IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** **CASE NUMBER:** 5/98

In the case of

DAVID KARABO	1st Applicant
SIMON MOHLASEDI	2nd Applicant
PIET MOGOROSI	3rd Applicant
MICHAEL KHOALE	4th Applicant
ELIAS MOKWENA	5th Applicant
FREDDY MBUNGELE	6th Applicant
JOSEPH TIBANE	7th Applicant
SAMUEL MTILENI	8th Applicant
PETER MOKWENA	9th Applicant
DAVID MOLOPE	10th Applicant
ISAAC BALOYI	11th Applicant
LUCAS MARABE	12th Applicant
HACKSON THOBEJANE	13th Applicant
ISAAK FOKAS	14th Applicant
ANIKY MAILE	15th Applicant
MALAKIA NDOU	16th Applicant
LETTIE LESHIKI	17th Applicant
JACKSON MARAPULA	18th Applicant
RONNIE MOHLALA	19th Applicant
BETTY RATAU	20th Applicant
BETHUEL BALOYI	21st Applicant
MAVIS MALATSI	22nd Applicant
PATRICIA KGATLE	23rd Applicant
CARLOS LANGA	24th Applicant
ALEX MASHOCO	25th Applicant
CAROLINE MORABA	26th Applicant
RENEILWE SEROKA	27th Applicant
LUCY MOLOTO	28th Applicant
JULIA MOLOTO	29th Applicant
JOHANNES MOGALE	30th Applicant
JOSEPH RALEKHOABA	31st Applicant
DOLLY MAPALAKANYE	32nd Applicant
VIOLET MANASO	33rd Applicant
SYDWELL KHOSA	34th Applicant
MOLEMA MALAPANE	35th Applicant
MOLINAH MALULEKE	36th Applicant
ABSALOM NDABA	37th Applicant
TSIETSI MOLOBELA	38th Applicant

ALPHEUS MAMTJA	39th Applicant
LORAH MAVHINGO	40th Applicant
MICHAEL LETHOLE	41st Applicant
KWATISA CHAVALALA	42nd Applicant
ELIZABETH MAHLAULA	43rd Applicant
LEKSINA MABUNDA	44th Applicant
PATIRONI BUNGELE	45th Applicant
TONIAS JABANI	46th Applicant
ALBERT MANKABIDI	47th Applicant
MIRIAM MOLELEKE	48th Applicant
JOSEPHINA MOKOENA	49th Applicant
LUCY MASHABA	50th Applicant
ELIAS MOKWENA	51st Applicant
SAKKIE MAGOLEGO	52nd Applicant
JOHANNES KHOETE	53rd Applicant
ELLEN MOKWENA	54th Applicant
YIMEKA RIKHOTSO	55th Applicant
WILLIAM MANKABIDI	56th Applicant
ANGLINA MARABE	57th Applicant
SALPHINA MASHABA	58th Applicant
ROBERT MANKABIDI	59th Applicant
JONAS PAEPAE	60th Applicant
APHPHIA MARABE	61st Applicant
JAFTA MOSIDI	62nd Applicant
JOHN HLUNGWANE	63rd Applicant
CATHERINE MINYUKU	64th Applicant

and

GEORGE FREDERICK MARX KOK	First Respondent
SARIE MARIA KOK	Second Respondent
CONSTEEN (PTY) LTD	Third Respondent

JUDGMENT

GILDENHUYS J :

[1] Mr G F M Kok and Mrs S M Kok are the owners of Portion 103 of the farm Lindley, district of Krugersdorp. Consteen (Pty) Ltd, a company belonging to Mr Kok, operates an industry, including a quarry and brick works, on the property. On 3 December 1997, Consteen discharged 64 labourers who were previously employed in the industry and who were accommodated in living quarters on the property.

[2] On the 7 January 1998, the discharged labourers, despite their dismissal, were still in occupation of the living quarters. Mr and Mrs Kok then issued a summons for eviction against them in the Magistrates' Court of Krugersdorp. The cause of action was set out as follows :

> "Die Eisers is die eienaars van onroerende eiendom geleë te **GEDEELTE 103 VAN DIE PLAAS LINDLEY, DISTRIK KRUGERSDORP**.
>
> Die Verweerders is ten tyde van die instel van hierdie aksie in okkupasie van die voormelde onroerende eiendom."

[3] On the same date, Mr and Mrs Kok applied for an order in the Magistrates' Court against the 64 labourers on the following terms:

> "'n Bevel in terme waarvan die Balju gelas word om die Respondente uit te sit uit die perseel bekend as **GEDEELTE 103 VAN DIE PLAAS LINDLEY, DISTRIK KRUGERSDORP.**
>
> Die Respondente op **WOENDAG, 28 JANUARIE 1998** om **08h30** redes kan aanvoer waarom die bevel soos voormeld nie bekragtig moet word nie;
>
> Die Respondente die keerdatum van 12 uur kennis aan die Applikante kan vervroeg."

[4] In his supporting affidavit, Mr Kok alleged that he and Mrs Kok are the owners of Portion 103 of the farm Lindley, that he is the sole shareholder and director of Consteen (Pty) Ltd, and that the 64 labourers were employed by Consteen on the premises up to 3 December 1997, with a right of occupation as part of their remuneration package. He alleged that, despite the fact that they were no longer employees, they continued in occupation of the living quarters on the property. He furthermore alleged that the living quarters were required to accommodate new workers, and that the 64 labourers were intimidating the new workers.

[5] On the same date, a Magistrate in the Krugersdorp Magistrates' Court issued a court order as follows :

> "Dat the Balju gelas word om die Respondente uit te sit uit die perseel bekend as **GEDEELTE 103 VAN DIE PLAAS LINDLEY, DISTRIK KRUGERSDORP**.
>
> Indien die Respondente verlang om redes aan te voer waarom die bevel tot uitsetting en koste nie finaal gemaak moet word nie, die Respondente op Woendsdag, 28 Januarie 1998 om **08h30** vir daardie doel voor die hof moet verskyn.
>
> Verder dat die Respondente by magte sal wees om met 12 uur kennis aan die Applikante die keerdatum te vervroeg."

The Court Order was obtained *ex parte*, without notice to the 64 labourers. I was told from the bar that, when the order was applied for, the attention of the Magistrate was not drawn to the provisions of the Extension of Security of Tenure Act ("the Tenure Act").[1] In fact, the attorney acting for Mr and Mrs Kok was, at that stage, unaware that the Act was in force.

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[1] Act 62 of 1997. The Act came into force on 27 November 1997.

[6] On the 19th of January 1998 the Sheriff, acting in terms of the Magistrates' Court Order, evicted the 64 labourers from the residential quarters on the property. I was told from the bar that, at this stage, the attorney had become aware of the existence of the Tenure Act. After advice obtained from an internal legal advisor of the police, who assisted with the eviction, the attorney concluded that Mr and Mrs Kok was legally entitled to implement the eviction order.

[7] On 26 January 1998 the 64 labourers filed a notice stating that they would oppose the application of Mr and Mrs Kok in the Magistrates' Court on the return day for the order. On 28 January 1998, the return day was extended to 4 February 1998. On 30 January 1998, opposing affidavits in the application were filed on behalf of the 64 labourers. The application was argued before the Magistrate on 4 February 1998. At this stage, the Magistrate was made aware of the provisions of the Tenure Act. Upon conclusion of the argument, the Magistrate struck the matter from the roll. I will revert to this curious order hereunder. On 10 February 1998, the 64 labourers gave notice of their intention to defend the summons issued by Mr and Mrs Kok. On the information before the court, this case is still pending.

[8] On 9 February 1998 the 64 labourers ("the Applicants") brought an urgent application to this court against Mr and Mrs Kok and Consteen (Pty) Ltd (the "Respondents") wherein, amongst other relief, an order was claimed that the Applicants' rights of residence and use of the residential quarters on the property be restored to them. The application was first heard on 10 February 1998 and postponed to 16 February 1998. On 10 February 1998 I indicated that I will ask the Magistrate to submit the papers in the Magistrates' Court case to me so that any order which the Magistrate had made could be reviewed[2] simultaneously with the hearing of the urgent application on 16 February 1998. The file was duly submitted to me by the Magistrate.

[9] It is not clear why the Magistrate struck the application for the confirmation of the provisional order of 7 January 1998 from the roll. If the Magistrate was of the opinion that the order should not be confirmed, he should have discharged it. Mr J Marabula (one of the Applicants) explains this in his supporting affidavit to this application, as follows :

> "At the hearing of the matter on the 4th of February 1998 the matter was removed from the roll, the learned Presiding Magistrate being of the view that the matter had no relevance anymore as all the Applicants had already been evicted by the Deputy Sheriff on the 19th of January 1998. I wish to stress the point that the provisional order granted on the 7th of January 1998 was not confirmed on the 4th of February 1998. In view hereof I am advised by my legal advisers that the said provisional order therefore automatically became discharged."

This is supported by the notes which the Magistrate made at the time, which read as follows :

> "Die hof bevind dat die Landdros jurisdiksie het ingevolge Art 29 en dat u aansoek ingevolge R56 gebring korrek was.
>
> Bevel is uitgevoer en Respondente was uitgesit.

[2] Any eviction order issued by a Magistrates' Court in terms of the Tenure Act is, under section 19(3) of that Act, subject to automatic review by this Court.

> Bekragtiging van bevel nie nodig - is dagvaarding en hoofaksie om mee voort te gaan -
>
> Tussentydse bevel van rol verwyder met koste in hoofgeding."

In a letter to me, under cover of which the papers were forwarded for review, the Magistrate explained as follows :

> "Eers op 28 Januarie 1998, die keerdatum van die bevel het regsverteenwoordigers in die hof verskyn en die hof verwys na die ware toedrag van sake, die beweerde arbeidsgeskil ensomeer.
>
> Die bevel was gevolglik deur my van die rol verwyder hangende die uitslag van die hoofsaak soos per die dagvaarding.
>
> Omdat die bevel van die rol verwyder was, met ander woorde nie bekragtig was nie, is die saak nie onderhewig aan hersiening nie en is daar niks wat in die weg van die Respondente gestaan het om na die perseel terug te keer nie."

[10] According to the Magistrate's notes, the impression is given that the provisional order was not confirmed because its objects had been achieved. This would imply that the ejectment of the 64 labourers was proper. On the other hand, in his letter to me the Magistrate gave the impression that he struck the matter from the roll because he was of the opinion that the original order should not have been granted. If that was his intention, he should have discharged the order. The Applicants are correct in their view that the order which the Magistrate gave on 7 January 1998, no longer exists. Although the wording of the order may not be as clear as might be desired, it was apparently intended to be of force only until the return date, when it would in the normal course of events either be confirmed or discharged. If none of that happens, the order lapses[3].

[11] On this aspect of the case, it remains for me to make some remarks on the procedure followed in the Magistrates' Court. From its wording it would appear that the provisional order, if confirmed, would grant permanent relief. If so, why was the summons issued? If the intention was (as it probably was) to grant interim relief pending the main action, it should have been so stated. In those circumstances, the granting of an interim order is undesirable.[4] Furthermore, no acceptable explanation was given as to why the order was applied for *ex parte*, without service on the labourers..

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[3] *Fisher v Fisher* 1965 (4) SA 644 (W).

[4] L J Gering and T W Beckerling, " Civil Procedure : Magistrates' Court" in Joubert ed 3(2) *LAWSA,* 2ed (Butterworths, Durban 1996) at 156 :

> "... a magistrate's court has the jurisdiction to grant an interim interdict ejecting a respondent pending the outcome of a trial in which ejectment is claimed even though ejectment can only be obtained through action proceedings. However, if the application seeks to anticipate the very relief claimed in the main action and the court is called upon to decide on the papers in the application issues it will be called upon to decide upon evidence at the trial, the proceedings are undesirable."

[12] The Tenure Act is an involved piece of legislation. Broadly speaking, it applies to all land other than land in a township or encircled by a township.[5] The Tenure Act applies to the land involved in this case, because the land is not in a township or encircled by a township. I cannot accept the submission on behalf of the Respondents that, because the activities on the land are essentially industrial, not agricultural, the Tenure Act does not apply. The application of the Tenure Act is not restricted to land used for agricultural purposes.

[13] Notwithstanding the provisions of any other law, an occupier may be evicted from land to which the Tenure Act applies only in terms of an order of court issued under the Tenure Act.[6] It was clearly the intention of the legislature to amend the existing law on eviction.[7] Papers in terms whereof the eviction of a person is claimed under the Tenure Act must contain the necessary factual allegations required to comply with the Tenure Act before an eviction order can be granted. These pre-requisites are summarised in section 9(2) of the Tenure Act. I will deal with them hereunder.

[14] Firstly, the right of residence of the person sought to be evicted must have been terminated.[8] The right of residence of a person which arises solely from an employment agreement, may be terminated if the person resigns from his or her employment or is dismissed in accordance with the provisions of the Labour Relations Act.[9] Any dispute over whether a person's employment has been lawfully terminated, must be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect only when that dispute has been determined in accordance with that Act.[10] I will revert to this aspect later. Secondly, the occupier must not have vacated the land within a period of notice given by the owner or person in charge.[11] Thirdly, the provisions of either section 10 or section 11 of the Tenure Act must have been complied with. These requirements relate, amongst other matters, to the availability of alternative accommodation. Section 10 is applicable to a person who was an occupier on 4 February 1997 and section 11 is applicable to a person who became an occupier after 4 February 1997. Lastly, the owner or person in charge must have given not less than two calendar months' written notice to the occupier, the municipality in whose area of jurisdiction the land is situated and the head of the relevant provincial office of the Department of Land Affairs of his or her intention to obtain an eviction order, which notice shall contain the

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5 Section 2(1)

6 Section 9(1)

7 Compare *Glen Anil Finance v Joint Liquidators, Glen Anil Development Corporation* 1981 (1) SA 171 (A) at 183 G-H and *National Automobile and Allied Workers' Union v Borg-Warner SA* 1994 (3) SA 13 (A) on 23A-B

8 Section 8(1)

9 Act 66 of 1995.

10 Sections 8(2) and (3)

11 Section 9(2)(b)

prescribed particulars and set out the grounds on which the eviction is based. If a notice of an application to court has been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this last requirement shall be deemed to have been complied with.[12]

[15] In this case, there is a dispute over the validity of the termination of the employment of the labourers, and this dispute is being dealt with under the provisions of the Labour Relations Act. Because the dispute is still pending, the termination of the employment for purposes of the Tenure Act has not yet taken effect.[13] I will revert to this later in the judgment. Furthermore, there is no allegation or indication that any of the prerequisites of section 10 or 11 of the Tenure Act have been complied with.[14] Lastly, the two month notice to the labourers, the municipality and the head of the provincial office of the Department of Land Affairs has not been given.[15] It is clear, therefore, that the labourers have been evicted contrary to the provisions of the Security of Tenure Act. It is no answer for the Respondents to say that the eviction was effected under a Court Order. The Court Order should never have been granted.

[16] It must furthermore be pointed out that the order given by the Magistrate does not comply with the provisions of section 12(1) of the Tenure Act. Under this section, the court must determine a just and equitable date on which the occupiers must vacate the land. In so doing, the court must have regard to all relevant factors, including a specified list of considerations[16]. In addition to determining a just and equitable date on which the occupier must vacate the land, the court must also determine a date on which the eviction order may be carried out if the occupiers do not vacate the land on the first mentioned date.[17] In determining that date, the Magistrate must bear in mind that his order is subject to automatic review by this Court[18], and there should, in the absence of special circumstances, be sufficient time for the Court to conclude the review before the eviction is implemented. Lastly, the court must, to the extent applicable, deal in its order with matters such as payment of compensation for structures erected by the occupiers, arrear wages and also provide the occupiers with an opportunity to demolish improvements erected by them and to remove standing crops.[19] Although some of these matters are clearly inapplicable in this

12 Section 9(2)(d)

13 Section 9(3)

14 As required under section 9(2)(c) of the Tenure Act.

15 As required under section 9(2)(d) of the Tenure Act.

16 Section 12(2)

17 Section 12(1)(b)

18 Section 19(3)

19 Section 13(1)

case, none of them seem to have received any consideration by the Magistrate before making the order.

[17] A considerable portion of papers before the Court, and of the argument in Court, were devoted to alleged acts of violence perpetrated on the property. The Applicants allege that they were terrorised by the security guards of the Third Respondent. The Respondents allege that the Applicants are quarrelsome, that while they resided on the property they intimidated new workers, and that they are being incited towards violence by a few individuals. Some of the Applicants are actually in jail, apparently on charges of incitement. It is clear that some violence, or threats of violence, did occur. It is impossible to determine from the papers before the Court the extent of the violence, or threats of violence, or who is responsible for it.

[18] Section 15 of the Tenure Act makes it possible for an owner or person in charge to make an urgent application for the removal of any occupier from land "pending the outcome of proceedings for a final order". The "final order" referred to can only be a final eviction order under the Tenure Act. The circumstances under which an interim eviction order may be granted are set out in section 15 as follows -

> "(a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land;
>
> (b) there is no other effective remedy available;
>
> (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted; and
>
> (d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted."

[19] It was submitted on behalf of the Respondents that, had the Applicants remained in occupation of the living quarters, the violence in which they are allegedly involved would have entitled the Respondents to obtain an interim eviction order against them under section 15 of the Tenure Act. Therefore, so the argument went, the Court should not order the restoration of the Applicants' rights of residence. I do not agree. The Respondents chose to obtain an eviction order against the Applicants on grounds which do not accord with the provisions of the Tenure Act. They cannot now invoke section 15 when the grounds they chose have turned sour. Furthermore, the circumstances which would have enable the Court to make an order under section 15 have not been established. For example, it has not been shown that adequate arrangements have been made for the reinstatement of the Applicants if it should later be found that they are entitled to reinstatement.

[20] The Applicants alleged that they were dismissed by the Third Respondent on 3 December 1997. The dismissal occurred pursuant to a strike. They disputed the lawfulness of the dismissal and applied to the Labour Court for relief. The application was dismissed because the Applicants did not follow the required procedures. They then initiated conciliation procedures under the Labour Relations Act. The Commission for Conciliation, Mediation and Arbitration certified on 9 February 1998 that conciliation was

not achieved. Having obtained this certificate, it is now possible for the Applicants to take the dispute to the Labour Court.

[21] Sections 8(2) and 8(3) of the Tenure Act reads as follows:

> "(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.
>
> (3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act."

[22] It was submitted on behalf of the Respondents that the phrase "dispute over whether an occupier's employment has been terminated as contemplated in subsection (2)" refers to a dispute on whether a termination actually occurred, and not to a dispute over the lawfulness of the termination. I do not agree with the submission. Subsection (3) refers back to subsection (2), which provides that the right of residence of an occupier may be terminated if he or she resigns or is dismissed in accordance with the provisions of the Labour Relations Act. The termination of the occupier's employment as envisaged in subsection (3) must, under the provisions of subsection (2), be in accordance with the provisions of the Labour Relations Act. This means that the validity of the termination is at issue. It is so, as pointed out on behalf of the Respondents, that such an interpretation would oblige the owner of land to continue housing dismissed employees while a dispute on the validity of the dismissal is pending. Such a dispute may take months to resolve. The interpretation I have given to subsections (2) and (3) is, in my view, the only possible interpretation. I cannot deviate from it because the consequences are alleged to be unfair. The fairness or otherwise of a legal provision is for parliament to decide.[20] I should point out, however, that in suitable circumstances, the owner or person in charge may be entitled to relief under section 15 of the Tenure Act.

[23] Having found that the Applicants were evicted contrary to the provisions of the Tenure Act, the Court is entitled to make an order under section 14(3), which order could be -

> "(a) for the restoration of residence on and use of land by the person concerned, on such terms as it deems just;
>
> (b) for the repair, construction or replacement of any building, structure, installation or thing that was peacefully occupied or used by the person immediately prior to his or her eviction, in so far as it was damaged, demolished or destroyed during or after such eviction;
>
> (c) for the restoration of any services to which the person had a right in terms of section 6;
>
> (d) for the payment of compensation contemplated in section 13;

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[20] There could, of course, be cases where a provision in a law is so unfair that it can be argued that it could never have been intended by Parliament. That is not the case here.

(e) for costs.”

[24] There are two difficulties connected with a possible order for the restoration of residence. The first difficulty is that, after the eviction of the Applicants, the Third Respondent hired new employees, and according to the Third Respondent, the hostel where the Applicants previously resided is now full. In the papers, the Applicants said they have no knowledge as to whether the hostel is full or not. During argument, an attempt was made to question the allegation that the hostel is full on the basis that at some stage the hostel was able to accommodate the Applicants together with some new employees. If the hostel is in fact full, the tenure of the present occupants is protected under the Tenure Act, similarly to the erstwhile tenure of the Applicants. If the Court should order the restoration of residence in favour of the Applicants, the Respondents might not be able to implement the order (and they say they cannot) without evicting some of the present occupants. The present occupants were not before the Court. There are not sufficient facts before me to enable me to find that the Applicants can be accommodated in the hostel without intruding upon the rights of some of the present occupants. A Court should not make an order for the restoration of residence if the Court is not satisfied that the order can be implemented without intruding upon the rights of others.

[25] The second difficulty is the allegation that, if an order for the restoration of residence is granted to the Applicants, the presence of the Applicants together with the workers who replaced them in the same hostel may lead to renewed violence. The Respondents say that it probably will, and that any such violence could lead to a stoppage of production in Third Respondent’s industry (which has a turnover of R2,5 million per month). The Applicants, on the other hand, deny any possibility of violence from their side and allege that, when they lived in the hostel in the past, they got along well with new workers. The Court must be reluctant to create a new volatile situation. The conflicting statements before me make it impossible, without oral evidence, to arrive at a finding as to whether violence is likely to occur or not if the Applicants’ right of residence in the hostel on First and Second Respondents’ property is restored. In the light of my conclusion on the first difficulty (the Respondents’ capacity to implement a restoration order), it is not necessary to make a finding on this issue.

[26] If the above difficulties prevent the making of an order for the restoration of residence to the Applicants on the property of the First and Second Respondents, the Respondents cannot be allowed to reap the benefits and the Applicants cannot be allowed to suffer the consequences of an eviction order (given in the Magistrates’ Court) which should never have been granted in the first place. Another solution must be found.

[27] The Applicants prayed for an order as follows -

> “2 That the Applicants’ rights of residence and use of the residential quarters on the property known as Portion 103 of the Farm Lindley, distrik (*sic)* Krugersdorp as it existed before their eviction therefrom on the 19th of January 1998, be restored.
>
> 3 That pending the final determination of the automatic review by the above Honourable Court in terms of Section 19(4)*(sic)* of the Extension of Security of Tenure Act, 1997 of the order for eviction granted by the Magistrates’ Court for the district of

Krugersdorp in case number 86/9A (*sic*) dated the 7th of January 1998, the Applicants' rights of residence as set out in paragraph 1 hereof be restored.

5 Alternative relief"

As indicated above, there are obstacles which prevent me from making an order under prayer 2. I cannot make an order under prayer 3 because the eviction order granted by the Magistrate on 6 January 1997 has lapsed. It can no longer be reviewed. All that is left to me is to make an order under the prayer for alternative relief.

[28] Had it not been for the eviction order of the Magistrate and the obstacles which stand in the way of a restoration order, the Applicants could have had residency in the living quarters on the property of the First and Second Respondents, at least until the dispute over the termination of their employ became resolved and (if such be the case) they became obliged to vacate the property in terms of the provisions of the Tenure Act. Until such time, the Court should place them in a position to enjoy residency elsewhere.

[29] Mr van der Merwe informed me that accommodation which the Applicants can utilise is available at the Dyambu Hostel (situated between Randfontein and Krugersdorp), at a daily charge of R20,00 per person which includes three meals per day. Mr van der Merwe said that, if an order restoring the Applicants' right of residence in the hostel on the First and Second Respondents' property is not granted, the Applicants will be satisfied with an order which will enable them to live in the Dyambu Hostel. In my view, justice will be served if I make an order which will enable the Applicants to live in the Dyambu Hostel.

[30] The Applicants asked for costs on an attorney and client scale in the Magistrates' Court on the grounds of the Respondents' alleged unacceptable behaviour in obtaining an eviction order in the Magistrates' Court. . Although it is to be regretted that the First and Second Respondents saw fit to obtain the eviction order on an *ex parte* basis, it cannot be said that they acted maliciously or in wilful disregard of the Applicants' rights. The Respondents suggested that, because it is possible that the employment relationship between the Applicants and the Respondents could be continued, the Court should not make any cost order on the grounds that a cost order could impact negatively on that possible future relationship. In my view, the Tenure Act provides specific rights for land owners and occupiers, and if these rights are intruded upon, the Court must make appropriate orders. The Tenure Act is very different from most labour legislation, where one of the principal aims is to achieve a reconciliation of conflicting interests between the employer and the employee in the interests of their continuing relationship. For that reason, the Labour Court does not often make costs orders. In this case, the Respondents intruded upon specific rights of the Applicants, and the latter are entitled to their costs for obtaining relief from the Court.

[31] The Court orders as follows:

(a) The Respondents must make it possible for the Applicants to utilise alternative accommodation available at the Dyambu hostel by paying to those Applicants who utilise or intend to utilise that accommodation the following amounts at the address of their attorneys, Messrs Truter, Crous & Wiggill :

(i) forthwith, for each of such Applicants, an amount of R20,00 per day from and including 23 February 1998 to 28 February 1998;

(ii) thereafter, for each of such Applicants for each successive week, as from 1 March 1998, an amount of R20,00 per day, payable on the Friday of the preceding week.

(b) The order in (a) will remain in force until amended or withdrawn by the Court. Any party may apply to the Court, formally or informally through the Registrar, for an amendment or withdrawal thereof.

(c) Nothing in this order will prevent the Applicants from applying in any future proceedings for further relief in terms of section 14(3) or any provision of the Tenure Act.

(d) The Respondents must jointly and severally pay the costs of this Application.

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JUDGE A GILDENHUYS

I agree

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JUDGE J MOLOTO

Heard on: 18 February 1998 **Handed down on:** 20 February 1998

For the applicants:
A R van der Merwe instructed by *Truter Crous & Wiggill*

For the respondents:
J G Rautenbach instructed by *Cilliers, Minnie & Blackie Swart Ingelyf*