IN THE LAND COURT OF SOUTH AFRICA

HELD AT RANDBURG

Magistrate's Case No: **3/2022**

Court Online Case No: **A2025-138009**

Heard on: 16 September 2025 (further submissions 23 September 2025)

Delivered on: 23 April 2026

Reserved on: 3 March 2026

Revised on: 3 June 2026

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

Date: 03 June 2026

Signature: [redacted]

In the matter between:

CHARMAINE JANTJIES First Appellant *(deceased)*

[1st Respondent in court a *quo*]

WILHELM JANTJIES Second Appellant

[2nd Respondent in court a *quo*]

JASON JANTJIES Third Appellant

[3rd Respondent in court a *quo*]

CHARNELLE JANTJIES Fourth Appellant

[4th Respondent in court a *quo*]

DENZIL JANTJIES Fifth Appellant

[5th Respondent in court a *quo*]

AND ALL OTHER PERSONS RESIDING WITH OR UNDER THE FIRST TO FIFTH RESPONDENTS IN THE PREMISES ON KROM RIVIER FARM, GRABOUW Sixth Appellant

[6th Respondent in court a *quo*]

and

JOSIAS SERFAAS STEPHANUS BEUKES N.O. First Respondent

[1st Applicant in court a *quo*]

JOSIAS STEPHANUS BEUKES N.O. Second Respondent

[2nd Applicant in court a *quo*]

ANTOINETTE CAROLINA BEUKES N.O. Third Respondent

[3rd Applicant in court a *quo*]

MARTINUS JOHANNNES STRYDOM N.O. Fourth Respondent

[4th Applicant in court a *quo*]

ELNA MOUTON N.O. Fifth Respondent

[5th Applicant in court a *quo*]

CAROLINA ELIZABETH VAN WYK N.O. Sixth Respondent

[6th Applicant in court a *quo*]

(The First to Sixth Respondents in their capacity as trustees in the meantime of THE DENNEGEUR TRUST (No: T591/87)

JS BEUKES (PTY) LTD t/a DENNEGEUR Seventh Respondent

[7th Applicant in court a *quo*]

JOSIAS STEPHANUS BEUKES Eighth Respondent

[8th Applicant in court a *quo*]

THEEWATERSKLOOF MUNICIPALITY Ninth Respondent

[7th Respondent in court a *quo*]

PROVINCIAL DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT Tenth Respondent

[8th Respondent in court a *quo*]

Coram: Yacoob J, et Montzinger et Mabasa AJJ

ORDER

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1. The appeal is upheld with costs.

2. The eviction order is set aside and substituted with the following order:

"The application is dismissed with costs."

JUDGMENT

Montzinger AJ:

Introduction

[1] This is an appeal against the judgment of Magistrate Vogt delivered on 17 March 2025 in the Magistrate's Court, Grabouw evicting the first to sixth Appellants, all ESTA[1] occupiers, off the farm Krom Rivier, Caledon, in the Western Cape Province.

[2] The Appellants are Wilhelm, Jason, Charnelle and Denzil Jantjies, and anybody residing with or under them as family members. Jason, Charnelle and Denzil are the adult children of Wilhelm and the late Charmaine. Although the First Appellant's name still appears as party to the proceedings, she passed away since the Magistrate's Court judgment. For convenience, I will refer to the Appellants at times collectively as "the Jantjies family" and where required their first names.

[3] The First to Sixth Respondents are the trustees of the Dennegeur Trust, the registered owner of the Krom Rivier farm. The Seventh Respondent is JS Beukes (Pty) Ltd t/a Dennegeur (the "Dennegeur Company"), and the Eighth Respondent is Mr Josias Stephanus Beukes ("Beukes"), who acts in various capacities as trustee of the Dennegeur Trust, director of the Dennegeur Company, and the person in charge of the day-to-day farming operations on Krom Rivier. These parties will all collectively be referred to as the "Respondents" while the

[1] The Extension of Security of Tenure Act 62 of 1997 ("ESTA").

Theewaterskloof Municipality and the Provincial Director of the Department of Agriculture, Land Reform and Rural Development, who were also joined to the proceedings *a quo*, will be referred to as the "Municipality" and the "Department", respectively.

[4] In the court *a quo,* the Respondents sought the Jantjies' family's eviction on the basis that the housing late Charmaine Jantjies received was tied to an employment benefit. The late Charmaine was the only person employed on the farm and when her employment was terminated following her dismissal in November 2020, she lost the employment benefit of housing on the farm. Consequently, since the Jantjies family's rights to reside were dependent on the late Charmaine's continued employment it meant the end for all of them to continue to reside in the house on the Krom Rivier farm. This was especially the case since Wilhelm Jantjies, who also had a housing benefit tied to his employment, voluntarily resigned from his employment during 2012.

[5] The Jantjies family opposed the eviction, but was ultimately unsuccessful in doing so, as the court *a quo* granted the eviction. They therefore appealed to this court seeking a reversal of the decision of the court *a quo*.

[6] The appeal was noted by the Jantjies family on 9 April 2025 but not prosecuted within the prescribed time limits as per the Land Court and Uniform Rules. The Respondents contend that the appeal has therefore lapsed.[2] The Appellants have sought condonation for the non-compliance with the rules and seek reinstatement of the appeal.

[7] In respect of the merits of the appeal the Jantjies family advance many grounds of appeal. These grounds will be considered later in this judgment. First, the factual context that permeate this matter is recorded.

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[2] See Rule 50 of the Uniform Rules of Court, which regulates appeals from Magistrate's Courts to this Court read with Rule 71 of the Land Court Rules.

The factual context

[8] Wilhelm Jantjies began working for the Dennegeur Company in 2003 on a different farm, called Spioenkop which was adjacent to Krom Rivier. In 2005, Wilhelm was promoted to assistant manager in the mechanical workshop and, due to his new higher level of employment, was allocated a manager's house on the adjacent farm Krom Rivier. His family, the late Charmaine and their children also received consent to reside with him in the manager's house. Once on Krom Rivier both Wilhelm and the late Charmaine worked on the Krom Rivier farm in various capacities over the years. The late Charmaine was also employed by the Dennegeur Company.

[9] Wilhelm voluntarily resigned from his employment on the Krom Rivier farm in 2012 to take up employment elsewhere. At that time, the late Charmaine was still permanently employed by the Dennegeur Company as a general worker, although the late Charmaine alleged in the answering affidavit that she was employed as a domestic worker. There is no explanation on the papers of the difference between a general or domestic worker. In any event the Appellant's case is that considering the employment position of the late Charmaine (not being a manager) and because Wilhelm was no longer employed on the farm, the Respondents informed the Jantjies family that they no longer qualified to occupy the manager's house and should relocate to accommodation more appropriate to the late Charmaine's level of employment ("ordinary house").

[10] The Jantjies family initially refused to relocate from the manager to the ordinary house. This led to litigation being instituted in 2018 in the Grabouw Magistrate's Court seeking their relocation from the manager's house to the ordinary house they currently occupy and to which the eviction order granted by the Court *a quo* relate. The Grabouw Magistrate's Court granted the relocation

order and the relocation from the manager's house to the ordinary house was duly executed by the Sheriff.[3]

[11] On 30 November 2020, following a disciplinary process, the late Charmaine's employment was also terminated. According to the Respondents, she was dismissed for continued absenteeism from work without reason or consent. The dismissal was not challenged before the CCMA[4] or any other forum. Following the late Charmaine's dismissal, none of the Jantjies family were employed by the respondents but some of the members were rather employed elsewhere or of employable age but not employed on the farm.

[12] On 8 March 2021, the Respondents, through their attorneys Otto Theron Attorneys Inc., served on each of the members of the Jantjies family a notice titled *Notice to Make Representations*[5] in terms of section 8(1)(e) of ESTA. This notice purported to invite them to make representations as to why their rights of residence should not be terminated, or alternatively to discuss alternatives to eviction. On 8 December 2021, a further notice was served, this time terminating the Jantjies family rights of residence and demanding that they vacate the house they occupy on the Krom Rivier farm.

[13] The Appellants did not vacate the premises. On 22 July 2022, the Respondents launched the application in the Magistrate's Court seeking the eviction of the Jantjies family.

Condonation and reinstatement of the appeal

[14] Being an appeal from the Magistrate's Court, the Appellants failed to prosecute the appeal in accordance with the prescribed requirements as laid down

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[3] Except for the relocation order and warrant of relocation, the full details of the litigation concerning the relocation did not form part of the appeal record.
[4] Commission for Conciliation, Mediation and Arbitration.
[5] The Afrikaans wording: *"Kennisgewing om Vertoë te Rig".*

by the Land Court Rules,[6] the Uniform Rules[7] and section 14(5)[8] of the Land Court Act 6 of 2023 ("LCA"). The joint effect of the aforementioned rules is that the Appellants' appeal in this instance was regulated by and had to be prosecuted in accordance with Uniform Rule 50.

[15] The Magistrate's Court judgment was delivered on 17 March 2025. The notice of appeal was delivered in time on 9 April 2025[9]. Thereafter, the appeal was regulated by Uniform Rule 50 and had to be prosecuted within 60 days after the noting of the appeal.[10] In this instance that date was 9 July 2025. Uniform Rule 50(4) also requires an Appellant to apply within 40 days from noting the appeal to apply to the registrar in writing for the assignment of a date for the hearing of the appeal. The Appellants were required to apply for a hearing date within 40 days of 9 April 2025, i.e., by 10 June 2025 and in terms of Uniform Rule 50(7)(a) two copies of the record also had to be lodged with the registrar. Furthermore, Uniform Rule 7(2) requires the filing of a power of attorney when applying for a hearing date.

[16] The appeal record and an application for a hearing date, without a power of attorney, was only filed on 26 August 2025. The appeal therefore automatically lapsed on 10 July 2025 (being after 60 days from 9 April 2025). The Appellants were therefore two and a half months late in complying with the applicable Uniform Rule. The Appellants filed a condonation application seeking condonation and the reinstatement of the appeal.

[17] The legal principles that guide a court's discretion in granting condonation is well established and have been constantly ventilated by our courts, as

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[6] Land Court rule 71(1) provides: *"…that any party that has appealed against a decision of a Magistrate's Court over which the Court enjoys appellate jurisdiction must prosecute such appeal in the Court in the same manner as a civil appeal from a Magistrate's Court to the Supreme Court*
[7] Uniform Rule 50.
[8] Section 14(5) of the LCA essentially provides for the same in respect of proceedings not regulated by the Land Court Rules but for which provision is made in the Uniform Rules, with the necessary changes required by the context.
[9] According to Magistrate Court Rule 51(1) this was due within 20 days of the date of the judgment.
[10] Uniform Rule 50(1).

condonation seems to be a regular feature of litigation. The foundational principle is that condonation is not to be had merely for the asking.[11] The Court exercises a discretion in the interests of justice, considering (*inter alia*) the length of the delay, the explanation covering the entire period, prospects of success, the importance of the case, prejudice, and the need for finality.[12] The explanation must be full, detailed and accurate and cover every period of the delay.[13] Ultimately, a court evaluate condonation on whether the party seeking the indulgence has established "good cause".[14] Although, with reference to proceedings in that court, the Constitutional Court has also weighed in to suggest that the overall enquiry is whether it is in the "interest of justice"[15] to grant condonation.

[18] Where non-compliance with the rules or directions is because of the fault of a litigant's legal representative, certain additional considerations come into the equation.[16] In such a case, a court will be reluctant to penalise litigants for the tardiness of their legal representative[17] although there is a limit and where that limit is reached the conduct and fault of a legal representative will be imputed to the litigant.

[19] Ultimately both condonation and reinstatement of a lapsed appeal involve the exercise of a judicial discretion having regard to whether good cause has been established and if the interest of justice so demands. With the foreshadowed principles in mind the reasons for the non-compliance and whether condonation and reinstatement of the appeal should be ordered are now considered.

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[11] *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) at para 6.
[12] *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C–F and other authorities.
[13] *Uitenhage TLC v SARS* 2004 (1) SA 292 (SCA) para 6.
[14] *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 449G-H.
[15] *Turnbull-Jackson v Hibiscus Court Municipality and* Others 2014 (6) SA 592 (CC) paras 23 and 25.
[16] *Turnbull-Jackson v Hibiscus Court Municipality and* Others 2014 (6) SA 592 (CC) para 25.
[17] *Saloojee and Another, NNO v Minister of Community Development 1965 (2) SA 135 (A) id at 140H-141B.*

[20] The explanation for the delay, as paraphrased, is as follows. First, there was initial confusion as to whether the matter would proceed by way of appeal or automatic review in terms of section 19(3) of ESTA. The Clerk of the Court initially indicated that the matter would be referred to this Court on automatic review. This confusion was only clarified on 4 June 2025 when the office of the Judge President confirmed that the matter would proceed as an appeal. Secondly, the Jantjies family are assisted by Mr. Mohamed, who is in turn appointed by Legal-Aid and approval from Legal Aid South Africa had to be obtained to prosecute the appeal. That approval was only received by Mr Mohamed on 3 July 2025. The court file then had to be obtained from the Magistrate's Court in order to prepare the appeal record. The file was only received by the Magistrate's Court from the Acting Chief Magistrate's office on 3 July 2025, and the Appellants' attorney was only able to uplift it on 13 August 2025. Thereafter Mr Mohamed filed the required notice and the appeal record, without a power of attorney, on 26 August 2025.

[21] The Respondents opposed the condonation application on several bases. Ultimately, the proposition is that even accepting the explanations on behalf of the Jantjies family, there were substantial unexplained gaps of several weeks at various points where nothing was done to prosecute the appeal and that consequently the appeal should be struck from the roll as having lapsed with costs.

[22] On consideration, I agree with the Respondents that the explanation for the delay is not entirely satisfactory. However, there is at least a credible explanation. First, the initial confusion regarding whether the matter would proceed as an appeal or a review, while perhaps avoidable, was not entirely unreasonable. Section 19(3) of ESTA does provide for automatic review in certain circumstances. The fact that the Clerk of the Magistrate’s Court initially indicated the matter would proceed as a review, and that a review case number was actually allocated, demonstrates that the confusion was not merely a figment of the Appellants' attorney’s imagination. Secondly, the Appellants are assisted by an attorney appointed by Legal Aid. While this does not excuse all delays, it is a factor that

explains the time taken to obtain authorisation to continue the appeal. Thirdly, after the review or appeal confusion was resolved and Mr Mahomed's appointment was confirmed the further delay was caused by the need to obtain the court file and prepare the record. Fourth, the conduct that resulted in the non-compliance is squarely at the feet of the attorney in this matter. Nothing in the record suggest that the attorney's conduct was so grievous that it reached a limit where the court should punish the litigants for the attorney's conduct.

[23] Ultimately, once the matter was allocated for a case management conference the matter proceeded expeditiously. Directions were given at that conference, and the parties complied with those directions. The appeal was heard on 16 September 2025, less than six months after the judgment was delivered. In the overall scheme of litigation, and particularly in the context of ESTA matters which affect people's homes, this is not an inordinate delay. Moreover, while the Respondents correctly point out various respects in which the Appellants failed to comply with the rules, I do not agree that the non-compliance warrant a refusal of condonation and reinstatement of the appeal. Furthermore, except for a delay, there was no prejudice to the Respondents' ability to prepare, participate and argue the appeal.

[24] In considering condonation, we are required to consider whether there is merit in the Appellants' appeal. However, the case law requires us only to do so if it is decisive of the issue of condonation. Having carefully reviewed the record and the submissions, we are satisfied that whether there is merit in the grounds of appeal is not decisive to determine whether condonation should be granted.

[25] Lastly, the interests of justice certainly warrants that condonation be granted, and the appeal be reinstated. The Appellants challenge an eviction order that will result in their removal from a home they have occupied for over two decades. Whatever the merits of their grounds of appeal, they raise important questions about the interpretation and application of ESTA. The Appellants are

entitled to have the merits of their case heard not to be shut out on a procedural basis where the explanation for delay, while imperfect, is not wholly lacking in merit.

[26] With regard to the failure to file a power of attorney and considering the effect and wording of Uniform Rule 7(2), non-compliance only prevents the appeal from being allocated a hearing date. It does not have the same effect of causing the appeal to lapse. After a request from the court, Mr Mahomed filed a power of attorney.

[27] For these reasons condonation for the compliance with the rules regulating the prosecution of an appeal is granted and the appeal is reinstated. We now turn to first consider the criticism levelled at the notice of appeal and thereafter the merits of the grounds of appeal.

The notice of appeal

[28] The notice of appeal sets out nineteen separate grounds of appeal and covers multiple issues. The Respondents raised, as a preliminary point, that the notice of appeal is either fatally defective as a whole or defective at least in respect of certain of the grounds as it did not comply with rule 50(2) or with rule 51(7) of the Magistrate's Court Rules. Relying on the *Scott-King* judgment[18] the argument was that the notice of appeal was invalid as the requirements of the foreshadowed rules are peremptory.[19]

[29] Particular criticism was directed at grounds 2, 3, 4, 8 and 12. It was contended that these grounds are framed in broad and generic terms, do not clearly differentiate between appeals on fact and appeals on law (or both), and do

[18] *Scott-King (Pty) Ltd v Cohen* 1999 (1) SA 806 (W) at 810F.
[19] *Leeuw v First National Bank Ltd* 2010 (3) SA 410 (SCA) 413D-E.

not identify with sufficient particularity the findings of fact or rulings of law said to be wrong.

[30] There is certainly merit in the Respondents' complaint. The grounds identified by the criticism share a common deficiency. They are not drafted with the concision and precision contemplated by the rules; they frequently employ the criticism that the Magistrate "misdirected" herself "in fact and law"; and they tend to conflate multiple complaints (sometimes at a level of generality) rather than pin-pointing the particular factual finding(s) or legal ruling(s) said to be wrong.

[31] However, I am not persuaded that these defects, in the circumstances of this appeal, justify the extreme consequence of dismissing the appeal without regard to the entire merits of the appeal. First, the rest of the grounds in the notice is fairly identifiable. Second, the notice makes plain that the appeal is directed against the whole of the judgment and order. Third, although not artfully framed, the impugned grounds are not unintelligible and, although with much effort, the court can still extract the substance of the issue taken by the Appellants.

The test for appellate interference

[32] The question of whether and to what extent a court of appeal may interfere with the findings of a court of first instance is one of the most well-ventilated and established issues in our law. The starting point is the well-established principle that a court of appeal has limited powers to interfere with the decision of a court of first instance. As the Supreme Court of Appeal held in *Malan*:[20]

> 'A court of appeal has limited powers to interfere with a decision of the court of first instance. In relation to the first leg of the inquiry, which is factual, appeals are subject to the general limitation that courts of appeal defer to the factual findings of courts of first instance (R v Dhlumayo 1948 (2) SA 677 (A)).'

[20] *Malan and Another v Law Society of the Northern Provinces* 2009 (1) SA 216 (SCA) para 12.

[33] However, the deference ordinarily accorded to a lower court's factual findings in trial proceedings has a fundamentally different footing when the matter on appeal was decided in motion proceedings, as is the case in this appeal. The distinction is of central importance and was articulated with clarity, also in *Malan*[21]. What the rule contemplates is that a court of appeal could interfere with a decision of the court of first instance if that court decided the case on paper, i.e., application proceedings, because in such a case the court of appeal is in as good a position to judge the facts as was the court below.

[34] However, in respect of the circumstances when a court of appeal can interfere with the exercise of a discretion by a lower court, the principle is that the court of appeal is entitled to interfere depending on whether a 'loose' or "strict" discretion was exercised. A discretion in the 'true' or 'strict' sense allows for a number of equally permissible courses open to the court of first instance. This may be to grant or refuse a postponement or an order for costs. Whichever, option is selected is entirely permissible as it requires a value-laden judgment informed by all the relevant facts.[22] In the case of that type of discretion, interference by the appellate court is confined to narrow circumstances.

[35] A 'loose' discretion, by contrast, does not involve a choice between equally permissible options. The court is simply at liberty to have regard to a number of disparate and incommensurable features in coming to its decision. In the case of this type of discretion, interference is permissible on a broader basis, whenever the appellate court decides that its own outcome is more appropriate based on the various factors it has considered.[23] This is typically because the appellate court is in an equally good position as the court of first instance to weigh the relevant considerations.

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[21] *Malan* supra n20 para 12.
[22] *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* 2015 (5) SA 245 (CC) para 85.
[23] *Trencon par 86* relying on *Knox D'Arcy Ltd and Others v Jamieson and Others* 1996 (4) SA 348 (A) *at 361I.*

[36] This appeal involves proceedings on motion in the Magistrate's Court. Accordingly, save to the extent that any finding turns on matters uniquely within the Magistrate's advantage, this Court is in as good a position as the court *a quo* to evaluate the evidence on the papers and to decide the factual issues on the record and to apply the *Plascon-Evans*[24] approach to resolve genuine disputes of fact. At the same time, where ESTA required the court *a quo* to exercise a discretion, like whether the termination and the eviction are "just and equitable", that discretion would be one in the 'loose' sense that could warrant interference by this court.

The grounds of the appeal

[37] While the notice of appeal consists of a multitude of grounds, on consideration of the heads of arguments and oral argument, it is apparent that the grounds substantially overlap. It is important to keep in mind that when the matter concerns an eviction in terms of ESTA, section 9(2) sets four requirements. First, the landowner must have terminated the occupiers' right of residence in terms of section 8. Second, the occupier must not have vacated the land after being given notice by the landowner to do so. Third, the conditions for eviction in sections 10 or 11 of ESTA, where applicable, must be met. Fourth, the applicant must have given the required notice in terms of section 9(2)(d) of ESTA. Once an eviction order is granted the final issue for the court is to consider the date and conditions for that eviction order.

[38] There are also other jurisdictional requirements that ESTA requires an applicant, seeking the eviction of occupiers, to establish. That includes who may institute an eviction application, whether ESTA applies to the type of land that is the subject of the eviction and whether an occupier falls within the definition of an occupier as defined in ESTA.

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[24] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

[39] It is apparent that the issues that were contentious in the court *a quo* were the *locus standi* of some of the Respondents, whether the termination of the consent was just and equitable and, lastly, whether it would be just and equitable to grant an eviction order. Notwithstanding the difficulty in deciphering the notice of appeal, those remained the core issues of substance that this court has to determine when the court *a quo's* judgment is considered.

Ground 1

[40] This ground is a procedural criticism and challenges the Magistrate's decision to proceed in the absence of the Ninth and Tenth Respondents, the Municipality and Department respectively, and without them filing notices to abide. In the heads of argument this ground was not treated as a separate ground but rather discussed as a criticism that the court *a quo* failed to fairly balance the rights and interests of the parties. Whether the eviction was just and equitable will be considered later. It suffices for now to find that there is no merit in this ground.

[41] Section 9(2)(d) of ESTA only requires that notice of the application be served on the Municipality and the Department and section 9(3) mandates the Department to file a report dealing with the issues listed in section 9(3)(a)-(d). In the case where a court is concerned that an eviction may result in homelessness a Municipality is required to file a report dealing with such an eventuality. In this matter both the Municipality and the Department 'participated' by filing reports. The ground of appeal does not shed any further light on how the hearing of the matter by the court *a quo* in the presence or absence of the Municipality and the Department would have resulted in a different outcome in respect of the merits of the matter.

Ground 2

[42] This ground appears in essence to propose that the court *a quo* did not grant the eviction in due consideration of all the principles governing ESTA evictions. The ground is not only vague but also generic and is probably an attempt to group it also with the general attack that the court *a quo* did not consider whether it was just and equitable to grant the eviction. The just and equitable attack on the court *a quo's* judgment will be considered later.

Grounds 3 and 4

[43] Both these grounds contemplate that there was a dispute of fact regarding the income of the Appellants and that the court *a quo* should not have decided the matter on the papers. It is correct that the Respondents challenged the Appellants to make full disclosure regarding their income. The Appellants never obliged and the income of the Appellants were only disclosed in the section 9(3) and Municipality reports.

[44] In any event the issue of the Appellants' income is not an issue that justifies interference with the court *a quo's* findings as the matter proceeded on the basis that the Appellants were occupiers as defined in ESTA. As per *Stargrow*,[25] and the judgments referred to in that judgment, the Respondents made the minimum allegations that the Appellants were ESTA occupiers and this was not disputed by the Appellants.

[45] The danger with these grounds of appeal is that on the Appellants' proposition none of the Appellants are ESTA occupiers if the so-called dispute regarding the Appellants' income as raised by the Respondents' is upheld. This means that the Appellants are indirectly suggesting that they either earn more than

[25] *Stargrow (Pty) Ltd v Ockhuis and Others* 2018 (1) SA 298 (LCC) paras 47 – 55.

the prescribed amount of R 13 625,00 that would disqualify them as ESTA occupiers or that the information about how much they exactly earn is in dispute.

[46] The further difficulty is that the knowledge of the Appellants' income is within their own knowledge and they had a duty to disclose it. These grounds raise a contradiction and are without merit.

Grounds 5 and 6

[47] These grounds contemplate two issues. First that the Appellants were not properly served with the court application and second, relying on the authority of *Kayamandi*,[26] that it was not proper to include occupiers under the general citation of *'…all persons residing with or under…"*.

[48] The criticism of non-service of the application papers has no foundation in the record. The Second and Third Appellants were personally served**,** while the First and Fourth Appellants were served by serving a copy of the papers on the Second Appellant**.** The manner of service on the First and Fourth Appellant is permissible in terms of rule 9(3)(b) of the Magistrate Court Rules.

[49] Regarding the citation criticism of *'…all persons residing with or under…'* as the Sixth Respondent. The first difficulty with this issue is that the full citation is in fact: *"..All other persons residing with or under the First to Fifth Respondents in the premises on Krom Rivier Farm…"*. *Kayamandi*, that the Appellant referred to, and other judgments that followed all in substance take issue with the situation where the Respondents are cited as an *"unknown class"* or "faceless" class of people.[27]

[26] *Kayamandi Town Committee v Mkhwaso and Others* 1991 (2) SA 630 at 634 (E-J).
[27] *City of Cape Town v Johannes Rooyen and Another* (A23/2025) [2025] ZAWCHC 507.

[50] ESTA defines an "occupier" as a person residing on land belonging to another who has, or on 4 February 1997 or thereafter had, consent or another right in law to do so, subject to enumerated exclusions. ESTA further contemplates that an occupier's family or dependants may reside with the occupier, and the case law[28] recognises that such persons may enjoy derivative or incidental protection through the occupier's status, without themselves meeting the statutory definition of an occupier. The jurisprudence emphasises that the core protection of ESTA attaches to the occupier.[29] This means that while family members residing with the occupier must be considered in a just-and-equitable analysis, they do not automatically acquire independent occupier status merely by virtue of dependence or co-residence. This has important consequences for joinder and the form of relief in proceedings that target such dependants as opposed to proceedings dealing with unknown land invaders.

[51] In ESTA cases, the persons against whom relief is sought are usually clearly linked to an ESTA occupier (e.g. spouses, adult children or other dependants residing in the occupier's household) and who are either individually cited by name and relationship, or described with a high degree of particularity as was done in this case. Furthermore, the First to Fifth Appellants were described with sufficient particularity to identify them. They are not simply included under the catch-all Sixth Respondent *a quo*. Also, the Appellants have not identified any other person who should have been cited as an independent occupier in her/his own right or such a person has not raised a criticism of non-joinder. Consequently, those persons that resort under the Sixth Respondent *a quo* are not "faceless Respondents" of the kind mentioned in *Kayamandi* (*supra*), and is there no merit in these grounds of appeal.

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[28] *Klaase and Another v van der Merwe N.O. and Others* (2016 (6) SA 131 (CC) paras 63 – 64 read with *Hattingh and Others v Juta* (; 2013 (3) SA 275 (CC).
[29] *Daniels v Scribante and Another* 2017 (4) SA 341 (CC).

Ground 7.1.

[52] This ground takes issue with the applicants' standing to institute the application and while listed in the notice of appeal was not pressed in the heads of argument. In paragraphs 8 – 17 of the founding affidavit the Respondents make out the case for its *locus standi*. First, the Trust as the owner while in paragraph 15, JS Beukes (Pty) Ltd,[30] the Dennegeur Company, is described. In paragraph 16 the Respondent described how the Dennegeur Company is in control of various farm portions that is operated as one farming operation under the trading name 'Dennegeur Boerdery'. Further that the Dennegeur Company has an oral lease agreement with the Trust and is therefore in control of the farm. The allegations in paragraphs 8 – 15 were not denied and only issue was taken with the allegations is paragraphs 16 and 17.

[53] In paragraphs 18 – 19 of the founding affidavit the Respondents conclude with the allegations in respect of *locus standi.* First, the Trust, as the owner, and the Dennegeur Company as the person in charge. In paragraphs 17 and 19 the allegations are also made that the deponent to the affidavit, Mr JS Beukes is authorised to launch the eviction application and depose to affidavits. While the allegations in paragraphs 16 and 17 of the founding affidavit were denied the rest of these allegations were 'noted'. Where an allegations is not expressly denied, it is taken as being admitted.[31]

[54] So in actual fact the only real issue that is denied is whether Mr Beukes was authorised on behalf of the Respondents to institute the proceedings and depose to the affidavits. Therefore, it is an issue of authority and if the Appellants wanted to challenge Mr Beukes's authority it had to be done by employing the process in Land Court rule 7(2), that requires a notice to dispute the authority of a person. This was not done. The legal position is clear that the proper approach to challenge

[30] The Seventh Respondent in the appeal and seventh applicant in court *a quo.*
[31] *Moosa v Knox* 1949 (3) SA 327 (N) at 331).

a person's authority is by filing a notice[32] in terms of the aforementioned rule. If no notice, then the court can accept that the person acting on behalf of the party is so authorised.

Ground 7.2

[55] This ground relates to the criticism that the court *a quo* incorrectly determined that the late Charmaine was employed by the Seventh Respondent and not the Sixth Respondent. Since this ground relates to issues involving the late Charmaine they are no longer of any relevance as that defence would have been open to the late Charmaine in her personal capacity.

Ground 8

[56] This ground essentially criticises the court *a quo* for having granted an eviction order while the application did not comply with section 9(2) of ESTA. It will be considered as part of those grounds that touch on court's overall assessment of whether ordering the eviction was just and equitable.

Ground 9

[57] This ground of appeal seems to suggest that the Appellants denied in the court *a quo* the basis on which the Appellants obtained consent, which the court *a quo* found was by virtue of the late Charmaine or the Second Appellant having been employed on Krom Rivier and by virtue of the operation of section 3(4) and (5) of ESTA. The Appellants seem to argue that they obtained consent by virtue of the late Charmaine and the Second Appellant's employment contracts and their

[32] *Eskom v Soweto City Council* 1992 (2) SA 703 (W); *Cf Ganes v Telecom Namibia Ltd* [2004] 2 All SA 609 para 19; *Unlawful Occupiers, School Site v City of Johannesburg* [2005] 2 All SA 108 (SCA),*SMM Holdings (Pvt) Ltd v Southern Asbestos Sales (Pty) Ltd* [2005] 4 All SA 584 (W); *Creative Car Sound v Automobile Radio Dealers Association 1989 (Pty) Ltd* 2007 (4) SA 546 (D); *Umvoti Municipality v ANC Umvoti Council Caucus and Others* 2010 (3) SA 31 (KZP) para 13.

right to family life. Either way, the Appellants all had consent which is a pre-condition for a person to claim ESTA occupier status, whichever way, on the facts, the court *a quo* may have determined the issue, it would not have affected the conclusion that the Appellants had consent.

Grounds 10, 11, 13, 14, 15 and 16

[58] These grounds all ultimately resolve themselves into the criticism that the termination of the Appellants' right to reside was not just and equitable. The termination of an occupier's right of residence is governed by section 8 of ESTA. In particular section 8(1) which sets out the factors a court must consider in deciding whether the termination of a right of residence is just and equitable. The structure of section 8(1) requires the court to consider whether termination was just and equitable both at a substantive and procedural level. The requirement for the substantive fairness of the termination is captured by the introductory part that requires the termination of a right of residence to be just and equitable. The requirement for procedural fairness is captured in section 8(1)(e).[33] I first address the substance of the decision to terminate and then the process.

[59] The Magistrate found that there was a general practice on the farm that residence was linked to employment. This was a correct finding as the Appellants admitted that their right of residence arose from their employment and therefore tied to employment. This is also the position of the Appellants if regard is had to ground 9 of the notice of appeal. Section 8(1)(a) requires the court to consider the fairness of the agreement or practice on which the owner or person in charge relies. It does not require a finding that an employment-linked housing arrangement is per se unfair. In the context of the agricultural sector the arrangement is not uncommon that employment and provision of housing is linked. Employees are often provided with housing as part of their employment package, and it is reasonable for employers or land owners to require that the housing be

[33] *Snyders and others v de Jager and Others* 2017 (3) SA 545 (CC) para 56.

vacated when the employment ends, subject to the protections in ESTA. The Magistrate did not misdirect himself in finding that this arrangement was not inherently unfair. There is thus no merit in ground 10 of the notice of appeal.

[60] In respect of ground 11 the court *a quo* found that the relationship between the parties had deteriorated to such a stage that it was not possible to restore it. The Respondents relied on the late Charmaine' dismissal and Wilhem's unilateral resignation, the Appellants' refusal to relocate to alternative accommodation on the farm, the criminal conduct and conviction of the Fifth Appellant, and the late Charmaine allowing the Fifth Appellant to occupy the house on the farm without obtaining permission from the Respondents and disregarding the notice served on the Fifth Appellant. The aforementioned incidents of conduct are all objectively determinable and serious and can suffice as conduct that may convince a landowner to make a substantive decision to terminate an occupier's consent as was done in this instance.

[61] A further difficulty with this ground of appeal that it was argued on the Appellants' behalf that the Appellants relied on a legal relationship and not a social relationship. That being the case it cannot be fair to suggest that the landowner must continue to provide housing to the Appellants in circumstances where the legal relationship, i.e. employment, has seized and there is no other relationship in existence between the parties.

[62] The issue raised in ground 13 of the notice of appeal has been discussed earlier as it relates to the same issue of unknown group of people. I have already found that in the context of this matter the notices were not served on unknown people.

[63] Ground 14 in the notice of appeal also has some difficulty. The evidence on the record is clear that Respondents invited each individual Appellant to engage with the Respondents more than once, and it is only when the Appellants' erstwhile

attorney, Mr Boer, came on record that a meeting was facilitated. This meeting, however, did not yield any fruit because the Appellants, through their then attorney, and not the Respondents, failed to revert on the issue of alternative accommodation for the Appellants so as to enable the Respondents to establish how and to what extent they could assist the Appellants. Neither Mr Boer nor the Appellants personally reverted to the Respondents, despite a further request for a response on 28 January 2022.

[64] With regard to the issue of mediation prior to institution of the application, there is no support either in ESTA or the jurisprudence to suggest that the Respondents were barred from instituting court proceedings to evict, only because the parties did not pursue meaningful engagement. Meaningful engagement in general developed as pre-litigation alternative dispute resolution mechanism in the context of PIE evictions[34] and where the landowner seeking eviction is the state. Content to the concept of meaningful engagement was developed in the *Olivia Road* case where the Court clarified that meaningful engagement is a salient component of a reasonable state response to the housing programme.[35] Meaningful engagement means that the occupiers, owner and the relevant municipality have to meaningfully engage on all aspects related to the eviction and the provision of temporary shelter to those who require it.[36] While the Municipality's engagement was not prior to the institution of the litigation, it did participate during litigation and filed a report that was relevant to the court having to make its just and equitable analysis.

[65] In respect of ground 15 in the notice of appeal, the Appellants take issue with the fact that notices terminating their consent was sent on behalf of Gemsbok Boerdery (Pty) Ltd and the Dennegeur Company and the Beukes. It is apparent that Gemsbok Boerdery is not a party to the present proceedings. It is peculiar that

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[34] *Port Elizabeth Municipality* v *Various Occupiers* 2005 (1) SA 217 (CC) paras 39-47.
[35] *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others 2008 (3) SA 208 (CC) (Olivia Road)* para 17.
[36] *Olivia Road* para 14.

the Trust is not mentioned in the invitation to make representations as well as the termination notices. However, although unexplained, the fact that the Trust is not mentioned in these notices does not mean that the Respondents were non-suited. In any event, the Dennegeur Company as the person in charge of the Krom Rivier farm certainly has *locus standi* to prosecute and litigate the Appellants' eviction as the application was not only premised on the basis that the Trust is the owner of the farm.

[66] The fact that one notice was served on all members of the Jantjies family also does not invalidate the process. As this court found in *Belle Vallee*[37] with reference to *Klaase*:[38]

> '…when a landowner dismisses an employee and terminates his right to reside, it cannot also terminate the right to reside of his family who have no other right to reside on the farm. It can; as long as it takes a separate decision to do so, and that decision is just and equitable. Often, but not inexorably, the termination of the employee's right of residence will justify terminating the right of other adult family members who were given consent to reside because of his employment..'

[67] Furthermore, with regard to criticism levelled in ground 16, each of the Appellants were cited separately in the notices requesting representations and also the termination and was also served individually on all the Respondents, as provided for in the Magistrate Court rules and the regulations[39] to ESTA in respect of service.

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[37] *Belle Vallee Vineyards (Pty) Ltd and Another v Lakey and Others* (LanC15/2025) [2025] ZALCC 27 (24 June 2025) paras 90 – 91.
[38] *Klaase and Another v van der Merwe N.O. and Others* 2016 (6) SA 131 (CC).
[39] Regulations 9(4)(a – c).

Grounds 17, 18 and 19

[68] Ground 17 essentially takes issue with the court *a quo's* conclusion that an eviction would be just and equitable. There was no dispute that the Appellants are section 11 occupiers and the just and equitableness of their eviction therefore had to be assessed with due regard to the factors listed in section 11(3). These factors are addressed in turn. It is correct that the Appellants had been residing on the farm for more than 20 years since Wilhelm's initial employment in 2003 or even if one dates it from their move from Spioenkop to Krom Rivier in 2005. The fact that occupiers were on the property for a long time is an important factor that weighs in favour of occupiers, but certainly not a determinative factor. In this case, while the Appellants' long residence is a factor in their favour, it must be balanced against the fact that their occupation was always conditional on employment, that the employment relationship has ended, and that sufficient time has passed since the end of employment for them to make alternative arrangements.

[69] On the evidence I cannot conclude that the Magistrate erred in finding that the employment-linked housing arrangement was not unfair. At best this factor is a neutral one or weighs slightly in favour of the Respondents.

[70] With regard to suitable alternative accommodation, the Magistrate found that the Appellants had a number of years to seek alternative accommodation but there is no evidence that they actively been looking. Furthermore, the Municipality's report stated that the Appellants' combined household income of approximately R24,600 per month placed them above the threshold for emergency municipal accommodation. The Municipality concluded that the household would most probably not be rendered homeless in the event of an eviction given the family's income level. The section 9(3) report took a more sympathetic view but did not provide any objective evidence that suitable rental accommodation was unavailable in the area at a price the Appellants could afford. There is also the Respondents' evidence that they had offered to provide financial assistance (three

months' rent) to help the Appellants secure alternative accommodation, but this offer was refused.

[71] On the evidence before the Magistrate it was not so incomprehensible to conclude that suitable alternative accommodation was available to the Appellants or at least that they had the financial means to secure it. In any event should the eviction of the Appellants result in their homelessness, then the Municipality will be obliged to make available emergency accommodation.

[72] Having considered all the factors in section 11(3) and the parties' submissions, I conclude that the court *a quo* was not misdirect in finding that eviction was just and equitable. While another court might have weighed some factors differently, or reached a different conclusion, that is not the test on appeal. The test is whether the Magistrate committed a reviewable error. I am not persuaded that such error is present in this case, especially in light of the fact that the court *a quo* exercised a discretion.

Order

[73] For all the reasons foreshadowed I would make an order in the following terms:

1. The appeal is dismissed.
2. The Second to Fifth Appellants, and all other persons residing with or under them (the Sixth Appellant) are ordered to vacate the farm dwelling on Marne Farm, Portion 19 of the Farm Krom Rivier, number 317 (the “property”), Caledon, Western Cape by 30 April 2026.
3. In the event that the Second to Fifth Appellants, and all other persons residing with or under them (the Sixth Appellant) fail to vacate the property by 30 April 2026 the Sheriff is ordered and directed to evict them on any weekday after 4 May 2026 on a day on which the weather is suitable (not raining) for an eviction.

4. The South African Police Services are authorised to assist the Sheriff to carry out this order.
5. The Ninth Respondent is ordered to provide emergency housing of a dignified nature with access to services (which may be communal) to the Appellants and all those occupying the property under them should the Appellants' eviction result in their homelessness.
6. There is no order as to costs.

Mabasa AJ (Yacoob J concurring):

Introduction

[74] I have had the benefit of considering the judgment penned by my colleague Montzinger AJ. I agree with some of it, but I am unable to embrace and endorse the whole judgment and order as it stands. In my view, the court *a quo* misdirected itself in the following material respects:

ii) Failure to conduct an individualised "occupier" enquiry for each Respondent *a quo;*
iii) Inadequate analysis of procedural fairness under section 8(1)(e) of ESTA;
iv) Conflation of standing to litigate with statutory competence to terminate rights of residence;
v) Inadequate consideration of s 11(3) and constitutional rights under sections 25(6) and 26(3) of the Constitution;
vi) Failure to consider the material disputes of fact and the application of the *Plascon-Evans* rule.

[75] Individually and cumulatively, these misdirections vitiate the eviction order.

[76] The factual background is fully set out in my colleague's judgment and I am grateful for its narrative. I will not repeat all of it but it is necessary to amplify some of the facts relevant to my judgment here. I am in broad agreement with his findings on condonation and reinstatement of the appeal. I only deal with our points of divergence.

Are the Respondents *a quo* "occupiers" in their own right?

[77] In *Klaase v Van der Merwe NO*,[40] the Constitutional Court recognised that family members may acquire independent occupier status. Rights of residence do not evaporate merely because they initially arose from employment of a family member. The Appellants include adult children and other family members. The court *a quo* was required to determine in respect of each Appellant:

a. Whether independent occupier status existed;
b. The basis of their consent;
c. Whether each right of residence was separately terminated; and
d. Whether termination in respect of each was just and equitable.

[78] The record does not demonstrate that such an individualised enquiry was undertaken by the Magistrate. A collective approach to termination is inconsistent with *Klaase.* The issue is whether the statutory precondition for eviction, i.e. lawful termination, was met in respect of each occupier. No such finding was made. In my view the failure to conduct an individualised enquiry constitutes a material misdirection.

[79] The founding affidavit alleges that occupation derived solely from the First Appellant's employment.[41] However in the answering affidavit it is alleged that all Respondents are occupiers in their own right. This right accrued after the first year

[40] *Klaase and Another v van der Merwe N.O. and Others* 2016 (6) SA 131 (CC) (*Klaase*).
[41] Appeal volume 1index 29 at para35.

of residing on the farm[42] not only through the First Appellant's right to a family life, but also through the assumption of tacit consent or the presumptions in ESTA.[43]

[80] Evidence regarding duration of the family's occupation on the farm, and composition of the family[44] is set out in the answering affidavit.[45] The family consists of Wilhelm Jantjies, his three adult children Jason, Charnelle and Denzil as well as two grandchildren Jayleze who is 4 years old and Amilio who is 8 years old and in Dennegeur Primary School in grade 2.

[81] It is common cause that the Jantjies family have been residing on the farm for 17 years and that they are occupiers under ESTA.

[82] Notwithstanding these facts the Magistrate's judgment treats the Appellants collectively and does not conduct an individualised enquiry.[46] No finding is made on independent consent, individual termination or individualised fairness.

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[42] Appeal bundle vol2 -25)at para67 and para 118.1

[43] **3. Consent to reside on land**
(1) Consent to an occupier to reside on or use land shall only be terminated in accordance with the provisions of section 8.
(2) If a person who resided on or used land on 4 February 1997 previously did so with consent, and such consent was lawfully withdrawn prior to that date-
(a) that person shall be deemed to be an occupier, provided that he or she has resided continuously on that land since consent was withdrawn; and
(b) the withdrawal of consent shall be deemed to be a valid termination of the right of residence in terms of section 8, provided that it was just and equitable, having regard to the provisions of section 8.
(3) For the purposes of this Act, consent to a person to reside on land shall be effective regardless of whether the occupier, owner or person in charge has to obtain some other official authority required by law for such residence.
(4) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of one year shall be presumed to have consent unless the contrary is proved.
(5) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of three years shall be deemed to have done so with the knowledge of the owner or person in charge.
(6) The provisions of subsections (4) and (5) shall not be applicable to any land held by or registered in the name of the State or an institution or functionary exercising powers on behalf of the State.

[44] Appeal bundle vol2 -12 at para 15.

[45] Appeal bundle vol2 -31 at 112.

[46] Vol 4 bundle-14 para 50.

[83] This omission is material because termination must be effected against each occupier. Eviction cannot be granted against a person whose right was never terminated. The failure to individualise constitutes a misdirection of law and fact.

Was there effective notice of termination of consent on each occupier?

[84] Section 8(1)(e) requires that termination be procedurally fair, including an effective opportunity to make representations before the decision is taken.

[85] Identical notices were served on the Jantjies family but only the first Respondent a quo received it. If a proper enquiry was done on the occupier status of each respondent, it would have been clear that their rights of residence should have been terminated separately and fairly, apart from the First Appellant's employment.

[86] I am not convinced that the single meeting with attorney Julian Boer satisfied this requirement.[47] Procedural fairness requires genuine consideration before a termination decision is finalised.

[87] The Magistrate's judgment at paragraph 49 states "the court finds that the applicants did comply with the requirements in section 8". However, there is no record of representations made and no evidence of consideration thereof. Further, there is no indication that each occupier was afforded an opportunity to make representations. The absence of such evidence renders the termination defective.

[88] In my view, the court *a quo* failed to determine whether the representation opportunity was real, effective, and considered in good faith.

[47] Founding affidavit at para 47.

“Owner versus person in charge” and the failure to resolve the competence question

[89] ESTA distinguishes between “owner” and “person in charge.” A person in charge is defined as one who has legal authority to grant consent to reside. It does not automatically follow that such person may terminate residence rights in the absence of proof of authority to do so.

[90] The termination notices were not clearly issued in the name of the Dennegeur Trust as registered owner. This is not immaterial. In ESTA, lawful termination is a condition for eviction. Any ambiguity regarding the competence of the terminating actor cannot be dismissed as inconsequential. Proper statutory interpretation requires attention to text, context and purpose, as set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality.*[48]

[91] The record reflects that the Trust is the registered owner. Resolutions authorised the institution of eviction proceedings. The notices were issued through Otto Theron attorneys referencing entities other than the Trust in its *nomino officio* capacity.

[92] A resolution authorising eviction is not equivalent to authorising termination under section 8 of ESTA. Termination is a prior and distinct act. Termination extinguishes a right of residence; eviction enforces that extinguishment.

[93] No clear resolution authorising termination, nor evidence that the termination notices were issued expressly on behalf of the Trust as owner, was established.

[94] Where section 9(2)(a) of ESTA makes lawful termination a jurisdictional fact, ambiguity or defect in that termination cannot be treated as immaterial.

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[48] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

[95] The reliance on the absence of a procedural authority challenge under Rule 7(2) conflates litigation authority with substantive statutory compliance. The latter cannot be waived by procedural omission.

[96] In matters implicating fundamental rights, ambiguity regarding lawful authority cannot be dismissed as trivial.

Was there proper termination of rights of residence?

[97] Section 9(2)(a) of ESTA requires that an occupier's right of residence must have been "terminated in terms of section 8" before eviction may be granted. In *Snyders v De Jager*,[49] the Constitutional Court held that termination must be both substantively and procedurally just and equitable. A defective termination renders the eviction incompetent.

[98] The record reveals uncertainty regarding whether termination was effected by, or on behalf of, the registered owner, the Dennegeur Trust, or whether the authority relied upon extended beyond instituting eviction proceedings.

[99] Termination is not a formal step incidental to eviction. It is a substantive jurisdictional prerequisite. Unless there is a lawful and just and equitable termination under section 8, the court lacks competence to grant eviction.

[100] Standing to institute eviction proceedings does not cure a defective termination. The enquiry under section 9(2)(a) remains whether termination occurred lawfully and in compliance with section 8.

Section 9(2)(d): Notice to Municipality and Department

[101] Section 9(2)(d) requires not less than two months' written notice to the occupier, the municipality and the Department following termination. Although municipal and probation reports were filed, participation during litigation does not

[49] *Snyders and Others v De Jager and Others (Appeal)* 2017 (3) SA 545 (CC).

cure prior defects in termination or notice. It was stated in *Blue Moonlight Properties 39 (Pty) Ltd v Occupiers of Saratoga Avenue*[50] meaningful municipal involvement is central where eviction may result in homelessness. That obligation presupposes compliance with statutory notice requirements.

[102] I cannot agree that the eventual filing of municipal and probation reports constitute sufficient compliance. It confuses outcome with process. The statutory requirement is not eventual participation but proper notice following lawful termination. Where termination is defective or notices are not properly served on each occupier, subsequent participation of the municipality and the Department cannot cure jurisdictional non-compliance.

[103] If all the stakeholders were timeously engaged, it may have been possible to explore options arranging suitable alternative accommodation for the Jantjies family.

[104] There was no attempt to mediate the dispute. Even though mediation in this case was not mandatory according to the recent *Marais*[51] judgment, it remains a valuable dispute resolution mechanism in ESTA evictions.

Section 11 (3): Inadequate constitutional balancing

[105] The Magistrate treated the Appellants as section 11 occupiers. Section 11(3) requires a just and equitable determination, including consideration of:

a. The fairness of the agreement;
b. The conduct of the parties;
c. Comparative hardship;

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[50] *Blue Moonlight Properties 39 (Pty) Limited v Occupiers of Saratoga Avenue and Another* [2010] ZAGPJHC 3.
[51] *Marais NO and Another v Daniels and Others* (LCC 130/2023; LCC 63/2023; LCC 98/2023; LCC 27/2023; LCC 145/2022; LCC 163/2023; LCC 162/2023; LCC 105/2024) [2025] ZALCC 38.

d. Availability of suitable alternative accommodation.

[106] The Magistrate relied heavily on joint household income of R24600, instead of the individual income of each occupier. There is no detailed engagement or finding on realistic access to alternative accommodation, the risk of homelessness, or the proportionality of eviction to operational need.

[107] The comparative hardship enquiry also required a deeper examination of:

a. Duration of residence;
b. Family composition;
c. Dependency relationships;
d. Realistic relocation prospects;
e. The Respondents' operational necessity.

[108] In my view that enquiry was not sufficiently undertaken. Eviction must be just and equitable under section 26(3) of the Constitution. In *Port Elizabeth Municipality v Various Occupiers*,[52] the Constitutional Court held that it is necessary to balance competing rights contextually and proportionately. Undue weight is placed on household income and municipal thresholds. Income alone, however, does not establish availability of suitable alternative accommodation.

[109] The court a quo did not enquire whether the Appellants will be able to benefit from a housing development in Grabouw, with monies potentially acquired from a tenure grant in terms of section 4 of ESTA to purchase a home.[53]

Application of the *Plascon-Evans* rule

[110] It is clear from the record that several material disputes of fact existed regarding housing policy, authority to terminate, individual consent and occupier

[52] *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC).
[53] Vol 4 bundle -91 para 86.

status. Mr Mohamed, the counsel for the Appellants, contends that the Respondents failed to provide any evidence of a housing policy or agreement, either oral or written. Instead, they mistakenly equate a purported employment agreement with a housing agreement and claim that all the Appellants breached it. He argues that there is no proof that termination of residence was communicated to all the applicants, who are deemed occupiers, whose rights of residence derives from the consent that must be presumed from the combined operation of ss3(4) and (5) of ESTA.[54]

[111] Those disputes required careful resolution in favour of the Appellants unless untenable. I cannot agree with the reasoning that resolves ambiguities against the Appellants without demonstrating that their version was palpably implausible.

[112] Under *Plascon-Evans* the Appellants' version must prevail unless far-fetched or untenable. Resolving disputes against the Appellants without demonstrating inherent implausibility or referring to probabilities established by objective evidence constitutes misapplication of the rule.

Cumulative effect of misdirections

[113] Even if I am wrong and each defect viewed in isolation might not be fatal, their cumulative effect is decisive. ESTA is remedial legislation "umbilically linked to the Constitution".[55] It must be interpreted purposively and in favour of security of tenure. Where uncertainty exists regarding compliance with its protective structure, eviction should not be granted.

Order

[114] In my view, the appeal should succeed. I make the following order:

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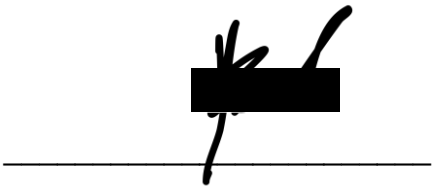
[54] Vol 4 bundle 81 para 48.
[55] *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC); *Klaase and Another v van der Merwe N.O. and Others* 2016 (6) SA 131 (CC) para 51; *Molusi and others v Voges NO and others* 2016(3) SA 370 (CC).

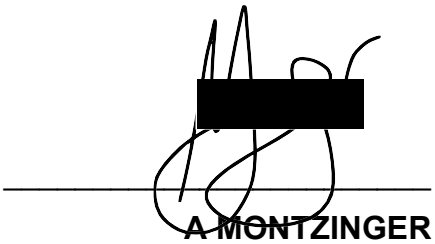
1. The appeal is upheld with costs.
2. The eviction order is set aside and substituted with the following order:

   "The application is dismissed with costs."



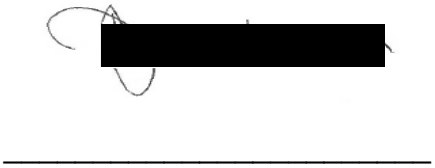
S YACOOB

Acting Judge of the Land Court



A MONTZINGER

Acting Judge of the Land Court



D MABASA

Acting Judge of the Land Court

Appearances

Attorneys for the First to Sixth Appellants:	Ashraf Mahomed Attorneys
	Mr Mahomed

Attorneys for the First to Eighth Respondents: Otto Theron Attorneys

Counsel for the First to Eighth Respondents: Ms Oschman