

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2024/60036

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO


SIGNATURE

DATE 24 November 2025

In the matter between:

RUDOLPH JOHANNES DU TOIT	First Applicant
PLUMARI RANCH HEKPOORT (PTY) LTD	Second Applicant
and	
SELINA MASETE	First Respondent
THE OTHER OCCUPIERS OF THE SECOND HOUSE ON PORTION 78 OF THE FARM DOORNSPRUIT 507 KRUGERSDORP	Second Respondent
MOGALE CITY LOCAL MUNICIPALITY	Third Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 24 November 2025.

MAHON AJ:

INTRODUCTION

- [1] This application concerns a dispute about the continued occupation of a dwelling situated on Portion 78 of the Farm Doornspruit 507, Krugersdorp. The first and second applicants seek the eviction of the first respondent, together with the other persons residing with her in what is described as the second house on the property. The application is brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (the PIE Act).
- [2] The first respondent resists the relief. Her primary contention, raised as a point *in limine*, is that the matter does not fall within the ambit of the PIE Act at all, but is governed instead by the Extension of Security of Tenure Act, 1997 (ESTA). If ESTA applies, then this Court would lack jurisdiction and the dispute would have to be determined in the Land Claims Court. Central to that question is whether the respondent qualifies as an “occupier” under ESTA, a definition that requires, among other things, that she earns less than the prescribed monthly income threshold. The answering affidavit frames her case on the basis that she is unemployed and survives on social grants, and therefore falls within ESTA’s protective ambit.

- [3] Beyond the jurisdictional issue, the applicants allege that any right of residence the respondent once held has been validly terminated, and that her continued occupation is unlawful. In support of the eviction sought, they rely on their ownership of the property, the termination of the underlying right of residence, and the notice procedures undertaken in terms of the PIE Act.

FACTUAL BACKGROUND

- [4] The property at issue is Portion 78 of the Farm Doornspruit 507, Krugersdorp. The first applicant previously owned the farm before selling it to the second applicant in 2021, upon which transfer was duly effected in October of that year. The dwelling in dispute is the so-called second house located on the property.
- [5] The first respondent's family has a long historical connection with the farm. According to the founding papers, the respondent's late mother commenced employment with the first applicant's father in 1979 and was permitted to occupy the second house pursuant to a verbal agreement concluded with him. The applicants contend that the terms of this arrangement restricted occupation to the respondent's mother and her immediate descendants, prohibited the erection of additional dwellings or improvements, and provided for termination in the event of any breach.
- [6] The first respondent accepts that her mother was employed on the farm and that she and her siblings lived with their mother in the second house. However, she states that her mother only vacated the property in 2012, not 2006 as alleged by the applicants, and that upon her mother's departure she and her own children and grandchildren continued residing on the property with the

consent of the applicants' family. She describes the property as her permanent home, having lived there for more than four decades, with her children and grandchildren born and raised there.

- [7] The applicants allege that after the mother's departure, the respondent continued in occupation on the same terms as the earlier verbal agreement, but that she subsequently breached those terms by allowing unauthorised persons to reside in the second house and by constructing additional structures. They rely in this regard on a notice delivered during April 2024 calling upon the respondents to vacate the dwelling by the end of that month.
- [8] The respondent disputes any breach. She maintains that she has never permitted persons outside her immediate family to live on the property and that any structure she built was erected with the first applicant's permission. She further denies that her rights of residence were ever lawfully terminated in accordance with ESTA's procedures, contending that the applicants did not follow the statutory process for terminating residence rights under that Act.
- [9] Following the April 2024 notice, the applicants contend that the respondent's continued occupation became unlawful. The respondent, by contrast, asserts that any notice purportedly terminating her right of residence was invalid both in form and in substance, and that she remains an occupier protected by ESTA.
- [10] It is common cause that several other family members, including the respondent's adult children and grandchildren, presently reside with her in the second house. The identities of those individuals became clear only upon the filing of the answering and confirmatory affidavits.

[11] The municipality, cited as the third respondent, did not participate in the proceedings.

[12] This background sets the stage for the jurisdictional debate between the parties and informs the assessment of whether the applicants' reliance on the PIE Act is well founded.

WHETHER ESTA APPLIES

[13] The respondent's principal defence rests on the contention that she is an "occupier" as envisaged in ESTA, and that the applicants ought to have proceeded in the Land Claims Court in terms of that statute. Because ESTA and the PIE Act are mutually exclusive, the determination of ESTA's applicability is anterior to every other enquiry.

[14] ESTA applies only if all elements of the statutory definition of "occupier" are satisfied. The definition of "occupier" in section 1 of ESTA contains the following elements:

[14.1] residence on agricultural land belonging to another, which has not been incorporated into a formal township;

[14.2] present or historical occupation with consent or other legal right; and

[14.3] the person in "occupation" must not fall within any of the statutory exclusions.

- [15] For purposes of the present application, the element in issue is whether a particular exclusion applies, namely, whether the first respondent earns an income not exceeding the “*prescribed amount*”.
- [16] On the papers, the first two elements of the definition are essentially uncontested. The property is agricultural land; the second house is situated on a farm and not within a proclaimed township. The respondent has lived on the property for decades, and both she and her mother originally did so with consent. The applicants themselves rely on a purported termination of a prior right of residence, which necessarily presupposes that such a right once existed.
- [17] The central dispute therefore concerns the income requirement. The onus rests squarely on the respondent to allege and prove that her income falls below the prescribed threshold. This principle is well-established: the income component concerns facts uniquely within the respondent’s knowledge and is therefore for her to establish.
- [18] The respondent avers that she is unemployed, that she survives solely on social grants, and that she has no other income. These averments are consistent throughout the answering affidavit and are confirmed by her adult children in their respective confirmatory affidavits. No suggestion is made of any employment, informal or otherwise. She also indicates that she cannot afford rental accommodation and that her household is headed by an unemployed woman approaching the age of sixty.

- [19] The applicants challenge the adequacy of this disclosure, contending that more detail should have been provided, such as bank statements or confirming documentation from the South African Social Security Agency.
- [20] While such material would have enhanced evidential weight, its absence is not fatal to the respondent's case. The question is whether the averments made are sufficient to discharge the onus on the probabilities in motion proceedings, where, a court must give effect to the version advanced by the respondent unless it is so far-fetched or untenable that it cannot be accepted. There is nothing inherently implausible in the respondent's assertion that she is unemployed and dependent on social grants, which is consistent with her age, circumstances and the fact that she receives legal aid representation.
- [21] The question then, is whether the cumulative benefit which can be obtained through social grants, could conceivable provide an income in excess of the requisite threshold under ESTA.
- [22] The regulations promulgated under ESTA provide the necessary detail to determine the income threshold. Regulation 2 of the Regulations issued under Government Notice R1632 of 18 December 1998, as amended by Government Notices 72 of 16 February 2018 and 84 of 23 February 2018, prescribes the income threshold for purposes of the definition of "*occupier*". These amendments raise the threshold to R13 625 per month, which remains the operative amount unless amended by later notice.
- [23] Sub-regulation 2(2) provides that, for the purposes of sub-regulation 2(1), "income" means:

- “(a) a person’s gross monthly cash wage or salary; or
- (b) where a person earns money -
 - (i) other than in the form of a monthly cash wage or salary, the average monthly amount of such person’s gross earnings during the immediately preceding year; or
 - (ii) in addition to a monthly cash wage or salary, such person’s gross monthly cash wage or salary together with the average monthly amount of such person’s additional gross earnings during the immediately preceding year:

Provided that remuneration in kind shall not be taken into account.”

[24] The first issue is whether, on a proper construction of regulation 2(2), social grants fall within the meaning of “*income*” for purposes of determining whether a person exceeds the prescribed threshold. Regulation 2(2) defines income in expressly exhaustive terms. It refers to “*gross monthly cash wage or salary*”, or, *in the case of earnings not received as a wage or salary, “the average monthly amount of ... gross earnings during the immediately preceding year”*. The structure and language of the regulation indicate that “*income*” is confined to earnings derived from work or an income-generating activity. The regulation contains no reference to transfers, subsidies or benefits that arise as a matter of statutory entitlement or social protection. The inclusion of the phrase “*remuneration in kind shall not be taken into account*” reinforces that the focus is on remuneration for work done, and not on general financial support provided by the State.

[25] Social grants are created by the Social Assistance Act, 2004. They are not remuneration, compensation, or consideration for labour rendered, nor do they derive from commercial or productive activity. They are a form of non-contributory income support, provided on the basis of vulnerability, age,

disability, or foster-care responsibilities. Each grant is paid at an amount fixed by the Minister and is not tied to past or present earning capacity. In substance and legal character, a social grant is a statutory entitlement, not an “*earning*”. It follows that, strictly speaking, social grants do not fall within the definition of income in regulation 2(2). If a person survives solely on social grants, that person earns no “gross earnings” as contemplated in the regulation.

- [26] Even if one assumes that social grants should be taken into account when assessing the income threshold, the question becomes whether the cumulative value of all available grants could ever exceed the prescribed ceiling of R13 625 per month. This requires a brief examination of the statutory framework governing social assistance in South Africa.

- [27] Social grants are created and regulated under the Social Assistance Act 13 of 2004. They are non-contributory statutory entitlements, designed to provide income support to vulnerable groups such as the elderly, persons with disabilities, and caregivers of minor children. They do not arise from employment, services rendered, or any form of productive economic activity. Their quantum is fixed periodically by the Minister of Social Development and is not variable according to economic output or earnings capacity. Grants of this nature are therefore legally and conceptually distinct from “*gross earnings*” or “*remuneration*”, which are the focus of regulation 2(2).

- [28] Even if one assumes, for purposes of analysis, that social grants form part of the enquiry into “*income*”, the statutory architecture makes it impossible for a person to exceed the ESTA income threshold solely through grants. The system

is structured around primary adult grants which are mutually exclusive. A qualifying adult may receive either an Older Persons' Grant, or a Disability Grant, or a War Veterans' Grant, but never more than one of these simultaneously. The value of each of these primary grants is well below the prescribed ESTA threshold, as is the total which one may earn from them collectively.

[29] These primary grants may be supplemented only by certain caregiving-related grants. A caregiver may receive Child Support Grants on behalf of eligible children, Foster Child Grants where court-ordered foster care exists, and, where appropriate, a Care-dependency Grant for a severely disabled child. The quantum of each of these grants is modest. The Child Support Grant, even with the optional "top-up" mechanism, remains by design a low-value support measure. In addition, a caregiver of a person requiring full-time care may receive a Grant-in-Aid, which is similarly modest in amount.

[30] The statutory and administrative framework also places limits on accumulation. A caregiver may not receive unlimited child-related grants. The Child Support Grant is expressly capped in the operative SASSA framework, preventing unlimited expansion of the household grant base. The Foster Child Grant is available only where a child is placed in foster care through a Children's Court order, a circumstance that cannot arise in large numbers in the ordinary household. The Care-dependency Grant is tied to a finding of severe disability and is available only for the specific child who meets that criterion.

- [31] When these limits are considered together, it becomes evident that even the most generous hypothetical combination of grants available to a person in the respondent's age cohort and circumstances would fall significantly short of the income threshold prescribed under ESTA. A single primary adult grant, plus the maximum feasible number of child-related grants permitted under the regulatory framework, plus a Grant-in-Aid where applicable, produces a combined monthly total that is, in round terms, several thousand rand below the prescribed threshold. Even adding optional top-ups to the permissible Child Support Grants does not bridge the shortfall.
- [32] It follows that, whether one approaches the matter from the strict interpretive standpoint (under which social grants do not constitute "income" for purposes of regulation 2(2)) or on the more generous assumption that they may be considered, the outcome is the same. A person who is unemployed and who survives on social grants alone cannot, as a matter of law and practical reality, exceed the prescribed ESTA income ceiling. The respondent's evidence that she is unemployed, survives through statutory grants, and receives no earnings from employment thus suffices to establish that her income falls below the prescribed threshold.
- [33] The conclusion that the respondent meets the statutory definition of an "occupier" under ESTA has an unavoidable jurisdictional consequence. ESTA and PIE occupy mutually exclusive terrain. Once ESTA applies, an eviction may be obtained only in accordance with the procedure laid down in sections 8 and 9 of ESTA, and only in the forum designated by the Act. Section 17 expressly vests jurisdiction for eviction proceedings involving occupiers in the Land

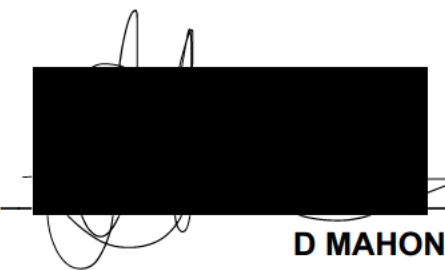
Claims Court. This Court's jurisdiction is accordingly ousted, and it cannot grant the relief sought under the PIE Act.

[34] The applicants did not invoke ESTA, did not purport to terminate the respondent's right of residence in terms of section 8, did not deliver any of the mandatory notices required by the Regulations, and did not approach the Land Claims Court. Their case is premised entirely on the PIE Act. Because ESTA governs the legal relationship between the parties, the present proceedings cannot be sustained, and the failure to proceed under the correct statutory framework is fatal to the application.

[35] As to costs, the general principle is that costs follow the result. There is no basis to depart from that principle. Although the applicants appear to have acted under a misapprehension regarding the applicability of PIE, the respondent has nonetheless been put to the expense of opposing proceedings that ought not to have been brought in this forum. Fairness therefore dictates that the applicants bear the costs.

[36] In the circumstances, the following order is made:

1. The application is dismissed with costs on scale B.


D MAHON
Acting Judge of the High Court
Johannesburg

Date of hearing: 15 August 2025

Date of judgment: 24 November 2025

APPEARANCES:

For the Applicant: Adv PS Van Niekerk
Instructed by: Louw & Heyl Attorneys

For the Respondent: Mr B Ndlovu
Instructed by: Legal Aid South Africa, Krugersdorp Local Office