




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

CASE NO: LCC33R/2023

STELLENBOSCH MAGISTRATE'S COURT CASE NO: 996/2021

Before: Honourable Meer AJP

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
25/01/2024 DATE	 SIGNATURE

In the review proceedings in the case between:

JULIAN MARK GRUFT N.O

First Applicant

(In his capacity as trustee of the Samuel Zetler Trust, T971/84)

DENNIS LOUIS ZETLER N.O

Second Applicant

(In his capacity as trustee of the Samuel Zetler Trust, T971/84)

S. ZETLER & SONS FARMING ENTERPRISES CC

Third Applicant

and

PIET PATRICK MULLER

First Respondent

DOROTHEA MULLER

Second Respondent

ASHLIN MULLER	Third Respondent
JAVIGAIL MULLER	Fourth Respondent
STELLENBOSCH MUNICIPALITY	Fifth Respondent
MINISTER OF LAND AFFAIRS	Sixth Respondent

JUDGMENT

MEER AJP

[1] This matter comes before me on automatic review in terms of section 19(3) of the Extension of Security of Tenure Act 62 of 1997 ("the Act"). It concerns the review of an order for the eviction of the First to Fourth Respondents from the house they occupy on Farm 530(1) Brakerlsdal, Stellenbosch Way, Stellenbosch ("the farm"), owned by the Samuel Zetler Trust of which the First and Second Applicants are trustees.

[2] The First and Second Respondents who are spouses started working and living on the farm in 2007. The First Respondent was dismissed for gross misconduct which dismissal was confirmed by the CCMA. The Second Respondent was retrenched in 2015. The First Respondent has, apart from a period of absence from the farm for two years from 2010 to 2012, lived there continuously since 2007, as has the Second Respondent. The Third and Fourth Respondents are the adult daughters of the First and Second Respondents. They too have been residing on the farm since 2007. The Third Respondent's son and the Fourth Respondent's infant daughter also live in the farm.

[3] The eviction of the Respondents was granted pursuant to the dismissal and termination of the right of residence of the First Respondent, an employee, whose right

of residence arose solely from his employment agreement. It is common cause that the First Respondent's dismissal was for gross misconduct, a charge to which he pleaded guilty at an internal investigation and which dismissal was subsequently confirmed by the CCMA. The founding affidavit emphasises that the dismissal of the First Respondent was due to violence displayed against another employee, that such conduct displays a negative relationship with co-inhabitants and creates a risk of danger. The affidavit avers that the display of violence by the First Respondent has irrevocably damaged the working relationship with the Applicants and his continued occupation on the farm prejudices the Applicants and the other Occupants. These allegations are met with a bare denial by the First Respondent in reply and accordingly are not seriously in dispute.

[4] In any event the Appellant's version is corroborated by the confirmation of the dismissal by the CCMA. A dispute over whether his employment was terminated in accordance with the provisions of the Labour Relations Act, as contemplated in terms sections 8(2) ad 8(3) of the Act, was dealt with in accordance with the provisions of the Labour Relations Act. Upon the confirmation by the CCMA the termination took effect. The order for the eviction of the First Respondent thus occurred in accordance with the provisions of sections 8(2) and (3) of the Act read together with section 9(2)(a). The eviction of the First Respondent thus stands to be confirmed.

[5] I am however unable to confirm the eviction orders granted in respect of the Second, Third and Fourth Respondents. It is undisputed that the Second to Fourth Respondents have lived on the premises continuously since 2007 with the knowledge of the Applicants. Section 3(4) of the Act provides that for the purpose of civil proceedings a person who has continuously and openly resided on land for a period

of one year shall be presumed to have consent unless the contrary is proved. Section 3(5) in turn states that for the purposes of civil proceedings a person who has continuously and openly resided on land for a period of three years shall be deemed to have done so with the knowledge of the owner of person in charge. The Second to Fourth Respondents are thus occupiers in their own right whose rights to occupy flow from consent. This being so, an eviction order could only have been granted if each of their rights of residence had been terminated in terms of section 9(2)(a) read with section 8(1) of the Act. Section 8(1) is applicable to persons like these Respondents whose rights of residence flow from consent. The termination of their rights of residence is required to be just and equitable having regard to all relevant factors set out at section 8(1) which states as follows:

.....

“8. Termination of right of residence

(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.”

[6] Not only was Section 8 (1) not considered in relation to each of them, but the first two notices relied upon by the Applicants for the termination of the rights of

residence of all the Respondents make no mention of the Second to Fourth Respondents, and the third notice refers to them as occupants whose rights to reside are held insofar as the first respondent continues to have rights of occupation. This is clearly wrong in law and is contrary to the findings of the Constitutional Court in the well-known judgment of *Klaase & another v Van der Merwe N.O and & others* [2016] ZACC 17, where at paragraphs 65 to 66, commenting on the position of Mrs Klaase, similar to that of the Respondents in the instant matter, the Court stated:

"[65] In my view, Mrs Klaase has made out a case that she is an occupier in terms of ESTA. As an occupier, Mrs Klaase is entitled to the protections set out in ESTA. An eviction order may be granted against her only if certain conditions are met. The first is that her right of residence must have terminated on lawful grounds, provided that the termination is just and equitable, having regard to certain listed factors. So, for as long as the right of residence of an occupier like Mrs Klaase has not been terminated in terms of section 8, the occupier may stay. Obviously, section 8 has not been complied with and there was no suggestion that it was. It follows that Mrs Klaase's right of residence was not lawfully terminated. It is accordingly unnecessary for us to consider whether her consent to reside on the property was subject to any conditions, such as the continuation of her marriage or Mr Klaase's continued employment. It is also unnecessary to consider whether, if proper notice had been given, her eviction would have been just and equitable.

[66] 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.


[7] These words apply appositely and equally to the Second to Fourth respondents.

[8] In view of the above, the eviction order granted in respect of the Second to Fourth Respondents is accordingly set aside. In keeping with the practice of this Court not to award costs in matters such as these, I intend granting no order as to costs.

I accordingly grant the following order:

ORDER

1. The order for the eviction of the First Respondent is confirmed.
2. The order for the eviction of the Second to Fourth Respondents is set aside.
3. There is no order as to costs.

A handwritten signature in black ink, consisting of a stylized 'Y' followed by a series of loops and a long horizontal stroke.

Y S MEER

Acting Judge President

Land Claims Court