



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

**CASE NO.: LANC: 27R2024
MAGISTRATE'S COURTS NO: 404/2022**

In the matter between:

**LALIBELA MANAGEMENT SERVICES PROPRIETARY
LIMITED**

Applicant

and

ZAMEKA PAYI

First Respondent

MZWABANTU MAGWADI

Second Respondent

MAKANA MUNICIPALITY

Third respondent

DEPARTMENT OF RURAL DEVELOPMENT

AND LAND REFORM

Fourth Respondent

JUDGMENT

MAJOZI AJ:

1. On 6 November 2024, the Magistrate Court for the District of Makana (**“the Magistrate Court”**), granted an order evicting the first respondent from

the farm known as Farm 300, Remaining Extant Portion 0, situated in the district of Sarah Baartman, in the Eastern Cape Province ("**the Farm**"). In its order, the Magistrate Court directed the first respondent to vacate the Farm. If she failed to vacate the Farm before 31 December 2024, the Sheriff of the Court was authorised to carry out the eviction from 3 January 2025.

2. The second respondent, who is the first respondent's sibling, is the only party that opposed the application. The eviction application in relation to the second respondent was dismissed and there was no order as to costs.
3. The eviction order against the first respondent, was presumably granted in terms of section 9 of the Extension of Security of Tenure Act 62 of 1997 ("**ESTA**").
4. It is clear that the eviction order against the first respondent was granted on the sole basis that, the first respondent, did not file any affidavit opposing the application. The first respondent also neglected to file a confirmatory or supporting affidavit, making common cause with the second respondent.
5. This matter is now before me in terms of sections 19(3) of ESTA as an automatic review. Section 19(3) of ESTA permits this Court in automatic reviews, to grant the following orders: to substitute the order of the Magistrate Court in whole or in part, set it aside in whole or in part, confirm it in whole or in part or remit the case to the Magistrate Court with directions to deal with any matter.

6. For reasons that will appear hereinunder, the order I grant, partly sets aside the order of the Magistrate Court evicting the first respondent and all occupiers of the Farm under her from the Farm. The order of the Magistrate Court, albeit granted on an unopposed basis, was erroneously granted as there is substantial non-compliance with both section 8 and 10 of ESTA. The fact that the first respondent failed to oppose this application did not, clothe the relief sought by the applicant, with lawfulness. Even when matters are unopposed a case for the relief sought still has to be made out.
7. It is trite that courts can only grant orders that are lawful as they are also bound by the rule of law.
8. The Constitutional Court held that an order that is contrary to the applicable legal context is neither competent nor proper. It is precluded by the principle of legality in section 1(c) of the Constitution. Courts do not grant illegal orders because they too are bound by the principle of legality and the rule of law is supreme under the Constitution.¹
9. The order evicting the first respondent from the farm is inimical to the mandatory procedural and substantive prescripts that an owner of a farm or person in charge must follow when seeking to evict an occupier. The applicant failed to make out a case for the relief it sought against both the first and second respondents. The order of the Magistrate Court has to therefore be disturbed.

¹ Cool Ideas 1186 CC v Hubbard and Another 2014 (4) SA 474 (CC) para 55; Also see Eke Parsons 2016 (3) SA 37 (CC) at paras 25-29

THE BRIEF COMMON CAUSE FACTS

10. As set out in the judgment of the Magistrate Court, the facts of this matter are common cause.

11. It is common cause that:

11.1. the applicant is not the owner of the Farm, it is the person in charge of the Farm and therefore had the necessary legal standing to bring the application;

11.2. the first and second respondents, are siblings and descendants of the late Daniel and Linah Magwadi;

11.3. the first and second respondents' parents, were employed on the Farm and thus worked and lived on the Farm for close to six decades;²

11.4. the first and second respondents were born and raised on the Farm;

11.5. the first and second respondents, were as of, 4 February 1997, occupiers;

11.6. when the applicant, sought to terminate the first and second respondents' occupation of the Farm, he only issued a notice in

² The second respondent alleges that, his paternal grandparents were also employed on the farm and his father was born on the Farm. The second respondent also alleges that, he and the first respondent were born, raised and worked on the Farm.

terms of section 8(1)(e) of ESTA, on the first and second respondents’;

11.7. the first and second respondents were not given an opportunity to make representations prior to the applicant taking steps to give them a notice of eviction in terms of section 9 of ESTA;

11.8. the letters that were issued by the applicant in terms of section 8(1)(e) of ESTA, were received by both the first and second respondents; and

11.9. without any further process pursuant to the issuing of the letters in terms of section 8(1)(e) and 9 of ESTA, the applicant instituted the eviction application.

COMPLIANCE WITH SECTION 8 OF ESTA AND THE DECISION OF THE MAGISTRATE COURT

12. In the light of the abovementioned common cause facts, the Magistrate Court at paragraph 43 of its judgment, held that since it was common cause that the applicant did not comply with section 8 of ESTA, that fact alone would bring the matter to finality. It further held that since there was non-compliance with section 8 of ESTA, there would be no need to deal with section 9 and section 10 of ESTA. The fact that the applicant had not complied with section 8 of ESTA, led to the dismissal of the application against the second respondent.

13. Section 8 of ESTA states as follows:

“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 effective opportunity to make representations before the decision was made to terminate the right of residence...”

14. The Magistrate Court, referred to the Constitutional Court judgment of *Snyders and Others v De Jager and Others*,³ where the Constitutional Court, indicated that, section 8(1) of ESTA makes it clear that the termination of a right of residence must be just and equitable both on a substantive level as well as on a procedural level. The requirement for the substantive fairness of the termination is captured by the introductory part to section 8(1) of ESTA which requires the termination of a right of residence to be just and equitable.

15. The applicant failed to comply with this step and this was explained by the second respondent in her opposing affidavit and it is also borne out by the applicants own founding affidavit and annexures thereto. This fact alone,

³ *Snyders and Others v De Jager and Others* 2017 (3) SA 545 (CC) at para 56

as explained by the Magistrate Court, justified the dismissal of the application against the second respondent.

16. The incongruity of the Magistrate's Court's order is that the applicants' letters purporting to terminate the first and second respondents' right of residence are a mirror image of each other. If the letter is deficient in relation to the second respondent, it remained deficient as it relates to the first respondent. The fact that the first respondent failed to oppose the application did not regularise the applicant's non-compliance with section 8 of ESTA.
17. A failure to afford the first respondent an opportunity to make representations, is as the Constitutional Court decreed, a failure at a substantial and procedural level. The first respondent ought to have been invited to make representation prior to the termination of her right of residence. This was not done for both the first and second respondents and the application should have failed against both of them, not just the second respondent.

SECTION 9 OF ESTA WAS ALSO NOT COMPLIED WITH

18. Further, section 9(2)(c) of ESTA dealing with limitation on eviction states that, the court may make an order for eviction of an occupier if the conditions for an order for eviction in terms of section 10 or 11 have been complied with.
19. Section 10 of ESTA provides that, an eviction order may only be granted to persons such as the first respondent, if the occupier has breached

section 6(3) of ESTA and the Court is satisfied that the breach is material and that the occupier has not remedied such a breach. It further provides that, the order of eviction may be granted if:

- “(b) 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 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 month’s notice in writing to do so;
- (c) 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;
- (d) the occupier—
 - (i) is or was an employee whose right of residence arises solely from that employment; and
 - (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act; or...”

20. In its founding affidavit, the applicant, simply alleged that the eviction was sought because it had issued a notice in terms of section 8(5) of ESTA. It then averred that the first and second respondents have access to suitable alternative accommodation and this fact justified the eviction relief sought. The latter was disputed by the second respondent.

21. So, even if the requirements of section 8 had been complied with by the applicant, none of the requirements set out in section 10 of ESTA were met by the applicant.
22. As a result of the aforementioned procedural and substantive deficiencies, the Magistrate Court should not have granted the eviction application sought by the applicant against the first respondent. The applicant had failed to make out a case for the eviction of the first and second respondents.
23. It is therefore necessary that, the order of the Magistrate Court, granted on 6 November 2024, be set aside in part by also dismissing the application in relation to the first respondent. The effect is that the application for eviction fails.
24. In the premises, the following order is made:
- 24.1. the application in respect of the first and second respondents is dismissed.
- 24.2. There is no order as to costs.

M MAJOZI
Acting Judge of the Land Court
of South Africa, Randburg
18 February 2026