

## **IN THE LAND CLAIMS COURT OF SOUTH AFRICA**

Held in **Stellenbosch** on 24 and 25 August 2006  
Before **Meer, J**

**Decided on** : 11 October 2006

**CASE NUMBER** : LCC 76/05

In the matter between:

**AMFARMS REALISATION COMPANY LIMITED**  
**ANGLO AMERICAN FARMS LIMITED**  
**BOSCHENDAL (PTY) LIMITED**

First Applicant  
Second Applicant  
Third Applicant

and

**NKOSINCEDILE VIKILAHLE**

Third Respondent

**CASE NUMBER** : LCC77/05

In the matter between:

**ANGLO AMERICAN FARMS LIMITED**  
**ALLEË BLEUE (PROPRIETARY) LIMITED**

First Applicant  
Second Applicant

and

**MAGDELENE SIMONS**

Second Respondent

**CASE NUMBER** : LCC78/05

In the matter between:

**ANGLO AMERICAN FARMS LIMITED**  
**RHODES FOOD GROUP (PTY) LIMITED**

First Applicant  
Second Applicant

and

**NOSISILE JOSEPHINA LUFEFE**

Respondent

**CASE NUMBER : LCC81/05**

In the matter between:

**AMFARMS REALISATION COMPANY LIMITED  
ANGLO AMERICAN FARMS LIMITED**First Applicant  
Second Applicant

and

**RUDOLPH BIERWINKEL**

Respondent

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**JUDGMENT**

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**MEER, J**

[1] This Judgment deals with applications for the eviction of four occupiers in terms of the Extension of Security of Tenure Act No 62 of 1997 (“the Act”). The occupiers are Respondents in four separate cases brought in the Land Claims Court. By agreement the four applications were heard together. Because of common aspects pertaining to each application, I have chosen to write one judgment in which I consider all four applications.

[2] The Applicants, Anglo American Farms Ltd (“AAF”) and certain of its successors in title, have applied for the eviction of the four Respondents as well as a number of other occupiers, from staff accommodation units on several farms within the Groot Drakenstein region of the Western Cape Province (“the farms”). AAF is or was the owner of the farms and provided the accommodation. The other Applicants are the current owners of some of the farms which were sold by AAF. Although different case numbers were allocated to each eviction application, the applications were heard together because of factual similarities and the fact that AAF is a significant Applicant in each case. On 24 and 25 August 2006 the cases of four Respondents in LCC 76/05, 77/05, 78/05 and 81/05 only were heard, it having been previously agreed that the applications for the eviction of the other occupants would be postponed for the hearing of oral evidence.

[3] The Respondents occupy AAF staff housing units. Their rights of occupancy predate February 1997<sup>1</sup> and have their genesis in contracts of employment between the Respondents and AAF, save in the case of Magdelene Simons, the second Respondent in LCC 77/05, whose right of occupation stemmed from the contract of employment between her father and first Applicant.

[4] AAF has sold the land on which the staff housing occupied by the Respondents is situated. In terms of the sale agreements, AAF has undertaken to the purchasers that it will relocate the occupiers of staff housing on the land, or use its best endeavours to do so.

[5] In seeking the eviction of the four Respondents, Applicants offer to relocate them to houses which have already been built and allocated to each Respondent in a housing development project initiated by AAF as a home ownership scheme for its employees, known as the Lanquedoc Housing Project ('LHP') also in the Groot Drakenstein area.

[6] Because of its relevance to the adjudication of these cases, I deem it necessary to explain at the outset how the LHP was established and the basis upon which Respondents are eligible to be relocated there. Applicants contend that the housing units allocated to Respondents in the LHP satisfy the requirements of suitable alternative accommodation, as specified in the Act. The Respondents dispute this and moreover contest the fairness of their proposed relocations.

### **The Lanquedoc Housing Project.**

[7] During 1994 AAF facilitated the initiation of a home-ownership scheme to attempt to secure long-term independent tenure rights for its employees. An organisation known as the Lanquedoc Housing Association ("LHA") was formed.

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<sup>1</sup> The date prescribed in the Act for evictions in terms of Section 10 thereof.

[8] The LHA is a communal property association governed by a constitution, the preamble of which states that the aims and purposes of the LHA is to provide residential accommodation with freehold title to certain employees, ex-employees and legal occupiers residing on AAF's land in the Western Cape. To this end the LHA established the Lanquedoc Housing Project, a development in conjunction with the Department of Land Affairs ("DLA"), and the Cape Winelands District Council ("CWDC").

[9] In terms of the constitution of the LHA in order to be eligible for the allocation of a household unit in the LHP, an occupier was required to become a member of the LHA. The LHA constitution provided for two categories of membership namely, a household member and an individual member. The terms and conditions pertaining to the allocation of housing units in the LHP to each of these categories are set out as follows:

“8.1 Household Member

A household member is one to whom accommodation has been allocated in the past by AAF and who occupies such accommodation as a single unit with a group of persons, whether or not such group comprises a single family unit. A household member is eligible for the allocation of a household unit in the LHP provided that:

- The household member is and remains in good standing with AAF in terms *inter alia* of its employment policy and housing policy in practice, prior to taking transfer of the property allocated to him/her;
- The household member remains resident in AAF accommodation he/she occupies prior to taking transfer of the property allocated to him/her in the LHP;
- The household member has, in view of the more favourable tenure afforded to him/her by virtue of membership of the LHA, entered into an agreement with AAF providing for the relinquishment in due course of the rights of occupation of all persons occupying the house presently occupied by the member and such group of persons;
- The household member has donated whatever DLA first time buyer's grant to which such member may be entitled, to the LHA.”

“8.2 Individual member

“An individual member is one of a closed list of 62 existing members who were residing with a household member and who did not qualify to become household members in their own right but, whose names are included on the list of such members filed with the Department of Land Affairs, having been identified by AAF, in consultation with the LHA as being eligible for the allocation of a “basic unit” in the LHP provided that-

- The individual member is and remains in good standing with AAF in terms of, *inter alia*, its employment policy and housing policy in practice prior to taking transfer of the property allocated to him/her;
- The individual member remains resident in the AAF accommodation he/she occupies prior to taking transfer of the property allocated to him/her;
- The individual member has donated whatever DLA first time buyer's grant to which such member may be entitled, to the LHA."

### **Roles and Obligations of Parties to Lanquedoc Housing Project**

[10] AAF provided the land and improvements, arranged for provision of electricity to the LHP dwellings and was obliged to provide up to R22 585 000.00 to finance the project. AAF's monetary contribution subsequently increased to R29 359 000; AAF's rights and obligations were subsequently ceded and assigned to Amfarms Realisation Company Limited).

[11] The DLA provided some 604 grants of R16 000.00 each in respect of qualifying members of the LHA and made available a planning grant in the amount of approximately R1 290 000.00, giving a total of R9 664 000.00;

[12] The CWDC, which was to implement the LHP on the DLA's behalf, provided bulk services to the LHP to a value of some R2 500 000.00, provided 479 grants of R4 000.00 each for internal services, giving a total of R4 366 000.00. The CWDC has managed the development, seeing to payments to contractors and professional consultants who in turn were responsible for ensuring compliance with building standards and regulation.

[13] The LHA has co-ordinated the signing of deeds of sale by qualifying members, represented its members, generally facilitated the LHP, accepted the transfer of land and transferred erven to qualifying members.

[14] What the LHP has in effect created is a village of several hundred houses to which it is intended all qualifying members of the LHA including those who currently remain in occupation of housing units on AAF's farms, would be relocated.

[15] Qualifying members have been moving into the LHP houses in phases since February 2004. The Respondents, all of whom have been accorded the status of household members under the LHA constitution, have consistently refused to relinquish their rights of occupation in respect of the units they currently occupy, and have likewise consistently refused to relocate to houses in the LHP which have been built and allocated to them.

[16] Some nineteen LHP houses including those allocated to the Respondents remain unoccupied. In August 2004 there were mass invasions of these unoccupied houses resulting in violence, intimidation, vandalism and damage to property, culminating in urgent High Court proceedings and the evictions of the mass invaders in November 2004. Vandalism has however continued, so much so that the Respondents' houses are currently uninhabitable. The Applicants have however undertaken to restore the unoccupied houses to their original state before the Respondents move into them.

[17] According to Applicants the Respondents' refusal to move to the LHP houses allocated to them, have resulted in security problems in Lanquedoc, and hinders the implementation of the sales of AAF's businesses and property.

Against this background I consider each application for eviction, within the context of the Act.

### **The legal framework**

[18] The grounds upon which an occupier can be evicted are set out at Section 9 of the Extension of Security of Tenure Act No. 62 of 1997. The section states:

“9 Limitation on eviction.

- (1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.
- (2) A court may make an order for the eviction of an occupier if-
  - (a) the occupier's right of residence has been terminated in terms of Section 8;
  - (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
  - (c) the conditions for an order for eviction in terms of Section 10 or 11 have been complied with; and
  - (d) the owner or person in charge has, after the termination of the right of residence, given-
    - (i) the occupier;
    - (ii) the municipality in whose area of jurisdiction the land in question is situated; and
    - (iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,

not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with."
- (3) For the purposes of subsection (2)(c), the Court must request a probation officer contemplated in Section 1 of the Probation Services Act, 1991 (Act No. 116 of 1991), or an officer of the department or any other officer in the employment of the State, as may be determined by the Minister, to submit a report within a reasonable period-
  - (a) on the availability of suitable alternative accommodation to the occupier;
  - (b) indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children, if any, to education;
  - (c) pointing out any undue hardships which an eviction would cause the occupier; and
  - (d) on any other matter as may be prescribed"

[19] It is common cause that the mandatory procedural requirements prescribed at Sections 9(2)(b) and 9(2)(d) have been complied with in each application before me and I shall accordingly dwell no further thereon. I shall instead consider in each application

whether the substantive requirements prescribed at Sections 9(2)(a) and 9(2)(c) of the Act have been complied with and whether the Respondents stand to be evicted. I commence with the applications for the eviction of Respondents Vikilahle, (LCC76/05) and Bierwinkel (LCC81/05) . Given that Applicants seek to evict both these Respondents for the same reasons, and rely on Sections 8(2), 10(1)(b) and 10(2) of the Act in doing so, it is convenient to consider the applications for their evictions in tandem, as it were.

**The Eviction Application and History of the Occupation of Nkosincedile Vikilahle (“Vikilahle”), the third Respondent in LCC76/05**

[20] The Applicants in LCC 76/05 seek to evict Vikilahle, the third Respondent in that case from the farm Thembaletu, in the vicinity of Boschendal, Groot Drakenstein. The first Applicant, in LCC 75/05, Amfarms Realisation Co. Ltd is the current owner of the farm. AAF, the second Applicant, is both the former owner of the farm and former employer of Vikilahle, who accorded him rights of occupancy thereon. The third Applicant, Boschendal Pty Ltd currently leases the farm from the first Applicant.

[21] Vikilahle currently resides in a house known as 9 Thembaletu, Married Quarters, with his wife, Fundiswa and their two minor children. He was employed by AAF in 1988 as a labourer in one of its business, Werda Piggery. Vikilahle’s right of residence arose from his contract of employment with AAF and his continued right to occupation and residence in AAF housing was dependant and subject to the continued existence of the contract of employment between him and AAF. The right of his family members to live with him also derived from his contract of employment.

[22] In 1998 Vikilahle was retrenched for operational reasons in accordance with the provisions of the Labour Relations Act. This occurred when Werda Piggery where he was employed, was sold to Delta Valley Farms (Pty) Ltd. Vikilahle did not dispute his retrenchment. Whilst Vikilahle’s right of occupation at Thembaletu became terminable by AAF when he was retrenched, AAF did not immediately terminate his right of occupation. Instead, it was arranged that he would continue staying in the Thembaletu

unit, on the basis, so Applicants contend, that he had agreed to participate in the Lanquedoc Housing Project, to comply with the obligations involved in the LHP, and to move to the house allocated to him in the LHP once it was available for accommodation. For this purpose, according to Applicants, Vikilahle applied to and became a member of the LHA.

[23] Some time after Vikilahle's retrenchment, he was employed by Delta Valley Farms. Pending his move to the Lanquedoc Unit a lease arrangement was concluded with Delta Valley Farms in respect of his continued occupation of the Themba lethu Unit.

[24] In 2003, Amfarms transferred the Themba lethu Farm on which Vikilahle resides to its associated company, Amfarms Realisation (Pty) Ltd, which in turn sold the land in late 2003 to a Black Empowerment Company, Purple Plum Properties 59 (Pty) Ltd. To date the land has not been transferred to Purple Plum Properties and Amfarms Realisation remains its registered owner. The land is currently leased to Boschendal Ltd. It is for this reason that Amfarms Realisation and Boschendal Ltd came to be joined as co-Applicants in LCC76/05

[25] During 2004 the Lanquedoc unit allocated to Vikilahle, Erf No. 247 Akkerlaanstraat became available for occupation, but despite being requested repeatedly to sign the necessary documentation and move out of the Themba lethu unit, he failed to do so. Applicants therefore commenced proceedings for Vikilahle's eviction under the Extension of Security of Tenure Act.

[26] Accordingly on 29 November 2004 in compliance with Section 9(2)(b) of the Act, Vikilahle was given notice of termination of his right of residence and notice to vacate the residence within 30 days, by 31 December 2004. His wife, Fundiswa, was notified at the same time that her right of residence was also terminated and she too was given notice to vacate by 31 December 2004. Vikilahle and his wife however have to date refused to vacate the Themba lethu unit.

[27] Consequently, and acting in accordance with Section 9(2)(d) Applicants caused a written notice of the intention to obtain an order for eviction of Vikilahle to be served timeously on the relevant Municipality and the Head of the Provincial Office of the Department of Land Affairs for the area. The eviction application itself was served on Vikilahle two months before the date of commencement of the hearing.

**The Eviction Application and History of the Occupation of Rudolf Bierwinkel, the Respondent in LCC 81/05**

[28] The Applicants in LCC81/05 seek to evict Rudolf Bierwinkel from the farm Bethlehem in the vicinity of Boschendal. Amfarms Realisation Pty Ltd, the first Applicant is the owner of the farm whilst the second Applicant AAF is Both its former owner and Bierwinkel's former employer who accorded him the right of occupation.

[29] Bierwinkel is currently 58 years of age. He resides in a house known as 6 Bethlehem on the farm Bethlehem. His three adult siblings and his 9 year old child reside with him. Bierwinkel was employed by AAF in February 1987 as a labourer in the fruit division. The house at 6 Bethlehem was originally allocated to Bierwinkel's father and Bierwinkel and his siblings lived there on the basis of their father's occupancy. When Bierwinkel's father died the house was allocated to Bierwinkel, solely on the basis that Bierwinkel himself was an employee of AAF. His continued right of occupation was dependant on his continued employment with AAF.

[30] Bierwinkel was permitted to have his immediate family reside with him as long as he continued in AAF's employment. It is Applicants' contention that their rights of occupation were dependant on Bierwinkel's and were regulated by AAF's housing policy, which required a written application for permission for occupation by adults over the age of 18 who were not registered full time students or direct dependants. No written application has ever been made by Bierwinkel in respect of the adult siblings who live with him. Of the siblings Lillian Bierwinkel ("Lily"), the eldest, aged 56, worked for

AAF from time to time but never as a permanent employee. She is currently a seasonal worker at Imibala Orchards.

[31] Bierwinkel was retrenched by AAF in 1998. He did not dispute his retrenchment. Although Bierwinkel's right of residence at Bethlehem became terminable by AAF when he was retrenched, AAF did not immediately terminate his right of occupation. Instead he was permitted to stay on at Bethlehem on the basis, so Applicants contend, that he agreed to participate in the LHP, by applying for membership of the Lanquedoc Housing Association. This, according to Applicants entailed that he would move to the house allocated to him in the LHP once it was available for accommodation.

[32] In 2003 Amfarms transferred the farm, Old Bethlehem, to Amfarms Realisation (Pty) Ltd, which in turn in late 2003 sold the farm to the Black Empowerment Company, Purple Plum Properties 59 Pty Ltd. In terms of the sale agreement, Amfarms has undertaken to relocate, or use its best endeavours to relocate the occupiers of staff housing on the land. The land is currently leased to Boschendal Ltd.

[33] During 2004 the Lanquedoc unit allocated to Bierwinkel, Erf 377 Wildeklawer Street, Lanquedoc Village, became available for occupation by him, but he refused to move. On 01 December 2004 consequently, Bierwinkel was given written notice that as a result of his failure to move to the Lanquedoc unit in accordance with the LHP requirements, his rights of residence had been terminated and he was required to vacate the Bethlehem house by the end of February 2005, failing which an eviction order would be sought. The adults living with Bierwinkel were likewise given notice.

[34] Bierwinkel avers that he is prepared to move to the Lanquedoc unit, provided that his sister, Lily Bierwinkel is allocated LHP housing in her own right, in which case he contends there would be no need for him to oppose the application for his eviction. When his house in Lanquedoc was ready for occupation, he demanded a house for his sister before he would move. In his answering affidavit, Bierwinkel however, in addition raised

concerns that the Lanquedoc unit is extremely small and he denies that it compares favourably with the accommodation at the Bethlehem unit currently occupied by him.

[35] Against this background to the rights of occupation acquired by Vikilahle and Bierwinkel I turn to consider the substantive basis upon which their evictions are sought, more particularly whether the grounds for eviction as specified at Sections 9(2)(a) and 9(2)(c) of the Act are present.

**Compliance with Section 9(2)(a) of the Act and Applicants' Reliance on Section 8 (2)**

[36] Applicants contend that in compliance with Section 9(2)(a) of the Act, Vikilahle's and Bierwinkel's rights of residence were terminated in terms of Section 8(2) as a consequence of the termination of their employment, as their rights of residence arose solely from their contracts of employment. The fact that they continued in occupation after the termination of their employment does not alter this. In this respect, Mr Breitenbach for the Applicants submitted that the employment agreement was not restricted to the wage work bargain but included also the staff housing agreement governed by AAF's housing rules and policy. When Vikilahle's and Bierwinkel's contracts of employment were terminated it was only the wage work agreements which came to an end. The occupation agreements included in the employment agreements became terminable but continued, until they were terminated at a later stage. Their rights of residence were therefore terminated in terms of Section 8(2) of the Act.

[37] Ms Rabkin-Naiker for the Respondents, argued in contrast, that upon the termination of the contracts of employment, the failure by AAF to terminate their rights of occupation meant that their continued occupation did not flow from their contracts of employment. The termination of their rights of occupation was accordingly not in terms of Section 8(2)(a).

[38] In my view, the fact that an employer elects to terminate a right of occupation which arises from a contract of employment, not upon the termination of employment,

but at a later stage does not in any way alter the fact that the right of occupation had its genesis in the contract of employment. This must be especially so in circumstances such as this, where there is no evidence that Bierwinkel's and Vikilahle's continued occupation was renegotiated on some basis not related to their status as employees. Their rights of occupation must in the circumstances have been terminated in terms of Section 8(2), notwithstanding the time lapse following the termination of their employment. I accordingly find that Section 9(2)(a) has been complied with.

**Compliance with Section 9 (2) (c) of the Act and Applicants' Reliance on Section 10 (1) (b)**

[39] Applicants contend there has been compliance with Section 9(2)(c) as both Vikilahle and Bierwinkel have committed breaches as contemplated at Section 10(1)(b) of the Act. Their failure to move to the housing units allocated to them in the LHP despite their agreement to participate in and comply with the requirements of the LHP constitutes, so the argument goes, a breach of a material and fair term of an agreement pertaining to their right to reside, a breach which they did not remedy despite receiving one month's notice. As the occupation agreement was a component of the employment agreements, by refusing to move, they were in breach, the argument continues, both of the employment agreement and the occupation agreement of which the LHP arrangement was a part. This, argued Mr Breitenbach constituted a material breach in terms of Section 10(1)(b).

[40] In the alternative Mr Breitenbach argued that Vikilahle and Bierwinkel stood to be evicted under Section 10(2) of the Act flowing from their retrenchments. The units allocated to them at the Lanquedoc Village satisfied the requirements of suitable alternative accommodation as specified at Section 10(2) of the Act, he submitted.

[41] Ms Rabkin-Naiker argued on behalf of both Bierwinkel and Vikilahle that there had been no breach by them as contemplated at Section 10(1)(b). Whilst conceding that they had signed to become members of the Lanquedoc Housing Association, she disputed

that they were obliged on the basis of the arrangements with them that Applicants relied on, to move into the LHP houses, and that they were in breach of such obligations. She suggested moreover, that such arrangements had an aspect of coercion. In addition, she submitted that in terms of the constitution of the LHA, which AAF was a party to drafting, a person only becomes the beneficiary of rights and obligations of membership of the LHA once he/she has signed a specific agreement in respect of the termination of the right of occupation, which neither Bierwinkel nor Vikilahle had done. A term of such agreement is that an occupier acknowledges that the housing allocated is suitable alternative accommodation which neither of these two Respondents had. Applicants, she said, had in the circumstances failed to prove the terms of the arrangements in relation to them. I do not accept this. Both Bierwinkel and Vikilahle admitted to applying for membership of the LHA and the former is prepared to move to the LHP house if his sister is allocated a house of her own. Neither Bierwinkel nor Vikilahle moreover dispute the terms of the arrangements.

[42] Nor do either of these two Respondents take issue with the founding affidavit of Sharon Hoskings for AAF which states that a proviso for applying and being accepted as a household member of the LHA was the entering into an agreement with AAF providing for the relinquishment in due course of the rights of occupation of all persons occupying the house presently occupied by the member. Nor do they claim to have been coerced into joining the LHA. The fact that Vikilahle and Bierwinkel might not have signed agreements terminating their rights of occupation, and the fact that they made no acknowledgments about suitable alternative accommodation, does not detract from this.

[43] This being so, I find that both Respondents, Vikilahle and Bierwinkel have committed breaches as contemplated at Section 10(1)(b), of their occupation agreements (which endured after the termination of their contracts of employment) as well as of the LHA agreements.

[44] AAF has complied with the terms of the agreements pertaining to their rights to reside on the land and has fulfilled its duties in terms of the law whilst Vikilahle and

Bierwinkel have each breached a material and fair term of the agreement although reasonably able to comply therewith. They have not remedied their breaches despite being given one calendar month's notice in writing to do so.

### **Applicants' Reliance on Section 10(2) of the Act**

[45] In seeking the eviction of Bierwinkel and Vikilahle Applicants rely in addition on Section 10(2) of the Act. Such reliance must be in the alternative to Applicants' reliance on Section 10(1)(b). This is so because a Court may grant an eviction order under Section 10(2) if none of the circumstances at Section 10(1) apply, and if it is satisfied that suitable alternative accommodation is available to the occupier concerned.

[46] Given my finding that the circumstances at Section 10(1)(b) apply, it is not necessary for me to consider if suitable alternative accommodation is available under Section 10(2). The availability of suitable alternative accommodation nonetheless falls to be taken into account as it is a factor prescribed under Section 9(3) for consideration in a probation officer's report stipulated for at that section. What follows is an assessment and comparison of their current accommodation with that of the LHP houses allocated to them. I consider the situation of each of them in turn.

### **Vikilahle- Suitable Alternative Accommodation**

[47] A probation officer's report although requested was not furnished within a reasonable time in respect of Vikilahle. This was so because he refused to grant the officer access to his premises. An inspection in loco was however conducted by the Court both on the premises in which Vikilahle currently resides and an identical LHP house to the one allocated to him. The inspection revealed the following:

[48] Vikilahle currently resides in AAF's married staff housing at Thembalethu hostel, at 9 Thembalethu Married Quarters. He lives there with his wife and two minor children. The Thembalethu unit comprises two bedrooms of 9m<sup>2</sup> each, a lounge/kitchen area of

17m<sup>2</sup> and an outside bathroom with a toilet, washbasin and shower of 5m<sup>2</sup>. The total area is 41m<sup>2</sup>. There is no electricity, running water or warm water geyser. Vikilahle does not own the unit.

[49] The LHP unit to be allocated to Vikilahle is a newly-built free-standing house with one bedroom downstairs of 9m<sup>2</sup>, a loft room with a usable area of 8m<sup>2</sup> which in the house inspected was used as a second bedroom, a lounge-kitchen area of 18m<sup>2</sup> and an indoor bathroom with washbasin, toilet and bath of 4m<sup>2</sup>. The total area is also approximately 41m<sup>2</sup>. It is common cause that the house will have a pre-paid electricity system, running water and a warm water geyser. In so far as the house allocated to Vikilahle may have been vandalised, Applicants undertake to restore and repair it at their own cost, before Vikilahle moves in. Applicants indicate that the house will be transferred in freehold to Vikilahle as has occurred with other LHP units. Applicants contend moreover that once renovated the LHP unit will have a land and replacement cost of R129 600.00. This is not disputed.. Applicants emphasise moreover that overall the basic community amenities available to the occupiers of the LHP are no less favourable than those available to the occupiers of Thembaletu.

[50] Vikilahle complains that the LHP unit is an unsuitable alternative to the Thembaletu unit, in that the LHP unit has one bedroom whilst the Thembaletu unit has two bedrooms. From the Court's inspection of the LHP unit it is clear that there are two rooms which can be used as bedrooms, one of which is a loft room of 8m<sup>2</sup>. Both rooms compare favourably in size with the bedrooms in the Thembaletu unit. Although the type of unit allocated to Vikilahle is referred to as a single bedroom unit, it is evident that there are two rooms which can be used as bedrooms.

[51] Vikilahle has made unsubstantiated allegations that the Lanquedoc units do not comprise suitable alternative accommodation because of water problems, poor construction, cracks in the walls and that they are unsafe. These allegations are adequately refuted in the replying affidavits by Rose & Lekay.

[52] The term suitable alternative accommodation is defined in Section 1(1) of the Act as meaning:

“Alternative accommodation which is safe and overall not less favourable than the occupiers’ previous situation, having regard to the residential accommodation and land for agricultural use available to them prior to eviction, and suitable having regard to-

- (a) the reasonable needs and requirements of all the occupiers in the household in question for residential accommodation, land for agricultural use, and services;
- (b) their joint earning abilities; and
- (c) the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active.”

[53] The test as to whether alternative accommodation complies with the definition as set out in the Act must in my view be an objective one and not be informed by the subjective assessment of an occupier. An objective assessment of the LHP unit reveals that the lounge-kitchen area is 1m<sup>2</sup> larger than that in the Thembaletu accommodation currently occupied by Vikilahle, it has an indoor bathroom as opposed to an outdoor bathroom at Thembaletu, it has electricity, running water and a warm geyser all of which are not available in Thembaletu. While Vikilahle might not regard the LHP unit as suitable alternative accommodation, I am of the view that objectively viewed and having regard to the community facilities and the nature and quality of the accommodation, the LHP accommodation is not only suitable but in some respects superior to the accommodation currently occupied by Vikilahle. I am satisfied that it meets the requirements of Section 10(2) of the Act.

### **Suitable Alternative Accommodation – Rudolf Bierwinkel**

[54] A probation officer’s report deals briefly with the aspect of suitable alternative accommodation in respect of Rudolf Bierwinkel. In addition the inspection in loco by the Court revealed the following:

[55] Bierwinkel currently resides in AAF staff housing at Old Bethlehem, known as 6 Bethlehem. As aforementioned his three adult siblings and his minor child reside with

him. As also aforementioned Bierwinkel has been allocated a house in the LHP described as Erf. 377 Wildeklawer Street, Lanquedoc Village. A comparison of the house Bierwinkel currently occupies with the type of unit allocated to him reveals the following:

- 1 Bierwinkel currently occupies a semi-detached house comprising of one bedroom of 13m<sup>2</sup>, a lounge of 13m<sup>2</sup>, a kitchen area of 20m<sup>2</sup> and a toilet of 2m<sup>2</sup>. The total area is 48m<sup>2</sup>. There is pre-paid electricity and a tap outside the house, but no water inside the house and no warm water geyser. Bierwinkel does not own the house.
- 2 The LHP unit allocated to Bierwinkel is a newly-built free-standing house with one bedroom downstairs of 9m<sup>2</sup>, one loft room with a usable area of 8m<sup>2</sup>, a lounge-kitchen area of 18m<sup>2</sup> and an indoor bathroom with washbasin, toilet and bath of 4m<sup>2</sup> (plus internal walls taking up about 2m<sup>2</sup>). The total area is therefore 41m<sup>2</sup>. The house will have a pre-paid electricity system, running water and a warm water geyser. Bierwinkel will have freehold title as has occurred with other Lanquedoc houses already transferred to occupants. The undisputed replacement cost of the Lanquedoc house is R129 000.00. In so far as the LHP house allocated to Bierwinkel may have been vandalized, it will be repaired and restored to its original state at the expense of the first and second Applicants before he is required to move into it.

[56] The concerns raised by Bierwinkel about the LHP unit are the lack of a proper superette, the fact that it does not have a spacious yard and well established garden, like the one he enjoys at Bethlehem, and the fact that the unit is extremely small for those accommodated in his current residence.

[57] An objective assessment of the LHP unit allocated to Bierwinkel reveals that it will provide him with an additional room which could be used as a bedroom, indoor running water, and a warm water geyser. He will also enjoy ownership which he

currently does not. Whilst the Lanquedoc unit is not situated on farm land, it has a yard in which a garden may be established. This and the fact that it is not disputed that the community facilities in both Lanquedoc and Bethlehem are generally comparable, leads me to the view that in the case of Bierwinkel too, the accommodation at Lanquedoc is not only suitable but in some respects superior to the accommodation currently occupied by Bierwinkel, and accordingly meets the requirements of Section 10(2) of the Act.

[58] I accordingly find that there has been compliance with Section 10(2) of the Act in respect of both Vikilahle and Bierwinkel.

### **The Status of Lilian Bierwinkel (“Lilly”)**

[59] As aforementioned Bierwinkel is prepared to move to the Lanquedoc house, if LHP accommodation is offered to his sister Lilly. Ms Rabkin-Naiker urged that Lilly be declared an occupier deserving of housing. She emphasized that Lilly had lived in the Bierwinkel house for over 25 years with AAF’s knowledge, and she was until now not sought to be evicted. The AAF housing rules had, she submitted, discriminated against persons such as Lilly who had lived and worked on Amfarms most of her life, but had in effect been treated as a perpetual minor, with her rights dependant on either her father or brother.

[60] There is, stated Ms Rabkin-Naiker, as yet unallocated housing in the LHP, and first Applicant has the ability to make housing arrangements for long term residents, out of kilter with LHA rules. The refusal to accord Lilly the requisite status cannot be considered fair in the circumstances. At the very least, she urged that an order for eviction not be granted until Lilly’s situation is determined or an application for LHP housing is brought by her.

[61] Fair or unfair, AAF’s failure to allocate LHP housing to Lilly is in keeping both with the AAF and LHA housing allocation policy. In terms of AAF’s housing policy, housing on its farms was over the years only provided to certain of its permanent

employees. Lilly has never been a permanent employee of AAF, notwithstanding the many years that she has lived in the Bierwinkel family home, and the periods she has have worked on the farm. Consequently, and in keeping with AAF's housing policy, she was never entitled to company housing in her own right, did not qualify for membership of the LHA and was not allocated a unit in the LHP.

[62] As for the submission that Lilly be accorded LHP housing as an occupier, it must be recalled that Lilly's occupancy arose from her status as a family member, initially of her father and subsequently of her brother, Rudolf Bierwinkel, both occupiers and permanent employees whose consent to live in AAF housing with family members stemmed from their contracts of employment. Lilly was at no stage an occupier with consent to reside in her own right.

[63] In *Landbounavorsingsraad v Klaasen* 2005(3) SA 410 Gildenhuis J at para 21 page 418 stated:

“The requirement of the Tenure Act that an occupier must have or must have had consent to reside on the land, means that the person concerned must be or must have been a party to a consent agreement with the owner of the land or with the person in charge ...”

and at para 23 on page 419:

“A person residing on land will not be an occupier (as defined) unless there is a legal nexus between family members living with that person on the one hand, and the owner or person in charge on the other.

The family law rights of the family members do not turn them into occupiers”.

[64] Rudolf Bierwinkel and his father were themselves parties to a consent agreement with AAF in terms of which they resided on AAF land. Lilly was a family member who was not party to the agreement that constituted the consent to reside on the land. She had the status of a family member and thus did not become an occupier in her own right.

[65] It is of course open to Lilly to apply by way of legal proceedings or otherwise for housing in the LHP to be allocated to her. If, at all, such an application can be entertained, it is urged that she be given favourable consideration.

[66] I can find no justification for staying an eviction of Rudolf Bierwinkel pending an application which may be brought by Lilly Bierwinkel. The house in which the Bierwinkels currently reside is no bigger than the LHP unit allocated to her brother. She could thus just as easily apply from the LHP accommodation.

### **The joinder of Purple Plum Properties**

[67] Both Bierwinkel and Vikilahle stated in answering affidavits that the Applicants' failure to join Purple Plum Properties (Pty) Ltd, the purchaser of the land on which their Bethlehem and Thembaletu houses are situated, renders the applications for their eviction, defective. In response thereto a replying affidavit on behalf of Purple Plum indicated that it does not wish to be joined. Mr Breitenbach, for Applicants submitted that Purple Plum, having neither ownership of nor control over the relevant property at this time, does not need to be joined. Purple Plum Properties Pty Ltd have elected to abide the decision of the court.

[68] Ms Rabkin-Naiker raised the possibility that Purple Plum Properties, as the successor in title to the land may take a different stance in respect of the evictions and submitted that this consideration should weigh with the Court. I can find no justification for considering the stance of a successor in title who is not a party to these proceedings. I note moreover that even were the land to be transferred to Purple Plum Properties, the status of Bierwinkel and Vikilahle as occupiers whose rights of residence have been terminated will apply also *vis a vis* Purple Plum Properties as the successor in title.

### **The eviction application of Nosisile Josephina Lufefe, Respondent in case number LCC78/05**

[69] AAF and Rhodes Food Group (Pty) Ltd, the former and current owners of the land on Werda where Ms Lufefe resides, seek her eviction in this application as first and second Applicants respectively.

[70] Ms Lufefe is over 60 years of age. She is a former employee of AAF. She was apparently born on 09 March 1942 and had already reached the age of 60 when her right of residence was terminated on 11 July 2005. She resides in a house known as 7 Werda, Lanquedoc Groot Drakenstein. Her right of occupation stemmed from her employment. Eight adults and two minor grandchildren also reside with her. She has been residing in Werda for at least 10 years. She therefore has the status of a long term occupier under Section 8(4) of the Act which states:

“The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years; and

- (a) has reached the age of 60 years; or
- (b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge,

may not be terminated unless that occupier has committed a breach contemplated in section 10 (1) (a) (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.”

[71] Applicants seek Ms Lufefe’s eviction on the basis that she has, as a Section 8 (4) occupier of over 60 years of age, who has lived on the farm for more than 10 years, committed a material breach in terms of Section 10 (1) (b) of the Act.

### **History of Lufefe’s Employment.**

[72] Lufefe was employed by AAF in 1990 as a labourer in its piggery. The Werda unit she occupies was allocated to her on a shared basis with another employee. Lufefe was allocated housing solely on the basis that she was an employee of AAF and her continued right to occupation and residence was subject to the continued existence of the contract of employment between her and AAF.

[73] Lufefe was permitted to have her immediate family live with her as long as she continued to have a right of occupation, in accordance with AAF's housing policy and rules which require, *inter alia* a written application for permission for occupation by adults over the age of 18 who were not registered full time students or direct dependants. No written application was made by Lufefe in respect of any of the adult occupiers who reside with her.

[74] On 31 October 1999 Lufefe, then aged 57, was retrenched when the AAF business in which she was employed, the Werda piggery was sold to Rhodes Food Group Ltd. In terms of the sale agreement AAF undertook to relocate or use its best endeavours to relocate the occupiers of staff housing on Werda.

[75] Although Lufefe's right of residence at Werda became terminable by AAF when she was retrenched, AAF did not immediately terminate her right of occupation as it was entitled to do under her employment agreement. Instead, AAF permitted her to stay on at Werda. Whilst Applicants initially contended that Lufefe applied to become a member of the LHA, they accepted Lufefe's denial that this was not the case. There is no evidence as to precisely what the arrangement was concerning Ms Lufefe's continued occupation of the house at Werda after she was retrenched. AAF, however permitted her to stay on at Werda and built a house for her at the Lanquedoc Housing Village.

[76] In 2004 the LHP house allocated to Lufefe was ready for occupation but she refused to move despite being requested repeatedly to do so. Consequently on 1 December 2004, Lufefe was given notice that she was in breach of material and fair terms of the agreement relating to her continued occupation of the Werda unit and given one month to remedy the breach.

**Are their grounds for the eviction of Lufefe ?**

[77] It is common cause that the Applicants have complied with the procedural requirements specified at Sections 9(2)(b) and 9(2)(d) of the Act. In compliance with Sections 9(2)(a) and 9 (2) (b) Applicants as aforementioned, contend that Ms Lufefe's right of residence as a long term occupier stands to be terminated in terms of Section 8(4) as she has committed a material breach under Section 10(1)(b), a breach which Mr Breitenbach explained as follows:

[78] Ms Lufefe's employment agreement was not restricted to the wage-work bargain. Included in her employment agreement was the staff housing agreement comprising of AAF's housing rules and policy, or the occupation agreement. The term of Lufefe's employment by AAF that she could stay at 7 Werda while employed, was a material and fair term of the agreement pertaining to her right of residence.

[79] As a consequence of Lufefe's retrenchment, the termination of the wage-work agreement occurred. The occupation agreement component of the employment agreement became terminable but it was not terminated. By permitting Lufefe to stay on after her retrenchment and until her house in the LHP became available, the Applicants complied with the occupation agreement and more. The Applicants have otherwise fulfilled their duties in terms of the law. Lufefe, explained Mr Breitenbach, breached the material and fair term of the agreement that she could stay at 7 Werda while employed, by failing to move, when in 2004, several years after her retrenchment, she was asked by AAF to move into the LHP house built for her. Although Lufefe is reasonably able to comply with this term, she has not remedied the breach despite being given one calendar months notice in writing to do so.

[80] Ms Rabkin-Naiker argued that Applicants could not rely on a breach of the employment contract in terms of Section 10(1)(b) given that the employment contract was terminated when Ms Lufefe was retrenched in 1998. There cannot, she submitted, be a breach of an agreement which has been terminated. Applicants' reliance on the employment agreement is untenable in the circumstances.

[81] I cannot accept that in failing to move, Ms Lufefe committed a material breach of an agreement as contemplated at Section 10 (1) (b) of the Act, for the simple reason that there is no evidence that she was party to any agreement that she would move. This being so, I am unable to find that there has been compliance with the mandatory requirement for an eviction prescribed at Section 9 (2) (c) of the Act, and I accordingly cannot grant an order for her eviction. I however express my concern about Lufefe remaining in isolated occupation at the Werda dwelling she occupies, which the inspection in loco revealed, had no electricity. The LHP type unit allocated to her appeared preferable as is evident from the following assessment of both dwellings during the inspection :

[82] The Werda house which Lufefe currently occupies comprises a one roomed unit with an outside bathroom which forms part of a larger unit. The one interior room, a bedroom, is 11m<sup>2</sup>, the other interior room, the kitchen is 11m<sup>2</sup>, the outside bathroom is 3m<sup>2</sup>. The unit has no electricity and no geyser. The total enclosed area is 26m<sup>2</sup>. There is a front stoep of 6m<sup>2</sup> and a back stoep of 5m<sup>2</sup>. There is a makeshift structure outside of 13m<sup>2</sup> which was suggested to be unlawful. There are an additional 2 bedrooms in the unit. Lufefe and her extended family are currently occupying these rooms although they were not allocated to her. She evidently moved into these bedrooms which were vacated when the other occupant moved. Whilst Lufefe contends that she is entitled to occupy 3 bedrooms, this appears not to be the case as she has never had permission to occupy the other 2 bedrooms. Lufefe does not own the unit she currently occupies.

[83] By contrast the LHP unit allocated to her is a newly-built free-standing house with 1 bedroom downstairs of 9m<sup>2</sup>, a loft area of 8m<sup>2</sup> which could be used as a second bedroom, a lounge/kitchen area of 18m<sup>2</sup> and an indoor bathroom with washbasin, toilet and bath of 4m<sup>2</sup> (plus internal walls taking up about 2m<sup>2</sup>). The total area is therefore 41m<sup>2</sup>. The house will have a pre-paid electricity system, running water and a warm water geyser. Lufefe will be entitled to freehold ownership of the unit as has occurred with occupiers who have been relocated to houses in the Lanquedoc Village. Once renovated,

Applicants' undisputed contention is that the LHP unit will have a land and replacement cost of R129 600.00.

[84] Lufefe complains about the damp conditions at Lanquedoc. An affidavit by the LHP project manager indicates that AAF and the Cape Winelands District Municipality have committed themselves to a R12million, 12 month project to extend the storm water infrastructure throughout the LHP which should take care of any concerns pertaining to damp.

[85] The Lanquedoc unit will give Lufefe an indoor bathroom, electricity and warm water geyser all of which she does not currently enjoy. Objectively speaking such accommodation is superior to the accommodation currently occupied by Lufefe and whilst I cannot order her eviction, I urge that she give careful consideration thereto before rejecting it out of hand. I do so particularly in the light of her advanced years which does not augur well for her living in isolation under her present conditions

[86] Ms Rabkin-Naiker submitted that the LHP accommodation would not be suitable for accommodating all the persons who currently live with Ms Lufefe. As the names of these persons, amongst whom are her three adult sons, appeared in a census of people living in the Werda house, she submitted they too were occupiers for whom suitable alternative accommodation should be provided. As in the case of Lillian Bierwinkel referred to above, I am of the view that such persons are not occupiers in their own right, did not have rights of occupation allocated to them as a result of a contract between them and the owner of the land and are accordingly not eligible for consideration as candidates for suitable alternative accommodation in their own right. The undisputed evidence moreover is that the adult occupiers who live with Lufefe do so without permission. Lufefe is required to regularise this situation at Werda. This, of course, presents another reason why it would be in Lufefe's interests to move to the Lanquedoc house, namely, that as owner of the property she would presumably not be required to get permission for her adult sons to live there with her.

**Application to Strike Out.**

[87] Ms Rabkin-Naiker applied to strike out several paragraphs in the replying affidavit of Hoskings on behalf of AAF, on the basis that they dealt with new matter.

[88] The paragraphs deal with aspects of the probation officer's reports. These reports were received by the Applicants' legal representatives in February 2006, but not by Respondents' legal team and were accordingly not referred to in the answering affidavits of Respondents.

[89] Whilst the contents of a probation officer's report is not evidence, it represents important information which the court must consider in terms of Section 9(3). The replying affidavit of Hoskings simply refers to aspects of the probation officer's report which the Court would in any event have taken cognisance of, in the light of the pleadings. It would obviously have been preferable for the Respondents too to have commented on the probations officers' reports. The reports have been available for some time and were filed some months ago. It was not explained why Respondent's legal team did not have access to them.

[90] I do not believe that Respondents have in any way been prejudiced by the references in Hoskings replying affidavit to the contents of the probation officer's reports. The Court will as always attach the requisite weight to these reports irrespective of the references thereto in the replying affidavit of Hoskings. The application to strike out, in the circumstances, is refused.

**The Application for the eviction of Magdelene Simons**

[91] AAF as the former owner and Aleë Bleue (Pty) Ltd as the current owner of the farm Lubeck, on which Magdelene Simons resides, seek her eviction as first and second Applicants respectively.

[92] The Applicants rely on Sections 8(1) and 10(2) in seeking the eviction of Magdelene Simons. As in respect of the other Respondents there has been compliance with the procedural requirements specified at Sections 9(2)(b) and (2)(d) of the Act. Despite receiving proper service of the application for her eviction as well as being notified of the date of the hearing, Simons elected not to oppose the application for her eviction, has filed no answering affidavit and did not appear in Court on the day of the hearing. Her case accordingly stands to be determined on the basis of Applicants' founding affidavit. A report in terms of Section 9(3) pertaining to Simons has been filed and considered.

[93] From the founding affidavit of Hoskings on behalf of AAF the following information emerges in respect of Simons: Simons is currently 49 years of age. She resides in a house known as 5 Lubeck on the farm Lubeck, Boschendal District with her adult daughter. Simons has never been employed by AAF as a permanent employee. The Lubeck house in which she lives was allocated to her late father during his employment with AAF, solely on the basis that he was an employee of AAF, and his continued right to occupation and residence was dependant on his continued employment by AAF. Simons' father was permitted to have his immediate family reside with him as long as he continued in AAF's employment and it was on this basis that Simons was allowed to reside at the Lubeck unit.

[94] When Simons' father passed away the contract of employment between him and AAF ceased to exist and accordingly his right of residence and that of Simons in the Lubeck unit became terminable. It was agreed however, that AAF would not terminate Simons' right of residence on the basis that she agreed to participate in the LHP, and to move to a house allocated to her in the LHP once it was available for accommodation.

[95] On 23 July 2001, Amfarms sold to Meerlust Estates (Pty) Ltd, now renamed Alleë Bleue Pty Ltd the land at Lubeck including the land on which Simons' house was situated. Alleë Bleue is the registered owner of the land. Accordingly AAF and Alleë Bleue have joined as Co-Applicants in the case for the eviction of Simons under

LCC77/05. In terms of the sale agreement AAF has undertaken to relocate or use its best endeavours to relocate the occupiers of staff housing on Lubeck.

[96] During 2004 the Lanquedoc unit allocated to Simons became available for occupation by her but despite being requested repeatedly to comply with all the requirements of the LHP, she failed to move.

[97] On 31 January 2005, Simons was given written notice that as a result of her failure to move to the Lanquedoc unit in accordance with the LHP requirements, her right of residence in the Lubeck unit had been terminated and she was required to vacate the unit within 30 days, failing which an eviction order would be sought. Her adult daughter was at the same time given written notice terminating her right of employment and requiring her to vacate the unit within 30 days. Simons and her daughter have to date failed to vacate the Lubeck unit.

#### **Compliance with Section 9(2)(a)**

[98] Applicants contend that Simons' right of occupation was terminated in terms of Section 8(1) which states as follows:

“Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to-

- (a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;
- (b) the conduct of the parties giving rise to the termination;
- (c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is not terminated;
- (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
- (e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.”

[99] I am of the view that the termination of Simons' right of residence is in accordance with Section 8(1) and just and equitable having regard to the factors specified therein for the following reasons:

- (1) The terms of Simons' father's employment agreement with Amfarms that he and those occupying under him could stay on at the Lubeck unit while he was employed, was a fair term of the agreement pertaining to his right of residence as required at Section 8(1)(a);
- (2) In terms of Section 8(1)(b) AAF's conduct giving rise to the termination was beyond reproach. It permitted Simons to remain in occupation after her father's death although she had no right to do so, and it contributed significantly to the cost of the house allocated to her in the LHA;
- (3) The interests of the parties strongly favour the termination of Simon's right of occupation. Simons can move to a house of her own in the LHP, a large part of which AAF has funded. AAF is obliged to pay rental to Alleë Bleue for as long as Simons occupies the house at Lubeck;
- (4) As Simons did not occupy under a fixed term agreement, she had no reasonable expectation of renewal; and
- (5) AAF followed fair procedure before the termination, which included its repeatedly asking Simons to move to the LHP of her own accord, a factor to be considered under Section 8(1)(e).

**Compliance with Section 9(2)(c)**

[100] Under Section 9(2)(c), Applicants rely on the grounds of eviction as specified at Section 10(2), which apply to instances like that in respect of Simons where Section 10(1) does not apply.

[101] Under Section 10(2) I can grant an order for the eviction of Simons if I am satisfied that suitable alternative accommodation is available to her. The uncontested evidence pertaining to the unit currently occupied by her is that it is 68m<sup>2</sup>, has 2 bedrooms, a lounge, kitchen, hall passage and an inside bathroom. There is also a small outside store room of 2m<sup>2</sup>. The house has electricity and cold running water. Simons does not own the house.

[102] The Lanquedoc unit allocated to Simons has two bedrooms downstairs of 8m<sup>2</sup> and 9m<sup>2</sup> respectively, one loft room which could be used as a bedroom with a usable area of 12m<sup>2</sup>, a lounge/kitchen area of 20m<sup>2</sup>, and an indoor bathroom with wash basin toilet and bath of 3m<sup>2</sup>. The total area is 53m<sup>2</sup>. The house has a prepaid electricity system, running water and a warm geyser. Simons will be the registered owner of the LHP unit. Once renovated the LHP unit will have a land and replacement value of R157 500.00. Overall the basic community amenities available at LHP are no less favourable than those at Lubeck.

[103] I am of the view that in respect of Simon too, objectively speaking the nature and quality of the accommodation at Lanquedoc is suitable if not superior alternative accommodation and accordingly meets the requirement of Section 10(2) of the Act.

[104] In view of all of the above I am satisfied that the Applicants are entitled to orders for the eviction of all four Respondents considered in this judgment. I am however not satisfied that such orders should incorporate also the interdictory relief sought by Applicants, which seeks to interdict respondents from entering upon the land where they currently reside, once they are evicted. As Ms Rabkin- Naicker very properly submitted

there is no justification for the granting of the extraordinary remedy implicit in interdictory relief in the circumstances of these applications. I accordingly grant the following orders.

**Case Number : LCC76/05**

**Third Respondent - Nkosincedile Vikilahle**

1 Within two (2) months of the date of service of the order of the Land Claims Court (“the Order”).

1.1 The third Respondent, Nkosincedile Vikilahle and every other person occupying the house at 9 Thembaletu Married Quarters, Groot Drakenstein, Western Cape Province, through or under the third Respondent shall vacate the said house and Portion No. 11 of the farm Boschendal No. 1674 in the Stellenbosch Municipality, Division of Paarl, Western Cape Province (hereinafter referred to as “Thembaletu”).

2 In the event that the third Respondent and/or any other occupier referred to in paragraph 1 above fails to so vacate within the said two (2) month period, the Sheriff is authorised and directed:

2.1 to evict from Thembaletu the said Respondent and/or other occupier(s) together with their belongings, provided that such eviction shall not be carried out earlier than ten (10) days after the expiry of the said two (2) month period; and

2.2 to ascertain and note the identity of each person so evicted.

3 The Sheriff is authorised to request any person, including members of the South African Police Service (“SAPS”), to assist him in the execution of the eviction, provided that the Sheriff must:

- 3.1 make the request timeously and in writing;
  - 3.2 specify in the request the nature and extent of the assistance required;
  - 3.3 co-operate with the person requested, or the officer commanding the relevant unit of the SAPS, as the case may be, in the planning of the eviction; and
  - 3.4 be present at all times during the eviction.
- 4 Should the third Respondent wish to occupy the house allocated to him in the Lanquedoc Village he shall notify the first Applicant and /or the second Applicant whereafter all necessary steps shall be taken by Applicants and third Respondent to facilitate the third respondent taking occupation.
- 4.1 It is recorded that the house in the Lanquedoc Village allocated to third Respondent is Erf No. 287, Akkerlaanstraat. The said house will be ready for occupation upon the firm of architects supervising the Lanquedoc Housing Project, notifying the first Applicant and/or the second Applicant in writing that it is satisfied that the house in question meets the building standards and specifications set for the Lanquedoc Housing Project.

**Case Number : LCC77/05**

**Second Respondent - Magdelene Simons**

- 1 Within two (2) months of the date of service of the Order of the Land Claims Court (hereinafter “the Order”):
  - 1.1 The second Respondent, Magdelene Simons and every other person occupying the house at, 5 Lubeck, Groot Drakenstein, Western Cape Province, through or under the second Respondent, shall vacate the said

house and Portion No. 18 of the farm No. 1645 in the Stellenbosch Municipality, Division of Paarl, Western Cape Province (hereinafter referred to as “Lubeck”).

- 2 In the event that the second Respondent and/or any other occupier referred to in paragraph 1 above, fails to so vacate within the said two (2) month period, the Sheriff is authorised and directed:
  - 2.1 to evict from Lubeck the said Respondent and/or other occupier(s) together with their belongings, provided that such eviction shall not be carried out earlier than ten (10) days after the expiry of the said two (2) month period; and
  - 2.2 to ascertain and note the identity of each person so evicted.
- 3 The Sheriff is authorised to request any person, including members of the South African Police Service (“SAPS”), to assist him in the execution of the eviction, provided that the Sheriff must:
  - 3.1 make the request timeously and in writing;
  - 3.2 specify in the request the nature and extent of the assistance required;
  - 3.3 co-operate with the person requested, or the officer commanding the relevant unit of the SAPS, as the case may be, in the planning of the eviction; and
  - 3.4 be present at all times during the eviction.
- 4 Should the second Respondent wish to occupy the house allocated to her in the Lanquedoc Village she shall notify the first Applicant and /or the second Applicant

thereof, whereafter all necessary steps shall be taken by Applicants and second Respondent to facilitate the second Respondent taking occupation.

- 4.1 It is recorded that the house in the Lanquedoc Village allocated to second Respondent is Erf No. 641, Botterblom Street. Such house will be ready for occupation upon the firm of architects supervising the Lanquedoc Housing Project notifying the first Applicant and/or the second Applicant in writing that it is satisfied that the house in question meets the building standards and specifications set for the Lanquedoc Housing Project.

**Case Number : LCC81/05**

**Rudolf Bierwinkel**

- 1 Within two (2) months of the date of service of the Order of the Land Claims Court (hereinafter “the Order”):
- 1.1 The Respondent, Rudolf Bierwinkel and every other person occupying the house at 6 Bethlehem, Groot Drakenstein, Western Cape Province, through or under the first Respondent shall vacate the said house and Portion No. 1 of the farm Old Bethlehem No. 153 in the Stellenbosch Municipality, Division of Paarl, Western Cape Province (hereinafter referred to as “Old Bethlehem”).
- 2 In the event that the Respondent and/or any other occupier referred to in paragraph 1 above fails to so vacate within the said two (2) month period, the Sheriff is authorised and directed:
- 2.1 to evict from Old Bethlehem the said Respondent(s) and/or other occupier(s) together with their belongings, provided that such eviction shall not be carried out earlier than ten (10) days after the expiry of the said two (2) month period; and

- 2.2 to ascertain and note the identity of each person so evicted.
- 3 The Sheriff is authorised to request any person, including members of the South African Police Service (“SAPS”), to assist him in the execution of the eviction, provided that the Sheriff must:
- 3.1 make the request timeously and in writing;
- 3.2 specify in the request the nature and extent of the assistance required;
- 3.3 co-operate with the person requested, or the officer commanding the relevant unit of the SAPS, as the case may be, in the planning of the eviction; and
- 3.4 be present at all times during the eviction.
- 4 Should the Respondent wish to occupy the house allocated to him in the Lanquedoc Village he shall notify the first Applicant and /or the second Applicant thereof, whereafter all necessary steps shall be taken by Applicants and the first Respondent to facilitate the first Respondent taking occupation.
- 4.1 It is recorded that the house in the Lanquedoc Village allocated to Respondent is Erf No. 377, Wilderklawer Street. The said house shall be ready for occupation upon the firm of architects supervising the Lanquedoc Housing Project notifying the first Applicant and/or the second Applicant that it is satisfied that the house in question meets the building standards and specifications set for the Lanquedoc Housing Project.

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**JUDGE Y S MEER**

**LAND CLAIMS COURT**

For the applicants :

*Adv A M Breitenbach* instructed by *Sonnenberg Hoffmann Galombik*, Cape Town

For the respondents :

*Adv H Rabkin-Naiker* instructed by *University Law Clinic*, Stellenbosch