

**May 2017**

*Without Prejudice*

In the past, our judiciaries have been plagued with a mass of eviction applications. A significant number have been for the eviction of farm workers. More often than not, the antecedent to these evictions is an employment relationship terminated through dismissal or retrenchment. These farm workers are then left not only jobless but homeless too.

Many victims of eviction look to the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE), for verification of their rights. However, PIE does not apply to the eviction from land throughout the country. The exception is the Extension of Security of Tenure Act 62 of 1997 (ESTA).

PIE sets out the procedures for eviction of unlawful occupants, in addition to prohibiting unlawful evictions. However, ESTA is applicable where the eviction concerns a previously lawful occupier or occupiers of rural or peri-urban land. This is subject to a number of conditions found in the Act.

## **ESTA**

### ***Protection for farm workers***

ESTA provides farm dwellers with tenure rights over the farm property that they occupy but do not own. People who have lived on the land of another with permission from the owner, on or after 4 February 1997, hold a secure legal right to carry on living on and using that land. The Act specifies the steps a landlord should take before a tenant can be evicted.

Long-term occupiers have a more exceptional right than others. Sections 8(4)(a) and (b) of ESTA provide that if an occupier is 60 years or older and has lived on the land for 10 years or, if they are an employee or former employee who has become disabled or sick while employed by the owner, they may occupy the land until their death. Consequently, long-term occupiers may not normally be evicted unless they violate their obligations.

The objectives of ESTA is to protect the people who live in rural areas, on farms, on undeveloped land, and people living on land encircled by a township or land within a township marked for agricultural purpose.

It is important to note that both PIE and ESTA have a common purpose – to protect both occupiers and landowners. Both pieces of legislation have been enacted to realise the fundamental human right in our Bill of Rights, section 25 of the Constitution 1996, the Right to Property.

ESTA, however, is aimed more specifically at the rights envisaged in section 25(6) of the Constitution, which is to improve security of tenure for those "whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices".

Notwithstanding the rights given to occupiers in terms of ESTA, many farm workers are victims of unfair evictions, and the prevailing failure to prosecute and convict transgressors is a dominant contributory factor.

Are farm dwellers aware that they have tenure rights at all? The tenure right includes remedies available to the farm dwellers if they are evicted.

The Constitutional Court judgments granted in the case of *Klaase and Another v van der Merwe N.O. and Others* (CCT 23/15) [2016] ZACC 17; 2016 (9) BCLR 1187 (CC); 2016 (6) SA 131 (CC) (14 July 2016), and *Snyders and Others v De Jager and Others (Appeal)* (CCT186/15) [2016] ZACC 55 (21 December 2016), give meaning to the provisions in ESTA, restore the dignity of farm workers and provide legal clarity on aspects surrounding eviction of farm workers.

### ***Female occupiers***

*Klaase and Another v van der Merwe N.O. and Others* (CCT 23/15) [2016] ZACC 17. The court confirmed that female occupiers are frequently not joined in eviction proceedings instituted against their spouses or partners. Female occupiers are susceptible to arbitrary evictions as a consequence of the actions of their spouses or partners. In essence, female occupiers are often evicted through no fault of their own, and such an eviction is neither just nor equitable in terms of ESTA. There is absence of substantive grounds for their evictions, and nothing material before the court to properly consider before they are evicted with their spouses or partners.

The Klaase case was about one such farm worker's spouse.

Mrs Klaase appealed, *inter alia*, the decision of the Land Claims Court that she is not an "occupier" as defined in terms of ESTA and against the eviction order. The court dealt with the interpretation and application of the protections under ESTA.

### **Background**

Mr and Mrs Klaase lived together for more than 30 years. Mr Klaase was considered an "occupier" in terms of ESTA and, therefore, a holder of tenure rights over the farm cottage in which he lived with his spouse. Mrs Klaase was not permanently employed on the farm, and was

a seasonal worker. Mrs Klaase and her children were not considered "occupiers" and were not protected under ESTA, nor was their interest considered in the eviction application.

The owner argued that while he was aware that Mrs Klaase resided on the farm, this did not grant her an independent right of occupation and therefore she was not entitled to protection under ESTA.

## **Judgment**

The court, in reaching its decision, emphasised the purpose and objective of ESTA, and noted that the Land Claims Court's finding that Mrs Klaase occupied the premises "under her husband" subordinates her rights to those of Mr Klaase. It found that to define Mrs Klaase's occupation in such terms is demeaning to her rights of equality and human dignity and is not what is contemplated by ESTA. Accordingly, Mrs Klaase was found to be an occupier.

Mrs Klaase was then entitled to the protections set out in ESTA, and an eviction order could only be granted against her if certain conditions were met. In view of the circumstances set out, the Constitutional Court has reaffirmed the rights afforded to occupiers in terms of ESTA, more specifically those of female occupiers, and prevented the perpetuation of further indignity suffered by many women in a similar position.

The judgment, (although it makes no mention of the case), also reaffirms the golden principal laid down in *Carmichele v Minister of Safety and Security and Others* (2001) AHRLR 208 (SACC 2001) that the law should be interpreted and developed for the protection of the public in general, and women and children in particular, as laid down in the Constitution and the Bill of Rights.

The judgment is considered a victory for female farm workers as they have been given official recognition.

## **Farm workers**

In *Snyders and Others v De Jager and Others (Appeal)* (CCT186/15) [2016] ZACC 55 (21 December 2016), the court sanctioned and endorsed the protection of farm workers, their families and the farming community as a whole. It captured the essence of ESTA: Termination of employment of a farm worker does not automatically terminate his/her right of residence on the relevant farm.

## **Background**

Mr Snyders and his family lived and worked on the farm from 1992 to 2008 when he was fired. By virtue of an eviction order granted by a magistrate's court, they were evicted in 2009. Mr Snyders took the case on appeal to the Land Claims Court, then the SCA, and finally the Constitutional Court where the eviction was overturned and the restoration and peaceful

possession of the dwelling to Mr Snyders and his family was ordered.

The case provides clarity in respect of a number of issues, including:

### **Jurisdiction**

The jurisdiction of the court has been cleared up. The court ruled that farm workers, whose rights have been exploited by an unlawful eviction, should proceed from the Magistrates' Court to the Supreme Court of Appeal, instead of the Land Claim's Court.

This provides future eviction claims with procedural clarity and hastens the process to some extent.

### **Security of tenure**

The judgment re-affirms the importance of ensuring security of tenure and the termination of such a right, in terms of ESTA, in order to extend the rights of occupiers, while giving due recognition to the rights, duties and legitimate interests of owners.

There must be a lawful ground for termination that is just and equitable to successfully evict an occupier in terms of ESTA.

Furthermore, ESTA requires the termination of the right of residence to comply with the requirement of procedural fairness, which includes enabling the occupier to make representations why his or her right of residence should not be terminated. This is echoed in section 8(1)(e) of ESTA.

Should an occupier be refused the right to make representation, the conduct will be construed as a failure to comply with the requirements of ESTA, thereby rendering the purported termination of the right of residence, unlawful and invalid.

Both these judgments have created an opportunity to review a number of farm worker eviction cases that were granted arbitrarily. These judgments, read together with the provisions of ESTA, have far reaching implications.

## Contacts



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