

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

RANDBURG

CASE NUMBER: LCC 18R/2018

MAGISTRATES COURT CASE NUMBER: 3498/2017

In Chambers: **Judge Meer**

In the review proceedings in the case between:

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| LOUWERIVIER PLASE (EDMS) BPK | 1 ST APPLICANT |
| JD KIRSTEN (EDMS) BPK | 2 ND APPLICANT |
| HENDRIK ALBERTYN LOUW N.O | 3 RD APPLICANT |
| JACOB DANIEL KIRSTEN N.O | 4 TH APPLICANT |
| HESTER JOSINA KIRSTEN N.O | 5 TH APPLICANT |
| and | |
| JOHANNA PAULSE | 1 ST RESPONDENT |
| ELZAAN PAULSE | 2 ND RESPONDENT |
| IVAN PAULSE | 3 RD RESPONDENT |
| TASWILL PETER KAROLESEN | 4 TH RESPONDENT |
| ALLE ANDER PERSONE WOONAGTIG SAAM OF ONDER DIE EERSTE TOT VIERDE RESPONDENTE TE HUISNOMMER 03, IRENE PLAAS DRAKENSTEIN MUNISIPALITEIT DEPARTMENT VAN LANDELIKE ONTWIKKELING EN GRONHERVORMING | 5 TH RESPONDENT 6 TH RESPONDENT 7 TH RESPONDENT |

JUDGMENT DELIVERED 17 APRIL 2018

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 No 62 of 1997 (“ESTA”). I am required to review the eviction order of the Third to Fifth Respondents from the

farm Irene, being Erf 7 in Paarl, Western Cape which order was granted in the Paarl Magistrate's Court on 15 March 2018. These Respondents reside in House No 3 with the First and Second Respondents whose eviction is not sought. The Respondents did not oppose the application for their eviction in the Court *a quo*.

[2] I am unable to confirm the eviction order in respect of the Fifth Respondent who, although described in the founding affidavit as "all other persons residing with or under the First to Fourth Respondents on Irene Farm", is a reference to the Second Respondent's minor children. The founding affidavit of Mr Valentin, the person in charge of the farm Irene and its manager, in fact states appropo the Fifth Respondent, that he is only aware of this being the Second Respondent's minor children and no other person. He also refers to a minor child of the Second Respondent attending the crèche on the farm. The order granted if carried out, would thus separate minor children from their mother. Such an order would in no uncertain terms be a violation of the right to family life provided for at Section 6 (2)(d) of ESTA and the rights of children to family and parental care guaranteed at Section 28(1)(b) of the Constitution, Act 108 of 1996.

[3] In terms of section 6(2)(d) of ESTA, the Second Respondent as an occupier is entitled to the right to family life, as indeed are her children. The section states, *inter alia*, that an occupier shall have, balanced with the rights of the owner or person in charge, the right to family life in accordance with the culture of the family.

[4] In *Hattingh and Others v Juta* 2013 (3) SA 275 CC, the Constitutional Court at paragraph 35 gave content to this right. There it was stated that the purpose of the conferment of right was to ensure that despite living on the land of others, vulnerable persons would be able to live a life as close as possible to the life they would lead if they lived on their own land, having regard to the landowner's rights. At paragraph 37 the Court said if the occupier were to live with one or more of their children, or other members of the extended family, and this would not result in any injustice, unfairness and inequity to the owner of the land, the occupier will be entitled to live with those members of his or her family. There is no evidence that the second respondent's continued residence with her minor children on the farm would result in any injustice, unfairness and inequity to the applicants. The Second Respondent and her children's right to family life under section 6(2)(d) of ESTA accordingly entitle the Second Respondent to reside on the farm with her children and they in turn to reside with her. It would be unconstitutional, preposterous, inequitable and a grave injustice if the Second Respondent's minor children were evicted from the farm and separated from their mother.

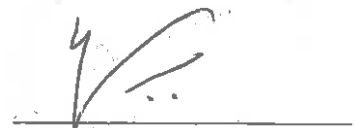
[5] I note that the same does not apply in respect of the Fourth Respondent an adult male, who although described in the founding affidavit as the "saamleefmaat" of the Second Respondent has refused to abide by the rule on the farm that he pay an "inslaapfooiheffing" which is applicable to persons like him who are living on the farm but working elsewhere. His continued residence on the farm without an agreement on his part to pay the fee would in my view be an injustice and unfair to the owner of the farm.

[6] With regard to the Third Respondent, the evidence suggests that he is not an occupier, does not have consent to reside on the farm, is employed elsewhere and has refused to pay the fee for staying on the farm, when requested by the Applicant to do so.

[7] In view of all of the above it is only the evictions of the Third and Fourth Respondents that can be confirmed on review.

[8] I accordingly substitute the following order for the order granted by the Magistrate, Paarl on 15 March 2018.

1. The Third and Fourth Respondents are ordered to vacate the property known as House No.3, Irene Plaas, Erf 7 Paarl, Western Cape on or before 30 June 2018.
2. In the event of the Third and Fourth Respondents failing to vacate the said property by the aforementioned date, the Sheriff is hereby authorised to carry out their eviction on 1 July 2018.
3. There is no order as to costs.



Y.S MEER

Acting Judge President

LAND CLAIMS COURT