



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case No: 1191/2023

In the matter between:

MARIA JOHANNA KRUGER

APPELLANT

and

TATE MATTHEW SIBANYONI &

FIRST RESPONDENT

SIBANYONI FAMILY

MINISTER OF RURAL DEVELOPMENT

SECOND RESPONDENT

AND LAND REFORM

PROVINCIAL HEAD OF THE DEPARTMENT

THIRD RESPONDENT

AND LAND REFORM

ESKOM HOLDINGS(PTY) LTD

FOURTH RESPONDENT

STEVE TSHWETE MUNICIPALITY

FIFTH RESPONDENT

Neutral citation: *Kruger v Sibanyoni and Others* (1191/2023) [2025] ZASCA
127 (9 September 2025)

Coram: MOKGOHLOA and SMITH JJA and TOLMAY, MOLITSOANE and
NORMAN AJJA

Heard: 6 May 2025

Delivered: 9 September 2025

Summary: Constitutional law – Extension of Security of Tenure Act 62 of 1997 (ESTA) – installation of electricity – whether electricity is a reasonably necessary improvement to make a dwelling habitable – whether the consent of the landowner is required before an occupier, as defined in terms of ESTA, may install or connect electricity to his/her dwelling – the fundamental right to human dignity contemplated in s 5 of ESTA entitles occupiers to install and connect electricity to their homes.

ORDER

On appeal from: The Land Claims Court, Randburg (Meer AJP sitting as a court of first instance):

The appeal is dismissed with costs, including the costs of two counsel where so employed.

JUDGMENT

Molitsoane AJA (Mokgohloa and Smith JJA and Tolmay and Norman AJJA concurring):

[1] This is an appeal against the judgment and order of the Land Claims Court of South Africa, Randburg (the Land Court¹) directing the appellant (Ms Kruger) to consent to the connection of electricity to the residential dwelling of the first respondent Mr Tate Mathew Sibanyoni (Mr Sibanyoni or the Sibanyonis depending on context), as well as interdicting her from preventing the installation of electricity to their residential home. The appeal is with leave granted by that court. The appeal concerns whether:(a) electricity is a reasonably necessary improvement to make a residential home habitable; and (b) whether the consent of the landowner is required before an occupier as defined in the Extension of Security of Tenure Act 62 of 1997 (ESTA) may install or connect electricity to his residential dwelling.

[2] Mr Sibanyoni was born on the farm Mooiplaas, Hendrina, Mpumalanga. This farm is about seven kilometres from another farm known as Portion 1[...] V[...] 1[...] J[...] (V[...]), also in Mpumalanga. The late Mr MJC van der Merwe

¹ Established in terms of s3 of the Land Court Act 6 of 2023 and replaced the Land Claims Court which, save for certain provisions, commenced on 5 April 2024.

(Mr van der Merwe), who is the father of Ms Kruger, was the previous owner of V[...]. On the version of Mr Sibanyoni, he was relocated to V[...] by the late Mr Van der Merwe. It is not in dispute that he had been residing on the farm since 2011. He and his family had even erected a permanent structure on V[...]. It is common cause that he and his family are occupiers on V[...] as defined in s 1 of ESTA.²

[3] The principal cause of the dispute between the Sibanyonis and Ms Kruger is the supply of electricity to the Sibanyonis' dwelling. Mr Sibanyoni alleges that he discussed his intention to install electricity at his dwelling with Mr Vincent Schalk (Mr Schalk), who was in charge of V[...] at the time. Mr Schalk was the son-in-law of the late Mr Van der Merwe. Mr Sibanyoni averred that Mr Schalk granted him permission to install electricity and also signed a consent form which was handed to the municipality.

[4] Ms Kruger denied that any consent was given and she alleged that Mr Sibanyoni failed to produce a copy of the consent form alleged. According to her, Mr Van der Merwe's son-in-law is Mr Vincent Schulz and not Mr Vincent Schalk as alleged by Mr Sibanyoni. To avoid confusion, and not out of disrespect, I shall refer to the son-in-law as Vincent. Nothing turns on the issue of the surname as it is not in dispute that Mr Van der Merwe's son-in-law also attended the meeting at Hendrina police station where the issue of electricity was discussed. According to Mr Sibanyoni, it was at this meeting that he was given permission by Vincent to install the electricity.

² According to s 1 of the Extension of Security of Tenure Act 62 of 1997:

““occupier” means a person residing on land which belongs to another person, and who, on s4 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, communal 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 . . .’

[5] Following the meeting at the police station, Eskom officials attempted to deliver poles to V[...] to be used to connect the Sibanyonis' dwelling to the grid. Ms Kruger took issue with the delivery of the poles as she contended that she had never been consulted about the installation of the electricity at the home of the Sibanyonis and had not granted consent to either Mr Sibanyoni or Eskom to do so. She prevented Eskom from delivering the poles. In her opposing affidavit, she states that:

‘... in order for Eskom to establish electricity supply to any portion on private land, the consent of the landowner would be required particularly as the effect on the environment and the operations of the landowner would have to be considered before such electricity supply is provided.’

[6] The Land Court held that the installation of electricity is an improvement which was reasonably necessary to make the Sibanyonis' dwelling habitable, and thereby give effect to the right to human dignity.

[7] Regarding the issue of consent, the Land Court held that the right of the Sibanyonis to bring their dwelling to a standard that conformed with conditions of human dignity, which, in this case, entailed the right to receive electricity, was not dependent on the owner's consent. Although the court found that occupiers like the Sibanyonis did not require consent to have access to electricity, it nevertheless directed Ms Kruger to grant such consent.

[8] Before us, it was submitted, on behalf of Ms Kruger that while it was conceded that the Sibanyonis established a need for electricity, that could not be elevated to the status of a fundamental right. It was submitted that the Land Court erred in holding that the right to human dignity as set out in s 5(a) of ESTA included the installation and supply of electricity as an improvement which is reasonably necessary to make a dwelling habitable. In the end, it was thus submitted that Mr Sibanyoni had failed to demonstrate how he is impacted by the

lack of electricity as he led no evidence demonstrating how access to electricity would make his dwelling humanely habitable.

[9] Ms Kruger also contended that the right of access to electricity is only enforceable against the municipality. Therefore, it was the duty of the municipality to enter into agreements with landowners. The argument advanced in the heads of argument that: ‘[if] no such agreement can be reached, the municipality has the obligation to then, either expropriate the servitude or approach the court to enable it to give effect to its constitutional duties by granting a servitude.’

Ms Kruger further submitted that it is for the municipality or Eskom to seek an agreement by way of a servitude failing which, the owner of the land may be liable for the electricity consumed by the occupier. Lastly, the Land Court’s judgment is assailed on the basis that it erred in finding that the meeting at the Hendrina police station constituted meaningful engagement as contemplated in *Daniels v Scribante and Another (Daniels)*.³ This finding of the Land Court accords with *Daniels* which held that:

‘Although consent is not a requirement, meaningful engagement of an owner or person in charge by an occupier is still necessary. It will help balance the conflicting rights and interests of occupiers and owners or persons in charge. In this regard I agree with the submissions of the amicus curiae, which argued for the need for meaningful engagement between an owner and occupier.

In *Hattingh v Zondo* J said:

‘‘In my view the part of section 6(2) that says: ‘balanced with the rights of the owner or person in charge’ calls for the striking of a balance between the rights of the occupier, on the one side, and those of the owner of the land, on the other. This part enjoins that a just and equitable balance be struck between the rights of the occupier and those of the owner. The effect of this is to infuse justice and equity in the inquiry.’’’⁴

[10] The Sibanyonis, on the other hand, submitted that they had a right to make improvements to their dwelling by installing or connecting electricity. They

³ *Daniels v Scribante and Another* [2017] ZACC 13; 2017 (4) SA 341(CC); 2017 (8) BCLR 949 (CC) (*Daniels*).

⁴ *Ibid* paras 62 and 63. Citations omitted.

submitted that occupiers on farmlands should not be left to struggle without electricity.

[11] In this appeal, the issue for determination is whether the Land Court was correct in granting final relief. The requirements for the granting of final relief are trite. In order to succeed with a claim for a final interdictory relief, the applicant must establish (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) a lack of an acceptable alternative remedy. The crisp question for determination in this appeal is whether the Sibanyoni family has a right to effect improvements in the form of electricity installation to make their residential home habitable and thereby give effect to their right to human dignity. Should that question be answered in the affirmative, then it stands to reason that they will have established a clear right.

[12] The Land Court held that electricity was part of modern life and its deprivation led to daily inconveniences like the benefit of safe lighting and use of modern electrical appliances. The court took judicial notice that electricity ‘improved living conditions, habitability and welfare.’ It found that the Sibanyonis were entitled to an order which permitted improvements which were necessary to render their residential home habitable in the exercise of their human right to dignity.

[13] In *Daniels*,⁵ the Constitutional Court recognised that private landowners are enjoined by s 25(6) of the Constitution of the Republic of South Africa, Act 108 of 1996,⁶ through ESTA, to accommodate occupiers on their land. In recognition of this obligation, ESTA, in turn, seeks, inter alia, to provide for measures at State

⁵ Ibid para 49.

⁶ Section 25(6) 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.’

expense to facilitate the long-term security of the land tenure and to regulate the conditions of residence on certain land.⁷ Section 5 of ESTA states:

‘Fundamental rights

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

- (a) human dignity;
- (b) freedom and security of the person;
- (c) privacy;
- (d) freedom of religion, belief and opinion and of expression;
- (e) freedom of association; and
- (f) freedom of movement, with due regard to the objects of the Constitution and this Act.

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

[14] It is common cause that the Sibanyonis are occupiers as defined in ESTA and thus are entitled to the protection provided by ESTA. As occupiers, they are entitled, together with landowners and persons in charge of land, to fundamental rights as provided for in s 5 and, more particularly, the right to human dignity. Since the occupiers are entitled to the fundamental rights in s 5 of ESTA, the enjoyment of those rights may invariably encroach on the property rights of the landowners as envisaged in s 25(1) of the Constitution.⁸ For this reason, landowners and occupiers equally enjoy the same fundamental rights in terms of ESTA. A balancing act is thus required in dealing with their competing fundamental rights.⁹

[15] As a starting point, it is necessary to dispose of the preliminary issue raised before us during the hearing, namely, that the Sibanyonis have failed to establish who the person in charge of V[...] was for the purpose of ESTA. It is submitted in the founding affidavit, that Ms Kruger is referred to as the person in charge of

⁷ See preamble of ESTA.

⁸ Section 25(1) of the Constitution provides that: ‘No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.’

⁹ *Daniels* para 61.

V[...] while in the same affidavit, Vincent is referred to as the person in charge. This point was, however, not raised pertinently as a preliminary point regarding standing, misjoinder or non-joinder.

[16] Nothing turns on this issue of standing for the following reasons. In the founding affidavit, Ms Kruger is described as the owner of the land, and only in the alternative, is an assertion made that she is also the person in charge thereof. In her answering affidavit, Ms Kruger alleges that she is the heiress in the estate of Mr van der Merwe and thus in control of V[...]. She further alleges that the landowner is the executrix seized with the administration of the estate. While Ms Kruger disputes ownership of V[...], she does not dispute that she is also the person in charge of it. She curiously chose, as she is entitled, not to disclose where she resides.

[17] Much as Mr Sibanyoni also asserts that Vincent was the person in charge of V[...], the evidence reveals that it was Ms Kruger who complained to Eskom about the electricity poles being delivered to V[...]. She is also the person who resisted the Sibanyonis' application in the Land Court and the appeal before us is also prosecuted by her. The executrix, as the representative of the estate, played no role in the litigation between these parties. This begs the question as to why she would resist the application and prosecute the appeal when she is neither a landowner nor a person in charge. In my view, only ownership or being in charge of land as contemplated in ESTA could give her standing in these proceedings. Vincent is not a party to these proceedings. As alluded to above, Ms Kruger is not the owner of V[...] and her conduct concerning these proceedings compels the inescapable inference that she was the person in charge of V[...] and has been correctly described in the founding affidavit.

[18] It is worth mentioning that Mr Sibanyoni asserts that Vincent, in his capacity as the person who was in charge of V[...] at the time when the meeting was held at

the Hendrina police station, had given him permission to instal electricity and had signed the relevant consent form which was submitted to the municipality. Ms Kruger denied this allegation and, attached the confirmatory affidavit of Vincent evincing the denial. The affidavit of Vincent does not confirm or support the denial of consent as it simply states that he was ‘[a]n adult male and the person referred to in the Opposing Affidavit of Maria Johanna Kruger.’ It says nothing more. Vincent does not expressly or tacitly deny that he was the person left in charge of V[...] when the owner passed on or did not give consent to Mr Sibanyoni to instal electricity.¹⁰ He also does not deny that he signed the consent form. In light of lack of denial of the averments made by Mr Sibanyoni in this regard, they must be accepted as true.

[19] ESTA does not expressly give an occupier the right to make improvements to his/her dwelling. The right to electricity is also not explicitly provided for in the Constitution and ESTA. However, it cannot be argued otherwise that its provision entitles an occupier to make the dwelling habitable thus allowing an occupier to live in a home with dignity. The Land Court, in *Sibanyoni v Holtzhausen and Others*,¹¹ said the following with regard to the occupiers’ rights to dignity as contemplated in ESTA:

‘. . . section 5 includes the rights of occupiers to dignity. In relation to farm dwellers, dignity cannot be restricted to personal dignity. It must include the entitlement to a dignified standard of living despite the meagre and sometimes pitiful resources at their disposal.’

It follows thus that an occupier has a right to make improvements to his dwelling in order to make it habitable, thus allowing him to enjoy its occupation with dignity.

[20] In *Daniels* the court stated that:

¹⁰ ‘Consent’ in terms of ESTA means ‘express or tacit consent of the owner or person in charge of the land in question.’

¹¹ *Sibanyoni v Holtzhausen and Others* [2019] ZALCC para 55.

‘. . . like the notion of “reside”, security of tenure must mean that the dwelling has to be habitable. That in turn connotes making whatever improvements that are reasonably necessary to achieve this. Of what use is a dwelling if it is uninhabitable? None.’¹²

The Sibanyonis do not necessarily aver that their home is not habitable. What they seek is to make improvements for its better beneficial use by installing electricity. In the heads of argument, it was submitted on behalf of Ms Kruger that ‘[t]he property in question is a farmland, where electricity has not historically been supplied.’ This is said in the context of the submission that the Sibanyonis failed to place facts before the Land Court to show the impact on their lives of the lack of electricity.

[21] This submission disregards the fact that electricity is necessary for an occupier to live in a dwelling in a dignified way. In modern times where things like mobile phones, electrical appliances are used in our daily life, it is difficult to understand why anyone would believe that people in ‘farmland’ should explain how they are impacted by lack of electricity. To even suggest that refusal to access electricity for the purposes of s 5 of ESTA does not establish apprehension of irreparable harm for the purposes of a final interdict is worrisome. This submission is akin to anyone claiming that a person who resides in a mud house in rural areas must prove how he is impacted by residing under those circumstances when he/she seeks a house made up of mortar and bricks. One may take judicial notice of the impact on anyone’s life of living without electricity or in a mud house, unless one is oblivious of the plight of the people living in abject poverty on farms and rural land. It cannot be seriously disputed that people living on farmlands are entitled to human dignity.

[22] I agree with the following sentiments expressed in *Makeshift 1190(Pty) v Cilliers*:¹³

¹² *Daniels* para 32.

¹³ *Makeshift 1190 (Pty) Ltd v Cilliers* [2020] ZAWCHC 41; [2020] 3 All SA 234 (WCC); 2020 (5) SA 538 (WCC) para 25.

‘In the modern day, the supply of electricity and water to a residential property is a practical necessity in order for the occupant to use the property as a dwelling. When such supply is terminated, the occupant experiences a significant disturbance in his possession.’

To deny the Sibanyonis the right to make improvements to the dwelling access to electricity in order to make their residential home habitable, is to deprive them of their right to human dignity as set out in s 5 of ESTA.

[23] On the issue of whether the Sibanyonis require the consent of the landowner to instal the electricity, Ms Kruger contends that such consent is required. The reason, so it is contended, is that the installation of electricity will attract liabilities, responsibilities and duties to the landowner in terms of the municipal by laws and the provisions of s 118 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act). This is incorrect and I will address this misconception by dealing with the concerns of Ms Kruger.

[24] It needs to be mentioned that the case that was argued before us differed materially from that which was before the Land Court. ‘It is trite law that in application proceedings the notice of motion and affidavits define the issues between the parties and the affidavits embody evidence.’¹⁴ In the answering affidavit, the nub of the opposition is captured as follows:

‘5.29 I respectfully submit that Mr Sibanyoni does not have a clear right to demand the supply of electricity by [Eskom] where [Eskom] does not have the consent of the landowner neither has he or Eskom complied with their environmental obligations for the erection of an electrical supply line.’

[25] Counsel for Ms Kruger raised, for the first time in the application for leave to appeal, the following:

‘. . . the simple issue is, it is not necessarily whether people has electricity or not, the question is whether it is accessible or not, that is a different question...First of all one cannot force a party to enter into an agreement with the other. . .’

¹⁴ *Molusi and Others v Voges N.O. and Others* [2016] ZACC 6; 2016 (3) SA 370 (CC); 2016 (7) BCLR 839 (CC) para 27.

This culminated in the submissions before us to the effect that the Sibanyonis needed to have the consent of Ms Kruger before installing the electricity. The submission in the Land Court was that it was Eskom which was required to obtain consent from the owner before proceeding with the installation of electricity. Counsel for the Sibanyonis did not take issue with this change of goal posts. This notwithstanding, I will deal with all issues raised.

[26] As a starting point, s 118 of the Systems Act is not implicated at all. This section seeks to prohibit the transfer and registration of immovable property where the levies, rates, surcharges and duties owed to the municipality had not been paid in full at the time of registration of transfer.¹⁵ This section will only be of relevance when the landowner seeks to transfer the property to a new owner. The Sibanyonis do not seek transfer and registration of the property of the landowner. What they seek is simply a basic improvement to enable them to live a dignified life by having electricity supplied to their home.

[27] In *Joseph and Others v City of Johannesburg and Others*,¹⁶ the Constitutional Court dealt with the constitutional and statutory obligation of the municipality to provide electricity and the concomitant right of citizens to receive it, as a municipal right. The Constitutional Court said:

‘The provision of basic municipal services is a cardinal function, if not the most important function, of every municipal government. The central mandate of local government is to develop a service delivery capacity in order to meet the basic needs of all inhabitants of South Africa, irrespective of whether or not they have a contractual relationship with the relevant public-service provider. The respondents accepted that the provision of electricity is one of those services that local government is required to provide, indeed they could not have contended

¹⁵ Section 118(1) of the Systems Act provides:

‘A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration officer of a prescribed certificate-

(a) issued by the municipality or municipalities in which that property is situated; and

(b) which certifies that all amounts due in connection with that property for municipal service fees, surcharges and fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.’

¹⁶ *Joseph and Others v City of Johannesburg and Others* [2009] ZACC 30; 2010 (3) BCLR 212 (CC); 2010 (4) SA 55 (CC) para 34.

otherwise. In *Mkontwana* Yacoob J held that “municipalities are *obliged* to provide water and *electricity* to the residents in their area as a *matter of public duty*.” Electricity is one of the most common and important basic municipal services and has become virtually indispensable, - particularly in urban society.’

[28] Because of the obligation to provide municipal services, the municipalities are enjoined to take measures to ensure that services like electricity are provided to the communities in an economically efficient manner.¹⁷ The Constitutional Court, in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd*,¹⁸ held that the Electricity Regulation Act 4 of 2006 (ERA) recognised the importance of municipalities and contained provisions that gave effect to the ‘constitutional duty of municipalities to supply electricity to their residents.’¹⁹ The court went further and said that in terms of ERA, municipalities are the customers²⁰ of Eskom while the residents are end users²¹ who are supplied with electricity by the municipalities. Eskom contracts with the municipality for the supply of electricity while the municipality contracts with residents. The residents are accordingly not Eskom’s customers. Therefore, Ms Kruger’s contention that she, as the landowner, stood the risk of attracting liability in respect of the moneys or levies which might become due by the Sibanyonis is untenable.

[29] Prior to 1 April 2024, when the matter was heard in the Land Court, ESTA provided for payment of subsidies. Section 4(1)(c) provided that the ‘Minister shall. . . grant subsidies for the development of land occupied or to be occupied in terms of on-site or off- site developments.’ I can see no reason why Ms Kruger could not make an application for this subsidy if she felt concerned about incurring liabilities to Eskom in circumstances where the Sibanyonis wanted to make improvements to their residential home. The situation is today even better due to

¹⁷ See s 9(1)(a)(iii) of the Housing Act 107 of 1997.

¹⁸ *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* [2022] ZACC 44; 2023 (5) BCLR 527 (CC); 2023 (4) SA 325 (CC).

¹⁹ *Ibid* para 84.

²⁰ In terms of the Electricity Regulation Act 4 of 2006 (ERA), ‘customer’ means ‘a person who purchases electricity or a service relating to the supply of electricity.’

²¹ In terms of ERA ‘end user’ means a user of electricity or a service relating to the supply of electricity.

an amendment brought by the Extension of Security of Tenure Amendment Act 2 of 2018 which came into effect on 1 April 2024. The amended s4(1)(e) obliges the Minister to ‘provide tenure grants to compensate owners or persons in charge for the provision of accommodation and *services to the occupiers and their families.*’ (Emphasis added.)

[30] There is therefore no basis for Ms Kruger’s concern about incurring liabilities as a consequence of the installation of electricity which seems to be the only reason to withhold her consent. In any event, as was held in *Daniels*, the Sibanyonis had no obligation to seek consent from her. Having found that the Sibanyonis required no consent from Ms Kruger to instal the electricity, the Land Court erred when it nevertheless ordered Ms Kruger to grant such consent.

[31] However, because the installation of electricity also affected the property rights of Ms Kruger, what was expected of all concerned was to engage meaningfully. It is common cause that a meeting was arranged at the Hendrina Police station where all the concerned parties were in attendance. What is in dispute is whether a consent was given to the Sibanyonis. On the version of Ms Kruger, there was no engagement as the executrix of the estate had indicated that the issue of electricity could only be addressed after the finalisation of the administration of the estate. On the Sibanyonis’ version, consent was given. As already alluded to above, the permission and consent form allegedly signed by Vincent is not disputed at all.

[32] There is no dispute that there was an engagement. I do not understand meaningful engagement to be elevated to the status of an agreement. The purpose of the engagement is surely to find common ground with the aim of achieving an agreement and, subsequently, consent. However, there will be circumstances in which an agreement will be difficult to achieve. In some instances, such engagement might be obstructive or hurdles may in some instances be put in the

way of achieving consensus. In this case, it is difficult to understand how Eskom could have gone to V[...] without the necessary engagement with the municipality with whom it ought to contract. The inescapable inference is that the municipality had consented to supply the Sibanyonis with electricity as end users and Eskom must have been engaged to install the necessary equipment for their supply, hence the delivery of the poles to V[...]. I am satisfied that the meeting, as was found by the Land Court, constituted meaningful engagement for the purposes of resolving the issue of the supply of electricity to the Sibanyonis' home. The Sibanyonis have no alternative remedy and are entitled to an interdict.

[33] I am accordingly of the view that the Land Court did not err in finding that the installation of electricity was an improvement that was reasonably necessary to make the Sibanyonis home habitable so as to enable them to exercise their right to human dignity as contemplated in s 5 of ESTA. In conclusion, I find that the Sibanyonis do not need the landowner's consent to instal electricity to their home. The appeal must accordingly fail.

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

The appeal is dismissed with costs, including the costs of two counsel where so employed.

P E MOLITSOANE
ACTING JUDGE OF APPEAL

Appearances

For the appellant:

M Snyman SC

Instructed by:

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Bezuidenhouts Inc, Bloemfontein

For the first respondent:

N Gama with S Kunene

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