



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

CASE NO: LCC09/2024

Before: Bishop AJ
Heard on: 5 March 2026
Delivered on: 6 March 2026

DELETE WHICHEVER IS NOT APPLICABLE

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

6 March 2026

DATE

[Redacted Signature]

SIGNATURE

In the matter between:

JAFTHA PEKEUR

First Applicant

MAGRIETHA PEKEUR

Second Applicant

and

THE FRUIT FARM GROUP (PTY) LTD

Respondent

ORDER

1. The Applicants' failure to file an application for condonation, and their late filing of the application for leave to appeal are condoned.
2. The application for leave to appeal is dismissed.
3. There is no order as to costs.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

BISHOP, AJ

[1] This is an application for leave to appeal against the judgment I delivered on 17 December 2025. In that judgment, I granted an application to evict the Applicants from the farm Verlorenvlei.

CONDONATION

[2] A preliminary issue arises because the application is brought out of time. It was filed on 16 February 2026. It ought to have been filed on 16 January 2026. Even if the

full period until 15 January 2026 is regarded as dies non, the application is still out of time.

[3] The day before the hearing Mr Joubert, for the Respondent, filed a note drawing the delay to the attention of the Court and the Applicants. At the hearing, I invited Mr Jacobs, for the Applicants to explain the delay. He explained that Legal Aid South Africa – who had previously represented the Applicants – had indicated they were not able to represent them in seeking leave to appeal. The Applicants then had to find alternative attorneys. They did so, and then the application for leave to appeal was filed.

[4] This seems to me like a reasonable explanation. While it should have been given in an application for condonation, Mr Joubert did not object to me considering the representations from the Bar. He also indicated that his client had no interest in postponing the application to allow an application for condonation to be brought.

[5] In my view, I have the power in terms of rule 32(7) to condone the failure to bringing a condonation application, and to condone the delay in bringing the application for leave to appeal. I made that order at the hearing, and the parties then argued the merits of the application.

THE MERITS

[6] An applicant for leave to appeal is confined to the grounds of appeal set out in the application.¹ Leave to appeal is granted on one or more of those grounds.

[7] The test is whether there are reasonable prospects that another court would come to a different conclusion.²

[8] The Applicants advanced six grounds of appeal.

[9] First, they argue that I misinterpreted their rights under s 8(4)(b) of ESTA. But, as I pointed out to Mr Jacobs, I made no finding on whether s 8(4)(b) applied or not. I did not do so because: (a) the issue was not pleaded or argued; and (b) it did not make a difference as I concluded that there was a fundamental breach as envisaged in s 10(1)(c) of ESTA. The Applicants did not seek leave to appeal on the basis that I was wrong to conclude that Mr Pekeur had committed a fundamental breach in terms of s 10(1)(c). Whether s 8(4)(b) applied or not was, therefore, irrelevant.

[10] Second, the Applicant contended that I ignored the occupiers' constitutional rights to family life, dignity, housing, freedom and security of the person, and privacy. The Applicants do not explain how I failed to consider those rights, or how a consideration of those rights would have changed the outcome. ESTA was enacted to give effect to the right to security of tenure, and the right to housing. It also protects the rights to dignity, family life, freedom and security and privacy.³ But ESTA must be

¹ *Songono v Minister of Law and Order* 1996 (4) SA 384 (E) at 385I-J.

² Land Court Act 6 of 2023 s 31, read with Superior Courts Act 10 of 2013 s 17.

³ ESTA ss 5 and 6.

interpreted on its terms. It was open to the Applicants to argue that I misinterpreted or misapplied ESTA because I did not have regard to a particular constitutional right. But then they should have identified the relevant provision and explained why a consideration of the right would have altered the meaning of the provision, or how it should have been applied on the facts. They did not do so, and so there is no basis to grant leave to appeal.

[11] Third, the Applicants point out that Mr Pekeur started his employment on Verlorenvlei in 1996. That is so. That is why I found his eviction was governed by s 10 of ESTA. Mrs Pekeur began occupying Verlorenvlei in 2005. That is why her eviction was covered by s 11.

[12] Fourth, the Applicants contend that I erred in concluding that there was a written contract of employment linking Mr Pekeur's residence to his employment, despite Mr Pekeur's denial that he signed one. But the Applicants do not explain why I erred in reaching that conclusion on the evidence. They also do not explain why the existence of a written agreement mattered in light of Mr Pekeur's own evidence that his residence on the farm flowed from his employment.⁴

[13] Fifth, the Applicants argued that I wrongly concluded that they had alternative accommodation because Mr Afrika – who they reside with on Driefontein – is not the owner of that farm. But they do not explain why it cannot be regarded as alternative accommodation given that it is currently their primary place of residence where they spend the majority of their time. They also do not explain why they would not be able

⁴ See para 31 of the Judgment on the merits.

to secure other alternative accommodation with Mrs Pekeur's salary of R13 000 per month. And if my factual finding that the Applicants had access to alternative accommodation was correct, there was no need for any further order to regulate the provision of alternative accommodation post-eviction.

[14] Finally, they argue that I was wrong to conclude that the Labour Court proceedings had been determined in terms of s 8(3) of ESTA as Mr Pekeur's review is still "pending" in that Court. But it isn't pending. It has been "deemed to be withdrawn" and it has "lapsed". No argument was advanced for why I was wrong in my conclusion on the effect of non-prosecution of the review in the Labour Court. And I do not see how an application that has lapsed and been deemed to be withdrawn can be said not to "determined" as envisaged in s 8(3) of ESTA.

[15] For all those reasons, there are no reasonable prospects that another Court will reach a different conclusion on the grounds of appeal raised by the Applicants. The application must be dismissed.

[16] Despite the failure of the application, I do not believe there is any reason to depart from the ordinary practice in this Court that costs orders are not made. The application was not abusive, it was just ill-founded.

[17] Accordingly, I make the following order:

[17.1] The Applicants' failure to file an application for condonation, and their late filing of the application for leave to appeal are condoned.

[17.2] The application for leave to appeal is dismissed.

[17.3] There is no order as to costs.



M BISHOP

Acting Judge of the Land Court

APPEARANCES:

For the Applicant: **Adv C Joubert SC**
Instructed by: Werksmans Attorneys

For the Respondents: **Mr J Jacobs** of J Jacobs and Associates