



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NO: LANC:01R/2025

DELETE WHICHEVER IS NOT APPLICABLE

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

20/03/2025
DATE


SIGNATURE

In the matter between:

ALEWYN PETRUS BURGER (JNR)

First Applicant

AS N.O OF THE AP BURGER FAMILIE TRUST (IT: 1482/94)

ALEWYN PETRUS BURGER (JNR)

Second Applicant

ALEWYN PETRUS BURGER (SNR)

Third Applicant

and

JOHANNES THOMAS SCHRADER

First Respondent

MINA SCHRADER

Second Respondent

**AND ALL PERSONS RESIDING WITH OR UNDER
THE FIRST TO SECOND RESPONDENTS ON THE FARM
KNOWN AS EIKENHOF FARM**

Third Respondent

LANGEBERG MUNICIPALITY

Fourth Respondent

ORDER

The following order is made:

1. The order of Magistrate Mr F. Van Deventer of 20 September 2024 is confirmed in part and substituted in part as set out below.
2. The First to Third Respondents are ordered to vacate the property known as Eikenhof Farm on or before 30 May 2025, failing which the Sheriff is authorized to evict them from the aforesaid property on 7 June 2025.
3. The Fourth Respondent is ordered to provide emergency housing suitable for human habitation with access to basic services to the respondents on or before 30 May 2025.

JUDGMENT

NTSHALINTSHALI AJ

Introduction

[1] This automatic review emanates from Montagu Magistrate's Court, which granted an eviction order in terms of section 11 of the Extension of Security of Tenure Act 62 of 1997 (ESTA) against the First to Third Respondents. This eviction follows the termination of the First Respondent's employment which is tied to the family's right of residence on Eikenhof Farm, Koo, Montagu, Western Cape province. This review is conducted in terms of Section 19 (3) of ESTA.¹

¹ **19. Magistrates' courts**

(3) Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the Gazette, shall be subject to automatic review by the Land Court, which may—

- (a) confirm such order in whole or in part;
- (b) set aside such order in whole or in part;
- (c) substitute such order in whole or in part; or
- (d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Court may think fit

The Parties

[2] The First Applicant is Alewyn Petrus Burger in his capacity as trustee of the Trust. The Trust is the registered owner of the farm commonly known as Eikenhof Farm and described on title deed as T74937/94 "GEDEELTE 5 (Eikenhof) van die plaas The Vineyard Nr 111, in die Afdeling Montagu, Provinsie Wes- Kaap". The Second Applicant is Alewyn Petrus Burger(JNR). The Third Applicant is Alewyn Petrus Burger (SNR).

[3] The First Respondent is Johannes Thomas Schrader, an adult male currently residing in the premises at Eikenhof Farm, Montagu. The Second Respondent is Mina Schrader, an adult female currently residing in the premises at Eikenhof Farm, Montagu. The Second Respondent is the First Respondent's wife. The Third Respondent is all other persons residing with or under the First to Second Respondents in the premises on Eikenhof Farm, Montagu. The Fourth Respondent is the Langeberg Municipality and the Fifth Respondent is the Department of Agriculture, Land Reform and Rural Development.

Background

[4] The First and Second Respondents are former employees of the Second Applicant. They were both born on the farm, lived with their parents and derived their right of residence in terms of section 6 (2)(d)² of ESTA.

[5] Around 15 February 2001, the First Respondent started his permanent employment with the Applicants, and he continued to reside with his mother in the house allocated to her and his father. In or around 2002, the First Respondent started to reside with the Second Respondent and due to the fact that he was a permanent employee, a dwelling was allocated to him and the Second Respondent.

[6] On 6 February 2004, a written employment contract was concluded between the First Respondent and Second Applicant as well as a Housing Contract which

² **6. Rights and duties of occupier**

(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-
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;

provided that the First Respondent's right of residence is derived exclusively from his contract of service to the Second Applicant.

[7] On 2 May 2018, the First Respondent was dismissed due to him coming to work under the influence of liquor/narcotics. Based on the fact that the right to reside on the farm was exclusively derived from the contract of service to the Second Applicant, the Second Applicant terminated the First Respondent's right to residence and applied for his eviction together with those that occupy through him.

[8] The Magistrate found it just and equitable to grant the eviction of the First and Second Respondents from the farm on the ground that the respondents only obtained occupier status after 4 February 1997 and that their right to reside on the farm solely derived from the First Respondent's service contract to the Second Applicant.

Respondents' Right of Residence

[9] Both the First and Second Respondents were born on the farm and lived with their parents due to their parent's right to family life in terms of Section 6(2)(d) of ESTA.

[10] During 2002, the First and Second Respondents were allocated a dwelling and lived together, however, a housing contract was entered into between First Respondent and the Second Applicant only on 6 February 2004.

[11] The Second Respondent became a permanent seasonal worker on the farm from 18 October 2017. The housing contract between the First Respondent and Second Applicant stipulated that the First Respondent's right of residence is derived exclusively from his contract of service with the Second Applicant. The Second and Third Respondents could stay with the First Respondent due to his right to family life.

First and Second Respondents' Termination of Employment

[12] On 16 April 2018, the First Respondent reported to work while under the influence of alcohol and as a result, the following steps were taken:

- a. The First Respondent was notified of a Disciplinary Hearing and was charged with a reporting for duty while under the influence of liquor / narcotics or use of alcohol.
- b. On 2 May 2018, the First Respondent was found guilty of reporting for duty while under the influence of liquor / narcotics while on duty.
- c. On 2 May 2018, the First Respondent's employment was terminated, and the notice of dismissal and disciplinary reported were handed to him.
- d. The First Respondent did not refer his dismissal to the Commission for Conciliation, Mediation and Arbitration (CCMA) in terms of the Labour Relations Act.

[13] The Second Respondent was employed as a seasonal worker in 2017, a written contract of employment was concluded between the Second Respondent and the Second Applicant. No submissions are further made on how and why her employment was terminated.

[14] In the answering affidavit, the Second Respondent confirms by filing a confirmation affidavit the averment that shortly after the dismissal of the First Respondent, the Second Applicant called the Second Respondent into his office and accordingly informed her that because the First Respondent's contract of employment was terminated, the applicants were no longer obliged to have her employment contract extended. Subsequently, the Second Respondent's employment contract was terminated.

[15] In the replying affidavit, the Second Applicant avers that the Second Respondent was never a permanent employee but a seasonal worker. The Second Respondent never referred the dismissal to the CCMA.

Termination of Right of Residence

[16] On 31 May 2018, the First and Second Respondents were served with a letter requesting them to vacate the dwelling by 30 June 2018, however they did not

vacate the premises. A second notice to vacate was sent to the respondents on 10 July 2018.

[17] On 25 October 2018, the respondents were served a notice by Sheriff, requesting them to make representations as to why their right of residence should not be terminated. The Respondents did not make any representations; their right of residence was therefore terminated. The First Respondent in his answering affidavit conceded to having received the notice but states that the procedure followed was not just and equitable.

[18] The First Respondent in his answering affidavit avers that both himself and the Second Respondent acquired their own independent rights of residence though their parents whom were long term occupiers on the farm. Therefore, they accordingly fall within the provisions of section 10 of ESTA³.

[19] The Second Applicant contended that the respondents are living rent free on the farm in contrast to the other workers. Furthermore, that the Second Applicant requires the premises occupied by the respondents to house one of his permanent employees, Mr Majola.

[20] The First Respondent has categorically described the hardships the parties will suffer. The respondents averred that their eviction will lead to them being homeless as he does not have any permanent income which will be enough to pay market related rental.

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

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

(a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;

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

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

(d) the occupier-

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

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

(e) the owner or person in charge or the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.

Meaningful engagement

[21] The Municipality held a meaningful engagement with the respondents and their legal representatives which led to a comprehensive report being filed on 26 August 2021 as well as another one filed on 22 September 2022 where the Municipality confirmed that at the moment, they have insufficient space and insufficient funding to provide emergency housing. The Municipality further confirmed that they have a backlog of almost 9000 Applicants in their data base awaiting housing and that these Applicants date back to 1985.

Report in terms of section 9 (3) ESTA

[22] A report was filed by the Department of Agriculture, Land Reform and Rural Development (the Department) to the magistrate in terms of Section 9 (3) of ESTA and the report looked at:

- a. The availability of suitable alternative accommodation;
- b. How an eviction order will affect the constitutional rights of the respondents with the rights of children including the right to education of the child.
- c. The department confirmed that the respondents' family do not have access to suitable alternative accommodation that if evicted the family will be left homeless.
- d. No child of the respondents attends school currently.
- e. They also pointed out that the respondents have a site / land in the Koo area and will require the owner to assist them in erecting a four room wendy house.
- f. The Department therefore recommended that the applicants and the respondents settle the matter on the basis that the respondents be assisted in erecting the four room wendy house and foundation on the property identified by the respondents.

Issues to be determined by the Magistrate's Court

[23] The central issues in this application are as follows:

- a. Whether the First and Second Respondents become occupiers on the farm before or after 04 February 1997.
- b. Whether the First and Second Respondents' eviction is in terms of section 10 or section 11 of ESTA.
- c. Whether there was lawfully cancellation of the right of occupation.
- d. Whether the termination of the First and Second Respondents' right of residence was just and equitable under the provisions of section 11 of ESTA both substantively and procedurally.

Legal framework

[24] An occupier as defined by section 1 of ESTA means:

'a person residing on land which belongs to another person, and who, on 4 February 1997 or thereafter, had consent or another right in law to do so, but excluding:

- (a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No.3 of 1996); and
- (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
- (c) a person who has an income in excess of the prescribed amount.'

[25] In terms of ESTA, occupiers fit in one or two of these categories:

- a. Occupiers on 4 February 1997 whose eviction is dealt with by section 10 of ESTA and;
- b. Occupiers after 4 February 1997 whose eviction is dealt with in terms of section 11 of ESTA.

[26] Section 9 (2)(c) of ESTA requires compliance with section 10 of ESTA if the person to be evicted was already an occupier on 4 February 1997 and compliance with section 11 if the person become an occupier after 4 of February 1997.

[27] In *Hattingh and others v Juta*⁴, Mrs. Hattingh was an occupier in terms of ESTA and had a right of residence on the respondents' land. The respondents brought an application in the Stellenbosh Magistrate's Court to evict the applicants who were members of Mrs. Hattingh's family from his farm as he required part of the cottage to accommodate his farm manager. The eviction was opposed by the family members. The Magistrate's Court held that the members of the Applicant were entitled to live with her on a farm in terms of ESTA. The matter went to the Land Claims Court where this judgement was overturned and their eviction was granted.

[28] The judgment was appealed to the Supreme Court of Appeal (SCA) where the SCA upheld the eviction. The matter further went to the Constitutional Court, and the leave to appeal was dismissed. In dismissing the appeal, in a unanimous judgement, Zondo J held that Section 6(2) of ESTA requires that the right to family life of an occupier, be balanced with the rights of the land owner.⁵ Accordingly, various factors were considered to determine whether it would be just and equitable for Mrs. Hattingh to live with the Applicants in the cottage amongst these factors was the fact that the respondent is the owner of the property and that the Applicants have no right of their own to live in the cottage but only depend upon Mrs Hattingh's right to family life to do so.⁶

[29] In the case of *Bakoven Plase (Pty) LTD and others v Maqubela*⁷, the Court found that:

'The First and Second Respondents' right of occupation was dependent and derived from their father, the late Mr. Maqubela's right to family life and that they were not occupiers in their own right, they are occupiers by virtue of section 3 (4) of ESTA. It follows that the provisions of section 11 of ESTA and not section 10 of ESTA apply therefore, the court a quo erred in its findings that section 10 of ESTA and not section 11 of ESTA is applicable in respect of the First and Second Respondents.'⁸

⁴ *Hattingh and Others v Juta* 2013 (3) SA 275 (CC).

⁵ *Ibid* para 32.

⁶ *Ibid* para 42.

⁷ *Bakoven Plase (Pty) Ltd and Others v Maqubela and Others* (LCC61/2023) [2024] ZALCC 3 (23 January 2024).

⁸ *Ibid* para 46.

[30] In the present case, the Magistrate relies on the case of *Landbou Navorsingsraad v Klaasen*⁹ and concludes that the First and Second Respondents only attained the status of majority which was 21 years old at that time during 2000, that the First Respondent was employed permanently as a general worker on 6 February 2004 and that the occupier status was obtained after 4 February 1997, therefore section 11 of ESTA¹⁰ must find application. I also agree with the decision of the Magistrate in this regard.

[31] I now move to deal with the termination of the right of residence.

Termination of right of residence

[32] Section 8(1) of ESTA provides as follows:

'8. Termination of right of residence

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

- (a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;
- (b) the conduct of the parties giving rise to the termination;
- (c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;
- (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and

⁹ *Landbou Navorsingsraad v Klaasen 2005 (3) SA 410 (LCC) (29 October 2001)*.

¹⁰ 11. Order for eviction of person who becomes occupier after 4 February 1997

(1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, the Court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.

(2) In circumstances other than those contemplated in subsection (1), the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.

(3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to-

- (a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties;
- (c) whether suitable alternative accommodation is available to the occupier;
- (d) the reason for the proposed eviction; and
- (e) the balance

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

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

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

[33] The Second Applicant avers that on the 16 April 2018 the First Respondent reported to work while under the influence of liquor/ narcotics. The First Respondent was notified of the hearing and was charged with reporting on duty while under the influence of liquor / narcotics or use of alcohol.

[34] On 2 May 2018, the hearing took place at the farm and the First Respondent was found guilty of reporting on duty while under the influence of liquor/ narcotics and was dismissed. The First Respondent's employment was therefore terminated on 2 May 2018.

[35] The Second Applicant further avers that the right of the First and Second Respondents to occupy the dwelling was exclusively dependant on the First Respondent's employment to the Second Applicant.

[36] The First Respondent did not refer his dismissal to the CCMA in terms of the Labour Relations Act. On 31 May 2018, the First and Second Respondents received a notice to vacate the farm dwelling by 30 June 2018, however, the First and Second Respondents did not vacate. On 10 July 2018, a second notice was sent for them to vacate the farm dwelling by 10 August 2018.

[37] On 29 November 2018, a notice was served by Sheriff on the First and Second Respondents, requesting them to make representations as to why their rights of residence should not be terminated.

[38] The First and Second Respondents never made any representations. On 26 February 2019, the First and Second Respondents were served with a notice terminating their right of residence.

[39] The First Respondent in his answering affidavit responded to these allegations as follows:

- a. That he received the notices as alleged by the Second Applicant and simply denies that the process followed was just and equitable.
- b. He then refers the Court to paragraphs 13 to 94 of his answering affidavit. He further avers that his and the other respondents' rights of residence was not derived from his employment but rather that both himself and his wife acquired their own independent rights of residence through their parents whom were also long term occupiers on the farm. He also avers that they accordingly fall within the provisions of Section 10 of ESTA.

[40] Section 9(2)(a) of ESTA requires that the occupier's rights of residence must have been terminated in terms of section 8 of ESTA.

[41] Dealing with section 8 of ESTA, Carlese J in *Timothy Maluleke*¹¹ held that:

'this Court in *Aquarius Platinum (SA) Pty vs Bonene and Others* re-affirmed this principle and that the first stage is a notice terminating the occupier's right to reside, thereafter a second notice of eviction in terms of section 9(2)(d) should be given to the occupier.'¹²

[42] It is not disputed that after the termination of the First Respondent's employment, the Second Applicant on 29 November 2018 sent a letter, giving the First and Second Respondents to make representations in terms of Section 8(1)(e) of ESTA and on 26 February 2019 a letter of termination of their rights of residence was also served on the First and Second Respondents. The occupiers refused to vacate and as a result, the Second Applicant launched an eviction application against the respondents and the notice was served on them.

¹¹ *Maluleke N.O. v Sibanyoni and Others* (1012/2020) [2022] ZASCA 40 (4 April 2022).

¹² *Ibid* para 9.

[43] The pertinent question is whether the termination of the respondents' right to reside given all relevant circumstances was just and equitable.

[44] In determining whether the termination was just and equitable all relevant factors in particular, the criteria set out under Section 8(1)(a) to (e) must be considered.

[45] In *Snyders and others v De Jager*¹³ at paragraph 56, the Constitutional Court held that:

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

[46] The Constitutional Court also held in paragraph 76 that:

'ESTA requires the termination of the rights of residence to also comply with the requirements on procedural fairness to enable this person to make representations as to why his or her right of residence should not be terminated. This is reflected in section 8(1)(e) of ESTA. A failure to afford a person that right will mean that there was no compliance with this requirement of ESTA. This would render the purported termination of the right of residence unlawful and invalid. It would also mean that there is no compliance with requirement of ESTA that the eviction must be just and equitable.'

[47] It is trite that the onus is on applicants to place information before the Court to enable it to have regard to the criteria listed under section 8 (1) (a) to (e) and any other relevant factors.

[48] The Magistrate found that all relevant factors were considered by the Second Applicant in particular, with regards to sections 8(2) and 8 (3) of ESTA, the Magistrate's Court found that section 8 (2) of ESTA provides the right of residence of

¹³ *Snyders and Others v De Jager and Others* 2017 (3) SA 545 (CC) (21 December 2016).

an occupier who is also an employee and where right of residence arises solely from an employment agreement it may be terminated the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.

[49] Section 8(3) of ESTA provides that "any dispute of whether an occupier's employment has been 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 been determined in accordance with that Act"; the Magistrate correctly noted that it is trite law that it cannot express an opinion regarding the lawfulness or fairness of the termination of the First Respondent employment contract with Second Applicant.

[50] The Magistrate thus found that the First Respondent's right of residence was terminated after a disciplinary hearing was conducted and therefore his housing benefit that formed part of his employment was accordingly also terminated.

[51] The First Respondent did not challenge his dismissal as he did not refer the dispute to the CCMA. The Magistrate further said that the First Respondent was a permanent employee on the farm, that the Second and Third Respondents' consent to live with the First Respondent, was due to his right to family life in terms of section 6 (2) (d) of ESTA and or the combined operation of section 3 (4) (3) (5) of ESTA.

[52] After the termination of the First Respondent's employment they were given notice to vacate the farm dwelling.

[53] The First and Second Respondents were given an opportunity to make representations via the Second Applicant as to why their right of residence should not be terminated, this notice was served on the Respondents on the 29 November 2018, no representations were received from the respondents instead the only averments that they make in their answering affidavit relates to the issue of homelessness in the event an eviction order is granted which will be dealt with below.

[54] In my view the procedure followed by the Second Applicant was fair. In the circumstances, the termination of the Respondents right of residence was just and equitable.

[55] Accordingly, I find that the Magistrate was correct in finding that it would be just and equitable to grant the eviction. That section 9(2) read with section 8 (4) of ESTA have been complied with.

Compliance with Section 11

[56] Section 11 (3) of ESTA stipulates that in deciding whether it is just and equitable to grant an eviction order for their eviction, the Court shall have regard to:

- (a) The period that the occupier has resided on the land in question;
- (b) The fairness of the terms of any agreement between the parties;
- (c) Whether suitable alternative accommodation is available to the occupier;
- (d) The reason for the proposed eviction; and The balance of the interest of the owner or person in charge, the occupier and the remaining occupiers on the land.

[57] Some of the provisions of section 11 (3) of ESTA echoes those set out in section 8(1) of ESTA which I have already considered above. The only section I wish to discuss herein below is section 11 (3) (c) of ESTA.

Compliance with section 11(3)(c)

[58] The Second Applicant submitted in his founding affidavit that the respondents since they received the letters terminating their right of residence, made no attempt to obtain alternative accommodation. That the reason he makes these averments is that no one has contacted the Second Applicant enquiring about the respondents.

[59] That the First and Second Respondents are employed elsewhere and they receive an income and that they can rent alternative accommodation or receive alternative accommodation with their respective employers.

[60] The First Respondent avers in his answering affidavit that the applicants are supposed to acknowledge and respect the right of children residing on the property

and to recognize that an eviction without suitable alternative accommodation is not in the best interest of the children in terms of section 28(1)(b)(c)(2) and (3) of the Constitution and Children's Act 38 of 2005.

[61] That the Langeberg Municipality filed a general report indicating that they do not have any alternative or emergency accommodation, the report fails to address the issue of how the Municipality will assist in the event the eviction order is granted.

[62] That despite the co-operation by the respondents and their willingness to engage on their relocation to suitable alternative accommodation in the area. The Municipality has failed to provide a report inclusive of the respondents' circumstances and position as to how the respondents' will be assisted in the event that the eviction is granted.

[63] That the applicants failed to prove that meaningful engagement took place with each of the individual respondents in respect of personal circumstances of the respondents and various other factors.

[64] That the Municipality is expected to provide the respondents with housing in accordance with its state constitutional obligation in terms of section 26 of the Constitution.

The Municipal Report

[65] The Municipality filed a report where it stated that Langeberg Municipality has no emergency housing facilities (land and or service sites) available at present where households can be accommodated.

[66] That the Municipality has no sufficient funding to provide emergency housing. That there is a backlog of almost 9 000 Applicants on their database awaiting housing, accordingly they have no accommodation available for the First and Second Respondents.

[67] It is trite that the constitutional duty to provide alternative accommodation rest on the Municipality.

[68] The applicants also relied on paragraph 97 of *Louw*¹⁴, where it was held that:

'we accept that the accommodation at Koopmanskraal may not qualify as suitable alternative accommodation in terms of the definition of the term in section 1 of ESTA. The absence of suitable alternative accommodation is not in the context of section 11, an automatic bar to the grant of a just and equitable order of eviction. It is a factor that we must consider, we have done so'.¹⁵ In this matter an eviction order was granted'.

[69] The applicants further relied on *Blue moonlight*¹⁶ where the Constitutional Court held that the duty regarding housing in section 26 of the constitution falls on all 3 spheres of government local, provincial and National which are obligated to co-operate. In *Grootboom*¹⁷, the Constitutional Court made it clear that a co-ordinated state housing programme must be a comprehensive one determined by all three spheres of government in consultation with each other, each sphere of government must accept responsibility for the implementation of particular parts of the programme.

[70] Depending on *Louw* and *Blue Moonlight*, it is quite clear that the constitutional duty rests on the state to provide occupiers with suitable alternative accommodation in the event those occupiers are legally evicted and rendered homelessness.

[71] In *Port Elizabeth Municipality*¹⁸, it was further emphasized that to elevate the factor of alternative accommodation to a pre-condition for an eviction order would have far reaching and chaotic consequences which could never have been envisaged by the legislature.

[72] The Second Applicant is under no obligation to provide the respondents with alternative accommodation, it is the duty of the state to do so. The continued occupation by the First to the Third Respondents of the farm dwelling will deprive the land owner of his rights to his property.

¹⁴ *Le Roux NO and Another v Louw and Another* (LCC223/2016, 2828/2015) [2017] ZALCC 10 (12 June 2017)

¹⁵ *Ibid* para 97.

¹⁶ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) (1 December 2011).

¹⁷ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46.

¹⁸ *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC).

[73] The respondents are also willing to vacate the property of the applicants and the state is therefore duty bound to provide suitable alternative accommodation, to the First, Second and Third Respondents.

Order

[74] In the result I make the following order:

1. The order of Magistrate Mr F Van Deventer of 20 September 2024 is confirmed in part and substituted in part as set out below.
2. The First to Third Respondents are ordered to vacate the property known as Eikenhof farm on or before 30 May 2025, failing which the Sheriff is authorized to evict them from the aforesaid property on 7 June 2025.
3. The Fourth Respondent is ordered to provide emergency housing suitable for human habitation with access to basic services to the respondents on or before 30 May 2025.



Ntshalintshali M C

Acting Judge of the Land Court