

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2802/2025

In the matter between:

**AMM PROPERTY DEVELOPMENT
(PTY) LTD**

FIRST APPLICANT

Registration number: 2007/016160/07

CLAIRE SONJA MARIE AMM N.O.

SECOND APPLICANT

Identity number: 4[...]

(In her capacity as co-executrix in the estate of the
late **BERNARD ALEX AMM**,
Estate Number: 003168/2021)

ELISABETH JANET VAN DER LINDE N.O.

THIRD APPLICANT

Identity number: 6[...]

(In her capacity as co-executrix in the estate of the
late **BERNARD ALEX AMM**, Estate Number: 003168/2021)

and

ALL RESPONDENTS AS LISTED

IN ANNEXURE 1**TO THE NOTICE OF MOTION****FIRST to THIRTY-
SIXTH RESPONDENTS**

**ANY AND ALL THE OTHER UNLAWFUL
AND UNIDENTIFIED OCCUPIERS OF
THE FARM FREEWATER 2505,
DISTRICT BLOEMFONTEIN,
PROVINCE FREE STATE
INCLUDING ALL PERSONS OCCUPYING
THE PROPERTY AND/OR ANY
STRUCTURE(S)**

**ON THE PROPERTY UNDER
ANY OF OTHER RESPONDENT**

THIRTY-SEVENTH RESPONDENT

**MANGAUNG METROPOLITAN
MUNICIPALITY**

THIRTY-EIGHTH RESPONDENT

Neutral citation: *AMM Property Development (Pty) Ltd and Others v All
Respondents as listed in Annexure 1 to the Notice of Motion and
Others* (2802/2025) [2026] ZAFSHC 388 (31 July 2026)

Coram: MOLITSOANE J

Heard: 13 NOVEMBER 2025

Delivered: 31 July 2026

Summary: Eviction – whether the applicants should have instituted an action based on the extension of Security of Tenure Act 93 of 1997 as opposed to Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998

– whether the jurisdiction of this Court has been ousted – whether it is just and equitable to order the eviction of the unlawful occupiers – principles restated.

ORDER

1 The first to thirty-seventh respondents are declared unlawful occupiers as contemplated in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998, as amended ('PIE') of the FARM FREEWATER 2505, BAINSVLEI, DISTRICT BLOEMFONTEIN (the property).

2 The first to thirty-seventh respondents are ordered to disassemble any structure(s) which they may have erected and vacate the property within 120 (hundred and twenty) days after service of this order on them.

3 Should the first to thirty-seventh respondents fail or refuse to comply with the order in para 2 above, the sheriff and/or the sheriff with the assistance of the South African Police Service and/or the sheriff with the assistance of any private contractor employed by him (sheriff), is/are hereby authorised and directed to:

- a. Evict the first to thirty-seventh respondents and all those persons holding title under them from the property.
- b. Demolish and remove any structures or buildings erected and/or occupied by the first to thirty-seventh respondents and all persons holding title under them on said property.

4 The first to thirty-seventh respondents are ordered to pay the costs of this application which includes the costs of Part A.

JUDGMENT

Molitsoane J

[1] This matter concerns an application for the eviction of the first to thirty-seventh respondents (the respondents) from the property known as Farm Freewater No. 2505, District Bloemfontein Province of Free State, held under Deed of Transfer T16783/08. The applicants are shareholders in the property, owning 75% through AMM Property Development (Pty) Ltd and 25% through the estate of the late Bernard Alex AMM. The respondents currently occupy a portion of the property without the consent of the applicants. They have erected informal homes on the property

[2] The property consists predominantly of arable land, with improvements on the northern side in the form of a house, two other buildings, and an empty dam structure. The respondents have been in occupation since at least 2019, without any form of permission. On 4 December 2024, the applicants' attorneys formally notified the respondents of their unlawful occupation.

[3] The respondents' did not file opposing papers on the merits. Counsel for the respondents conceded that there was no opposition to the merits of the applicants' case. He further conceded that should this court find against the respondents on the question of law raised, then in that case this Court would be entitled to order the eviction of the respondents from the property.

[4] The respondents' opposition rests solely on the contention that the eviction should have been brought under the Extension of Security of Tenure Act 62 of

1997 (ESTA) rather than the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE).

[5] The following issues call for determination: (a) whether the respondents qualify as ‘occupiers’ under ESTA, thereby ousting the jurisdiction of this Court under PIE; (b) whether it is just and equitable to grant an eviction order under PIE.

[6] Section 1 of PIE defines an unlawful occupier as follows:

‘Unlawful occupier means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997 and excluding a person whose informal rights to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996).’

Section 2 of PIE provides that the Act applies to all land throughout the Republic.

[7] On the other hand, ESTA applies to all land except land in a township or encircled by a township, with the exception that land in a township that has been designated for agricultural purposes is included. Section 1 of ESTA defines an ‘occupier’ as follows:

‘**occupier** means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding-

(a) ...

- (b) a person using or intending to use the land in question mainly for industrial, mining, commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
- (c) a person who has an income in excess of the prescribed amount;'

[8] The respondents argue that the property constitutes agricultural land and therefore ESTA applies. They rely on the: (a) Subdivision of Agricultural Land Act 70 of 1990 (SALA); and (b) Mangaung Metropolitan Municipality Land Use Scheme. They further contend that this Court lacks jurisdiction in terms of ss 17(2) and 20(1)-(2) of ESTA.¹ The jurisdiction of this Court is impugned on the basis that ESTA applies.

[9] The first enquiry is whether the respondents are 'occupiers' for the purposes of ESTA. Consent to occupy the land is a prerequisite for ESTA to afford the respondents protection under this Act. It is common cause that the respondents do not have the consent or permission of the owners of the land they occupy. This, however, is not the end of the enquiry. Section 3(3) of ESTA provides that the person who has continuously and openly resided on land belonging to another person for a period of one year shall be presumed to have consent unless the contrary is proved. On the other hand, s 3(5) provides that the

¹ '17. (2) If all the parties to proceedings consent thereto, proceedings may be instituted in any Division of the High Court within whose area of jurisdiction the land in question is situate.

...
 20. (1) The Land Claims Court shall have jurisdiction in terms of this Act throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power-

- (a) to decide any constitutional matter in relation to this Act;
- (b) to grant interlocutory orders, declaratory orders and interdicts;
- (c) to review an act, omission or decision of any functionary acting or purporting to act in terms of this Act; and
- (d) to review an arbitration award in terms of the Arbitration Act 1965 (Act No. 42 of 1965), in so far as it deals with any matter that may be heard by a court in terms of this Act.

(2) Subject to the provisions of section 17(2) and 19(1), the Land Claims Court shall have powers set out in subsection (1) to the exclusion of any court contemplated in section 166(c), (d) or (e) of the Constitution.'

person who have 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.

[10] The SCA dealt with the application of ESTA in *Pieters and Another v Stemmet and Another*² as follows:

‘The application of ESTA

The first enquiry is whether the property qualifies as land situated within a township that has been ‘established, approved, proclaimed, or otherwise recognised as such in terms of any law’, or is surrounded by such a township or townships. If the land does *not* fall within this category, the enquiry ends, and the provisions of ESTA will apply. However, if the land *does* fall within this category, a second enquiry arises: whether the land within such a township has been ‘designated for agricultural purposes in terms of any law’. If it does, ESTA will apply notwithstanding the property’s location within the defined township area. In terms of s 2(2) of ESTA, in proceedings brought in terms of ESTA it is presumed that the land in question falls within the scope of ESTA. What this means is that although the overall burden to prove that ESTA applies in relation to a specific occupier rest on the occupier who invokes the application of ESTA, the land in question will be presumed to fall within the scope of ESTA unless the respondents proved the contrary.’

Does the property fall within the definition of a township?

The answer to this question is factual. The concept of a township has no fixed definition in ESTA. In *Droomer*, Binns-Ward J held:

“The word “township” is not defined in ESTA, but the context in which it is used in s 2 makes it clear that something more than just a developed area is required. A “township” for the purpose of the Act means a development or approved subdivision that has been formally recognised as such in terms of a law. That is the effect of the words “*established, approved, proclaimed or otherwise recognised as such in terms of any law*”. . .’³ (Citation omitted.)

² *Pieters and Another v Stemmet and Another* [2025] ZASCA 60; [2025] 3 All SA 304 (SCA) paras 11-13.

³ Ibid paras 11-13.

[11] It is not the case of the respondents that the land they occupy is in a township. It is also not their case that the land they occupy has been developed as contemplated in *Droomer*.⁴ The uncontested evidence of the applicant is that the land consists of a house, two other buildings and a dam structure on a farm. In my view, the land in question does not fall under the definition of township. ESTA was enacted to protect vulnerable farm dwellers who historically resided on agricultural land with consent, while PIE addresses unlawful occupation in general. The respondents do not have any consent as alluded to above. The applicants have correctly identified and premised their cause of action and proceeded against the respondents based on PIE. This Court thus has jurisdiction to deal with this application I find that the Land Court's exclusive jurisdiction is not engaged.

[12] The court now has to deal with the issue of whether it would be just and equitable to evict the respondents from the property. The evidence reveals that on instructions of the legal representatives of the applicants, the sheriff did some investigations seeking to identify the particulars of the people who unlawfully occupy the property. The information gathered also touched on any elderly persons and children occupying the premises. Section 4(7) of PIE applies and provides that a court may grant an order for eviction if it is of the opinion that it is just equitable to grant such eviction. In this case the court is enjoined to consider all relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another landowner for the relocation of the unlawful occupiers including the rights and

⁴ *Droomer NO v Snyders and Others* (A336/2019) [2020] ZAWCHC 72 (4 August 2020).

needs of the elderly, children, disabled persons and households headed by women. It would seem that the unlawful occupiers have been residing on the property for a few years. In the process, the owners of the property have engaged the police as well as the legal representatives to have the respondents evict the property.

[13] In circumstances of this nature, the interest of the unlawful occupiers should be balanced against the rights of the owners of the property to use and lease their land effectively. It is so that a private landowner has no obligation to provide free housing and unlawful occupation of his land which may result in a deprivation of his property under s 25(1) of the Constitution.

[14] From the information provided, some of the respondents receive income which may enable them to afford accommodation elsewhere. Some of the respondents appear to work for employers in the surrounding areas. Much as it may pose some hardship on the unlawful occupiers, they cannot choose to stay at a place merely because it is convenient to do so.

[16] Two of the unlawful occupiers are above the age of 60. They reside in structure number 2 and informed the sheriff that they were pensioners. Another occupier is 66 years old and occupies structure number 26. He also receives pension. These pensioners are not without income and may be able to get alternative accommodation.

[17] I am satisfied that it would be just and equitable to grant an order of eviction against the respondents. Although the respondents were notified to evict

the premises by 6 December 2024, I am of the view that they would still need time to acquire alternative accommodation.

[18] I make the following order.

1 The first to thirty-seventh respondents are declared unlawful occupiers as contemplated in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998, as amended ('PIE') of the FARM FREEWATER 2505, BAINSVLEI, DISTRICT BLOEMFONTEIN (the property).

2 The first to thirty-seventh respondents are ordered to disassemble any structure(s) which they may have erected and vacate the property within 120 (hundred and twenty) days after service of this order on them.

3 Should the first to thirty-seventh respondents fail or refuse to comply with the order in para 2 above, the sheriff and/or the sheriff with the assistance of the South African Police Service and/or the sheriff with the assistance of any private contractor employed by him (sheriff), is/are hereby authorised and directed to:

a. Evict the first to thirty-seventh respondents and all those persons holding title under them from the property.

b. Demolish and remove any structures or buildings erected and/or occupied by the first to thirty-seventh respondents and all persons holding title under them on said property.

4 The first to thirty-seventh respondents are ordered to pay the costs of this application which includes the costs of Part A.

P MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances

For the Applicants:

JMC Johnson

Instructed by:

Van Der Merwe & Sorour

Bloemfontein

For the Respondents:

V A Mnyameni

Instructed by:

Legal Aid South Africa

Bloemfontein