# IN THE LAND CLAIMS COURT OF SOUTH AFRICA

**RANDBURG** **CASE NUMBER**: LCC 21R/00
In chambers: **DODSON J** **MAGISTRATE'S COURT CASE NUMBER: 6753/98**

Decided on: 02 May 2000

In the review proceedings in the case between:

**ZACHARIAS JOHANNES PITOUT** Plaintiff

and

**BONAPARTE MBOLANE** Defendant

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**JUDGMENT**

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**DODSON J:**

Background

[1] The plaintiff is the owner of the farm Blackmoor in the district of Newcastle. The defendant resides on the farm. The plaintiff sued the defendant in the Newcastle Magistrate's Court for eviction. No notice of intention to defend was filed. Default judgment was duly sought and granted on 29 April 1999. On 14 March 2000,[1] the magistrate sent the file to this Court, purportedly for purposes of automatic review in terms of section 19(3) of the Extension of Security of Tenure Act.[2] I will refer to the Act as "ESTA".

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1 It goes without saying that this delay of almost a year in the submission of the matter for review was most improper.

2 Act 62 of 1997.

Jurisdiction

[2] The first question which must be determined is whether or not this Court has jurisdiction to review the default judgment. At the time when default judgment was granted and on 14 March 2000 when the magistrate forwarded the file, section 19(3) of ESTA provided that-

> "Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before 31 December 1999, shall be subject to automatic review by the Land Claims Court which may . . . "(the various forms of order which may be made pursuant to a review are then listed).

However, this section was amended by the Land Affairs General Amendment Act, 2000.[3] I will refer to it as "the amendment Act". The amendment Act came into force on 24 March 2000, the day after the file was received by this Court. Section 11(a) of the amendment Act deleted the reference to "31 December 1999" and substituted "a date to be determined by the Minister and published in the Gazette". Section 14 of the amendment Act deems this amendment to have come into operation on 1 January 2000. No date has yet been determined by the Minister. I held in *Lusan Premium Wines (Pty) Ltd v Stoffels and others*[4] that this means, in effect, that the Court's automatic review jurisdiction is extended indefinitely.

[3] This is not the only jurisdictional question. The words in section 19(3) which limit the review function of this Court to orders for eviction "in terms of this Act" are also important. Notwithstanding these words, the Court's review powers under this section have been widely interpreted. In *Skhosana and others v Roos and others*[5] Gildenhuys J said the following regarding section 19(3):

> "Where, in an action for eviction under common law, the defendant raises a defence based on ESTA and the magistrate finds that ESTA is not applicable and grants the eviction order, must the magistrate send the order to the Land Claims Court for automatic review? On a narrow interpretation of 'in terms of this Act' it will not be necessary, because the eviction order was made under common law. However, the legislature in providing for the automatic review of ESTA cases clearly intended that the Land Claims Court must scrutinise the records of those cases to ensure that the provisions of ESTA were correctly applied. It would

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3 Act 11 of 2000.

4 LCC 25R/00, 19 April 2000, internet web site http://www.law.wits.ac.za/lcc/2000/25r_00sum.html

5 [1999] 2 All SA 652 (LCC).

> be absurd if, on the one hand, an eviction order made under the provisions of ESTA has to be reviewed by this Court while, on the other hand, an eviction order under common law consequent upon a decision that ESTA does not apply, is not subject to such review."[6]

[4] To establish whether this Court has jurisdiction in this matter, it is necessary to look at the various documents filed in the course of the proceedings in the magistrate's court. The particulars of claim contain the usual averments relating to the identities of the parties, a statement that the plaintiff is the owner of the farm and an averment that the entire cause of action arose within the jurisdiction of the magistrate's court concerned. It then goes on to say:

> 5.
> "DIE VERWEERDER het vir die EISER op die plaas gewerk as Algemene Plaasarbeider.
>
> 6.
> DIE VERWEERDER en sy gesin/familie het op die plaas gewoon. Die verblyf was onderworpe daaraan dat VERWEERDER in diens van die EISER moes wees.
>
> 7.
> OP of omtrent 17 September 1996 het die VERWEERDER uit eie beweging die diens van die EISER verlaat.
>
> 8.
> DIE VERWEERDER en sy gesin/familie se reg om op die plaas te bly het derhalwe op 17 September 1996 tot .n einde gekom.
>
> 9.
> DIE VERWEERDER is aanvanklik 30 DAE KENNIS gegee om die plaas te verlaat, waarna .n VERDERE SKRIFTELIKE 30 DAE KENNISGEWING gevolg het, waarna die VERWEERDER .n VERDERE 2 (TWEE) MAANDE kans gegun is (ingevolge die bepalings van die Wet op die Uitbreiding van Sekerheid van Verblyfreg 62 van 1997) om, tesame met sy familie, vee en ander besittings, die plaas te verlaat.
>
> 10.
> TEN spyte van aanmaning weier en / of versuim die VERWEERDER om met sy familie en besittings die plaas te verlaat.
>
> 11.
> DIE VERWEERDER het geen reg ingevolge enige wetgewing om tans nog op die plaas te woon nie."

The prayers for appropriate relief follow after paragraph 11 of the particulars.

[5] The plaintiff also filed an affidavit in support of his default judgment application. It repeats the allegations in the particulars of claim in slightly more detail. In paragraph 14 of the affidavit he says:

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6 Above n 5 at para [12].

> "Dit is my respekvolle submissie dat enige regte wat die Verweerder moontlik onder die Wet op die Uitbreiding van Sekerheid van Verblyfreg. . . (en in besonder artikel 8(2) van voormelde Wet) tot verblyf op my plaas . . . mag gehad het, deur sy bedanking beëindig is."

[6] The magistrate's court's decision to grant default judgment is reflected in a stamp on the cover of the file recording that an ejectment order with costs was granted on 29 April 1999. The order is signed by the clerk of the court. No date is specified for vacation of the premises, nor is a date specified on which the eviction may be carried out if the premises are not vacated. If an eviction order is made in terms of ESTA, the determination of such dates on a just and equitable basis is a peremptory requirement of section 12(1).[7] No reasons are given for the judgment, but the absence of the dates required by section 12(1) leads me to conclude that the magistrate [8] did not make the eviction order in terms of ESTA. If the magistrate ought to have applied ESTA, then on the extract from the *Skhosana* judgment which I have referred to above, the Land Claims Court has jurisdiction in terms of section 19(3).

[7] To determine whether the magistrate ought to have applied ESTA, one must have regard to certain of its provisions. ESTA regulates the eviction of "occupiers". An "occupier" is defined as:

> "a person residing on land which belongs to another person, and who has or [sic] on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding-
>
> (a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996);
>
> (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and

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7 See, for example, *Beukes J S (Edms) Bpk v Jagers and others* LCC 1R/00, 18 January 2000, internet web site http://www.law.wits.ac.za/lcc/1999/beukessum.html at para [5]; *Roux v Lekekiso* LCC 13R/98, 16 November 1998, [1998] JOL 4157 (LCC); internet web site http://www.law.wits.ac.za/lcc/lccalph.html at paras [9]-[10].

8 Or the clerk of the court, if he or she acted in terms of rule 12(1)(c) of the rules of the magistrates' courts, which allows the clerk to enter default judgment. I do, however, have serious doubts as to whether this rule may still be applied to evictions, in view of section 26(3) of the Constitution of the Republic of South Africa Act 108 of 1996, which provides that:

> > "No one may be evicted from their home, or have their home demolished, without an order of court *made after considering all the relevant circumstances*." (my emphasis)

(c) a person who has an income in excess of the prescribed amount;"[9]

In terms of section 2 of ESTA, the land to which ESTA applies is essentially rural land, with certain exceptions which are not important for present purposes. It is clear enough that the land in this matter is land as contemplated in section 2. However, on the averments in the particulars of claim, the defendant's consent to reside on the land terminated before 4 February 1997. He therefore does not qualify as an occupier in terms of the definition.

[8] However, in addition to persons who are occupiers in terms of the definition, there is another category of occupiers. Section 3(2) of ESTA provides as follows:

> "(2) If a person who resided on or used land on 4 February 1997 previously did so with consent, and such consent was lawfully withdrawn prior to that date-
>
> (a) that person shall be deemed to be an occupier, provided that he or she has resided continuously on that land since consent was withdrawn; and
>
> (b) the withdrawal of consent shall be deemed to be a valid termination of the right of residence in terms of section 8, provided that it was just and equitable, having regard to the provisions of section 8."

[9] On the particulars of claim and the affidavit in support of the request for default judgment, it is clear that the defendant falls into the latter category. Consent to reside on the land was lawfully withdrawn before 4 February 1997 but he has continuously resided on the land since the withdrawal of consent. Clearly ESTA applies.[10] The defendant could only have been evicted in terms of an order

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9 The definition is contained in section 1 of ESTA. The prescribed amount referred to in paragraph (c) is R5 000. See Regulation R1632 Government Gazette 19587, 18 December 1998.

10 In arriving at this conclusion, I have taken into account a possible argument that a person claiming to be an occupier in terms of section 3(2) must still show that, over and above compliance with section 3(2), he or she is not disqualified in terms of paragraphs (a), (b) or (c) of the definition of occupier. It is not necessary for me to decide this as it is clear on the plaintiff's version that the defendant does not fall into any of these three categories. This emerges from one of the notices annexed to the affidavit in support of the request for default judgment which includes averments to the effect that the defendant is not a labour tenant as defined in the Land Reform (Labour Tenants) Act No 3 of 1996 (see paragraph (a) of the definition), the defendant is using the farm for domestic and subsistence agricultural purposes (see paragraph (b)) and that he is unemployed (see paragraph (c)).

granted in terms of ESTA and, on the basis set out in *Skhosana*, this Court has jurisdiction to review the order.[11]

Does the order comply with ESTA?

[10] The magistrate's decision must therefore be scrutinised for compliance with ESTA. As has been pointed out in almost every automatic review judgment by this Court in terms of section 19(3), before an order of eviction can be granted against an occupier in terms of ESTA, there must be compliance with section 9(2). I do not consider it necessary to set out paragraphs (a) and (b) of section 9(2), as I am satisfied that they were complied with. Section 9(2)(c) was also complied with in terms of ESTA as it read before the amendment Act. I will discuss this issue in more detail below.

[11] Section 9(2)(d) must also be complied with. It requires that-

> "(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."

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11 Note that the example referred to in the *Skhosana* decision contemplated a defendant mounting a defence based on ESTA. In principle, there is no distinction in a situation such as this where, although no defence was raised, the applicability of ESTA was patent on the plaintiff's papers. A person seeking default judgment must show that he or she has made out a *prima facie* case. See, for example, Gering et al "Civil Procedure: High Court" in Joubert (ed) *Law of South Africa* 1st Reissue, Vol 3, Part 1 (Butterworths, Durban 1997) at para 131. No such *prima facie* case is made out if, on plaintiff's own version, there is patently a defence to the claim. See *Atkinson v van Wyk* 1999 (1) SA 1080 (LCC) at para [8].

[12] The content of the notices contemplated by section 9(2)(d)(i) to (iii) is prescribed by regulation.[12] However, these regulations only came into force on 18 December 1998. On the plaintiff's version, these notices were given before that date. The form of the notice to the parties referred to in section 9(2)(d)(i) to (iii) which is annexed to the affidavit in support of the request for default judgment substantially complies with the requirements of ESTA before promulgation of the regulations. However, although the notice claims that it was served on the defendant by hand, on the head of the provincial office of the Department of Land Affairs by registered post and on the local municipality by hand, there is no proof whatsoever in the court file that this was in fact done. Even the provision in the notice for a signature acknowledging receipt by the representative of the municipality is unsigned. No postal slips are annexed and there is no return of service from the sheriff suggesting that he or she served the notice. The plaintiff's attorney was invited to provide proof of service, but no response was received from him.

[13] There may be a further difficulty with the notice, even if it was sent to the addresses it refers to. The address for the head of the relevant provincial office of the Department of Land Affairs is described in the notice as follows:

> "Ms Lisa Del Grande
> Head: Department of Land Affairs
> Vryheid District Office
> Santam Building
> 160 High Street
> Vryheid"

My own understanding from previous matters involving the Department is that the official concerned is based in Pietermaritzburg. In *Rix v Arnolds and others*[13] this Court emphasised the importance of serving the notice on the correct official at the correct address. The magistrate ought not to have granted the order in the absence of averments to show that the person notified was the person contemplated in section 9(2)(d)(iii) of ESTA.

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12 See above n 9.

13 LCC 59R/99, 16 November 1999, internet web site http://www.law.wits.ac.za/lcc/1999/rixsum.html at paras [5] to [10].

[14] There are further deficiencies in the order of the magistrate. As I have pointed out above, sections 12(1) and (2) contain peremptory provisions regarding any eviction order. They read as follows:

> "(1) A court that orders the eviction of an occupier shall-
>
> (a) determine a just and equitable date on which the occupier shall vacate the land; and
>
> (b) determine the date on which an eviction order may be carried out if the occupier has not vacated the land on the date contemplated in paragraph (a).
>
> (2) In determining a just and equitable date the court shall have regard to all relevant factors, including-
>
> (a) the fairness of the terms of any agreement between the parties;
>
> (b) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land; and
>
> (c) the period that the occupier has resided on the land in question."

The magistrate or the clerk simply gave an order of ejectment with no dates whatsoever specified.

[15] Section 13 also contains certain peremptory provisions with which a court must comply when making an eviction order. It reads:

> " (1) If a court makes an order for eviction in terms of this Act-
>
> *(a)* the court shall order the owner or person in charge to pay compensation for structures erected and improvements made by the occupier and any standing crops planted by the occupier, to the extent that it is just and equitable with due regard to all relevant factors, including whether-
>
> (i) the improvements were made or the crops planted with the consent of the owner or person in charge;
>
> (ii) the improvements were necessary or useful to the occupier; and
>
> (iii) a written agreement between the occupier and the owner or person in charge, entered into prior to the making of improvements, provides that the occupier shall not be entitled to compensation for improvements identified in that agreement;
>
> *(b)* the court shall order the owner or person in charge to pay any outstanding wages and related amounts that are due in terms of the Basic Conditions of Employment Act, 1983 (Act 3 of 1983) the Labour Relations Act or a determination made in terms of the Wage Act, 1957 (Act 5 of 1957); and

*(c)* the court may order the owner or person in charge to grant the occupier a fair opportunity to-

(i) demolish any structures and improvements erected or made by the occupier and his or her predecessors, and to remove materials so salvaged; and

(ii) tend standing crops to which he or she is entitled until they are ready for harvesting, and then to harvest and remove them.

(2) The compensation contemplated in subsection (1) shall be determined by the court as being just and equitable, taking into account-

*(a)* the cost to the occupier of replacing such structures and improvements in the condition in which they were before the eviction;

*(b)* the value of materials which the occupier may remove;

*(c)* whether any materials referred to in paragraph *(b)* or contributions by the owner or person in charge were provided as part of the benefits provided to the occupier or his or her predecessors in return for any consideration; and

*(d)* if the occupier has not been given the opportunity to remove a crop, the value of the crop less the value of any contribution by the owner or person in charge to the planting and maintenance of the crop.

(3) No order for eviction made in terms of section 10 or 11 may be executed before the owner or person in charge has paid the compensation which is due in terms of subsection (1): Provided that a court may grant leave for eviction subject to satisfactory guarantees for such payment."

A plaintiff or applicant seeking an eviction in terms of ESTA must set out in the particulars of claim or founding affidavit sufficient information to enable the court to apply its mind to section 13.[14] This is so even if the end result is that the Court is not obliged to make any order in terms of that section. The particulars of claim and the affidavit in support of the request for default judgment did not contain the necessary averments in this regard. The magistrate was thus not in a position to apply section 13, as she was obliged to do.

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14 See, for example, *Theewaterskloof Holdings (Pty) Ltd, Glaser Division v Claasen and others*, LCC 26R/00, 13 April 2000, internet web site http://www.law.wits.ac.za/lcc/2000/26r00.sum.html at para [8]; *Ferguson v Buthelezi and another*, LCC 41R/99, 23 September 1999, [1999] JOL 5408 (LCC), internet web site http://www.law.wits.ac.za/lcc/1999/fergusonsum.html at paras [18] and [22].

[16] In the circumstances, the order of the magistrate's court stands to be set aside. There is another deficiency in the proceedings which took place in the magistrate's court. It relates to the entire process before the magistrate, from the issue of summons. I have already shown that the proceedings for eviction should have been brought in terms of ESTA. In terms of section 17(4) of ESTA, the rules applicable to proceedings for the eviction of an occupier in a magistrate's court are the High Court rules.[15] In my view, the failure to comply with this provision represents another instance of non-compliance with ESTA. However, I do not believe that the legislation envisages that such a breach results in complete nullity of all the steps taken in the proceedings.[16] It will therefore be sufficient if I order that any future steps which are taken in the proceedings are effected in terms of the High Court rules.

[17] There is a further issue to which the setting aside will give rise. Section 10 of the amendment Act introduced a new subsection (3) into section 9. It reads:

> "(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."

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15 Section 17(4) reads:

> "Until such time as rules of court for the magistrates' courts are made in terms of subsection (3), the rules of procedure applicable in civil actions and applications in a High Court shall apply *mutatis mutandis* in respect of any proceedings in a magistrate's court in terms of this Act."

No rules have been made in terms of section 17(3), so the High Court rules apply.

16 See the discussion on this issue in *Rainbow Farms (Pty) Ltd v Fransman* LCC 64R/99, 3 November 1999, internet web site http://www.law.wits.ac.za/lcc/1999/fransmansum.html at para [8] and see *Ferguson* above n 14 at para [32]-[35].

In *Lusan*[17] I held that the amendment applied to proceedings which were still pending in a magistrate's court on 24 March 2000. These proceedings were not pending before the magistrate on that date. Will section 9(3) become applicable once I have set aside the judgment on the basis which I intend doing in this matter? In *Lusan* I left open the question of the applicability of section 9(3) to such cases. The effect of the setting aside is that the magistrate's order becomes a nullity.[18] The proceedings must clearly be treated as though no decision has yet been made by the magistrate. Such proceedings thus become pending proceedings once more. On the basis of this Court's decision in *Lusan*,[19] section 9(3) must now be applied in any further proceedings in the magistrate's court in relation to this matter, save to the extent discussed in paragraph [18].

[18] The conclusion which I have reached in this case must not be read as necessarily requiring that a report will have to be requested in every case that comes before a magistrate. Section 9(3) requires the report for the purposes of section 9(2)(c). Section 9(2)(c) requires that before an occupier can be evicted, -

> "(c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with;".

Whether it is section 10 or 11 which applies depends on whether the occupier concerned was an "occupier" on 4 February 1997 or became one after that. This is a strange provision because, in truth, no-one was an "occupier" on 4 February 1997 because ESTA was not in force then. However, section 10 must be there for a purpose. The distinction links back to the definition of occupier, which includes as a fundamental requirement, consent to reside on the land on or after 4 February 1997. Section 10 clearly is intended to apply to those who already had consent on 4 February 1997. Section 11 applies to those whose consent was secured after 4 February 1997. But what about persons who are deemed occupiers in terms of section 3(2), because their consent was withdrawn before 4 February

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17 See above n 4.

18 The words "set aside" in section 19(3)(b) mean that the magistrate's order is invalid once the Court sets the eviction aside. See the discussion in Claassen *Dictionary of Legal Words and Phrases* 2nd ed Vol 4 (Butterworths, Durban 1997) at S-42.

19 *Lusan* above n 4 at paras [7] to [12].

1997? It seems to me that the overall scheme of the legislation envisages their being treated as persons who were occupiers on 4 February 1997. Section 10 therefore applies in this case.

[19] Section 10 of ESTA reads as follows:

> "(1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if-
>
> (a) the occupier has breached section 6 (3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
>
> (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar month's notice in writing to do so;
>
> (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or
>
> (d) the occupier-
>
> (i) is or was an employee whose right of residence arises solely from that employment; and
>
> (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.
>
> (2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.
>
> (3) If-
>
> (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
>
> (b) the owner or person in charge provided the dwelling occupied by the occupier; and
>
> (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,
>
> a court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to-
>
> (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and

(ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted."

[20] If the requirements of section 10(1) are satisfied, then there is compliance with section 10 and no further investigation is required by the court in relation to section 10(2) or (3) before concluding that section 9(2)(c) is satisfied. Section 10(1) makes no mention of any of the matters referred to in paragraphs (a) to (c) of section 9(3). One may then ask what the purpose is of the report in circumstances where the owner relies only on section 10(1). It is certainly arguable that in these circumstances, the legislation does not envisage the requesting of a report because it would serve no purpose.[20] On the other hand it may be argued that, notwithstanding section 10(1), section 26(3) of the Constitution requires a court to consider "all the relevant circumstances" before ordering an eviction[21] and the report is needed for this purpose anyway. The rejoinder to this may be that the right in section 26(3) of the Constitution has been subject to reasonable limitations in section 10(1) of ESTA which can be justified on the basis of section 36 of the Constitution.[22] Fortunately, it is not necessary for me to decide this difficult issue, as it seems that it must be left open to the plaintiff in any renewed proceedings before the magistrate to decide what his approach will be in terms of section 10. It is also possible that the Minister will by then, in terms of section 9(3)(d), have added to the list of matters to be reported on.

[21] I accordingly make the following order:

(i) the whole of the order made by the Magistrate, Newcastle on 29 April 1999 is set aside;

(ii) the case is remitted to the Magistrate, Newcastle;

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20 This is subject to the possible extension of the list of matters on which a report is required by regulation in terms of section 9(3)(d).

21 Above n 8.

22 Section 36 deals with the limitation of rights.

(iii) the rules of the High Court must be applied to any further proceedings in the matter.

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**JUDGE A DODSON**

For the plaintiff:
*JL Boshoff, Newcastle*

For the defendant:
No appearance