



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

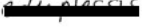
Magistrate Court **Case No:** 1355/23
LanC 2025-032788

Before: Du Plessis AJ

Delivered on: 31 October 2025

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

Date: 31 October 2025

Signature: 

In the matter between:

PHILIPPUS PETRUS VAN DER MERWE N.O.

First Applicant

TANIA VAN DER MERWE N.O.

Second Applicant

JACOB PIETER JORDAAN LE ROUX N.O.

Third Applicant

(in their capacity as trustees in the meantime of
THE PHILIANA TRUST (NO. 3623/99))

PP VAN DER MERWE BOERDERY (PTY) LTD
(REG. NO.: 2008/004144/07)

Fourth Applicant

PHILIPPUS PETRUS VAN DER MERWE
(ID NO.: 680405 5133 08 5)

Fifth Applicant

and

ANDREW STOFFELS
(ID NO.: 760416 5112 08 9)

First Respondent

SELINA STOFFELS
(ID NO.: 690818 0248 08 8)

Second Respondent

MAGRIETA PIENAAR

Third Respondent

ORDER

1. The eviction order granted by the Worcester Magistrates' Court on 12 December 2024 is set aside.
2. The matter is referred to mediation in terms of section 11(2)(b) of the Extension of Security of Tenure Act 62 of 1997.
3. The mediation shall be concluded within six months of this order, unless the mediator extends that period for good cause shown.
4. The Breedevalley Municipality (sixth respondent) and the Provincial Director of the Department of Agriculture, Land Reform and Rural Development (seventh respondent) are ordered to participate meaningfully in the mediation. They shall provide information regarding:
 - 4.1 Housing assistance available to the first to fifth respondents;
 - 4.2 The steps taken since 2004 (or at least since May 2016) to address the first respondent's housing application;
 - 4.3 Emergency or temporary accommodation options;
 - 4.4 Any other measures that could prevent or ameliorate homelessness if eviction proceeds.
5. At the conclusion of mediation, the mediator shall prepare a report for filing with the Worcester Magistrates' Court, indicating:
 - 5.1 Whether the parties reached an agreement;
 - 5.2 If agreement was reached, the terms of that agreement;

5.3 If no agreement was reached, a summary of the issues that need to be adjudicated on.

6. If the mediation does not result in an agreement, the appellants may bring an application in the Worcester Magistrates' Court. Such an application shall be accompanied by:

6.1 The mediator's report;

6.2 Updated reports from the municipality and the Provincial Director regarding housing alternatives;

7. Pending the outcome of mediation and any subsequent court proceedings, the first to fifth respondents shall be entitled to remain in occupation of the dwelling on Ruigtevlei Farm.

8. There is no order as to costs.

JUDGMENT

DU PLESSIS AJ,

Introduction

[1] This matter concerns the familiar situation in ESTA evictions in this court: farmworkers living on farms under employment agreements that allow them to live on the farm as long as they are employed, and who face eviction from their homes (along with their families) when such employment is terminated.

[2] It was referred to this Court for automatic review, in terms of section 19(3) of the Extension of Security of Tenure Act¹ ("ESTA"),² by Magistrate Diyani in Worcester, who granted an eviction order on 12 December 2024 against all the respondents.

¹ 62 of 1997.

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

(a) confirm such order in whole or in part;

(b) set aside such order in whole or in part;

(c) substitute such order in whole or in part; or

(d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the

Facts

[3] The first to third applicants are the trustees of the Philania Trust, the registered owner of Ruigtevlei Farm in Slanghoek, near Rawsonville in the Western Cape. The fourth applicant, PP van der Merwe Boerdery (Pty) Ltd, leases the farm from the Trust and conducts all farming activities there.

[4] The respondents are members of the extended Stoffels family. The first respondent, Mr Stoffels, worked as a farmworker at Ruigtevlei Farm from 2006 until he was dismissed on 24 March 2020. The second respondent, Ms Stoffels, grew up on the farm but later moved away, only to return in 2006 with Mr Stoffels. She worked on the farm seasonally from 2006 until 2016, when she resigned due to illness caused by pesticide exposure. She now works elsewhere on a casual basis for wages, as Mr Stoffels receives no income. The third respondent, Ms Pienaar, moved to the farm in 2015 to live with the first and second respondents as family, and suffers from the effects of a stroke that left her partially paralysed. She receives a disability grant. There is some dispute over whether her son, Randal (20), also lives on the farm, as he is a boarder at Pioneer School in Worcester during the week due to his visual impairment. The fourth respondent, Mr Monsigner (19), is Ms Stoffels' nephew, who moved into the house after his mother's death when he was four months old. There are also two minor children.

[5] It bears to be emphasised that Mr Stoffels suffers from epilepsy, Ms Stoffels suffers from respiratory illness caused by pesticides, Ms Pienaar is paralysed, and her son has a visual impairment, and two minor children live in the house.

[6] The terms under which they occupy the house were initially agreed upon verbally. Mr Stoffels' employment agreement was formalised in a written contract in April 2011. In April 2019, Mr Stoffels signed an agreement stating that the housing was provided only for the duration of his employment. Mr Stoffels claims he did not understand the significance of these documents when he signed them, believing he was simply recording the original verbal agreement rather than altering its terms. The

applicants also assert that signing this contract was merely a formalisation of the verbal agreement. Where Mr and Ms Stoffels believed that they each received verbal permission to stay in the house (i.e. independent of one another) in 2006, the applicants submit that the house was allocated exclusively to Mr Stoffels. This implies that the rights of all other occupiers depend on Mr Stoffels, contingent on his ongoing employment.

[7] Mr Stoffels was dismissed after a series of disciplinary hearings relating to his continued absence without a valid excuse, insubordination, and the breaking of house rules by allowing occupiers to occupy the house. Mr Stoffels explains that he suffers from epilepsy and depends on daily medication. Since he does not always have timely access to medication, he would become ill and thus unable to work, explaining his absence.

[8] Still, the CCMA found that the dismissal of Mr Stoffels was substantively fair. After receiving the confirmation, the applicants aimed to end all the respondents' rights of residence. Notices were served on 9 February 2022, 22 March 2022, and finally on 24 January 2023. A round table discussion was also held on 10 October 2022, during which the respondents informed the appellants that they could not secure alternative accommodation and explicitly stated that eviction would leave them homeless.

Issues for review

[9] The main question in this review is whether the eviction ordered was just and equitable. The Land Court's authority to review under ESTA has been discussed extensively, and it bears no reminding that reviews in terms of ESTA are to be understood in their widest sense, examining or considering a matter already decided by a Magistrate's court, with very few limits on the scope of that review.³

[10] This is evident from the powers given to the Land Court in terms of section 19(3) of ESTA, namely to confirm, set aside, substitute, and remit. The purpose is to ensure that the right to tenure security is protected and advanced, with one component of that right being protection against arbitrary or unlawful eviction. It is for this court to ensure

³ *City Council of Springs v Occupants of the Farm Kwa-Thema* 2000 (1) SA 476 (LCC) para 19.

that errors in the magistrates' courts are remedied, as some evictees may not be able to take their cases on review or appeal.⁴ It is not just a rubber-stamp exercise.

[11] Having carefully considered the record, I am of the view that the order cannot be confirmed, mainly because the magistrate failed to conduct the substantive inquiry as required by ESTA into whether, considering all the circumstances, the eviction is just and equitable. The reason for my decision is set out below.

The sources of the occupational rights of the respondents

[12] The argument that all respondents' rights of residence stem from Mr Stoffels is unpersuasive. Section 1 defines an "occupier" as any person living on land with "consent or another right in law". Consent can be explicit, implied, or assumed. Section 3(4) presumes consent unless proven otherwise and section 3(5) considers continuous and open residence for a year as being with consent.

[13] Courts must guard against an automatic acceptance of occupation rights derived from employment alone,⁵ especially in instances where an earlier verbal agreement or continuous occupation established consent,⁶ and a later (often contested) written agreement limited what was purportedly verbally agreed.

[14] Accordingly, each respondent's occupation must be assessed on its own merits: by reference to employment contracts, historic residence, independent consent, or statutory presumptions. The termination of one household member's employment does not, without further cause, extinguish the lawful occupation rights of other members who meet the statutory criteria.

[15] Even if one were to accept that Mr Stoffels signed an agreement in 2019 that expressly linked his housing to his employment, this does not automatically mean that the agreement binds Ms Stoffels. This is for various reasons. Her evidence is that she was employed on the farm in her own right from 2006 until 2016, and that she derived her initial right of residence from her own employment (independent of Mr Stoffels),

⁴ *Malan v Gordon* [1999] ZALCC 27 para 15; *Snyders v De Jager* (Joinder) [2016] ZACC 54 para 20.

⁵ *Misty Cliffs Farm (Pty) Ltd v Christoffels* [2025] ZALCC 34 paras 41 – 43.

⁶ In terms of section 3.

and presumably, thereafter, in terms of consent (in terms of section 3). If this is the case, Mr Stoffels cannot sign away her rights under *his* employment contract. Her right, therefore, had to be terminated separately.

[16] Ms Pienaar, similarly, openly resided on the land for more than a year, meaning that consent is presumed under section 3(4) and deemed under section 3(5). Similar arguments may be applicable to the other respondents. Since the magistrate assumed that all the respondents' rights are derived from the first respondent, there was no separate inquiry as to the justness and equitableness of the eviction of the other respondents.

Termination procedure

[17] Section 8(1) – (2) outlines the requirements for a lawful eviction. Section 8(1) establishes a general rule that the termination of an occupier's right of residence is only lawful on valid grounds. The termination must be "just and equitable," taking into account all circumstances. The factors listed in this section emphasise that this is a flexible and multi-faceted assessment, not a mechanical test. Section 8(2), although addressing termination of occupation arising from an employment relationship, does not override the protections offered by section 8(1).

[18] Therefore, even if an employee's dismissal is lawful under labour law, the court must still be convinced that the termination of the right of residence is "just and equitable." From the judgment, it is not clear that this has been established.

Requirements for an eviction in terms of section 11 of ESTA.

[19] Even if I were to accept that the termination was lawful, the requirements in section 11 of ESTA governing the eviction must be met.⁷ It envisions taking into

⁷ 11. Order for eviction of person who becomes occupier after 4 February, 1997.—

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

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

(a) the period that the occupier has resided on the land in question;
(b) the fairness of the terms of any agreement between the parties;
(c) whether suitable alternative accommodation is available to the occupier;

consideration all relevant circumstances: the rights of the landowner, the housing rights of the occupiers under section 26, the constitutional objective of security of tenure and all other circumstances (including the rights of people living with disabilities and the best interests of children).

[20] The judgment does not fully engage with these factors, aside from noting the respondents' long-term occupancy and recognising their potential homelessness. There is no substantial weighing of their circumstances, no analysis of comparative hardship, and no examination of whether less drastic alternatives are available. I am not convinced that the eviction in this case is just and equitable.

[21] The judgment's primary focus is on procedural compliance and the fairness of Mr Stoffels' dismissal. That is legally correct. However, the judgment does not fully address the substantive question of whether, considering all circumstances of the case, including nearly two decades of residence, the vulnerability of the household members, and the risk of homelessness, it is just and equitable to evict each of the respondents. There is no proper balancing of competing interests and hardships.

[22] The most prominent hardship is homelessness. The Breedevalley Municipality report confirmed the respondents' risk of homelessness. It stated that it was not in a position to offer emergency accommodation for those who can meet their housing emergency needs using their own resources. The threshold for the municipality to provide emergency accommodation is a monthly household income of R4500. Based on the income of everyone in the household, the municipality concluded that the family would not become homeless if they were evicted. The Department disagreed.

[23] The magistrate criticised the municipality for failing to fulfil its constitutional duty and for not explaining the steps it has taken since the respondent was added to the housing database in May 2016 to provide housing (allegedly applied for around 2005). Despite this criticism and recognising that the respondents would be left homeless by the eviction, the magistrate granted the eviction order. The magistrate based this

(d) the reason for the proposed eviction; and

(e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.

decision mainly on procedural compliance and the realisation that, although potential homelessness is a relevant factor, it should not shift the burden of providing housing onto private landowners.

[24] It is so that section 26 imposes a positive duty on the state, not private landowners, to take reasonable steps towards the progressive realisation of the right to adequate housing. Courts have repeatedly held in the context of the PIE Act⁸ that private owners cannot be compelled to provide housing (without compensation), and that this obligation rests with the state. Similarly, the state cannot simply dismiss this duty by claiming inability. Moreover, the court's obligation to exercise caution before granting an eviction where potential homelessness may occur must be understood in the context that an eviction does not automatically become unjust if the state fails to furnish alternative accommodation, which could lead to homelessness. Instead, a just and equitable assessment involves weighing all relevant interests, considering all circumstances, with homelessness being a key factor, while also taking into account the rights of the landowner and the actual measures undertaken by the state.⁹

[25] Thus, the difficulty with such reasoning is that it seems to suggest that in ESTA evictions, where potential homelessness may result due to the state's inaction, the automatic assumption is that the landowner must not be burdened. This cannot be. Such an interpretation would render the section 26 rights of the most vulnerable meaningless. It will continue to prioritise ownership above all other rights, whereas security of tenure and protection from arbitrary evictions are constitutional aims that should be pursued alongside the protection of property from unlawful and arbitrary state actions interference.¹⁰ In *Baron v Claytile*¹¹ the Constitutional Court stated:

“In *Daniels* it was held that ESTA can, under certain circumstances, place a positive obligation on a private landowner. This does not mean that private landowners carry all or the same duties as the State to fulfil the obligations set out in the Constitution. However, it has long been recognised in our constitutional dispensation that ownership

⁸ The Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998

⁹ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd (CC)* [2011] ZACC 33 paras 32, 40–41

¹⁰ *Misty Cliffs Farm (Pty) Ltd v Christoffels* [2025] ZALCC 34 paras 24 – 29.

¹¹ *Baron v Claytile (Pty) Limited* [2017] ZACC 24 para 35.

of land comes with certain duties or responsibilities, which may differ significantly from the duties and obligations that rested on private landowners in the pre-constitutional context.”

[26] Dealing with this tension in eviction matters is no easy feat. It is, and remains, the state’s constitutional duty to progressively realise the right to adequate housing. When the state fails to do so, judicial officers must choose between either limiting landowners’ ownership by imposing this duty on them for a limited period or granting an order that could lead to homelessness, leaving occupiers without the protection of their constitutional right to access adequate housing. The choice must always be guided by the objectives that the Constitution seeks to achieve.

[27] This was set out in *Port Elizabeth Municipality v Various Occupiers*¹² (in the context of PIE¹³):

“[T]he Constitution imposes new obligations on the courts concerning rights relating to property not previously recognised by the common law. It counterposes to the normal ownership rights of possession, use and occupation, a new and equally relevant right not arbitrarily to be deprived of a home. The expectations that ordinarily go with title could clash head-on with the genuine despair of people in dire need of accommodation. The judicial function in these circumstances is not to establish a hierarchical arrangement between the different interests involved, privileging in an abstract and mechanical way the rights of ownership over the right not to be dispossessed of a home, or vice versa. Rather it is to balance out and reconcile the opposed claims in as just a manner as possible taking account of all the interests involved and the specific factors relevant in each particular case.”

[28] In other words, there is no easy, abstract formula for achieving a specific outcome. In each case, the judicial officer is tasked with balancing and reconciling the interests based on the facts.

[29] An inquiry into whether an eviction is “just and equitable” therefore requires more than merely ensuring compliance with procedure, but instead requires a

¹² *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7.

¹³ Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act), Act 19 of 1998.

substantive balancing of interests, in this case the right of the landowner under section 25 of the Constitution, with the housing rights of the occupiers under section 26 (read with their right to tenure security in section 25(6)). In some instances, the balance may favour an eviction (e.g. Where the landowner faces genuine hardship, where occupiers do have other options, where the occupation is of short duration, where continued occupation is disruptive to the farming community), but in this instance, considering the length of occupation, the vulnerability of the household and the real risk of homelessness, on the facts on the record, this is not the case.

The possibility of addressing the issue of homelessness in mediation

[30] The question is: what is the correct pathway forward? In my opinion, these issues have the potential to be suitably resolved during mediation, where all the relevant role players are involved. The recent judgment of *Marais NO v Daniels*¹⁴ extensively deals with the issue of mediation in ESTA matters. While a round table discussion was held, this does not constitute mediation within the meaning of section 11(2)(b) of ESTA.¹⁵ The Full Court of the Land Court held that the mediation requirements introduced by the 2018 amendments to ESTA are mandatory for applications brought after 1 April 2024. The Court explained that Parliament recognised the value of mediation in resolving land disputes and preventing homelessness.

[31] This application was launched in June 2023, before the mediation provisions became mandatory. The applicants, therefore, had no statutory obligation to attempt mediation before launching the eviction application. However, the fact that mediation was not mandatory does not mean it is not appropriate.

¹⁴ *Marais NO v Daniels* [2025] ZALCC 38.

¹⁵ "(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997, if—

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

[32] Mediation is a vital tool in cases where eviction may lead to homelessness, as it serves a function that a court application cannot replicate.¹⁶ For one, it creates a space for creative problem-solving. While the Land Court may have inquisitorial powers that can alleviate the adversarial nature of litigation, the process often results in binary outcomes. Mediation creates a more creative space to explore alternatives with various parties involved. When eviction is necessary, it can help soften the impact on vulnerable occupiers. This can include a phased relocation, assistance accessing the housing databases, or contributions that occupiers might make in exchange for continued residence.

[33] Moreso, it enables state actors to engage meaningfully with all parties involved, ensuring that the municipality fulfils its obligations under section 26(2) and does not merely avoid them by filing a report.¹⁷ For instance, during mediation, the municipality and the Provincial Director of Agriculture, Land Reform and Rural Development can be pressed to explain what assistance they can provide. It can provide another forum for accountability.¹⁸

[34] Mediation also empowers vulnerable parties, enabling them to speak for themselves without having to mould their needs into rights to be pleaded and argued by legal representatives. They can explain their circumstances and participate in crafting solutions, reflecting the requirement of “meaningful engagement” found in PIE jurisprudence.¹⁹

[35] Likewise, landowners will be able to explain better their legitimate interests, such as the housing needs of other employees, as well as maintenance and conduct concerns. These interests and their impact on occupiers' housing rights can be weighed and, if appropriate, accommodated in a mediated settlement.

¹⁶ The following documents set out the benefits and limitations of mediation: South African Law Commission. *Alternative dispute resolution*. Vol. 94. The Commission, 1997, from page 32 onwards, discusses various reasons why parties should consider mediation. See also Rakgwale, M. S. (2023). *An Assessment of Mediation as an Effective Aid for Resolving Conflict: Land Disputes* (LLM mini-dissertation, University of Pretoria) and Naidoo, V. (2023). *Reforming the approach to mediation legislation in South Africa: a comparative analysis* (LLM mini-dissertation, University of the Western Cape) discusses the benefits in the context of labour law.

¹⁷ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* (CC) [2011] ZACC 33.

¹⁸ *Marais NO v Daniels* [2025] ZALCC para 67.

¹⁹ *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7 para 39 onwards.

[36] Ultimately, mediation provides an opportunity to ease the trauma of such an eviction. Eviction, especially after a lengthy occupation, is destabilising. Even when housing is connected to employment, it does not negate the fact that the structure is a person's home within a community. Mediation offers a chance to find a solution that can soften the blow and possibly prevent homelessness, making it more suitable than the harshness of a court order.

Conclusion

[37] The correct course of action is therefore to set aside the eviction order and refer the matter for mediation. Such mediation must be completed within six months of this order, to prevent it from being used as a delay tactic. If the mediation is unsuccessful, the applicants may return to the magistrate's court with supplemented papers, which must include a mediation report indicating the matters still in contention that need to be adjudicated.

Order

[38] Accordingly, the following order is made:

- 1.The eviction order granted by the Worcester Magistrates' Court on 12 December 2024 is set aside.
- 2.The matter is referred to mediation in terms of section 11(2)(b) of the Extension of Security of Tenure Act 62 of 1997.
- 3.The mediation shall be concluded within six months of this order, unless the mediator extends that period for good cause shown.
- 4.The Breedevalley Municipality (sixth respondent) and the Provincial Director of the Department of Agriculture, Land Reform and Rural Development (seventh respondent) are ordered to participate meaningfully in the mediation. They shall provide information regarding:
 - 4.1 Housing assistance available to the first to fifth respondents;
 - 4.2 The steps taken since 2004 (or at least since May 2016) to address the first respondent's housing application;
 - 4.3Emergency or temporary accommodation options;
 - 4.4Any other measures that could prevent or ameliorate homelessness if eviction proceeds.

5. At the conclusion of mediation, the mediator shall prepare a report for filing with the Worcester Magistrates' Court, indicating:

5.1 Whether the parties reached an agreement;

5.2 If agreement was reached, the terms of that agreement;

5.3 If no agreement was reached, a summary of the issues that need to be adjudicated on.

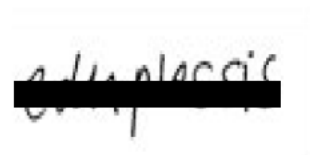
6. If the mediation does not result in an agreement, the appellants may bring an application in the Worcester Magistrates' Court. Such an application shall be accompanied by:

6.1 The mediator's report;

6.2 Updated reports from the municipality and the Provincial Director regarding housing alternatives;

7. Pending the outcome of mediation and any subsequent court proceedings, the first to fifth respondents shall be entitled to remain in occupation of the dwelling on Ruigtevlei Farm.

8. There is no order as to costs.



WJ du Plessis
Acting Judge of the Land Court