative accommodation, there was no evidence that the First to Third Respondents will immediately use the site at Thembalihle as their dwelling upon their eviction, and that the eviction will not render the First to Third Respondents homeless. In the light of the absence of any evidence that the eviction of the First to Third Respondents will not result in their homelessness, I am not persuaded that it is just and equitable to order the eviction of the First to Third Respondents.

[39] Given what transpired in the Magistrate's Court, in particular, that court's failure to establish whether the eviction order will not result in the homelessness of the First to Third Respondents, a court dealing with future litigation involving eviction of occupiers in terms of the Act should be hesitant to merely admit as it was done in this case, that it would be just and equitable to order the eviction of the occupiers if it is not satisfied that the eviction order will not result in homelessness, and most importantly, homelessness of the minor children. The courts faced with eviction proceedings in terms of the Act must carefully consider the evidence on whether the eviction will lead to homelessness of the occupiers.

Whether the constitutional rights of the First to Third Respondents were considered

[40] In terms of section 9(3)(b) of the Act the Court must request a probation officer or an officer of the department or any officer in the employment of the State to submit a report indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children to education.

[41] In the present case, the probation officer filed the report in terms of section 9(3) and stated that an arbitrary eviction of the First Respondent will infringe his right to human dignity because "currently they do not have alternative housing (accommodation) and that any eviction before the issue of accommodation is resolved would probably infringe the right of the occupiers". Regarding the right to

adequate housing, the probation officer's report went on and recorded that although the occupiers have been allocated a site by the municipality, there is no house/structure available.

[42] Most importantly, the report recorded that the respondents have children that are attending school in the neighbouring farm, and therefore the constitutional right of the children to education will be affected if the court grants an eviction order in the middle of the school year. However, nowhere in the judgment of the court below did the court deal with the issue of constitutional rights of the occupiers, including the children's right to education. In my view, the Magistrate's Court misdirected itself and committed an irregularity when it failed to deal with the issue of the right to education of the minor children and that the eviction order will affect the minor children's education if such an order is granted in the middle of the school year.

[43] It is important for the court dealing with eviction under the Act to take into consideration that the report in terms of section 9(3) of the Act is peremptory and such a report is not for mere formalities, but for the court to consider the report before taking a decision whether or not to grant eviction order.

[44] In *Magubane*,²⁵ the Supreme Court of Appeal held:

'In my view, the failure of the LCC to consider the report before making its order, constituted a material misdirection entitling this court to interfere. The report was filed and available since 3 December 2015, some six weeks before judgment was delivered. In view of the important purpose served by the report, as alluded to hereinafter, **the eviction order ought not to have been issued without consideration of the report.**'²⁶(Emphasis added)

[45] In my view, the misdirection by the court identified by the Supreme Court of Appeal in *Magubane* and the approach by the Supreme Court of Appeal therein finds application in this case. The report was filed with the Magistrate's Court before the

²⁵ *Magubane and Another v Twin City Developers (Pty) Ltd and Others* (981/16) [2017] ZASCA 65 (30 May 2017).

²⁶ *Ibid* para 9.

judgment was delivered, but the Magistrate's Court ignored the report and its importance.

[46] As it was correctly held in *Magubane* that the eviction order ought not to have been granted without consideration of the report,²⁷ the Magistrate's Court's failure to consider the report relating to the aspect of the minor children's right to education constitutes a material misdirection entitling this Court to interfere with the order of the Magistrate's Court.

[47] In *Glen Elgin Trust*,²⁸ this Court per Meer AJ (as she then was) correctly pointed out that the purpose of the report in terms of section 9(3) of the Act is to ensure that the constitutional rights of the occupiers who stand to be evicted, are not overlooked.²⁹ For this reason, the Magistrate's Court had a duty in the present case to consider the content of the probation officer's report in relation to the constitutional rights of the occupiers, and to strike a balance between the occupiers' rights with the applicant's rights. However, no attempt to do so was made by the Magistrate's Court, and this constitutes a misdirection on the part of the Magistrate's Court and warrant interference by this Court.

[48] In *Monde*³⁰, the Supreme Court of Appeal correctly held that the Act is a remedial legislation with its genesis in the Constitution and that its purposes include to protect those who do not have secure tenure of land and are therefore vulnerable to unfair evictions that lead to great hardship.³¹

[49] In the circumstances, the Magistrate's Court failed to consider the probation officer's report. It cannot be comprehended as to how the Magistrate's Court arrived at a decision to order eviction without any attempt to analyse the probation officer's report on the constitutional rights of the occupiers balanced against the Applicant's rights. It is clear from the probation officer's report that the eviction of the occupiers is not just and equitable. However, the Magistrate's Court ordered contrary and did

²⁷ Ibid.

²⁸ *Glen Elgin Trust v Titus & Another* [2001] 2 All SA 86 (LCC).

²⁹ Ibid para 9.

³⁰ *Monde v Viljoen NO and Others* 2019 (2) SA 205 (SCA).

³¹ Ibid para 29.

so without analysing the report and giving reasons why the report must not be considered.

[50] In my view, the failure by the Magistrate's Court to consider the probation officer's report is a misdirection on the part of the Magistrate's Court and which misdirection justifies interference by this Court to reconsider the judgment and order of the Magistrate's Court in view of the content of the report.

Whether continued occupation will violate the Applicant's right to property in section 25(1) of the Constitution

[51] The Applicant's founding affidavit in the Magistrate's Court revealed that there is an existing structure erected by the First Respondent on the farm using corrugated iron. However, it is not clear as to whether the aforesaid structure can serve as a dwelling place. Be it as it may, in terms of the probation officer's report filed in terms of section 9(3) of the Act, it is recorded that the Applicant will not be deprived of land if the respondents continue to stay on the farm until they finalise the issue of suitable accommodation. This issue was not dealt with or analysed by the Magistrate's Court before granting an eviction order.

[52] In my view, the Magistrate's Court's eviction order cannot be found to be just and equitable without this analysis. To do contrary would be tantamount to a clear disregard to the purpose of section 9(3)(b) of the Act and our country's constitutional order.

Whether the minor children's constitutional rights were considered

[53] It is trite that before ordering an eviction of the occupiers, the court must consider the constitutional rights of the affected persons, including the rights of the children to education. In the present case, it is common cause that the probation officer filed a report as required in terms of section 9(3).

[54] The probation officer's report set out how the eviction will negatively affect the right of the minor children to education. However, no attempt is made by the

Magistrate's Court to reconcile the said violation with the applicant's rights. The Magistrate's Court simply ignored the probation officer's report and proceeded to grant the eviction order.

[55] It follows that the eviction order ought not to have been granted in the absence of a finding that the eviction order will not negatively affect the rights of the children, including the right to education.

Whether the First Respondent's right of residence was in fact terminated

[56] It is trite that the owner of land must terminate the person's right of residence first before he or she can seek an order to evict the person.³²

[57] In the present case, the Applicant relied on the award by the Commission for Conciliation Mediation and Arbitration together with the notices in terms of section 9(2)(a) & (b) when obtaining an order for eviction. There was no specific notice of termination of the First Respondent's residence given to the First to Fifth Respondents other than the notice in terms of section 9(2).

[58] Although the Applicant incorporated notice in terms of section 8(2) of the Act into the notice in terms of section 9(2), nowhere in the notice in terms of section 9(2) is stated that the First Respondent's notice of residence is terminated, and this is so obviously because the Applicant could not give notice for representations in terms of section 9(2) and simultaneously terminate the First Respondent's residence.

[59] It can never be possible under the Act that the Applicant serves the First Respondent with a notice in terms of section 8(2)(1) and (2) in the same notice in terms of section 9(2) setting out the reasons for seeking an order for eviction. This is so because the notice in terms of section 9(2) setting out the reasons for intended eviction must be preceded by the notice of termination of the right of residence. Logic dictates that one cannot terminate the right to residence at the same time of

³² See *Snyders and Others v De Jager and Others* 2017 (5) BCLR 614 (CC).

inviting the occupiers to make representations. This logic was defeated in the present case by the Applicant.

[60] In the present case, it appears that the Applicant assumed that once the employment agreement is terminated, automatically the First Respondent's right of residence has been terminated. This is not the correct position in law.

[61] In *Snyders*, the Court stated as follows in relation to a duty to terminate the right of residence apart from the termination of employment:

'In any event Ms de Jager did not terminate Mr Snyders' right of residence. She assumed that, once she had terminated his contract of employment, that automatically terminated his right of residence as well. She said that the part of the letter of dismissal that told Mr Snyders that he was to vacate the house in a month's time was the part that informed Mr Snyders of the termination of his right of residence. A copy of that letter was attached to Ms de Jager's founding affidavit in the Magistrate's Court.

There are two difficulties with Ms de Jager's reliance upon the contents of that letter. The first is that Mr Snyders is illiterate and would not have been able to read the letter. In this regard Mr Snyders said that, when Ms de Jager gave him that letter, she told him that he was being dismissed but never told him that his right of residence was also being terminated. Ms de Jager has not said anything different on this aspect. Since Mr Snyders was a respondent in those motion court proceedings, his version is the one that prevails. There was an obligation on Ms de Jager to have either read the letter to Mr Snyders or to have told him specifically that she was terminating his right of residence if that is what she sought to do. Whether or not it would have been proper or just and equitable for Ms de Jager to terminate Mr Snyders' right of residence at that time and in that manner is another question. However, Ms de Jager would have been obliged to comply with the requirements of ESTA before she

could terminate Mr Snyders' right of residence.'³³ (Emphasis added and footnote omitted).

[62] The Court in *Snyders* went on and stated:

'The second difficulty is that no part of the letter said that Mr Snyders' right of residence was being terminated. The part on which Ms de Jager relies simply said that Mr Snyders was required to vacate the house. The basis for the requirement that Mr Snyders should vacate the house must have been that his right of residence had automatically terminated when his contract of employment was terminated. That was not necessarily the position. The right of residence needed to be terminated on its own in addition to the termination of the contract of employment. Until Mr Snyders' right of residence had been terminated, he could not be required to vacate the house. In this case Ms de Jager has failed to show that Mr Snyders' right of residence had been terminated. Therefore, Ms de Jager had no right to require Mr Snyders to vacate the house or to seek an eviction order against Mr Snyders. The Magistrate's Court was wrong to find differently. The Land Claims Court was equally wrong to confirm the Magistrate's Court eviction order.'³⁴ (My emphasis)

[63] I find that the requirements for eviction of the First to Third Respondents have not been satisfied in the Magistrate's Court. It follows that the order of the Magistrate's Court must be set aside and be substituted with an appropriate order.

Order

[64] In the result, the following order is made:

1. The order of the Magistrate's Court under case number 140/2022 is set aside and replaced with the following order:
 - (a) The application is dismissed.
 - (b) There is no order as to costs.

³³ Ibid paras 69 – 70.

³⁴ Ibid para 71.

2. There is no order as to costs.

TEBEILE S.S.
ACTING JUDGE OF THE LAND COURT