



**THE LAND COURT OF SOUTH AFRICA
HELD AT CAPE TOWN**

Case No: LanC 28/2025
Magistrate's Court Case No: 607/2022

Before: Du Plessis AJ and Bishop AJ
Heard on: 6 June 2025
Delivered on: 5 August 2025

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 05 August 2025

Signature:

In the matter between:

MISTY CLIFFS FARM (PTY) LTD

First Appellant

DEKKER ADAM ESTERHUYSE

Second Appellant

and

KOOS CHRISTOFFELS

First Respondent

SOPHIA CHRISTOFFELS

Second Respondent

ESELINE CHRISTOFFELS

Third Respondent

**AND ALL OTHER OCCUPIERS
RESIDING WITH OR UNDER THE
FIRST TO THIRD RESPONDENTS IN
THE PREMISES ON BO-VLAKTE
FARM, BARRYDALE**

Fourth Respondent

SWELLENDAM MUNICIPALITY

Fifth Respondent

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

Sixth Respondent

ORDER

1. The appeal is dismissed.
2. No order as to costs.

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an appeal against the judgment and order of Magistrate Pearcey-Botha in the Swellendam Magistrate's Court,¹ which dismissed the appellants' application to evict the First to Third respondents from a farm property. At issue is whether the termination of Mr Christoffels' employment lawfully brought an end to the entire family's right of residence, or whether their continued occupation enjoys independent protection under the Extension of Security of Tenure Act² (ESTA). The appeal engages ESTA's procedural and substantive safeguards, particularly the requirement of a fair process prior to termination of residence, and the constitutional rights to tenure security and protection against arbitrary eviction. The key issue before this Court is whether the requirements for a lawful and procedurally fair termination under ESTA were met, and if so, whether an eviction would be just and equitable in the circumstances.

¹ Handed down on 11 December 2024.

² 62 of 1997.

[2] The court a quo dismissed the application on the ground that the respondents were not invited to make a representation before the February 2020 notice to terminate their right of residence. The appellants submit that this was incorrect, in that a fair labour dismissal itself fulfils ESTA's procedural fairness requirement where residence is employment-related. Apart from the employment-linked consent that was lawfully terminated, the appellants submit they gave the respondents repeated opportunities to make representations.

[3] To decide the issues on appeal, it is necessary to outline the background.

Background

[4] The Christoffels family occupy House 7 of the farm property. There is a dispute regarding the source of the right of occupation of each of the respondents. The appellants aver that as part of an employment contract the First Respondent, Mr Christoffels, signed on 1 September 2014, he received a housing benefit. This housing benefit ended after he was dismissed following a disciplinary process on 7 January 2020.

[5] Mr Christoffels denies that he received the house as a result of employment, as he started his occupation before he was employed on the farm. He denies knowledge of the terms of the employment agreement and states that it is common practice at the farm for general workers to sign any documents that are presented to them by management. The documents were not explained in simple terms, and he was simply told to sign. Thus, while he admits to signing the documents, he denies knowing what he signed.

[6] The appellants aver that all the other respondents occupied the house through Mr Christoffel's employment benefit alone. The respondents disagree. They aver that the Second Respondent, Ms Christoffels, was born on the farm in the house they currently occupy, since her parents (the Van Wyks) used to live there. Mr Christoffels came to live on the farm in 1989 when he moved in with Ms Christoffels and her parents around that time. The then-owner of the farm was aware of his residence. Mr Christoffels says his residence derives from tacit consent from the previous owner of

the farm, as well as the contract of employment that was entered into later, as will be explained below.

[7] Ms Christoffels used to work on the farm until 1998, when Eseline, the Third Respondent, was born. Eseline was born with a disability, and Ms Christoffels quit her job to take care of Eseline full time. The appellants state that she is not an occupier, but a resident, and as such, her fate follows that of her caregivers. The Fourth Respondent(s) are the couple's minor children, aged 13 and 9. The Second to Fourth Respondents do not know any other home other than House no 7 on the farm.

[8] Ms Christoffels did not sign an agreement with the previous owner (or the appellants). Her rights on the farm, she states, flow from sections 3(4) and (5), which create certain statutory presumptions. She was an occupier before her employment on the farm, and continued to be an occupier after her employment, she states. She states that this right of residence was not terminated before the agreement was concluded with her husband in 2014 and 2016. She has independent rights that were not terminated; therefore, her rights are not subject to the rights outlined in Mr Christoffel's employment agreement.

[9] She submits that since she is an occupier in her own name, her rights had to be terminated in accordance with section 8(1). Although correctly cited, no substantive grounds for her eviction were alleged or proved, she submits. While she did receive termination notices, it was based on the incorrect premise that her right of residence is dependent on Mr Christoffels' right. This, she contends, is procedurally improper.

Dismissal that gave rise to the termination of the residence of Mr Christoffels

[10] Mr Christoffels' employment terminated on 7 January 2020, when he was dismissed after a disciplinary hearing where he was charged with misconduct for being absent from work for nine consecutive days over the Christmas period. Mr Christoffels took part in the disciplinary process; he did not raise any procedural fairness issues. He was dismissed. In the dismissal letter, he also received notice that, since his right of residence was tied to his employment, he was required to vacate the house within a month.

[11] Mr Christoffels referred his dismissal to the Commission for Conciliation, Mediation and Arbitration, where a settlement agreement was reached and an award was made, including Mr Christoffels agreeing to move from the farm. This settlement agreement thus concluded any proceedings under the Labour Relations Act³ (LRA).

[12] The appellants' case is that Mr Christoffels' right to occupy the house depends entirely on his employment. Since he was dismissed, they started the process to withdraw their consent. The appellants aver that Ms Christoffels and Eseline reside on the farm only through Mr Christoffels' employment; the termination of his employment, therefore, terminates their right of residence as well.

[13] The rest of the Christoffels family also received notices, which invited them to make representations to advance reasons why they could continue to stay in the house. They did not respond. Thereafter, more notices were sent, but were also met with no response. Mr Christoffels stated that he did not respond because he sought legal advice, as he did not understand the content of the notices.

[14] Mr Christoffels refused to vacate the house after termination, leading to the eviction proceedings in the court a quo.

[15] The respondents state that there was no compliance with section 8(1)(e), as they were not given an opportunity to make representations before the applicant decided to terminate their occupation. The dismissal letter informing the parties of termination was sent on 7 January 2020, without first allowing the respondents to make representations as to why their right of residence should not be terminated before the decision to terminate was made. Instead, the applicant's mind was made up, and all subsequent notices were therefore not an effective opportunity to make representations.

[16] The court below concurred with the respondents, ruling that the notice to vacate the premises was given on the same day as the notice of termination of employment.

³ 66 of 1995.

The magistrate found that the respondents were not given an opportunity before the decision to terminate their residence was made, and that "any discussions that followed [after the termination of the right of residence] do not benefit the applicants, as they had already decided to evict the respondents". For this reason, there was a procedural defect in the eviction, and since the appellants could not overcome this hurdle, the court was not required to consider any other issues.

[17] The appellants state that the court below erred with regard to the First Respondent, in that consent for him to reside in the house is directly linked to his continued employment. It questions whether he is entitled to a separate opportunity to make representations why his consent to reside should not be terminated if he received a fair disciplinary hearing to terminate his employment.

[18] The question also arises what procedure the landowner must follow to terminate if an employee's connection to the farm is not only an employment relationship, but also some other basis, like having lived on the farm prior to having been employed by the landowner.

[19] To determine the outcome of the appeal, it is necessary to examine the legal framework that governs the questions before the court.

The Legal Framework

[20] Section 25(6) of the Constitution provides that "a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress". ESTA was enacted to give effect to this constitutional right.

[21] The long title of ESTA states

"To provide for measures with State assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land

may be terminated; and to regulate the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land”.

[22] The purpose of ESTA is twofold – to give effect to the constitutional right of tenure security, and to regulate termination of residence and evictions. Protection against arbitrary and unfair evictions is a key part of tenure security. It enables individuals to live without fear of displacement or homelessness, and fosters stability, dignity, and community.⁴

[23] The purpose of these rights is not merely to endorse the status quo of the parties; the word *reform* necessary implies that relationships and rights must be developed and adjusted where necessary, within the broader transformative vision of the Constitution.⁵

[24] Courts give effect to this constitutional mandate by resolving disputes through the application of legal principles, and, where necessary, by developing new ones. This process often requires adjusting the legal relationships between litigants, especially when their rights conflict. Traditionally, ownership sat at the apex of the property hierarchy. But in eviction disputes under ESTA, courts must weigh and balance rights in light of constitutional values, sometimes reinterpreting and deconstructing that hierarchy to accommodate new, statutory forms of property.

[25] This dynamic is particularly evident in the agricultural sector, where the phenomenon of “farm workers” and “occupiers” living on farms in close proximity to the farm owners is well known. There are various sources for this right to occupy the farm, as will be discussed below.

[26] Before the Constitution, the ownership right of the farm owner occupied the top space in the hierarchy of rights in land. In fact, whatever relationship a farmworker might have had with the land was often not a legally recognised one. In the hierarchy of rights, it would have been classified as a personal right at best. It was fragile, and it

⁴ Dr E van der Sijde. "Tenure security for ESTA occupiers: Building on the obiter remarks in *Baron v Claytile Limited*" *South African Journal on Human Rights* 36, no. 1 (2020) page 75

⁵ See in this regard JM Pienaar *Land Reform* (2014) p 383.

was at the mercy of the owner, who could easily terminate whatever relationship such a farm dweller had with the land because ownership always prevailed, unless the farm dweller could prove a valid defence (such as a statutory or contractual right to occupy).

[27] It is this previous hierarchical relationship that our Constitution requires us to examine and dismantle. The Constitution, by creating a property right in the form of a right of tenure security in section 25(6) *alongside* the constitutional protection of property against arbitrary state interference, questions this hierarchy. In eviction cases, the section 26(1) right to access adequate housing also becomes a factor to consider when the court assesses the possibility of homelessness that may follow an eviction order.

[28] ESTA, likewise, creates different forms of (statutory) property rights of occupation or residence, depending on the source of the right. This was emphasised in the Constitutional Court in *Baron v Claytile (Pty) Limited*,⁶ where the court stated:⁷

‘For ESTA occupiers to enjoy a strong form of secure tenure, as envisaged by the Constitution, we must recognise that ESTA occupiers enjoy rights and entitlements over the land they occupy, and that these rights and entitlements are every bit as worthy of protection as those of private landowners.’

[29] These rights extend beyond access to housing. While ESTA outlines some of their content, courts must further develop it on a case-by-case basis. This involves weighing competing rights to land and ensuring that vulnerable and marginalised people are protected against arbitrary or unfair eviction, rather than defaulting to the supremacy of private ownership.

[30] One way of providing tenure security is by regulating evictions. This means that an eviction can only be granted if the procedural and substantive measures in ESTA have been met. These measures are not intended to deprive landowners of the right to evict occupiers of land, but rather to ensure that fair and reform-oriented measures

⁶ 2017 (5) SA 329 (CC).

⁷ In para10.

are applied when exercising the landowner's right, thereby correcting some of the injustices of the past.

[31] In this context, it is worth noting that even if all the necessary measures have been met, an eviction order may still be refused on the grounds that granting such an order would not be just and equitable in the circumstances. The court below found that not all procedural requirements had been met and therefore refused to order eviction. The court, therefore, did not go into the "just and equitable" inquiry. This court is thus tasked with determining whether the court below erred in finding that the procedural requirement was not met. If we found that the court erred, then this court must determine whether, having met all the requirements, it is just and equitable to order an eviction.

[32] In applying ESTA, it is important to keep in mind the structure of the Act. Section 9(2) allows a court to grant an eviction order if the occupier's right of residence has been terminated in accordance with section 8 and if the requirements of either section 10 or 11 have been met. This means the process begins by identifying the source of the occupier's right to reside under section 3. If that right arises from an employment relationship, section 8(2) requires that the employment is terminated in terms of the LRA. If that happens, it triggers the right to terminate the right of residence; a decision which must still be taken in terms of section 8(1). Only once the right of residence has been lawfully terminated in terms of section 8, and the applicable conditions under section 10 or 11 have been satisfied, may an eviction order be sought under section 9. The application of these statutory elements will be considered in detail below, with specific reference to the circumstances of the first to fourth respondents.

"Occupiers" and "consent"

[33] Only "occupiers" are protected under ESTA. "Occupier" is defined in the Act as

“‘occupier’ 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)

- (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”.

[34] “Consent” under ESTA includes both express and tacit consent. Importantly, the Act establishes legal presumptions regarding consent. A person who has lived openly and continuously on land for over one year is presumed to have consent (section 3(4)), and after three years, their presence is deemed to have been with the knowledge of the owner (section 3(5)). These presumptions also become relevant where the formal right of occupation (such as one based on employment) has ended, but no steps have been taken to evict the person. In such cases, consent might be inferred or deemed, continuing the person’s status as an “occupier”. This consent must be terminated following section 8(1).

[35] Where the right to occupy is linked to an employment contract, section 8(2) governs the process to terminate the right. The termination of the employment contract must be done in accordance with the LRA. Even if employment is terminated in terms of the LRA, termination of the right of residence must still comply with the overarching principle of justice and equity in section 8(1) also being considered.⁸

[36] A further important consideration is that parties occupying can have different forms of consent. For instance, in *Klaase v van der Merwe NO*⁹ the Constitutional Court had to deal with the question of a spouse who lived with her husband on the farm. It was clear that he was an “occupier” for the purposes of ESTA, and the question was what the nature of the rights of the spouse (and the children) were in the case where the occupation right of the husband flowed from an employment relationship. The question in the Constitutional Court was whether the wife should have been joined as a party to the proceedings. The court found that she should have been joined as a party, as, due to her continuous and open residence on the farm for at least 30 years, with the owners’ knowledge, she had acquired deemed consent. This requires that

⁸ This is discussed in more detail below.

⁹ 2016 (6) SA 131 (CC) .

separate substantive grounds for her eviction should have been alleged and that eviction should have been sought specifically against her.¹⁰ Since she was not a party to the proceedings, there was no information before the court to decide whether that right had been lawfully terminated.

[37] To assess whether the termination of the right of residence was in line with ESTA, it is necessary to consider the source of the respondents' right of occupation

[38] Mr Christoffels lived with his in-laws until their passing before he started working on the farm for the owner at the time in 1998. There was no written agreement governing the employment relationship or the consent with which he occupied the house. He signed an employment contract with Bo-Vlakte Boerdery on 1 September 2014. This contract was transferred to Cape Span Farming,¹¹ the predecessor of Misty Cliffs, the first appellant. A generic term of this contract stipulates (translated from Afrikaans) "if, during the course of employment, the employee receives housing as a benefit on one of the employer's farms, the following terms and conditions will apply", followed by a list of conditions, including that the employee and the employee's family's right to occupation will be automatically terminated if the employee's employment contract is terminated. It does not specify that Mr Christoffels received such a housing benefit, although it is assumed that since he lived in the house, this clause is intended to apply to him. Only Mr Christoffels signed the agreement.

[39] The appellants submit that Mr Christoffels began working on the farm after his in-laws passed away, and thus occupied the house as an employment benefit, since their occupation right was linked to their (the in-laws') employment. This is the "only logical explanation", the appellants aver, as they see no other reason for Mr Christoffels to occupy the house.

[40] This argument cannot hold. Firstly, ESTA in section 8(2) expressly recognises that a person may occupy a house on a basis other than an employment benefit, even if the initial basis was an employment benefit, by requiring that once the employment

¹⁰ Paras 46 and 47.

¹¹ Referring to a contract between Sonkwasdrif Boerdery, JT Basson and not Bo-Vlakte Boerdery for some reason.

contract is terminated, the erstwhile employer may also terminate the right of residence.¹² That implies that the employer must decide whether they wish to terminate the residence too.

[41] Secondly, it disregards the possibility that Mr Christoffels might have an occupational interest in the house beyond his employment. Before Mr Christoffels signed the employment agreement, his occupation was not explicitly connected to employment, at least not based on the evidence before the court. Without such an explicit connection as a basis for his right to occupy, his right of residence falls under sections 3(4) and (5). This conclusion is supported by the fact that when he initially moved to the farm, he did not live in the house because of his employment. His right to occupy existed prior to his employment.

[42] Which brings me to the question of whether the contract signed by Mr Christoffels validly converted his rights of occupation based on consent to a right of occupation linked solely to employment. I think not. Firstly, section 25(2) of ESTA¹³ states that the court must have regard to, but is not bound by, any agreement insofar as the agreement seeks to limit the rights of an occupier under ESTA. A contract that purports to change an occupier's right from one based on consent to one linked to his employment is a limitation, as will be shown below with a discussion on section 8 requirements. Such rights cannot simply be signed away; and even if they are, this Court is expressly not bound to enforce any such agreement.

[43] Moreover, Ms Christoffels was born in the house and occupied it on her own terms – namely, with consent in terms of section 3(4) and (5). She was not party to the employment contract Mr Christoffels signed, and therefore could not convert her consent rights to rights that are dependent on the employment benefit of her husband. Such a reading would imply that a husband can sign away the rest of the family's rights, and would go against the dicta in *Klaase*. She is thus an occupier with her own

¹² Section 8(2) reads: "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." [own emphasis]

¹³ Section 25(2) reads: "The Court must have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of this Act."

occupational rights, which rights needed to be terminated separately from Mr Christoffels. The importance of this finding will now be illustrated.

Termination of a right of residence: section 8

[44] Section 9 of ESTA only permits eviction if the occupier's right of residence has been terminated under section 8. Therefore, it is essential to first conduct a section 8 inquiry to establish whether that has occurred. If it is found that it was not done, the inquiry will come to an end, as the threshold requirement for the court to consider the justice and equity of the eviction will not be met.

[45] Section 8 of ESTA governs the termination of the occupier's right of residence. Such residence right "may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all the relevant factors". These factors are then set out in section 8(1)(a) – (e) as:

- (a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;
- (b) the conduct of the parties giving rise to the termination;
- (c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;
- (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
- (e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.

[46] In considering whether such a right of residence has been terminated, a court should consider the provisions of section 8(1)(a) – (e). This requires a termination of residence that is just and equitable on both a substantive (section 8(1)(a) - (d) and a procedural level (section 8(1)(e)).

[47] Section 8(2) addresses the scenario where the right to reside in a house is a benefit or an incident of employment. A lawful dismissal in terms of the LRA will often be a basis for ending the associated consent to reside in the house. This should be read in conjunction with section 8(3), which stipulates that any dispute regarding whether the employment was lawfully terminated must be resolved in terms of the LRA. Once the labour dispute is finalised, the landowner is enabled to take a decision whether to terminate the occupier's right of residence.

[48] The first important point to note regarding section 8(2) is that the termination of employment does not necessarily and automatically lead to the termination of the occupier's right of residence.¹⁴ There must be two steps – a lawful termination of employment, and then a just and equitable termination of the right of residence.

[49] Secondly, there is a connection between section 8(2) and section 8(1). The Supreme Court of Appeal gave guidance on the interaction between these two provisions in *Sterklewies (Pty) Ltd t/a Harrismith Feedlog v Msimanga*¹⁵ when it stated that section 8(2) does not necessarily operate in isolation from the broad just and equitable requirements of section 8(1), the court stated:

'It is capable of the construction that it is a possible specific instance of a just and equitable ground for termination, but that its prima facie weight as such is capable of being displaced by way of evidence that, notwithstanding the fact that the right of residence flowed from the employment agreement and that agreement had been both lawfully and fairly terminated, it would nonetheless not be just and equitable to terminate the former worker's right of residence. I accept that this would probably require a strong case, such as one based on lengthy residence, old age, ill health, the absence of reasonably equivalent alternative accommodation and evidence showing that the continued presence of the former worker on the erstwhile employer's property would not impose a burden on the latter.'

[50] From the above passage, it can be concluded that section 8(2) still requires specific steps to be taken to terminate the occupier's right of residence after

¹⁴ *Aquarius Platinum (SA) (Pty) v Bonene* 2020 (5) SA 28 (SCA) para 14.

¹⁵ 2012 (5) SA 392 (SCA) para 14.

termination of the employment agreement, where the right arises solely from the employment relationship. The practical effect of this is that an LRA-compliant termination of employment will ordinarily, but not always, mean that the termination of the right of residence is just and equitable in terms of section 8(1).

[51] A mechanical reliance on the termination of employment under section 8(2), without a proper interrogation of the surrounding circumstances, including the employment agreement, may result in an unjustified erosion of an occupier's occupational rights. Particularly where the facts indicate that the right of residence did not originate solely from employment (or where the termination causes disproportionate hardship), the court remains obliged to examine whether the eviction would, in all the circumstances, be just and equitable within the meaning of section 8(1).

[52] The court below focused on the procedural requirement in section 8(1)(e). This requirement was developed through case law, which holds that procedural fairness often requires an occupier to be informed that they have an opportunity to be heard *before* a decision to terminate the occupation is made. The Constitutional Court in *Snyders* found that failure to give occupiers such an opportunity may render the termination unlawful and invalid.¹⁶

[53] The appellants argue that this is not an inflexible duty on landowners to invite representations in every case. For this, they rely on the court's interpretation of *Snyders* in *Le Roux NO v Louw*¹⁷ as stating that section 8(1)(e) is not a requirement, but one of the factors to take into account. In a recent judgment of this court¹⁸ it was stated that *Le Roux NO v Louw*¹⁹ is wrong since it fails to distinguish between the decision to terminate employment and the decision to terminate a right of residence. An entitlement to terminate residency upon termination of employment should not be equated with the termination of residence itself. Those are two distinct decisions that

¹⁶ *Snyders and Others v De Jager and Others* 2017 (3) SA 545 (CC) para 75.

¹⁷ [2017] ZALCC 10 para 91.

¹⁸ *Belle Vallee Vineyards (Pty) Ltd v Lakey* [2025] ZALCC 27 para 68.

¹⁹ [2017] ZALCC 10 para 91.

are best kept separate: the decision to terminate the employment, and the decision to terminate the residence.

[54] Likewise, there is also reliance on *Nimble Investments v Malan*,²⁰ where the Supreme Court of Appeal found that an occupier need not be given an opportunity in every case to make representations. I can accept that the facts will determine the nature of the opportunity to be provided, and that this would look different in every circumstance. I agree with the court below that there was non-compliance with section 8(1), but I arrive at that conclusion differently.

[55] Based on the findings regarding the nature of the respondents' occupation rights, there was non-compliance with section 8(1) in respect of all respondents. This is because the appellants' termination of their right of residence was premised solely on the termination of Mr Christoffels' employment, and the assumption that his employment was the sole source of the family's right of residence. As outlined above, that was an incorrect assumption. Both Mr and Ms Christoffels occupied the property before the 2014 employment agreement was signed and acquired rights of residence independently, supported by the statutory presumptions in section 3(4) and (5). Critically, Ms Christoffels' right of occupation exists in her own name and was not, and could not be, altered by Mr Christoffels' employment contract. Her right of residence was never lawfully terminated, and she was never afforded an opportunity to make representations regarding the termination of her own occupation. As for the third respondent, Eseline, now an adult, the record is insufficient to determine the full nature of her occupational rights, particularly in light of her disability.

[56] In view of these substantive and procedural defects, the requirements of section 8 were not fulfilled. The Court cannot conclude that the termination of the rights of residence was just and equitable when the appellants did not appreciate that the respondents had rights of residence unconnected to Mr Christoffel's employment. Accordingly, the purported termination of the respondents' rights of residence was invalid. Section 9(2) of ESTA permits eviction only where there has been a lawful

²⁰ 2022 (4) SA 554 (SCA) para 70.

termination under section 8. As that condition has not been satisfied in this case, the application for eviction must fail at the threshold stage.

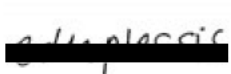
[57] The appeal must therefore be dismissed. The court a quo concluded that the procedural safeguards in ESTA, particularly section 8(1)(e), were not complied with. I reach a similar conclusion, but by taking a different path. My conclusion rests on the appellants' failure to appreciate the nature of the right of residence of both Mr and Ms Christoffel. I make no finding on whether, had the appellants correctly understood the nature of the right of residence, the procedure followed would have been fair. The result remains the same: There is no basis for interfering with the judgment of the magistrate.

[58] I see no reason to depart from the ordinary approach in this Court; I make no order as to costs.

Order

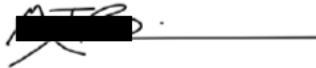
[59] Accordingly, the following order is made:

3. The appeal is dismissed.
4. No order as to costs.


[Redacted signature]

WJ du Plessis
Acting Judge of the Land Court

I so agree


[Redacted signature]

M Bishop
Acting Judge of the Land Court

Date of hearing: 6 June 2025

Date of judgment:

5 August 2025

For the applicant:

A Montzinger instructed by Otto Theron
Attorneys Inc

For the respondent:

H Julius and L Mgedezi, attorneys at
Legal Aid South Africa, Stellenbosch
Local Office