



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

CASE NO: LanC 97/2025

Before: Du Plessis J

Heard on: 17 April 2026

Delivered on: 17 April 2026

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

Date: 17 April 2026

In the matter between:

TEBEILA INSTITUTE NPC

Applicant

and

**MINISTER OF LAND REFORM AND
RURAL DEVELOPMENT**

Respondent

ORDER

1. The application for leave to appeal is dismissed, no order as to costs.
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JUDGMENT

DU PLESSIS J

Introduction

[1] On 6 November 2025, I delivered judgment dismissing the applicant's constitutional challenge to section 19(3) of the Extension of Security of Tenure Act ("ESTA").¹ The applicant now applies for leave to appeal against that judgment and order. The respondent opposes the application.

[2] The applicant challenged section 19(3), as amended in 1998, by the deletion of a proviso that had previously obliged the Land Court to afford parties in automatic review proceedings an opportunity to file written submissions (and a discretion to permit oral submissions). I dismissed the challenge on the merits, finding that the applicant had not discharged the heavy burden of demonstrating that the provision is unconstitutional on its face.

[3] The test is that in section 17(1)(a) of the Superior Courts Act:² leave to appeal may only be granted where the judge is of the opinion that the appeal would have a reasonable prospect of success, or that there is some other compelling reason why it should be heard.

¹ 62 of 1997.

² 10 of 2013.

[4] A reasonable prospect of success requires more than an arguable case or a mere possibility of success. The applicant must persuade me that another court would realistically reach a different result.³

The Grounds of Appeal

[5] The grounds of appeal raise seven heads of alleged error but reduce, on analysis, to three substantive challenges: (a) that I erred in finding that the reviewing judge retains a discretion to invite submissions notwithstanding the deletion of the proviso; (b) that I erred in finding that the procedural protections of section 34 are satisfied through the initial Magistrate's Court hearing and the subsequent right of appeal; and (c) that I erred in finding that the deletion of the proviso does not violate section 165(4) of the Constitution. The respondent correctly observes that the bulk of the grounds are a restatement of the case advanced in the founding affidavit and do not engage closely with the specific findings and reasoning in the judgment.

Analysis

The judicial discretion finding

[6] I found in the judgment that the 1998 amendment converted the obligation to afford parties a written-submissions opportunity effectively into a discretion, and that a reviewing judge retains the power to invite submissions where fairness or justice so requires. The applicant contends that no discretion is expressed in the text of the amended provision and that I therefore erred.

[7] I am not persuaded that this ground has reasonable prospects of success. The principle that a court retains an inherent discretion to act fairly, even absent an express statutory obligation to do so, is well-established. Both *De Kock v Juggels*⁴ and *Kanhym (Pty) Ltd v Mashiloane*⁵ confirmed that, following deletion of the proviso, a reviewing judge retains a discretion to receive submissions where justice requires. The applicant conflates the removal of a mandatory obligation with the elimination of a residual judicial power. The two are not the same. I see no reasonable prospect that another court would find otherwise.

³ MEC for Health, Eastern Cape v Mkhitha [2016] ZASCA 176.

⁴ [1999] ZALCC 13.

⁵ 1999 (2) SA 55 (LCC).

Section 34 of the Constitution

[8] Section 34 guarantees everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court. The applicant's central contention is that section 19(3) violates section 34 because parties to automatic review are denied any opportunity to engage with the Magistrate's reasoning.

[9] I remain of the view that this is incorrect. By the time a matter reaches automatic review, the parties have fully participated in adversarial proceedings before the Magistrate. The review is a supervisory safeguard designed to protect vulnerable occupiers against unlawful eviction, not a fresh hearing on the merits. The Land Court's review powers are broad. It may confirm, set aside, substitute, or remit. The judge retains discretion to call for further submissions where appropriate. I do not consider that the absence of an express right to file submissions at the review stage renders the overall process constitutionally deficient.

[10] Nor does the automatic review mechanism deprive a litigant of all further judicial recourse. As I found in the judgment, a party aggrieved by the outcome of automatic review retains the right to appeal. The Constitutional Court confirmed in *Snyders v De Jager*⁶ that such a party is entitled, subject to leave, to appeal the Land Court's decision. The right of access to courts in section 34 is not confined to a single tier of the dispute resolution process.

[11] The applicant's analogy to Constitutional Court confirmation proceedings under section 172(2)(a) of the Constitution is inapt. Those proceedings serve a constitutionally distinct function and operate under a distinct procedural framework. ESTA's automatic review is not constitutionally required to replicate that framework.

[12] Even if the deletion of the proviso could be characterised as a limitation of section 34, which I do not accept, such a limitation would be justified under section 36(1). The purpose of the amended provision is to ensure swift judicial oversight of

⁶ [2016] ZACC 55

eviction orders affecting vulnerable occupiers while preserving the right to a further appeal. That is a legitimate and important purpose. The limitation is proportionate to it. I see no reasonable prospect that another court would reach a different conclusion on this ground.

Section 165(4) of the Constitution

[13] Section 165(4) requires organs of state to assist and protect the courts to maintain their independence, impartiality, dignity, accessibility, and effectiveness. I found in the judgment that this provision is intended to secure institutional judicial independence and does not confer individual procedural entitlements on litigants.

[14] I am not persuaded that this ground has any prospect of success. Section 165(4) is about protecting the independence of courts as institutions, in other words, keeping them free from outside interference. It is not about the procedural rights of individual litigants. Parliament is perfectly entitled to decide how the automatic review process works, including what submissions parties may or may not file. That is confirmed in *S v Van Rooyen*.⁷ This ground fails.

Procedural observation

[15] As the respondent correctly observes, the grounds of appeal are in large measure a repetition of the applicant's founding affidavit rather than a focused engagement with the specific findings of the judgment. As noted in *M.S.H v J.S.H (Application for Leave to Appeal)*,⁸ a "shotgun" approach in leave to appeal applications, by multiplying grounds without adequately engaging the reasoning impugned, is deprecated. Grounds that merely reassert arguments already considered and rejected do not, without more, demonstrate a reasonable prospect that another court would reach a different result.

⁷ [2002] ZACC 8.

⁸ [2023] ZAWCHC 345.

Compelling Reason

[16] No conflicting judgments on the interpretation of the amended section 19(3) have been identified, and no other compelling reason why the appeal should be heard has been advanced on the papers before me.

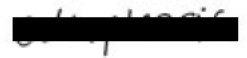
Costs

[17] The respondent seeks costs. This is constitutional litigation in which the applicant advanced a public interest challenge. In accordance with the *Biowatch* principle, no order as to costs is appropriate.

Order

Accordingly, the following order is made:

1. The application for leave to appeal is dismissed, no order as to costs.



WJ DU PLESSIS

Acting Judge

Land Court

APPEARANCES:

For the Applicant: Adv SS Tebeila; Adv TA Makola; Adv FP Semanya;
Adv PK Matsepane; Adv LV Makofane; Adv S Maponya
Instructed by: MS Machethe Attorneys, Polokwane

For the Respondent: Adv T Seneke SC
Instructed by: The State Attorney, Pretoria