IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LanC 108/2025

Before the Honourable Petse AJ
Date of hearing: 05 December 2025
Date of judgment: 23 April 2026

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	NOT REVISED.

[redacted] **23 April 2026**

SIGNATURE DATE:

In the matter between:

THEO RUAN SMIT N.O. and KARIN YVONNE SMIT N.O. In their capacities as Trustees for the time being of the TR SMIT FAMILIE TRUST	First Applicant
RUAN SMIT	Second Applicant
and	
DANIEL DOCTOR MLAMBO	First Respondent
THOKO BESLINA MLAMBO	Second Respondent
ALL UNLAWFUL OCCUPIERS OF FARM MEULSTROOM/MANESRUST, MEMEL	Third Respondent
PHUMELA MUNICIPALITY	Fourth Respondent

Summary: Eviction – application for eviction in terms of section 9 of the Extension of Security of Tenure Act 62 of 1997 – first and second respondents having been dismissed from employment by previous farm owner as employer – respondents' right of occupation of employees residential quarters terminated by new farm owner – irretrievable breakdown of relationship between farm owner and respondents rendering continued occupation of employees' quarters intolerable – respondents no longer in occupation of premises for some two years due to circumstances unrelated to the current litigation between the parties – held that the eviction of the respondents just and equitable.

ORDER

On application for eviction of the respondents at the suit of the current farm owner. The following order is made:

1. The first and second respondents' right of residence on the farm Meulstroom is hereby terminated.
2. The first and second respondents are directed to vacate the house occupied by them on Manesrust, Meulstroom farms within 45 days of the date of this order.
3. Should the first and second respondents refuse, neglect or fail to vacate the premises within the period stipulated in paragraph 2 hereof, the Sheriff of the court in the district in which the property is situated is hereby authorised to evict them.
4. Upon the eviction of the first and second respondents from the premises, the applicants shall be entitled to demolish the structure/house vacated by the said respondents.
5. The first and second respondents shall pay the costs of the application jointly and severally, the one paying the other to be absolved.
6. The applicants shall pay the wasted costs associated with the hearing of the application before the Free State Division of the High Court, Bloemfontein on 12 June 2025 on an opposed basis.

JUDGMENT

PETSE AJ

Introduction

[1] The first applicant, T R Smit Familie Trust, represented by its two trustees in these proceedings owns several farms in the Vrede district, Free State, collectively known as the farm Meulstroom. The various farms were all purchased during 2012 from a corporate entity known as Meulstroom Landgoed (Pty) Limited. The two trustees representing the first applicant are Mr Theo Ruan Smit and Ms Karin Yvonne Smit.

[2] The second applicant is Mr Ruan Smit who is a farmer and full-time employee of the Trust as well as manager of the farms and, as previously mentioned, collectively known as Meulstroom[1] and owned by the Trust.

[3] The first respondent is Mr Daniel Doctor Mlambo who is married to the second respondent, Ms Thoko Beslina Mlambo. Both respondents currently reside at 1107 Zamani location in Memel since they vacated their residence on the farm pursuant to an order granted in the magistrate's court, Memel some 24 months previously. The respondents previously resided in Meulstroom until the occurrence of certain events that precipitated the institution of the current proceedings, culminating in them having to move out of the house they occupied on the farm to their current place of abode. I shall revert to this aspect later.

Background facts

[4] The two applicants instituted legal proceedings in the Free State Division of the High Court, Bloemfontein (the high court) by way of notice of motion for an order in the following terms:

[1] The various farms are: Witzenberg 256, in extent 708,8516 hectares; Waterval 1167, in extent 904,555 hectares; Remaining Extent of Manesrus 253 in extent 180,9110 hectares; Draaiwater 252, in extent 441,7992 hectares; Mill-Vale 363, in extent 825,8067 hectares.

‘1. That the right of residence of the first and second respondents on the farm Meulstroom or any property of the first applicant, be terminated by the court.

2. That the respondents be evicted from the house [situated] on Manesrust / Meulstroom of the first applicant.

3. To the extent that the respondents have not vacated the property at the [time of] granting of this order, that they do so within 30 (thirty) days from date of service of the order, failing which the Sheriff be authorised to evict them.

4. That the applicants be entitled to demolish the house on the farm Manesrust / Meulstroom previously occupied by the respondents.

5. Costs of the application on an attorney and client scale.

6. …’

[5] Broadly stated, the foundation for the relief sought in the notice of motion was that the relationship between the protagonists had reached such a state of disintegration that rendered continued co-existence amongst them on the farm intolerable.

[6] In support of their application, the applicants relied on the founding affidavit deposed to by Ms Karin Yvonne Smit, in her capacity as a co-trustee of the T R Smit Familie Trust. For convenience, I shall hereinafter refer to Ms Smit as the deponent. To the extent relevant for present purpose, the deponent, inter alia, stated:

‘13. This is an application in terms of Chapter 3 and 4 of the Extension of Security of Tenure Act 62 of 1997 (hereinafter referred to as “the Act” or “ESTA”) against the Respondents.

14. More particularly:

14.1 It is an application for confirmation of the termination of the right of the Respondents residence in terms of Section 9(2)(a) and (b) of ESTA;

14.2 An order for eviction in terms of Section 10 of ESTA; alternatively

14.3 An order for the eviction in terms of Section 11 of ESTA;

14.4 An order for demolishment of the residential dwelling.

…

18. At the time when the property was bought in 2012, the First and Second Respondents occupied a house close to the Memel/Newcastle (Muller's Pass) road, a district road called the "S17".

19. The First and Second Respondents during that stage were employed by Meulstroom Landgoed (Pty) Limited, which the First Applicant accepted.

20. The First Respondent was employed by the First Applicant for a period of almost 1 (one) and a half years during the period 2012 to 2014. The First Respondent terminated his employment with the First Applicant and ceased employment on the 30th of August 2014. It was unknown what his position thereafter was. He obtained housing in Zamani in Memel and only attended to the house on the farm sporadically. The Second Respondent was also employed by the First Applicant, but she also terminated her employment.

21. Due to the house situated right next to the S17 Road, the house was located on the side of the farm next to the road and the First Applicant had no objection [to] the occupation of the house by the First and Second Respondents, subject to the First Applicant's rights as owner to terminate the residence.

22. The First Applicant however never consented to:

22.1 Any family, save for the First and Second Respondents personally, residing in the house;

22.2 Any farming activities;

22.3 Any grazing facilities to the First and Second Respondents;

22.4 The Respondents did not have any rights other than their occupation of the house.'

[7] Thereafter, the deponent proceeded to aver that on 8 March 2024 a Mr Theo Ruan Smit together with one of the Trust's employees, Mr Morné James Pruis, were busy spraying tracers with herbicides at the road reserve running through the farm Meulstroom to make firebreaks along the boundary fence using a Landcruiser motor vehicle. This exercise was required in terms of the National Veld and Forest Fire Act[2] and the Local Fire Protection Association Rules which legal prescripts, inter alia,

[2] National Veld and Forest Fire Act 101 of 1998 (the Veld Fires Act).

provide that farmers who fail to make firebreaks expose themselves to both criminal and civil liability.

[8] Whilst Smit and Pruis were busy spraying the grass they were confronted by, amongst others, the first respondent who was in the company of his three sons who blocked the path of travel of the Landcruiser. The four men, apparently acting in concert, assaulted Theo Smit. Smith and Pruis realised that their lives were in serious danger and, as a result, they attempted to flee from their assailants. Theo Smit had by then suffered some serious bodily injuries and was profusely bleeding from such injuries. The assailants pursued them and approximately 50 metres from where the assault had begun, the assailants caught up with Theo Smit and continued to jointly assault the latter. During the ensuing scuffle the first respondent incited his co-assailants to dispossess Theo Smit of this cell phone whilst continuing to assault and swear at him. At that stage Theo Smit had fallen to the ground. Pruis, too, was dispossessed of the Landcruiser’s keys. Through the intervention of the second respondent the Landcruiser keys were later handed back to Pruis.

[9] Once Pruis had retrieved the Landcruiser keys, he drove to another area of the farm where Ruan, who is Theo Smit’s son, was busy in the field. When Pruis and Ruan reunited with Theo Smit, the latter informed them that his assailants seized his cell phone and refused to return it to him. When Theo, Pruis and Ruan approached their assailants in order to retrieve Theo Smit’s cell phone they were attacked again by, inter alia, the first respondent. Ruan was dispossessed of his firearm, which was in its holster, by one of the assailants who fired one shot to the ground. A scuffle then ensued when Ruan attempted to recover his firearm. Whilst still wrestling over the firearm, the second applicant pleaded with one of the respondents’ sons, by the name of Lindelani, who was part of the attacking group to let go of the firearm, but the latter did not heed the plea. At that stage, Mfunafikile also took part in the attack by hitting Ruan in the head. By then the attacking group was in possession of Theo’s cellphone and Ruan’s pistol. Both Theo and Ruan were bleeding from the injuries inflicted by their assailants.

[10] Convinced that their assailants were not prepared to restore possession of the pistol and cellphone, Theo, Ruan and Pruis left and drove to the police station in

Memel some 12 kilometres away as they could not reach the police telephonically. On arrival at the police station, they received no assistance with the result that they were compelled to resort to a private security company in Newcastle named Ithemba, some 60 kilometres away. Despite the intervention of Ithemba, the attacking group still refused to return the cellphone and the pistol to their rightful owners.

[11] Theo and Ruan were driven to hospital in Newcastle for medical help. Whilst the hospital staff indicated that Theo and Ruan would be admitted for further observation due to the seriousness of their bodily injuries, the latter, however, said that it would be ill-advised of them to stay in hospital overnight whilst Theo's wife was left vulnerable and alone at home. I pause here to mention that the averment in the founding affidavit that Theo and Ruan suffered serious bodily injuries as a result of the assault at the hands of the first respondent and his sons, acting in concert, is not in dispute. As a sequel to the assault, Theo and Ruan laid criminal charges against the respondents and their cohorts at the Memel police station. But the prosecution declined to press charges against the second respondent on the available evidence.

[12] As a result of the criminal charges laid against them, the first respondent and his three cohorts were arrested, charged with assault and attempted murder and caused to appear before the magistrate's court in Memel. And given the gravity of the charges they faced, the case was transferred to the Regional Court. All four accused were admitted to bail subject to the usual conditions. And, insofar as the first respondent in particular is concerned, the court imposed certain special conditions, one of which was that he is precluded from entering or being at Meulstroom Farms. As a result of this latter bail condition, the respondents have not lived in Meulstroom Farms for some two years now.

[13] As a further sequel to the events that occurred on 8 March 2024, a firm of attorneys, acting on instructions from the applicants, gave a written notice of termination of the respondents' rights of residence in Meulstroom Farms calling upon them to vacate their residence on the farm since, besides the 8 March 2024 incident, they were no longer employees of the applicants. The notice further invited them to make representations in relation to the content of the notice, if they so wished. The

notice was served by the Sheriff on the second respondent.[3]

[14] The events of 8 March 2024 as alleged in the applicants' founding affidavit deposed to by Ms Karin Yvonne Smit were confirmed in confirmatory affidavits deposed to by Theo Smit, Ruan Smit and the medical personnel who attended to Theo's and Ruan's injuries on the day of the assault.

[15] The respondents opposed the application on various grounds. As a preliminary point, the respondents, relying on section 20 of the Extension of Security of Tenure Act,[4] took the point that the high court lacked jurisdiction to adjudicate the dispute and therefore could not grant any of the relief sought in the applicants' notice of motion. They contended that this Court enjoys exclusive jurisdiction in relation to the matters dealt with therein and the causes of action encompassed by ESTA, more particularly having regard to the fact that the respondents had not and would not consent to the jurisdiction of the high court. Consequently, they moved for the dismissal of the application solely on this ground, ie lack of jurisdiction.

[16] Insofar as the merits of the dispute are concerned, whilst disputing some of the averments contained in the applicants' founding affidavit, the respondents did not meaningfully address the substance of the allegations relating to the fracas that took place on the farm on 8 March 2024. They adopted the stance that the material allegations relating to the events of 8 March 2024 were matters that would be ventilated in their criminal trial in due course. Having regard to their stance, the respondents stated that it would therefore be ill-advised of them to pertinently respond to the material averments contained in the founding affidavit. In addition, the respondents took the point that the whole of the evidence presented in the applicants' founding affidavit deposed to by Ms Karin Yvonne Smit was hearsay. Moreover, they asserted that the evidence upon which she relied was 'pending before the criminal court where it will be contested, challenged, authenticated and disputed'. The first respondent went on to proffer a speculative explanation that Theo Smit 'might have got injured during the scuffle as the iron spanner over which they were wrestling was

[3] The second respondent refused to accept the notice and the Sheriff left it 'at her feet', by dropping it to the ground in front of her, which was proper service on the respondents in terms of the rules since the second respondent had refused to accept service.
[4] Extension of Security of Tenure Act 62 of 1997 (ESTA).

long and to win it back it had to be turned around', and that it was 'also possible that Ruan Smit might have got injured during the scuffle over the firearm'.

[17] The first respondent further stated that although he, together with his cohorts, laid several charges[5] against both Theo and Ruan he was told by the police officers that they would not be allowed to lay charges against Theo and Ruan because, so the first respondent asserted, the police officers were dismissive of their case and instead believed the version of Theo and Ruan over theirs in relation to the events of 8 March 2024. On 29 September 2025, the respondents filed a 'supplementary opposing affidavit' which did not advance their case in any material way. So much for the factual matrix.

[18] To promote a better understanding of what is at the core in this litigation, it will be helpful at this juncture to make reference to certain provisions of ESTA. Section 6 of ESTA, in relevant parts, provides:

> '(1) Subject to the provisions of this Act, an occupier shall have the right to reside on and use the land on which he or she resided and which he or she used on or after 4 February 1997, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.
>
> …
>
> (3) An occupier may not—
>
> (a) intentionally and unlawfully harm any other person occupying the land;
>
> (b) intentionally and unlawfully cause material damage to the property of the owner or person in charge;
>
> (c) engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or
>
> (d) enable or assist unauthorised persons to establish new dwellings on the land in question.'

[5] The alleged charges were: (a) contravention of section 17(a) of the Domestic Violence Act 116 of 1998; (b) crimen injuria; (c) assault with intent to do grievous bodily harm; and (d) attempted murder.

[19] On the other hand, section 8, in relevant parts, reads:

> '(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.
>
> …
>
> (7) If an occupier's right to residence has been terminated in terms of this section, or the occupier is a person who has a right of residence in terms of subsection (5)—
>
> (a) the occupier and the owner or person in charge may agree that the terms and conditions under which the occupier resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the occupier; or
>
> (b) the owner or person in charge may institute proceedings in a court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.'

[20] Section 9(2) is of particular significance. It provides:

'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 section 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.'

[21] The relevant parts of section 10 of ESTA must also be referenced. They provide:

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

(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;

…

(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,

a 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.'

[22] I conclude the overview of the statutory framework by making a passing reference to section 11(2) in terms of which the court may grant an order for eviction after the termination of the right to residence if the court is of the opinion that it is just and equitable to do so.

[23] In paragraph 4 above it is mentioned that the applicants instituted these proceedings in the high court. And, as already indicated, the respondents asserted that the high court lacked jurisdiction to entertain this application. The respondents' assertion in this regard did not deter the applicants. Undaunted, they enrolled the application for hearing on 12 June 2025. On this day, the applicants relented and conceded that the high court lacked jurisdiction to adjudicate the case since the relief sought by the applicants lay in the exclusive domain of this Court. Consequently, by agreement between the parties, the high court (per Van Rhyn J) granted an order in terms of section 27(1) of the Superior Courts Act[6] transferring the proceedings to the 'Land Court'. The wasted costs occasioned by the transfer of the proceedings to the Land Court were reserved for later determination by the court seized with the matter.[7]

[24] It is necessary to say something about section 27 of the SC Act, albeit briefly. Section 27 of the SC Act, which is headed 'Removal of proceedings from one Division to another or from one seat to another in same Division' reads:

'(1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court that such proceedings—

(a) should have been instituted in another Division or at another

[6] Superior Courts Act 10 of 2013 (the SC Act).
[7] The high court order reads:
'(1) In terms of the provisions of s 27(1)(a) to (b)(ii) of the Superior Courts Act 10 of 2013, the application is transferred to the Land Court established by s 3 of the Land Court Act, 2023; and
(2) The costs of the present application are reserved for determination by the Land Court.'

seat of that Division; or

(b) would be more conveniently or more appropriately heard or determined—

(i) at another seat of that Division; or

(ii) by another Division,

that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be.

(2) An order for removal under subsection (1) must be transmitted to the registrar of the court to which the removal is ordered, and upon the receipt of such order that court may hear and determine the proceedings in question.'

[25] At the hearing of this matter I posed a question to counsel appearing on behalf of the applicants as to whether the order granted by the high court on 12 June 2025 is competent and, in particular, whether section 27(1) of the SC Act also encompasses a transfer of proceedings pending in a Division of the high court to a court other than another Division of the high court, or another seat of the same Division, from such Division, to another or from one seat in one Division to another seat within the same Division. In response, counsel submitted that the wording of section 27(1) is wide enough to include other courts of equal status like, in this instance, the Land Court. Whilst I had grave misgivings about the competence of the high court's order, I indicated to counsel that I did not consider it necessary to determine this issue because in terms of section 34 of the Land Court Act[8] a Division of the high court may, in the circumstances specified in section 34, transfer proceedings pending before it to this Court or visa versa.

[26] Section 34 of the Land Court Act, which is titled 'Removal of action or proceedings' reads:

'(1) If any action or proceedings have been instituted in the Court sitting in any area of jurisdiction, and it appears to the Court sitting in that area that such action or proceedings—

[8] Land Court Act 6 of 2023.

(a) should have been instituted in the Court sitting in another area of jurisdiction within the same province; or

(b) would be more conveniently or more appropriately heard or determined—

(i) by the Court sitting in another area of jurisdiction within the same province;

(ii) at the seat of the Court if the proceedings have been instituted in the Court sitting at another area of jurisdiction within the same province; or

(iii) at another area of jurisdiction if the proceedings have been instituted at the seat of the Court within the same province,

the Court sitting in that area may, upon application by any party thereto and after hearing all other parties thereto, order such action or proceedings to be removed to the Court sitting at another area of jurisdiction or to the seat of the Court, as the case may be.

(2) The provisions of this section apply, with necessary changes required by the context, to the removal of an action or proceedings from—

(a) the Court to a Division of the High Court; and

(b) a Division of the High Court to the Court,

within the same province.

(3) An order for removal—

(a) under subsection (1) must be transmitted to the registrar of the Court to which the removal is ordered; and

(b) under subsection (2) must be transmitted to the registrar of the Court or the High Court, as the case may be, to which the removal is ordered,

and upon the receipt of such order the Court or the High Court, as the case may be, may hear and determine the action or proceedings in question.'

[27] Since the Land Court Act had already come into effect[9] when the order of the high court mentioned in paragraph 23 above was granted, there can be no doubt that

[9] The Land Court Act came into effect on 5 April 2024.

even if it were found that section 27 of the SC Act found no application in the circumstances that obtained before the high court on 12 June 2025 the situation is, however, saved by section 34 of the former Act. This then renders it unnecessary for present purposes to broach the subject any further.

[28] At the risk of stating the obvious, one must begin with the nature of the relief sought by the applicants. First, the applicants seek, in the main, an order that the respondents' right of residence on the farms Meulstroom owned by the first applicant has been lawfully terminated pursuant to the written notice given to the respondents and served on them by the Sheriff on 11 July 2024 at the instance of the first applicant. The termination of the respondents' right of residence was a sequel to the incident that occurred on the farm on 8 March 2024. And, in consequence of the termination of the right of residence, the first applicants sought the eviction of the respondents from the farm.

[29] The thrust of the case advanced by the applicants in support of the relief sought and the factual foundation relied upon have been canvassed above. The applicants' allegations must of course be considered in the context of the weight of the countervailing evidence of the respondents. Against that backdrop, it is desirable, in the first instance, to consider the evidence presented to this Court by the applicants and then determine whether such evidence sufficiently establishes, on a balance of probabilities, the applicants' entitlement to the relief prayed for in the notice of motion.

[30] The proposed approach accords, in my view, and aligns with the views expressed in *Divisional Council, Cape v Mohr*,[10] albeit in a different context. There, the court in dealing, amongst other things, with one of the arguments advanced on behalf of the respondent that a respondent who seeks an outright dismissal of proceedings instituted by way of notice of motion must establish that the allegations in the founding affidavit do not make out a case for the relief sought. In dealing with this argument the court there said the following:

> 'The procedure in question represents a convenient method of disposing of an application where there are material and insoluble factual disputes but the

[10] *Divisional Council, Cape v Mohr* 1973 (2) SA 310 (C).

applicant has failed to establish a prima facie case. The practice upon which this procedure is based is not a mandatory or inflexible one; nor is it intended as a springboard for tactical manoeuvres. Like all practices its purpose is to achieve a just and expeditious disposal of litigation of this kind. The approach contended for by respondent's counsel would, in my opinion, result in the complete negation of this purpose. It would mean, for example, that an application could be dismissed where an essential allegation was omitted from, or inadequately made in, the original application notwithstanding the fact that the allegation was made or fully admitted in the opposing affidavits and there was in truth no issue in regard thereto.'[11]

[31] At this juncture it will be helpful to refer to the decision of the Supreme Court of Appeal – then known as the Appellate Division – in *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd*.[12] There, it was stated that where disputes of fact have arisen in proceedings on notice of motion 'a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by the respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact.'[13] (Citations omitted.)

[32] Whilst a court should ordinarily be slow to resolve factual disputes on affidavit, it must, however, not flinch from doing so if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible or so far-fetched or clearly untenable that the court would be justified in rejecting them merely on the papers. As to why motion proceedings are inappropriate for resolving factual disputes or probabilities, the Supreme Court of Appeal explained the position thus:

'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the

[11] Ibid at 232D-G.
[12] *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (*Plascon Evans*).
[13] Ibid at 634H-I.

circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.'[14]

[33] Before dealing with the merits of this application, it is necessary to address a preliminary point taken by the respondents concerning the status of the applicants' founding affidavit. It was contended on behalf of the respondents that the applicants' founding affidavit was inadmissible in its entirety since the deponent to such affidavit lacked personal knowledge of the incident that occurred on 8 March 2024. Therefore, so the respondents asserted, her evidence tendered therein was hearsay and consequently inadmissible. In these circumstances, concluded the argument, the effect of all this was that what remains after the exclusion of the so-called hearsay evidence would not justify the grant of the relief sought by the applicants. I proceed now to consider the respondents' contention on this score.

[34] It is trite that as a general rule hearsay evidence is inadmissible in legal proceedings. There are, however, exceptions to this exclusionary general rule. One of the exceptions for the admission of hearsay evidence is provided for in section 3 of the Law of Evidence Amendment Act.[15] Section 3(1) of the LEAA provides:

'(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless—
- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;
- (b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or
- (c) the court, having regard to—
  - (i) the nature of the proceedings;
  - (ii) the nature of the evidence;
  - (iii) the purpose for which the evidence is tendered;
  - (iv) the probative value of the evidence;
  - (v) the reason why the evidence is not given by the person upon whose credibility the probative value of such

[14] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA) para 26.
[15] Law of Evidence of Amendment Act 45 of 1988 (LEAA).

evidence depends;

(vi) any prejudice to a party which the admission of such evidence might entail; and

(vii) any other factor which should in the opinion of the court be taken into account,

is of the opinion that such evidence should be admitted in the interests of justice.'

[35] Section 3(4) of the LEAA, in turn, defines hearsay evidence as follows:

'**"hearsay evidence"** means evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence.'

[36] As will have been observed from a reading of sub-section 3(1)(b) quoted in paragraph 34 above, hearsay evidence will be admitted if the person upon whose credibility the probative value of such evidence depends himself testifies at such proceedings. It is as well to remember that in this case the proceedings were brought on notice of motion. Therefore, the applicants' founding affidavit served a dual purpose. First, it set out the nature of the relief the applicants sought and also identified as well as defined the issues. Second, it contained the essential evidence necessary to support the applicants' allegations.[16]

[37] In this case it is common ground that the applicants' founding affidavit was deposed to by a Ms Karin Yvonne Smit in her representative capacity as one of the trustees of the TR Smit Familie Trust, the first applicant. However, since she was not present to witness the incident that occurred on 8 March 2024 she lacked personal knowledge of such events as they unfolded on the farm on the day in question. This was similarly the position in regard to the nature and severity of the injuries suffered by the assault victims. But her evidence relating to those events as well as the injuries suffered by the assault victims was confirmed in confirmatory affidavits deposed to by

[16] *Bowman v De Sousa Roldao* 1988 (4) SA 326 (T); [1988] 4 All SA 174 (T); *Commissioner of Customs and Excise v Bank of Lisbon International Ltd* 1994 (1) SA 205 (N) at 225-226; *Arendse and Others v Van der Merwe NO and Another* (2015/40324) [2016] ZAGPJHC 292; 2016 (6) SA 490 (GJ); [2016] 4 All SA 48 (GJ).

persons who had personal knowledge of the matters about which she testified. Accordingly, with the hearsay content of the founding affidavit having been confirmed in confirmatory affidavits filed, it must then ineluctably follow that the persons upon whose credibility the probative value of the hearsay evidence contained in Ms Karin Yvonne Smit's founding affidavit depends, had themselves 'testified' in these proceedings by way of their confirmatory affidavits. That being the case, this fact must perforce mean that the respondents' preliminary point is unsustainable.

[38] With the respondents' preliminary point having been disposed of, this is then the opportune time to revert to the merits of the application. However, it is necessary to preface the discussion of this aspect with the following observation, which is this. In their answering affidavits the respondents elected not to meaningfully deal with most of the categorical averments made under oath in the applicants' founding affidavits. They contented themselves with merely stating that their version of events would be revealed only at their pending criminal trial. Thus, the question as to how the assault came about and who were the aggressors has, for the most part, not been meaningfully traversed. That said, I nevertheless advisedly refrain from passing judgment on whether the strategy adopted by the respondents in this regard is tactically sound or not. Suffice it to say that the inevitable consequence of their strategy is that critical averments in the main founding affidavit have essentially gone unanswered.

[39] These being proceedings brought on notice of motion in which the applicants are seeking final relief, the applicants can succeed in their quest for final relief only if, as *Plascon Evans* says, the 'facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent justify such an order' and 'the court is satisfied as to the inherent credibility of the applicant's factual averment'. The inevitable consequence of the respondents' litigation strategy in these proceedings therefore provides a pathway to determining this application on the footing that the applicants' allegations are correct. Thus, the question whether the applicants are entitled to the final relief they seek will be determined on the basis of the correctness of their version which, on the papers before this Court, is as best for the respondents not seriously disputed.

Analysis

[40] At this juncture, it is as well to remember that the principal relief sought by the first applicant is for a judicially sanctioned termination of the respondents' right of residence on the farms Meulstroom. And, by way of consequential relief, the first applicant prays for the eviction of the respondents from the house that was allocated to them on the farms at a time when the respondents were employed by both the first applicant and its predecessor-in-title, ie the previous farmer from whom the farms were purchased. Insofar as the principal relief is concerned, the applicants have invoked section 9(2)(a) and (b) of ESTA. And for the eviction of the respondents from the farms the applicants rely on section 10 or alternatively section 11 of ESTA.

[41] In seeking the termination of the respondents' right of residence and, following such termination, the eviction of the respondents from the farms the applicants rely on section 6(3) of ESTA. In support of this relief, the applicants asserted that the respondents have, following the events that occurred on 8 March 2024, rendered continued residence on the farms intolerable for the farm owner and its employees. In elaboration they averred that the respondents, and in particular the first respondent and his sons, intentionally and unlawfully assaulted the second applicant and one of the first applicant's employees Pruis as a result of which both suffered serious bodily injuries for which they had to seek medical help.

[42] Since the applicants are in the main seeking termination of the respondents' right of residence on the farms it is necessary to advert to section 6 of ESTA. Section 6(1) of ESTA which is headed 'Termination of right of residence' provides that '[a]n occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable'. Of course the termination of such right is subject to the factors listed in paragraphs (a) to (e) of sub-section 6(1). For present purposes, it is only paragraphs (b) and (c) that bear relevance. Respectively, these two paragraphs require that 'the conduct of the parties giving rise to the termination' and their interests 'including the comparative hardship to the owner…the occupier…if the right of residence is not terminated'.

[43] As is apparent from the factual narrative set out above, the kernel of the

applicants' case against the respondents is that the latter have made themselves guilty of the proscribed conduct listed in section 6(3) of ESTA. In particular, in a nutshell it has been asserted that on 8 March 2024 the respondents intentionally and unlawfully harmed the second applicant when they viciously assaulted him and one of the first applicant's employees, Pruis. Further, it was contended that in engaging in the events of 8 March 2024 the respondents made themselves guilty of the kind of conduct proscribed under section 6(3)(c) of ESTA. That the first respondent, acting in concert with his sons, severely assaulted the second applicant and Pruis brooks no argument to the contrary. The evidence in this regard is both overwhelming and stark. It has also emerged from the papers that the respondents have for some time harboured hostility towards the second applicant for allegedly poisoning their livestock with herbicides.

[44] This then brings me to the fundamental issue that is at the heart of the dispute between the protagonists. It is this. As a sequel to the events of 8 March 2024 what this Court must now determine is whether the respondents have committed such a fundamental breach of the relationship between them on the one hand and the owner of the farms and certain of its employees on the other that 'is not practically possible to remedy' either at all or 'in the manner which could reasonably restore the relationship' as contemplated in section 10(1)(c) of ESTA. It bears mentioning that what compounds matters and has in fact led to the hardening of attitudes is that the respondents are no longer employees of the first applicant. And insofar as the first respondent is concerned, his situation is aggravated by the fact that he and his sons are facing serious criminal charges laid against them by the second applicant and Pruis, one of which is attempted murder. And as against this, the respondents also harbour feelings of resentment and animosity towards the applicants. This is because they are aggrieved by the fact that the prosecution declined to prosecute the second applicant and Pruis on counter-criminal charges that they had laid against these two parties.

[45] On the evidence, it is clear that the respondents feel hard-done by the decision of the prosecution which they believe was improperly influenced by the fact that the police and the prosecution were biased against them. As already mentioned, their perception in this regard has resulted in the hardening of attitudes to such a degree that the relationship between the respondents and the applicants has irretrievably

broken down. And this situation is exacerbated by the fact that one of the bail conditions imposed by the court in the criminal proceedings precluded the respondents from residing on or even setting foot on the farms. Consequently, the respondents have not resided on the farms for two years now. Since the first respondent's release on bail, the respondents have through their own endeavours acquired alternative accommodation at 1107 Zamani location, in Memel. And moreover they have since taken up employment with a neighbouring farmer. Thus, on the facts of this case, the respondents appear to have managed to rebuild their lives, both in relation to alternative employment and place of residence.

[46] Having reached the conclusion that the applicants have established that the respondents committed a fundamental breach of the relationship between the parties – that is beyond redemption and can therefore no longer reasonably be restored – the court must now determine whether it will be just and equitable to sanction the applicants' termination of the respondents' right of residence and, in consequence, order their eviction from the farms. I have above already alluded to the conduct of the parties in particular the respondents, that precipitated the termination of their right of residence.

[47] It is as well to remember that the foundation for the applicants' case against the respondents rests, for the most part, on paragraphs (a); (b); and (c) of section 10(1) of ESTA. In this regard it bears repeating that the catalyst for the conflict raging on between the parties are the events of 8 March 2024. Much has already been said about the incident in question and it is therefore not necessary to delve into that issue here. Apropos this, section 10(1)(c) of ESTA comes to the fore. Before a court may grant an eviction order it is obligated to first satisfy itself in terms of section 10(2) that suitable alternative accommodation is available to the occupier. And insofar as this aspect of the case is concerned, it has already been indicated above that the respondents have been living in a township in Memel for over two years since the incident of 8 March 2024. It is necessary to note that since the date of the incident the respondents have not been residing at the farm but in 1107 Zamani location in Memel. This is common cause and, in any event, not seriously disputed. This being the case, the eviction of the respondents from the farm would, in the light of all relevant considerations, be just and equitable.

[48] The conclusion alluded to in the preceding paragraph leads to the next issue, which is this. Should the respondents be afforded time to 'vacate' their residence and, if so, how long? At the hearing counsel for the applicants submitted that a period of 30 days would be more than adequate for the respondents to remove whatever personal effects were left behind on the farm. Counsel justified this period on the basis that the respondents are no longer residing on the farm and therefore a period of 30 days will not occasion any hardship to them. For his part, the respondents' legal representative contended for 90 days. However, I could not understand why he thought 90 days would instead meet the justice and equity of the case given the prevailing situation. It appeared that counsel's submission in relation to this aspect was made without rhyme or reason as I could not discern any plausible basis therefor. Nevertheless, I shall indulge the respondents by affording them 15 additional days to the period of 30 days proposed by counsel for the applicants. Taking into account all relevant factors I consider a period of 45 days to be more than adequate to enable the respondents to collect and remove whatever personal possessions that may have been left behind in March 2024.

Costs

[49] It remains to address the issue of costs. In its notice of motion, the applicants prayed for costs on an attorney and client scale. However, the prayer for costs on such a scale was not in any way motivated in the applicants' founding affidavit. As a general rule the award of costs is at the discretion of the court, which discretion must be exercised judicially. But over the years an enduring practice to the effect that costs follow the event has firmly taken root. Insofar as the award of costs on an attorney and client scale is concerned, it bears mentioning that a court will not grant costs on such a scale lightly because, as a general rule, courts look upon such awards with disfavour. Thus, there must exist exceptional circumstances before a court will award costs on an attorney and client scale. In the context of the facts of this case, I cannot discern any special considerations to warrant the grant of a punitive costs order. Therefore, no punitive costs will be awarded.

[50] Furthermore, there are also costs associated with the hearing before the high

court that were reserved for determination by this Court. On 12 June 2025 the high court granted an order transferring the proceedings then pending before it to this Court for adjudication. This came about as a consequence of the preliminary point taken by the respondents that the high court lacked jurisdiction as the relief sought by the applicants fell within the exclusive jurisdiction of this Court. That the proceedings were eventually transferred to this Court is clear indication, in my view, that the applicants were, after initially resisting the point, ultimately constrained to concede the preliminary point taken by the respondents at the door-step of the court. Thus, the costs associated with the hearing before the high court on 12 June 2025 should be for the account of the applicants on an opposed scale.

[51] Before making the order, I am constrained to tender my sincere and profuse apology to the parties for the delay in rendering this judgment. Whilst I had planned to expedite the preparation of the judgment it was not possible to do so due to a concatenation of several factors that were beyond my control. The resultant delay is deeply regretted.

Order

[51] In the result the following order is granted:

1. The first and second respondents' right of residence on the farm Meulstroom is hereby terminated.
2. The first and second respondents are directed to vacate the house occupied by them on Manesrust, Meulstroom farms within 45 days of the date of this order.
3. Should the first and second respondents refuse, neglect or fail to vacate the premises within the period stipulated in paragraph 2 hereof, the Sheriff of the court in the district in which the property is situated is hereby authorised to evict them.
4. Upon the eviction of the first and second respondents from the premises, the applicants shall be entitled to demolish the structure/house vacated by the said respondents.
5. The first and second respondents shall pay the costs of the application jointly and severally, the one paying the other to be absolved.

6. The applicants shall pay the wasted costs associated with the hearing of the application before the Free State Division of the High Court, Bloemfontein on 12 June 2025 on an opposed basis.

[redacted]

X M Petse

Acting Judge of the Land Court

Date of Hearing:	05 December 2025
Date of Judgment:	23 April 2026
Counsel for Applicants:	J S Stone SC
Instructed by	W A Du Randt Attorneys, Olifantsfontein
Counsel for First and	
Second Respondents	T E Mlambo
Instructed by:	T E Mlambo Attorneys, Durban
Counsel for Third and	
Fourth Respondents	No appearance