



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

Case number: LanC: 07R/2025

Magistrate's Court case number: 12/2024

Before: The Honourable Acting Judge Maluleke
In chambers

Delivered on: 23 January 2026

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

Date: 23 January 2026

In the matter between:

EZWELETHU COMMUNAL PROPERTY ASSOCIATION

Applicant

and

VUSUMUZI KUBHEKA

First Respondent

**UNKNOWN OCCUPANS OF IMMOVABLE
PROPERTY KNOWN AS PORTION 2 OF
FARM WYDELEGEEN 53 REGISTRATION
DIVISION HT MPUMALANGA**

Second Respondent

SEME LOCAL MUNICIPALITY

Third Respondent

**HEAD OF THE DEPARTMENT OF RURAL
DEVELOPMENT & LAND REFORM MPUMALANGA**

Fourth Respondent

ORDER

1. The order granted by the Wekkerstroom Magistrate's Court dated 19 September 2025 is set aside in its entirety.
2. The case is remitted to the Wekkerstroom Magistrate's Court for reconsideration as a relocation with an emphasis on ensuring substantive fairness and possible mediation.
3. There is no order as to costs.

JUDGMENT

MALULEKE AJ

Introduction

[1] This is an automatic review before me in terms of section 19 (3) of the Extension of Security of Tenure Act 62 of 1997 ("ESTA") emanating from the Magistrate's Court for the District of Gert Sibande, in the Sub District of Pixley Ka Seme, held at Wekkerstroom, Mpumalanga.

[2] On 19 September 2025, the Magistrate granted an order in the following terms:

1. The First Respondent and all occupiers occupying through him are declared unlawful occupiers of the farmhouse situated on portion 2 of the farm Wydgelegen 53, registration division HT, Mpumalanga.
2. The First Respondent and all occupiers occupying through him are ordered to remove all their movable property from the farmhouse and vacate the mentioned farmhouse no later than 60 calendar days after service of this order.

3. The First Respondent and all occupiers occupying through him are authorised to demolish any structure that they have erected to the farmhouse and salvage any material from such demolition no later than 60 calendar days after service of this order.
4. If the First Respondent and all occupiers occupying through him fail to comply with the order, the sheriff of the district is authorised and directed to evict them and their movable belongings from the mentioned farmhouse.
5. No cost order is made.
6. The order is subjected to automatic review to the Land Court and the execution of such is stayed pending the outcomes of such.

Parties

[3] The Applicant is Ezwelethu Communal Property Association ("the CPA"), registered in terms of the Communal Property Association Act 28 of 1996, under registration number: CPA/18/1549/A, situated at Wydgelegen Farm 53 HT, Wakkerstroom District, Mpumalanga Province ("the farm").

[4] Mr Mfanikhona Enock Thwala ("Mr Thwala") is the representative of CPA, appointed as such by virtue of a Resolution dated 15 December 2023, and appointed duly to depose to the affidavit on behalf of the Applicant.

[5] The First Respondent is Vusumuzi Kubheka, ("Mr Kubheka"), currently residing on the farm. The Second Respondents are unknown occupants of the farmhouse, occupying through the First Respondent. For the sake of convenience, the First Respondent and the Second Respondents will collectively be referred to as "The Respondents".

[6] The Third Respondent is the Pixley Ka Seme Local Municipality, a local municipality with its main place of business at C/O Adelaide Tambo Street and Dr Nelson Mandela Drive, Mpumalanga.

[7] The Fourth Respondent is the Head of the Department of Rural Development & Land Reform ("the Department"), with its main place of business at 374 Mohammedia Street, Piet Retief, Mpumalanga Province.

Background

[8] The CPA is the owner of the farm that was bought by the Department on 22 January 2018 on behalf of the CPA and its beneficiaries in land restitution. Mr Kubheka has always lived on the farm with his family as a resident, hence he became a beneficiary under the verification list of beneficiaries of the CPA.

[9] The CPA Constitution provides that office bearers will hold office for 3 years only. However, Mr Kubheka has been a Chairperson for more than three years, due to the committee's inability to hold elections because of the COVID pandemic.

[10] Some committee members of the CPA called the Department to assist them in holding new elections as the term of that committee had already elapsed. The Department advised them to elect a temporary committee and the fully fledged committee will be elected [*sic*] on a date to be determined by the Department.

[11] The then committee of 2017 which Mr Kubheka was the Chairperson of, informed the members of the CPA of the meeting to be held to elect a temporary committee. Mr Kubheka did not form part of the committee members who were talking to the Department regarding the elections of a temporary committee.

[12] The committee members who were talking to the Department informed all the CPA members of the date of the proposed meeting to elect the temporary committee, and Mr Kubheka was informed through his son, Adam Patrick Kubheka, of the date of the meeting wherein the elections of the temporary committee will take place.

[13] The meeting was held in September 2023 wherein the current committee was elected; however, Mr Kubheka did not attend the meeting and none of his family members attended.

[14] On or about 19 November 2024, the CPA instituted eviction proceedings in terms of section 9 of ESTA in the Magistrate's Court under case no. 12/2024, against Mr Kubheka and the Second Respondents.

[15] Mr Thwala, a member of the CPA and the person in charge of the farm, deposed to the founding affidavit on behalf of the CPA. Mr Kubheka was the Chairperson of the CPA committee from January 2018 to September 2023. He was part of the committee that developed the Constitution of the CPA, and therefore should have intimate knowledge of the Constitution thereof.

[16] Mr Kubheka as the Chairperson of the CPA, checked regularly on the farmhouse from 2018 to 2022 and he took occupation of the farmhouse in December 2022. Mr Kubheka has his own dwelling on the farm. When he was the Chairperson of the CPA, he left his dwelling took occupation in the house that belonged to the CPA without the necessary consent from CPA. Mr Kubheka's wife, followed to move into the CPA's house, to stay with Mr Kubheka. Mr Kubheka had first sent his children, Sibusiso and Sandile Kubheka to occupy the house in 2018 before he went to occupy the house in 2022.

[17] After the election of the new committee members, numerous meetings were held with Mr Kubheka, urging him to vacate the farmhouse, but he kept on promising to vacate but did not. He remained in occupation of the farmhouse with his family. The CPA seeks the eviction of the Respondents in order to utilise the farmhouse for its business.

[18] The Respondents, despite receiving the notices of the intention to terminate the residence and to evict them, have not vacated the farmhouse within the notice period given.

[19] The CPA contends that the eviction would be just and equitable because Mr Kubheka has his own house on the farm; however, he left his house and took occupation of the farmhouse that belonged to the CPA without the necessary consent therein. Therefore, they already have access to alternative accommodation, his house, though he argues that it is dilapidated.

[20] Regarding compliance with the provisions of ESTA, the CPA contends that when the Respondents failed to vacate the premises, they informed Mr Kubheka about the outcome of the meeting and requested him to hand over the documents in his possession to the new Chairperson, and to vacate the farmhouse which belongs to the CPA. However, Mr Kubheka continues to occupy the farmhouse to date and he refuses to hand over the documents in his possession to the current Chairperson.

[21] Officials from the Department came to the farm in 2023 and informed Mr Kubheka, in the presence of the CPA members, to vacate the farmhouse. He promised to vacate the farmhouse after Good Friday of April 2023, but did not vacate and is still occupying the farmhouse to date. Mr Kubheka took full occupation of the house in December 2022.

Termination of the right to residence

[22] A letter dated 30 October 2023 informing Mr Kubheka that he has no legal right whatsoever to occupy the CPA's farmhouse, was served on him on 23 November 2023. The said letter was affixed to the principal door at Mr Kubheka's place of residence (the CPA's farmhouse) by the sheriff as Mr Kubheka was not available for service. The sheriff's return of service was filled in court.

[23] A copy of the letter was also served on the Pixley Ka Seme local municipality on 22 November 2023. The sheriff's return of service was filled in court.

[24] A copy of the letter was also served on the Department on 10 November 2023. The sheriff's return of service was filled in court.

[25] A notice in terms of section 9(2)(d)(ii) of ESTA was sent to the sheriff to serve on the Department.

[26] A further notice in terms of section 9(2)(d)(ii) of ESTA was addressed to Mr Kubheka and was served by the sheriff for Wekkerstroom on the mother of Mr Kubheka, Ms Lizzy Kubheka. The sheriff's return of service was filled in court.

[27] The CPA submits that it is suffering severe prejudice as it is prevented from conducting some of its business in the farmhouse, as Mr Kubheka prevents access to the farmhouse to all the members of the CPA.

[28] The CPA contends that Mr Kubheka has always lived in the farm with his family, hence he became a beneficiary under the verification list of beneficiaries of the CPA, and therefore he and the Second Respondents are occupiers in terms of section 10 of ESTA. However, Mr Kubheka has his own dwelling in the farm; though he left his dwelling and went to occupy the house that belonged to the CPA without the necessary consent from the CPA.

[29] Regarding compliance with section 10 (3) of ESTA, the CPA contends that the Respondents are not long-term occupiers in the farmhouse but in the farm itself.

[30] The CPA submits that the Respondents' right of residence has been lawfully and fairly terminated in terms of section 8 of ESTA.

[31] The CPA further submits that, in the alternative that the Court should find that section 11 of ESTA is also applicable since the occupiers occupied the farmhouse after 4 February 1997; the CPA submits that the Respondents are not evicted from the farm, since they have their own house on the farm, but the farmhouse that belongs to the CPA. The CPA further submits that the provisions for an order for eviction in terms of section 11 have been complied with.

[32] In the judgment, the Magistrate states that the Respondents did not file any opposing papers and the application proceeded unopposed.

Report in terms of section 9 (3) of ESTA

[33] The Department filed a report in terms of section 9 (3) of ESTA. The report establishes among others; that Mr Kubheka and the Second Respondents will experience suffering should they be evicted as a result of their current homestead being dilapidated, unless the court orders a temporary structure to be constructed by

the relevant government institution. The report further records that the Respondents indicated that they would not vacate the farmhouse.

Meaningful engagement

[34] There has been no substantive engagement between the parties with the municipality and no report was submitted.

The Legal Framework

[35] It is trite that the point of departure in all eviction applications is the Constitution, in particular, section 26(3) which guarantee that no one may be evicted from their home without an order of court made after considering the relevant circumstances. The preamble to the Constitution recognises the injustices of the past, and it states that one of its purposes is to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights.

[36] ESTA, centrally, is a legislation that seeks to give effect to section 25(6) of the Constitution, which 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.'*¹

[37] This is a relocation matter and not an eviction matter, because the Respondents are not evicted from the land but relocated from the farmhouse to another house on the farm, therefore a distinction must be drawn between "relocation" and "eviction", due to different suitable alternative accommodation considerations that emerge in the respective domains.²

¹ *Daniels v Scribante and Another* 2017 (8) BCLR 949 (CC)(*Daniels v Scribante*), paras 14 to 23. *Du Plessis and Another v Kriel N.O and Others* (LCC88/2022), para 41.

² Lerato Rudolph Ngwenyama 'The difference between a relocation and an eviction in the context of ESTA: A critical reflection on Boplaas Landgoed (Pty) Ltd v Jonkies (LCC 37/2022) [2022] ZALCC 38 (15 August 2022)'. *Law, Democracy & Development*/ Vol 28 (2024).

[38] ESTA deals with evictions in the rural areas of South Africa.³ ESTA refers to “relocation” in the sense that evictees should be provided with suitable alternative housing under certain circumstances,⁴ and does not deal with relocations on the same property. An owner or the person in charge might, however, seek to relocate an ESTA occupier, hence the courts have introduced the concept that the movement of ESTA occupiers from one ESTA home to another, on the same property, is to be known as relocation. Although a relocation can generally mean movement of people to another property or house off-site, or a relocation on the property itself, the case of *Boplaas Landgoed (Pty) Ltd v Jonkies* (LCC 37/2022) [2022] ZALCC 38 (Jonkies) demonstrates that “relocation” may have various meanings.

[39] A relocation in the context of ESTA is limited to the movement of ESTA occupiers from one ESTA home to another on the same land (i.e., the same deed description and title deed).⁵ In contrast, an eviction in terms of section 1 of ESTA is confined to the removal of ESTA occupiers from the land (i.e., different title deeds).⁶ There is hence a distinction between relocation and eviction.⁷

[40] An eviction involves depriving an ESTA occupier, against his or her will, of residence on land, the use of land, or access to water, all of which are linked to a right of residence in terms of ESTA.⁸ Prior to an eviction, the owner or person in charge must first terminate an ESTA occupier’s right of residence in terms of section 8 of

³ 2. Application and implementation of Act

Subject to the provisions of section 4, this Act shall apply to all land other than land in a township established, approved, proclaimed or otherwise recognised as such in terms of any law, or encircled by such a township or townships, but including—

(a) any land within such a township which has been designated for agricultural purposes in terms of any law; and

(b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment, approval, proclamation or recognition.

Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved.

⁴ Sections 10(2) and 11(3)(c) of ESTA.

⁵ *Boplaas Landgoed (Pty) Ltd v Jonkies* (LCC 37/2022) [2022] ZALCC 38 (2022) para 12 (Jonkies). See also *Pharo's Properties CC and Others v Kuinders and Others* (LCC101R/00) [2001] ZALCC 1 (2001) para 13; *Chagi v Singisi Forest Products* 2007 (5) SA 513 (SCA) paras 19 and 20; *Oranje and Others v Rouxlandia Investments (Pty) Ltd* 2019 (3) SA 108 (SCA) (2019) para 10; *Du Plessis and Another v Kriel N.O and Others* [2024] 1 All SA 702 (LCC).

para 33. See also note 2 above.

⁶ *Jonkies* para 12.

⁷ *Ibid.*

⁸ Section 1 of ESTA.

ESTA. This right may be terminated if the ESTA occupier (a) has resigned from employment or has been dismissed, or (b) has committed a breach in terms of section 10(1)(a), (b) or (c).⁹ Furthermore, the owner or person in charge must approach the court for an order of eviction, and the court will grant such an order if it complies with the conditions set out in sections 10 or 11 of ESTA.

[41] The process which is currently followed in the relocation of ESTA occupiers is not provided for in ESTA, however, the court has extended the application of ESTA to relocation, though the right of residence is not necessarily terminated when ESTA occupiers are relocated, it is imperative that sections 5(a), 6(2)(a) and 8(1)(e) of ESTA are complied with. The majority judgment in *Du Plessis and Another v Kriel N.O and Others* [2024] 1 All SA 702 (LCC) held that section 8 of ESTA applies to relocations (not just evictions). In this matter, Cowen J and Ncube J concurring, Cowen J said in paragraph 39:

'In my view, the rights that are affected by any relocation are rights of residence protected by section 8 of ESTA. In other words, properly interpreted, section 8 of ESTA is invoked where an occupier's right of residence is terminated whether or not that termination is intended to lead to an eviction either at the time it is terminated or at any time thereafter.'

[42] The Supreme Court of Appeal ("SCA") in the case of *Oranje v Rouxlandia Investments (Pty) Ltd*¹⁰ (*Rouxlandia*) ruled that a relocation of an ESTA occupier to a different house on the same property is not an eviction:

'The starting point is the decision of this court in *Chagi v Singisi Forest Products (Pty) Ltd*, which conclusively spelt out whether a relocation could amount to an eviction as contemplated by ESTA. The court held that because s 6 encroaches upon a landowner's right of ownership, it should be restrictively interpreted. Therefore, an eviction in terms of ESTA is confined to an eviction from the land, not from one dwelling to another. As such, a relocation could not amount to an eviction in terms of ESTA.'¹¹

⁹ Section 8(2), (4) and (5) of ESTA.

¹⁰ (2019 (3) SA 108 (SCA) (*Oranje v Rouxlandia Investments*).

¹¹ *Ibid* para 10.

[43] The SCA ordered the relocation and said that a landowner or person in charge is entitled to relocate an occupier, provided that the move does not infringe upon the occupier's fundamental rights to security of tenure and human dignity, as protected by ESTA, there is suitable alternative accommodation provided, the occupiers rights in terms of sections 5(a) and (d) read with section 6(2)(a) are not affected, and the relocation does not impact on the occupier's human dignity. As such, a relocation could not amount to an eviction in terms of ESTA. The principle established in this decision is therefore that, an eviction in terms of ESTA is confined to an eviction from the land, not from one dwelling to another.

[44] Nkabinde J in *Molusi and Others v Voges N.O. and Others*¹² said the following regarding the balancing of the competing rights:

'The pre-reform-era land law reflected the common-law based view that existing land rights should be entrenched and protected against unlawful intrusions. The land reform legislation ESTA in this case changed that view. It highlights the reformist view that the common law principles and practices of land law, that entrench unfair patterns of social domination and marginalisation of vulnerable occupiers in eviction cases, need to change. ESTA requires that the two opposing interests of the landowner and the occupier need to be taken into account before an order for eviction is granted. On the one hand, there is the traditional real right inherent in ownership reserving exclusive use and protection of property by the landowner. On the other, there is the genuine despair of our people who are in dire need of accommodation. Courts are obliged to balance these interests. A court making an order for eviction must ensure that justice and equity prevail in relation to all concerned. It does so by having regard to the considerations specified in section 8 read with section 9 as well as sections 10 and 11 which make it clear that fairness plays an important role.'¹³

[45] In *PE Municipality*¹⁴ the Constitutional Court remarked that it is necessary "to infuse elements of grace and compassion into the formal structure of the law"¹⁵ and courts need "to balance competing interests in a principled way and to promote the constitutional vision of a

¹² 2016 (3) SA 370 (CC) (*Molusi*).

¹³ *Ibid* para 39.

¹⁴ *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7 (*PE Municipality*).

¹⁵ *Ibid* para 37.

caring society based on good neighbourliness and shared concern because *"we are not islands unto ourselves"*.¹⁶ One immediately agrees that:

'[t]he Judiciary cannot, of itself, correct all the systemic unfairness to be found in our society. Yet it can, at least, soften and minimise the degree of injustice and inequity which the eviction of the weaker parties in conditions of inequality of necessity entails.'¹⁷ (Footnote omitted)

Compliance with sections 8, 9 and 10 or 11 of ESTA

[46] Section 8¹⁸ of ESTA provides that the right to residence may be terminated on any lawful grounds, provided that such termination is just and equitable, having regard to all relevant factors. Section 9¹⁹ of ESTA sets the basic requirements that must be met before a court can grant an eviction order. Section 10²⁰ of ESTA provides the

¹⁶*Ibid.*

¹⁷ *PE Municipality* supra n14 para 37 and *Molusi* supra n12 paras 39 – 40.

¹⁸ "8. Termination of right of residence

(1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to—

(a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;

(b) the conduct of the parties giving rise to the termination;

(c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;

(d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises after the effluxion of its time; and

(e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an adequate opportunity to make representations before the decision was made to terminate the right of residence.

¹⁹ Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.

(2) A court may make an order for the eviction of an occupier if—

(a) the occupier's right of residence has been terminated in terms of section 8;

(b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;

(c) the conditions for an order for eviction in terms of sections 10 or 11 have been complied with; and

(d) the owner or person in charge has, after the termination of the right of residence, given—

(i) the occupier;

(ii) the municipality in whose area of jurisdiction the land in question is situated; and

(iii) the head of the relevant provincial office of the Department of Rural Development and Land Reform, for information purposes, not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.

²⁰ 10. Order for eviction of person who was occupier on 4 February 1997

(1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if

(a) the occupier has breached section 6(3) and the court is satisfied that the breach

(b) is material and that the occupier has not remedied such breach;

(c) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while

requirements for an order for eviction of a person who was an occupier on 4 February 1997 and section 11²¹ of ESTA provides the requirements for eviction of a person who was an occupier after 4 February 1997.

[47] A written notice was addressed to Mr Kubheka and was served on him through affixion on the door of his residence, informing him to vacate the residence and that

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- the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar months' notice in writing to do so;
- (d) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or
- (e) the occupier—
- (i) is or was an employee whose right of residence arises solely from that employment;
 - (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.
- (f) the owner or person in charge or 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.
- (2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.
- (3) If—
- (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
 - (b) the owner or person in charge provided the dwelling occupied by the occupier; and
 - (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge.
- The court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to
- (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and
 - (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

²¹ 11. Order for eviction of person who becomes occupier after 4 February 1997

- (1) If it was an express, material and fair term of the consent granted to an occupier in question, that the consent would terminate upon a fixed or determinable date, the Court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.
- (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;
 - (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.

his right of residence is terminated, however, as indicated above, this is not an eviction but a relocation. Accordingly, the Magistrate must reconsider the matter under relocation and not eviction.

Discussion

[48] It has been established in case law that an eviction in terms of ESTA is limited to the removal of ESTA occupiers from one land to another, and not from one house to another on the same farm.²² As such, relocation does not constitute an eviction in terms of ESTA.²³ Though relocation does not constitute eviction, it still has to comply with the just and equitable requirements as outlined in ESTA.

[49] The CPA stated that Mr Kubheka did not avail himself for meetings to discuss his relocation with the Second Respondents, therefore, Mr Kubheka did not make any representation as required in terms of section 8(1)(e).

[50] The probation officer's report submitted in terms of section 9(3) of ESTA, established that Mr Kubheka and the Second Respondents will experience hardship should they be evicted because their current homestead is dilapidated and not habitable, therefore there is no suitable alternative accommodation.

[51] The SCA²⁴ confirmed that, where a relocation infringes an ESTA occupier's right to human dignity, such a relocation could be successfully resisted by invoking sections 5(a) and 6(2)(a) of ESTA. However, where suitable alternative accommodation was provided and the right to human dignity was not infringed, sections 5(a) and 6(2)(a) of ESTA cannot be relied on to resist a relocation²⁵.

[52] In consideration of the above, the Magistrate erred in ordering eviction in a relocation matter.

²² *Oranje v Rouxlandia Investments* supra n10 para 10.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Oranje v Rouxlandia Investments* supra n10 para 22.

Order

[53] Accordingly, the following order is granted:

1. The order granted by the Wekkerstroom Magistrate's Court dated 19 September 2025 is set aside in its entirety.
2. The case is remitted to the Wekkerstroom Magistrate's Court for reconsideration as a relocation with an emphasis on ensuring substantive fairness and possible mediation.
3. There is no order as to costs.



MJ MALULEKE
ACTING JUDGE OF THE LAND COURT