IN THE LAND COURT OF SOUTH AFRICA

HELD AT RANDBURG

LANC161/2024

LANC161/2024B

BEFORE THE HONOURABLE FLATELA J

Heard on 25 and 29 November 2024 and 02 and 03 December 2024

Delivered on 15 January 2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES ~~/ NO~~
(2) OF INTEREST TO OTHER JUDGES: YES ~~/ NO~~
(3) REVISED: ~~YES~~ / NO

15/01/2025
DATE

[redacted]
SIGNATURE

In the matter between:

AUGUST MATSHIDISO SEBIGI	Applicant
and	
ANDRIES JACOBUS STRAUSS	First Respondent
GAUTENG RENTAL HOUSING TRIBUNAL	Second Respondent
THE SHERIFF, WESTONARIA	Third Respondent

THE MAGISTRATE, WESTONARIA Fourth Respondent

THE DEPARTMENT OF AGRICULTURE
LAND REFORM AND RURAL DEVELOPMENT Fifth Respondent

RAND WEST CITY LOCAL MUNICIPALITY Sixth Respondent

And

Case LANC 161/2024B

ANDRIES JACOBUS STRAUSS Applicant

and

AUGUST MATSHIDISO SEBIGI First Respondent

RAND WEST CITY LOCAL MUNICIPALITY Second Respondent

HEAD OF THE DEPARTMENT OF AGRICULTURE,
LAND REFORM AND RURAL DEVELOPMENT
GAUTENG Third Respondent

Summary: Land Reform – the restoration of the right to residence in terms of section 14 of the Extension of Security of Tenure Act 62 of 1997 ("ESTA") – urgent eviction of the Applicant in terms of section 15 of ESTA – whether the conduct of the First Respondent amounts to constructive eviction – whether the requirements of section 15 of ESTA had been fulfilled - after balancing competing rights of the parties, the application for the restoration of the use of residence in terms of section 14 of ESTA was granted, and the application for urgent eviction application was dismissed with costs

ORDER

1. In the matter under case number 161/2024, the following order is made:

    1. The First Respondent shall restore and replace all the windows, window panes, and doors in the structure occupied by the Applicant and restore to the Applicant any other rights and resources previously enjoyed by the Applicant at 11 Acacia Avenue, Dennydale AH, Westonaria, West Rand Municipality, Gauteng Province.
    2. The order of the Gauteng Housing Tribunal is declared a nullity.
    3. The Third Respondent is directed to release the items that it had attached pursuant to the order mentioned in paragraph 2.
    4. The Applicant is entitled to exercise their right to access water and electricity under sections 5 and 6 of ESTA.
    5. The Applicant and the First Respondent are directed to meaningfully engage with the Sixth Respondent regarding the connection of electricity and water
    6. The First Respondent is ordered to pay the costs of the application.

2. In the matter under case number 161/2024B, the following order is made:

    1. The application is dismissed with costs.

JUDGMENT

FLATELA J

Introduction

[1] This matter concerns the competing rights of the occupiers and owners under the Extension of Security of Tenure Act 62 of 1997 ("ESTA"). It specifically deals with the occupier's right to security of tenure and the owner's right to their property.

[2] The controversy concerns the use of the property described as HOLDING 11, DENNYDALE AGRICULTURAL HOLDINGS; REGISTRATION DIVISION IQ, PROVINCE OF GAUTENG, MEASURING 2,5805 (TWO COMMA FIVE EIGHT ZERO FIVE) Hectares, held under a deed of transfer number T9140/2024C situated at 11 ACACIA AVENUE, DENNYDALE, WESTONARIA ("the Property").

Parties

[3] The Applicant is August Matshidiso Sebigi, a 53-year-old unemployed male currently residing in the main house on the property with his wife, Ms. Ivodia Lekhoaba. He is the former employee of the previous owner of the property.

[4] The First Respondent is Andries Jacobus Strauss, a major male businessman currently residing at The Lodge, 28 Franshoek Street, Culombog Park. The First Respondent is the owner of the property. He became the registered owner of the property on 22 February 2024, having bought it from the previous owner on 02 November 2023.

[5] The Second Respondent is the Gauteng Rental Housing Tribunal, with its offices at 129 Fox Street, Marshalltown, Johannesburg. It is a statutory body appointed by the Gauteng MEC for Co-operative Governance in terms of the Rental Housing Act 50 of 1999 to resolve disputes between landlords and tenants of residential dwellings.

[6] The Third Respondent is Sheriff Westonaria. The Fourth Respondent is the Magistrate Westonaria. The Fifth Respondent is the Head of the Department of

Agriculture, Land Reform and Rural Development. The Sixth Respondent is Rand West City local municipality, a municipality as contemplated in section 2 of the Local Government Municipal Systems Act 32 of 2000. None of the State Respondents are participating in these proceedings.

Brief Background Facts

[7] The Applicant has been residing on the property for 24 years. He was employed by Mr Van Tonder, the previous owner of the property, as the general worker from 16 March 2000 to 15 December 2023. On 15 December 2023, Mr Van Tonder terminated the Applicant's contract of employment. Numerous notices to vacate have been issued to the Applicant; however, the Applicant failed to vacate the premises.

[8] On 01 October 2024, in a seemingly deliberate attempt to force the Applicant off the property, the First Respondent, without consulting the Applicant, removed the roof, windows, and doors from the section of the property occupied by the Applicant and his wife.

[9] On 03 October 2024, the Applicant launched an urgent restoration application in terms of section 14 of ESTA. The Applicant also sought an order to enforce his rights under sections 5 and 6 of ESTA. The Applicant contended that the First Respondent had made his living in the house intolerable by disconnecting the water and electricity supply and installing an excessively loud alarm, which would go off every time they passed a certain door in the house. The Applicant further contended that the First Respondent also charged rental arbitrarily, leading to the Second Respondent granting an order against the Applicant for payment of R22 400 (Twenty-two Thousand Four Hundred Rand) for arrear rental. Furthermore, the Applicant contended that his vehicles were removed from the property and were later attached by the Sheriff. He says his belongings were damaged after they were removed from the garage and placed in an open space outside the main house. The Applicant also stated that he had limited access to the property due to not having a key to the gate. The Applicant

argued that these actions constituted constructive eviction. This matter has been assigned case number 161/2024.

[10] On 11 October 2024, the Court issued a *Rule Nisi* calling upon the First Respondent to show cause, if any, to this Court on 05 November 2024 at 10:00 or soon after that, as the matter may be heard, why a final order should not be made.

[11] The parties attempted to settle the matter between themselves as directed by the Court; however, their differences remain unresolved.

[12] On 21 October 2024, the First Respondent filed an affidavit opposing the restoration application. Notably, the First Respondent admitted to removing the roof, doors, and windows but asserted that these actions were necessary to ensure the safety of everyone on the property, including the Applicant. The First Respondent contended that the main house had become structurally unstable and unsafe, and allowing the Applicant to remain there without repairs posed a risk of physical harm for which he could be held liable.

[13] On 22 October 2024, the First Respondent, by way of notice of motion, filed an urgent counter-claim seeking the eviction of the Applicant and all individuals occupying the property under him in terms of section 15 of ESTA (the urgent eviction application). The First Respondent asserts that on 01 October 2024, while his employees were conducting emergency repairs to the property, the Applicant allegedly threatened him with death, assaulted him with a knife, and attempted to take his life. The First Respondent further claims that the Applicant made threats to commit arson by attempting to siphon petrol from a vehicle belonging to one of the employees, Mr Motsai, with the intent of setting the vehicle, along with other vehicles on the property, on fire. The urgent eviction application has been assigned case number 161/2024B.

[14] Given the interconnectedness of facts and the relief sought, I will deliver a combined judgment for both applications. The application in terms of section 14 of ESTA will be referred to as the main application or restoration application

interchangeably. The application under section 15 of ESTA will be referred to as an urgent eviction application. In this context, I will refer to the Applicant as "the Applicant" and the First Respondent as "the First Respondent" in both cases.

[15] I deem it important to outline the chronological events regarding both applications before delving into their merits.

Chronological events

[16] On 03 October 2024, the Applicant approached this Court on an urgent basis for the relief sought in Part A and Part B of the application. In Part A, the Applicant sought the following orders:

(a) an order compelling the First Respondent to restore and replace windows and sliding doors to the structure occupied by the Applicant and to restore all other rights previously enjoyed by the Applicant at the property in question;
(b) an order interdicting and restraining the First Respondent from threatening, interfering, intimidating, or otherwise communicating with the Applicant and the Applicant's wife save through legal representatives; and
(c) a punitive costs order against the First Respondent on an attorney and own client scale.

[17] For Part B, the Applicant sought an order, among others, to review and set aside the decision of the Gauteng Rental Housing Tribunal dated 12 August 2024, an order directing the Third Respondent to release all items it has placed under judicial attachment, which belong to the Applicant and for the First Respondent to pay the costs on an attorney and own client scale.

[18] The matter served before Meer J on 03 October 2024. Directives were issued in terms of Rule 34(3)(b), pertaining to service and filing of papers, including directives upon the First Respondent. Meer J also called for a virtual conference on Friday, 11 October 2024, in an attempt to resolve the matter between the parties.

[19] On 10 October 2024, the First Respondent filed the notice to oppose the application. On 21 October 2024, the First Respondent filed his answering affidavit.

[20] On 22 October 2024, the First Respondent's legal representatives addressed a letter to Judge Meer's secretary and attached a separate urgent Counter Application headed 'Notice of Motion-Urgent Counter Application.' He advised that he has instructions to bring an urgent counter application for the urgent eviction of the Applicant.

[21] The First Respondent sought an order that *a Rule Nisi* be issued calling upon the Applicant or any other person having an interest in this matter to appear and show cause why the interim order should not be made final:

1. *that the (Applicant) First Respondent and all those who occupy the property and or under the First Respondent are in unlawful occupation of the property situated at holding 11, Denny Dale Agricultural. Holdings, also known as 11 Acacia Ave. Dennydale, Westanoria;*
2. *that it is just for the (Applicant) First Respondent, as well as all other persons occupying the property through and or under the First Respondent, to be evicted from the property in accordance with section 11(1) as read with Section 15 of the Extension of Security of Tenure Act 62 of 1997;*
3. *that the eviction order may be carried out if the (Applicant) First Respondent, as well as all persons occupying the property through and or under the First Respondent, have not vacated the property on the date determined by this Court under Prayers 3 above; and*
4. *the (Applicant) First Respondent is to pay the cost of this application on an attorney-client scale.*

[22] The urgent eviction application served before Mabasa AJ, who issued the directives regarding the service and filing of pleadings. The matter was set for Thursday, 21 November 2024. Both matters were consolidated and set down for a hearing on Monday, 25 November 2024.

[23] The matter was allocated to me on Monday, 25 November 2024. The pleadings of both parties were not a model of clarity. I ordered the Applicant to appear personally in terms of Rule 33(8) of the Rules of this Court, and the following issues were referred to for oral evidence:

(a) Whether the Applicant and his wife were occupiers in terms of ESTA and;
(b) whether their right to residence was lawfully terminated.

[24] Mr. Zulu, representing the Applicant, informed the Court that the Applicant is currently detained at the Krugersdorp Correctional Centre following his arrest, which stemmed from a criminal case opened by the First Respondent. Mr Zulu also informed the Court that the Applicant appeared in the Magistrate's Court on 14 November 2024 and was granted bail of R1000 (One Thousand Rands only), but his family could not raise the bail money. As a result of his detention, the Applicant was unable to appear before the Court. This matter was adjourned to 29 November 2024 to be heard virtually. The hearing could not proceed on 29 November 2024 due to technical issues, compounded by poor network reception at the Krugersdorp Correctional Centre. Consequently, the matter was rescheduled for 02 December 2024, and the hearings took place on 2, 3, and 4 December 2024 at the Land Court.

[25] The issues for determination are, firstly, whether the First Respondent constructively evicted the Applicant on 01 October 2024 and, if so, whether the Applicant is entitled to the restoration in terms of section 14 of ESTA. The Second issue is whether the First Respondent has met the jurisdictional requirements for the eviction application in terms of section 15 of ESTA.

[26] I now proceed to outline the legislative framework against which this case should be evaluated.

Legislative Framework

[27] The point of departure in all eviction applications is the Constitution. The preamble to the Constitution recognises the injustices of the past, and it states that one of its purposes was to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights.

[28] The rights implicated in this matter include the occupiers' right to have their human dignity respected and protected."[1] Furthermore, two socio-economic rights in sections 25 and 26 of the Constitution are also implicated: the right of the property owner not to be deprived of his property in terms of section 25 of the Constitution. Section 25 of the Constitution guarantees the right to one's property, enjoyment, use and disposal thereof and to not be deprived of those rights; at the same time, the rights of the occupiers to the security of tenure protected by section 25(6) 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.

[29] Section 26(3) of the Constitution guarantees everyone a right not to be arbitrarily deprived of their home, either by eviction or demolishment, without an order from the Court made after considering all relevant circumstances. Section 26(3) of the Constitution goes further to prohibit the operation of any legislation that would allow for arbitrary evictions.

[1] Section 10 of the Constitution.

[30] In *PE Municipality*[2], the Court provided a comprehensive analysis of the interconnectedness between the rights enshrined in Section 25 of the Constitution and their relationship with housing rights as provided in Section 26. Sachs J said :

> 'Much of this case, accordingly, turns on establishing an appropriate constitutional relationship between s 25, dealing with property rights, and s 26, concerned with housing rights. The Constitution recognises that land rights and the right of access to housing and of not being arbitrarily evicted, are closely intertwined. The stronger the right to land, the greater the prospect of a secure home. Thus, the need to strengthen the precarious position of people living in informal settlements is recognised by s 25 in a number of ways. Land reform is facilitated, and the State is required to foster conditions enabling citizens to gain access to land on an equitable basis; persons or communities with legally insecure tenure because of discriminatory laws are entitle to secure tenure or other redress; and persons dispossessed of property by racially discriminatory laws are entitled to restitution or other redress. Furthermore, ss 25 and 26 create a broad overlap between land rights and socio-economic rights, emphasising the duty on the State to seek to satisfy both, as this Court said in *Grootboom*.
>
> There are three salient features of the way the Constitution approaches the interrelationship between land hunger, homelessness and respect for property rights.
>
> In the first place, the rights of the dispossessed in relation to land are not generally delineated in unqualified terms as rights intended to be immediately self-enforcing. For the main part they presuppose the adoption of legislative and other measures to strengthen existing rights of tenure, open up access to land and progressively provide adequate housing. Thus, the Constitution is strongly supportive of orderly land reform, but does not purport to effect transfer of title by constitutional fiat. Nor does it sanction arbitrary seizure of land, whether by the State or by landless people. The involved in s 26(3) are defensive rather than affirmative. The land-owner cannot simply say: This is

[2] *Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC).*

my land, I can do with it what I want, and then send in the bulldozers or sledgehammers."[3]

[31] The observations were with respect to PIE legislation; however, I deem them relevant in this matter.

ESTA

[32] 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
c. regulate the conditions and circumstances under which the right of persons to reside in the land may be terminated;
d. 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]

[33] 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. ESTA recognises that unfair evictions are part of past discriminatory laws and practices.

[34] According to the preamble of ESTA, 'it is desirable

i. to ensure that the law should promote the achievement of long-term security of tenure for occupiers of land, where possible through the joint efforts of occupiers, land owners, and government bodies;

[3] Ibid at para 19 - 20.
[4] See the preamble and the individual chapter headings to Chapters II, III and IV.

ii. that the law should extend the rights of occupiers while giving due recognition to the rights, duties and legitimate interests of owners;
iii. that the law should regulate the eviction of vulnerable occupiers from land in a fair manner while recognising the right of land owners to apply to court for an eviction order in appropriate circumstances;
iv. to ensure that occupiers are not further prejudiced'.

[35] The ESTA provides greater protection for occupires. Chapter II of ESTA deals with the 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;
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]

[36] Nkabinde J explaining the purpose of ESTA in *Molusi and Others v Voges N.O. and Others*[6] held that:

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[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).

'To ensure the realisation of this under section 26(3), Parliament enacted ESTA. Parliament sought to limit homelessness by respecting, protecting, promoting and fulfilling the right to access to housing. The legislation was enacted, amongst other things, to improve the conditions of occupiers of premises on farm land and to afford them substantive protections that the common law remedies may not afford them. Chapter IV of ESTA, covering sections 8 to 15, deals with the rights of residence, and eviction.'[7]

[37] ESTA affords secure tenure as envisaged in section 25(6) to persons who reside on land that they do not own.[8] The mischief of ESTA is not only about securing tenure of ESTA occupiers." *It is also about affording occupiers the dignity that eluded most of them throughout colonial and apartheid regimes"*[9].

[38] In ***Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd 10 ,*** Moseneke DCJ, dealing with the Restitution of Rights Act, held

"It is now trite that not only the empowering provision of the Constitution but also of Restitution Act must be understood purposively because it is remedial legislation umbilically linked to the Constitution'. ... Therefore, in construing ' as a result of past discriminatory laws or practices' In its setting of section 2(1) of the Restitution Act, we are obliged to scrutinise its purpose. As we do so, we must seek to promote the spirit, purport and objects of the Bill of Rights. We must prefer a generous construction over a merely textual or legalistic one in order to afford claimants the fullest protection of their constitutional guarantees. In searching for the purpose, it is legitimate to seek to identify the mischief to be remedied. In part, that is why it is helpful, where appropriate, to pay due attention to the social and historical background of the legislation. We must understand the provision within the context of the grid, if any, of related provisions and of the statute as a whole, including the underlying values.

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[7] Ibid para 7.
[8] *Daniels v Scribante and Another 2017 (4) SA 341 (CC)* para 13
[9] Ibid para 23
[10] *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd* [2007] ZACC 12; 2007 (6) SA 199 (CC); 2007 (10) BCLR 1027 (CC) (*Goedgelegen*).

Although the text is often the starting point of any statutory construction, the meaning it bears must pay due regard to context. This is so even when the ordinary meaning of the provisions of the provisions to be construed is clear and unambiguous the legislation."[11]

[39] In *Daniels,* Madlanga ADCJ held that the mischief that section 25(6) and ESTA are seeking to address is not only about securing the tenure of ESTA occupiers; it is about affording occupiers *the dignity that eluded most of them throughout the colonial and apartheid regimes.*[12] The learned judge emphasised that when interpreting Section 25(6) and ESTA, we must adopt a purposive interpretation that best advances their noble purpose.

[40] Chapter 5 of ESTA deals with the fundamental rights of the occupier, the owner or the person in charge, whereas Chapter 6 deals with the rights and duties of the occupier.

[41] To determine if the First Respondent's conduct amounts to constructive eviction of the Applicant, it is crucial to examine sections 5, 6 and 7 of ESTA, which outlines the rights and duties of occupiers and owners.

[42] Section 5 of ESTA provides:

'5. Fundamental rights

Subject to limitations which are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, an occupier, an owner and a person in charge shall have the right to-

(a) human dignity;
(b) freedom and security of the person;
(c) privacy;
(d) freedom of religion, belief and opinion and of expression;
(e) freedom of association; and
(f) freedom of movement,

with due regard to the objects of the Constitution and this Act.'

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[11] *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd* [2007] ZACC 12; 2007 (6) SA 199 (CC); 2007 (10) BCLR 1027 (CC) (*Goedgelegen*) at para 53.

[12] Id at para 23.

Section 6 of ESTA provides:

'6. Rights and duties of occupier

(1) Subject to the provisions of this Act, an occupier shall have the right to reside on and use the land on which he or she resided and which he or she used on or after 4 February 1997, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.

(2) Without prejudice to the generality of the provisions of section 5 and subsection (1), and balanced with the rights of the owner or person in charge, an occupier shall have the right-

(a) to security of tenure;

(b) to receive bona fide visitors at reasonable times and for reasonable periods: Provided that-

(i) the owner or person in charge may impose reasonable conditions that are normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land;

and

(ii) the occupier shall be liable for any act, omission or conduct of any of his or her visitors causing damage to others while such a visitor is on the land if the occupier, by taking reasonable steps, could have prevented such damage;

(c) to receive postal or other communication;

(d) to family life in accordance with the culture of that family: Provided that this right shall not apply in respect of single sex accommodation provided in hostels erected before 4 February 1997;

(dA) to bury a deceased member of his or her family who, at the time of that person's death, was residing on the land on which the occupier is residing, in accordance with their religion or cultural belief, if an established practice in respect of the land exists;

(dB) to take reasonable measures to maintain the dwelling occupied by him or her or members of his or her family;

(e) not to be denied or deprived of access to water; and

(f) not to be denied or deprived of access to educational or health services.

(3) An occupier may not-

(a) intentionally and unlawfully harm any other person occupying the land;

(b) intentionally and unlawfully cause material damage to the property of the owner or person in charge;

(c) engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or

(d) enable or assist unauthorised persons to establish new dwellings on the land in question.

(4) Any person shall have the right to visit and maintain, or erect a tombstone on, mark, place symbols or perform rites on, his or her family graves on land which belongs to another person, subject to any reasonable condition imposed by the owner or person in charge of such land in order to safeguard life or property or to prevent the undue disruption of work on the land.

(5) The family members of an occupier contemplated in section 8(4) of this Act shall on his or her death have a right to bury that occupier on the land on which he or she was residing at the time of his or her death, in accordance with their religion or cultural belief, subject to any reasonable conditions which are not more onerous than those prescribed and that may be imposed by the owner or person in charge.'

[43] Section 7 of ESTA provides:

'**7. Rights and duties of owner**

'(1) The owner or person in charge may have a trespassing animal usually or actually in the care of an occupier impounded and removed to a pound in accordance with the provisions of any applicable law, if the owner or person in charge has given the occupier at least 72 hours' notice to remove the animal from the place where it is trespassing and the occupier has failed to do so: Provided that the owner or person in charge may take reasonable steps to prevent the animal from causing damage during those 72 hours.

(2) An owner or person in charge may not prejudice an occupier if one of the reasons for the prejudice is the past, present or anticipated exercise of any legal right.

(3) If it is proved in any proceedings in terms of subsection (2), that the effect of the conduct complained of is to prejudice an occupier as set out in that subsection, it shall be presumed, unless the contrary is proved, that such prejudice was caused for one of the reasons referred to in subsection (2).'

[44] Having outlined the legislative framework upon which these matters must be assessed, I now proceed to assess the respective applications separately based on

the facts and evidence they were presented. I will begin with the restoration application.

The Restoration Application

Witnesses

[45] The Applicant, Mr August Matshidiso Sebigi, is the main and the only witness who testified in support of the restoration application. At the commencement of the hearing, Mr Roets, representing the First Respondent, stated he would call five witnesses: the First Respondent, Mr Andries Jacobus Strauss, Mr Marshell Nhlapho, Mr Sam Motsai, and two security personnel. The security personnel had submitted statements to the police on 04 October 2024, included in the Applicant's pleadings. In the end, only three witnesses testified: the First Respondent, who opposed the restoration application and supported the urgent eviction; Mr Nhlapho and Mr Motsai. The security personnel did not testify. Mr Roets informed me that they had an emergency, although they were present on the first day of the hearing.

Evidence

Applicant- Mr August Matshidiso Sebigi's testimony

[46] The Applicant testified that he arrived at the property on 16 March 2000 and worked as a general labourer for the previous owner, Mr Van Tonder, until his employment was terminated on 15 December 2023. He initially received accommodation and lived alone until 2015; thereafter, he was joined by his wife. He testified that the dwelling he was initially accommodated in was a hut made of plastic material; was extremely hot and inhabitable. The Applicant testified that in 2017, following a robbery incident on the property in which Mr Van Tonder was shot, Mr Van Tonder requested that he move into the main house with him to ensure his safety. As Mr. Van Tonder's health declined due to lung cancer and heart issues, Mr. Van Tonder's family requested him to look after him. He says he slept next to Mr. Van Tonder's bed

for a month before Mr. Van Tonder's family took him to Pretoria to live with him. He says both Mr. Van Tonder and his family requested him to continue residing in the main house, where he and his wife had lived ever since.

[47] The Applicant says that he continued his employment with Mr. Van Tonder, managing client deliveries and reporting to him while Mr. Van Tonder permanently resided in Pretoria. During this period, the Applicant used public transportation to commute to Pretoria. At one point, he was mugged in the Johannesburg CBD while returning from Pretoria to report to Mr. Van Tonder. He was robbed of his cell phone. Mr. Van Tonder bought him a new phone to replace the one that was stolen.

[48] The Applicant testified that on 01 December 2023, the First Respondent arrived at the property with some people to install poles for fencing while the Applicant continued to do his work of planting trees. He was still employed by Mr Van Tonder. The First Respondent called the Applicant and the other employees of the previous owner to inform them that he had purchased the property. The Applicant asked the First Respondent for a job, but the First Respondent replied that he did not have any work available for him at that time. However, he requested the Applicant's cellphone number and promised to call him once he had finished fixing the property. The First Respondent also informed him of his intention to convert the main house into an office space and instructed the Applicant that he should vacate the main house.

[49] The Applicant says that on Sunday during that week, he went to church, and upon return, other employees told him that the First Respondent told them that he was going to employ them, but he would evict the Applicant. The First Respondent disputes this. I will revert to this later in the judgment.

[50] The Applicant testified that on 07 December 2023, the First Respondent returned to the property and told him to vacate the property. He mentioned that he would come with his lawyer on 08 December 2023. On 08 December 2023, the First Respondent arrived at the property with an individual named Mr. De Lange, who identified himself as the First Respondent's lawyer. Mr. De Lange informed the

Applicant that he had eight days to vacate the property and instructed him to remove his vehicles, which were parked near the main house.

[51] The Applicant said that when he failed to move his cars as instructed, the First Respondent hired a Truck Loader Backhoe, commonly known as a TLB, to remove the cars and park them outside the property. He says his cars were parked outside the property for 11 months before the Sheriff attached them pursuant to the ruling of the Second Respondent, which granted the First Respondent an order to the effect that the Applicant was liable for the payment of R22 400 (Twenty -two thousand four hundred) in arrear rental. He says that his movable property was removed from the garage, placed in an open area near the main house, and exposed to harsh weather conditions, leading to significant damage and loss of valuable items. The First Respondent conceded to removing the Applicant's vehicles but stated that he sought legal advice first from Mr. De Lange, who gave him the go-ahead to remove them.

[52] The Applicant testified that on 01 December 2023, the First Respondent cut off the electricity supply to the section where he and his wife resided. The First Respondent then closed off the toilet they were using and installed a door in its place. Behind that door, there is an alarm that goes off at any time. As a result, the Applicant and his wife no longer have access to the toilet and must rely on their neighbours for assistance whenever they need to use it.

[53] The Applicant says his employment contract was terminated on 15 December 2023, and he was given a two-week notice of termination of employment ending on 01 January 2024. This is a common cause.

Notice to vacate

[54] The Applicant testified that on 24 December 2023, Mr De Lange provided him and his wife with a written notice to vacate the property, issued through a company known as Frontline Financial Services. The notice instructed them to vacate the premises by 01 January 2024, as the Applicant was currently occupying the property, and the First Respondent wished to exercise his property rights as enshrined in section

25(1) of the Constitution. The Applicant did not comply with this notice; instead, he sought legal advice from the offices of Legal Aid South Africa. Following the intervention of Pogiso Maluleke from the Legal Aid offices, Mr De Lange issued a subsequent notice on 02 February 2024, granting the Applicant an extension until 29 February to vacate the property.

[55] The Applicant testified that at the end of September 2024, the First Respondent entered the section of the main house where the Applicant stays with his wife, forcibly kicked the windows, and shattered the window panes. The First Respondent threatened to return the following day to remove the roof, windows, and doors. On 01 October 2024, the First Respondent arrived with his employees, and his employees proceeded to remove the roof, window and door frames. He alleges that he called the police for assistance but received no help. In his affidavit, he stated that the First Respondent told him he could do whatever he wanted to; it was his property. Mr Roets objected to this evidence, claiming it was hearsay.

[56] The Applicant says these actions by the First Respondent were aimed at forcing him and his wife to vacate the main house, leaving it exposed and without these essential structures. The Applicant recounted that he and his wife were forced to sleep outside in harsh weather conditions until the court granted an interim order and ordered the First Respondent to restore the property. He says that he fell ill from sleeping outdoors and required medical attention; he went to the hospital and was treated as an outpatient. The Applicant argues that the First Respondent has violated his rights under Section 26(1) of the Constitution. The Applicant contends that the First Respondent's actions amount to constructive eviction

[57] Furthermore, the Applicant testified that the First Respondent had been abusive towards him, asserting that he possesses evidence of this abuse in the form of videos recorded without the First Respondent's awareness. The Applicant further stated in his affidavit and when testifying that the First Respondent had made his life and his continuous stay on the property unbearable in that he has made numerous attempts to evict him and his wife from the property in that the First Respondent installed an

alarm system in the Applicant's bedroom in the main house. The First Respondent installed an alarm behind the door erected to close the toilet, which caused an unbearable noise every time the Applicant went past the door where this system was installed. The Applicant did not have a remote alarm/code to switch it off, but one of the employees, Mr Nhlapho, had the remote control. The noise made by the alarm has badly affected his hearing, and their access to the property is restricted. The Applicant and his wife were not given keys to the gate. The keys were given to the First Respondent's employees, Mr Marshell Nhlapho and Sam Motsai, as well as the security personnel employed by the First Respondent. While Mr Nhlapho and Mr Motsai opened the gate for him, the security personnel did not open it for him based on the instructions of the First Respondent. He says he was also not allowed to buy paraffin for his Primus stove.

On arrear rental

[58] In his founding affidavit, the Applicant asserts that since January 2024, the First Respondent has been issuing monthly rental invoices in the amount of R2,800, which the Applicant says is arbitrary and unwarranted. In his affidavit, the Applicant states that in May 2024, the First Respondent commenced proceedings before the Gauteng Rental Housing Tribunal to demand the arrear rental payments. On 12 August 2024, the Second Respondent granted a default judgment declaring that the Applicant is in arrears for a total of R22,400. This ruling was based on the determination that the Applicant had violated the rental agreement between the parties.

[59] The Applicant says the First Respondent is also badmouthing him to the neighbourhood community, which resulted in him losing his job.

[60] The Applicant indicates that the First Respondent has opened a criminal case against him. On 13 November 2024, he went to the police station to meet with the investigating officer assigned to the case, where he was subsequently arrested. He appeared in court on 14 November 2024 and was granted bail of R1,300. The case is scheduled for a hearing on 9 January 2025, and the police have instructed him not to discuss the details of the case with anyone until that date.

The First Respondent's compliance with the interim court order

[61] The Applicant testified that the First Respondent had not complied with the interim order, as he closed off the windows by covering them with corrugated iron sheets and had not repaired the glass. The Applicants are currently using two bedrooms, a passage, and a sitting room. The windows in both bedrooms have been covered with corrugated iron sheets.

[62] During cross-examination, the Applicant stated he worked for Mr Van Tonder from 1988 to 1989 and travelled by bicycle from the township. He resigned but was re-employed in 2000 with accommodation provided. He acknowledged that he was given accommodation because of his employment but claimed it was not terminated when his employment was terminated. He recalled informing Mr Van Tonder about a potential eviction by the First Respondent, to which Mr Van Tonder replied that he could stay until a house was built for him by the First Respondent. The Applicant objected to this as hearsay.

[63] During cross-examination, the Applicant acknowledged that he was advised to relocate to a shack or a Wendy house; however, he declined this option, asserting that it did not constitute suitable alternative accommodation. It was presented to the Applicant that he had resided in the shack for 18 years without raising any objections, thereby challenging the validity of his reasons for rejecting the proposed offer. In response, the Applicant stated that the shack is small and uninhabitable. Mr Roets stated that Mr Nhlapho lived in this one-room shack with his wife and children. The First Respondent offered him a Wendy house and storage for his belongings. The Applicant stated that at the time he was living in the dwelling, he had a bed, a small table and a primus stove.

[64] It was suggested that the main house was fully furnished with Mr. Van Tonder's furniture. The Applicant stated that he had accumulated many items since 2017. When asked how he had acquired so many things, the Applicant explained that he had been using a lay-by system to purchase them. The Applicant stated that these items were stored in the garage and placed outside the house; they are now damaged.

[65] Mr Roets suggested to the Applicant that the house was structurally damaged, with cracks, rotten rafters, and water leaking in whenever it rained. Mr Roets suggested that the reason Mr Van Tonder left the main house to live with his family in Pretoria was that the house was uninhabitable. The Applicant strongly denied this claim. He explained that in 2017, Mr. Van Tonder's health deteriorated, and during that time, his family asked the Applicant to look after him. The Applicant stated that Mr. Van Tonder left the property to be closer to his family due to his illness. He emphasised that the house was in good condition, noting only that the garage had some cracks.

[66] Mr Roets suggested that the Applicant was offered alternative accommodation in the form of a shack from 1 April 2023 - 30 April 2024. The Applicant admitted that he was offered the shack but stated that he was given 30 days to leave the property.

[67] Mr. Roets informed the Applicant that Mr. Rawland, the director of CISS, had offered him a two-bedroom flat in Johannesburg. However, the Applicant denied that such an offer was ever made. He stated that Mr. Rawland never discussed alternative accommodation with him; instead, he only delivered papers from the Second Respondent.

[68] It was suggested that the Applicant and his wife have alternative accommodation since his spouse had not been living on the property for two months; she had been staying with his sister, who lives in the neighborhood. However, the Applicant denied that he and his wife have any alternative housing available, stating that the eviction would result in their homelessness.

[69] The Applicant reiterated that the First Respondent cut off the electricity supply on 02 December 2023. It was put to the Applicant that all these things the Applicant was complaining about, that is, termination of water and electricity, removal of roof, windows and doors, were necessary to effect repairs. The Applicant denied this.

[70] Concerning the ruling of the Rental Housing Tribunal, the Applicant acknowledged that he was served with the papers but indicated that he had forwarded them to his lawyer, Mr. Zulu. During cross-examination, the Applicant was questioned about why he did not appeal the ruling of the Rental Housing Tribunal. The Applicant responded that he was unfamiliar with the tribunal procedures and had directed all his communications to Mr. Zulu.

[71] Dealing with the events of 01 October 2024, counsel for the First Respondent suggested that renovations were required due to structural damage to the house, rendering it unsuitable for human habitation. The Applicant disputed this claim, maintaining that the house was in good condition, although he acknowledged that the walls had cracked as a result of the roofing removal. Additionally, it was put to the Applicant that on the day the roof was removed, the Applicant threatened the First Respondent with a knife, resulting in the issuance of a protection order against him, which was finalised on 29 October 2024. The Applicant denied the allegation of an attack on the First Respondent, stating that he believed he was being falsely accused.

Alternative Accommodation

[72] During cross-examination, it was suggested that his wife had not been living on the property for the past two months. She had been staying with her sister, who resides on a neighbouring farm. As a result, their eviction would not result in homelessness, as she has alternative accommodation. The Applicant, however, denied that his wife was permanently living with her sister.

[73] The First Respondent alleged that the Applicant caused members of the Economic Freedom Fighters (EFF) to threaten the First Respondent and his family.

The Applicant denied this allegation, stating that a member of the EFF and another white man approached him on the farm as he was returning from work. The EFF member asked him why he had not visited their office in Johannesburg to provide feedback instead of harassing the First Respondent. The EFF member also advised him to accept a final settlement of R17,000 and to vacate the premises.

The First Respondent's pleaded case and evidence.

Mr Andries Jacobus Strauss's evidence

[74] The First Respondent testified that he approached Mr. Van Tonder, whom he had known for some time, with the intention of purchasing his property to expand his business. He stated that he used a pension payout to make the purchase. According to the First Respondent, the agreement of sale stipulated specifically that he would receive the property in a vacant condition. He further indicated that before taking the transfer of the property, Mr. Van Tonder terminated the employment contracts of all his employees and settled their dues. According to the First Respondent's answering affidavit, the Applicant's employment was terminated on 15 December 2023[13].

[75] The First Respondent says that immediately after purchasing the property in November 2023, he went to the property with his employees to clean and fence it. In December 2023, he met the employees of the previous owner who were still residing on the property to introduce himself and to discuss their residence and possible employment. The First Respondent says that in that meeting, the Applicant, purporting to be speaking on behalf of the employees, said that "they will not work for him," and when he asked him the reason for not wanting to work for him, he said because he works so hard. The First Respondent says that later, Mr Marshell Nhlapho and other workers came to him and asked him to employ them, and they also advised that the Applicant had no mandate to speak on their behalf. Mr Marshell Nhlapho, in his evidence, had no recollection of these events. He did not recall the Applicant speaking

[13] Paragraph 12 of the Answering Affidavit.

on their behalf, he said. Mr Nhlapho testified that he went to the First Respondent to ask for work for him and his family members.

[76] The First Respondent testified that the workers were living in deplorable conditions in shacks not fit for human habitation; he then demolished the shacks and built decent houses for Mr. Nhlapho and Mr. Motsai's families.

[77] The First Respondent asserts that he notified the Applicant that he must vacate the main house, as he plans to convert it into an office space. He indicates that on 01 October 2024, he conducted emergency repairs on the main house. These repairs were deemed necessary to ensure the safety of all individuals working and residing on the property, including the Applicant, who could have faced serious injury or worse in the event of a structural collapse. The Applicant would have pursued damages against the First Respondent. Nevertheless, the Applicant refused to vacate the premises and instructed him to take whatever actions he considered appropriate regarding the situation.

[78] The First Respondent testified that he had offered the Applicant alternative accommodation in the form of a shack, a Wendy house and a storeroom facility for his belongings in the pottery section. Still, the Applicant refused to take up the offer, stating that the space was too small for him. The First Respondent avers that the Applicant has caused his urgency, which is the result of his prejudice in the matter.

[79] The First Respondent testified that he intended to reside on the property; however, he is currently renting a small flat in Randfontein. He expresses a growing concern for his safety on the property due to multiple incidents in which the Applicant, along with his wife and brother-in-law, allegedly threatened his life. The First Respondent says that the Applicant's brother-in-law has also threatened his workers with arson. Furthermore, the First Respondent reports that the Applicant's wife has issued threats against his business partner, and he characterises the Applicant as exhibiting extreme aggression toward both him and his employees. He notes that the

Applicant has also displayed aggressive behaviours toward the children of his employees, reprimanding them for playing near the main house.

[80] The First Respondent testified that the Applicant had agreed on multiple occasions to vacate the house. During Easter weekend in 2024, the Applicant promised to leave the house after returning from church, and they shook hands as a sign of their agreement. However, the Applicant did not leave the premises. The First Respondent alleges that the Applicant is claiming ownership of the farm.

On Compliance with the interim court Order

[81] The First Respondent says that he had complied with the interim court order, that the state of the property has been greatly improved, and that it is no longer unstable and unsafe. Neither renovations nor repairs are necessary. The First Respondent testified that he had fixed the roofing. However, he could not completely fix the whole house 100%; he used corrugated iron sheets to close the windows. The First Respondent states that it is impossible to restore the property to its original state because the wooden structure is falling apart, and the other section has asbestos.

[82] The First Respondent says the Applicant's wife has not been staying on the property for the past two months, and he knows that because he had placed some wood in a strategic place by the door as a monitor to see if there was access to the house. He says there was no access to the main house, and his employees confirmed that the Applicant's wife is residing with her sister on the neighboring property.

[83] During cross-examination, in response to the question of why he did not follow ESTA procedure in evicting the Applicant when the notice to vacate expired, the First Respondent explained that after the Applicant failed to comply with the notices, he instructed Mr De Lange to file an eviction application in the High Court and accompanied him there. However, Mr. De Lange later informed him that he could not proceed with the eviction. The First Respondent also utilised the services of a security company called CISS, which assisted him with the proceedings related to the Gauteng

Rental Housing matter. He stated that Mr. Danny, the Director of CISS, even offered the Applicant a two-bedroom flat in Johannesburg at no cost. While a confirmatory affidavit was not obtained, the First Respondent indicated that this was due to the urgent nature of the application.

Damages suffered

[84] The First Respondent testified that the pottery section had been closed for the past five months. They do not allow customers to visit their nursery because the presence of the Applicant poses a security risk; their employees are frightened of him. As a result, the staff is tiptoeing around him and is not functioning at full capacity. Security is compromised, and the business is not operating at 100%. The First Respondent incurs costs related to delivery, pottery, and travel.

[85] During cross-examination, the First Respondent acknowledged that the electricity and water were disconnected at the main house—electricity due to wiring issues, as advised by an electrician, and water due to high charges, and the geyser was disconnected. He also admitted that the alarm system had been malfunctioning but claimed that the Applicant had denied the security company access to the main alarm box in his bedroom. He says that at the time of the hearing, the alarm system was completely off, and security guards were no longer working for him.

[86] Under cross-examination, the First Respondent said that he had offered the Applicant the storage space in the pottery section. He denied removing the Applicant's property from the little garage. He stated that he had removed Mr Van Tonder's belongings after consultations with him. Mr Van Tonder advised that he could remove them and place them outside the house so the Applicant could take them if he wanted them.

[87] In relation to the removal of the Applicant's vehicles, the First Respondent states that he spoke with Mr De Lange to inquire if he could move the Applicant's vehicles. Mr De Lange informed him that he could proceed with moving them. The

First Respondent also mentioned that whenever he intends to act regarding the main house, he will first seek legal advice from Mr De Lange.

[88] During the re-examination, the First Respondent maintained that Mr. Van Tonder terminated the Applicant's right of residence following a significant dispute in which the Applicant used abusive language towards him. The First Respondent further asserted that he discontinued Mr. De Lange's services upon realising that Mr. De Lange was not a qualified lawyer in July 2024. He then engaged the services of CISS, a company that assisted with the proceedings before the Rental Housing Tribunal. He contended that the Applicant consented to vacate the property; however, the Applicant has not yet complied with this agreement. As a result, it became necessary to file an urgent eviction application.

[89] Concerning the alarm system, the First Respondent admits that it was not functioning properly. It was activated using a remote control that one of his employees had. He claims that the Applicant denied the security company access to the main bedroom to repair the alarm. The First Respondent testified that the alarm system is now completely turned off. He says that the security personnel were let go three weeks ago. He has since installed an electric fence around the property.

[90] Regarding compliance with the court order, he states that they have complied with the court order. The property has been restored, and he has closed up the windows with corrugated sheets. However, it was impossible to return the property to its original state.

Re-Examination

[91] The Applicant admitted that he disconnected the electricity based on the electrician's advice and the water supply. The First Respondent indicated that the right to reside was linked to employment. Mr Van Tonder had issued termination notices to all employees, which prompted the Applicant to confront Mr Van Tonder.

[92] Regarding cars, the First Respondent admitted that the cars were removed and parked in the front portion outside of the fence. The First Respondent said that Mr Van Tonder closed down the business in December, attended to the property and told the former workers that if they wanted to work for him, they could, but the Applicant said they would not.

[93] In relation to the outstanding rental payments, the First Respondent acknowledged that there was no formal agreement regarding the rental amount. Mr. De Lange said that he must automatically charge the applicant R2,800 per month for rent if he fails to vacate. The First Respondent informed the Applicant that if he did not vacate the premises, he would begin charging him this rent on a monthly basis. This is contrary to what is asserted in the affidavit. He says he terminated the services of Mr De Lange between July/August. The First Respondent testified that the director of CISS had offered the Applicant a two-bedroom flat in their head offices.

[94] The First Respondent testified that the Applicant had promised to vacate, but he has not vacated, hence the urgent application.

[95] The second witness that the First Respondent called is Mr Marshell Nhlapho.

Marshell Nhlapho testimony

[96] Mr. Nhlapho testified that he started working for the late Mr. Van Tonder eight years ago and is now employed by the First Respondent. Mr Marshell testified before that it was an express and material term of all employment agreements entered into with Mr Van Tonder that an employee could reside on the property only for as long as he works on the property.

[97] Mr Roets asked Mr Nhlapho whether all employees shared the same terms of employment and stated that the agreement stipulated that upon the termination of the contract, the right to residence would also end. Mr Nhlapho responded that he was not familiar with the terms of the contract as he was not provided with a contract by the

previous owner. He says he was employed and provided with accommodation in a shack, and he lived there for eight years. He says he never received any notice to vacate after the termination of the contract.

[98] Mr. Nhlapho says that the Applicant was only asked to guard the main house and not to live in it. He also confirmed that the Applicant was offered a Wendy house and a shack in January 2024, which the Applicant declined

[99] During cross-examination, Mr Nhlapho confirmed that the alarm box was located in the Applicant's bedroom. He says the alarm was malfunctioning in that it would go off every 10 seconds; however, he was unable to turn it off with the remote control he had been given. Only the First Respondent was able to deactivate the alarm using his phone. Mr Nhlapho also mentioned that the security company had come to fix the alarm 3 to 4 times, but the Applicant was never present to grant them access. Additionally, Mr. Nhlapho confirmed that the Applicant had previously lived in a two-room shack and suggested that the Applicant should be asked to guard the main house instead of living in it.

[100] On re-examination, Mr Nhlapho confirmed that the First Respondent offered the Applicant alternative accommodation in the form of a shack and a Wendy house. Still, he refused to vacate the main house.

[101] That was the evidence of the parties.

Inspection *in loco conducted* on 03 December 2023

[102] It is now convenient to give a brief description of the property and its surroundings, as revealed in the inspection *in loco*. The inspection *in loco* was conducted on 03 December 2024.

[103] The inspection *in loco* revealed the main house is divided into two sections, which are used by both the Applicant and the First Respondent, along with his employees. The Applicant occupies three rooms: two bedrooms and an open-plan sitting/lounge area. There is also a locked room that the Applicant identified as the toilet, which he cannot access because the First Respondent installed a door and locked it. According to the Applicant, an alarm inside this locked room goes off whenever someone passes by. The Applicant indicated that the alarm is prone to frequent activations, producing a loud noise that adversely affects their hearing due to its proximity. In response to the alarm's activation, the Applicant stated that they are compelled to use earplugs to safeguard their hearing from the potentially harmful noise levels.

[104] Additionally, it was noted that the open-plan sitting, and lounge area is empty and contains no furniture.

[105] It has been noted that the section of the house occupied by the Applicant does not have access to water and electricity. Additionally, the main security alarm system box is located in the Applicant's main bedroom.

[106] The inspection in *loco* revealed that while the roofing had been replaced, the window frames and glass panes were not restored. Instead, the First Respondent covered the window openings with corrugated iron sheets. The broken window glass was still visible on the floor.

[107] The inspection revealed that the First Respondent and his employees occupy a designated section of the house that includes a pottery-making area, a bathroom, and a kitchen. Additionally, the First Respondent uses another room to store his belongings. It is important to note that the Applicant does not have access to the section of the house used by the First Respondent and his employees. The inspection also confirmed that this area has access to water and electricity. Furthermore, it was observed that a female potter was actively engaged in pottery-making within the designated pottery area.

[108] The gate is a steel structure located far from where the First Respondent's employees live. It must be opened manually. A nursery is situated between the gate and the employee residence.

[109] The structures that were offered as alternative accommodation, a Wendy house and a shack, were inspected. The Wendy house is currently being used as a storage space for the First Respondent's belongings. The shack is also very small, with limited windows. It can only accommodate a single bed and a few movable items. Currently, the shack is occupied by one of the First Respondent's employees, who lives there alone. It was noted that both the shack and Wendy house have no access to sanitation facilities, water, and electricity

[110] It was noted that movable property, including a couch, refrigerator, wardrobe, television, and various other items, had been disposed of outside the main house. These items are now damaged. The Applicants assert that these possessions belonged to him. In contrast, the First Respondent claims that these items were outdated and non-functional, having belonged to the previous owner and stored in the garage. He says after consulting with the previous owner, the First Respondent was advised to place them outside and was informed that the Applicant was welcome to retrieve them if desired.

[111] The employee's residence is situated at the back of the property, where two houses are provided for the families of Mr. Nhlapho and Mr. Motsai. Each house has one bedroom and an open lounge. Mr. Nhlapho has pointed out that the bathroom is incomplete. There is no proper electrical cubing in these houses; Mr Nhlapho mentions that they connect electricity from the pump using an extension cord. It was also observed that there are several hanging wires in Mr. Nhlapho's house.

Dispute of facts

[112] There is a dispute of facts between the parties regarding the reasons for removing the roof, windows, and doors, whether the right to reside was terminated as well as the circumstances of the alleged attempted stabbing.

[113] For the following reasons, I believe there is no genuine dispute in the restoration application. The oral testimony did not alter the probabilities evident from the affidavits. In *Administrator, Transvaal, and others v Theletsane and others 1991 (2) SA 192*, the following was stated at 197 A – C:

> 'In motion proceedings, as a general rule, decisions of fact cannot properly be founded on a consideration of the probabilities, unless the Court is satisfied that there is no real and genuine dispute on the facts in question, or that the one party's allegations are so far-fetched or clearly untenable as to warrant their rejection merely on the papers, or that viva voce evidence would not disturb the balance of probabilities appearing from the affidavits. This trite rule applies to instances of disputes of fact (see eg Sewmungal and Another N.N.O v Regent Cinema 1977 1) SA 814 (N) at 818 G – 821 G and the authorities discussed there) and also in cases where an applicant seeks to obtain final relief on the basis of the undisputed facts together with the facts contained in the respondent's affidavits (see Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634 E – 635 C and the authorities cited there).'

[114] The only relevant factual issue that must be resolved is whether the Respondent's action amounted to eviction and, if so, whether the Applicant is entitled to the relief sought.

[115] First, Respondent argued that to assess the Applicant's entitlement to the relief sought, I must first determine whether the Applicant has the right to reside in the main house.

First Respondent's submissions

[116] The Applicant argued that the right to residence on the land was terminated lawfully in accordance with Section 8 of ESTA, and the Applicant is not entitled to reside on the land or to the relief sought should be dismissed with costs.

[117] It was further submitted that The First Respondent, in the main, that the Applicant had no consent to reside in the main house; this right to reside was granted only for a smaller structure adjacent to a dam and has since been lawfully terminated.

[118] The First Respondent argued further that the Applicant's right to reside on the land arose solely from the employment agreement, which was terminated after Mr. Van Tonder dismissed the Applicant. As a result, the Applicant's right to reside was lawfully terminated in terms of section 8 of ESTA. Therefore, the Applicant is not entitled to remain on the property or to the relief sought in his Notice of Motion, which should be dismissed with costs. Furthermore, the Applicant's contention that the First Respondent was required to terminate this right is unfounded, as the right was already terminated before the First Respondent became the landowner.

[119] It is trite that consent to reside shall only be terminated under specific conditions set out in section 8 of ESTA.[14]

[120] Section 8 of ESTA 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:

"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;

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[14] Section 3(1) of ESTA provides:
"Consent to an occupier to reside on or use land shall only be terminated in accordance with the provisions of section 8."

(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.

(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."

[121] Relying on the decision of this Court in Le *Roux NO and others v Louw and another*[15], *the* First Respondent submitted that the Applicant was not under any obligation to be granted an opportunity to make representations in terms of section 8(1)(e).[16]

[122] This argument belongs in the court that will determine an application in terms of section 11 of ESTA. I do not have to decide on the issue of the termination of residence.

Did the conduct of the First Respondent constitute constructive eviction of the Applicant from the property?

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[15] *Le Roux NO and Another v Louw and Another (LCC223/2016, 2828/2015) [2017] ZALCC 10 (12 June 2017).*
[16] Ibid para 91 – 92.

[123] According to section 14 of ESTA, a court may grant temporary relief to any person who has been evicted in violation of this Act.

Restoration of residence and use of land and payment of damages

'14. (1). A person who has been evicted contrary to the provisions of this Act may institute proceedings in a court for an order in terms of subsection (3).

(2) A person who—

(a) would have had a right to reside on land in terms of section 6 if the provisions 5 of this Act had been in force on 4 February 1997; and

(b) was evicted for any reason or by any process between 4 February 1997 and the commencement of this Act,

may institute proceedings in a court for an order in terms of subsection (3).

(3) In proceedings in terms of subsection (1) or (2) the court may, subject to the conditions that it may impose make an order—

(a) for the restoration of residence on and use of land by the person concerned, on such terms as it deems just.

(b) for the repair, reconstruction or replacement of any building. structure, installation or thing that was peacefully occupied or used by the person immediately prior to his or her eviction, in so far as it was damaged, demolished or destroyed during or after such eviction;

(c) for the restoration of any services to which the person had a right in terms of section 6;

(d) for the payment of compensation contemplated in section 13;

(e) for the payment of damages but not limited to damages for suffering or inconvenience caused by the eviction; and

(f) for costs.'

[124] It is common cause that the Applicant is an occupier in terms of ESTA and entitled to the protections of the provisions of ESTA in terms of Sections 5 and 6 of ESTA.

[125] Section 5 of ESTA deals with the fundamental rights of the occupier, the owner or the person in charge, whereas section 6 deals with the rights and duties of the occupier.

[126] To determine if the First Respondent's conduct amounts to constructive eviction of the Applicant, it is crucial to examine sections 5, 6 and 7 of ESTA, which outlines the rights and duties of occupiers and owners.

[127] Chapter IV of ESTA, comprising sections 8 to 15, contains detailed provisions applicable to the termination of occupiers' rights and their eviction. Demanding requirements are set before an occupier can, by due process, be lawfully evicted.

[128] This application was launched following the events of 01 October 2024. On that date, the First Respondent entered the section of the main house where the Applicant and his wife lived. He broke the windows and brought his employees to remove the roof, window frames, and door frames, leaving the house without these essential structural components.

[129] It is important to note that the First Respondent denies that he demolished the house section of the house that the Applicants were occupying but admitted to removing these structural components. Instead, in paragraphs 22 to 27 of the answering affidavit, he argues that he needed to remove the corrugated metal roof, the rusted and broken windows and window frames and the damaged doors and door frames because the main house had become structurally unsafe. He contended that the Applicant was instructed to move to a different building on the property until he vacated. The emergency repairs, he contends, were essential to ensure the safety of everyone on the property, including the Applicant, who could have faced injury if the building remained unstable and might have sought damages from the First Respondent.

[130] The First Respondent testified that he informed the Applicant of his desire to convert the main house into an office. I offered him several options for suitable

accommodation and storage space, including a corrugated metal house and a wooden Wendy house.

[131] The First Respondent heavily relied on the Applicant's termination of contract of employment on 15 December 2023. He says the Applicant had no right to reside as his right was tied to employment.

[132] The following analysis will show that the sequence of events from 01 December 2023 to 01 October 2024 favours the Applicant and indicates that the First Respondent's conduct amounted to eviction.

[133] The Applicant testified that on 01 December 2023, while the Applicant was still employed by Mr Van Tonder, the First Respondent came to the property and verbally instructed him and his wife to vacate the property as he wanted to convert it to offices.

[134] On 08 December 2023, the First Respondent came with Mr. De Lange, a representative of the First Respondent, reiterated this instruction and gave the applicant eight (8) days to leave the property. During this period, the First Respondent hired a TLB (tractor-loader-backhoe) to remove the Applicant's vehicles from the property. The electricity and water supply were disconnected from the Applicant's section of the house.

[135] The First Respondent admitted that he visited the property after making a deposit but before the property was registered in his name. He admitted to removing the Applicant's vehicles based on advice from his former representative, Mr De Lange. Additionally, he also admitted to disconnecting the water supply due to high water charges and to disconnecting the electricity following the electrician's recommendation.

[136] This case illustrates the issues that Madlanga ADCJ mentions that occur outside the oversight of a meticulously designed eviction process. In *Daniels,* Madlanga ADCJ held that:

'ESTA has a carefully delineated process of eviction. It is monitored by courts. A denial of the existence of the right asserted by Ms Daniels might inadvertently result in what would in effect be evictions. This would be a direct result of the intolerability of conditions in the dwelling. And these "evictions" might happen beneath the radar of the carefully crafted eviction process. That would make nonsense of the very idea of security of tenure. After all, like the notion of "reside", security of tenure[17] must mean that the dwelling has to be habitable. That, in turn, connotes making whatever improvements are reasonably necessary to achieve this. Of what use is a dwelling if it is uninhabitable? None.'

If you deny an occupier the right to make improvements to the dwelling, you take away its habitability. And if you take away habitability, that may lead to her or his departure. That in turn may take away the very essence of an occupier's way of life. Most aspects of people's lives are often ordered around where they live. Bell says "[a] tenant who fears loss of an interest as vital as his home may forego associations or actions that are a normal part of self-determination and self-expression". Roisman puts it thus:

> "Security of tenure is fundamentally important because it is the basis upon which residents build their lives. It enables people to make financial, psychological, and emotional investments in their homes and neighbourhoods. It provides depth and continuity for children's school attendance and for the religious, social, and employment experiences of children and adults. Security of tenure enables tenants 'to fully participate in social and political life'."

Take away the home that is the fulcrum of security of tenure, the way of life of an occupier will be dislocated. And that will offend her or his human dignity. So, permitting an occupier living in circumstances as we have here to make improvements to her or his dwelling will serve the twin-purpose of bringing the dwelling to a standard that befits human dignity and averting the indignity that the occupier might suffer as a result of the possible departure.'[18]

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[17] See section 6(2)(a) of ESTA.
[18] *Daniels* supra n 8 para 32- 34.

[137] The First Respondent also argued that the sale agreement specified he would have the property vacant, without any employees, which he anticipated. He relied on clause 7.1 of the Deed of Sale, which stipulated that Mr Van Tonder and all other occupants must vacate the property before he could take ownership.

[138] The First Respondent's reliance on clause 7.1 of the sale agreement is misplaced. Clause 7.1 reads as follows:

> "7.1 Occupation of the property shall be given to and taken by the PURCHASER on registration (the occupation date), by which date the SELLER, and any occupier shall have vacated the PROPERTY."

[139] When the initial verbal notices were issued to the Applicant, Mr Van Tonder still employed the Applicant, and the property was still registered in Mr Van Tonder's name. The First Respondent mentioned that he consulted Mr. De Lange before taking any action and that he received approval from him. This excuse is absurd.

Written notices to vacate

[140] The first written notice to vacate was given to the Applicant on 24 December 2024. The notice gave the occupiers notice to vacate by 01 January 2024. On 26 January 2024, Ms Ivodia Lekhoaba approached the offices of Legal Aid SA for legal assistance. On 31 January 2024, Pogiso Maluleke from the offices of Legal Aid wrote to Melanie De Lange advising that they were instructed to defend the client, who is an ESTA occupier, not an unlawful occupier, in terms of the PIE Act. Maluleke further advised that Ms Lekhoaba was entitled to two months' notice to vacate, which ends on 20 March 2024. The First Respondent had acknowledged that the Applicant was an occupier in terms of ESTA and is entitled to its protections.

[141] The First Respondent said in his answering affidavit that he did not agree with the Applicant's legal representatives. Still, to resolve the matter, he agreed to give the Applicant two months' notice using court days. Thus, he instructed his representative

to amend the notice. On 02 February 2024, before the registration date of the property to the First Respondent's name, Mr De Lange gave the Applicant a second written letter to vacate the premises on 29 February 2024. The second notice backdated the period of notice to commence on 01 January 2024. The notice further informed Ms Lekhoaba that she must move to one of the other outer buildings on the premises until she moves out of the property. He says the instruction was given on account of the fact that the building had become structurally unstable and unsafe.

[142] The evidence does not support this. A notice addressed to the Legal Aid offices states thus.

Our further requests are to;

i. *REQUEST your client, in terms of section 8(7)(b), to move to another dwelling on the premises until the final day of evacuation, as the owner is suffering huge financial losses and wishes to move into the main dwelling occupied by your client.*
ii. *Collect payment of R2340 for a Samsung phone currently being paid for by the previous owner or the return of the Samsung phone.*
iii. *Ensure that all furniture belonging to the previous owner at the party at the property remains in the main dwelling, as though bought by my client, or furniture. Listed in the previous owner.*

[143] Similarly, the notice was addressed to Miss Ivodia Lekhoaba dated 02 February 2024 states, thus;

i. *You MUST hand over the Samsung phone or Two Thousand Three Hundred and Forty Rand(R2300), the balance on a contract Phone currently being paid by Mr. CJ Van Tonder, before you leave the premises on 29 February 2024.*

ii. *You are to move to one of the other outbuildings on the premises until you finally move from 11 Acacia Avenue. Dennydale ; Westonaria*

iii. *Access is granted to Mr. Strauss to remove the furniture belonging to the previous owner.*

[144] Both notices do not mention emergency repairs on the main house. They mention section(8)(b) of ESTA, which is questionable in its significance. It is common cause that the eviction process in ESTA cannot be invoked without compliance with section 8 of ESTA, which deals with termination of occupation.[19]

[145] In *Rouxlandia 2 Ltd*[20], a matter that dealt with the relocation of the occupiers from one house to another, but relevant to this matter, the appellant argued that the house they were relocated to was smaller than the house the appellant was occupying. Therefore, the relocation would impair his dignity.

[146] Nicholls AJJA, writing for the Court, said:

> 'However, what of the situation where a relocation does not impact on the human dignity of the occupier? The Constitutional Court has acknowledged that the right of residence conferred by s 8 of ESTA is not necessarily tied to a specific house. The protection afforded by those parts of sections 5 and 6 of ESTA, on which the appellants rely, is to ensure that an occupier will not be subjected to inhumane conditions violating human dignity. To this extent, an occupier's right to resist relocation is protected. But these sections do not amount to a blanket prohibition on relocation under any circumstances. If indeed the relocation were to impair an occupier's human dignity, then the provisions of section 5 and section 6 would apply, and the occupiers could invoke their constitutional rights. This does not mean that all relocations necessarily suffer the same fate.'[21]

[147] Describing suitable alternative accommodation, the learned judge held thus:

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[19] *Chagi v Singisi Forest Products* 2007 (5) SA 513 (SCA) (29 May 2007) para 8.
[20] *Orange and Others v Rouxlandia Investments (Pty) Ltd* 2019 (3) SA 108 (SCA).
[21] Ibid para 18.

'Suitable alternative accommodation is defined in s 1 of ESTA as 'alternative accommodation which is safe and overall, not less favourable than the occupiers' previous situation. Rouxlandia has offered alternative accommodation. It is not a manager's house but a smaller 5-roomed house. It has been newly painted and has running water, a flush toilet, and an inside bathroom. The roof is corrugated iron and is leak-free. The criteria for suitability have, in my view, been fulfilled. In any event, Mr. Orange does not object to the alternative accommodation on the basis that it is unsuitable. His complaint is that it does not befit the status of a manager. He wants a 'bigger and better' house.'[22]

[148] The learned Judge continued in the following paragraph and stated:

'ESTA was not enacted to provide security of tenure to an occupier in the house of his or her choice. The primary purpose of ESTA, as set out in the preamble, is: 'To provide for measures with State assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and the circumstances under which the right of persons to reside on land may be terminated; and to 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.'[23]

[149] In section 1(xvii) of ESTA, it is defined that:

'suitable alternative accommodation" means alternative accommodation which is safe and overall not less favorable than the occupiers' previous situation, having regard to the residential accommodation and land for agricultural use available to them prior to eviction. and suitable having regard to –

(a) the reasonable needs and requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use, and services.

(b) Their joint earning abilities

[22] *Rouxlandia* supra n 17 para 20.
[23] *Rouxlandia* supra n 17 para 21.

(c) The need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active'.

[150] The First Respondent testified that when he took charge of the property, he was concerned about the living conditions of the employees. He noted that their accommodations were not suitable for human habitation. As a result, he decided to demolish the shacks and build proper housing for his workers. However, he now claims that the accommodations he deemed unsuitable for his employees are suddenly adequate for the Applicant and his wife. This argument is untenable.

[151] It was argued that the Applicant's rejection of the offered accommodation was unreasonable since he had lived in the shack for eight years before moving to the main house. Mr Nhlapho and his wife had also lived in the shack before moving to new staff accommodations, making the alternative deemed suitable. The Applicant, however, objected on two grounds: he found the size inadequate and raised concerns about inhumanity and dignity. These issues cannot be overlooked, and living in such poor conditions does not equate to providing a suitable alternative as defined by the Act.

Removal of roof windows and door frames

[152] To evict, in the definition of ESTA, is to deprive a person against his or her will of residence on land or the use of land or access to water, which is linked to a right of residence in terms of the Act, and eviction has a corresponding meaning.[24]

[153] On 1 October 2024, the First Respondent removed the roof, windows, and doors, stating that these actions were necessary for urgent repairs. This assertion lacks merit. A thorough examination of the evidence beginning 01 December 2023 clearly reveals that the First Respondent wanted the vacant property, and he took various measures to accomplish that objective by any means necessary.

[24] Section 1(1)(vi) of Extension of Security of Tenure Act 62 of 1997.

[154] In conclusion, Mr Roets concluded his argument by quoting the following paragraph from *Baron* matter:

> 'It must be emphasised that the preamble to ESTA does not deal only with the rights of occupiers, but similarly recognises the rights of landowners to apply for eviction under certain conditions and circumstances.
>
> The applicants have enjoyed free accommodation since 8 December 2012, when their right of occupation was terminated, until 2017, almost five years. The first respondent has had a temporary restriction on its property rights for that period and it cannot, in fairness, be expected to continue granting free accommodation to the applicants where its current employees are disadvantaged. Therefore, the applicants must be evicted to enable the first respondent to accommodate its current employees.'[25]

[155] Mr. Roets acknowledged that the points mentioned above would be more pertinent to the eviction application yet to be filed. He argued that the Applicant has been residing in the property rent-free, while the First Respondent has had limited access to his property for the past year. He contended that it would be unjust to grant the order, particularly given that the First Respondent is staying elsewhere and has been hindered by the Applicant from converting the property into much-needed office space.

[156] I agree with the First Respondent that this submission belongs to section 11 of the ESTA application. However, I must respond to the submission that granting this application would mean that the Court places a positive obligation on the owner to provide accommodation. I do not agree with the First Respondent's submissions. That is not what this judgment says. This judgment says the First Respondent must follow proper procedure as provided in ESTAAs mentioned earlier in this judgment. ESTA was not enacted to monitor the evictions of occupiers but to afford tenure rights to them. The relevant government departments must be involved in every eviction that involves an occupier.

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[25] *Baron and others v Claytile (Pty) Ltd and another 2017 (5) SA 329 (CC) (13 July 2017,* para 48 and 49.

Part B of the Restoration Application

[157] According to the affidavit from the First Respondent, the Applicant agreed, in the presence of Mr Van Tonder, to vacate the property by 01 January 2024 or to pay R2,800 per month in rent until he left. However, the First Respondent admitted in his testimony that there was no formal rental agreement between the parties. He decided to charge the rental based on advice from his representative, Mr. De Lange, who suggested billing the Applicant if he refused to vacate. This is a material contradiction which the Court cannot ignore.

[158] In the proceedings before the Second Respondent, the First Respondent filed a complaint regarding the non-payment of rent and requested an attachment order under the Rental Housing Act. The First Respondent, in his capacity as landlord, claimed that there was a lease agreement with the Applicant for a monthly rent of R2,800. He stated that the Applicant had failed to pay rent from January 2024 to August 2024, resulting in a total owed amount of R22,400. Mr. Daniel Rowland represented the First Respondent.

[159] On 12 August 2024, the Second Respondent issued a ruling and ordered the Applicant and his wife to pay R22,400 within 7 days from the receipt of this ruling. Subsequently, on 16 September 2024, the clerk of the Magistrate's Court in Westonaria issued a warrant of execution against the Applicant and his wife.

[160] In terms of this ruling, the parties were warned of the effect of non-compliance with this order as follows:

> "Section 13(13) of the Act, which provides that; -
> A ruling by the Tribunal is deemed to be an order of a Magistrates Court in terms of the Magistrate Courts Act, 1944 (Act No 32. 1944) and is enforced in terms of that act and
>
> Section 16(g) of the Act which provides that-

> Any person who fails to comply with any ruling of the Tribunal in terms of section 13(4) will be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years, or to both such a fine and such imprisonment."

[161] Pursuant to this order, on 18 September 2024, the notice of attachment was issued, and Sheriff Westonaria attached the following items

(a) 1x Astra Opel 200IE
(b) 1x Audi
(c) 1x Russel Hobbs microwave
(d) 1x LG Microwave
(e) 1x 2 Piece Armchair s
(f) 1x 4 Piece lounge suite
(g) 1 x white couch
(h) 1x Telefunken 32cm flat screen
(i) 1x 72 cm Samsung TV
(j) 1x Sony Speaker
(k) 1x 2 JVC Speakers
(l) 1x Panasonic Disc Changer
(m)1x Telefunken DVD Player

[162] The evidence presented to the Second Respondent was demonstrably false. In the notice to vacate dated 02 February 2024, the First Respondent acknowledged that the Applicant was an occupier under ESTA. The First Respondent submitted invoices for rental arrears commencing from January 2024. During this period, he was serving a notice to vacate that would be effective until 29 February 2024.

[163] This raises an important question: how can it be justified to charge an occupier under ESTA? Such behavior is unacceptable, as it allows farm owners, like the First Respondent, to bypass the protections offered by ESTA. This leads to the continued exploitation of vulnerable occupiers, which should not be tolerated in our constitutional

democracy. The primary purpose of ESTA is to safeguard the rights of these vulnerable occupiers.

[164] In *Du Plessis and Another v Kriel N.O and Others*[26], Cowen J and Ncube J concurring, highlighted the vulnerability of occupiers thus:

> '... Accordingly, in dealing with these points, it is important to remember that, for the most part, those who are subject to relocation efforts under ESTA are not in the position of the appellants but are historically disadvantaged persons, predominantly African, who continue to live in vulnerable conditions and are the direct victims of South Africa's unjust past.'[27]

[165] In terms of section 22 of the Superior Courts Act 10 of 2013, the grounds upon which the proceedings from any Magistrate's Court may be brought under review are:

(a) Absence of jurisdiction on the part of the Court;
(b) Interest in the cause, bias, malice, or corruption on the part of the presiding judicial officer;
(c) Gross irregularity in the proceedings; and
(d) The admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.[28]

[166] In my considered view, there was a gross irregularity in the proceedings before the Gauteng Housing Tribunal. Secondly, The Second Respondent had no jurisdiction to adjudicate disputes arising from ESTA matters; therefore, its order is a nullity.

[167] In *Modirupula v Mbedzi*[29] Mfenyana J, dealing with a request for judgment where the court lacked jurisdiction, said:

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[26] *Du Plessis and Another v Kriel N.O and Others [2024] 1 All SA 702 (LCC) (14 December 2023).*
[27] Ibid para 23.
[28] Superior Courts Act 10 of 2013, Section 22.
[29] *Modirapula v Mbedzi (2114/20) [2024] ZANWHC 2 (5 January 2024).*

'The law pertaining to the jurisdiction of the court is well established, and a judgment granted in circumstances where the court lacks jurisdiction is a nullity. As early on as 1883, in *Willis v Cauvin· our courts recognized* that a judgment where the court has no jurisdiction is of no force or effect. This approach was endorsed in later decisions, and 1904, Mason J (with Innes CJ and Bristowe J concurring) observed in *Lewis and Marks v Middel*:

"[T]he authorities are quite clear that where legal proceedings are initiated against a party, and he is not cited to appear, they are null and void; and upon proof of invalidity the decision may be disregarded, in the same way as a decision given without jurisdiction, without the necessity of a formal order setting it aside."

This principle has been cited with approval by the Supreme Court of Appeal in *Travelex Limited v Maloney and Another*, and in *The Master of the High Court (North Gauteng High Court, Pretoria) v Motala NO & Others.'*[30]

[168] The First Respondent submitted that the Applicant is not seeking to review the ruling of the Second Respondent based on the abovementioned grounds. Instead, the Applicant argues that the Second Respondent made an error in its decision, claiming that there is no oral or written agreement obligating the Applicant to pay rent. Therefore, the order sought to set aside is an abuse of court. I do not agree.

[169] The First Respondent failed to bring all the facts before the Tribunal, especially the fact that the Applicant was an ESTA occupier. This was a gross irregularity.

[170] I am satisfied that the Applicant has made a case for the restoration of the right of use of the property. The windows have not been fixed. Instead, the First Respondent installed corrugated sheets to close the windows, and he argued that he could not fix

[30] Ibid para 11 – 12.

the main house to its original state. All this conduct has hammered on the Applicant's right to dignity

[171] The Applicant is entitled to occupy his part of the main house under conditions that are consistent with human dignity. The First Respondent completely disregarded the Applicant's right in terms of sections 5 and 6 of ESTA.

[172] Moreover, when 'ours is a never again constitution,'[31]

[173] In this instance, our Constitution states that occupiers will never again be stripped of their inherent right to dignity through inhumane treatment by landowners. Never again must an occupier in the position of the Applicant be subjected to the conditions outlined throughout this judgment.

[174] Thus, I am satisfied that the Applicant is entitled to relief in terms of section 14 (3) (a), (b) and (c) of ESTA.

[175] I turn to deal with an urgent eviction application.

Urgent Eviction Application

[176] As stated earlier on 22 October 2024, the First Respondent filed an urgent counterclaim seeking inter-alia the urgent removal of the Applicant and all persons residing at the property through or under the Applicant from the property in terms of section 15 of ESTA, pending the outcome of proceedings for a final order.

[177] The First Respondent testified that he intended to reside on the property; however, he is currently renting a small flat in Randfontein. He expresses a growing concern for his safety on the property due to multiple incidents in which the Applicant, along with his wife and brother-in-law, allegedly threatened his life. The First

[31] *South African Transport and Allied Workers Union and Another v Garvas and Others 2013 (1) SA 83 (CC) (13 June 2012)* para 63. See also *Mlungwana and Others v S and Another 2019 (1) SACR 429 (CC) (19 November 2018)* para 67.

Respondent says that the Applicant's brother-in-law has also threatened his workers with arson. Furthermore, the First Respondent reports that the Applicant's wife has issued threats against his business partner, and he characterizes the Applicant as exhibiting extreme aggression toward both him and his employees. He notes that the Applicant has also displayed aggressive behaviours toward the children of his employees, reprimanding them for playing near the main house.

[178] The First Respondent mentioned that approximately 30(thirty) EFF members protested on the property when the sheriff went to attach the Applicant's vehicles. They refused to allow the sheriff to proceed with the attachment. The First Respondent states that he has video footage of the protest.

[179] Regarding the events of 01 October 2024, the First Respondent says that the Applicant was sitting in front of the main house with a knife. The First Respondent approached him to discuss the matter, but the Applicant suddenly lunged at him in an attempt to stab him. He says, Fortunately, two security officers intervened and restrained the Applicant. The First Respondent says he promptly reported the incident to the South African Police Services, where a sergeant advised him to seek a protection order. He followed this advice and obtained the protection order later that same day. Although the order was issued and served, the Applicant failed to appear in Court, and the protection order was ultimately confirmed.

[180] The First Respondent asserts that he has consistently calmly communicated with the Applicant regarding the need to vacate the main house. However, he says that the Applicant has exhibited aggressive behaviours towards him. Each time the First Respondent sought to engage in discussion on the matter, the Applicant responded with shouting and insults. Furthermore, the First Respondent characterises the Applicant as deceptive, citing multiple instances in which the Applicant promised to vacate but ultimately failed to do so. On 01 October 2024, the First Respondent noted that rather than repairing the primus stove, the Applicant allegedly wielded a knife in an attempt to assault him.

[181] The Applicant denies the allegations of death threats and assault against the First Respondent. He claims that on 1 October 2024, when the First Respondent arrived to pick up his employees who were removing doors and window frames from the main house, the Applicant was occupied with repairing his primus stove using a knife, as the cotton part could not reach the paraffin. According to the Applicant, the First Respondent approached him, shouting, but the Applicant did not retaliate. He notes that there were two security personnel present along with three individuals who were removing the roof frames, making it impossible for him to assault the First Respondent with a knife while they were all there. Furthermore, the Applicant mentions that the First Respondent is larger in stature than him.

[182] Mr Nhlapho testified that on 01 October 2024, the Applicant approached him at the main house in tears, holding a knife. At that time, Mr. Nhlapho and other employees were removing the roof as instructed by the First Respondent. Mr. Nhlapho says the Applicant inquired about the First Respondent's whereabouts, expressing his intention to stab him. Mr. Nhlapho stated that the First Respondent had dropped the workers off to work on the house but was not inside at that moment. The Applicant then picked up a green camp chair and waited for the First Respondent to return. Fearing for his safety, Mr. Nhlapho decided to flee the scene, worried that the Applicant might also attack him. Mr Nhlapho states that the First Respondent returned to the property late to pick up the workers, but he was unaware of what happened afterwards as he did not witness the stabbing incident. He testified that the Applicant is intimidating him and his family; he often swears and shouts at them when he wants the gate to be opened. Additionally, Mr Nhlapho mentioned that the Applicant's wife has not been living on the property for the past two month

Sam Motsai testimony

[183] Mr Motsai testified that he began working for the First Respondent in January 2024. He described the Applicant as being very aggressive, which has instilled fear in everyone, including children, as he shouts when he wants the gate to be opened. Mr Motsai mentioned that he is so afraid of the Applicant that he does not open the gate

for him; instead, he asks his children, including a two-year-old, to open the gate for the Applicant. Additionally, he noted that the Applicant's wife has not resided on the property for the past two months. Mr Motsai testified that on 01 October 2024, while cutting the grass, he witnessed the Applicant attack the First Respondent with a knife. He stated that the First Respondent approached the Applicant to talk, but the Applicant entered the house and then launched the attack with the knife. Additionally, Mr Motsai mentioned that the Applicant's brother-in-law threatened to burn them alive while the Applicant was present.

[184] The summary of the evidence presented to the Court indicates that the various accounts of the stabbing incident are irreconcilable. Nienaber JA neatly summarised the method for resolving such factual disputes in the case of *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others 2003 (1) SA 11 (SCA)* on pages 14I-15E. I do not intend to repeat them in this judgment. I will analyse evidence using the techniques.

[185] The Applicant was a credible witness with a strong recollection of events, including the exact dates of incidents. Overall, the Applicant provided straightforward and honest testimony. In contrast, while the First Respondent was firm and almost aggressive towards the Applicant's counsel during cross-examination, he presented confused evidence. He shifted the blame to his former representative regarding his actions.

[186] Mr Nhlapho and Mr Motsai's evidence was unsatisfactory. Mr Nhlapho only came to work for Mr Van Tonder in 2008, while the Applicant has been employed since March 2000. Still, Mr Nhlapho testified about the material terms of all employment agreements entered into with Mr Van Tonder that an employee could reside on the property only for as long as he worked on the property. He also testified that the Applicant was not asked to reside in the main house but to keep an eye on it. In cross-examination, Mr. Nhlapho conceded that he did not know the terms of the contract of employment; he was not provided a written contract. On the Applicant's right to reside in the main house, he conceded that he was not part of the discussions between the

Applicant and Mr Van Tonder about moving into the main house; he says the Applicant told him.

[187] Mr. Nhlapho testified that the Applicant came to the main house in a state of anger, to the point of crying, and asked for the First Respondent. According to Mr Nhlapho, the Applicant threatened to stab him to death. However, Mr. Nhlapho did not inform the First Respondent that the Applicant was waiting for him and had made threats to his life. Instead, he fled for his safety, leaving behind his work on the removal of the roof, windows, and a door. He did not report the threat to the police, nor did he warn the First Respondent when he arrived at the main house later that day. Mr Nhlapho chose to remain silent about the incident and did not make a police statement regarding it. This evidence raises serious concerns.

[188] Mr. Nhlapho testified that the Applicant is not violent but tends to shout when he wants the gate to be opened. The gate is located at a distance from where Mr Nhlapho and Mr Motsai live, which may justify the Applicant's shouting in order to be heard. Additionally, a two-year-old child would not be able to open a standard steel gate, although the Court does not have precise measurements of the gate.

[189] Mr Motsai testified that he was cutting the grass when he witnessed the incident. He recalled hearing a conversation between the First Respondent and the Applicant. According to Mr. Motsai, the First Respondent approached the Applicant to talk to him. At that moment, the Applicant allegedly entered the house and attacked the First Respondent. This account contradicts the testimony of the First Respondent, who stated that he approached the Applicant while he was sitting outside the house. Mr Motsai's account is suspicious.

[190] Mr Motsai also testified that the Applicant's brother-in-law once threatened them with arson. Mr Motsai says that he is scared of the Applicant; he shouts and insults them, their wives, and including children. The Applicant's account is more credible than that of the Respondent. He was likely focused on fixing his Primus stove while the First Respondent's employees were dismantling the structures. The First Respondent's

story is highly implausible. He claims to have approached a man wielding a knife to talk to him, even though he did not consult with him before deciding to remove the structures that convert a dwelling into a home.

[191] To recap, the First Respondent seeks permanent relief in the following terms

1. *that the First Respondent and all those who occupy the property and or under the First Respondent are in unlawful occupation of the property situated at holding 11, Danny Dale Agricultural. Holdings, also known as 11 Acacia Ave. Dennydale, Westanoria;*

2. *that it is just for the First Respondent, as well as all other persons occupying the property through and or under the first respondent, to be evicted from the property in accordance with section 11(1) as read with Section 15 of the Extension of Security of Tenure Act 62 of 1997;*

3. *that the eviction order may be carried out if the first respondent, as well as all persons occupying the property through and or under the First Respondent, have not vacated the property on the date determined by this Court under Prayers 3 above; and*

4. *the First Respondent is to pay the cost of this application on an attorney-client scale.*

Legal Principles

[192] The Applicant must comply with all the requirements of section 15 of ESTA to succeed in this application. The requirements are as follows:

(a) there is a real and imminent danger of substantial injury or damage to any person or property if such removal from the property is not granted immediately;

(b) there is no other effective remedy available;

(c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the potential hardship to the Applicant and other occupants against whom the order is sought if an order for removal is granted, and

(d) adequate arrangements have been made for the reinstatement of any persons evicted if the final order is not granted.[32]

Real and imminent danger

[193] This application was filed on 22 October 2024. The First Respondent testified that on 01 October 2024, while he was performing emergency repairs on the property, the Applicant made repeated threats to kill him, assaulted him with a knife, and attempted to take his life. Additionally, the Applicant threatened to commit arson by attempting to siphon petrol from a vehicle intended to be set on fire, along with other vehicles on the property. The First Respondent testified that he was saved by the presence of two security personnel who were stationed on the property at the time of the incident. These security officers subsequently provided sworn statements to the South African Police Service (SAPS), further corroborating the events that transpired.

[194] The First Respondent testified that he went to the police station to open the criminal case on the same day of the incident, and the police officer advised him to obtain an interim protection order against the Applicant, which order has since been made final. The Applicant is currently out on bail regarding the criminal matter.

[195] The First Respondent has submitted that there is a real and imminent danger of substantial injury and damage to the First Respondent and other persons and property if the Applicant and all other occupants residing on the property through and under the Applicant are not forthwith removed from the property.

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[32] Extension of Security of Tenure Act 62 of 1997, section 15.

[196] It is my considered view that the First Respondent has not adequately fulfilled the requirement of this provision. The incident in question occurred on 01 October 2024, yet it took the First Respondent 20 days to bring this application. This delay raises concerns, as there is insufficient evidence to support the assertion that the First Respondent or his employees were genuinely at risk during that period. It is also pertinent to note that the Applicant and his wife have occupied the property since 01 October 2024, which further complicates the circumstances surrounding the First Respondent's response to the situation. Mr. Nhlapho testified that the Applicant has no propensity to violence but only shouts at them when he needs the gate to be opened.

[197] Mr. Nhlapho and Mr. Motsai testified that they, along with their wives and children, are afraid of the Applicant because they know he is dangerous and has previously threatened them with violence. Specifically, they mentioned a threat of petrol bombing that he made in conjunction with his brother-in-law. However, it is unclear when this threat was made, and there is no evidence to support this allegation.

[198] The intervention by members of the Economic Freedom Fighters (EFF) did not transpire recently. In a correspondence dated approximately January 2024, Mr De Lange provides further clarification on the matter:

"My instructions are to obtain a restraining order against Mr Argust and his wife as they came there with the EFF members and intimidated and abused Mr Strause as his family. We have video footage of the incidence taken by the armed response company.

- Our instructions are, therefore, very clear:
- Apply for a Protection Order
- Apply for an urgent eviction order for which we will use the video and the security company's Affidavit as annexures.
- Apply for financial relief if the occupation continues beyond 31 January 2024."

[199] In early 2024, Mr De Lange issued this letter of demand. However, he did not pursue any further action on the matter until the Applicant launched the restoration

application. This timing raises concerns that the application may have been opportunistic, particularly as the Applicant had secured an interim order in the restoration application.

No other effective remedy

[200] According to the First Respondent's founding affidavit, the First Respondent submitted that he has no other effective remedy available to him despite the final protection order being granted and the criminal matter under investigation; the Applicant has continued to threaten injuries and damages.

[201] The First Respondent argued that the protection order does not protect other individuals or property and does not address the potential danger. Additionally, the remote location of the property makes it difficult for the SAPS to respond quickly if a threat arises.

[202] This submission is devoid of merit and should be dismissed. On 02 October 2024, the First Respondent approached the Magistrate's Court, Randfontein and sought an interim protection order that prohibits the Applicant from engaging in harassment against the First Respondent and other individuals, including Ria de Cterco and employees of Bonsai Nursery. This interim protection order has since been made final. The Respondent was armed with this protection order.

[203] The claim that the property is remote and not easily accessible by the SAPS is unfounded. In fact, the property is easily reachable, and even a small sedan can access it without any difficulty.

[204] The two security guards who reportedly rescued the First Respondent from being stabbed by the Applicant were released from their positions. They also submitted their statements on 04 October 2024, after these proceedings were initiated. This raises a pertinent question: if the Applicant is truly as dangerous as suggested, why were the security personnel released from their duties at such a critical time?

[205] In addition to other legally effective remedies, the First Respondent can launch eviction proceedings under section 11 of ESTA.

Likely Hardship

[206] The First Respondent submitted that the likely hardship of the First Respondent and other people on the property, if the order for removal is not granted, exceeds the likely hardship of the Applicant and other unlawful occupants should the order be granted.

[207] It has been submitted that the Applicant and his spouse pose a threat to the safety of the First Respondent, his business partner and their employees. Furthermore, it was submitted that they have previously exhibited violent behaviour and have shown a propensity to engage in acts of murder, arson, and public disorder. However, the evidence fails to substantiate these allegations. There is no evidence that the Applicant has caused any damage to the property of the First Respondent nor to that of his former employer. In contrast, the Applicant has been subjected to violence and harassment during the period; a TLB was hired to remove the Applicant's vehicles and personal belongings from his garage, which were carelessly discarded in an open area. Furthermore, essential components of their residence, including roofing, windows, and doors, were also removed, resulting in the Applicant and his wife facing exposure to the cold.

Reinstatement of any persons evicted

[208] It is submitted that adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.

[209] The First Respondent submitted that the building where the Applicant currently resides has been repaired and restored, and no further renovations are scheduled. Furthermore, several other forms of suitable alternative accommodation are available

to the Applicant and any other person evicted. The First Respondent testified that the structure currently inhabited by the Applicant will remain vacant pending the final eviction order, and the Applicant will be allowed to return to that structure should the same be dismissed. The First Respondent has not fully complied with the court order. On 03 December 2024, the windows were not installed back.

[210] The First Respondent has sought an order *that it is just for the First Respondent, as well as all other persons occupying the property through and or under the First Respondent, to be evicted from the property in accordance with section 11(1) as read with Section 15 of the Extension of Security of Tenure Act 62 of 1997";*

Eviction Proceedings

[211] The Applicant's legal representative submitted that the First Respondent should have instituted eviction proceedings in the normal course much sooner, as that would have provided the Applicant with an effective alternative remedy. The First Respondent testified to the reason why he did not institute eviction proceedings at an earlier stage, namely that the Applicant made several undertakings to vacate the property willingly, including through his legal representatives, who asked the First Respondent for additional time for the Applicant to vacate.

[212] It was only after realising that such undertakings would not be fulfilled and after the Applicant attacked the First Respondent as aforesaid that the First Respondent was compelled to launch these proceedings.

[213] According to the First Respondent, the Applicant agreed to move out of the property during Easter weekend after coming back from church service. He did not. Easter was in March this year. Instead of instituting eviction proceedings and following proper procedure, the First Respondent used all other means to take away the habitability of the dwelling, hoping that it would lead to their departure to circumvent the provisions of ESTA.

[214] The First Respondent has not made up a proper case for an urgent eviction, and the eviction application fails to be dismissed with costs.

ORDER

[215] In the circumstances, the following order is made:

1. In the matter under case number 161/2024, the following order is made:

    ii. The First Respondent shall restore and replace all the windows, window panes, and doors in the structure occupied by the Applicant and restore to the Applicant any other rights and resources previously enjoyed by the Applicant at 11 Acacia Avenue, Dennydale AH, Westonaria, West Rand Municipality, Gauteng Province.

    iii. The order of the Gauteng Housing Tribunal is declared a nullity.

    iv. The Third Respondent is directed to release the items that it had attached pursuant to the order mentioned in paragraph 2.

    v. The Applicant is entitled to exercise their right to access water and electricity under sections 5 and 6 of ESTA.

    vi. The Applicant and the First Respondent are directed to meaningfully engage with the Sixth Respondent regarding the connection of electricity and water

    vii. The First Respondent is ordered to pay the costs of the application.

2. In the matter under case number 161/2024B, the following order is made:

    viii. The application is dismissed with costs.

[redacted]

LULEKA FLATELA

JUDGE

LAND COURT

Date of hearing: 25 and 29 November 2024 and 02 and 03 December 2024

Date of judgment: 15 January 2024

Appearances

Counsel for the Applicant in the main application and Respondent in the counter application: Mr Zulu V

Instructed by: Legal Aid South Africa Krugersdorp Local office

Counsel/Attorney for the First Respondent in the main application and Applicant in the counter application: Mr Roets

Instructed by: Roets Attorneys INC