



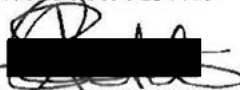
**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

LCC93/2023

Before: The Honourable FLATELA J

Heard: 29 September 2024

Delivered: 20 May 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
20/05/2025	
DATE	SIGNATURE

In the matter between:

NKOSINATHI KHUMALO

First Applicant

GAMANE ZONDO

Second Applicant

FUNAPHI MAZIBUKO

Third Applicant

and

DURAN LAW

First Respondent

GAVIN LAW

Second Respondent

and

THE SOCIO-ECONOMIC RIGHTS INSTITUTE

ORDER

1. The Respondents are ordered to restore the access gate, which they unlawfully removed without obtaining a court order, thereby reducing the applicant's grazing area and preventing the applicant's livestock from accessing grazing and water on Portion 5, Smalhoek Farm Number 1282, Registration Division GS, KwaZulu-Natal Province.
2. The Respondents are ordered to restore the Applicants' access to the 125 hectares of grazing camp on Portion 5, Smalhoek Farm Number 1282, Registration Division GS, KwaZulu-Natal Province.
3. There is no order as to costs

JUDGMENT

FLATELA J

Introduction

[1] The applicants are occupiers in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA). They reside on the Second Respondent's farm described as Portion 5, Smalhoek Farm Number 1282, Registration Division GS, Kwa-Zulu-Natal Province, held under Deed of Transfer number T24189/2009 in extent 459.6549 hectares. The farm is also known as Kilham Glen Farm and is situated in Bergville. The applicants reside and keep their cattle on a 26-hectare staff camp designated for farm labourers and their families.

[2] On 26 July 2023, the applicants approached this Court ex parte on an urgent basis, seeking an order against the First Respondent to restore their unhindered use

of the grazing land and their grazing rights on 125 hectares of land on the Farm. The applicants also sought compensation for the loss of livestock that died due to starvation and dehydration, which resulted from the First and Second Respondents' removal of a gate that previously granted access to the 125-hectare grazing land.

[3] The applicants contend that, in February 2023, the respondents permanently closed an access gate on the boundary fence between the staff camp and the 125-ha grazing camp. This gate had previously allowed the applicants' cattle to reach the 125-hectare grazing camp, which features a water stream. As a result of this closure, several cattle belonging to the applicants have died, and others are reportedly suffering from starvation and dehydration due to insufficient grass and water within the staff camp.

The Parties

[4] The First Applicant is Nkosinathi Khumalo, an adult male residing on the farm. The Second Applicant is Gamane Zondo, an adult male pensioner who lives on the farm. The Third Applicant is Mrs. Funaphi Mazibuko, an adult female residing on the farm. While their founding affidavit asserts that the Second and Third Applicants are Labour Tenants and/or associates as defined in the Land Reform (Labour Tenants Act 3 of 1996) (LTA), the applicants seek relief in these proceedings in terms of ESTA. In 2026, the Second and Third Applicants instituted an action to be declared as labour tenants in terms of Section 33(2A) LTA. The matter was assigned to case number LCC 40/2016 and is still pending before this court.

[5] The First Respondent is Duran Law, who defines himself as an adult businessman and a farmer residing on the farm. The Second Respondent is Gavin Law, the owner of the property. According to the First Respondent, the Second Respondent is not actively involved in farming; he works in Bergville Town, and he comes to the farm to assist when needed.

The Relief Sought

[6] The relief requested by the applicants is wide and is articulated in their notice of motion as follows:

- 1. That the applicant's noncompliance with the forms and notice periods prescribed by the rules of this court be and are hereby condoned, and this application be heard as one of urgency.*
- 2. That a rule nisi is hereby issued, calling upon the respondent to show cause, if any, before this Honorable Court, on ----day 2023 at Why the final order in the following terms should not be made:-*
 - 2.1 That the Respondent be and is hereby ordered to restore to the Applicant's their unhindered use of that grazing land of the farm known as Kilham Glen situated at Bergville, Kwa-Zulu Natal, on which the applicants grazed their livestock until February 2023 by restoring the gate that allowed the applicant's livestock to pass to the other side of the grazing camp in order to access food.*
 - 2.2 That the Respondent be and is hereby ordered to restore the Applicants unhindered use of what of that flowing stream known as Kilham Glen situated at Bergville, Kwa Zulu Natal, on which the applicant's grazed their livestock used for drinking water until February 2023 by restoring the gate that allowed both the applicant's livestock to pass to the other side of the grazing camp in order to access water*
 - 2.3 That the respondent be is hereby ordered to restore the gate and remove the fence that he erected during February 2023, consequently reducing the applicant's grazing; preventing the applicant's livestock from grazing and drinking water on the other side of the fence*
 - 2.4 That the respondent compensates the applicants for the loss they suffered due to the death of their livestock as a result of the reduced grazing camp*
 - 2.5 That the applicant been granted further alternative relief.*
 - 2.6 That the respondent be ordered to pay the costs of this application.*
 - 2.7 That paragraph 2.2 and 2.3 above operate as an interim order with immediate effect pending the final determination of this application.*

[7] After considering the matter, I was satisfied that the application was urgent. Consequently, I granted orders in paragraphs 2.1, 2.2, and 2.3 of the applicants' notice of motion, pending the final resolution of the application. I also issued directives for filing papers and the hearing date. The matter was set for a hearing on 17 August 2023.

[8] The respondents failed to comply with the Court's directives regarding the filing of their papers, and the applicants subsequently launched a contempt of court application. A few days before the hearing date, the respondents addressed a letter to my registrar seeking a postponement to prepare their answering affidavit, but the request was refused.

[9] On the date of the hearing, the respondents made an application for the postponement of the matter so they could file their answering affidavit. The respondents raised issues such as the incorrect citation of the First Respondent (the name of the First Respondent was wrongly spelled, the non-joinder of the Second Respondent, and Mr. Green, who had leased the grazing land.

[10] The parties also engaged in negotiations regarding the postponement and agreed to the following order:

- i. The respondents are directed to provide the applicant's livestock with access to water by providing a 2000-litre Jojo tank to be installed within the applicant's grazing area by 21 August and to fill the tank three times a week.
- ii. The respondents are directed to provide the applicant's livestock with five large bales of hay weekly, to be delivered to the applicant's grazing camp every Monday.
- iii. The applicants are interdicted from preventing the respondents from complying with paragraphs 5.1 and 5.2 above.
- iv. The applicants are interdicted from grazing their livestock outside the grazing camp of the respondent, Mr. Green.

[11] The application for postponement was granted by consent, and costs occasioned by the postponement were reserved. Further directives were given on the filing of pleadings.

[12] An inspection *in loco* was conducted on the farm. I took notes during the on-site inspection. I was shown the boundary fence that separated the staff camp from the 125-hectare grazing camp, the carcasses of the cattle, the dry ponds on 26 hectares, the stream in the 125-hectare grazing area, the other gate leading to the opposite side of the 125-hectare grazing land, the carcass of the cow belonging to the Second Respondent, the other gate on the property where there is an Eskom site with another stream of water, the cow that was unable to stand, digging of an artificial dam near the Third Applicant's homestead, and the other gate providing access to the 125 hectares.

[13] The application is opposed by the respondents on the basis that the applicants were not granted consent to graze their cattle on the 125-hectare grazing camp. The respondents contend that the applicants unlawfully constructed a makeshift gate on the boundary fence dividing the respondents' 125 ha grazing camp from the applicants' staff camp. Additionally, the respondents assert that the applicants have maintained livestock more than the number agreed upon by the parties. Lastly, the Respondent contended that it was agreed between the parties that at least one member of each of the applicant's family must work on the farm for them to keep their cattle. The applicants' entitlement to keep cattle on the farm has been cancelled, as none of the applicants are employed on the farm.

[14] The Socio-Economic Rights Institute of South Africa (SERI) applied to be admitted as *amicus curiae* in terms of Rule 14 of the Rules of this Court.

[15] A conference in terms of Rule 30 of the Rules of the Court was called on 12 March 2024. SERI was admitted as *amicus curiae*.

[16] The following issues were referred for oral evidence:

- a. Was the gate already in existence when the applicants arrived on the farm?
- b. Whether the applicants were allowed to use the 125-ha grazing land.

- c. Whether the applicants were permitted to keep an unlimited number of cattle.
- d. Whether the respondents had unlawfully hindered the applicants' access to the 125-ha grazing land by unlawfully installing a fence and removing the access gate between the 125-ha grazing land and the 26 hectares of grazing land.

[17] The matter was adjourned until 17 April 2024. Several interlocutory applications were filed, causing a delay in the hearing of the matter. The matter was heard on 29 September 2024.

Evidence

[18] All the applicants testified in support of the relief sought. The applicants also filed supporting affidavits from Fikile Mazibuko and Phumzile Khumalo, who were not called to give oral evidence. The First Respondent, Duran Law, the farm manager, submitted an answering affidavit on behalf of the respondents. He was not called to give oral evidence; only the Second Respondent, Mr. Garvin Law, provided oral evidence. The respondents also filed supporting affidavits from Mr. Alan Green and Mr. Ian King in support of their case.

Evidence of the First Applicant – Luke Nkosinathi Khumalo

[19] Mr. Nkosinathi Khumalo testified that he resides on the farm with three adult siblings and is keeping 28 head of cattle at the staff camp. He testified that his family arrived on the farm in 1985 with 17 head of cattle from Ntabamnyama, Kwa-Mesa. Mr. Khumalo stated that his parents approached the Second Respondent's mother, Mrs. Law, who was the owner and person in charge of the farm, seeking a place to reside, a place to keep their cattle, and employment. He also testified that Mrs. Law granted permission to his parents to live on and keep their cattle on the farm if someone would work on the farm.

[20] Mr. Khumalo never worked on the farm, but his parents both did. His father worked as a herdsman and gardener, while his mother served as a domestic worker. His mother died in 2012, and his father died in 2014.

[21] Mr. Khumalo stated that his parents were not paid a salary; instead, they received 50 kg of maize meal each month until they stopped working due to old age. He also testified that his parents informed him they were allowed to keep an unlimited number of cattle to cover their basic living expenses, including food, clothing, and other necessities. He mentioned that his parents often sold cows to meet these costs, noting that in 2003, they owned 20 heads of cattle.

[22] Mr. Khumalo testified that his parents and other labourers were assigned to a staff camp adjacent to a 125-hectare grazing camp, separated by a fence. He stated that there was an access gate to the grazing camp, which allowed their cattle to graze more extensively and access a drinking stream. This gate existed prior to their arrival and was used by his parents for grazing cattle and collecting grass for their huts' thatched roofs. Mr. Khumalo mentioned that Mrs. Law imposed no restrictions on the use of the grazing area, and he confirmed that the gate was a makeshift one and never locked.

[23] Mr. Khumalo testified that within the 26-hectare staff camp, there were five homesteads belonging to the Mazibuko family and other families from the Khumalo clan; however, one family from the Khumalo clan left the farm. He stated that after Mrs. Law's death, the Second Respondent took over the farm and its management without altering the agreements made between Mrs. Law and Mr. Khumalo's parents regarding access to the larger camp.

[24] Mr. Khumalo further testified that in 2014, Mr. Law impounded his cattle on the 125-hectare grazing camp and moved them to another grazing camp that Mr. Law also owns. Mr. Law instructed him to pay R40 per head to keep his cattle on the farm, as no one from his family was working there. Mr. Khumalo testified that after the respondents impounded his cattle, he reported the matter to the Department of Rural Development and Land Reform (the Department) and sought their advice and intervention. An official from the Department advised him to pay, as there was no one from his family working for the respondents. Mr. Khumalo indicated that he paid R40 per head for almost two years until he discovered that other applicants were not charged for their cattle, despite being in a similar situation. He testified that in 2017,

the law requiring occupiers to pay rent to farm owners for their cattle on the farm was abolished, and he, therefore, stopped paying rent for his cattle. They continued to graze their cattle on the larger farm.

[25] Mr. Khumalo testified that in 2016, the Second Respondent leased the grazing land to Mr. Green, and Mr. Green did not allow his cattle to mix with the Second Respondent's cattle. As a result, Mr. Green closed the access gate and dug ponds in the staff camp to provide water for the occupants' cattle. He testified that the access gate was completely shut in February 2023, preventing the cattle from accessing grazing land and water.

[26] Mr. Khumalo testified that before February 2023, he had 35 cattle, and now he has 28 because 7 (seven) have died since April 2023 due to thirst and starvation.

[27] During cross-examination, counsel for the respondents suggested to the First Applicant that there had never been any agreement concluded between the Second Respondent's parents and his parents to raise an unlimited number of cattle. The First Applicant stated that his parents had informed him they were not paid salaries; instead, they were allowed to keep an unlimited number of cattle. They utilized the livestock for food and to support their children, selling the livestock for maintenance, school fees, and general upkeep.

[28] During cross-examination, the counsel for the Second Respondent referred the First Applicant to a letter from Blose Phindela Attorneys, dated 9 June 2016, in which the applicants' previous attorneys requested that the respondents provide water for the applicants' cattle. It was suggested that if there had been an agreement to graze the cattle on 125 hectares, the applicants' former attorneys would have mentioned it and pursued litigation to enforce the agreement. The First Applicant stated that they had sought legal assistance from the Department because their cattle were wounded from the 125-hectare camp to a 26-hectare staff camp, leaving them without water to drink. The attorneys were assigned to them by the Department, but he was not aware of the contents of the letter.

[29] It was also pointed out to the First Applicant that after his cattle were

impounded, he contacted the Department of Land Affairs, and officials were assigned to represent him to ensure his rights were protected. Moreover, if an agreement had been in place, the officials from the Department should have advocated for their rights under that agreement instead of advising him to pay for their cattle monthly. Additionally, the First Applicant was informed that there was no agreement to keep an unlimited number of cattle and that the applicant's parents were permitted to raise only five cattle. Mr. Khumalo disagreed with this statement.

Second Applicant Mr. Gamane Zondo

[30] Mr. Zondo testified that he lives on the farm with his wife, four children, and six grandchildren. He began working on the farm as a herdsman in 1994 after being recruited by the Second Respondent. Mr. Zondo had previously worked for Mr. Green. He stated that when the Second Respondent picked him up from Mr. Green's farm, he had 18 heads of cattle and brought them all with him to the farm. Mr. Zondo testified that the Second Respondent did not mention any limit on the number of cattle he could keep. He noted that he earned very little money and had been told he could keep an unlimited number of cattle.

[31] Furthermore, Mr. Zondo testified that their cattle had access to a 125-hectare grazing camp through an access gate. Mr. Zondo testified that when he arrived on the farm in 1994, he found a gate that he and the other occupiers used to access the grazing land and stream. In February 2023, the respondents removed the gate and installed a fence prohibiting their cattle from accessing 125 ha of grazing land. Before February 2023, he had 17 cattle and four goats; however, he now has 14 cattle.

[32] He states that he is no longer working for Mr. Law; they reached an agreement in June 2022 to retire due to old age.

[33] During cross-examination, it was suggested to him that the Second Applicant would testify that he had agreed with Mr. Zondo to limit the cattle to 15 heads. Mr. Zondo denied this allegation, insisting that there was no such agreement and that he arrived with 18 heads of cattle.

[34] The respondents' counsel suggested to Mr. Zondo that in 2016, when he went on pension, he had an obligation to provide labor for his cattle. Since there was no one available to work on the farm, the agreement to keep the cattle was canceled. Mr. Zondo testified that he was unaware of the cancellation of the agreement and that the Second Respondent had not communicated to him that he was no longer allowed to keep cattle on the farm.

The evidence of the Third Applicant, Mrs. Funani Mazibuko

[35] Mrs. Mazibuko testified that she moved to the farm with her husband and in-laws in 1987. She stated that her father-in-law approached the Second Respondent's mother with a request to accommodate their family on the farm. The Second Respondent's mother agreed to provide accommodation, and his sons would work on the farm for six months. In exchange for their labour, they received R30 per month and were allowed to keep an unlimited number of cows and goats.

[36] Following the death of her father-in-law, her late husband and brother-in-law worked for the father of the Second Respondent. She also worked as a domestic worker for the respondents, but she does not recall the year she stopped working for the respondents. Mrs. Mazibuko mentioned that their cattle grazed in the larger camp. They used the access gate to access the bigger camp.

[37] Mrs. Mazibuko testified that Mrs. Law was in charge of the farm when her family moved there. She stated that they faced difficulties regarding their grazing rights in 2015 when the Second Respondent leased the larger camp. She testified that she heard the gate had been removed. Mrs. Mazibuko stated that a gate existed on the property when they arrived, but it was permanently removed in 2023.

[38] Mrs. Mazibuko also testified that prior to 2015, after the access gate was closed, they would take the cows to a distant spot on the farm where there was little water available for them to drink and then bring them back. Mrs. Mazibuko testified that during 2015, Mr. Zondo's children would also take the cattle to a small stream near the Eskom site, but the owners would lock the gate, thereby denying them access to water. However, after the inspection and loco, they discovered that the gate had

been opened again.

[39] During cross-examination, it was suggested to Mrs. Mazibuko that her family was permitted to keep five heads of cattle. Mrs. Mazibuko denied that her family was permitted to keep only five cattle. She stated that they arrived with several cattle and goats, and her father-in-law, brother-in-law, and husband worked on the farm for six months.

[40] It was suggested to Mrs. Mazibuko that Mr. Green remove the illegally constructed gate to the larger camp in 2012, as the applicants had unlawfully created a makeshift gate to access the leased grazing land. Counsel for the respondents indicated that the ponds had been present in the staff camp since 1987. In the winter of 2012, there was no water in the ponds, and others were dug. Mrs. Mazibuko denied these allegations and reiterated that their cattle drank water from the stream in the bigger camp. She stated that the gate was removed completely in February 2023.

[41] Mrs. Mazibuko resides on the farm with her seven children and five grandchildren. She has eight cattle and one goat. She has not lost any livestock, but her livestock has nowhere to graze.

Ms Phumzile Khumalo

[42] Ms. Phumzile Khumalo filed a supporting affidavit, stating that she arrived on the farm in 1975 after marrying her late husband, Meyi Khumalo. She confirmed that her husband was granted permission by the Second Respondent's father to stay and graze on the farm, utilizing 125 hectares and a nearby stream for water. She noted that a gate allowed access to the grazing area camp.

Ms Fikile Mazibuko

[43] Ms. Fikile Mazibuko states that she was born on the farm in 1963 and that her late parents, Mkiyo and Julia Khumalo, worked for the Second Respondent's parents. She notes that their house was built on the 125-hectare grazing camp. She testified that there was a fence dividing the camps, but a gate allowed access to the 26-hectare staff camping area. She states that her late father was permitted to graze on the 125-

hectare grazing camp.

[44] That concluded the evidence of the applicants.

The Respondents evidence

Mr Duran Law – The First Respondent

[45] Mr. Duran Law filed an answering affidavit on behalf of the respondents, identifying himself as a businessman and a farmer residing on the property in question. Mr. Duran asserts that the Second Respondent, Mr. Gavin Law, is his father and the registered owner of the property. He states that he is actively involved in farming operations, while indicating that Mr. Law primarily works in town and returns only as necessary to help on the farm. However, Mr. Duran does not specify the timeframe during which he assumed the responsibilities of farm manager.

[46] The First Respondent contends that the applicants previously engaged in litigation against the Second Respondent, asserting their rights to the farm by seeking a declaration as labour tenants under the Labour Tenants Act, but were unsuccessful in their pursuit. He indicates that an agreement was reached between the parties after the respondents could not secure the estimated relocation costs of R100,000 per family, allowing the applicants to utilise a 26-hectare portion of the farm for residence and grazing.

[47] The First Respondent stated that it was Mr. Khumalo's father who originally moved onto the farm after approaching his grandmother, Mrs. Law, for a place to stay and a job. The First Respondent also mentioned that Mr. Khumalo's father was not employed by his family at that time but rather worked for their neighbour, Mr. Raymond Green. However, Mr. Khumalo's mother worked on the farm. He notes that "an agreement was made that they could stay on the land and keep the cattle, but they would be entitled to only five head of cattle with them, and someone would have to work for them at all times for the cattle to remain on the property."

[48] The First Respondent asserts that the farm is 156 hectares in extent. A fence separates the 125-hectare grazing area from the staff camp. The First Respondent admitted that a gate was unlawfully installed by the applicants around 1 April 2020, and he restored the fence in February 2023 after a confrontation with Mr. Khumalo, who moved his cattle into the 125-hectare grazing area, leading to Mr. Green cancelling his lease with the respondents, which resulted in financial loss for them. During this argument, Khumalo insulted him and told him that the farm is his. The First Respondent stated that permanently closing the gate was a necessity, not an act of malice.

[49] The First Respondent asserts that in 2017, he approached the First Applicant to complain about him deliberately moving his cattle outside the 26-hectare camp. An altercation ensued during which the First Applicant assaulted the Second Respondent, and both parties filed criminal charges against each other.

[50] The First Respondent asserts that none of the applicants or their family members have worked on the farm since 2002. Regarding the First Applicant, the First Respondent states that in 2004, Mr. Gavin Law reached an agreement with the First Applicant to pay a fee of R40 per head of cattle. The payments were honoured until early 2015, when the First Applicant ceased making payments after discovering that the other applicants were not paying for their livestock. He asserts that all three applicants have no right to use the land for grazing since no one is working for them, which was the condition for keeping their livestock on the farm.

[51] The First Respondent states that the Second Respondent has cattle on the farm, including a bull, which would cost around R40,000 to R50,000. He notes that the applicants do not vaccinate their herds, and if they were to become ill, the illness could spread to his herd, resulting in significant financial loss for him.

[52] The First Respondent asserted that the complaint regarding the lack of water in the staff camp dates back ten years; therefore, the matter is not urgent. The First Respondent referred the Court to a letter written by Blose Phindela Attorneys, the applicants' erstwhile attorneys, dated 9 June 2016, in which the applicants' erstwhile attorneys claimed that the Second Respondent had moved the applicants' cattle to a

camp where they had no access to water. A request was made to the Second Respondent to allow the herd to move to an alternative camp; failing which, an application would be brought to court. In response, the Second Respondent refuted the allegations that he had moved the applicants' cattle to a camp where there was no water. He stated that he was willing to assist insofar as necessary, as he did not intend for the applicants' cattle to go thirsty. Additionally, it was noted that the applicants' cattle exceeded the permitted number and that they were required to reduce the number to the permitted limit within 30 days.

[53] The First Respondent asserts that prior to the commencement of these proceedings; the Second Applicant had requested water for the cattle from his father. On 16 July 2023, they successfully organised a 2,000-litre tank and delivered water to a staff camp. The First Respondent claims that when they brought the water, the Second Applicant, who was intoxicated, yelled at them and questioned why the gate had been removed.

[54] Furthermore, the First Respondent avers that approximately two years ago, the First Applicant had only seven head of cattle, but now claims to have 35. He doubts that the herd could have naturally increased to that size in just two years and suspects that the First Applicant is leasing the land and charging others to keep their cattle on the farm. There are various brands of cattle, and some remain unbranded.

The testimony of Gavin Law, the Second Respondent.

[55] Mr. Gavin Law testified that his parents had owned the farm since 1954, and prior to that, his two uncles had owned it as early as 1890. Mr. Law stated that initially, the farm was a single unit; however, it was subsequently subdivided into two separate units by a fence. The boundary fence was installed in 1954. The 26-hectare area where the applicant resided belonged to his father's side, while the 125-hectare area belonged to his uncle's side. There was no access gate between the two properties.

[56] Mr. Law testified that he was born in 1961 and worked for the Railways until his retirement. He states that the Khumalo family arrived at the farm in 1987 after Mr.

Khumalo approached his mother for a job and a place to stay while working. Mr. Law asserts that upon returning from work, he informed Mr. Khumalo's father that he could keep only five head of cattle, but only if someone worked in exchange. He stated that Mr. Khumalo's father did not work for them initially; instead, he worked for their neighbour, Mr. Green. However, Mr. Khumalo's mother did work for them. After Mr. Khumalo's parents passed away, no one worked on the farm. Mr. Law states that he contacted Mr. Khumalo to request R40 per head for the cattle, to which Khumalo agreed. Mr. Law moved the cattle and returned them to the staff camp after receiving a demand letter from his attorneys.

[57] Regarding Mr. Zondo, Mr. Law confirmed that he recruited Mr. Zondo as a herdsman in 1996 and fetched him from Mr. Malcolm Green's farm, where he had previously worked. Mr. Zondo requested to keep his cattle and was allowed to maintain 15 head. At that time, he owned 15 cattle and three calves, totalling 18. They agreed that Mr. Zondo would sell the calves after six to eight months. Mr. Law recognised Mr. Zondo as his best herdsman and indicated that he paid him a salary, although he could not recall the exact amount, in addition to providing an 80 kg bag of maize meal. Upon the implementation of minimum wage laws, Mr. Law ensured Mr. Zondo was paid the required minimum, though he was unable to specify the amount.

[58] In 2012, Mr. Law leased his grazing land to Mr. Hilton Green, followed by Mr. Ian King, and lastly to Mr. Allen Green in 2020. Mr. Green reported that the applicants were unlawfully driving their cattle onto the leased land by creating a makeshift gate and cutting fences. Mr. Law stated that there was no access gate to the 125-hectare area and denied granting the applicants any permissions.

[59] He explained that the farm comprised 300 hectares for grazing, 100 hectares for planting, and 125 hectares for commercial grazing, while the applicants were restricted to 26 hectares in the staff camp. Mr. Law also noted that the applicants had access to water through two ponds, and the stream near the Eskom site had been opened for their cattle.

Mr I Green's testimony – Former tenant

[60] Mr. Green filed a supporting affidavit indicating that he leased the respondents' 125-hectare grazing camp from 2015 to 2017 and again in 2020. He claimed that the applicants encroached upon the camp by breaking the fence to access water for their livestock. When he asked them why they were driving their cattle to the large camp he had leased, they told him that they had no water. He then constructed a pond over a 26-hectare area. When the dam dried up, the applicants accessed water from a nearby stream by the ESCOM power station.

[61] In 2020, Mr. Green signed a three-year lease agreement for the grazing camp. Upon taking possession of the camp, he discovered that the applicants had created a makeshift gate by tampering with the fence. Despite his efforts to restore the fence, the makeshift gate continued to reappear. After consulting his attorneys, they sent a letter demanding that the applicants cease grazing on the grazing camp, which was ignored. Ultimately, Mr. Green decided to terminate the lease due to concerns about the health of his cattle linked to the applicants' actions.

Mr J Buys - Former beef production manager employed by Mr Green

[62] Mr. Johannes Matthys Buys testified as the former beef production manager for Mr. Green, a role he held since 2003, overseeing leased farms and grazing camps. In 2021, he specifically managed a 125-hectare camp leased from Mr. Law. Mr. Buys explained that a fence enclosed the camp, but there was no gate. He reported instances of the applicants attempting to drive their cattle onto the camp by tampering with the fence. When he asked the applicants why they were tampering with the fence, they expressed concerns about water shortages and improvised a gate to access a stream within the 125-hectare area, which allowed their cattle to enter the grazing camp leased by Mr. Green.

Mr Ian Malcolm King

[63] Mr. King filed an affidavit stating that he has resided at Roseleigh Farm in Ladysmith, adjacent to the First Respondent's farm, for 21 years. In 2017, he sought additional grazing land and verbally negotiated a lease for a 125-hectare camp at a rate of R6000 per month for one year. He testified that there was no access gate from

the staff camp to the leased area; however, the applicants managed to move their cattle onto the land. Mr. King instructed his attorneys to send letters demanding that the applicants keep their cattle off the leased land, which were served by D. Van Rensburg, the security officer for the farm owners' association. The applicants ignored the letter as they continued to drive their cattle to his leased grazing camp. He expressed concern that the applicants' poorly maintained cattle could harm his herd's health. health. Upon the applicants' non-compliance, Mr. King terminated the lease.

[64] That concluded the evidence of the Respondents.

SERI's submissions

[65] SERI focused on two main submissions, namely:

- i. The proper interpretation of section 6 of the ESTA.
- ii. The practical meaning of installing the fence and or fencing off the camp.

[66] Counsel for SERI made submissions regarding the proper interpretation of section 6 of the ESTA. Referring to the current jurisprudence on cattle and grazing rights, he argued that viewing grazing rights as personal rights, rather than as integral to the right to use land as provided in section 6 of the ESTA, has consistently represented a narrow and overly restrictive interpretation of ESTA. SERI primarily relied on the judgment of this Court in *Maladora Trust v Mereki and Others* for their submissions. It is common cause that the judgment was overturned on appeal by the Supreme Court of Appeal, which reaffirmed that grazing rights are personal rights. Mereki subsequently appealed to the Constitutional Court, where the issue of whether grazing rights should be considered personal or real rights has been referred for determination. The matter was heard on 27 March 2025, and the judgment is pending. Therefore, I will not entertain the arguments regarding the interpretation of section 6 of the ESTA.

[67] On the second issue, SERI submitted that any interference with grazing rights constitutes an eviction or, at the very least, constructive eviction. In *Loskop Landgoed*

*Boerdery (Pty) Ltd and Others v Petrus Moeleso and Others*¹ The SCA held that:

'.....ESTA defines 'evict' to mean: '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 this Act, and "eviction" has a corresponding meaning'.²

[68] In *Adendorffs Boerderye v Shabalala and Others* [2017] ZASCA 37, it was held that:

'It thus follows that his rights of grazing do not derive from ESTA. He has a personal right to use the land for the purpose of grazing. I agree with the remarks by Pickering J in *Margre Property Holdings CC v Jewula* [2005] 2 All SA 119 (E) at 7 when he said the following:

"The right of an occupier of a farm to use the land by grazing livestock thereon is a right of a very different nature to those rights specified in s 6(2) [in ESTA]. In my view, such use was clearly not the kind of use contemplated by the Legislature when granting to occupiers the right to use the land on which they reside. Such a right would obviously intrude upon the common law rights of the farm owner and would, in my view, thereby amount to an arbitrary deprivation of the owner's property. There is no clear indication in the Tenure Act that such an intrusion was intended. It is relevant in this regard that the respondent is neither an employee nor a labour tenant as defined by section 1 of the Land Reform (Labour Tenants) Act 3 of 1996. His right, if any, to graze stock on the farm does not derive from that Act. In my view, the use of land for purposes of grazing stock is pre-eminently a use which would be impossible to regulate in the absence of agreement between the parties. I am satisfied in all the circumstances that an occupier is not entitled as of right to keep livestock on the farm occupied by him as an adjunct of his right of residence. His entitlement to do so is dependent on the prior consent of the owner of the property having been obtained."³

[69] The second issue has been addressed in *Loskop*, and the SCA held that the removal of cattle does not amount to an eviction.

¹ (390/2021) [2022] ZASCA 53.

² *Ibid* para 13.

³ *Adendorffs Boerderye v Shabalala and Others* [2017] ZASCA 37 para 28.

Evaluation of the evidence

[70] The summary of the evidence presented to the Court regarding the issues that were referred to oral evidence is 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) at paragraph 5.⁴

[71] The first issue that must be determined is whether the respondents unlawfully despoiled the applicants of their access to the 125 ha by illegally installing a fence and removing the access gate between the 125 ha and the 26 hectares of grazing land.

[72] In my view, once I find that against the respondents in this issue, there is no need to determine other issues. It will dispose of the matter.

[73] Stripped of all the verbiage, the relief sought by the applicants is in the form of *mandament van spolie*. The applicants alleged that in February 2023, the respondents removed a gate that allowed the applicants' livestock access to the 125-ha grazing and constructed a fence prohibiting the applicants' cattle from accessing the 125-ha grazing

[74] Stripped of all the verbiage, the relief sought by the applicants is in the form of *mandament van spolie*. The applicants alleged that the respondents removed a gate that allowed the applicants' livestock access to the 125-ha grazing and constructed a fence prohibiting the applicants' cattle from accessing the 125-ha grazing.

The Respondents' Pleaded Case and evidence

[75] The First Respondent conceded that there was a gate that the applicants unlawfully installed on 1 April 2020. He conceded that he closed the gate in February 2023 following a confrontation with the First Applicant.

⁴ '....The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities.'

[76] The First Respondent's version of the events that led to him closing the gate is well articulated in paragraphs 50, 51, 52, 68, 71, 72, 73 and 74 of their answering affidavits, which he states thus:

"50. I concede there was a gate placed on the property. This gate was unlawfully placed by the applicants when they cut the fence in order to install their own gate. This happened on or about 01 April 2020.

51. I admit that I restored the fence in February of this year. This was not done out of malice but rather necessity.

52. My father liked to have cattle on the land. Included in this head of approximately 60 is a rather impressive bull who I estimate is worth approximately R40,000 to R50,000.

53. I am aware that applicants do not vaccinate their head. Consequently, if any of their head were to get some kind of illness, and considering their intention to continue to allow our head to mix, these illnesses could be spread to our own head at a vast loss than she lost to me.

.....

68. This leads me to the incident in February 2023.

71. What led to the restoration of the fence was an argument between myself and the First Applicant when he had once again moved his cattle off the 26-hectare portion of the property which they are allowed to use and in the greater part of the farm where our cattle were as well as the adjacent camp which is currently still leased by Mr A Green. I went to confront the First Applicant and told him that again his cattle are not allowed in that camp, particularly because it was putting pressure on our relationship with Mr Green.

72. The First Applicant's response was to claim that the farm belongs to him and instead shouted at me to get off his property.

73. It was shortly after that that the First Applicant again forced his cattle onto the property that was being leased by Mr Green.

74. Mr Green at that stage expressed his regret of the situation but said that there was no reason for him to continue leasing the land if we could not secure it. As a result of this he said that the lease agreement which would

be expiring shortly thereafter would not be removed. (I think the correct word is that the lease would not be renewed.

75. We have accordingly already lost money because of the Applicant's behaviour."

Legal principles applicable to *mandament van spolie*

[77] Mhlantla JA in *Ivanov v Northwest Gambling and others*⁵ held that:

'Spoliation is the wrongful deprivation of another's right of possession. The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands. An applicant, upon proof of two requirements, is entitled to a *mandament van spolie* restoring the status quo ante. The first is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant - that is why a thief is protected. The second is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant, as that would go to the merits of the dispute.⁶

[78] In this matter, the First Respondent conceded to removing the makeshift gate and constructing the fence in February 2023, thereby preventing the applicants from grazing on 125 ha of grazing land. However, the respondents spent a great deal of time justifying the cause of possession, i.e., that the gate was unlawfully constructed.

[79] Recently, in *Loskop Landgoed Boerdery (Pty) Ltd and Others v Petrus Moeleso and Others*⁷, Carelse JA outlined the principles underlying the *mandament van spolie* as follows :

'On the appellants' own version, the respondents were deprived of possession of the two grazing camps that they had been given consent to use. In *Nino Bonino v De Lange* 1906 TS 120, the court stated that:

'It is a fundamental principle that no man is allowed to take the law into his own hands; no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so,

⁵ *Ivanov v North West Gambling Board and Others* 2012 (6) SA 67 (SCA).

⁶ *Ibid* para 19.

⁷ *Loskop Landgoed Boerdery* *supra* n 2.

the Court will summarily restore the *status quo ante*, and will do that as a preliminary to an inquiry or investigation into the merits of the dispute. It is not necessary to refer to any authority upon a principle so clear.'

In a decision of this Court, in *Bon Quelle (Edms) Bpk v Munisipaliteit van Otavi* it was specifically held that the *mandament van spolie* is available for the restoration of the lost possession (in the sense of quasi-possession, which consists of the actual use of the servitude) of a right of servitude. In this case, a right of servitude of grazing could therefore be spoliated. The dispossession of the actual possession of the two camps or the quasi-possession in respect thereof by the respondents without consent or a court order, was unlawful and amounted to a spoliation.⁸

[80] The removal of the gate without a court order was unlawful and amounted to self-help.

[81] Van Blerk JA in *Yeko v Qana*⁹ neatly summarised the principle for spoliation and held as follows at page 739D-G:

'The very essence of the remedy against spoliation is that the possession enjoyed by the party who asks for the spoliation order must be established. As has so often been said by our Courts the possession which must be proved is not possession in the juridical sense; it may be enough if the holding by the applicant was with the intention of securing some benefit for himself. In order to obtain a spoliation order the *onus* is on the applicant to prove the required possession, and that he was unlawfully deprived of such possession. As the appellant admits that he locked the building it was only the possession that respondent was required to establish... For, as *Voet*, 41.2.16, says, the injustice of the possession of the person despoiled is irrelevant as he is entitled to a spoliation order even if he is a thief or a robber. The fundamental principle of the remedy is that no one is allowed to take the law into his own hands. All that the *spoliatus* has to prove, is possession of a kind which warrants the protection accorded by the remedy, and that he was unlawfully ousted.'

[82] The applicants have demonstrated that they were unlawfully dispossessed of the gate providing access to 125 hectares of grazing land for their cattle. The

⁸ *Loskop Landgoed Boerdery* supra n2 para 20.

⁹ *Yeko v Qana* 1973 (4) SA 735 (A).

respondents had several legal remedies available to them; however, they opted to take matters into their own hands. Therefore, the applicants are entitled to a restoration order of the gate that they unlawfully removed without a court order.

[83] The conclusion reached above disposed of the matter as deciding on other issues will not have a bearing on the restoration order. For completeness, I will deal with the remaining questions:

Were the Applicants allowed to raise an unlimited number of cattle?

[84] The First and Third Applicants both testified that their parents approached Mrs. Law, the Second Respondent's mother, who was the owner and person in charge of the farm for work, a place to stay and to keep their livestock. They stated that Mrs. Law provided their parents a place to stay and jobs and allowed them to keep an unlimited number of cattle. They described this arrangement between Mrs. Law and their parents as mutually beneficial for both parties. Mrs. Law did not pay their parents' salaries for the work, and their parents were permitted to keep an unlimited number of cattle.

[85] The First Respondent confirmed in their affidavit that the First Applicant's father, Mr. Doda Khumalo, approached his grandmother, Mrs. Law, for a place to live and a job. According to him, an agreement was made allowing them to stay on the farm, but they would only be entitled to keep five heads of cattle. Someone would need to always work on the farm to ensure the cattle remained.

[86] The Respondents urged me to reject the First and Third Applicants' evidence, arguing that their evidence is hearsay, whereas the Second Respondent's evidence is direct. I disagree.

[87] The Second respondent confirmed that the First Applicant's father approached his mother, seeking a job and a place to stay, and his mother granted the First and Third Applicant consent to stay on the property and keep their cattle. The Second respondent confirmed that he was not present when the First Applicant's father spoke to his mother, as he was working at the time. However, he says that upon returning from work, he informed the First Applicant's father that he was permitted to keep five

heads of cattle and that someone would always work to keep the cattle; the same applies to the Third Applicant.

[88] Responding to my inquiry regarding the role he played on the farm while his mother was still actively farming and managing it, he clarified that he acted in a supportive capacity since his mother was the owner and manager. He indicated that his involvement primarily consisted of assisting her in managing the farm.

[89] The First and Third Applicant contested the allegation that the Second Respondent was actively involved on the farm; they asserted that the Second Respondent was not responsible for the management of the farms; rather, this responsibility lay with his mother, Mrs. Law. Furthermore, it was Mrs. Law who provided them with jobs and gave them consent to reside on the farm and keep an unlimited number of their livestock.

[90] I accept the applicant's version regarding this issue. ESTA defines a "person in charge" as follows:

"... a person who at the time of the relevant act, omission of conduct had or has legal **authority** to give consent to reside upon the land in question" (my emphasis)

[91] Pullinger AJ in *Red Oak Properties (Proprietary)*¹⁰ dealing with the interpretation of a person in charge of the property in PIE eviction application held as follows

'The phrase "legal authority" implies a right in law to permit a person entry upon or to reside upon the land or building in question. When the ordinary grammatical meaning of the words in the phrase is considered, purposively, and through the lens of the Constitution, the meaning of the phrase is uncontroversial. It asks whether a person, who is not the owner of the said land or building erected on the land, has the right, in

¹⁰ *Red Oak Properties (Proprietary) Limited v Unlawful Occupiers of Unit [...], Door 1[...], Pearlbrook Complex, 3[...] B[...] Street, Hillbrow, Johannesburg and Another (2023/053286) [2024] ZAGPJHC 1058 (16 October 2024).*

law, to allow another person to enter land or a building situated thereon and to reside there.¹¹

‘Various people who fall within the class who enjoy the aforesaid right. These include a lawful tenant that is permitted to sub-let or a registered owner’s agent (for example a letting agent). Then, there are those who enjoy a registered servitude of *usus*, *usufructus habitatio*. Each of these examples are holders of limited real rights which confer upon the holder the legal authority PIE contemplates to be the “person in charge”.¹²

[92] It is a common fact that the Second Respondent was employed full-time by the Railways until his retirement. The Second Respondent admitted that when his mother was the owner and overseeing the farms, he assisted her whenever needs arose. He conceded that he did not take any measures to enforce compliance with the farm regulations and that the agreements he claimed were made between himself and the Applicants, stating that he saw no necessity for such actions. Following the passing of his mother, he took on the management of the farm. The Second Respondent testified that upon assuming control of the farm, he did not modify the agreements that had previously been established with his mother. I find it difficult to comprehend how an individual responsible for the farm could be indifferent to whether the regulations in effect since 1987 are being adhered to unless he is not the actual person in charge. In my opinion, the Second Respondent did not fulfil the role of a ‘person in charge’ as defined by the ESTA at the time the Applicant’s parents arrived; his late mother held that role. He lacked the legal authority under the law to enter into any agreements with the occupiers regarding the number of cattle the Applicant was permitted to keep. All agreements governing their residency on the farm were made with his mother.

[93] The First Applicant testified that following the death of his mother in 2012, the Second Respondent impounded his 17 heads of cattle and demanded a payment of R40 per head. The First Applicant disputes having agreed to this payment. He indicated that he sought guidance from the Department of Rural Development, which advised him to proceed with the payment. At that time, he possessed 17 heads of cattle

¹¹ Ibid para 7.

¹² Red Oak Properties supra n 12 para 8.

and was making a monthly payment of R640 to the Second Respondent. Mr. Law accepted the payments for all the cattle without raising any concerns regarding the number of cattle the First Applicant was keeping. The issue arose only after he ceased making payments for the cattle. This begs a question: If there was indeed an agreement between the First Applicant and the Second Respondent regarding the number of cattle to keep payment, why did the Second Respondent accept the payment for 17 cattle and not raise the issue of the number of cattle that the Applicants kept?

[94] The respondents further testified that the number of cattle maintained by the applicants raises suspicions, as the cattle appear to have multiplied in an unreasonably short period. The First respondent suspects that the First Applicant may be harbouring other people's cattle in exchange for compensation. It appears that the Second Respondent impounded the First Applicant's cattle based on these suspicions. Furthermore, it seems improbable that an agreement was concluded between the First Respondent and the Applicant concerning any form of payment.

[95] The testimony of the Second Respondent is considered unreliable. An effective manager would certainly monitor compliance with farm rules and any agreements made with labourers over a long period, including after their retirement. The evidence clearly shows that the Second Respondent was not in charge of the property while his mother was alive, and after her passing, he did not change the rules. Instead, it was the lessors who attempted to prevent the applicant's cattle from accessing, which attempts met with resistance. Conversely, the Applicant's account is accepted as credible.

Whether the access gate was present when the Applicants arrived in 1987 and 1994, respectively

[96] The First and Second Applicants testified that an access gate has been present between the two camps since they arrived in 1987. The Third Applicant also confirmed that he discovered the gate when he began working on the farm in 1994.

[97] The Applicant submitted unequivocal evidence from two independent witnesses, Ms. Fikile Mazibuko and Ms. Phumzile Khumalo, both of whom affirmed the existence of the gate. They described it as a makeshift structure utilized for accessing the grazing camp, thereby allowing their cattle to graze and obtain water from the nearby stream. Furthermore, the Third Respondent indicated that the gate was used to access grass that they collected for constructing thatched houses.

[98] The Applicants also testified that the gate was in existence when the Second Respondent commenced leasing the grazing camp to Mr. Green. However, Mr. Green prohibited his cattle from mingling with those of the Applicants. Consequently, he closed the access gate, which resulted in the Applicants' cattle being deprived of water. Subsequently, Mr. Green excavated an artificial pond within the camp.

[99] The Second Respondent disputed the existence of the access gate at the time the Applicants arrived on the farm and acknowledged that the Applicants had constructed a makeshift gate. Furthermore, the Second Respondent failed to take action to prevent the Applicants from doing so.

[100] Upon thorough consideration of the evidence presented, I accept the Applicant's version that a gate was already in existence at the time the Applicant arrived at the farm. The farm labourers utilized this gate to access the 125-grazing camp for extended grazing and to access water from the stream until the Second Respondent leased the grazing land to various farmers.

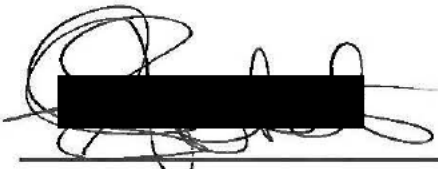
[101] In my view, all the applicants were credible witnesses. Their evidence, taken as a whole, was credible. The applicants are not sophisticated individuals; their testimony was presented through an interpreter. They had a clear recollection of the facts and provided straightforward and candid testimony.

[102] In relation to the matter of compensation for the loss of livestock sustained by the First and Second Applicants, it is determined that this issue cannot be resolved within the context of these proceedings. It will be best resolved in action proceedings.

Order

[103] In the circumstances, I make the following order:

1. The Respondents are ordered to restore the access gate, which they unlawfully removed without obtaining a court order, thereby reducing the applicant's grazing area and preventing the applicant's livestock from accessing grazing and water on Portion 5, Smalhoek Farm Number 1282, Registration Division GS, KwaZulu-Natal Province.
2. The Respondents are ordered to restore the Applicants' access to the 125 hectares of grazing camp on Portion 5, Smalhoek Farm Number 1282, Registration Division GS, located in the KwaZulu-Natal Province.
3. There is no order as to costs



FLATELA J
JUDGE
LAND COURT

Date of hearing: 21 September 2024

Date of judgment: 20 May 2025

Appearances

Counsel for the Applicants: Mrs Nkomonde

Instructed by: Legal Aid South Africa

Counsel for the Respondents: Mr I Veerasamy

Instructed by: Maree & Pace, Mpulo Inc

For the Amicus Curiae – SERI LAW CLINIC