



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

CASE NO: LanC 97/2025

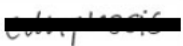
Before: Du Plessis AJ

Heard on: 10 October 2025

Delivered on: 6 November 2025

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

Date: 06 November 2025

Signature: 

In the matter between:

TEBEILA INSTITUTE NPC

Applicant

and

**MINISTER OF LAND REFORM AND
RURAL DEVELOPMENT**

Respondent

ORDER

1. The application is dismissed.
 2. No order as to costs.
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JUDGMENT

DU PLESSIS AJ

Introduction

[1] The applicant brought an application challenging the constitutional validity of section 19(3) of the Extension of Security of Tenure Act¹ (“ESTA”). Their challenge is based on an earlier amendment that deleted an express proviso permitting parties in automatic reviews (for eviction) to file written submissions, stating that this infringes their rights to a fair hearing (section 34 of the Constitution) and to accessible, effective courts (section 165(4) of the Constitution).

[2] ESTA’s automatic review mechanism requires that every eviction order granted by a magistrate be submitted to the Land Court for confirmation. Before the 1998 amendment, section 19(3) expressly afforded parties the right to file further written submissions and make oral arguments in such reviews. The express proviso has been deleted in the 1998 amendment to the Act.

[3] The applicant submits that, absent such an express proviso, automatic reviews undermine the core constitutional requirement of audi alteram partem and deny effective access to justice in eviction matters. The respondent disagrees, submitting that courts retain an inherent discretion to invite submissions and parties may still challenge the decision on appeal or rescission.

¹ 62 of 1997.

The respondent correctly pointed out that the amendment was not caused by the 2024 amendment to the Act as the applicant stated in its founding affidavit, but was amended as far back as 1998. Additionally, the respondent raised various points in limine. These points will be addressed first, before dealing with the substantive arguments.

Points in limine

[4] The point in limine raised related to the alleged non-joinder of the Department of Justice and Constitutional Development as administrators of the Land Court Act² and the Minister of Justice and Constitutional Development.

[5] Two submissions were made in support of this. In essence it is as follows: the approach to automatic review legislation is similar to that of automatic review proceedings under the Criminal Procedure Act.³ Should the court find that section 19(3) of ESTA is unconstitutional, this will also have far-reaching consequences affecting similar legislation providing for automatic review, such as the Criminal Procedure Act. Therefore, the Minister responsible for the Criminal Procedure Act must be joined.

[6] Secondly, Schedule 8 of the Land Court Act refers to section 19(3), which means automatic review is also dealt with in the Land Court Act, which the Department administers; therefore, the Minister must also be joined for that reason.

[7] Both these arguments must fail. The applicant is not challenging the automatic review under the Criminal Procedure Act. It might be that the procedures are similar, and that similar arguments can be made regarding the constitutionality (or not) of the procedure in that Act. Still, each section stands or falls on its own legislative scheme, and if the court finds that section 19(3) is unconstitutional, the declaration of unconstitutionality will only apply to ESTA, not to the Criminal Procedure Act. A party must be joined only if it has a direct and substantial interest in the proceedings or if

² 6 of 2023.

³ 51 of 1977.

the order will directly affect its rights or obligations.⁴ The Minister of Justice responsible for the Criminal Procedure Act has no such interest in a challenge to ESTA.

[8] Likewise, the argument that the automatic review was included in the Land Court Act is wrong. Schedule 8 to the Land Court Act merely sets out the extent to which legislation has been amended by the promulgation of the Land Court Act, and as such indicates that references to the Land Claims Court will be replaced with the Land Court. The provision remains in the ESTA but is merely amended by the promulgation of the Land Court Act, with only the court's name being amended.

[9] During the hearing, a third non-joinder submission was made, this time submitting that the Speaker of Parliament should also be joined, since an order of possible constitutional invalidity might include an order suspending the invalidity to allow Parliament to fix the problem and thereby bind the Speaker. Authority cited for the proposition included *Mogale and Others v Speaker of the National Assembly*.⁵

[10] This argument must also fail. An order of constitutional invalidity does not 'bind' Parliament to act; it simply establishes the legal framework within which Parliament may choose to legislate (or not). If the court finds in favour of the applicant and declares the provision unconstitutional, and if such an order includes a paragraph allowing Parliament time to address the issue, this does not constitute an order for Parliament to rectify it. The court's authority ends with the declaration of constitutional invalidity; what Parliament chooses to do after such an order is not for the court to determine. In the *Mogale and Others v Speaker of the National Assembly*⁶ case referred to, the Speaker cited as the *process* of adopting the legislation was challenged. This is not the case here.

[11] The points in limine thus fails.

⁴ *Judicial Service Commission v Cape Bar Council* [2012] ZASCA 115 para 12.

⁵ [2023] ZACC 14.

⁶ [2023] ZACC 14.

Standing and abstractness

[12] On the day of the hearing, the respondent argued that there is no matter or set of facts for the court to consider, and that the application is therefore a “pie in the sky.” This argument raises important questions about both standing and the hearing of abstract cases. Although these doctrines are distinct, they often overlap, particularly in constitutional litigation.

[13] Standing concerns who is entitled to approach the court. Section 38 of the Constitution broadens the traditional test, allowing not only those who are directly affected but also those acting in the public interest or on behalf of others to bring an application and seek relief. Abstractness addresses what kind of dispute the court can resolve: whether there is a concrete controversy grounded in facts, or whether the court is being asked to decide a hypothetical question or provide an advisory opinion.

[14] In *Ferreira v Levin NO*,⁷ Chaskalson indicated how these two issues are often intertwined.

“Ordinarily a person whose rights are directly affected by an invalid law in a manner adverse to such person, has standing to challenge the validity of that law in the courts. There can be no question that the applicants have such an interest in the present case. [...] It was argued, however, that this does not apply to the present applicants because section 7(4) of the Constitution limits constitutional challenges to persons whose constitutional rights have been impaired or threatened. [...] Whilst it is important that this Court should not be required to deal with abstract or hypothetical issues, and should devote its scarce resources to issues that are properly before it, I can see no good reason for adopting a narrow approach to the issue of standing in constitutional cases. On the contrary, it is my view that we should rather adopt a broad approach to standing. This would be consistent with the mandate given to this Court to uphold the Constitution and would serve to ensure that constitutional rights enjoy the full measure of the protection to which they are entitled.”

⁷ ZACC13 paras 162 and 165

[15] Despite their conceptual overlap, it is important to keep standing and abstractness analytically separate. In this case, the applicant is the Tebeila Institute NPC, a non-profit organisation with the aims of educating communities about their constitutional rights and litigating constitutional matters in the public interest. The applicant asserts standing under section 38(d) of the Constitution (public interest litigation), which provides:

“Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The person who may approach a court are (d) anyone acting in the public interest.”

[16] In *Ferreira v Levin NO*,⁸ O'Regan, in her minority judgment, set out the test for public interest standing:

“This court will be circumspect in affording applicants standing [...] and will require an applicant to show that he or she is genuinely acting in the public interest. Factors relevant to determining whether a person is genuinely acting in the public interest will include considerations such as: whether there is another reasonable and effective manner in which the challenge can be brought; the nature of the relief sought, and the extent to which it is of general and prospective application; and the range of persons or groups who may be directly or indirectly affected by any order made by the court and the opportunity that those persons or groups have had to present evidence and argument to the court. These factors will need to be considered in the light of the facts and circumstances of each case.”

[17] The Constitutional Court has adopted a broad and flexible approach to standing in public interest litigation, particularly when the relief sought is prospective and could impact a wide range of people. The right to standing should furthermore not be unnecessarily restricted unless the claim is genuinely unmeritorious. This aligns with the Constitution's transformative vision and the necessity to defend rights effectively.

⁸ ZACC13 para 234.

[18] The factors for determining standing in an abstract challenge were developed in *Corruption Watch NPC v President of the Republic of South Africa*⁹ where the Constitutional Court held (quoting in length, footnotes omitted):

“[37] This Court has entertained abstract challenges in appropriate circumstances. In *Ferreira* in the context of an abstract challenge arising from public interest litigation, O’Regan J held that the relevant factors are—

“whether there is another reasonable and effective manner in which the challenge can be brought; the nature of the relief sought, and the extent to which it is of general and prospective application; and the range of persons or groups who may be directly or indirectly affected by any order made by the court and the opportunity that those persons or groups have had to present evidence and argument to the court.”

[38] In *Lawyers for Human Rights* Yacoob J, writing for the majority, quoted this passage with approval and held that even though O’Regan J was in the minority, the passage was not inconsistent with anything said in the majority judgment on standing. Crucially, he then held that the factors set out by O’Regan J in respect of public interest standing where there is a live controversy are of relevance even where there is none. In other words, the factors apply even in the case of abstract public interest challenges. This is how he articulated this:

“It is ordinarily not in the public interest for proceedings to be brought in the abstract. But this is not an invariable principle. There may be circumstances in which it will be in the public interest to bring proceedings even if there is no live case. The factors set out by O’Regan J help to determine this question. The list of relevant factors is not closed. I would add that the degree of vulnerability of the people affected, the nature of the right said to be infringed, as well as the consequences of the infringement of the right are also important considerations in the analysis.”

[39] I am of the view that – in the present circumstances – it is imperative that the abstract challenge be entertained. What stands out is the nature of the

⁹ *Corruption Watch NPC v President of the Republic of South Africa; Nxasana v Corruption Watch NPC* [2018] ZACC 23 paras 37 – 39.

unconstitutionality complained of and its susceptibility to occurring without detection. CASAC argued that when the alleged unconstitutionality relates to independence as is the case with the present challenges, abstract challenges are vital. It explained that “the problem is not only the actual exercise of unconstitutional powers, but the subtle ways in which the mere existence of those powers undermines independence”. An NDPP may refrain from acting independently because she or he fears indefinite unpaid suspension and the factual matrix for the challenge not to be abstract may never arise. As CASAC further argued, rather than give the factual matrix an opportunity to eventuate, it is better to pre emptively challenge the relevant statutory provision.”

[19] From the above it is evident that in *Lawyers for Human Rights and Corruption Watch*, the Constitutional Court considered abstract challenges where the applicants raised serious and plausible claims that constitutional rights were at risk. The test for standing in such cases is not whether the applicant will ultimately succeed on the merits, but whether they have raised a genuine constitutional issue of public importance that warrants adjudication.

[20] To hold otherwise would create an absurd circularity: an applicant in an abstract case would have standing only if the court first found a constitutional violation, which means one could only have standing if one succeeded on the merits. That cannot be correct.

[21] In this case, for reasons explained later in the judgment, I ultimately conclude that section 19(3) does not violate section 34. However, the applicant has raised a constitutional concern regarding section 19(3) and its possible effect on the right of access to courts which is an important right that warrants consideration. I therefore find that they have standing to contest this. The challenge fails on the merits, not due to lack of standing.

[22] The following factors guide the decision whether the court can consider the matter (i.e. whether the applicant has public interest standing in an abstract case):

- a) Whether there is another reasonable and effective manner in which the challenge can be brought;

- b) The nature of the relief sought, and the extent to which it is of general and prospective application;
- c) The range of persons or groups who may be directly or indirectly affected by any order made by the Court;
- d) The opportunity that those persons or groups have had to present evidence and argument to the Court;
- e) The degree of vulnerability of the people affected;
- f) The nature of the right said to be infringed;
- g) The consequences of the infringement of the right;
- h) Whether the alleged unconstitutionality relates to institutional independence or structural harm that may occur without detection or prevent a concrete challenge from arising.

[23] This is not a closed list.

[24] This case concerns the potential unconstitutionality of a legislative provision intended to protect vulnerable individuals and uphold the constitutional right to security of tenure. A broad range of people could be impacted. The right of access to the courts, which is alleged to be infringed, is important because it allows individuals to enforce and protect their rights in the proper forum. Occupiers affected by this provision are vulnerable and often need to rely on Legal Aid or Law Clinics to help them assert their rights, if they are aware of and able to access such services.

[25] While the applicant could wait for a specific case to arise, I consider it appropriate to resolve the matter now. The issue concerns a provision affecting a broad class of vulnerable individuals, and deciding it provides legal certainty and prevents further speculative litigation. Courts serve the public interest not only by upholding rights but also by resolving unfounded constitutional challenges, thereby conserving judicial resources and preventing repetitive claims. A definitive ruling thus best serves the interests of justice in this case.

[26] Having concluded that the applicant has standing and that the matter warrants adjudication despite its abstract nature, it remains necessary to set out the legal framework governing abstract challenges. The doctrine of abstractness prevents

courts from issuing advisory opinions on hypothetical legal questions. In *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs*¹⁰ Ackerman J stated that (own emphasis):

“A case is moot and therefore not justiciable, if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.”

[27] In *Savoi v National Director of Public Prosecutions*¹¹ the Constitutional Court acknowledged that even where parties have standing, the fact that the challenge is brought in the abstract matters. The Court stated:

“[c]ourts generally treat abstract challenges with disfavour. And rightly so. [...] Abstract challenges ask courts to peer into the future, and in doing so they stretch the limits of judicial competence. For that reason, the applicants in this case bear a heavy burden – that of showing that the provisions they seek to impugn are constitutionally unsound merely on their face. The analysis that follows demonstrates just how heavy that burden is.”

[28] The following principles emerge from the authorities: Courts generally do not entertain abstract applications where there is no live controversy. They are called upon to resolve concrete disputes, not to provide advisory opinions on hypothetical legal questions. However, abstract challenges may be entertained in appropriate circumstances, especially where public interest factors strongly favour adjudication. When the challenge is made in the abstract, without an underlying factual dispute and based solely on the wording of the provision, the applicant bears a heavy burden: to demonstrate that the provision is unconstitutional in all (or nearly all) its possible applications. Theoretical or speculative harms will not be sufficient.

[29] For reasons set out above, most importantly preventing repetitive claims and bringing finality, I will entertain the merits. The question is then whether, in the absence of concrete facts, the applicant has discharged the heavy burden of showing that

¹⁰ [1999] ZACC 17.

¹¹ [2014] ZACC 5 para 13.

section 19(3) is unconstitutional on its face. For the reasons that follow, I find that it has not.

Constitutionality of section 19(3)

[30] Before the 1998 amendment, section 19(3) stated:

“Provided that before the Court makes any order in terms of paragraph (b) or (c), it shall give the parties an opportunity to make written submissions, and may give the parties an opportunity to make oral submissions, in that regard.”

[31] Section 19(3), after the 2024 amendment, reads:

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

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

[32] In *Malan v Gordon*¹² Dodson J set out the purpose of section 19(3):

“[15] The purpose of the provision appears to be to provide for blanket scrutiny by this Court of the decisions of magistrates’ courts resulting in evictions for a limited period after the Act’s promulgation. This must be to ensure that errors in the magistrates’ courts, in the initial phase of the implementation of the ESTA, do not go unchecked simply because the person evicted does not, or is not able to, take a matter on review or appeal. If such errors went unchecked, persons could be evicted unlawfully.”

¹² *Malan v Gordon* [1999] ZALCC 27 para 15.

[33] The review is intended to protect a vulnerable occupier. If the magistrate does not grant the eviction, then there is no review. It is only when an eviction order is made that section 19(3) applies to ensure that an occupier is not unlawfully evicted under ESTA.

[34] This was confirmed in *Snyders v de Jager*¹³ where the Supreme Court of Appeal investigated the content of the review power, with reference to automatic reviews under the Criminal Procedure Act, the Court stated (own emphasis):

[14] [...] Any point on which the proceedings can be faulted, may be taken into account. It seems clear that by providing for automatic review of eviction orders in terms of ESTA, it was intended to similarly provide a measure of protection to the often vulnerable occupiers of land as defined in ESTA. In *Lategan v Koopman & others*,^[12] Gildenhuys J held, correctly in my view, that the unique South African system of automatic review in terms of the Criminal Procedure Act provides guidance in respect of the nature and import of automatic review in terms of ESTA. He said that the court should, as a point of departure, determine whether justice was done and that the court should follow a broad approach and should not scrutinize the findings of the magistrate as meticulously as it might do in the case of an appeal.

[35] The Land Court's review powers are extensive. In *City Council of Springs v Occupants of the Farm Kwa-Thema 210*,¹⁴ the court held that this is a wide review power specifically given under a particular statute:

“[19] [...] This is a form of review unique to South Africa Innes CJ described it in the *Johannesburg Consolidated Investment* case as follows:

“... the Legislature meant to use the word review in its widest and in what may be called its popular sense. So employed the expression ‘review’ seems to mean ‘examine’ or ‘take into consideration’. And when a court of law is charged with the duty of examining or considering a matter already dealt with by an inferior court, and no restrictions are placed upon it in so doing, it would appear to me that the powers intended to be conferred upon it are unlimited. In other

¹³ [2015] ZASCA 137 para 14.

¹⁴ [1998] 4 All SA 155 (LCC)

words it may enter upon and decide the matter de novo. It possesses not only the powers of a court of review in the legal sense, but it has the functions of a court of appeal with the additional privileges of being able, after setting aside the decision arrived at by the lower Tribunal, to deal with the whole matter upon fresh evidence as a court of first instance.”

In my view the Court cannot adequately fulfil its review function if it cannot have regard to matters or circumstances not evident from the record of the case. This Court has been given “all the ancillary powers necessary or reasonably incidental to the performance of its functions”.

[36] The Land Claim Court (as it then was) clarified from the outset that the review power is broad and that a judge is not restricted to what is on the record but may request additional submissions when exercising it. The only difference between pre-amended section 19(3) and the amended section 19(3) is that there is no longer an obligation on the judge to allow the parties to make submissions. Still, it remains within the judge's discretion to do so if fairness or justice requires.

[37] In *De Kock v Juggels*,¹⁵ the question was whether new evidence should be allowed in review proceedings. The Land Claims Court noted that there is no formal provision for doing so, noting the limited time period for review. The court then referred to the amendment and stated:

“[S]ection 19(3) has been amended since that case was decided by the deletion of the proviso which expressly conferred on the parties a right to make submissions before an order was set aside on automatic review. This amendment suggests that the review proceedings, at least in the post-amendment phase, are meant to be as simple as possible and ordinarily confined to the record of the proceedings before the magistrate.

[38] Still, the broad review powers as set out earlier are sufficiently wide to allow for additional evidence. Nonetheless, it is preferable to remit matters to the magistrate for further evidence if needed.

¹⁵ [1999] ZALCC 13 para 15.

[39] Given what has been outlined above, the question arises whether section 19(3), as amended, is unconstitutional because it conflicts with section 34 of the Constitution, since it limits the right of access to the courts. The applicant argues that the amendment “denies” the parties the opportunity to file written submissions and to present oral submissions in automatic reviews. The respondent contends that it is not inconsistent with section 34.

[40] Section 34 of the Constitution provides:

“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”

[41] What, in the context of review, constitutes a “fair public hearing before a court”? The applicant submits that it means both parties are given an opportunity to present their case and evidence, allowing the decision-maker to reach a decision based on the facts and the law. The chance to address the Magistrate’s Court judgment through written or oral submissions is not provided in review proceedings. This exaggerates the situation. Although it was once mandatory for judges to receive written submissions (“shall give parties an opportunity”), the amendment changed that requirement into a discretion.

[42] Moreover, by the time a matter is considered on automatic review, the parties have had an opportunity in the Magistrate’s Court to present the facts and the law. The only opportunity that is not necessarily provided in the automatic review is to engage with the reasoning of the Magistrate’s Court.

[43] Does that mean an occupier whose eviction is confirmed on automatic review will never have an opportunity to challenge the Magistrate’s decision? No. Once the automatic review process is complete, there is still a chance to appeal the decision. There is thus no infringement of the right of access to courts.

[44] Even if it could be argued that the procedural framework infringes the right of access to courts, such a limitation would be justified under section 36(1) of the

Constitution, given the aims of the provision: to offer extra protection for vulnerable people and to ensure a swift process. Once again, the right to appeal (or review) remains.

[45] The applicant thus failed to meet the burden of demonstrating that the provision is unconstitutional in nearly every application. Section 19(3) can facilitate a constitutionally automatic review of cases because the procedural protections of section 34 are satisfied through the initial Magistrate's Court hearing and subsequent appeal rights. Moreover, the Land Court judge retains discretion to call for submissions in the interests of fairness.

[46] Lastly, the applicant's reliance on section 165(4) is fundamentally misguided. Section 165(4) requires organs of state to support and safeguard the courts to maintain their independence, impartiality, dignity, accessibility, and effectiveness. It offers protections for the judiciary's institutional independence. It does not establish individual procedural rights for litigants, nor does it prevent Parliament from setting the appropriate procedural framework for automatic reviews under ESTA. Institutional judicial independence is a separate constitutional principle that extends beyond the Bill of Rights.¹⁶ It does not extend to regulating litigant procedural entitlements.

Conclusion

[47] For the reasons outlined above, the applicant has standing to bring this constitutional challenge but has failed to meet the substantial burden of proving that section 19(3) is unconstitutional in the abstract. The provision can be implemented constitutionally, and the applicant's reliance on sections 34 and 165(4) is unfounded. The application must therefore be dismissed.

Order

[48] Accordingly, I make the following order:

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

¹⁶ *S v Van Rooyen* (General Council of the Bar of South Africa Intervening) [2002] ZACC 8 par 35.

~~WJ DU PLESSIS~~

WJ DU PLESSIS

Acting Judge

Land Court

APPEARANCES:

For the applicant: SS Tebeila, TA Makola, FP Semenya, PK Matsepane,
LV Makofane, S Maponya.

Instructed by: MS Machethe Attorneys

For the respondent: T Seneke SC, D Senyatsi

Instructed by: The State Attorney