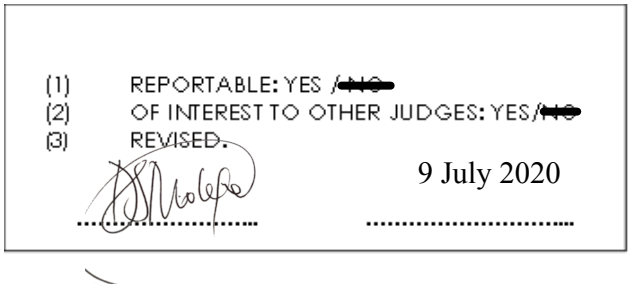
**IN THE LAND CLAIMS COURT OF SOUTH AFRICA**

**HELD AT RANDBURG**




Mag Case no. 2/2018

LCC Case no. 11/2020

In matter between:

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|---|---|
| **DRUMEARN (PTY) LTD** | First Appellant |
| **JAMES EDWARD RAWBONE-VILJOEN** | Second Appellant |
| **BRANDON CRAIG MYBURGH** | Third Appellant |
| and | |
| **CHRISTINA PIETERSE** | First Respondent |
| **CELESTE PIETERSE** | Second Respondent |
| **ALL PERSONS RESIDING WITH OR UNDER THE FIRST AND SECOND RESPONDENTS ON THE FARM BLAUWKRANS, GRABOUW** | Third Respondent |
| **THEEWATERSKLOOF MUNICIPALITY** | Fourth Respondent |
| **DEPARTMENT OF LAND REFORM AND RURAL DEVELOPMENT** | Fifth Respondent |

**Judgment delivered on 9 July 2020**

**JUDGMENT**

**CANCA AJ**

INTRODUCTION

[1] This is an opposed appeal against the whole of the judgment and orders of the Magistrate for the district of Grabouw, dismissing the application for eviction of the first, second and third respondents from the first appellants' farm. The issue in this appeal is whether the Magistrate erred in finding that the appellants, in seeking the termination of the right of residence of the respondents, and hence their eviction from the first appellant's farm, Blauwkrans ("the farm"), failed to comply with the provisions of the Extension of Security of Tenure Act, No. 62 of 1997 ("ESTA").

[2] The grounds on which the appeal is based are set out in detail in the Notice of Appeal and will not be repeated here unless where it is necessary to do so. The Magistrate based his judgment on a finding that the first appellant had failed to show that:

> 2.1 it had complied with the provisions relating to notice in terms of section 8(5) of ESTA[1]; and

[1] Section 8 of ESTA provides for the lawful termination of an occupier's right of residence on land that belongs to another. Sub-section 8(5) provides that:

> "(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)."

2.2 there was a fundamental breach by the first respondent as contemplated in sub-section 10(1)(c) of ESTA[2].

[3] Mr. Montzinger, for the appellants, contends that there are two pertinent issues for determination in this appeal, namely, (a) what constitutes a "fundamental breach" and (b) whether a deviation from the requisite formalities of ESTA or its regulations, regarding the prescribed notice is fatal? He contends that the breach between the parties was fundamental and that, because there was substantial compliance with the formalities or regulations, the deviation complained of was not fatal.

[4] Mr. Williams, for the respondents, in opposing the appeal, contends that the termination of the first respondent's right of occupation (and that of the second and third respondents) is unlawful and, as a result, the eviction would not be just and equitable in terms of section 8(1) of ESTA.

[5] In support of the aforementioned contentions, Mr. Williams submitted that the first respondent is a protected occupier in terms of section 8(4) of ESTA given that she was a long term occupier in her own right on the farm.[3] Her protected status arose, not only from her stay of approximately 19 years on the farm (according to a report compiled by a Project Coordinator for the Cape Winelands District Office) but also from her erstwhile employment on the farm as a domestic worker for three years.

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[2] Section 10 sets out the basis on which an occupier such as the first respondent, namely, one who was an occupier on 4 February 1997, may be evicted in terms of ESTA. Sub-section 10(1)(c) provides that an eviction order may be granted if:

> "(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;"

[3] Section 8(4) provides as follows: "(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 to provide labour shall not constitute such a breach."

That employment was terminated by illness, and with the consent of the farm owner. She was therefore, so the argument continued, not an occupier on the farm through or under her late husband as contended for by the appellants.

[6] Mr. Williams further submitted that because the first respondent is a long-time occupier, her occupation can only be terminated in terms of the provisions of section 10 (1)(c) of ESTA and that the appellants failed to make out a case in this respect.

**PARTIES**

[7] The first appellant, Drumearn (Pty) Ltd, is a company with limited liability and is duly registered in terms of the company laws of South Africa ("Drumearn"). Drumearn owns the farm, Blauwkrans, portion 84 of the farm Palmiet River No. 319, Division of Caledon.

[8] The second appellant, James Edward Rawbone-Viljoen ("Mr. Rawbone-Viljoen") is a director of Drumearn and is in charge of the day to day farming activities on the farm.

[9] The third appellant, Brandon Craig Myburgh ("Mr. Myburgh") is employed by Drumearn as its Operational Farm Manager and is in charge*, inter alia,* of Drumearn's human resources as well its employment and housing agreements with the farm workers.

[10] The first respondent, Christina Pieterse ("Mrs. Pieterse"), is the widow of the late Michael Jacobus Pieterse ("Mr. Pieterse") who, prior to his death on 20 August 2016, was employed by Drumearn as a production foreman. He was, allegedly, due to him being part of management, allocated "the foreman's house". It is from this house that the appellants are attempting to evict Mrs. Pieterse and her daughter, the second re-

spondent, Ms. Celeste Pieterse (“Ms. Pieterse”) as well as the third respondents who are Ms. Pieterse’s two minor children.

[11] The fourth respondent, the Theewaterskloof Municipality, is a municipality established by the Provincial Minister of Local Government under section 12 and 14 of the Local Government: Municipal Structures Act 117 of 1998. No substantive relief is sought against this respondent.

[12] The fifth respondent is the Department of Land and Rural Reform (“the Department”), and the administrative arm of the Minister of Rural Development and Land Reform, who has political oversight over the Commission on Restitution of Land Rights, an entity charged among other things, with receiving, investigating, mediating and settling disputes arising from land rights claims and recommending the settlement of such claims.

**BACKGROUND FACTS**

[13] Mr. Pieterse, as alluded to above, was a Production Foreman at Drumearn, a position he held from 2000 until his death during August 2016. Mrs. Pieterse, who was also employed by Drumearn as from 2000 as a domestic worker, ceased being employed in that or any other capacity, when she developed arthritis which resulted in hip replacement operations. It is not denied that it was with the agreement of Mr. Viljoen that her continued employment with the company ceased. Permission was, however, sought and obtained from Drumearn, for Ms. Pieterse, who was never employed by Drumearn, and had left the farm for employment elsewhere, to return to the farm so as to assist her mother. Ms. Pieterse’s presence on the farm is, therefore, with the consent of the owner and/or the person in charge.

[14] Approximately three months following the death of Mr. Pieterse, Mr. Viljoen and Mr. Myburgh entered into discussions, initially with only Mrs Pieterse during October 2016, and thereafter, with both her and her daughter, regarding the possibility of

them vacating the “foreman’s house” as same was needed for the new Production Foreman. Part of these discussions involved relocating the Pieterse family to a largely similar sized house on a neighbouring farm, also owned by Drumearn, so it is alleged. The appellants contend that the Pieterse family, and in particular, Mrs. Pieterse’s stance regarding a move from her current premises to the neighbouring farm, was hostile and uncooperative, this, notwithstanding the fact that she and her daughter had received a combined provident pay-out, to which the appellant had contributed, of R410 667.88. It is submitted that provident fund pay-outs of that nature had in the past, been used by the appellants to assist retiring and/or retired employees or their widows to acquire property in the nearby town of Grabouw.

[15] On 21 June 2017, following a break-down in the parties’ discussions regarding a voluntary vacation of the premises, Mr. Myburgh caused a notice, in terms of Form D of the regulations, issued under section 8(5) of ESTA to be served on Mrs. Pieterse. The notice, in relevant parts reads as follows:

*“**NOTICE TO TERMINATE RESIDENCE OF SPOUSE OR DEPENDANT OF LONG-TERM PROTECTED OCCUPIER***

*NOTICE IN TERMS OF SECTION 8(5) OF THE EXTENSION OF SECURITY OF TENURE ACT, 1997*

*……..*

*……..*

***If you do not leave the land within ……12……. of receiving this notice, the owner or person in charge may ask the court for an order saying that you can be evicted.***

*[Note: The period of notice given must not be less than 12 months.]”*

[16] I assume, for purposes of this judgment, that Mrs. Pieterse’s mother tongue is Afrikaans as she was served with the Afrikaans version of the Notice quoted above.

**THE ISSUES**

[17] It is not disputed that Mr. Pieterse, having lived on the farm for more than 10 years and had, as an employee and a resident on the farm, reached the age of 60 years on his demise, was an occupier in terms of section 8(4)(a) of ESTA.

[18] It is also common cause that Mrs. Pieterse, the spouse of Mr. Pieterse, had worked for the first appellant for 3 years until her employment ended, with the mutual consent of her employer, due to ill-health.

[19] The appellants contend that Mrs. Pieterse, her daughter and the grandchildren fall to be dealt with under the provisions of section 8(5) of ESTA, which deals with the rights of a spouse or dependant of a former section 8(4) occupier, in this case late Mr. Pieterse. Section 8(5) provides that:

> *"(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 months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1)."*

[20] The notice terminating Mrs. Pieterse and her family's occupation of the premises gave her 12 months' notice to vacate the farm as from the 21 June 2017. On the face of it, the appellants appear to have complied with one of the two requirements where a Sections 8(5) of ESTA termination of occupation of residence is sought. These are firstly, the grant of a 12 months' notice for the occupier to vacate the premises and to leave the farm. Mr. Williams contends that the appellants have failed to comply with this requirement.

[21] The second requirement is whether the occupier in this case, has committed a breach contemplated in section 10(1) of ESTA. Section 10(1), in relevant parts, reads as follows:

> "**Order for eviction of person who was an occupier on 4 February 1997 –**
>
> *(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) ……*
>
> *(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;*
>
> (d) ……."

[22] It is common cause that the Section 8(5) notices was sent to Mrs. Pieterse. What has to be determined now is whether that notice is relevant in circumstances where I find Mrs. Pieterse to be a section 8(4)(b) occupier and not one in terms of section 8(5) as contended for by the appellants.

[23] The right of residence of a surviving spouse of a deceased "long term occupier" may be terminated on 12 calendar months' written notice, this much is not in dispute.

[24] If, however, the surviving spouse is also a "*long term occupier*" in her own right, her right of residence can only be terminated if she has committed a breach in terms of section 10(1). The right to give 12 calendar months' notice to a spouse requiring her *"to leave the land*" does not apply if the notice will, in the latter case be irrelevant. Even if such a notice did not comply with all formal requirements, its effect cannot be to terminate Mrs. Pieterse's right of residence.

**THE MAGISTRATE'S JUDGMENT**

[25] The Magistrate's judgment, in relevant parts, reads as follows:

> *"(b) Reasons for Judgment.*
>
> *The right of residence of a section 8(5) occupier may be terminated on at least 12 months' written notice. According to the applicants [the appellants in the matter before us] they complied with this requirement.*
>
> *The applicants also relied upon an alleged section 10(1)(c) fundamental breach of trust.*
>
> *In my opinion they failed on both counts.*
>
> *As far as the alleged fundamental breach of trust is concerned, section 6(3) lists examples of different breaches. The breaches mentioned in section 6(3) do however not constitute a closed list and obviously theft and or some other criminal offences and or action would also constitute a fundamental breach.*
>
> *……..*
>
> *The respondents did not commit any of the breached [sic] referred to in section 6(3) neither did they, in my opinion, commit any other fundamental breaches. The breach the applicants allege is the first respondent's attitude recorded in their minutes of meetings held with the first respondent. The applicants refer to a negative attitude, being uncooperative, aggressive and a refusal to move.*
>
> *Aggressive [sic] was never expounded upon but it is hard to imagine that it was anything more than uncooperative and verbal refusal to move.*
>
> *It is quite understandable that somebody, in the respondent's position, would be uncooperative and negative.*
>
> *In my opinion this is not what the legislature intended as "… such a fundamental breach of relationship …" The applicants wanted to evict the respondents. This eventually soured the relationship and was not the initial cause of the proposed eviction.*
>
> *In my opinion the applicants therefore had to serve proper notices in terms of section 8(5) read with regulation 5. Regulation 5 is strict and holds that the notice given must be on form D or must conform substantially to [sic] form D. …"*

[26] Despite its convoluted language, the errors in the judgment are clear. Firstly, the Magistrate erred in relying on the provisions of subsection 6(3) of ESTA for finding

that Mrs. Pieterse did not commit a fundamental breach. That particular subsection has a closed list of possible offenses which an occupier can commit and so, jeopardize his or her continued residence on property falling within ESTA's net. Moreover, that subsection only applies when an eviction is sought in terms of section 10(1)(a). The appellants have relied for the eviction in terms of section 10(1)(c) and not subsection 10(1)(a), rendering subsection 6(3) irrelevant in this matter.

[27] The Magistrate also erred in finding that *"Regulation 5 is strict"* but states in the same sentence that a notice *"must conform substantially to [sic] form D…".* Conforming "*substantially*" to something cannot also be *"strict*" conformance with that thing.

[28] However, notwithstanding the fact that the Magistrate erred in the reasons advanced in reaching his conclusion, I agree that the appellants' appeal should fail, for the reasons set out hereunder.

[29] The Section 10(1) notice served on Mrs Pieterse is in my view irrelevant, as Mrs. Pieterse, being a section 8(4)(b) occupier, does not fall under its provisions.

**HAVE THE APPELLANTS MADE OUT A CASE FOR THE EVICTION?**

[30] It is common cause that Mrs. Pieterse 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.

[31] 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).

[32] The most egregious acts, according to the appellants, committed by Mrs. Pieterse, as I understand them, was her unwillingness to be relocated to a house on a neighbouring 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. Pieterse.

[33] As aforementioned, this is a typical *Klaase* case. The first respondent is a protected long-term occupier in terms of section 8(4) of ESTA. The appellants in their founding affidavit and heads of argument admit to that. However, Ms Pieterse was served with a notice of termination in terms of Section 8(5), as if her right of residence was as a spouse and could be terminated on 12 months notice.

[34] The appellants seek to rely on both section 8(4) and 8(5) of ESTA. - arguing that there was a breach of trust, and that the defective section 8(5) notice is cured by the respondents' misconduct in terms of section 10(1)(c). In my view, the Magistrate correctly concluded that there has not been a breach of relationship. None of Mrs. Pieterse' behaviour, referred to by the appellant persuade me that the breach between her and the appellants, is such that it cannot be cured or reasonably restored.

[35] There was therefore no certainty in the characterisation in law of the right of occupation by the appellant. The procedure to be followed is directed by the applicable section 8(4), and to rely on the incorrect section, renders the subsequent procedure unfair and fatally flawed.

[36] Therefore the termination of the first respondent's occupation was unlawful (and by extension that of the second respondents). A proper consideration of the factors in section 8(1) of ESTA shows the termination was not just and equitable.

[37] The Pieterse family cannot, on the facts before me, be evicted from the farm.

[38] I therefore make the following order:

1. The appeal is dismissed.

2. No order as to costs.

PP

**M P CANCA**

**ACTING JUDGE**

**LAND CLAIMS COURT**

I agree, and it is so ordered

**D S MOLEFE**

**JUDGE**

**LAND CLAIMS COURT**

**Appearances**

**For the Appellant**

Adv A Montzinger

*instructed by*

Terblanche Attorneys

**For the Respondent**

Adv J L Williams

*instructed by*

Ighsaan Sadien Attorneys