IN THE LAND CLAIMS COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LCC 135/2022
MAG CASE NO:3/2021

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: YES ~~/NO~~
(3) REVISED: ~~YES~~ / NO

19/04/2023
DATE

SIGNATURE

In the matter between:

CHRISTINA PIETERSE	Appellant
ALL PERSONS RESIDING WITH OR UNDER THE FIRST AND SECOND RESPONDENTS ON THE FARM BLAUWKRANS, GRABOUW	
and	
DRUMEARN (PTY) LTD	First Respondent
JAMES EDWARD RAWBONE-VILJOEN	Second Respondent
BRANDON CRAIG MYBURGH	Third Respondent

JUDGMENT

FLATELA J

Introduction

[1] At issue in this matter is whether a relocation of a long-term occupier from one house to another house which is situated on land belonging to a different entity with distinct cadastral identifications constitutes an eviction as contemplated by the Extension of Security of Tenure Act 62 of 1997 ("ESTA").

[2] This is an appeal against the whole judgement and orders of the Magistrates Court, Grabouw dated 26 July 2022. The Magistrate granted an application by the respondents for a mandatory interdict in terms of Section 19 (1)*(b)(i)*[1] of the Extension of Security of Tenure Act 62 of 1997 ("ESTA") to relocate the appellant from a production manager's house in Blauwkrans farm to a labourers' house on Helderfontein farm.

[3] In granting the relocation order, the court *a quo* held that the farms are owned by the same shareholders even though the registered owners are different entities and for that reason, the relocation was not an eviction. The court *a quo* further held that the relocation would not impair the appellant's human dignity, and lastly that the appellant's entitlement to the house the appellant currently occupies was contractually linked to her deceased spouse's employment as a manager which employment came to an end when he passed on.

[4] The appellants are appealing the decision on grounds that are more fully set out in the Notice of Appeal. However, during the hearing both counsel crystallised the issue that this court must determine to whether the relocation of the appellant from a house on Blauwkrans Farm on the land belonging to the first respondent to another

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[1] **Magistrates' courts**

19. (1) A magistrate's court—
(a) shall have jurisdiction in respect of—
(i) proceedings for eviction or reinstatement: and (ii) criminal proceedings in terms of this Act: and
(b) shall be competent—
(i) to grant interdicts in terms of this Act; and
(ii) to issue declaratory orders as to the rights of a party in terms of this Act.

house on Farm Helderfontein in the land of the second respondent with distinct cadastral identifications amounts to eviction as contemplated by ESTA. The first and second respondent have common shareholders.

The Parties

[5] The appellant is Christina Pieterse ("Mrs P"), a 61 year old pensioner who resides at house No. 4 on the first respondent's Drumearn farm. Mrs P and her late husband Mr P were granted the right of occupation of the house by virtue of Mr. P's employment as a Production Manager of the first respondent prior to his death on 20th August 2016. Mrs P was formerly employed as a helper in the household of the shareholder of the first and second respondent. She was discharged from duty due to ill health.

[6] Mrs P has since acquired a status of being long-term occupier as described in Section 8(4) of ESTA. She has been residing on the first respondent's farm for 21 years and has reached the age of 60.

[7] The first respondent is Drumearn (Pty) Ltd, a company with limited liability duly registered in terms of the company laws of South Africa ("Drumearn") with registration number 1962/00367/07. Its registration address is Helderfontein farm, Elgin, Grabouw. Drumearn is the registered owner of the farm Blauwkrans more fully described as Portion 84 of the farm Palmiet River No. 319, Division of Caledon (Blauwkrans Farm).

[8] The second respondent is Helderfontein Farm (Pty) LTD, a company with limited liability and registered in terms of the company laws of South Africa ("Helderfontein") with registration number 1965/0017817/07 and with registration address at Helderfontein farm, Elgin, Grabouw. The second respondent is the registered owner of Helderfontein farm more fully described as portion 64 of the farm Palmiet River No. 319, Division of Caledon (Helderfontein Farm). The labourers' house to which the respondents wish to relocate the appellants is situated on Helderfontein farm.

[9] The third respondent is Brandon Craig Myburgh. Mr Myburgh is employed by Drumearn as its Operational Farm Manager and is a person in charge of the 1st respondent.

[10] The shareholding in both farms is wholly held by the JE Rawbone-Viljoen Trust and JE Rawbone Viljoen respectively. The shareholders are not joined in these proceedings .

Factual Background

[11] The facts are largely common cause. The appellant has been residing on Farm Blauwkrans since 2000 when she and her late husband Mr Pieterse were employed by the first respondent as foreman and domestic worker respectively for James Raubown–Viljoen and his wife. In 2003 the appellant was diagnosed with acute arthritis on her hips and she was relieved from her duties due to this disability. She has since undergone two hip replacement operations during 2015. She is permanently disabled and she has been receiving a disability grant since 2004. In July 2016 Mr P was diagnosed with lung cancer and he passed away on 20 August 2016.

[12] On 12th October 2016 the third respondent convened a meeting with the appellant and her daughter to discuss their occupation of the house. The appellant was informed that the property was required for the accomodation of the new production foreman that was to be employed to replace Mr P. Therefore they must look for alternative accomodation. Several follow up meetings were convened to establish the progress in finding alternative accomodation by the appelant. There was no progress and the applellant refused to leave the property. A notice in terms of section 8(5)[2] of ESTA was served upon the appellant. On 23 May 2017, the appellant was informed that she could stay in the property up to 31 July 2017 and thereafter she

[2] **Section 8(5)**
On the death of an occupier contemplated in subsection (4), the right of residence 50 of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1)

would be moved to Helderfontein Farm for the remainder period of her year notice ending on 1 September 2017.

[13] The appellant refused to move voluntarilly to the farm Heldefontein Farm and then negotiations collapsed. The first respondent then started litigation against the appellant on 20th August 2017. In order to put this matter into context a brief litigation history is unavoidable.

Litigation History

First Relocation Application

[14] On 20th August 2017 the first respondent launched an application for a mandatory interdict in terms of section 19(1)(*b*)(i)[3] of the Extension of Security of Tenure Act 62 of 1997 ("ESTA") to relocate the appellant and her daughter from a manager's house in Blauwkrans farm to a labourers' house on Helderfontein Farm. In June 2018, the second respondent was joined to the proceedings. On 28th September 2018 the respondents withdrew the mandatory interdict application and launched eviction proceedings.

The Eviction Application

[15] On 23 November 2018 the respondents launched eviction proceedings against the appellant and her daughter in the same court and the eviction application was dismissed by the Magistrate. The respondents appealed the judgement and the order of the Magistrate to this court. On appeal, the respondents argued that the eviction

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[3] **Magistrates' courts**
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was just and equitable as they have given the respondents twelve months' notice in terms of section 8(5) of ESTA and by refusing to be relocated to the house in the neighbouring farm the appellant has breached the provisions of section 10(1)[4] of ESTA. On whether the appellants have made out a case for eviction the court in *Drumearn Pty Ltd and Others v CP and Others*[5] said the following:

> 'It is common cause that Mrs. P is on the authority *of Klaase and Another v Van der Merwe NO and Others* 2016 (9) BCLR 1187 (CC) at paras [60] – [66], an occupier in her own right, having worked for the employer for approximately 3 years and having lived the farm continuously for close to 19 years with the consent of the land owner. Issuing the notice of termination under section 8(5), instead of section 8(4)(b) was, accordingly, in my view, erroneous.[6]
>
> Also, on the facts of this matter, no case is made out for a breach which can be classified as satisfying the criteria envisaged in section 10(1)(c). The most egregious acts, according to the appellants, committed by Mrs. P, as I understand them, was her unwillingness to be relocated to a house on a neighboring farm owned by them, refusing to use her husband's provident fund pay-out to purchase a house in Grabouw, her uncooperative attitude and, alleged sub-letting of the premises, which is denied by Mrs. P.'[7]

[16] On 30th July 2020 the respondents filed a leave to appeal to the Land Claims Court. The respondents were informed that this court does not have jurisdiction to hear an appeal from its own judgement. The registrar referred the respondents to *Tadvest*

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[4] **Order for eviction of person who was occupier on 4 February 1997**
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;
(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.
[5] Drumearn Pty Ltd and Others v CP and Others (LCC 11 of 2020) [2020] ZALCC 13 (09 July 2020)
[6] Ibid, para 30.
[7] Ibid, para 31.

Industrial (Pty) Ltd formerly known as Old Abland (Pty) Ltd v Hanekom and Others[1] judgement. They were informed they will have to approach the Supreme Court of Appeal. The respondents did not appeal to the Supreme Court of Appeal. Instead, they launched the second relocation application.

The second relocation application

[17] The respondents re-launched an application for a mandatory interdict in terms of Section 19(1)(*b*) to relocate the appellants from a manager's house in Blauwkrans farm to a labourers' house on Helderfontein farm. The respondents argued still that Section 8(5) of ESTA was applicable. Mrs P's right of residence could be terminated with 12 months' written notice after the death of Mr P.

[18] The respondents argued that although the farms are owned by different companies, the shareholding in both companies is the same, therefore both farms are effectively owned by one shareholder. And by reason of the fact that shareholder is farming the farms as one-unit, the farms must be treated as a single unit for the purpose of the relocation. Furthermore, the relocation of the appellant will not impair on the appellant's dignity.

Court a quo

[19] The court a quo held that the respondent's farms are effectively owned by the same shareholder and the "land" although registered in different companies is operated as same unit by the respondents, therefore the relocation of the appellant will not amount to eviction. The court relied on the cases of *Chagi v Singisi Forest Products (Pty) Ltd*,[8] *Oranje and Others v Rouxlandia Investments (Pty) Ltd*[9] *and Dlamini v Joostens*[10] for its findings.

On appeal

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[8] *Chagi v Singisi Forest Products (Pty) Ltd* [2007] ZASCA 63; [2007] SCA 63 (RSA).
[9] *Oranje and Others v Rouxlandia Investments (Pty) Ltd* 2019 (3) SA 108 (SCA).
[10] *Dlamini v Joostens* 2006 (3) SA 342 (SCA).

[20] Mr Montzinger, for the respondents, contended that it is trite law that a relocation does not constitute an eviction and that this court confirmed this position in its judgement of *Pharo's Properties CC and Others v Kuilders and Others.*[11] He submitted further that this position was later confirmed by the Supreme Court of Appeal in *Chagi.*[12]

[21] In support of his argument, Mr Montzinger contended that this court in *Investments (PTY) LTD v Orange and others*[13] *(Rouxlandia 1)* confirmed that a relocation from a manager's house to a different house on the same farm does not constitute an eviction.

[22] He submitted that *Orange and others v Rouxlandia Investments (PTY) LTD*[14] *(Rouxlandia 2)* provides general guidance when a relocation is pursued . He summarised the principles relating to relocations as follows :

22.1. A landowner is entitled to enforce its common law right to terminate an occupier's occupancy in a particular house subject to the proviso that none of the occupier's tenure rights are infringed.
22.2. Security of tenure not tied to a specific house.
22.3. An eviction in terms of ESTA is confined to an eviction from the land and not from one dwelling to another. As such the relocation from one dwelling to another can never costitute an evictiction.
22.4. A provision of ESTA (or at least section 6) that encroaches on the landowner's right of ownership should be restrictively interpreted.
22.5. ESTA was not enacted to provide security of tenure to an occupier in the house of his or her choice.

Legal Framework

[11] *Pharo's Properties CC v Kuilders* [2021] 2 ALLSA 309 (LCC).
[12] Supra, fn 8.
[13] *Investments (PTY) LTD v Orange and others* (LCC 122/2016) [2017] ZALCC 3.
[14] *Orange and others v Rouxlandia Investments LTD* 2019 (3) SA 108 (SCA).

Definitions

[23] To evict in the definition of ESTA is to deprive a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence in terms of the Act and eviction has a corresponding meaning.[15].

[24] Eviction in ESTA cannot be invoked without compliance with section 8[16] that deals with termination of occupation.[17]

[25] Land is not defined in the Act, however various courts have interpreted land to mean the land registered in the name of the owner.[18]

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[15] Section 1(1)(vi) of 62 of 1997.

[16] **Termination of right of residence**
Section 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;
(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.
(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) 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.
(5) On the death of an occupier contemplated in subsection (4), the right of residence of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1).
(6) Any termination of the right of residence of an occupier to prevent the occupier from acquiring rights in terms of this section, shall be void.
(7) If an occupier's right to residence has been terminated in terms of this section, or the occupier is a person who has a right of residence in terms of section 8(5)—
(a) the occupier and the owner or person in charge may agree that the terms and conditions under which the occupier resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the occupier; or
(b) the owner or person in charge may institute proceedings in a court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.

[17] *Chagi v Singisi Forest Products (Pty) Ltd* [2007] SCA 63 (RSA) par [8].

[18] See *Dlamini v Joostens* 2006 (3) SA 342 (SCA).

Case Law

[26] In *Dlamini v Joostens*[19] Cachalia AJA interpreted land to mean the land registered in the name of the owner. In that case a proposal was made that the cadastral definition of properties as registered in the Deeds Office must not be taken into account when considering the burial of an occupier who resided in a particular property. The court said:

> 'In the instant matter the appellants contend that considerations other than the boundaries of the land registered in the deeds office must be taken into account in deciding whether an occupier can claim any rights on it. They submit that the three farms must be regarded as the same land because they have effectively been farmed by the father and sons as a single unit; that it had not been apparent to the first appellant which of the Joostens was responsible for farming particular portions of the farm; that the boundaries between the farms were neither material nor apparent; and that the first appellant worked on the farms Bockenhoud and Sandspruit never appreciating that they were different parcels of land.[20]
>
> The contention that the meaning of words in a statute may vary, depending on the facts of a particular case, has no legal foundation. The word 'land' is not defined in the Act. But it is apparent that in the context within which it is used, it can refer only to land that is registered in the name of an owner. This is because the Act regulates the relationship between occupiers of land and owners of the same land.' [21] (internal footnotes omitted).

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[19] Ibid.
[20] Ibid, para 13.
[21] Ibid, para 8.

[27] In *Chagi*[22] Jafta JA, endorsed with approval Cachalia's AJA's dictum in *Dlamini*[23] regarding the definition of the word "land". The *Chagi* matter concerned itself with a relocation of occupiers from one house to another on the same registered land unit.[24] The learned Judge expressed himself as follows:[25]

> 'Consistently with the protection of the right of ownership, the word "land" as used in sec 6 and in the definition of eviction means the registered unit as a whole. This interpretation does not subtract anything from the occupier's right of residence on land as envisaged in s 6. In preferring this particular interpretation, I am fortified by the decision of this court in *Dlamini v Joosten* 2006 (3) SA 342 (SCA). There Cachalia AJA said (at para 14):
>
> > "The contention that the meaning of words in a statute may vary, depending on the facts of a particular case, has no legal foundation. The word "land" is not defined in the Act. But it is apparent that in the context within which it is used it can refer only to land that is registered in the name of the owner. This is because the Act regulates the relationship between occupiers of land and owners of the same land."
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> The learned judge continued (at para 16):
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> > "The burial right in s 6(2)(dA) of the Act is an incidence of the right of residence contained in s 6(1), which creates a real right in land. Such a right is in principle registrable in a Deeds Registry because it constitutes a "burden on the land" by reducing the owner's right of ownership of the land and binds successors in title. The burial right is in the nature of a personal servitude which the occupier has over the property on which he possesses a real right of residence at death of a family member who at the time of death was residing on the

[22] *Chagi v Singisi Forest Products (Pty) Ltd* [2007] SCA 63 (RSA).
[23] Supra, fn 19.
[24] *Chagi v Singisi Forest Products (Pty) Ltd* [2007] SCA 63 (RSA).
[25] Ibid, para 19.

land. These rights are claimable against the owners of registered land only. And the only objective determination of the extent of the land which has been registered by an owner is by reference to its cadastral description.'"

It follows that the court below erred in making the finding that 'land' as used in s 6(1) means the actual piece of land used by the occupier and not the entire registered land unit. The proposed relocation of the appellants to Weza Sawmill Village does not constitute an eviction as contemplated in the Act and the respondent is not obliged to comply with its requirements before effecting the relocation.'[26]

[28] *Rouxlandia 2 Ltd*[27] is a matter which concerned itself with the relocation of the occupiers from one house to another. The appellant's argument was that the house they were relocated to was smaller, therefore the relocation will impair his dignity. Nichols AJA said:[28]

'The starting point is the decision of this court in *Chagi v Singisi Forest Products (Pty) Ltd* which conclusively spelt out whether a relocation could amount to an eviction as contemplated by ESTA. The court held that because sec 6 encroaches upon a landowner's right of ownership, it should be restrictively interpreted. Therefore an eviction in terms of ESTA is confined to an eviction from the land, not from one dwelling to another. As such, a relocation could not amount to an eviction in terms of ESTA. The appellants did not suggest otherwise. Nor indeed is this avenue available to the appellants.'

[29] From the body of the case law above, it is now settled that land in terms of ESTA refers to only to land that is registered in the name of the owner because the

[26] Ibid, para 20.
[27] *Orange and Others v Rouxlandia Investments (Pty) Ltd* 2019 (3) SA 108 (SCA) (Rouxlandia 2)
[28] Ibid, para 10.

Act regulates the relationship between an occupier's right of residence and the owner's right of property in terms of the same land. Therefore, a relocation is not an eviction if an occupier is moved from one house to another in the same registered land unit.

Discussion

[30] Mr Montzinger relied heavily on the SCA's judgement in *Rouxlandia 2*[29] to support his proposition that a relocation does not amount to eviction. He submitted that the SCA emphatically summarised this position as follows at paragraph 18:

> '... The Constitutional Court has acknowledged that the right of residence conferred by sec 8 of ESTA is not necessarily tied to a specific house. The protection afforded by those parts of ss 5 and 6 of ESTA on which the appellants rely, is to ensure that an occupier will not be subjected to inhumane conditions violating human dignity. To this extent, an occupier's right to resist relocation is protected. But these sections do not amount to a blanket prohibition on relocation under any circumstances. If indeed the relocation were to impair an occupier's human dignity, then the provisions of secs 5 and 6 would apply and the occupier could invoke his or her constitutional rights. This does not mean that all relocations necessarily suffer the same fate.'

[31] The submission that there is a common law right of relocation not recognised as an eviction and that this court and the Supreme Court of Appeal has confirmed this position is not backed by law. Recently this court in *Boplaas Landgoed (Pty) Ltd v Van der Merwe and others*[30] Meer AJP answered the question regarding what relocation is in terms of ESTA. She expressed herself as follows:

> '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.

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[29] Supra, fn 27.

[30] *Boplaas Landgoed (Pty) Ltd v Van der Merwe* (LCC37/2022) [2022] ZALACC 38.

[12] In *Pharo's Properties CC and Others v Kuilders and Others* at paragraph 13, this court found that relocation in terms of ESTA was movement from one housing unit to another on the same registered farm. A similar finding was made in *Drumearn (Pty) Ltd v Wagner and Others* at 504F, and in *Mjoli v Greys Pass Farm (Pty) Ltd* at paragraph 11. The Supreme Court of Appeal has confirmed this. In *Chagi*, at paragraphs 19 and 20, it was similarly held that a relocation from one house to another on the same land does not constitute an eviction. Likewise in *Rouxlandia* where, as aforementioned, with reference to *Chagi*, it was held that an eviction in terms of ESTA is confined to an eviction from the land, not from one dwelling to another.'[31]

[13] Mr Montzinger submitted that in the event of our accepting that a relocation is limited to movement on the same land, as we have, then a development of what he referred to as the 'common law remedy of relocation' is necessary to define the removal of an occupier off a farm in a case such as this where the State has allocated an occupier a house which the occupier now owns, as a relocation and not an eviction. The 'common law remedy of relocation', he submitted, was – absent such a development – inconsistent with the Constitution. (Appellants' heads of argument, para 41.) It had not kept up with the changing landscape of farm evictions and provision of housing by the state, and how a landowner protects their rights in terms of Section 6 of ESTA or Section 25 (1) of the Constitution, if an occupier has security of tenure on their land and also a stronger right to property ownership and security of tenure off the land. Such a development, he submitted, will apply to a very specific set of circumstances and will not impact other categories of occupiers' rights to security of tenure.

[31] ibid, para 12.

> [14] What Mr Montzinger refers to as a common law remedy of relocation, is in fact the interpretation of the definition of 'eviction' as contained in Section 1 of ESTA in the cases mentioned in paragraph 12 above. There, the judicial interpretation of 'eviction,' as endorsed by the SCA, confines an eviction to a removal off a farm and a relocation to a removal from one dwelling on a farm to another. The exercise engaged in by the courts was judicial statutory interpretation, which is binding. There was no pre-existing common law remedy of relocation emanating from our courts which was considered in the judgments referred to above at paragraph 12, at least independent of the law of contract. In those cases, ESTA was considered.'[32]

[32] This matter falls within the same principles applicable in *Boplaas.* In *Boplaas* the farm owner wanted to relocate the long term ESTA occupiers to their Municipality allocated houses. The Land Claims Court dismissed the appeal in *Boplaas* and held that a relocation from one land to the other is an eviction. In this case, the intention is to relocate the occupier to another property owned by a different legal entity.

[33] Mr Montzinger argued emphatically that the cadastral description of the property is not the exclusive method of determining what land is for the purposes of a relocation. He submitted that the Supreme Court of Appeal judgement of Dlamini *v Joostens* and *Sandvliet Boerdey v Mampies*[33] is authority for his contention that to enforce rights in terms of ESTA is not limited to where the land is made up of only one registered portion of land. He submitted that *Sandvliet* did not consider the cadastral description of the property as an impediment for the enforcements of rights contemplated in ESTA. He argued further that the Land Claims Court is bound by the *stare decisis* principles enunciated by the Supreme Court of Appeal in *Sandvliet.*

[34] Mr Montzinger contended *Sandvliet* extended the meaning of the land when it concluded that the meaning of "residence" had an effect that the occupier could exercise burial rights on a different cadastral registered piece of land while residing on

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[32] Ibid, para 14.
[33] *Sandvliet Boerdery (Pty) Ltd v Maria Mampies & another* (107/2018) [2019] ZASCA 100.

another. For this proposition Mr Montzinger relied on this extract from paragraph 25 of the judgment..

> '....It is clearly possible, however, for a person to 'reside' on land which is made up of more than one registered portion of land. To take a straightforward example, a family might have the exclusive use of a fenced area containing their dwelling and a field for crops. I do not think anyone would doubt that the fenced area was the land on which the family 'resided'. Yet it might be situated partly on one registered piece of land and partly on another. The question whether a person has routinely performed sufficient acts in relation to land to regard it as part of the land on which he or she 'resides' is necessarily fact-specific.'

[35] *Sandvliet* does not find application in this matter. That judgment concerned itself with the development of the concept of residence and the established practice of burial rights in section 6 of ESTA. It did not extend the scope of the definition of land. In this regard Maya P (as she then was) said:[34]

> 'I should mention at this juncture that I have no objection to the meaning that *Dlamini* ascribed to the term 'land' in s 6(2)*(dA),* which the Court derived from the fact that ESTA regulates the relationship between occupiers of land and owners of the same land. And as the Court further pointed out, the burial right provided by these provisions is an incidence of the occupier's right of residence contained in s 6(1) of ESTA, which is in the nature of a registrable real right possessed by the occupier over the land at death of a family member, who at the time of death resided on that land. I also agree that because the burial right is a registrable real right in land which reduces an owner's dominium over his or her land, it is claimable only against that owner and his or her successors-in-title under s 24 of ESTA.[35]' (original footnote).

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[34] Supra, fn 33, para 21.

[35] In terms of s 24 of ESTA:

'(1) The rights of an occupier shall, subject to the provisions of this Act, be binding on a successor in title of an owner or person in charge of the land concerned.

(2) Consent contemplated in this Act given by the owner or person in charge of the land concerned shall be binding on his or her successor in title as if he or she had given it.'

[36] Having found that the appellant's relocation is in fact eviction, I do not think that it is necessary to deal with the suitability of the house the respondents' wishes to relocate the appellant to.

[37] The Magistrate misdirected herself in facts and in law by accepting that the "land", although registered in different entities, is owned by one owner. The court a quo misdirected itself in finding that the relocation will not amount to an eviction because the farms are treated as a single unit. The farms are owned by different entities and have distinct cadastral descriptions.

[38] All the cases the Magistrate relied on categorically state that a relocation from one house to another in a single unit is not an eviction. However, the relocation off the land is eviction.

[39] In the circumstances the appeal must succed.

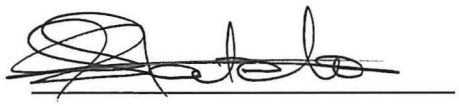
Costs

[40] This court only orders costs in special circumstances. I have given careful consideration to whether an adverse costs order should be granted in view of the litigation history of this particular matter and whether it constitutes special circumstances warranting a costs order. To recap, on 20th August 2017 the respondents instituted proceedings for a mandatory interdict to relocate the appellants but subsequently withdrew the application on 28th September 2017. Little over a year later on 28th November 2018 they changed tact and instituted eviction proceedings in the Magistrate's Court, which was dismissed; and on appeal, dismissed by this Court as well. On 20th July 2020 they appealled the dismissal to the very same Court and after being advised that this Court does not have jurisdiction to hear an appeal on its own judgment and that they should approach the SCA, they chose not to do so. Instead they instituted the second relocation application. The second relocation application, in my view, was a meritless application in view of the body of case law governing relocations which has not only impacted upon the respondent but has been

wasteful of the Department's scarce resources. Applications of this sort should be discouraged. But for the grant of the order by the Magistrate, which suggests that further legal certainty is warranted, a costs order would in my view be justified. Different considerations may apply in future cases.

[41] I accordingly order as follows:

1. The appeal is upheld..
2. The decision of the Magistrate's Court, Grabouw is set aside in its entirety and is replaced with this order:
   "The relocation application is dismissed".



L FLATELA
JUDGE
LAND CLAIMS

I agree, and it is so ordered

S COWEN

JUDGE

LAND CLAIMS COURT

Date of hearing: 16 January 2023

Date of judgment: 19 April 2023

Appearances

For the Appellant Adv A Bass *instructed by Ighsaan Sadien Attorneys*

For the Respondent Adv A Montzinger *instructed by* Terblanche Attorney