

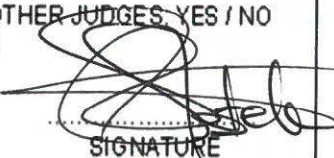


**IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG**

**CASE NO: LCC 02R/2023
MAG CASE NO:1338/2021**

Before the Honourable Flatela J

Delivered on: 07 February 2023

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES YES / NO	
(3) REVISED: YES / NO	
7/02/2023	
DATE	SIGNATURE

In the matter between:

**JOHANNES NICOLAAS JACOBS
JOHANNES NICOLAAS JACOBS
EVENLY JACOBS N.O
ODETTE-MARI BOSHOF N.O
RISJES VALLEI BOERDERY (PTY)LTD**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT**

and

**CHRISTIAAN BESTER
MARIA BESTER
CHRISTOPHER BESTER
ALL PERSONS OCCUPYING THROUGH THE 1ST**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

JUDGMENT

FLATELA J**Introduction**

[1] This is an automatic review emanating from the Magistrate Court, Worcester, Western Cape in terms of sec 19(3) of the Extension of Security of Tenure Act 62 of 1997 (ESTA). The Magistrate granted an eviction order against the first to the fourth respondents from the dwelling which is situated on the Remainder of the Farm Risjei Vallei No.553, Breede Valley Municipality, Division of Worcester in the Province of the Western Cape (the property) on the basis that the first respondent's right of occupation arose solely from the employment contract between him and the former owners of the property. None of the respondents are employed by the applicants. The dwelling is needed for the employees of the Risjies Vallei Boedery (Pty)Ltd (the fifth applicant).

[2] I am required to review the eviction of the respondents, granted on 20 October 2022, by order of the Worcester Magistrate's Court. The application served before me on 10 January 2023.

[3] The property is owned by Kanaan Trust (the Trust), a trust duly registered with the Master of the High Court, Western Cape Division under registration number: IT 000673/2017. The Trust leased the property to Risjies Vallei Boedery (Pty)Ltd (the fifth applicant) which conducts the farming business in the farm. The Trust is represented by its trustees, the second to fourth applicants.

The Parties

[4] The first applicant is Johannes Nicolaas Jacobs a major male director of the fifth applicant and a person in charge of the property. The second to fourth applicants are the trustees of the Trust, acting in their official capacity.

[5] The first respondent is Chritiaan Bester a major male aged 47, who lives in the property. He is a former employee on the farm. The second respondent is Maria Bester aged 62, the first respondent's wife. Mrs Bester has been living in the property since 1993.

[6] The third respondent is Christopher Bester, a major male aged 28. The third respondent is the first and second respondent's son. He was born in 1994 in the property. He regards the property as his home.

[7] The fourth respondent is Rivaldo Minnaar, a minor male learner aged 17. In 2022 he was a grade 11 learner at Breeivier High School. Rivaldo is the first and second respondents was born in 2005 and has been living with the respondents since birth.

[8] The respondents reside in a three-bedroom house in the property. The first and second respondents were given right of occupation of the dwelling by Mr Paul Potgieter, the previous owner of the property. The first and second respondents were both employed by the former owner from 1994 to 2018.

[9] On 10 February 2021 the first to the third respondents were served personally with a notice to terminate their right of occupation. The said notice, dated 21 January 202, also gave them 30 (thirty days) to vacate the property.

Factual Background

[10] The facts are largely common cause. The applicants took ownership of the farm in 2018. The fifth applicant took over farming activities in the property. Mr Jacobs avers that when the 5th respondent took over of the farming activities, he approached the first respondent and offered him employment contract but the first respondent declined the offer. He contends that the first respondent's rights to occupy the dwelling arose from the employment in the farm.

[11] The applicants contended that the dwelling is needed to accommodate their employees as the occupation of the dwelling is subject to the condition that the respondents are employees of the applicants.

[12] The applicants also state that there was never an employment relationship between themselves and respondents, they have no control over the respondents and they do as they please as their relationship cannot be reasonably restored as the applicants simply cannot trust the respondents anymore.

[13] The applicants state that the first respondent does not contribute to the growth and the development of the applicants business. He works on other farms and for other employers and expects to live rent and obligation free.

[14] The first respondent was first given notice to vacate in 2018. The respondents failed to vacate. The applicants launched eviction proceedings of which eviction order was granted by the Magistrate. On review Ncube J set the eviction order aside on the basis of non-compliance with section 8(1)(e) of ESTA.

[15] The applicants aver that he has complied with the requirements of section 8, 9 and 10 of ESTA.

The respondents' submissions

[16] The first respondent opposed the application on the basis that the termination of their right to residence was not just and equitable in terms of section 9(2)(a), read with section 8(1) of ESTA. Secondly, the second respondent contended that the

requirements of section 9(2) read with section 10 of ESTA have not been complied with, therefore the application ought to be dismissed.

[17] The first respondent avers that he has been residing in the farm for 28 years from 1994 whilst the second respondent has been residing in the farm for 29 years since 1993. The first respondent worked in the farm for Mr Paul Potgieter, the previous owner of the property from 1994-2018 as a maintenance worker and second respondent was employed at the creche.

[18] The second respondent was first to arrive in the property in 1993. She came to live in the property with her sister. She was offered employment by the former owner to attend to creche. She resided on the farm in her own right with the consent of the previous owner.

[19] The first and second respondent met in the farm and got married in 1994. In 1994 the third respondent was born in the property. Initially the Besters were granted permission to live in a two-room house. In 1999 they were granted permission to occupy the dwelling.

[20] The first respondent contends that their employment was terminated when the applicants took over the farm. He confirms that he declined the offer of employment from the applicants but states that the reason for declining the offer was because the applicants offered him less rates than what the previous owner offered him. This allegation was disputed by the applicants who showed that the rates were actually higher than the rates from the previous owner. The first respondent exaggerated the rates he was offered by the previous owner. I accept the applicant's version.

[21] The second respondent was not re-employed by the applicant in the same position because there were not enough children to attend the creche. The applicant offered her employment as a general worker to work in the vineyard and to perform related duties. She declined the offer due to her health challenges. The second respondent suffers from chronic back pain and arthritis. She receives medical treatment for her condition.

[22] The first respondent earns a stipend from the profits of a spaza shop that they are operating from the property in the amount of R 2 500 plus the pension grant from the government. The third respondent is not working. Rivaldo receives state grant in the amount of R450 per month which is used to take care of his needs.

[23] The third respondent has been living on the property for 28 years since birth. He regards the property as his home. He is unemployed. It is not clear from the papers if he was offered any employment by the applicants.

[24] Rivaldo, is a grade 11 learner attending school at Breeivier High School and uses the bus to and from the school. She has been living in the property for 17 years.

[25] The first respondent confirmed that they received a pension pay out in 2018 from the previous owner and they used the money for their daily needs. They also settled their debts and bought a car. The He states that currently they cannot afford to rent a property as they have no means to afford rental. There is no available alternative accommodation for them. They have been on the waiting list of the Municipality for government housing subsidy. They also do not have relatives that can accommodate them.

[26] The first respondent disputed that the dwelling is needed for the employees of the applicant, He states that the applicant has an empty compound that can accommodated 60 people in the farm. The applicants did not deny this allegation.

[27] The first respondent denies that the eviction is just and equitable.

Discussion

[28] It is a common cause that the respondents are occupiers in terms of ESTA.¹ The first to the third respondent have lived in the property before 4 February 1997.² The third and fourth respondent were born in the property.

[29] The applicants contended that all the requirements of sections 8,9 and 10 of ESTA were complied with.

¹ 'Occupier' means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding—

- (a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); and
- (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
- (c) a person who has an income in excess of the prescribed amount.

² Section 10 of ESTA provides that:

'(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.

[30] For the applicants to succeed in evicting an occupier before 4 February 1997, he must show that he has complied with the mandatory requirements of section 9.³

[31] Section 9 (2) requires that the right of residence must have been terminated in terms of Section 8. Section 8 provides that:

“(1) 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 or 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. (my emphasis)

(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.

³ Section 9 provides as follows:

‘(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) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act."

(4) 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."

Termination of right of Occupation

[32] On 10 February 2021, a notice of termination of the right to occupation was personally served upon the first respondent and his family whereof they were given 30 days to vacate the dwelling. The respondents failed to vacate the property after the given time.

[33] In granting the eviction order the Magistrate found that the first respondent's right of occupation arose from the employment agreement with the previous owner. The Magistrate found that the agreements were fair and just. The Magistrate stated that the first and second respondent knew that by refusing to enter into a new agreement, their right of occupation may be terminated. He stated that the applicants have amended the one procedural step that they failed to comply with previously. He stated that the termination of right of occupation was first given in 2018.

[34] In 2018 the Magistrate granted an eviction order which was set aside in whole by Ncube J for non-compliance with Section 8(1)(e) particularly that the respondents were not given an opportunity to make presentations before the decision was made to terminate. The Magistrate stated that the applicants had complied with the provisions of section 8(1) (e).

[35] Section 8 requires that the termination of right to residence may be terminated on any lawful grounds provided that such termination is just and equitable having regard to all relevant factors.

[36] The question that must be answered is whether the termination of the right of occupation of the respondents was just and equitable. In order to answer this question, I am required to consider '*all relevant factors*'. The Constitutional Court in *Snyders and Others v De Jager and Others*⁴ stated that:

"Section 8(1) makes it clear that the termination of a right of residence must be just and equitable both at a substantive level as well as at a procedural level. The requirement for the substantive fairness of the termination is captured by the introductory part that requires the termination of a right of residence to be just and equitable. The requirement for procedural fairness is captured in section 8(1)(e)."⁵

[37] The applicants wrote to the respondents granting them opportunity to make representations regarding their eviction. The respondent stated that they were unable to vacate the dwelling as their income is not sufficient to enable to rent a private property. They do not have alternative accommodation and they have no means of renting a private property as they are unemployed. They stated that they have no relatives to accommodate them. The eviction will render them homeless.

[38] The applicants contended that the applicant's current financial state is self-created as first respondent and his wife received large pension pay out from the previous owner in 2018. The applicant offered the respondents assistance with transportation for their relocation.

[39] It seems to me that the applicants did not provide the respondents with effective opportunity to make representation regarding their eviction, they wrote to the respondents in order to tick box that 8(1)(e) was complied with.

⁴ 2017 (3) SA 545 (CC).

⁵ Id at para 56.

[40] The court a quo in granting the eviction order put much emphasis to the pension pay out that the first and second respondents received in 2018 despite the undisputed evidence that the money was no longer available and that the eviction would render them homeless. The Magistrate stated that they should have started making provisions for the future when they had financial means to do so. Instead, they squandered a very large amount in a very short time and were now sitting back and expect others to provide for them. The applicants on the other hand suffered financial loss for bringing two ESTA eviction proceedings over the course of four years without receiving any rental.

[41] It seems to me that court a quo considered the irrelevant factors and totally ignored “all the relevant factors. The huge pension pay out that the first and second respondents received in 2018 distracted the court from applying ESTA properly.

[42] Section 8 requires the court to consider *inter alia* the interest of the parties, including the comparative hardships to the owner and the person in charge, the occupier/s and any other occupier. The court *a quo* totally misdirected himself the interest of the occupiers and it didn’t have regard to the hardships that the occupiers will encounter.

[43] The Magistrate failed to balance the competing rights of the parties before he granted an eviction. Nkabinde J in *Molusi and Others v Voges N.O. and Others* ⁶ said the following regarding the balancing of the competing rights: -

“ ...

ESTA requires that the two opposing interests of the landowner and the occupier need to be taken into account before an order for eviction is granted. On the one hand, there is the traditional real right inherent in ownership reserving exclusive use and protection of property by the landowner. On the other, there is the genuine despair of our people who are in dire need of accommodation. Courts are obliged to balance these interests. A court making an order for eviction must ensure that justice and equity prevail in relation to all concerned. It does so by having regard to the considerations specified in

⁶ 2016 (3) SA 370 (CC) para 39-40.

section 8 read with section 9 as well as sections 10 and 11 which make it clear that fairness plays an important role.

In *PE Municipality* this Court remarked that it is necessary “to infuse elements of grace and compassion into the formal structure of the law” and courts need “to balance competing interests in a principled way and to promote the constitutional vision of a caring society based on good neighbourliness and shared concern” because “we are not islands unto ourselves”. One immediately agrees that—

“[t]he Judiciary cannot, of itself, correct all the systemic unfairness to be found in our society. Yet it can, at least, soften and minimise the degree of injustice and inequity which the eviction of the weaker parties in conditions of inequality of necessity entails.” (Footnote omitted)

What of the rights of Mrs Bester, Christopher Bester and Rivaldo?

[44] In the pleadings, the second respondent was cited in the pleadings but there were no separate substantive grounds for her eviction. The applicants only concentrated on the first respondent.

[45] There is undisputed evidence that the second respondent arrived in the property in 1993 before the first respondent. She came to live with her sister in 1993 and was offered an employment by the previous owner. At the time of her eviction, she had been staying in the property openly for 29 years.

[46] Although there were no separate grounds for the eviction of the second respondent, the court a quo granted her eviction on the ground that her right of occupation was derived from the employment of Mr Klasee. This is unsustainable post *Klaase and Another v van der Merwe N.O. and Others*⁷. Mrs Klasee appealed the decision of this court where it held that Mrs Klasee occupied the premises under her husband. The Constitutional Court held:

“The Land Claims Court’s finding that Mrs. Klaase occupied the premises “under her husband” subordinates her rights to those of Mr. Klaase. The phrase is demeaning and is not what is contemplated by section 10(3) of ESTA. It demeans Mrs. Klaase’s rights of equality and human dignity to describe her occupation in those terms. She is an occupier entitled to the protection of ESTA. The construction by the Land Claims

⁷ 2016 (6) SA 131 (CC).

Court would perpetuate the indignity suffered by many women similarly placed, whose rights as occupiers ought to be secured”.⁸

[47] When assessing whether the eviction was just and equitable the second respondent’s right were totally disregarded by the Magistrate.

[48] In addition, the second respondent is a long-term occupier in terms of section 8(4) of ESTA.⁹ ESTA provide a special protection to long term occupiers. Her right of residence may not be terminated unless they had committed a breach as contemplated in section 10 (1) (a), (b) or (c).

[49] There is no evidence of breach committed by the second respondent. Her eviction is unjust.

[50] The third respondent was born in the property. He lived in the property for 28 years. The respondents did not commit any breach as described in Section 6(3) of Act 62 of 1997.

[51] The applicants failed to comply with the provisions of section 10 whilst it ignored the rights of a minor child, Rivaldo. The third and fourth respondent were born in the property. They regard the property as their home. The court *a quo* committed an irregularity by failing to have regards to the effect of eviction of the respondents from their home.

[52] In *Port Elizabeth Municipality v Various Occupiers*¹⁰, the court held that-

“Section 26(3) evinces special constitutional regard for a person’s place of abode. It acknowledges that a home is more than just a shelter from the elements. It is a zone of personal intimacy and family security. Often it will be the only relatively secure space of privacy and tranquillity in what (for poor people in particular) is a turbulent

⁸ Id at para 66.

⁹ Section 8 (4): ‘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.’

¹⁰ 2005 (1) SA 217 (CC).

and hostile world. Forced removal is a shock for any family, the more so for one that has established itself on a site that has become its familiar habitat.”¹¹

The Probation Report in terms of Section 9(3) of ESTA

[53] In terms of section 9(3) of ESTA the probation report was submitted in court. It was prepared by Lionel Beerwinkel on 23 February 2022.

[54] In his report the probation officer recommended the following:

- Eviction of the Respondents is not granted, and
- The second Respondent's permanent rights of residence be confirmed in terms of section 8(4)(a) of Act 62 of 1997
- Engagement with Breede Valley Municipality is pursued to consider the possibility of housing for the respondents at the new Transhex Housing
- The provisions of Section 24 of the Act should also be considered
- The Respondents occupy a house on the farm belonging to the Applicants

[55] On the availability of suitable alternative accommodation, the respondent submitted that they not have any alternative accommodation. They applied for housing at Breede Valley Municipality and their names are on the waiting list. The municipality filed a report where they stated that they don't have alternative accommodation for the respondents

[56] On the Constitutional rights that will be affected by eviction including the rights of Children, the probation officer stated the following rights of the respondents will be affected

- The right to housing in terms of section 26 of the Constitution
- Section 29(1) – the first and second respondent have one foster child Rivaldo Minaar who attends school at High School Breerivier in Worcester. He commutes between home and school with the school bus financed by Western Cape Department of Education. The child knows no other

¹¹ Id at para 17.

place than this farm life. He performs very well academically and in sport. Any disruption of his current livelihood, will have a negative impact on his performance.

[57] On the balancing of the constitutional rights of the applicants and those of the first respondent, the applicants submitted that his constitutional rights in this matter weighs in favour of the applicant. His right to property and the unhindered enjoyment thereof amongst others whilst the 1st respondent is attempting to abuse the legal framework to establish unfounded rights.

[58] On undue hardships that might fall unto the occupier, the probation officer the following was reported on undue hardships:

- The respondents noted that it is difficult to find accommodation on farms in the area. Land owners prefer to employ people that are not housed on the farms normally referred to as “buite-workers”.
- These workers are transported from their place of stay to the farm and back to their homes before and after work respectively.
- This practice allows landowners not to provide employees with accommodation on the farm. In the absence of having own accommodation, the respondents cannot compete with this practice.
- The second respondent suffers a health condition that makes it difficult for her to offer her employment to landowners on farms. She is 60 years old, the age of retirement as per labour legislation. She will find it difficult to compete in the labour market because of her age and health condition.
- The second respondent meets the requirements of Section 9(4) of Act 62 of 1997 as she has been on the farm for more than 10 years and reached the age of 60.
- The respondents will experience undue hardship if they are evicted because an eviction will render them homeless and thereby infringe their constitutional right of access to suitable accommodation.

[59] The applicants failed to show any hardships that they might suffer if the application is refused. The allegations by the applicants regarding the dwelling being needed for other employees, the breakdown of a relationship between the applicants and respondent was not backed up by any facts.

[60] In *Kanhym (Pty) Ltd v Simon Botha Mashiloane*¹² Dodson J held that the applicant must show a causal connection must be shown between the unavailability of that particular dwelling and the serious prejudice which the owner's operation or operations will suffer.

[61] The probation report was available by the time the eviction was granted. It is not even mentioned in the judgment. The recommendations of the probation officer were ignored. Dealing with the purpose of the reports Ngcukaitobi AJ said in *Drakenstein Municipality v CJ Cillie en Seun (Pty) Ltd*¹³

"There is a clear reason why the consideration of these reports is entrenched in statute: the reports must (a) indicate availability of alternative land in the event of an eviction; (b) the impact of the eviction on the affected occupiers, including their children; and (c) any undue hardship which will be caused by the eviction. It can be seen from the provisions of section 9(3) that the purpose of the statute is to protect occupiers from unlawful evictions and where evictions are inevitable to ameliorate their adverse impact".¹⁴

[62] In deciding whether the eviction would be just and equitable, the judicial officer must consider the Probation officer report in ESTA matters, the Supreme Court of Appeal held in *Monde v Viljoen NO & Others* ¹⁵

"The LCC has subsequently in *Cillie*¹⁶ held that a probation officer's report was not a mere formality. It found that the issues in s 9(3) of ESTA that had to be addressed in the report were necessary to assist a court in deciding whether an eviction was just and equitable; that the importance of the report in an eviction could not be overemphasised; and that it ensured that the constitutional rights of those affected by eviction were not overlooked. Likewise, in *Drakenstein Municipality*,¹⁷ the LCC noted that s 9(3) was cast in peremptory terms; that the court's ability to discharge its function was frustrated without a report by a probation officer; and that the absence of the report negatively affected the interests of occupiers, since the purpose of ESTA was to

¹² 1999 (2) SA 55 (LCC).

¹³ [2016] ZALCC 9.

¹⁴ *Id* at para 15.

¹⁵ 2019 (2) SA 205 (SCA) at para 27.

¹⁶ *Cillie NO & Others v Volmoer & Others* [2016] ZALCC 5 para 18.

¹⁷ *Drakenstein Municipality v CJ Cillie en Seun (Pty) Ltd* [2016] ZALCC 9 para 15.

protect occupiers from unlawful eviction and where eviction was inevitable, to ameliorate its adverse impact”.

[63] I find that the Magistrate erred in finding that the respondent’s eviction would be equitable.

[64] In the result I am unable to confirm the order by the Magistrate. Consequently; the following order is made:

1. The order granted by the Magistrate Worster is set aside and replaced by the following order:

“The application is dismissed with no order as to costs.”

A handwritten signature in black ink, appearing to read 'Flatela L', is written over a horizontal line.

Flatela L

Judge of the Land Claims Court

February 2023