



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
JUDGMENT**

**Reportable**  
Case No: 83/2018

**TADVEST INDUSTRIAL (PTY) LTD** formerly known as  
**OLD ABLAND (PTY) LTD** (Registration No: 1990/003968/07) **APPELLANT**

and

**ANTHEA HANEKOM** **FIRST RESPONDENT**

**STUURMAN HANEKOM** **SECOND RESPONDENT**

**THOSE PERSONS UNLAWFULLY OCCUPYING  
COTTAGE NO 3, TOPSHELL PARK, BADEN  
POWELL ROAD, LYNEDOCH, STELLENBOSCH, WITH,  
OR UNDER FIRST AND SECOND RESPONDENTS** **THIRD RESPONDENT**

**STELLENBOSCH MUNICIPALITY** **FOURTH RESPONDENT**

**DEPARTMENT OF RURAL DEVELOPMENT AND  
LAND REFORM** **FIFTH RESPONDENT**

**TADVEST INDUSTRIAL (PTY) LTD** formerly known as  
**OLD ABLAND (PTY) LTD**

**APPELLANT**

and

**SUZIE-ANN JACOBS**

**FIRST RESPONDENT**

**THOSE PERSONS UNLAWFULLY OCCUPYING  
 COTTAGE NO 8, TOPSHELL PARK, BADEN  
 POWELL ROAD, LYNEDOCH, STELLENBOSCH, WITH,  
 OR UNDER FIRST RESPONDENT**

**SECOND RESPONDENT**

**STELLENBOSCH MUNICIPALITY**

**THIRD RESPONDENT**

**DEPARTMENT OF RURAL DEVELOPMENT AND  
 LAND REFORM**

**FOURTH RESPONDENT**

**Neutral citation:** *Tadvest Industrial (Pty) Ltd v Anthea Hanekom & others*  
 (83/2018) [2019] ZASCA 19 (25 March 2019)

**Coram:** Ponnann, Majiedt and Swain JJA and Carelse and Matojane  
 AJJA

**Heard:** 26 February 2019

**Delivered:** 25 March 2019

**Summary:** Section 16(1)(b) of Superior Courts Act 10 of 2013 – appeal from decision of high court sitting as an appeal court – special leave of Supreme Court of Appeal required – s 16(1)(c) of the Superior Courts Act – appeal from decision of Land Claims Court sitting as appeal court – leave to appeal granted by Land Claims Court – s 22(2)(a) of the Restitution of Land Rights Act 22 of 1994 – powers of Land Claims Court limited to powers of high court – special leave of Supreme Court of Appeal required – absence of jurisdiction – each appeal is struck from the roll.

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## ORDER

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**On appeal from:** Land Claims Court, Randburg (Poswa-Lerotholi AJ and Canca AJ concurring, sitting as the court of appeal):

Each appeal is struck from the roll.

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## JUDGMENT

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**Swain JA (Ponnan and Majiedt JJA and Carelse and Matojane AJJA concurring):**

[1] This appeal has its origin in the grant of orders for the eviction of the Hanekom family and the Jacobs family from a property situated in Stellenbosch, by the Magistrates' Court for the District of Stellenbosch. Separate applications for their eviction were launched by the owner of the property, Old Abland (Pty) Ltd, whose name was subsequently changed to Tadvest Industrial (Pty) Ltd, the appellant.<sup>1</sup>

[2] In the first application (the Hanekom matter) the present respondents were Ms Anthea Hanekom, the first respondent, Mr Stuurman Hanekom, the second respondent and the third respondent, described as 'those persons occupying cottage number 3 on the property' together with the first and second respondents

[3] In the second application (the Jacobs matter) the present respondents were Ms Suzie-Ann Jacobs, the first respondent, and the second respondent, described

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<sup>1</sup> LCC Case Nos: LCC178/2016 & LCC179/2016.

as 'those persons occupying cottage, number 8 on the property' together with the first respondent. In each application the Stellenbosch Municipality and the Department of Rural Development and Land Reform were cited as the third and fourth respondents. As only the first and second respondents in the Hanekom matter and the first respondent in the Jacobs matter, participate in this appeal, I will refer to these parties collectively as the respondents.

[4] In both matters, the magistrates' court, in addition to granting orders evicting the respondents from the appellant's property, ordered that the appellant pay the sum of R80 000 to the first respondent in each matter, in order to assist the respondents with their relocation and the acquisition of alternative accommodation. The respondents were ordered to vacate the premises within 90 days of payment of this amount. The appellant then appealed against the orders for payment, in both matters, to the Land Claims Court (the LCC). In response, the respondents cross-appealed against the orders for their eviction.

[5] The LCC, sitting as an appeal court of two judges, heard the appeals in the matters together, dismissing the appeals, but upholding the cross-appeals. In the result, the orders for eviction were set aside and each party was ordered to pay their own costs in the appeals. The appellant applied for and was granted leave by the LCC to appeal to this court in both matters, which were enrolled for hearing together.

[6] Prior to the hearing of the appeal the registrar of this court was directed to write to the parties as follows:

'At the hearing of the above appeal, the presiding judge requires counsel to be prepared to address the following –

Regard being had to sections 16(1)(b) and (c) of the Superior Courts Act 10 of 2013:

(1) Did the Land Claims Court (LCC) have jurisdiction to entertain an application for leave to appeal and grant leave to the appellant to appeal to this court?

(2) If not,

(2.1) Does the order of the LCC granting leave to the appellant to appeal to this court not amount to a nullity?

(2.2) If yes, does this court have jurisdiction to consider and determine the appeal?

To this end, supplementary heads of argument must be filed on behalf of the appellant by 6 February 2019 and the respondents by 20 February 2019 in which these questions are addressed.’

[7] In compliance with the directive, supplementary heads of argument were delivered and argument presented at the hearing, in which we were urged to decide the merits of the matter. Regrettably, this court does not have jurisdiction to do so, with the result that an order was granted at the hearing striking the appeals from the roll. An order was also granted directing the parties to pay their own costs in the appeals. This judgment is the fulfilment of an undertaking to furnish reasons for the grant of these orders.

[8] As it was put in *Snyders v De Jager* [2015] ZASCA 137; 2016 (5) SA 218 (SCA) para 8:

‘First, this court does not have original jurisdiction. Its jurisdiction is determined by the Constitution and by statute. Its inherent power to protect and regulate its own process does not extend to the assumption of jurisdiction not conferred upon it by statute.’

In addition, as pointed out by this court in *S v Van Wyk & another* [2014] ZASCA152; [2014] 4 All SA 708 (SCA); 2015 (1) SACR 584 (SCA) para 19:

‘The jurisdiction of this court to hear appeals from the high court whether as a court of first instance, or an appeal court, is derived from this section [s 16 of the Superior Courts Act 10 of 2013] and s 19 of the Act. Whereas under s 20(4) of the SC Act, [the Supreme Court Act 59 of 1959] the special leave of this court was only required in respect of an appeal from a decision of the full court (three judges) given on appeal to it, the special leave of this court is now also required where leave to appeal is sought in respect of a decision of two judges given on appeal to it.’

[9] The provisions of s 16 of the Superior Courts Act 10 of 2013 (the Act) read with s 19 of the Act, therefore determines the jurisdiction of this court to hear appeals from the high court. Section 16 of the Act which is headed ‘Appeals generally’ provides as follows:

‘(1) Subject to section 15(1), the Constitution and any other law –

(a) An appeal against any decision of a Division as a court of first instance lies, upon leave having been granted –

- (i) if the court consisted of a single judge, either to the Supreme Court of Appeal or to a full court of that Division, depending on the direction issued in terms of section 17(6); or
  - (ii) if the court consisted of more than one judge, to the Supreme Court of Appeal;
- (b) an appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal; and
- (c) an appeal against any decision of a court of a status similar to the High Court, lies to the Supreme Court of Appeal upon leave having been granted by that court or the Supreme Court of Appeal, and the provisions of section 17 apply with the changes required by the context.'

Section 19 of the Act provides for the powers of this court when hearing an appeal and is not relevant for present purposes.

[10] Section 16(1)(c) of the Act provides for an appeal against any decision 'of a court of a status similar to the High Court'. That the LCC is a court of such status appears from the provisions of s 22(2)(a) of the Restitution of Land Rights Act 22 of 1994, which provides that the LCC has jurisdiction throughout the Republic and has: '(a) all such powers in relation to matters falling within its jurisdiction as are possessed by a High Court having jurisdiction in civil proceedings at the place where the land in question is situated, including the powers of a High Court in relation to any contempt of the Court.' Section 16(1)(c) applies to 'any decision' of the LCC which therefore includes a decision of the LCC sitting as an appeal court. The section confers jurisdiction on the SCA to hear an appeal from a decision of the LCC sitting as an appeal court.

[11] In terms of the preamble to s 16, its provisions are, however, subject to 'any other law'. Section 16(1)(c) of the Act itself is therefore subject to the provisions of s 22(2)(a) of the Restitution of Land Rights Act, which provides that the LCC has 'all such powers in relation to matters falling within its jurisdiction as are possessed by a high court having jurisdiction in civil proceedings'. Its powers are accordingly limited to those possessed by a high court in civil proceedings. Section 22(2)(a) therefore not only determines the status of the LCC for the purposes of s 16(1)(c) of the Act, but also its powers. Consequently, because the high court sitting as an appeal court lacks the power to grant leave to appeal to the SCA, as the special leave of the SCA is required in terms of s 16(1)(b) of the Act, the LCC must similarly lack the power to do so.

[12] It would be anomalous if the higher threshold of special leave was required in the case of the high court, which possesses a far more extensive jurisdiction than the LCC, but ordinary leave was sufficient in the case of the LCC. There can be no basis in logic or principle why such a distinction should be drawn. The higher threshold of special leave is also justified when regard is had to the fact that in terms of s 22 of the Restitution of Land Rights Act, the LCC is a specialist court with exclusive jurisdiction in defined areas. Recognition should be afforded to the fact that when it sits as an appeal court it performs a similar function to that of the Competition Appeal Court (CAC) and the Labour Appeal Court (LAC). In so far as the SCA is concerned, the LAC is the final court of appeal in respect of judgments and orders of the Labour Court and the jurisdiction of the CAC is final and exclusive with regard to those matters set out in s 62(1) of the Competition Act 89 of 1998.

[13] The provisions of ss 37(1) and 37(2) of the Restitution of Land Rights Act also have to be considered with reference to 'any other law' contained in the preamble to s 16 of the Act. These sections provide as follows:

'(1) No appeal shall lie against a judgment or order of the Court except with leave of the Court or, where such leave has been refused, with the leave of the Supreme Court of Appeal.

(2) An appeal from a judgment or order of the Court shall be heard by the Supreme Court of Appeal.'

If the term 'judgment or order of the Court' is interpreted to mean a judgment or order of the LCC sitting as an appeal court, this would mean that the leave of the LCC would be sufficient to appeal such a decision to the SCA. These sections must, however, be read subject to the general limitation on the powers of the LCC, contained in s 22(2)(a) of the Restitution of Land Rights Act and cannot extend the powers of the LCC beyond those of the high court. The reference to a 'judgment or order of the Court' accordingly does not apply to a judgment or order of the LCC, when it sits as a court of appeal.

[14] Contrary to the above reasoning and conclusion, the parties sought to persuade us that only the leave of the LCC was required to appeal to the SCA against a decision of the LCC, sitting as an appeal court. The argument was that ESTA provides in s 19(2) that civil appeals from magistrates' courts in terms of this

Act lie to the LCC. In addition, ss 37(1) and 37(2) of the Restitution of Land Rights Act provide for an appeal from a judgment or order of the LCC to the SCA, with the leave of the LCC or if refused, with the leave of the SCA. When the provisions of s 16(1)(c) of the Act were considered in this context, so the argument went, the leave of the LCC was sufficient to endow this court with the requisite jurisdiction to decide the appeals. The argument, however, overlooks the limitation on the powers of the LCC, to those powers of the SCA, in terms of s 22(2)(a) of the Restitution of Land Rights Act, read with s 16(1)(c) of the Act and accordingly falls to be rejected.

[15] A further argument advanced by counsel for the appellant was based upon the decision of the Constitutional Court in *Snyders & others v De Jager & others* [2016] ZACC 55; 2017 (5) BCLR 614 (CC); 2017 (3) SA 545 (CC). In this case the magistrates' court had granted an eviction order under the Extension of Security of Tenure Act 62 of 1997 (ESTA), which was confirmed on automatic review by the LCC in terms of s 19(3) of ESTA, which provides as follows:

'Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the Gazette, 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.'

[16] An appeal to the SCA in *Snyders*, with the leave of the LCC against the confirmation of the eviction order, was struck off the roll with costs on the grounds that the order was a nullity. It was held by the SCA that an order confirming a magistrates' court eviction order was not an order on the substantive merits of the matter. If the SCA were to entertain such an appeal on the merits, it would in effect be hearing an appeal directly from the magistrates' court to the SCA. It was held that this would be contrary to the hierarchy of our courts, and in direct conflict with s 19(2) of ESTA, which provides that civil appeals against magistrates' court decisions in terms of ESTA lie to the LCC.

[17] The Constitutional Court in *Snyders* held that the confirmation by the LCC of the eviction order of the magistrates' court under ESTA, was an order of the LCC. Consequently, an appeal against the s 19(3) confirmation of the magistrates' eviction order under ESTA was an appeal against an order of the LCC, and was not an appeal against a magistrates' court order. The appeal therefore lay to the SCA and not to the LCC. The Constitutional Court stated the following at para 44:

'In my view, as is the case with the High Court in respect of automatic reviews under the Criminal Procedure Act, in automatic review proceedings under s 19(3) the Land Claims Court may confirm, set aside, substitute or remit a magistrates' court's eviction order on the basis of either review grounds or appeal grounds. It is not limited to review grounds or irregularities. It, therefore, has both review and appellate powers.'

[18] Counsel for the appellant therefore submitted that on the basis of this decision, the decision of the LCC on appeal, in setting aside the eviction order granted by the magistrates' court was appealable to the SCA, with the leave of the LCC. The decision of the Constitutional Court is, however, distinguishable on the following grounds:

(a) The LCC in *Snyders* was not sitting as an appeal court of two judges in an appeal from the magistrates' court in terms of s 19(2) of ESTA, when dealing with the eviction order granted by the magistrates' court, but as a court consisting of a single judge, exercising a power of automatic review in terms of s 19(3) of ESTA. That a distinction is to be drawn between the LCC exercising this power of automatic review of an eviction order granted by the magistrates' court and an appeal against such an order, is made clear by the provisions of s 19(4) of ESTA, which provides as follows:

'The provisions of subsection (3) shall not apply to a case in which an appeal has been noted by an occupier.'

The fact that the LCC when exercising an automatic power of review has both appellate and review powers, cannot blur the clear distinction between these two procedures. The distinction is of particular importance in the present case. It will be recalled that the respondents as occupiers, cross-appealed against the order of eviction granted by the magistrates' court. Consequently, an automatic review of the eviction order was precluded.

(b) The limitation on the power of the LCC to grant leave to appeal to the SCA when it acts as an appeal court, does not apply in the case of an appeal to the SCA against a decision of the LCC exercising a power of automatic review in terms of s 19(3) of ESTA. When the LCC acts as a court of automatic review it does not act as an appeal court.

[19] A decision by the LCC acting as a court of automatic review accordingly falls within the definition of 'any decision of a court of a status similar to the High Court' in terms of s 16(1)(c) of the Act. As stated by the Constitutional Court in *Snyders* at para 49:

'With regard to s 16(1)(c) of the Superior Courts Act, the only question that would need to be asked would be: is a decision under s 19(3) confirming an eviction order made by a magistrates' court a decision of a court of a status similar to that of the High Court? If the answer is yes, then an appeal lies to the Supreme Court of Appeal. If the answer is no, then s 16(1)(c) would not be relevant. In my view, the answer is yes. Therefore, this means that an appeal against that decision lies to the Supreme Court of Appeal. Section 16(1)(c) begins with the words "subject to section 15(1), the Constitution and any other law". There is, in my view, nothing in s 15(1), the Constitution and any other law which militates against approaching the issue this way.'

[20] This of course gives rise to the anomalous situation that where the LCC exercises its powers of automatic review of an eviction order granted by the magistrates' court in terms of s 19(3) of ESTA, an appeal lies to this court with the leave of the LCC. However, where the LCC acts as an appeal court in respect of an eviction order granted by the magistrates' court, an appeal only lies to the SCA with the special leave of this court. Unfortunately, this is the result of two mutually exclusive jurisdictional avenues to the LCC being available to challenge an eviction order granted by the magistrates' court.

[21] In the result, the LCC sitting as an appeal court did not have the power to grant leave to appeal to this court. The order is a nullity and this court has no jurisdiction to entertain the appeals.

[22] When it was clear to counsel for the appellant that this court was unable to entertain the appeals, counsel then asked that special leave to appeal be granted to the appellant. As pointed out by this court in *S v Potgieter* [2015] ZASCA 15 para 4, a substantive petition supported by an affidavit ought to have been filed by the appellant. The parties were aware by no later than the end of January 2019, in terms of the letter from the registrar of the concerns of this court in relation to the issue of jurisdiction. There was ample time to bring such an application and afford the respondents a proper opportunity to consider it. Simply put, no case was made out by the appellant why special leave should be granted and no attention was paid to the requirements which have to be satisfied, before special leave may be granted by this court. The informal request was therefore refused.

[23] The parties were agreed at the hearing that if the appeals were to be struck from the roll they should each pay their own costs. An order was therefore granted in the following terms:

Each appeal is struck from the roll.

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**K G B Swain**  
**Judge of Appeal**

Appearances:

For the Appellant:

Ms I Oschman

Instructed by:

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McIntyre Van Der Post, Bloemfontein

For the Respondents:

Mr S Magardie

Instructed by:

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