


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

CASE NO: 06R2023

MAG CASE NO: 2410/21

Before the Honourable Flatela J

Delivered on: 28th February 2023

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHER JUDGES: YES/NO	
(3) REVISED: YES/NO	
28/02/2023 DATE	 SIGNATURE

In the matter between:

**PAUL DE VILLIERS AS N.O OF THE HUGO
DE VILLIERS FAMILY TRUST
(REGISTRATION NO: IT3826/94)**

1st Applicant

**PAUL DE VILLIERS AS N.O OF THE HUGO
DE VILLIERS FAMILY TRUST
(REGISTRATION NO: IT3827/94)**

2nd Applicant

**PAUL & HUGO DE VILLIERS
T/A LANDSKROON WINES**

3rd Applicant

PAUL DE VILLIERS

4th Applicant

**HUGO MYBURGH DE VILLIERS
and**

5th Applicant

THOMAS PIETERSEN	1 st Respondent
CATHLEEN GOEIEMAN	2 nd Respondent
FELICITY GOEIEMAN	3 rd Respondent
ELRICO GOEIEMAN	4 th Respondent
AND ALL PERSONS RESIDING WITH OR UNDER THE FIRST TO THE FIFTH RESPONDENTS ON THE FARM KNOWN AS LANDSKROON FARM, PAARL, WESTERN CAPE	5 th Respondents
DRAKENSTIEN MUNICIPALITY	6 th Respondents
DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, AND LAND REFORM	7 th Respondent

JUDGMENT

FLATELA J

Introduction

[1] This is an automatic review in terms of sec 19(3)¹ of the Extension of Security of Tenure Act 62 of 1997 (**ESTA**) emanating from the Magistrate Court, Paarl District, Western Cape. On 29 November 2022, the Paarl Magistrate's Court made a "settlement agreement" between the applicants and the respondents an

¹ (3) 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 –

- (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:
- Provided that before the Court makes any order in terms of paragraph (b) or (c), it shall give the parties an opportunity to make written submissions, and may give the parties an opportunity to make oral submissions. in that regard.

order of court. In terms of the agreement, the respondents agreed to be relocated to an emergency accommodation structure to be erected by the sixth respondent.

[2] The parties agreed that the respondents' right to occupy the dwelling on the property known as cottage 21 of Landskroon Farm, described as Portion 0 (the remaining extent) of the farm Landskroon No 709, Drankeinstein Municipality, Division of Paarl, Province of the Western Cape, held under deed of transfer no T17690/1956 is lawfully terminated. The parties further agreed that it is just and equitable that the respondents and any persons occupying the house on the property with them, vacate the property voluntarily and permanently by no later than **Friday, 3 February 2023** failing which, they be evicted by the Sheriff of the Court on, or after **17 February 2023** should they not vacate the house voluntarily.

[3] The settlement agreement was subject to suspensive condition that the enforcement of the agreement is subject to this Court confirming it on automatic review in terms of sec 19(3) of the ESTA, and this is what I am called to do: to confirm, vary, or set aside the agreement.

[4] This matter came before me on 14 February 2023.

The Parties

[5] The first applicant is Paul De Villiers as nomine officio of the Hugo De Villiers Family Trust (Registration number T3826/94) a trust property registered in terms of the laws of South Africa and registered address at Landskroon Farm, Paarl.

[6] The second applicant is Paul De Villiers as nomine officio of the Paul De Villiers Family Trust (Registration number: T3827/94) a trust property registered in terms of the laws of South Africa, and registered address at Landskroon Farm, Paarl.

[7] The third applicants are Paul and Hugo De Villiers T/A Landskroon Wines, a partnership between the fifth Applicant and the first applicant. The third applicant is also the entity through which all farming activities are performed and is also the person in charge of the day to day activities on the farm who, through its authorised representatives, concludes employment and housing agreement with the occupiers of the farm,

[8] The fourth applicant is Paul De Villiers an adult male farmer residing on Landskroon Farm cited herein in his personal activities

[9] The fifth applicant is Hugo Myburgh De Villiers an adult, male, farmer residing on Landskroon Farm. He is cited herein in his personal capacity.

[10] The third applicant conducts the farming operations on the property and enjoys beneficial occupation of the property and the improvement thereof.

[11] The first respondent is **Thomas Pietersen**, a major male aged 35 residing in an employee cottage 21 on the property. The first respondent is a former employee of the applicants. He was employed as a general worker from 2009 - 2019.

[12] The second respondent is **Cathleen Goeieman**, a major female aged 55 residing in the dwelling. The second respondent is the first respondent's sister.

She too is a former employee of the applicant. She was employed as a general worker from 11 July 2016 - 26 July 2019.

[13] The third respondent is **Felicity Goeieman**, an adult female. The third respondent is the daughter of the second respondent. She is no longer residing on the farm.

[14] The fourth respondent is **Elrico Goeieman**, an adult male residing in the house on the property. The fourth respondent enjoys occupation of the property by virtue of being the son of the second respondent.

[15] The fifth respondents are all other persons residing with or under the first to the fourth respondents at employee cottage 21 on the property. The fifth respondents are described in the 1st respondent's answering affidavits as follows:

- i. Angelique Goeieman, the second respondent's daughter. She is 18 years old and in grade 9;
- ii. Sasciah Goeieman is the second respondent's granddaughter and daughter of the third respondent. She is 14 years old. She left school in 2021;
- iii. Keysha Goeieman is the second respondent's granddaughter and daughter of the third respondent. She is 10 years old and attends school at Bergendal Primary School and is in grade 5. She walks to and from school;
- iv. Tashwell Goeieman is the second respondent's grandson and son of the third respondent. He is 6 years old and attends school at Bergendal Primary School and is in grade 1; and
- v. Caden Goeieman, a 2-year-old son to the third respondent.

[16] The 1st, 2nd, 4th and 5th respondents occupy a three-roomed house comprising of a kitchen, one bathroom and a toilet/shower. There is electricity supply to the house. They have access to water.

[17] The sixth respondent is the Drakenstein Municipality properly constituted as such with its main place of business at Berg River Boulevard, Paarl, Western Cape. The sixth respondent is a municipality contemplated in section 155 of the constitution of the republic of South Africa, 1996, established by the provincial minister of Local Government under section 12 and 14 of the Local Government Municipal Structures Act 117 of 1998.

[18] The seventh respondent is the Department of Agriculture, Rural Development and Land Reform properly constituted as such with its provincial head office at 14 Long Street, Cape Town, Western Cape. The fifth respondent is cited in terms of inter alia to give effect to section 9(2)(d) of ESTA. The probation officer as contemplated in Section 9(3) of ESTA will be required by this Honourable court to file a probation officers report.

Factual Background

[19] The facts of the matter are very brief and largely common cause. Eviction proceedings were launched against the first to the fifth respondents on 13 September 2021. The application was served to the respondents on 17 September 2021 and to the sixth respondent on 17 September 2021. All parties that were served filed their papers and their reports.

The Settlement Agreement

[20] The Paarl Magistrate's Court made an order of court a "settlement agreement" in terms of which the parties agreed that the respondents' right to occupy the house on the property is lawfully terminated. The parties further agreed that it is just and equitable for the respondents and any persons occupying the house on the property with them, vacate the property voluntarily and permanently by no later than **Friday, 3 February 2023** and that they be evicted by the Sheriff of the Court on, or after **17th February 2023** should they not vacate the house voluntarily.

[21] Some salient terms of the relocation agreement under the heading "**the first to fifth respondents' rights and obligations**" state that it is agreed that:

- a. The respondents will vacate the house and property permanently on, or before, the vacation date, and further agree that it is just and equitable for them to vacate the property on, or before, the aforementioned date.
- b. The respondents undertake not to occupy the property after the settlement agreement has been given effect to, and will for a period of 24 months after the settlement agreement has been given effect to, not sleep over the property (as guests).
- c. The respondents confirm that should they fail and/or refuse to voluntarily vacate the property as set out in the terms of the agreement, such action will constitute a material breach of the trust relationship between the applicants and the respondents, of which relationship will not be capable of restoration.

[22] The agreement provided for the transportation and costs thereof, of the relocation as it were, be borne by the applicants.

[23] Under a heading “**Legal Advice**” the respondents confirmed that they:

‘Received legal advice from the Stellenbosch University Law Clinic in respect of [the] proceedings; that the content[s] of [the] settlement agreement was explained to them, and that they understand the consequences thereof; that they were informed of their rights in terms of [ESTA]; and that [the] settlement agreement is concluded freely and voluntarily, without duress or undue influence.’

[24] The settlement agreement was subject to the suspensive condition that it is signed by the respondents and/or their authorized representatives and co-signed by the Municipality. The first respondent, Thomas Pietersen, signed in his own personal capacity and on behalf of the fifth respondents “*who occupies the property under him*”. The second respondent, Cathleen Goeieman, signed in her personal capacity. The agreement was also co-signed by the Municipality. Notably, no legal representatives, if any were present, for the first to the fifth respondents co-signed the agreement.

Litigation History - Eviction Proceedings

[25] The applicants contended that the respondent’s occupation of the dwelling was derived from the occupation and was subject to a Housing agreement entered between the parties in 2011. The 1st respondent’s employment was terminated in 2019 after he was found guilty of gross dishonest and misappropriating the applicant’s monies without authority. The right of occupation was terminated on 24 March 2022 by a letter served by the sheriff. The applicant contended that it complied with section 8, 9 and 11 of ESTA.

[26] It is common cause that the respondents are occupiers in terms of ESTA. The 1st respondent has been living in the property for a period of 14 years and

was given permission to occupy the dwelling in 2011. The second respondent has been living in the property with the 1st respondent for a period of 11 years from 2011 to date. The second respondent also worked in the farm from 2015-2019. The second respondent is 55 years of age; disabled and she is receiving disability grant from the government.

[27] Contrary to the decision of the Constitutional Court in *Klaase and Another v van der Merwe N.O. and Others*² there were no separate ground for eviction of the second respondent who is elderly and disabled. Her rights were subjected to her younger brothers' rights although she is senior to her by 20 years. As a result, her needs as elderly and disabled were not addressed.

[28] In *Klaase*, 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 Court would perpetuate the indignity suffered by many women similarly placed, whose rights as occupiers ought to be secured”.³

[29] The 1st respondent filed an opposing affidavit on behalf of the respondents. He opposed the eviction on the basis that it was not just and equitable because he and respondents had no alternative suitable accommodation and their household income is utilised for their daily needs including those of the five school attending children.

² 2016 (6) SA 131 (CC).

³ *Id* at para 66.

[30] The Municipality filed a “*report on possible accommodation and emergency accommodation by Drakenstein Municipality*” on 8th July 2022 to assist the court in determining the application launched by the applicants in terms of 9(d)(ii) of the Extension of Security of Tenure Act 62 of 1997 (ESTA). The report stated that the most immediate available site where emergency housing *may* be available is in Schoongezicht. However, this presents a limited number of housing opportunities and their finding was that the household does not qualify for emergency accommodation in terms of the Municipality’s Temporary Housing Assistance Policy “**the Policy**”, as the household would most probably be able to address their housing emergency needs from their own resources.

[31] The report continued to state that as a rule of thumb, the Municipality states, in applying sec 5.1 of the Policy, the Municipality generally utilises a threshold income of R4500.00 in terms of its Indigent Support Policy. The Municipality defines household income to mean “the gross monthly sums from all sources, including wages, salaries, ... grants ... and other forms of earnings received by all persons residing on the property” whereas an ‘Indigent Household’ means a household that is below the poverty threshold as determined by the Drakenstein Municipality.

[32] The report stated further that “should it be found that the households qualify for emergency housing, emergency accommodation in phase four of Schoongezicht would most probably be provided by the Municipality. The report concluded that “Phase four of Schoongezicht is currently under construction, the municipality would be able to assist respondents with emergency accommodation in phase four.

[33] There is no supplementary report from the records to the effect that the municipality reconsidered the position of the respondents.

[34] The Magistrate Court requested a probation officer's report in terms of sec 9(3) of ESTA. This report was prepared by Lionel Beerwinkel, a project coordinator: Cape Winelands, Tenure Systems Implementation, the report is dated 1 June 2022. At the time of writing, its findings were that:

A. The respondents

- i. The first respondent is 35 years old and unemployed.
- ii. The second respondent is the sister of the first respondent and occupies the house with him. She came to stay on the farm with her brother in 2012 after the death of her husband. She informed that she has been on the farm for the last ten years and worked on the farm for at least a period of four years, however she could not confirm the employment dates. (In the answering affidavit, her brother informed that this period was from 2015 to 2019). She is 55 years old and receives a disability grant of R1900.00. The report concludes that she meets the requirements of sec 8(4)(b) of ESTA in that she has been staying on the farm for more than 10 years, and due to ill-health, cannot work anymore.
- iii. The third respondent's details were not available as she no longer stayed on the farm.
- iv. The fourth respondent is the son of the second respondent and occupies the house with the first and second respondent. He came to stay with his mother in September 2015 and has been staying with the respondents ever since. He has never been employed on the farm. He is 30 years old.

B. The children

- vi. Siskia Goeieman is the second respondent's granddaughter and daughter of the third respondent. She is 14 years old. She left school in 2021.
- vii. Kiesha Goeieman is the second respondent's granddaughter and daughter of the third respondent. She is 10 years old and attends school at Bergendal Primary and is in grade 5. She walks to and from school.
- viii. Tashwell Goeieman is the second respondent's grandson and son of the third respondent. He is 6 years old and attends school at Bergendal Primary and is in grade 1.

C. Amenities and services

- i. The respondents occupy a three-roomed house comprising of a kitchen, one bedroom and a toilet/shower.
- ii. There is electricity supply to the house but the respondents inform that they seldom use the facility as they do not have the financial means to buy electricity units, which are available for sale from the applicants.
- iii. They have access to water.

D. Reason for eviction

- i. According to the second respondent, she was called to a disciplinary hearing wherein she got dismissed for alleged theft. She did not refer a dispute to the CCMA as she claims she was not aware of this right.
- ii. The fourth respondent derives his right of residence on the farm by association to his mother. He has never been employed on the farm.

E. Availability of suitable alternative accommodation

- i. The second respondent informs that she looked for alternative accommodation in the Klapmuts area, but she could not secure any.
- ii. She further informs that she is not registered on the housing waiting list of the Drakenstein Municipality but is in the process of applying.
- iii. At present the respondents do not have suitable alternative accommodation available.

F. Effect of eviction on the constitutional rights of the occupiers with specific regards to the rights of children, if any, to education

- i. An eviction order in the absence of access to suitable alternative accommodation will deny the respondents secure accommodation as they do not have access to alternative accommodation whereto they can relocate.
- ii. The second respondent's three grandchildren stay with her; two of which attend school, and their education may be disrupted if transferred to another school.

G. Effect of the respondents' continued stay in the house on the applicants' property rights in terms of sec 25 of the Constitution

- i. The applicants are the owners of the house on the property. The continued stay of the respondents in the house of the applicants' property does not deprive the applicants of their property rights as they remain in ownership of the house. However, they will not be able to accommodate another household on the property due to the respondents' continued occupation of the house.

H. Recommendations

- i. The eviction order sought by the applicants against the respondents be not granted; and
- ii. The rights of the second respondent in terms of sec 8(4)(b) of ESTA be confirmed; and
- iii. In the alternative, the parties work towards a settlement agreement that will secure the tenure of the respondents.

Legal Principles Governing Relocations in terms of ESTA

[35] It is settled - law that a relocation in terms of ESTA is the removal from one housing unit to another on the same farm, and that removal off the land or farm, as in the instant case, is an eviction.⁴ In terms of sec 11(3) of ESTA, a Court deciding whether it is just and equitable to grant an order for eviction in terms of this section. the court shall have regard to –

- (a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties;
- (c) whether suitable alternative accommodation is available to the occupier;
- (d) the reason for the proposed eviction;
- (e) the balance of the interests of the owner or person in charge. the occupier and the remaining occupiers on the land.

[36] Sec 11(3) is subject to sec 9.⁵ Relevant to this case is that section 9(2)(a) provides that a court may grant an eviction order against an occupier if their right

⁴ See *Boplaas Landgoed (PTY) Ltd and Another v Jonkies and Others* (LCC 37/2022) [2022] ZALCC 3 para 12 and the authorities cited therein.

⁵ **Limitation on eviction**

9. (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.

of residence has been terminated in terms of section 8. The relevant provisions of sec 8 to this matter provides that:

Sec 8. (1) Subject to the provisions of this section, an occupier's right of residence maybe 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;

Subsection (4) states that: 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

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- (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

(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

occupier has committed a breach contemplated in section 10(1)(a)⁶, (b)⁷ or (c)⁸: Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

Discussion

[37] It is common cause that the 1st and 2nd respondents are the occupiers in terms of ESTA and for an eviction to be lawful the applicant must comply with the provisions of sec 8, 9 and 11. The fourth and fifth respondents are also occupiers in terms of ESTA by virtue of sec (3) of ESTA.

[38] It is blatantly clear that the “settlement agreement” made an order of Court by the Magistrate, is in fact, an eviction order. Whereas “relocation” applications, disputes and settlement agreements, are more often than not, usually indirect eviction applications or matters substantively tied to evictions, this settlement agreement is a clear example of an eviction order that has bypassed all the requirements that must be satisfied before an eviction could be ordered. Its operative and executability depends solely on the conduct of the respondents, for instance, if the respondents do not vacate the property voluntarily and permanently by no later than **Friday, 3 February 2023** then consequence of that is the Sheriff of the Court may, on or after **17th February 2023** execute eviction.

⁶ 10. (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;

⁷ (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 months’ notice in writing to do so;

⁸ (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;

[39] This “settlement agreement” order flies in the face of the probation’s officers report expressly not recommending eviction, and instead, recommending that the rights of the second respondent in terms of sec 8(4)(b) be confirmed. Signifying the purpose of judicial consideration of these reports, Ngcukaitobi AJ in *Drankeinstein Municipality v CJ Cillie en Seun (Pty) Ltd*⁹ said

‘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.’ (footnotes omitted)

[40] The Supreme Court of Appeal endorsed *Drankeinstein Municipality* in *Monde v Viljoen NO & others*¹⁰ in these terms:

‘The LCC has subsequently in *Cillie* 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*, 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 protect occupiers from

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

¹⁰ *Monde v Viljoen NO & others* (1162/17) [2018] ZASCA 138

unlawful eviction and where eviction was inevitable, to ameliorate its adverse impact.’¹¹

[41] The Probation’s Officer’s report is clear in that, it states that eviction would not be just and equitable regard being had to the unavailability of suitable alternative accommodation; the family’s indigent conditions and economic hardships; and the disruption to the children’s education in the respondents’ care. All of these hardships are simply cast away by the settlement agreement.

[42] The agreement now states that the respondents qualify to be given emergency housing. Perplexingly, the latter part of the first suspensive condition to the enforcement of the settlement agreement, that it being subject to being co-signed by the Municipality, was actually met by the Municipality. It co-signed the agreement to the negation of its own report dated 8th July 2022 wherein it held that the household does not qualify for emergency accommodation in terms of the Municipality’s Temporary Housing Assistance Policy because the household would most probably be able to address their housing emergency needs from their own resources. What these “resources” are, is not said. But also not said is the factors giving rise to the Municipality’s change of tone. And most concerningly, the Municipality does not say any word in the settlement agreement as to where the respondents would be relocated to. In fact, if one reads the settlement agreement in greater depth, one comes to the conclusion that finding of suitable alternative accommodation is burdened on the respondents, hence great emphasise being put on them “vacating voluntarily”.

[43] No supplementary report has been filed by the sixth respondent.

¹¹ Ibid, para 27.

[44] In paragraph 19 of the settlement agreement, it is recorded that” The respondents indicated that they are able to secure emergency accommodation with the assistance of the Sixth respondent and they are willing to permanently vacate the property by; or before Friday, **3 February 2023**.

[45] I must consider whether the terms of the agreement are The Constitutional Court in *Snyders and Others v De Jager and Others*¹² 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.’¹³

[46] I must haste to say that it is not for the respondents to agree that their own eviction is “just and equitable”, it is rather incumbent on the Court to make that determination as to whether sections 9 read with section 8 of ESTA had been complied with, in particular whether the applicants had shown that it was just and equitable to terminate the respondents’ rights of residence and to evict them regard being had to sec 11(3) of ESTA. The Court is enjoined by the ESTA to consider all relevant circumstances before granting an order that the eviction is just and equitable.

[47] But how do courts minimise inequality and inequity in evictions? Nkabinde J in *Molusi and Others v Voges N.O. and Others*¹⁴ posed this pertinent question and the answer is very key in the adjudication of evictions. ESTA allows eviction only when it is just and equitable.¹⁵

¹² *Snyders and Others v De Jager and Others* 2017 (3) SA 545 (CC).

¹³ *Ibid*, para 56.

¹⁴ 2016 (3) SA 370 (CC).

¹⁵ *Ibid*, para 41.

[48] In *Hattingh*,¹⁶ Zondo J delineates how the balancing of the rights of the owner or person in charge and that of the occupier infuses justice and equity into the inquiry. This Court said:

“[T]he part of section 6(2) [of ESTA] that says: ‘balanced with the rights of the owner or person in charge’ calls for the striking of a balance between the rights of the occupier, on the one side, and those of the owner of the land, on the other. This part enjoins that a just and equitable balance be struck between the rights of the occupier and those of the owner. The effect of this is to infuse justice and equity into the inquiry required by section 6(2)(d). Section 6(2)(d) is not the only provision into which ESTA seeks to infuse justice and equity or fairness. In this regard I draw attention to the requirement in section 6(4) that the landowner’s rights to impose conditions . . . must be exercised reasonably, and the requirement in section 8(1) that the termination of an occupier’s right of residence must not only be based on a lawful ground but also that it must be ‘just and equitable, having regard to all relevant factors. . . make it clear that fairness plays a very important role.’”¹⁷ (Footnotes omitted.)

[49] Further, Nkabinde J held that:

“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 section 8 read with section 9 as well as sections 10 and 11 which make it clear that fairness plays an important role”¹⁸

[50] Similarly, a court making any “settlement agreement “an order of court in eviction proceedings must ensure that justice and equity prevails to all concerned having considered all relevant circumstances.

¹⁶ *Hattingh and Others v Juta* [2013] ZACC 5; 2013 (3) SA 275 (CC); 2013 (5) BCLR 509 (CC)

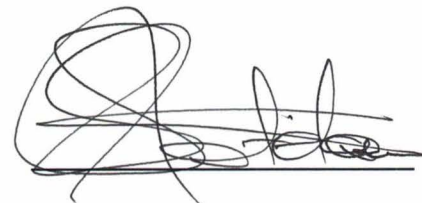
¹⁷ *Ibid*, para 32.

¹⁸ *Molusi* above n 14 at Para 39.

[51] I therefore cannot, in all circumstances of this case being considered, confirm the settlement agreement.

[52] In the result I make the following order:

1. The Order dated 22 November 2022 of the Magistrate Court, Paarl District, Western Cape, is set aside in its entirety.
2. The matter is remitted to the magistrate court Paarl to consider the eviction application taking into consideration the issues raised in this judgement.

A handwritten signature in black ink, appearing to be 'FLATELA L', written over a horizontal line.

FLATELA L

Judge

Land Claims Court