



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 20469/2014

In the matter between:

**KAREL SNYDERS
SOFIA SNYDERS
MINOR CHILDREN**

**FIRST APPELLANT
SECOND APPELLANT
THIRD APPELLANT**

and

LOUISA FREDERIKA DE JAGER

RESPONDENT

Neutral citation: *Snyders v De Jager* (20469/2014) [2015] ZASCA 137 (30 September 2015).

Coram: Ponnann, Saldulker, Dambuza and Mathopo JJA and Van der Merwe AJA

Heard: **15 September 2015**

Delivered: **30 September 2015**

Summary: An appeal does not lie to the Supreme Court of Appeal against an order of the Land Claims Court confirming an eviction order of the magistrates' court on automatic review to it in terms of s 19(3) of the Extension of Security of Tenure Act 62 of 1997.

ORDER

On appeal from: Land Claims Court, Randburg (Matojane J sitting as court of first instance):

The matter is struck from the roll with costs.

JUDGMENT

Van der Merwe AJA (Ponnan, Saldulker, Dambuza and Mathopo JJA concurring):

[1] The appellants, Mr Karel Snyders, his wife Ms Sofia Snyders and their minor children, reside on the farm known as Voorbaat, in the district of Ladismith in the Western Cape Province (the farm).¹ The farm is owned by Mr F J N Stassen, but is managed on his behalf by the respondent, Ms Louisa Frederika de Jager.

[2] On 26 March 2009, the respondent launched an application in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA) in the Magistrate's Court, Ladismith for the eviction of the appellants from the farm. The application was opposed by the appellants. Following upon an inspection in loco on the farm and after consideration of the affidavits of the parties and the *viva voce* evidence presented, the magistrate gave judgment on 14 November 2012 granting the order of eviction sought.

[3] The eviction order thereafter served before the Land Claims Court (LCC) on automatic review in terms of s 19(3) of ESTA. This section provides:

¹ The land that constitutes the farm is described in the deed of transfer as portions 44, 47, 48, 49, 50, 85, 86 and 111 of the farm Voorbaat no 42, the farm Waterkloof no 51 and the farm Waterkloof, all situated in the Kannaland Municipality, Ladismith, Western Cape Province.

‘Any order for eviction by a magistrate’s court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the *Gazette*,² shall be subject to automatic review by the Land Claims Court, which may –

- (a) confirm such order in whole or in part;
- (b) set aside such order in whole or in part;
- (c) substitute such order in whole or in part; or
- (d) remit the case to the magistrate’s court with directions to deal with any matter in such manner as the Land Claims Court may think fit.’

[4] The automatic review was dealt with by Matojane J. On 13 February 2013 he confirmed the eviction order of the magistrate’s court. The relevant part of the order reads:

‘Having read the record of the proceedings in the Magistrate’s Court, the whole of the order made by the Magistrate on 14 November 2012 is confirmed, this is done in terms of section 19(3)(a) of the Act.’

[5] The appellants requested full reasons for this order, purportedly in terms of LCC rule 69(1)(b)(ii). This rule provides that a party that wishes to appeal against an order of the LCC, must apply to the LCC for leave to appeal. It further provides that if application for leave to appeal was not made orally at the time when the order was made, it must be made by notice delivered within 15 days after the order was made or after full reasons for the order were given.

[6] The court a quo responded to this request on 13 August 2013, when it delivered what was described as a ‘Review Judgment’, furnishing reasons for the confirmation of the eviction order. The appellants thereafter filed a notice of application for leave to appeal against the confirmation order and on 6 August 2014 the court a quo granted leave to appeal to this court. There is no doubt that the intended appeal is limited to the merits of the eviction order. That is clear from the grounds of appeal set out in the notice of application for

² No date has as yet been determined by the Minister or published in the *Gazette*. In *Lusan Premium Wines (Pty) Ltd v Stoffels & others* [2000] 2 All SA 367 (LCC) para 4 it was held that the effect of the failure to do so is to extend the review jurisdiction of the Land Claims Court indefinitely. This decision was not challenged before us.

leave to appeal in the LCC and the subsequent notice of appeal filed with the registrar of this court. In any event it is only the eviction order which was subject to automatic review by the LCC in terms of s 19(3) of ESTA.

[7] The first issue for determination is whether the matter is properly before this court, the question being whether an appeal lies to this court against an order of the LCC confirming an eviction order of a magistrates' court on automatic review to it in terms of s 19(3) of ESTA.

[8] It is necessary to deal at the outset with the argument of counsel for the appellants that this court should exercise jurisdiction on the ground that the respondent had consented to the jurisdiction of this court. The argument is without merit. First, this court does not have original jurisdiction. Its jurisdiction is determined by the Constitution and by statute. Its inherent power to protect and regulate its own process does not extend to the assumption of jurisdiction not conferred upon it by statute.³ It follows that this court cannot assume jurisdiction merely because the parties consented. Secondly, the argument has no factual basis. The respondent did not expressly consent to the jurisdiction of this court. And counsel for the appellants was unable to point to any conduct of the respondent that is consistent only with such consent. On the contrary, in supplementary heads of argument filed with this court the respondent contends that this court lacks jurisdiction.

[9] This issue has not been decided by this court. I am aware of only two judgments of this court that dealt with a situation where an eviction order of a magistrate's court had previously served before the LCC on automatic review. These decisions are *Rashavha v Van Rensburg*⁴ and *Land en Landbouontwikkelingsbank van Suid-Afrika v Conradie*.⁵ Both matters are clearly distinguishable on the facts. In *Rashavha*, the eviction order made by the magistrates' court against the appellant, was not confirmed by the LCC on

³ See *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 (A) at 7E-G; *New Clicks South Africa (Pty) Ltd v Minister of Health* 2005 (3) SA 238 (SCA) para 19 and *S v Tonkin* 2014 (1) SACR 583 (SCA) para 6.

⁴ *Rashavha v Van Rensburg* 2004 (2) SA 421 (SCA).

⁵ *Land en Landbouontwikkelingsbank van Suid-Afrika v Conradie* 2005 (4) SA 506 (SCA).

automatic review. The LCC referred the matter back to the magistrate with certain directions. The magistrate reconsidered the matter and issued a fresh eviction order against the appellant. The appellant appealed to the LCC against the latter eviction order. The LCC dismissed the appeal, but granted leave to appeal to this court. Lewis JA⁶ remarked that there was no argument that the appeal from the magistrates' court incorrectly served before the LCC. In that matter the appeal to this court was therefore against the dismissal by the LCC of the appeal to it. The facts in *Conradie* were that when the eviction order of the magistrates' court came before the LCC on automatic review, it was set aside by the LCC and substituted with an order dismissing the application for eviction. The LCC granted leave to appeal to this court against its substituted order. On appeal to this court, the order of the LCC was set aside and replaced with an order confirming the eviction order of the magistrate. In that matter therefore, the appeal to this court was against the order of the LCC setting aside the eviction order of the magistrates' court and dismissing the application for eviction.

[10] The LCC considered this issue in the recent judgment of *Brummer & another v Joostenberg*.⁷ There the eviction order of the magistrate was confirmed by the LCC on automatic review. The respondent in the magistrates' court was aggrieved and applied to the LCC for leave to appeal against the confirmation order. Meer AJP struck the matter from the roll. The court reasoned that a magistrate's order of eviction that was confirmed by the LCC on automatic review, remains an order of the magistrates' court. However, if the LCC on automatic review substituted the order of the magistrates' court with its own decision, so the court held, the substituted decision becomes a decision of the LCC. The court therefore concluded that despite the confirmation of the eviction order by the LCC on automatic review, an appeal against the magistrate's decision lies to the LCC, but that when the LCC substituted its decision for that of the magistrate, an appeal lies from the LCC to this court.

⁶ At para 5.

⁷ *Brummer & another v Joostenberg* (LCC) unreported case no 16R/2013 (20 February 2015).

[11] I agree with the conclusions reached in *Brummer*. However, I reach those conclusions by a different route.

[12] Section 19(2) of ESTA provides that civil appeals from magistrates' courts in terms of ESTA shall lie to the LCC. In terms of s 19(4), the provisions of s 19(3) shall not apply to a case in which an appeal has been noted by an occupier. In terms of LCC rule 71(1), any party that has appealed against a decision of a magistrate's court over which the LCC enjoys appellate jurisdiction, must prosecute such appeal in the same manner as a civil appeal from the magistrates' court to the High Court. Section 20(1)(c) of ESTA clothes the LCC with common law review power. It provides that the LCC has the power to review an act, omission or decision of any functionary acting or purporting to act in terms of ESTA. LCC rule 35 determines the procedure to be followed in such a case. This procedure is similar to that provided for in Uniform rule 53. LCC rule 35A deals with the procedure to be followed in respect of automatic reviews.

[13] Thus, it is clear that ESTA recognises the distinction between an appeal against an eviction order of a magistrate and the common law or automatic review thereof. As a general rule, where the complaint is against the result of the proceedings of the lower court, an appeal is the appropriate remedy, whereas review is aimed at the method by which the result was reached.⁸ This was explained as follows by Schutz JA when dealing with a review in *Minister of Environmental Affairs and Tourism v Phambili Fisheries*:⁹ 'During the course of the argument for Phambili we were frequently told that something that Chief Director had done was "wrong". This is the language of appeal, not review. I do not think that the word was misused, because time and again it appears that what is really under attack is the substance of the decision, not the procedure by means of which it was arrived at. That is not our job.'

⁸ D E van Loggerenberg & P B J Farlam *Erasmus: Superior Court Practice* at A1-32N; *Lawsa*, first re-issue, vol 3, part 1 para 394.

⁹ *Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd* 2003 (6) SA 407 (SCA) para 52.

[14] In that regard our system of automatic review in the context of criminal proceedings may not be an entirely inappropriate analogy. The system of automatic review of certain proceedings in terms of the Criminal Procedure Act 51 of 1977 provides a measure of protection to the large number of undefended accused persons in criminal trials in the magistrates' court.¹⁰ The power of the High Court to intervene on automatic review in terms of the Criminal Procedure Act is not limited to cases of irregularity. Any point on which the proceedings can be faulted, may be taken into account.¹¹ It seems clear that by providing for automatic review of eviction orders in terms of ESTA, it was intended to similarly provide a measure of protection to the often vulnerable occupiers of land as defined in ESTA. In *Lategan v Koopman & others*,¹² Gildenhuys J held, correctly in my view, that the unique South African system of automatic review in terms of the Criminal Procedure Act provides guidance in respect of the nature and import of automatic review in terms of ESTA.¹³ He said that the court should, as a point of departure, determine whether justice was done and that the court should follow a broad approach and should not scrutinize the findings of the magistrate as meticulously as it might do in the case of an appeal.

[15] Although there may well be a fine line between an automatic review in terms of ESTA and an appeal, the distinction must not be blurred.¹⁴ In my view the following statement of Ngcobo J in *Sidumo & another v Rustenburg Platinum Mines Ltd & others*¹⁵ is of particular relevance:

'What must be emphasised is that there may well be a fine line between a review and an appeal, in particular, where, as I will show later in this judgment, the reviewing court considers the reasons given by a tribunal, not to determine whether the result is correct, but to determine whether a gross irregularity occurred in the proceedings. At

¹⁰ For the history of automatic review in criminal matters in South Africa, see 'On the System of Automatic Review and Punishment of Crime' (1962) 79 SALJ 267.

¹¹ *Lawsa*, 2 ed, vol 5, part 2, para 347; Albert Kruger *Hiemstra's Criminal Procedure* at p 30-21.

¹² *Lategan v Koopman & others* 1998 (3) SA 457 (LCC) para 11.

¹³ See also *Springs City Council v Occupants of the Farm Kwa-thema* 210 2000 (1) SA 476 (LCC) para 19.

¹⁴ *Shoprite Checkers (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration & others* 2009 (3) SA 493 (SCA) para 28.

¹⁵ *Sidumo & another v Rustenburg Platinum Mines Ltd & others* 2008 (2) SA 24 (CC) para 244.

times it may be difficult to draw the line. There is, however, a clear line. And this line must be maintained.'

[16] In my judgment all of this leads to the inescapable conclusion that an order confirming an eviction order on automatic review in terms of s 19(3) of ESTA is not an order on the substantive merits of the matter. Should the LCC set aside the eviction order and substitute it with a substantive order of its own in terms of s 19(3)(b) and (c), different considerations apply. In such case the eviction order of the magistrate would no longer be extant and could therefore not be appealed against. An appeal against the substituted order of the LCC would then lie to this court, subject to the required leave to appeal having been granted. Prima facie the test on appeal in such a matter would be to determine which order the LCC should have made on automatic review, but it is not presently necessary to decide this issue.

[17] It follows that if this court were to entertain the appeal on the merits, it would in effect be hearing an appeal directly from the magistrates' court to this court.¹⁶ Given the hierarchy of our courts, the undesirability of such a course is patent. Moreover, that would be in direct conflict with s 19(2) of ESTA, which, as I have said, provides that civil appeals from a magistrate's court in terms of ESTA lie to the LCC.

[18] In terms of s 16(1)(c) of the Superior Courts Act 10 of 2013, any appeal against any decision of a court of similar status to the High Court (such as the LCC), lies to this court upon leave to appeal having been granted in terms of s 17 of the Superior Courts Act by that court or, if refused, by this court. For the reasons mentioned, the LCC did not determine the merits of the eviction order of the magistrate. The LCC was therefore not empowered to grant leave to appeal to this court on the merits, as it purported to do. In the circumstances, the order of the LCC granting leave to appeal to this court is a nullity. In the absence of leave to appeal on the merits having properly been

¹⁶ See *S v Tonkin* (above) para 6.

granted in terms of ss 16 and 17 of the Superior Courts Act, this court has no jurisdiction to entertain the matter.¹⁷

[19] As the matter is not properly before us, we can hardly enter into the merits of the dispute, as was urged upon us by counsel for the appellant. Consequently the matter falls to be struck from the roll. In my view the respondent is entitled to her costs, even though the financial position of the appellants appears such that any award of costs will in all probability be no more than cold comfort to the respondent.

[20] The matter is struck from the roll with costs.

C H G VAN DER MERWE
ACTING JUDGE OF APPEAL

¹⁷ *Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd* 2015 (4) SA 34 (SCA) para 13.

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