



**IN THE LAND CLAIMS COURT OF SOUTH AFRICA  
HELD AT RANDBURG**

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
26-11-2018 <i>[Signature]</i>	

**BEFORE: THE HONOURABLE CANCA AJ**

**CASE NO.: LCC 202/2017**

**ANNA JOHANNA ERASMUS**

**Applicant**

and

**GODFREY NTENJE**

**First Respondent**

**UNKNOWN INDIVIDUALS OCCUPYING  
SMALLHOLDING 54, ANDEON AGRICULTURAL  
HOLDINGS, PRETORIA**

**Second Respondent**

**CITY OF TSHWANE METROPOLITAN  
MUNICIPALITY**

**Third Respondent**

**MINISTER OF TRADE AND INDUSTRY  
DEPARTMENT OF HUMAN SETTLEMENTS**

**Fourth Respondent**

**DEPARTMENT OF HUMAN SETTLEMENTS:**

**Fifth Respondent**

**GAUTENG PROVINCE**

and

*Amicus Curiae*

**AFRISAKE NPC**

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**JUDGMENT**

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**CANCA AJ**

[1] The applicant seeks leave to appeal against the whole of the judgment and order, save for the issue of costs, handed down by this Court on 12 June 2018. The application is opposed and was heard on 31 October 2018 after condonation for the late filing of this application was granted. Following argument, the parties were requested to file written submissions which they duly did on 6 November 2018.

[2] The judgment, *inter alia*, dismissed the applicant's prayers that:

2.1. The first and second respondents be interdicted from:

2.1.1 continuing the construction of a structure which they were erecting on the applicant's immovable property without her permission and in contravention of the third respondent's Town Planning Scheme, the National Building Regulations and Building Standards Act, 103 of 1977 ("the NBRBSA"), the Town Planning and Township, 15 of 1986 as well as the title deed conditions of the property; and

2.1.2 occupying that structured.

2.2. She be authorized to demolish the structured.

[3] The grounds of appeal are set out in detail in the notice for leave to appeal and need not be repeated in full in this judgment. I have decided to grant leave to appeal for the reasons that follow.

### **The principle of legality**

[4] Mr. Hamman, for the applicant, submitted that, in the light of the fact that it was common cause that there were no approved building plans for the structure, the Court erred in finding that the NBRBSA (and the rest of the legislation referred to in paragraph [2] above) was not applicable in this matter. In the judgment, I found that the NBRSA was not applicable as the land was found to be outside the erstwhile municipal area prior to the dawn of “wall to wall” local government.

[5] Mr. Hamman contends that “wall to wall” local government only realized after the commencement of the Constitution on 4 February 1997. The title deed of the applicant’s property which bears number 34565/1973, contains various conditions regarding the type of structure permitted on the land and also records that approval of those plans by the local authority is required. This was evidence that the property resorted within the municipal area prior to the coming of “wall to wall” local government, so the contention continued. The Court was referred to *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* 2009 (1) SA 337 (CC) at paras 131 and 132 where it was held that even if land was previously outside municipal area, the municipal planning laws would still find application.

[6] I am persuaded that this issue is arguable and that the appeal has reasonable prospects of success on the issue of legality.

### **Prescription**

[7] It is not disputed that more than a decade had elapsed since the eviction complained of and the relief sought in the counter-application in terms of section 14 of the Extension of Security of Tenure Act 67 of 1997 (“ESTA”).

[8] It was contended on behalf of the applicant that, in view of the fact that this was the first time that the issue of prescription or inordinate delay was raised in terms of section 14 of ESTA, a higher Court could provide guidance on how this Court should deal with this issue in future.

[9] I have carefully considered the submissions of both Mr. Hamman and Mr. Thompson, for the first and second respondents, and come to the view that the appeal is of general importance to the wider public as a higher Court would bring certainty on how this Court should deal with a defense of prescription and inordinate where relief is sought in terms of section 14 of ESTA.

[10] In the light of the above, I order as follows:

1. The applicant is granted leave to appeal to the Supreme Court of Appeal the whole of the judgment and order handed down on 12 June 2018.
2. The costs of this application are to be costs in the appeal.



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MP Canca

Acting Judge, Land Claims Court

**Appearances:**

**For the Applicant:**

**Adv. JGC Hamman**

**Instructed by:**

**Hurter Spies Inc. Centurion**

**For the First and Second Respondents:**

**Adv. A Thompson**

**Instructed by:**

**Lawyers for Human Rights, Pretoria**

**For the *Amicus Curiae***

**Adv. CFJ Brand SC**

**Instructed by:**

**Hurter Spies Inc. Centurion**