



IN THE NORTH WEST HIGH COURT, MAHIKENG

CASE NO: M546/2023

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates: **NO**

In the matter between:

PIETER BOTHA N.O

Applicant

AND

WJH MARAIS BROERS CC

First Respondent

JAN GABRIEL DE VILLIERS PRETORIUS

Second Respondent

HENDRIK JACOBUS MARAIS

Third Respondent

**ALL OCCUPIERS OF THE REMAINING
PORTION 1 OF THE FARM WITPAN 20,
REGISTRATION DIVISION I.P NORTH
WEST PROVINCE, HELD BY DEED OF**

TRANSFER T[...] AND PORTION
20 (A PORTION OF PORTION 3) OF
THE FARM ROODEPAN 19, REGISTRATION
DIVISION I.P NORTH WEST PROVINCE,
HELD BY DEED OF TRANSFER T[...]2

Fourth Respondent

LOUIS LE ROUX

Fifth Respondent

ALL OCCUPIERS OF THE PROPERTY
SITUATED AT THE REMAINING PORTION
10 OF THE FARM ROODEPAN 19,
REGISTRATION DIVISION I.P NORTH
WEST PROVINCE, HELD BY DEED OF
TRANSFER T[...]3

Sixth Respondent

DATE OF HEARING : 05 February 2026

DATE OF JUDGMENT : 08 April 2026

FOR THE APPLICANT : Adv.Raubenheimer

FOR THE 1st & 2nd RESPONDENT : Adv. Strydom SC

FOR THE 3rd to 6th RESPONDENT : Adv. Botha SC

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives *via* email. The date and time for hand-down is deemed to be 10h00 on 08 April 2026.

ORDER

Resultantly, the following order is made:

- (i) The application is dismissed.
- (ii) The applicant is ordered to pay the costs of this application on a party-and-party basis on Scale C in terms of Rule 67 A of the Uniform Rules of Court, to be taxed.
- (iii) Such costs to include the costs occasioned by the employment of Senior Counsel (SC).

JUDGMENT

Summary

Application for eviction - Extension of Security of Tennure Act (ESTA) 62 of 1977 - Prevention of Illegal Eviction from Unlawful Occupation of Land Act (PIE) 68 of 1969 - its application.

HENDRICKS JP

- [1] In this application the applicant prays for an order for the eviction of the respondent from certain farms together with certain ancillary relief. It is prudent to state the citations of the respective parties. The applicant is the duly appointed executor in the estate of the late Helena Lovina Wallis, in his official capacity, Mr. Pieter Johannes Botha N.O. The first respondent is WJH Marais Broers CC, a close corporation farming entity. The second respondent is Jan Gabriel De Villiers Pretorius. The third respondent is Hendrik Jacobus Marais. As the fourth respondent is cited 'all occupiers of the remaining of Portion 1 of the farm Witpan 20 and

Portion 20 of the farm Roodepan 19'. The fifth respondent is Louis Le Roux. As the sixth respondent is cited 'all occupiers of the property situated at the remaining Portion 10 of the farm Roodepan 19'. At the hearing of this matter on 05 February 2026, this Court ordered the joinder of the third and sixth respondents as they have a vested interest in this matter, as it will become apparent later on in this judgment.

[2] It is common cause that the properties referred to above are three farms that are all registered in the name of the late Helena Lovina Wallis. The first and second respondents purchased these farms at an auction that was held on 30 August 2019, on instruction of NWK Limited, who was the bond holder. This was with the cooperation of the previous executor of the estate, Mr. Van Wyk. The third respondent, together with his family reside on the farm Witpan, whilst the fifth respondent together with his family reside on the farm Rooipan. The relief claimed effected them as well as their respective families and 'all those who occupy by, through or under the first and second respondents'. The applicant is the newly appointed executor in the stead of Mr. Van Wyk who resigned as executor of the estate.

[3] The applicant contends that because the properties (farms) are registered in the name of the deceased estate, he as executor is entitled and obliged to protect, recover and preserve estate assets including instituting proceedings to recover possession thereof from unlawful occupiers. He allege that the first and second respondents do not reside on the properties, and that they occupy and control the properties for commercial farming operations. Based on the agreement concluded at

the auction, possession and occupation of the properties, will be given to the purchaser on date of registration of transfer in the name of the purchaser. This is the crux of the applicants' case. Because transfer of the properties has not been registered in the names of the first and second respondents, the agreement does not confer on them the right of occupation. It is quite apparent that the respondents do not rely on any written lease agreement concluded with the owner, the late Helena Lovina Wallis or the executor, the applicant. The respondents rely on the conditions of sale and informal agreements. The applicant submitted in the absence of transfer of the property by registration thereof in the name of either the first or second respondent, and in the absence of a lease or written consent granting early occupation, the respondents occupation is without my right.

- [4] It is clear that this Court is not at the juncture called upon to determine the validity of the sale agreement concluded at the auction. This is a dispute to be resolved in an action instituted. The applicant contended that even if it were to be assume that the sale agreement on auction is valid, occupation of the properties is deferred until registration and transfer thereof in the name of either the first or second respondent. The current application is for the eviction of the respondents from these farms. The opposition by the respondents are based on the agreement of sale on auction and informal agreements to occupy the farms to avoid vandalism; to improve the farms to make it habitable and profitable in respect whereof there exist a *lien* over the farms (property); because ESTA finds application, this Court does not have the necessary jurisdiction to deal with this matter; non-compliance with the dictates of

the PIE Act insofar as it relates to one of the occupiers; and the respondents (first and second) are *bona fide* possessors.

- [5] Insofar as the applicability of the PIE Act is concerned, it is common cause between the applicant and the fifth respondent that the PIE Act is applicable insofar as he (and his family) are concerned. As alluded to earlier, the fifth respondent and his family reside on the farm Rooipan. He is an employee of the first respondent and as such has a right of residence on the farm. In terms of section 14 (2) of the PIE Act, the applicant had to give him 14 days written notice, approved by a court. This did not happen. There is therefore non-compliance with the PIE Act in this regard. Whilst small deviation from strict compliance may be condoned by a court if there is substantial compliance, a court will not lightly condone substantial non-compliance. This is not a case of placing form over substance. The legislation make it peremptory that there must be compliance with the dictates of the PIE Act.¹ No reasons for the non-compliance with the requirements of the PIE Act was proffered. Non-compliance with the PIE Act in the sense that the dictates of the act was ignored can never be regarded as substantial compliance.² The object of the PIE Act is to give protection against illegal evictions.³ Not only does the fifth respondent reside on the farm Rooipan but his family is also residing there; that is his wife Liesel and their children as well as other family members. Liesel and the other family members of the fifth respondent were not initially joined in these proceedings, although they might be effected by the relief claimed. This in my view is fatal. The

¹ Cape Killarney Property Investments (Pty) Ltd vs Mahamba 2001 (4) SA 1222 (SCA).

² Moele v Shoniwe 2005 (4) SA357 (SCA).

³ City of Tshwane Metropolitan Municipality v Lombardy Development and Others 2018 ZASCA 177.
Weenen v Transitional Council v Van Dyk 2002 (4) SA 653 (SCA).

prescripts of the PIE Act should have been adhered to insofar as Liesel and the other family members are concerned. After this Court ordered that they be joined, notice of these proceedings should have been effected on them, which did not happen.

[6] An aspect that is central to this application is the fact that the first and second respondents *bona fide* purchased these farms on an auction and *bona fide* belief that the agreements concluded were valid. They took occupation of these farms in the *bona fide* belief that they were entitled to do so to prevent possible vandalism and theft and they even made improvements on the farms in order to make it habitable and profitable. These improvements increased the value of the farms. On this score, the first and second respondents raised as a defence the fact that they are having improvements liens because of the expenses incurred. This is borne out by evidence of increased valuations. It need to be emphasized that the first and second respondents contended that they are *bona fide* possessors or occupiers and not tenants in terms of any lease agreement. A bona fide possessor is someone that possesses property labeling under the impression that he will become the owner or is the owner regardless of whether ownership will eventually be acquired or not.⁴

[7] The bona fide possessor or occupier is entitled to be reimbursed for all the expenses incurred in preservation or protection of the property and also for any improvements made or effected to the property.⁵ The first

⁴ Kommissaris van Binnelandse Inkomste v Anglo American (OFS) Housing Company Ltd 1960 (3) SA 642 (A).

⁵ Business Aviation Corporation (Pty) Ltd v Rand Airports Holdings (Pty) Ltd 2006 (6) SA 605 (SCA).

and second respondents are *bona fide* possessors of the properties (farms). Whether or not NWK had a right to sell the properties is subject to an action that is pending before this Court. This does not detract from the fact that the first and second respondents acquire possession of these properties by buying it on an auction. The improvements made on these properties gives the first and second respondents a real right (*lien*) over these properties. They believe that these properties will become theirs as a result of the purchase thereof on an auction. Until such time as these sale agreements are declared invalid and/or are set aside, they have a *lien* or right of detention over these properties.

- [8] The third, fourth, fifth and sixth respondents are occupying these farms for residential purposes. As alluded to earlier, it is common cause that these properties are farms. The third, fourth and sixth respondents raise as a defence that the Extension of Security of Tenure (ESTA) Act 62 of 1997 find application and their rights of occupation in terms of this act are protected. It is trite that a person that occupies under ESTA cannot be evicted under the PIE Act. The PIE Act deal with the unlawful occupiers whilst ESTA deals with lawful occupiers who occupy with the consent of the owner or person in charge of the land. The third, fourth and sixth respondents occupy these farms through the first and second respondents in whose employ they are. The farms are land in terms of ESTSA. ESTA oust the jurisdiction of this Court as it specifically states that the Land Court (previously the Land Claims Court) have exclusive jurisdiction over the land (and land claims) matters.⁶

⁶ Skhosana And Others v Roos t/a Roos Se Oors 2000 (4) SA 561 (LCC).

[9] These farms are land within the ambit of ESTA. This Court as a High Court does not have jurisdiction to entertain this application insofar as the third, fourth and sixth respondents are concerned. The application for their eviction should consequently fail. As alluded to earlier, the fifth respondent (resort under the PIE Act which find application insofar as he is concerned. To reiterate, there was substantial non-compliance with the formal prescripts of the requirements of the PIE Act, which is fatal for the present application. No notice of the intended eviction was given to the fifth respondent and his family members. Furthermore, no grounds for their eviction are set out in the founding affidavit which is to the prejudice of the fifth respondent and this family as they could not properly prepare for their defence as was highlighted by counsel representing them.

[10] This application is fatally defective in that there is non-compliance with the requirements of the PIE Act and ESTA exclude this Courts' jurisdiction. As such this application must fail. Insofar as costs are concerned it should follow the result and be awarded in favour of the successful litigants, the respondents. The importance and complexity of this matter warrant the employment of senior counsel and their employment are justified. The costs should therefore also include the costs consequent upon the employment of senior counsel (SC).

Order

[11] Resultantly, the following order is made:

- (i) The application is dismissed.

- (ii) The applicant is ordered to pay the costs of this application on a party-and-party basis on Scale C in terms of Rule 67 A of the Uniform Rules of Court, to be taxed.
- (iii) Such costs to include the costs occasioned by the employment of Senior Counsel (SC).

R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG