



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

CASE NO: LCC 163/2023

Before: MALULEKE AJ

Heard on: 2 JULY 2026

Delivered on: 27 AUGUST 2026

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

Date: 24 August 2026

In the matter between:

CHARLES JOHANNES LAMBRECHTS N.O.

First Applicant

CHARLES JOHANNES LAMBRECHTS N.O.

Second Applicant

HIGHLANDS NIGHT INVESTMENT 108 CC

Third Applicant

and

PIET BOOYSEN

First Respondent

JOHANNA DE JONGH

Second Respondent

PATRICK DE JONGH

Third Respondent

ADAM DE JONGH

Fourth Respondent

**ALL OTHER PERSONS RESIDING WITH OR
UNDER THE FIRST TO THE FOURTH RESPONDENT
IN THE PREMISES ON VERGENOEGD FARM,
WORCESTER, WESTERN CAPE PROVINCE**

Fifth Respondent

BREEDE VALLEY MUNICIPALITY

Sixth Respondent

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

Seventh Respondent

ORDER

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

JUDGMENT

MALULEKE AJ

Introduction

[1] This is an application for leave to appeal against part of the judgment and order of this Court delivered on 4 May 2026¹. The application is brought by the Applicants in the main application. I will continue to refer to the parties as I did in the main judgment.

¹ *Lambrechts NO and Others v Booysen and Others* (LCC163/2023) [2026] ZALCC 20 (4 May 2026).

[2] The Applicants seek leave to appeal against paragraph 3 of the order, in terms of which the application for the eviction of the Second to Fifth Respondents was dismissed. No appeal is sought against paragraphs 1, 2 and 4 of the order.

[3] The application is brought in terms of section 31(3) of the Land Court Act 6 of 2023, read with section 17(1) of the Superior Courts Act 10 of 2013. The Applicants contend that the proposed appeal would have a reasonable prospect of success and, alternatively, that some other compelling reason exists why the appeal should be heard.

[4] The application is founded upon six grounds of appeal directed principally at the interpretation and application of the Extension of Security of Tenure Act 62 of 1997 ("ESTA"), the Court's findings concerning the termination of the rights of residence of the Second to Fifth Respondents, the findings concerning service and receipt of the pre-litigation notices, the refusal of default eviction against the Third and Fourth Respondents, the Fourth Respondent's alleged non-residence, and the application of the Plascon-Evans rule. The Applicants rely, in the alternative, on the existence of some other compelling reason why the appeal should be heard.

Applicable Legal Principles

[5] This application is governed by section 31(3) of the Land Court Act 6 of 2023, read with section 17(1) of the Superior Courts Act 10 of 2013. Leave to appeal may be granted only where the Court is of the opinion that the proposed appeal would have a reasonable prospect of success, or where there is some other compelling reason why the appeal should be heard.

[6] The use of the word "would" in section 17 signifies a heightened threshold for leave to appeal. It is no longer sufficient that another court might come to a different conclusion. The Court must be satisfied that there is a realistic prospect that another

court would do so.² The enquiry requires an objective assessment of the grounds advanced.

[7] In undertaking that assessment, the Court does not determine the appeal itself, nor is the enquiry whether every aspect of the reasoning in the principal judgment is beyond criticism. The Court is required to consider the application dispassionately with reference to the facts and the law.³ The question is whether the Applicants have demonstrated a basis upon which an appellate court could reasonably interfere with the order granted.

[8] The Applicants also rely on the existence of some other compelling reason why the appeal should be heard, within the meaning of section 17(1)(a)(ii). That enquiry is distinct from the enquiry into reasonable prospects of success and will be considered after the individual grounds of appeal have been examined.

The grounds of appeal

[9] I turn now to address the grounds of appeal. This application is not a rehearing of the eviction proceedings. The Court's enquiry is confined to the statutory threshold for leave to appeal.

Ground 1: The application of *Klaase* and the lawful ground for terminating the independent rights of residence

[10] The first ground concerns the Court's reliance on *Klaase and Another v van der Merwe NO and Others* [2016] ZACC 17 ("*Klaase*"). The Applicants contend that the Court misapplied *Klaase* by treating the termination of the First Respondent's

² In *The Mont Chevaux Trust v Goosen and others* [2014] ZALCC 20, 2014 JDR 2325 (LCC) para 6. Bertelsmann J (in an *obiter dictum*) held that: 'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.'

³ *Minister of Justice and Constitutional Development and Others v South African Litigation Centre and Others* 2016 (3) SA 317 (SCA).

employment as incapable, in law, of constituting a ground for the separate termination of the residence rights of the Second to Fifth Respondents.

[11] The Applicants' argument proceeds from the proposition that *Klaase* does not preclude the termination of the rights of residence of other household members merely because those rights were acquired independently of the employee's right. They submit that occupiers whose consent arose through the effluxion of time under sections 3(4) and 3(5) may have that consent terminated on a ground common to the household, provided that each occupier's right of residence is separately terminated on a lawful ground and the requirements of section 8 are otherwise satisfied.

[12] The principal judgment did not hold that the termination of the First Respondent's employment could never be relevant to the residence rights of other occupiers. Its finding was that the Second to Fifth Respondents were occupiers in their own right, and that the Applicants had not established a lawful ground for terminating their rights of residence merely by relying on the termination of the First Respondent's employment.

[13] The authorities referred to by the Applicants do not support the Applicants contention:

13.1 *Klaase* establishes that an occupier whose right of residence is independently recognised under ESTA cannot be treated as a merely derivative occupier whose right automatically terminates upon the termination of another occupier's employment.

13.2 In *Misty Cliffs Farm (Pty) Ltd and Another v Christoffels and Others* (LanC28/2025) [2025] ZALCC 34, the Land Court established that family members or other co-occupiers who acquire an independent right of residence through the statutory presumptions of long-term occupation (the effluxion of time under sections 3(4) and 3(5) of the Extension of Security of Tenure Act – ESTA) hold rights separate from an employee's service agreement. Consequently, their residency cannot be terminated automatically upon the dismissal or termination of the

main employee's contract, and any eviction process against them requires independent, procedurally and substantively fair termination under section 8 of ESTA.

13.3 In *Van Der Merwe N.O and Others v Stoffels and Others (2025/032788) [2025] ZALCC 44 (Stoffels)* similarly emphasise that the right of each occupier must be considered on its own legal and factual basis. They do not, however, establish that a particular event affecting one occupier can never constitute a lawful ground for terminating the independent right of another occupier.

13.4 *Belle Vallee Vineyards (Pty) Ltd and Another v Lakey and Others (LanC15/2025) [2025] ZALCC 27 (Belle)* did not establish principles regarding independent rights of residence acquired through the effluxion of time under sections 3(4) and 3(5) of ESTA. The Court in paragraph [148] said: "*Disputes about eviction are often messy. This case is no different. Neither party is all in the right or all in the wrong. Courts must weigh competing facts and try to reach a just outcome. Here, justice and equity require that the Occupiers leave Soetendal and find a new home somewhere else.*" Therefore, *Belle* does not, establish an unqualified proposition that the termination of one occupier's employment constitutes a lawful ground for terminating the independent rights of residence of other occupiers.

[14] The question for present purposes is not whether another court might adopt a different formulation of the relationship between employment and residence under ESTA. The question is whether the Applicants have demonstrated a reasonable prospect that an Appellate Court would conclude that this Court erred in finding that the termination of the First Respondent's employment did not, on the facts of this matter, constitute a lawful ground for terminating the independent rights of residence of the Second to Fifth Respondents.

[15] In these circumstances, the Applicants have not demonstrated that the principal judgment misapplied *Klaase* in a manner that gives rise to a reasonable prospect of

success on appeal. The judgment did not treat the rights of the Second to Fifth Respondents as incapable, in principle, of termination. It recognised that their rights had to be considered independently and concluded that the Applicants had not established a lawful ground for terminating those rights merely by relying on the termination of the First Respondent's employment. The Applicants' disagreement with that conclusion does not, without more, establish the threshold contemplated by section 17(1)(a)(i).

Ground 2: Failure to conduct an individualised section 8(1) enquiry

[16] The second ground concerns the Applicants' contention that the Court failed to conduct the individualised enquiry required by section 8(1) of ESTA in respect of the Second to Fifth Respondents before concluding that their rights of residence could not be terminated.

[17] In the absence of an established lawful ground for termination, an enquiry into whether termination would nevertheless be just and equitable could not provide the Applicants with a lawful basis for obtaining an eviction order.⁴ The Applicants have therefore not demonstrated that the absence of a separate section 8(1) enquiry, in the circumstances of this case, gives rise to a reasonable prospect that an appellate court would interfere with the order.

[18] In the circumstances, Ground 2 does not establish a reasonable prospect of success. The Applicants have not demonstrated that the Court erred in requiring the termination of the right of residence of each occupier to be considered separately.⁵ Their contention effectively treats the termination of the First Respondent's employment as determinative of the rights of the other occupiers, without identifying a legal basis for doing so. The fact that the occupiers resided on the same property, or that their residence may have had some factual connection with the First Respondent, did not dispense with the requirement to establish the lawful ground for termination of each individual right of residence.

⁴ *Maluleke N.O. v Sibanyoni and Others* (1012/2020) [2022] ZASCA 40.

⁵ *Van Der Merwe N.O and Others v Stoffels and Others* (2025/032788) [2025] ZALCC 44.

[19] The Applicants have therefore not demonstrated a sound and rational basis upon which another court would reasonably be expected to reach a different conclusion.

Ground 3: Service and receipt of the pre-litigation notices

[20] The third ground concerns the Court's finding that receipt of the pre-litigation notices by the Third and Fourth Respondents had not been established. The Applicants contend that the representations notice and the subsequent termination notice were addressed to the individual occupiers, that the Sheriff's returns recorded service, and that receipt of the notices was in any event confirmed in the answering affidavit.

[21] The Applicants rely, inter alia, on the Sheriff's returns as demonstrating that the notices were served upon the individual respondents. The four individual returns record service in respect of the First to Fourth Respondents respectively. The return relating to the First Respondent records personal service upon him, as does the return relating to the Second Respondent. The return relating to the Third Respondent likewise records personal service upon him. In respect of the Fourth Respondent, however, the return records that the notice was served upon the First Respondent at the Fourth Respondent's residence because the Fourth Respondent was temporarily absent.

[22] The Applicants further rely on the references to "we" and "our" in the First Respondent's answering affidavit, particularly the statement in paragraph 16 of the Answering Affidavit, that "we confirm receiving the termination notices dated 20 July 2023". They contend that Mr Booysen deposed to the answering affidavit on behalf of the household as a whole and that the use of the plural therefore constitutes an admission of receipt by the other respondents.

[23] That contention is not supported by the manner in which the matter was defended. At the commencement of the hearing, Legal Aid South Africa, which represented the First, Second and Fifth Respondents, expressly informed the Court

that it had no instructions to represent the Third and Fourth Respondents. In those circumstances, the use of the plural pronoun by the First Respondent cannot, without more, be treated as an admission made on behalf of the Third and Fourth Respondents or as establishing that they personally received the notices.

[24] The distinction is material. The question was not whether the First Respondent received the notices, nor whether he understood the notices to concern the rights of the occupants of the residence. The question was whether the Applicants established compliance with section 8(1)(e) in respect of each occupier whose right of residence they sought to terminate. In the absence of an indication that the First Respondent was authorised to speak on behalf of the Third and Fourth Respondents, his collective reference to "we" does not, on its own, establish their receipt of the notices.

[25] There is, moreover, a further difficulty with the Applicants' reliance on service and receipt of the notices. Even if it were accepted, for purposes of argument, that the Third and Fourth Respondents received the notices and were afforded the opportunity contemplated by section 8(1)(e), that would establish only the procedural component of the enquiry under section 8(1). It would not establish that the Applicants had a lawful ground upon which to terminate the independent rights of residence of those occupiers. As already explained under Ground 1, procedural fairness cannot cure the absence of a lawful ground for termination.

[26] Ground 3 does not establish a reasonable prospect of success. Their reliance principally on the termination of the First Respondent's employment could not, without more, constitute a lawful ground for terminating the independent rights of residence of the other occupiers. The Applicants cannot, on appeal, cure that difficulty by inviting the Court to construct separate enquiries or grounds of termination which were not established in the proceedings below. There is accordingly no sound and rational basis for concluding that another court would reasonably reach a different conclusion.

Ground 4: Refusal of default eviction against the third and fourth respondents

[27] Ground 4 concerns the refusal of default eviction against the Third and Fourth Respondents. The Applicants contend that these respondents did not oppose the

eviction application and that the Court therefore erred in refusing to grant eviction orders against them. Their argument is, in substance, that the absence of opposition entitled the Applicants to default relief, particularly because the Third and Fourth Respondents had not placed evidence before the Court challenging the Applicants' case.

[28] It is correct that the absence of opposing evidence from the Third and Fourth Respondents left the Applicants' evidence substantially unanswered. That circumstance was relevant to the Court's assessment of the Applicants' case. It did not, however, convert the Applicants' allegations into proof of every statutory requirement for eviction. The Court was still required to determine, on the evidence before it, whether the Applicants had established the lawful ground for termination of the particular right of residence of each respondent and whether the requirements for eviction under ESTA had been satisfied.

[29] The Applicants' reliance on default does not alter this conclusion. Default may permit a court to determine an application on the evidence placed before it, and the absence of opposition may result in the allegations contained in the founding papers standing largely unanswered. It does not, however, compel the Court to grant relief which the Applicants have not established to be competent in law. In proceedings under ESTA, the Court retains an obligation to determine whether the statutory requirements for eviction have been satisfied in respect of the particular occupier concerned.

[30] The Applicants have accordingly not demonstrated a reasonable prospect that another court would conclude that the refusal of default eviction against the Third and Fourth Respondents constituted a material error warranting appellate interference. The Applicants' complaint therefore amounts, in substance, to disagreement with the manner in which the Court exercised its judicial function on the evidence and the applicable statutory framework, rather than demonstrating a reasonable prospect that another court would reach a different conclusion.

[31] Ground 4 does not establish a reasonable prospect of success. The Applicants have not demonstrated that the Court materially erred in refusing to grant default

eviction against the Third and Fourth Respondents. The Applicants have accordingly not identified a sound and rational basis upon which another court would reasonably be expected to reach a different conclusion.

Ground 5: The fourth respondent's non-residence

[32] Ground 5 concerns the Fourth Respondent's alleged non-residence on the farm. The Applicants contend that the Court erred in requiring them to initiate a separate process to terminate the Fourth Respondent's right of residence merely because he had previously been allocated a separate residence during his employment. They contend that the evidence established that the Fourth Respondent had voluntarily relocated from the farm to Riebeek-Kasteel in or about March 2022, however he had left his belongings in the residence that was allocated to him personally, and the Applicants moved those belongings to the First Respondent's residence. The Applicants also indicated that the Fourth Respondent was incarcerated. On that basis, they submit that he was no longer an occupier as defined in section 1 of ESTA and that no separate eviction process was required in respect of him, however, they are applying for his eviction on the basis of the termination of the First Respondent's employment.

[33] Ground 5, accordingly there is no reasonable prospect that an appellate court would set aside the order on this ground.

Ground 6: The application of the Plascon-Evans Rule

[34] Ground 6 concerns the application of the *Plascon-Evans* rule. The Applicants accept that the Court correctly identified the rule in *Plascon-Evans*, but contend that it failed to apply the qualification articulated in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*, namely that a real, genuine and bona fide dispute of fact does not arise from a bare denial or an unsubstantiated assertion. They submit that none of the factual disputes identified by the Court was sufficiently genuine to preclude the granting of final relief and that, properly applying *Wightman*, the Applicants' version stood effectively uncontradicted on the material issues.

[35] When the four categories of alleged factual disputes identified by the Applicants are considered in their proper context, none demonstrates a material misapplication of the *Plascon-Evans* rule. The dispute concerning the housing agreement did not determine the independent rights of residence of the Second, Third and Fourth Respondents; the status of those respondents as ESTA occupiers did not determine whether their respective rights of residence were lawfully terminable; the existence of an RDP house did not, without more, establish suitable alternative accommodation; and the receipt of notices did not establish the lawful termination of the particular rights of residence. The alleged disputes therefore do not demonstrate that a different application of *Plascon-Evans* would have produced a different result.

[36] I accordingly conclude that the Applicants have not demonstrated that the principal judgment misapplied the *Plascon-Evans* rule or the qualification articulated in *Wightman* in a manner giving rise to a realistic prospect of appellate interference.

Compelling Reasons: Section 17(1)(a)(ii)

[37] The absence of a reasonable prospect of success does not, however, dispose of the application for leave to appeal. Having considered the six grounds advanced by the Applicants, I turn to the second basis upon which leave to appeal may be granted. Section 17(1)(a)(ii) of the Superior Courts Act provides for leave where there is “some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration”.

[38] The Applicants argue, in the alternative, that compelling reasons exist for leave to be granted. They contend that such a compelling reason exists because the Land Court is presently delivering inconsistent decisions on the proper approach to the eviction of household members whose right of residence is linked to the employment of another household member, and on the inter-relationship between sections 3(4)/(5) and section 8 of ESTA. Cases pointing in different directions include *Visser and Another v Marthinus and Others* (LCC 178/2022) [2023] ZALCC 10, *Belle Vallée Vineyards (Pty) Ltd v Lakey and Others* [2025] ZALCC 27, *Misty Cliffs Farm (Pty) Ltd and Another v Christoffels and Others* [2025] ZALCC 34, *Van Der Merwe N.O. and Others v Stoffels and Others* [2025] ZALCC 44 and *Maluleke N.O. v Sibanyoni and*

Others (LCC 2018/59) [2020] ZALCC. The judgment under appeal stands at the more restrictive end of that spectrum and creates a precedent that a section 3(4)/(5) right is not terminable so long as the owner has no “further connection” with the occupier. Clarification by the Supreme Court of Appeal (“SCA”) is required to ensure legal certainty and uniformity.

[39] The Applicants further contend that the judgment is at odds with binding higher court authority. That the judgment is, with respect, in tension with the principles articulated in *Klaase v Van der Merwe N.O.*⁶, *Baron v Claytile*⁷, *Nederburg Wines (Pty) Ltd v Nero* (SCA),⁸ *Sterklewies (Pty) Ltd v Msimanga*⁹, and *Aquarius Platinum (SA) (Pty) Ltd v Bonene*.¹⁰ The SCA’s intervention is required to settle the proper application of those authorities at first-instance level.

[40] Some of the authorities referred to by the Applicants, *Klaase and Another*, *Misty Cliffs*, *Van Der Merwe and Belle Vallee* have been discussed in paragraph 13 and it is clear that the decisions taken depended on the facts of each case and none of them establish the principle argued by the Applicants.

[41] *Visser v Marthinus* likewise does not establish that the termination of one occupier’s employment is, without more, a lawful ground for terminating another occupier’s independent right. In that matter the Court recognised the wife, daughter and children as occupiers in their own right and subjected their rights to the enquiry under section 8(1). The fact that they had remained on the farm for approximately ten years after dismissal and that the relationship with the owner had broken down formed part of the factual setting in which the Court concluded that termination was just and equitable. The decision accordingly demonstrates that an independent right may be terminated; it does not establish the proposition for which the Applicants contend.

⁶ *Klaase and Another v van der Merwe NO and Others* [2016] ZACC 17.

⁷ *Baron and Others v Claytile and Another* 2017 (5) SA 329 (CC).

⁸ *Nederburg Wines (Pty) Ltd v Nero and Others* (1084/17) [2018] ZASCA 119.

⁹ *Sterklewies (Pty) Ltd v Msimanga* 2012 (5) SA 392 (SCA).

¹⁰ *Aquarius Platinum (SA) (Pty) Ltd v Bonene* [2020] 2 All SA 323 (SCA).

[42] The authorities, however, do not establish two competing rules, one holding that the termination of an employee's employment automatically provides a lawful ground for terminating the independent right of a household member, and the other holding that it can never do so. Rather, they demonstrate the importance of first identifying the source and nature of the particular occupier's right of residence and then determining whether the ground relied upon constitutes a lawful ground for terminating that particular right.

[43] This distinction also answers the Applicants' proposed question concerning the owner's burden where the grounds of residence of individual occupiers overlap. The fact that the circumstances giving rise to different occupiers' residence overlap does not make their rights identical. Once the Court finds that the occupiers possess independent rights, the owner must establish the lawful basis for terminating each such right. This does not necessarily mean that the factual event relied upon must always be different. A single event could conceivably constitute a lawful ground applicable to more than one independent occupier. The owner must nevertheless demonstrate why that event constitutes a lawful ground for terminating each particular right.

[44] The Applicants' formulation of the first proposed question—whether a deemed right under sections 3(4) and 3(5) can be terminated “in the absence of a continuing employment-related nexus”—also reverses the statutory enquiry. The question is not simply whether an employment nexus continues to exist. The question is what lawful ground has been established for terminating the particular occupier's independent right of residence.

[45] That is the distinction applicable to the present matter. The Court found that the Second to Fourth Respondents were occupiers in their own right. The question was therefore whether their respective rights of residence had been lawfully terminated. The termination of the First Respondent's employment was capable of providing the basis for terminating his own employment-related right of residence. It did not, without establishing the legal connection between that event and the independent rights of the other respondents, establish the lawful ground for termination of those rights. The

Applicants' reliance upon the same event as the basis for all the terminations therefore did not dispense with the requirement to establish a lawful ground in respect of each right.

[46] I accordingly accept that the issue is an important and developing one. I am, however, not persuaded that the authorities disclose conflicting judgments on the precise question that determined the order under appeal. Nor does the present matter, on the case actually pleaded and litigated, raise a discrete unresolved question of law requiring authoritative determination independently of those facts. The apparent differences between the decisions are substantially explained by the different factual and juridical bases upon which the relevant rights of residence were established. The Applicants have therefore not established, on this basis, a compelling reason within the meaning of section 17(1)(a)(ii).

[47] No compelling reason exists. The application therefore does not satisfy either of the alternative requirements in section 17(1)(a) of the Superior Courts Act.

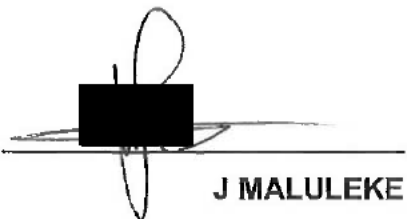
Conclusion

[48] In these circumstances, leave to appeal is not warranted and must be refused.

Order

[48] Accordingly, I make the following order:

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


J MALULEKE
Acting Judge of the Land Court

APPEARANCES:

For the Applicants: ADV. ADRIAAN MONTZINGER

Instructed by: OTTO THERON ATTORNEYS INC

For the First, Second and Fifth Respondents: LEGAL AID SOUTH AFRICA

Instructed by: LEGAL AID SOUTH AFRICA