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IN THE LAND COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO: **LanC:02R/2025**

MAGISTRATE'S COURT CASE NO:**3204/2022**

Before the Honourable Flatela J

In Chambers

Date of Judgment: 14 March 2025

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: YES/~~NO~~

(3) REVISED: ~~YES~~/NO

DATE: 14/03/2025

SIGNATURE:

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED: YES / NO

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DATE

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SIGNATURE

In the matter between:

VRFT PROPERTIES CC

First Applicant

MARIUS MICHAEL VAN ROOYEN

Second Applicant

and

JOHANNES FLORIS

First Respondent

MARTHA MERCY FLORIS

Second Respondent

CECILIA FRANSIENA FLORIS

Third Respondent

**AND ALL OTHERS PERSONS RESIDING
WITH OR UNDER THE FIRST TO THIRD
RESPONDENTS IN THE PREMISES ON
MIDDAGKRANSFARM, FRANSCHHOEK**

Fourth Respondent

DRAKENSTEIN MUNICIPALITY

Fifth Respondent

**PROVINCIAL DIRECTOR OF THE
DEPARTMENT OF AGRICULTURE
LAND REFORM AND RURAL DEVELOPMENT**

Sixth Respondent

ORDER

The Magistrate Court order dated 1 August 2024 is set aside and substituted with the following order:

1. The Application is dismissed with no order to costs.

JUDGMENT

FLATELA J

Introduction

[1] This is an automatic review in terms of section 19 (3) of the Extension of Security of Tenure Act 62 of 1997 (ESTA) emanating from the Magistrate's Court, Paarl, Western Cape Province.

[2] On 01 August 2024, the Magistrate granted the following order:

1. That the 1st to the 3rd Respondents and all those residing under them shall vacate from the farm dwelling on Middagkrans, Farm Number 1546, Stellenbosch Municipality, Paarl Division on 30 August 2024 failing which, the Sheriff or his/her deputy is authorised and directed to evict the first to the third respondents and all those residing under them from the said property on or before 16 September 2024. The South African Police Services is instructed and authorised to assist the sheriff and or his or her deputy to carry the eviction order. Mentioned supra
2. The execution of the eviction order is suspended pending confirmation from the Land Court on automatic review in terms of section 19(3) of ESTA.
3. The Stellenbosch Municipality is ordered to provide the respondents with alternative suitable emergency accommodation should they be rendered homeless.

4. There shall be no order as to costs.

Parties

[3] The First Applicant is **VRFT PROPERTIES CC**, a close corporation with limited liability duly registered under the laws of the Republic of South Africa, with a registered address at 2[...] E[...] Lane, Steenberg Golf Estate, Tokai, Western Cape, 7945. The First Applicant is the registered owner of the farm, having taken ownership on 27 July 2020.

[4] The Second Applicant is Marius Michael Van Rooyen, a member of the First Applicant, who is also the person in charge of the farm.

[5] The First Respondent is Johannes Floris, a 56-year-old man currently residing on a farm. The Second Respondent is Martha Mercy Floris, a 55-year-old woman who also lives on the farm. The First and Second Respondents are siblings. They were born and had lived on the property all their lives. The Third Respondent is Cecilia Fransiena Floris, a 37-year-old unemployed woman residing on the farm, who is the daughter of the Second Respondent. The Fourth Respondent includes all other individuals residing with or under the First, Second, and Third Respondents on the premises at Middagkrans Farm, located in Franschhoek, Western Cape Province.

[6] The Fifth Respondent is Stellenbosch Municipality, a local municipality with its main place of business at Plein Street, Stellenbosch, Western Cape. The Fifth Respondent is a Municipality contemplated in section 155 of the Constitution of the Republic of South Africa, 1996, established by the Provincial Minister of Local Government under sections 12 and 14 of the Local Government, Municipality Structures Act 117 of 1998.

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

Legal Principles applicable to evictions under ESTA

[8] It is trite that the Constitution is the point of departure in all eviction applications, in particular, section 26(3) which guarantees that no one may be evicted from their home without an order of court made after considering all the relevant circumstances. The preamble of the Constitution recognises the injustices of the past and it states that one of its purposes is to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights.

[9] ESTA, centrally, is a legislation that seeks to give effect to section 25(6) of the Constitution, which provides that '(a) person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress'.

[10] ESTA affords secure tenure as envisaged in section 25(6) to persons who reside on land that they do not own.¹ The mischief of ESTA is not only about securing tenure of ESTA occupiers. In *Daniels v Scribante*,² it was correctly pointed out that this mischief is “*also about affording occupiers the dignity that eluded most of them throughout colonial and apartheid regimes*”³.

The Structure of ESTA

[11] The purpose of ESTA is to:

- a. provide for measures with State Assistance to facilitate the long-term security of the land tenure;
- b. regulate the conditions of residence on certain land;

¹ *Daniels v Scribante and Another* 2017 (8) BCLR 949 (CC) (*Daniels*) para 13.

² *Ibid.*

³ *Ibid* para 23.

- c. regulate the conditions and circumstances under which the right of persons to;
- d. reside in the land may be terminated;
- e. regulate the conditions and circumstances under which persons whose right of residence has been terminated may be evicted from the land and to provide for matters connected therewith.⁴

[12] ESTA recognises that 'many South Africans do not have secure tenure of their homes and the land which they use and are therefore vulnerable to unfair eviction', and the unfair eviction leads to great hardships, conflict and social instability.

[13] Chapter II of ESTA deals with measures to facilitate long-term security of tenure for occupiers. It provides that:

4. Tenure grants

1. The Minister shall, from the monies appropriated by Parliament for that purpose and subject to the conditions of the Minister, may prescribe in general or determine, in a particular case, provide tenure grants-
 - a. To facilitate the planning and implementation of on-site and off-site developments,
 - b. To enable occupiers, former occupiers and other persons who need long-term security of tenure to acquire land or rights in land;
 - c. For the development of land occupied or to be occupied in terms of on-site or off-site developments;

⁴ See the preamble and the individual chapter headings to Chapters II, III and IV.

- d. To enable occupiers and former occupiers to acquire suitable alternative accommodations and;
- e. To compensate owners or persons in charge for the provisions of accommodation and services to occupiers and their families.⁵

[14] Nkabinde J in *Molusi and Others v Voges N.O. and Others*⁶ said the following regarding the balancing of the competing rights:

‘The pre-reform-era land law reflected the common-law based view that existing land rights should be entrenched and protected against unlawful intrusions. The land reform legislation – ESTA in this case – changed that view. It highlights the reformist view that the common law principles and practices of land law, that entrench unfair patterns of social domination and marginalisation of vulnerable occupiers in eviction cases, need to change. ESTA requires that the two opposing interests of the landowner and the occupier need to be taken into account before an order for eviction is granted. On the one hand, there is the traditional real right inherent in ownership reserving exclusive use and protection of property by the landowner. On the other, there is the genuine despair of our people who are in dire need of accommodation. Courts are obliged to balance these interests. A court making an order for eviction must ensure that justice and equity prevail in relation to all concerned. It does so by having regard to the considerations specified in section 8 read with section 9 as well as sections 10 and 11 which make it clear that fairness plays an important role.

In PE Municipality this Court remarked that it is necessary “*to infuse elements of grace and compassion into the formal structure of the law*”

⁵ Chapter II, Section 4 of the Extension of Security of Tenure Act 62 of 1997.

⁶ *Molusi and Others v Voges N.O. and Others* 2016 (3) SA 370 (CC).

and courts need “to balance competing interests in a principled way and to promote the constitutional vision of a caring society based on good neighbourliness and shared concern” because “we are not islands unto ourselves”. One immediately agrees that

“[t]he Judiciary cannot, of itself, correct all the systemic unfairness to be found in our society. Yet it can, at least, soften and minimise the degree of injustice and inequity which the eviction of the weaker parties in conditions of inequality of necessity entails.”⁷ (Footnote omitted)

Was the eviction just and equitable?

[15] In *Aquarius Platinum (SA) (Pty) Ltd v Bonene and Others*⁸, the Supreme Court of Appeal settled the law in the determination of the application in terms of section 8⁹ of ESTA, the Court held that the eviction must engage in a consecutive two-stage enquiry eloquently put as follows:

⁷ Ibid para 39 -40.

⁸ *Aquarius Platinum (SA) (Pty) Ltd v Bonene and Others* 2020 (5) SA 28 (SCA).

⁹ Section 8 provides as follows:

‘8 Termination of right of residence

(1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to-

(a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;

(b) the conduct of the parties giving rise to the termination;

(c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;

(d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and

(e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.

(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.

(3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act.

(4) The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and— (a) has reached the age of 60 years; or (b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge, may not be terminated unless that

‘ . . . (the need to protect the rights of residence of vulnerable persons) indicate a two-stage procedure. Section 8 provides for the termination of the right of residence of an occupier, which must be on lawful ground and just and equitable, taking into account, inter alia, the fairness of the procedure followed before the decision was made to terminate the right of residence. Section 8 at least requires that a decision to terminate the right of residence must be communicated to the occupier. Section 9(2) then provides for the power to order eviction if, inter alia, the occupier’s right of residence has been terminated in terms of s 8, the occupier nevertheless did not vacate the land and the owner or person in charge has, after the termination of the right of residence, given two months’ written notice of the intention to obtain an eviction order. Section 8(2) must of course be read with s 8(1) and provides for a specific instance of what may constitute a just and equitable ground for the termination of a right of residence’.¹⁰

Whether there has been compliance with sections 8, 9 and 10 of ESTA

[16] Section 8 provides that the right to residence may be terminated on any lawful grounds, provided that such termination is just and equitable, having regard to all relevant factors. The provisions read as follows: -

occupier has committed a breach contemplated in section 10(1)(a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

(5) On the death of an occupier contemplated in subsection (4), the right of residence 50 of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months’ written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1).

(6) Any termination of the right of residence of an occupier to prevent the occupier from acquiring rights in terms of this section, shall be void.

(7) If an occupier’s right to residence has been terminated in terms of this section, or the occupier is a person who has a right of residence in terms of section 8(5)— (a) the occupier and the owner or person in charge may agree that the terms and conditions under which the occupier resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the occupier; or (b) the owner or person in charge may institute proceedings in a court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.’

¹⁰ *Aquarius Platinum* supra n 8 para 13.

“8. Termination of right of residence

(1) Subject to the provisions of this section, an occupier’s right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to-

(a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;

(b) the conduct of the parties giving rise to the termination;

(c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;

(d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises after the effluxion of its time; and

(e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an adequate opportunity to make representations before the decision was made to terminate the right of residence.”

[17] Section 9 of ESTA is entitled ‘Limitation on eviction’. It provides:

“(1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.

(2) A court may make an order for the eviction of an occupier if—

(a) the occupier’s right of residence has been terminated in terms of section 8;

- (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
- (c) the conditions for an order for eviction in terms of sections 10 or 11 have been complied with; and
- (d) the owner or person in charge has, after the termination of the right of residence, given—

- (i) the occupier;

- (ii) the municipality in whose area of jurisdiction the land in question is situated; and

- (iii) the head of the relevant provincial office of the Department of Rural Development and Land Reform, for information purposes,

not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with." (Emphasis added.)

[18] Section 10 of ESTA provides as follows:

“10. Order for eviction of person who was occupier on 4 February 1997.

(1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if—

(a) the occupier has breached section 6(3) and the court is satisfied that the breach

(b) is material and that the occupier has not remedied such breach;

(c) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier’s right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar months’ notice in writing to do so;

(d) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or

(e) the occupier—

(i) is or was an employee whose right of residence arises solely from that employment; and

(ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.

(e) the owner or person in charge or the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for

arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.

(2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.

(3) If—

(a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;

(b) the owner or person in charge provided the dwelling occupied by the occupier; and

(c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge.

The court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to—

(i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and

(ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the

remaining occupiers shall be exposed if an order for eviction is or is not granted.”

[19] The applicants stated that they have complied with sections 8, 9,10 ,11 of ESTA.

The Applicants’ pleaded case before the Magistrate

[20] On 31 October 2022, the applicants brought an application for the eviction of the First to the Third Respondents from one of the First Applicant’s houses on the farm.

[21] Mr Marius Michael Van Rooyen, a member of the First Applicant and the person in charge of the property, deposed to the applicants’ founding affidavit. Mr Van Rooyen alleged inter alia that:

- a. The respondents had obtained consent to reside on the premises from the previous owner of the farm through a verbal rental agreement. When the First Applicant became the owner of the property, a fixed written rental agreement was concluded with the First Respondent on 20 October 2020 for the rental period until 30 September 2021 (the first agreement). It was further agreed that the agreement would automatically terminate on 30 September 2021 unless otherwise agreed between the parties.
- b. The first rental agreement expired on 30 September 2021, and the First Respondent asked for an extension, and it was granted. The second rental agreement was concluded between the First Applicant and the First Respondent for the period running from 1 October 2021 until March 2022 (the second rental agreement).
- c. The First Applicant contended that it was explicitly agreed that the respondents were to provide vacant possession of the premises on or before 31 March 2022, should there be no further agreement to extend

the second rental agreement, and no extension agreement was concluded.

- d. The applicants asserted that during January and February 2022, the First Respondent was repeatedly informed that the second rental agreement would not be renewed, and that vacant possession of the premises must be provided on or before 31 March 2022. The respondents failed to vacate the premises.
- e. The applicants further alleged that the First Respondent had voluntarily vacated the premises and moved elsewhere and was included in the eviction proceedings solely for completeness and to illustrate the prior connection between the respondents and the applicants. Furthermore, the applicants stated that the eviction of the First Respondent is sought as he is the only individual with a direct connection to the First Applicant and the household, as evidenced by the rental agreement concluded between him and the First Applicant.
- f. The grounds for eviction are simply that the second rental agreement lapsed and was not extended. The applicants believed that the respondents' continued stay on the farm was contingent upon the rental agreement between the parties.
- g. The applicants claimed that the premises were required to be allocated to house qualifying members of staff who are permanently employed as an employment benefit.

[22] The applicants contended that the eviction would be just and equitable due to the following reasons:

- a. The First Respondent does not permanently reside on the farm.
- b. The respondents already have access to alternative accommodation with family and friends.

- c. The respondents can afford alternative accommodation and are accustomed to rental housing.
- d. The Fifth Respondent has offered alternative accommodation, and the applicants have made numerous attempts to contribute towards the respondents' relocation.
- e. The applicants have already accommodated the respondents on their property for years; it is the respondents' responsibility to address their housing needs with the assistance of the Fifth and Sixth Respondents

[23] Regarding compliance with the provisions of ESTA, the applicants contended that when the respondents failed to vacate the premises, they instructed their attorneys to organise a round table discussion with the First Respondent and his representative, Mr. Wilfred Moses, on 20 April 2022. The applicants alleged during the meeting that the housing opportunities were discussed between the parties. It is further alleged that the applicants offered relocation costs, and the applicants' Attorney, Ms. Esmeri Theron, specifically advised the First Respondent to explore funding options through the Department of Human Settlements.

[24] The applicants alleged further that the First Respondent confirmed that his sister (the Second Respondent) has recently purchased housing in Franschhoek and that he is currently on the Stellenbosch Municipality's waiting list for a formal housing opportunity.

[25] Ms. Esmeri Theron and Mr. Wilfred Moses agreed that the respondents would consider various settlement possibilities and reply to the applicants' attorneys. The applicants contend that their attorneys received no feedback from the respondents or their representatives. It is further alleged that a formal settlement offer, which included a financial contribution and transport for the respondents, was directed to Mr. Wilfred Moses; however, it was never accepted, and the respondents did not provide any reason for their rejection or failure to offer counterproposals to resolve the matter.

[26] On 14 May 2022, the applicants served a “Notice to Make Representations” as envisaged under section 8 (1)(e) of ESTA. The notice informed the respondents that:

- a. The respondents were permitted to occupy the property solely by virtue of the rental agreement. Thus, it follows that the basis of their residence was the rental agreement, which has since expired without any renewal.
- b. Alternatively, should the respondents have acquired an independent right of residence, which the applicants have not acknowledged, that right is terminated.
- c. The respondents were requested to provide the applicants or their attorneys with substantial written representations, outlining the reasons why their right of residence should not be terminated. The applicants received no response.

Termination of the right to reside

[27] On 13 and 20 June 2022, the applicants issued a “Notice of Termination of Right of Residence and Demand to Vacate the Premises” to the respondents through the Sheriff, allowing them 30 days to leave the premises. However, despite this period expiring, the respondents failed to vacate the farm. Consequently, the applicants initiated eviction proceedings.

[28] The applicants contend that they are suffering severe prejudice as they require the premises to accommodate their permanent employees. The applicants aver that the respondents contribute nothing towards electricity and water, and there is no legitimate reason supporting their continued occupation.

Compliance with section 9 (2)(c) of ESTA read with section 10

[29] The applicants contended that the respondents are occupiers in terms of section 10 of ESTA. However, the applicants urged the Court to take cognisance of the fact that the First Respondent interrupted his residence on the farm when he moved off it. In this regard, the applicants submitted that section 11 of ESTA should apply to the First Respondent should he attempt to reoccupy the premises. (My emphasis)

Compliance with section 10(2) of ESTA: The availability of suitable alternative accommodation

[30] The applicants contended that the respondents are capable of accessing alternative accommodation on the basis that the First and Second Respondents are gainfully employed elsewhere and are therefore in a financial position to afford lodging away from the farm. The applicants asserted that the First Respondent has already vacated the farm and confirmed his address, while the applicants believe that he is currently occupying this residential property. This raises questions about why the Second and Third Respondents failed to vacate the farm and relocate with the First Respondent, considering that the First Respondent was the lessee of the premises, not the remainder of the respondents. The applicants further stated that the First Respondent confirmed his sister also owns immovable property in the Franschoek area. Consequently, the applicants believed that multiple housing opportunities were available within the family in the immediate vicinity.

[31] The applicants repeatedly invited the respondents to make submissions regarding how the applicants could assist them with their relocation from the property, but the applicants are not legally bound to do so. The applicants submitted that the duty to provide alternative accommodation lies with Fifth and Sixth Respondents, not with the applicants.

[32] Regarding compliance with section 10 (3) of ESTA, the applicants contended that none of the respondents have reached the age of 60. The applicants submitted that the respondents have not been declared permanently incapacitated. Therefore, they do not meet the requirements of section 8 (4) of ESTA. The applicants submitted that it is common cause that none of the respondents are currently

employed on the farm, and they simply continue to reside unlawfully and free of charge on the property. Furthermore, the applicants could not reasonably have expected the respondents to reside in the premises for much longer, as there were and still are no objective reasons for them to do so.

[33] The applicants further submitted that the Legislature did not intend for individuals to continue occupying the property indefinitely, especially after the occupiers' rights had been terminated.

[34] The respondents prejudiced them by refusing to relocate off the farm. The applicants are prevented from housing their key permanent employees on the front despite those employees being required to reside on the farm due to operational reasons.

[35] The applicants submitted that the respondents right of residence has been lawfully and fairly terminated in terms of section 8 of ESTA.

[36] The applicants argued in the alternative that the Court should find that section 11 of ESTA is also applicable to the application since the occupiers occupied the property after 4 February 1997; and that they interrupted the residence or became occupiers after the set date, the applicants submit that the provisions for an order for eviction in terms of section 11 have been complied with.

[37] The applicants also assert compliance with sections 8, 9, 10, 11, 3, and 12 of ESTA.

The Respondents' case

First Respondent

[38] The respondents filed separate answering affidavits opposing the application. The First Respondent stated that he was born on the farm in 1968 and continues to reside there. He has lived on the farm all his life. He averred that he once worked on the farm as a seasonal employee between the 1990s and 2000s until his parents

passed away.

[39] The First Respondent disputed that he had relocated from the farm; he stated that he still resides there and that all his belongings remain on the property. He asserted that the property where the applicants claim he is now living at is his godmother's house. He explained that he occasionally sleeps at his godmother's house, located at 5[...] B[...], Groendal, Franschhoek, to care for her and assist with tasks around her home. He also occasionally stays at her house to spend more time with his daughter.

[40] He is now employed by Huguenot Memorial Museum, where he earned a monthly salary of R12,000. He has a 12-year-old daughter.

[41] The First Respondent submitted that the provisions of section 10 of ESTA applies to him, as he was an occupier of the farm before 4 February 1997. He asserted that sections 11 and 12 of ESTA do not apply.

[42] The First Respondent denied having informed the applicants that the Second Respondent owns immovable property and that multiple housing opportunities are available for the family

[43] The First Respondent contends that when the First Applicant acquired the farm, he was approached by the Second Applicant, who suggested that it would be preferable to conclude a rental agreement to regulate the respondents' residence on the farm, which would help protect their tenure. Relying on this assurance, the First Respondent agreed to conclude the rental agreement.

[44] The First Respondent duly paid the rental amount to the First Applicant. As the expiry date of the rental agreement approached, the respondents were informed that they needed to vacate the farm. Due to lack of alternative accommodation, the respondents requested an extension. The extension was granted for six months, until 31 March 2022.

[45] The applicants demanded that the respondents vacate the farm by 31 March

2022. The First Respondent continued to pay rent each month; however, the applicants refunded the payment and informed him via SMS on 19 May 2022 that they would no longer accept the rental payments.

[46] The First Respondent contended that the applicants intentionally compromised their tenure rights on the farm by requiring him to sign a lease agreement with a specified end date, which interfered with their rights to occupation and use. The alleged attempts by the applicants to mediate and consult were merely aimed at ticking the proverbial boxes rather than demonstrating a sincere effort to accommodate them.

[47] The First Respondent asserted that the applicants cannot rely on the termination of the lease agreement, as it represents a deliberate effort to undermine their tenure rights under the ESTA and effectively constitutes an eviction against them. Furthermore, their basis of occupation was never dependent on the lease agreement.

[48] The First Respondent argues that an order for their eviction will not be just and equitable in that:

- a. The applicants have not satisfied the substantive and procedural requirements of ESTA, including sections 3, 4, 5, 6, 8, 9 and 10;
- b. He has not committed any form of misconduct or breach.
- c. They will be rendered homeless.
- d. There is no suitable alternative accommodation available.
- e. Meaningful engagement has not taken place with the municipality

The Second and Third Respondents

[49] The Second Respondent asserted that the respondents were all born and raised on the farm and have continuously resided there with the knowledge of all farm owners. She had been residing on the farm for 54 years at the time of the eviction proceedings. The premises occupied by the respondents were allocated to their late parents, who were employed on the farm. Their parents passed away in 2007 and 2008, respectively.

[50] The respondents assert that section 11 of ESTA does not apply in this instance, as they have occupied the property since before 4 February 1997. The premises comprise two bedrooms, one bathroom, an open-plan kitchen, and a living room. The Second Respondent shares the property with the First and Third Respondents.

[51] The First and Second Respondents previously worked on the farm. The Second Respondent was employed as a domestic worker for the former owners, Mr and Mrs Rutherford, and subsequently worked on the farm as a seasonal worker. A payslip from 2015 and 2016 is attached to the answering affidavit.

[52] The Second Respondent currently works as a general worker at a fruit factory three days a week, earning R247 daily.

[53] The respondents concede that they paid rent to the previous owner of the farm; however, it was an oral contract with no end date and no written lease agreement. Upon the transfer of ownership to the First Applicant, the respondents assert that the applicants advised them that they must have a lease agreement to safeguard their rights and regulate their stay.

[54] The First Respondent then agreed with the applicants on a specific rental amount to be paid for their stay. The respondents understood that the lease would be extended for longer periods, as it was common knowledge among the parties that they had no other home. As the lease approached its expiry, the respondents were informed that they needed to vacate the farm.

[55] As alternative accommodation was unavailable and they anticipated an extension of the lease, the respondents requested a six-month extension, which was granted and set to expire on 31 March 2022. Upon the expiration of the extension, the respondents continued their farm occupation as they lacked alternative accommodation. The First Respondent paid rent for April and May 2022; however, in May 2022, the applicants refunded the rent that had been paid and requested that the respondents vacate the property.

[56] The respondents argue that the termination of their right to reside was neither just nor equitable and, consequently, unlawful under ESTA for the following reasons:

- a. The lease agreement between the parties was unfair as it substantially limited their rights as occupiers;
- b. They had a reasonable expectation that the agreement would be renewed for longer periods, given that they believed and knew the property to be their only home;
- c. The conduct of the applicants in presenting the lease agreement was not *bona fide*; it was explained to the First Respondent that the agreement was meant to secure the respondents' tenure on the farm and lawfully regulate their stay, but it turned out to be a process of evicting them;
- d. They stand to suffer more hardship upon eviction; they will be rendered homeless as they do not have suitable alternative accommodation.

[57] The respondents argue that they have not vacated the premises due to the unavailability of alternative accommodation, as the property is the only home they have known. They would consequently become homeless if evicted. In this circumstance, the respondents assert that the eviction application should be dismissed. However, should the Court grant the eviction, they request that the order be suspended until the municipality provides suitable alternative accommodation.

[58] The Second Respondent contended that eviction would result in homelessness for both herself and her daughter. She stated that she has resided on the farm for fifty-four years and has never left. Her daughter was also born on the farm. The Second Respondent stressed that they lack alternative accommodation and have reached out to a relative to determine whether they can provide shelter to no avail.

[59] In their answering affidavit, the respondents requested mediation between the parties and the State Respondents.

Municipality Report

[60] According to the Municipal Report, a meaningful engagement took place on 1 June 2023 amongst all parties involved. The report indicates that the municipality was not able to provide alternative accommodation. However, it will fulfil its obligation to provide alternative accommodation or emergency housing if the respondents become homeless following the eviction order. The identified informal settlements are equipped with basic communal services.

Common cause facts

[61] The First and Second Respondents initially began occupying the farm property with their parents, who were employed on the farm and received housing as an employment benefit. They were both born on the farm. They originally obtained permission to reside at the farm from the farm's previous owner.

[62] The First Respondent entered into a rental agreement with the previous owners, and it remains unclear how their rental arrangement was established.

[63] Upon transfer of the property to the First Applicant, the First Applicant concluded a fixed rental agreement with the First Respondent on 20 October 2020.

[64] In terms of the fixed rental agreement:

- a. The premises could be occupied by the respondents from 1 October 2020 until 30 September 2021 (“the first rental agreement”)
- b. The agreement would automatically terminate on 30 September 2021 unless otherwise agreed between the parties.

[65] Upon the expiry of the first rental agreement and following the First Respondent's request for a grace period to provide vacant possession of the premises, another fixed-term rental agreement was established between the First Applicant and the First Respondent for the occupation of the premises from 1 October 2021 to 31 March 2022 (“the second rental agreement”).

[66] The parties agreed that the second rental agreement would automatically terminate on 31 March 2022. The respondents were to provide vacant possession of the premises on or before 31 March 2022 unless an agreement was reached to extend the second agreement. The second agreement was not extended. The respondents failed to vacate the property, and the applicants launched eviction proceedings.

Dispute of Facts

[67] In paragraph 55 of the affidavit, the applicants allege the following:

“55.3. The first respondent has already vacated the farm and confirmed his residential address as 5[...] B[...], Groendal, Franschhoek, 7690. It is, therefore, believed that he is currently residing at this property, which raises questions as to why the second and third respondents have not vacated the farm along with the first respondent, especially considering that the first respondent was the lessee of the premises and not the other respondents.

55.4 The first respondent personally confirmed that his sister also owns her immovable property in the Franschhoek area; thus, there are multiple housing opportunities for the family in the immediate vicinity.”

[68] The First Respondent vehemently denied that he had moved off the farm, asserting that he still permanently resides at the farm. He explained that he stays at his “grootmaak ma”’s house at 5[...] B[...], Groendal, Franschhoek, to assist with household tasks and to spend more time with his 12-year-old daughter. He confirmed that all his belongings remain on the farm and stated that his godmother’s place is not suitable as an alternative accommodation.

[69] The First Applicant denied that he had informed the applicants’ attorneys that the Second Respondent had purchased a house. The Second Respondent denies that she purchased a house and that she has alternative accommodation. She asserts that the applicants failed to make genuine attempts to mediate the matter and therefore section 8(1) (e) of ESTA was not complied with. She further submits that the provisions of section 10 of ESTA were not complied with, and that the eviction will lead to homelessness.

MAGISTRATE’S COURT JUDGMENT

[70] The Magistrate found that it would be just and equitable on the facts of the case for an eviction order to be granted. His reasons for the order are as follows:

- a. The Court considered the private landowner’s real right in the property, the ESTA occupiers’ rights over the property, and the possibility of homelessness should an eviction order be granted.
- b. The Court found that the applicants have complied with all the substantive and procedural requirements as specified in section 9 (2) (a) and (b) of ESTA.
- c. The court found that section 11 of ESTA finds application and considered the factors contained therein.

- d. The court determined that the respondents are not presently employed by the applicants and do not contribute to the farm's activities or productivity.
- e. The applicants are being prejudiced and are suffering damage due to the continued unlawful occupation of the respondents.
- f. The Court found that the prejudice suffered by the applicants outweighs that the respondents would suffer should an eviction order be granted
- g. The Court accepted that the First Respondent is not a permanent resident of the farm as he does not reside on the farm permanently.
- h. The respondents refuse to vacate the property as they have no intention of giving up accommodation benefits and utilities provided by the applicants
- i. During the process of meaningful engagement, the applicants offered to assist the respondents with their relocation from the farm. A financial contribution of R50,000 was offered to the respondents so they could use it as they wished. Even while these proceedings were pending in court, the applicants remained willing to settle the matter between the parties in a mutually beneficial manner.

[71] In his judgement, the Magistrate listed the disputes of facts as follows:

- a. Whether the First Respondent permanently occupies the premises on the farm;
- b. Whether the respondents have access to alternative accommodation or can have access to alternative accommodation by way of their means and the assistance from Stellenbosch Municipality;

- c. The prejudice that the respondents might face due to an eviction order outweighs that of the applicants;
- d. The applicants failed to make genuine attempts to mediate the matter and therefore section 8(1) (e) was not complied with;
- e. The existence of a reasonable expectation of the renewal of the agreement between the parties.

[72] The Magistrate's Court found that the respondents' opposition to the eviction application should be dismissed as the issues raised fail to constitute a proper or *bona fide* defence.

[73] The Magistrate's Court accepted that the First Respondent does not reside on the farm and that the respondents have simply refused to vacate the property despite a lawful demand. The court also found that the applicants are prejudiced and suffering due to the continued unlawful occupation of the property in question by the respondents. Furthermore, the court established that the applicants' right of ownership is being expropriated. In this circumstance, the court determined that the applicants have adhered to the procedural and substantive requirements of ESTA; therefore, their eviction will be just and equitable.

Discussion

[74] The Magistrate referenced the principles of Plascon-Evans in the introduction but did not apply those principles to resolve the factual disputes outlined in his judgment.

[75] In their founding affidavit, the applicants asserted that the First Respondent had already vacated the premises, which the First Respondent disputed in his answering affidavit. Despite the respondents' denial, the applicants insisted on this unsubstantiated allegation. In their heads of argument, the applicants sought to introduce new facts to support this allegation. The respondents made the following submissions:

“27.1 On 14 May 2022, the Sheriff attempted to personally serve their representation notice t on the First respondent. The second respondent informed the sheriff during the service that the first respondent is not a resident at the premises on the farm;

27.2 In an application for housing aid to the Stellenbosch municipality, the first respondent voluntarily elected to disclose a residential address in town as his place of residence. The first respondent indicated that he resides at 5[...] B[...], Groendal, Franschhoek, as opposed to the main address on the farm.”

[76] It is trite that where the pleadings show disputes of fact, and the applicants nevertheless decide to proceed by way of motion proceedings without resorting to oral evidence, the principles enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*¹¹ are applicable. The general rule is that an applicant who seeks final relief on motion must, where a dispute of facts arises in motion proceedings accept the version set up by his opponent unless the allegations are, in the opinion of the court, not such as to raise a real, genuine or *bona fide* dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.¹²

[77] This rule was further crystallised by the Supreme Court of Appeal in *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another*¹³ where Heher JA said:

‘A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the

¹¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (PTY) Ltd* 1984 (3) SA 623 (A).

¹² *Ibid* at p634-635.

¹³ *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* [2008] 2 All SA 512 (SCA).

fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them, and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied'.¹⁴

[78] The Supreme Court of Appeal in *National Director of Public Prosecutions v Zuma*¹⁵ clarified the Plascon Evans principle and held that:

'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities'.¹⁶

[79] The respondents claim to have lived on the farm for over 50 years, and this assertion has not been effectively challenged by the applicants, who have not provided evidence to refute it.

[80] While the applicants noted the allegation that the First respondent resided on the farm, the applicants attempted to bolster their case by giving context to their allegations, for the first time, in the heads of argument. In their founding affidavit, the applicants make sweeping allegations based on hearsay evidence. These remain unconfirmed and constitute hearsay evidence. The First Respondent's version is not so clearly untenable that the Court would be justified in rejecting it merely on the papers. The First Respondent's version is that he has occupied the property since birth and occasionally slept at his godmother's place but would return home. It should be accepted. Therefore, only section 10 of ESTA is applicable to the First and Second respondents.

¹⁴ Ibid para 13.

¹⁵ *National Director of Public Prosecutions v Zuma* [2009] 2 All SA 243 (SCA) (12 January 2009).

¹⁶ Ibid para 26.

[81] The Magistrate merely cited the Plascon-Evans principle without applying it or resolving the dispute and accepted the applicants' assertion that section 11 of ESTA applies to the respondents without explaining how he reached that conclusion.

[82] Consequently, the Magistrate concluded that section 11 of ESTA applies in this case. This conclusion was evidently incorrect, considering that the respondents had lived on the farm their entire lives. For this reason alone, this matter should be set aside.

[83] This should be the end of the matter, but for completeness, I shall proceed and deal with whether the eviction granted is just and equitable.

Meaningful engagement

[84] In their answering affidavit, the respondents requested that the court refer the matter to mediation, considering the history of their occupation of the property. In reply, the applicants rejected the mediation proposal, indicating that their legal representatives had already initiated contact with the State Respondents to arrange a meeting for a substantial discussion. Additionally, the applicants noted that their attorneys had communicated via email with the Department to inform the probation officer regarding the section 9(3) ESTA report. The applicants contended that the mediation proposed by the respondents is not a mandatory procedural requirement as stipulated under ESTA. The applicants asserted that they had made several attempts to mediate and that the respondents had been afforded multiple opportunities to engage in dialogue.

[85] Furthermore, the applicants stated that it is a well-established legal principle that meaningful engagement should occur between the relevant stakeholders while the proceedings remain pending in court.

[86] The probation officer filed a report and made recommendations to the parties to consider the mediation process to resolve the dispute, as outlined in section 21 of ESTA. The Probation Officer stated that the health condition of the Third Respondent should be taken into account when considering suitable alternative accommodation.

The parties should engage meaningfully with the Municipality, and an eviction order ought not to be granted without the availability of appropriate alternative accommodation. The report further emphasises that the emergency housing offered by the municipality is not suitable alternative accommodation for a family of three adults.

[87] In his judgment, the Magistrate simply notes the Probation Officer's Report and the Municipality Report. It is not sufficient to note the recommendations of the Probation Report and disregard them. Dealing with the purpose of the reports Ngcukaitobi AJ said in *Drakenstein Municipality v CJ Cillie en Seun (Pty) Ltd*.¹⁷

“There is a clear reason why the consideration of these reports is entrenched in statute: the reports must (a) indicate availability of alternative land in the event of an eviction; (b) the impact of the eviction on the affected occupiers, including their children; and (c) any undue hardship which will be caused by the eviction. It can be seen from the provisions of section 9(3) that the purpose of the statute is to protect occupiers from unlawful evictions and where evictions are inevitable to ameliorate their adverse impact”.¹⁸

[88] In deciding whether the eviction would be just and equitable, the judicial officer must consider the Probation officer report in ESTA matters. The Supreme Court of Appeal held in *Monde v Viljoen NO & Others*.¹⁹

“The LCC has subsequently in *Cillie* held that a probation officer's report was not a mere formality. It found that the issues in s 9(3) of ESTA that had to be addressed in the report were necessary to assist a court in deciding whether an eviction was just and equitable; that the importance of the report in an eviction could not be overemphasised; and that it ensured that the constitutional rights of those affected by eviction were not overlooked. Likewise, in *Drakenstein Municipality*, the

¹⁷ *Drakenstein Municipality v CJ Cillie En Seun (Pty) Ltd and Others* (LCC44/2015) [2016] ZALCC 9 (3 June 2016)

¹⁸ *Ibid* para 15.

¹⁹ 2019 (2) SA 205 (SCA) (28 September 2018).

LCC noted that s 9(3) was cast in peremptory terms; that the court's ability to discharge its function was frustrated without a report by a probation officer; and that the absence of the report negatively affected the interests of occupiers, since the purpose of ESTA was to protect occupiers from unlawful eviction and where eviction was inevitable, to ameliorate its adverse impact".²⁰

[89] In the present case, the Magistrate failed to consider the Probation Officer's report. That is an irregularity.

Compliance with Section 8 (1) notice

[90] Zondo J in *Snyders and Others v De Jager and Others* ²¹ held:

"Section 8(1) makes it clear that the termination of a right of residence must be just and equitable both at a substantive level as well as at a procedural level. The requirement for the substantive fairness of the termination is captured by the introductory part that requires the termination of a right of residence to be just and equitable. The requirement for procedural fairness is captured in section 8(1)(e)."²²

[91] On 20 April 2022, the applicants' attorney scheduled a meeting with the representatives of the First Respondent. The applicants' attorneys emphasised that the applicants no longer wished to lease the premises, as they solely intended to utilise it for their corporate functions and daily farming activities. The applicants proposed relocation options, and the applicants' attorney advised the First Respondent to explore funding opportunities through the Department of Human Settlements.

[92] The Second and Third Respondents were not invited to be the part of the meeting; it is unclear whether they were also invited to attend.

²⁰ Ibid para 27.

²¹ *Snyders and Others v De Jager and Others* (3) SA 545 (CC) (21 December 2016).

²² Ibid para 56.

[93] On 14 May 2022, the applicants delivered to the respondents via the Sheriff a “Letter of Demand and Notice to Make Representations in terms of Section 8(1)(e) of the Extension of Security of Tenure Act, 62 of 1997 (‘the Act)’ (‘the Sec. 8(1)(e)’ // Letter) as to why their right to residence on the Farm should not be terminated. They were given 30 (thirty) days’ Notice to make oral or written representations to the applicants’ attorneys of record. The respondents failed to make the representations. The applicants terminated their right to reside and instituted these eviction proceedings.

[94] The applicants raised concerns regarding the respondents’ lack of response to the notice issued under section 8(1)(e) of ESTA. However, upon examination of the applicants’ actions, it becomes evident that the notice was primarily a formality, serving merely to fulfil the compliance requirement outlined in section 8 of ESTA. The applicants consistently indicated that the rental agreement between the parties was for a fixed term, with a clear intention not to renew it. Throughout the second agreement, the applicants communicated via letters from January 2022, explicitly informing the First Respondent of the decision not to renew the rental agreement.

[95] In the notice itself, the applicants reiterated that both the rental agreement and any independent rights associated with it would not be extended. It is crucial to note that whether or not the respondents replied to the notice was irrelevant, as the applicants’ intentions were clearly articulated in all prior correspondence and the notice itself; therefore, the eviction application was not just and equitable.

[96] The applicants alleged that the rental agreement governs the parties’ relationship, thereby circumventing compliance with the provisions of section 10 of ESTA. The applicants even urged the court to find that the provisions of section 11 of ESTA were applicable to the respondents.

[97] Section 10 (3) of ESTA establishes a higher threshold for the applicants. It requires the court to consider the efforts made by both the owner or person in charge and the occupier to secure suitable alternative accommodation for the occupier. The applicants argued strongly that they offered relocation costs and that it is not their

obligation to secure suitable alternative accommodation. Section 10 (3) of ESTA stipulates that both parties must endeavor to secure alternative accommodation for the respondents; therefore, the submission that the responsibility to secure suitable accommodation rests solely with the Sixth Respondent is inconsistent with the legislation. The legislature anticipates that the applicants will make a genuine effort to secure suitable accommodation for the respondents. Offering relocation costs of the applicants and refusing to refer the matter to mediation is not a genuine effort to secure suitable accommodation as envisaged by the legislation.

[98] The applicants contend that the municipality has a constitutional duty to provide suitable alternative accommodation, and this obligation cannot be overlooked merely by asserting a lack of such accommodation. The applicants argued that they do not have any obligation to accommodate the respondents indefinitely. However, this is not the respondents' demand; rather, the respondents suggested that the matter be referred to mediation and that the parties engage in meaningful engagement. The Applicants failed to recognise the principles articulated by Pretorius AJ in *Claytile*²³. The learned judge held as follows:

'In Daniels it was held that ESTA can, under certain circumstances, place a positive obligation on a private landowner. This does not mean that private landowners carry all or the same duties as the State to fulfil the obligations set out in the Constitution.

But often adherence to a strict classification of horizontal or vertical application of the Bill of Rights obfuscates the true issue: whether, within the relevant constitutional and statutory context, a greater "give" is required from certain parties. Any "give" must be in line with the Constitution. This Court has long recognised that complex constitutional matters cannot be approached in a binary, all-or-nothing fashion, but the result is often found on a continuum that reflects the variations in the respective weight of the relevant considerations.'²⁴

[99] It is this greater "give" that is at the heart of this matter. The Court continued:

²³ *Baron and others v Claytile (Pty) Limited and Another 2017 (5) SA 329 (CC) (13 July 2017)*.

²⁴ *Ibid* para 35.

'The provisions of ESTA do not spell out, in section 10(2), who is responsible for making available suitable alternative accommodation. The logical role player would be the State. But where the State has been cited as a party and has meaningfully participated in the proceedings, and yet no suitable alternative accommodation could be found, is that necessarily the end of the matter? I think not. Section 10(2) has a narrow scope: it only applies in circumstances where an owner wishes to evict an occupier where there has been no breach or breakdown of the employment relationship. Eviction under those conditions should therefore be allowed only in exceptional circumstances. Within this narrow scope, it might therefore be appropriate to expect the private landowner to assist with the finding of, or, failing that, in truly exceptional circumstances, to provide suitable alternative accommodation. This must be a contextual enquiry, having due regard to all relevant circumstances.'²⁵

[100] Unlike in other matters, there has not been a breach or breakdown of the employment relationship in this case. The respondents were not residing free of charge in the applicants' premises, as the applicants allege. They were paying rent monthly. The respondents argued that the eviction would result in homelessness.

[101] In its founding affidavit and during the argument, the applicants submitted that both sections 10 and 11 of ESTA were applicable, and that the requirements of sections 10 and 11 had been complied with as follows: basis:

- i. *It is submitted that the respondents are capable of having access to alternative accommodation since (inter-alia);*
- ii. *The respondents have had sufficient time to obtain alternative accommodation and to vacate the property;*

²⁵ Ibid para 37.

- iii. *The First and Second Respondents, and possibly the Third Respondent, are gainfully employed elsewhere and therefore, in the financial position to afford alternative lodging of the firm;*
- iv. *The First Respondent had already vacated the farm;*
- v. *The First Respondent personally confirmed that his sister also owned her own immovable property in Franschhoek area, and such there are multiple housing opportunities within the family in the immediate area;*
- vi. *The applicants repeatedly invited the respondents to make reasonable suggestions regarding the manner in which the applicants could assist them with their relocation from the property., notwithstanding those invitations, the respondents did not respond and failed or refused to provide any suggestions in this regard which in itself is indicative that the respondents would not require the applicants' assistance and relocation from the property;*
- vii. *The Second and Third Respondents were gainfully employed elsewhere, and they should have utilised their income to secure alternative accommodation elsewhere;*

[102] Addressing compliance with the requirements of section 10(3) of ESTA, the applicants asserted that it would be just and equitable under the circumstances because the respondents were only permitted to occupy the premises until the expiry of the fixed term of the second rental agreement. Therefore, the applicants contend that it is fair for them to expect the respondents to vacate the property, particularly as there is no objective reason for the respondents to continue occupying the farm property. The respondents disputed most allegations made that the respondents have alternative accommodation.

[103] The applicants initially contended that they needed the house for their

corporate functions and later they contended that they needed it to house their other employees. The Magistrate accepted this without enquiry as to how the respondents' occupation in the farm hampered the applicants farming operations.

[104] In *Kanhym (Pty) Ltd v Simon Botha Mashiloane*,²⁶ Dodson J held that the applicant must show a causal connection between the unavailability of that particular dwelling and the serious prejudice which the owner's operation or operations will suffer. The learned judge said:

'I do not agree that a mere averment that the house is needed for another employee justifies the inference that the efficient carrying on of any operation of the applicant would be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the applicant. It was necessary that the applicant set out details of the serious prejudice which one or more of its operations would suffer and to identify those operations. The enquiry is specific to that particular occupier (the respondent in this instance) and the particular house which he or she occupies. A causal connection must be shown between the unavailability of that particular dwelling and the serious prejudice which the owner's operation or operations will suffer. No such proof was offered by the applicant.'²⁷

Further considerations

[105] In the pleadings, the Second Respondent was cited, but there were no separate substantive grounds for her eviction. The applicants only focused on the First Respondent. The Second Respondent is a 56-year-old woman, and the Third Respondent is a 37-year-old woman.

[106] The Second and Third Respondents were not invited to the meaningful engagement meetings and there were no separate grounds for the eviction of the Second Respondent. This is unsustainable post *Klaase and Another v van der*

²⁶ 1999(2) SA 55 (LCC).

²⁷ Ibid para 12.

Merwe N.O. and Others.²⁸ In that matter, Mrs Klaase appealed the decision of this Court where it held that Mrs Klaase occupied the premises under her husband. The Constitutional Court held:

‘The Land Claims Court’s finding that Mrs. Klaase occupied the premises “under her husband” subordinates her rights to those of Mr. Klaase. The phrase is demeaning and is not what is contemplated by section 10(3) of ESTA. It demeans Mrs. Klaase’s rights of equality and human dignity to describe her occupation in those terms. She is an occupier entitled to the protection of ESTA. The construction by the Land Claims Court would perpetuate the indignity suffered by many women similarly placed, whose rights as occupiers ought to be secured’²⁹

[107] Although the First and Second Respondents are siblings, I believe the same principles apply.

[108] In addition to the Magistrate’s erroneous conclusion that section 11 of ESTA applies, there are several troubling aspects of his judgment that merit censure from this Court.

[109] The Magistrate accepted the version presented by the applicants without demonstrating consideration of the respondent’s submissions. I assert this because comparing the Magistrate’s judgment with the applicants’ heads of argument inevitably reveals elements of plagiarism in the applicants’ submissions. However, I must empathetically point out that had this copying and pasting constituted a reiteration of the parties’ submissions, similarly followed by the respondents’ submissions, as is customary in judgment writing, the Magistrate would have avoided such criticism. However, his judgment appears to summarise the Applicant’s submissions as stated in the heads of argument.

Order

²⁸ 2016 (6) SA 131 (CC).

²⁹ Ibid para 66.

[110] Consequently, the following order is made:

1. The Magistrate's Court Order dated 1 August 2024 is set aside and substituted with the following order:
2. The Application is dismissed with no order to costs.

Flatela Luleka
Judge of the Land Court