



IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT RANDBURG

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: ✓
18 June 2018	
B. Molefe	

Before: **Molefe J**

Heard: **15 May 2018**

Judgment delivered: **18 June 2018**

CASE NO.: LCC 50/2014

In the matter between:

AMOS MATODI MOLOBI

Applicant

and

SOUTH AFRICAN NATIONAL PARKS

First Respondent

**THE MINISTER OF RURAL DEVELOPMENT
AND LAND REFORM**

Second Respondent

**DIRECTOR-GENERAL OF THE DEPARTMENT OF
RURAL DEVELOPMENT AND LAND REFORM**

Third Respondent

THABAZIMBI LOCAL MUNICIPALITY

Fourth Respondent

ASSOCIATION FOR RURAL DEVELOPMENT

Amicus Curiae

JUDGMENT

MOLEFE J

[1] This is part B of an application in terms of which the applicant seeks an order in the following terms:

- 1.1. Declaring the provisions of paragraph (c) of the definition of '*occupier*' in section 1 of the *Extension of Security of Tenure Act 62 of 1997 (ESTA)* unconstitutional as a result of it being inconsistent with the provisions of sections 9(1), 9(3), 25(1), 25(6) and 26(3) of the Constitution;
- 1.2. If this relief is granted, that *ESTA* will no longer make any income differentiation, and the discretion to evict or not will fall upon the Court, more specifically the Land Claims Court to exercise in each case in terms of the facts as a whole and that the court's discretion not be fettered by some arbitrary income level;
- 1.3. In the alternative to 1.1, that failure of the second and/or third respondents to regularly adjust the prescribed amount envisaged by the provisions of paragraph (c) of the definition of '*occupier*' in section 1 of *ESTA* to be inconsistent with the Constitution, as this failure seriously erodes the rights to tenure security of rural occupiers;

1.4. In the further alternative, that the income threshold should be deemed to be R18 000.00 as of 1 January 2014 and that any declaration of constitutional invalidity should apply prospectively from the date of this court order as well as in respect of all evictions brought under *ESTA* that have not yet been finalised or where the time period for lodging appeal processes had not yet lapsed;

1.5. That the second and/or third respondents pay the costs of this application.

[2] Applicant's claim in Part A of this application is based on spoliation and the relief sought is that the first respondent be ordered to reconnect the electricity supply to the applicant's home on portion 4 of the farm Morakeli 437 KQ. On 1 November 2017, the first respondent was ordered and directed to connect electricity supply to the applicant's residence. This claim has now become moot.

[3] The first and fourth respondents ("respondents") do not oppose the application nor do they participate in part B of the relief sought. The second and third respondents oppose the application.

[4] On 20 June 2016, the Association for Rural Advancement ("AFRA") was admitted as *amicus curiae* in these proceedings in terms of Rule 14 of the Rules of this Court.

Factual Background

[5] The applicant is an adult male retired teacher and was employed by the Limpopo Provincial Department of Education. He resides at portion 4 of the farm Morakeli 437

KQ (“the property”) with his wife, two adult children and two grandchildren and has been occupying the property since 1978.

[6] The applicant was employed at Seribane Primary School, a public school serving the rural community in the area. The school was established in the 1950’s and at the time of its establishment, the community built the house which the applicant and his family have been residing since 1978.

[7] The first respondent South African National Parks (“SANPARKS”), acquired the property in terms of the provisions of the *National Environmental Management Protected Areas Act No. 57 of 2003*. The property was declared as part of Marakele National Park on 17 October 2003.

[8] Seribane Primary School was closed down during 2010 and the applicant was transferred to Deo Gloria Primary School, a school approximately 20 kilometres from the applicant’s place of residence but he still resided on the property with his family. The property has been the applicant’s home for the past 37 years. The applicant earns a monthly pension income of R9 000.00.

[9] As from 23 February 2018, the prescribed amount in terms of section 1(c) of *ESTA* changed from R5 000.00 per month to R13 625.00 per month, thus the prescribed amount in terms of the impugned provision is now R13 625.00

[10] At the hearing of this application, counsel for the applicant¹ abandoned prayers 1.3 and 1.4 in part B of the Notice of Motion.

[11] The issue for determination is therefore whether the third leg of the definition of 'occupier', being the income threshold is unconstitutional in that it is irrational and arbitrary. If the impugned provision is found to be rational, I have to determine whether it unfairly discriminates on a category of persons, thus violating the right to equality as provided in section 9 of the Constitution. Lastly, I have to determine whether the limitation is a violation of the rights provided in section 25 of the Constitution and if such rights are limited, such limitations pass muster in terms of section 36 of the Constitution

ESTA and its Object

[12] The Constitution requires that judicial officers read legislation, where possible, in ways which give effect to its fundamental values. Consistently with this, on the constitutionality of legislation is in issue, they are under a duty to examine the objects and purport of an Act and to read the provisions of the legislation, so far as is possible, in conformity with the Constitution. Accordingly, judicial officers must prefer interpretations of legislation that fall within constitutional bounds over those that do not, provided that such an interpretation can be reasonably ascribed to the section.²

[13] The preamble of *ESTA* states as follows:

¹ Advocate A Vorster

² *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: in re: Hyundai Motor Distributors (Pty) Ltd and Others v Smit N.O. and Others 2001 (1) SA 545 (CC)* at paragraph [22] and [23]

“WHEREAS many South Africans do not have secure tenure of their homes and the land which they use and are therefore vulnerable to unfair eviction;

WHEREAS unfair evictions lead to great hardship, conflict and social instability;

WHEREAS this situation is in part the result of past discriminatory laws and practices;

AND WHEREAS it is desirable—

that the law should promote the achievement of long-term security of tenure for occupiers of land, where possible through the joint efforts of occupiers, land owners, and government bodies;

that the law should extend the rights of occupiers, while giving due recognition to the rights, duties and legitimate interests of owners;

that the law should regulate the eviction of vulnerable occupiers from land in a fair manner, while recognising the right of land owners to apply to court for an eviction order in appropriate circumstances;

to ensure that occupiers are not further prejudiced.”

[14] The purpose of *ESTA* is to promote measures with State assistance to facilitate long-term security of land tenure, to regulate the eviction process of vulnerable occupiers of land and in general seeks to protect a designated class of poor tenants occupying certain land with the express or tacit consent of the owners of the land against unfair evictions from such land.

[15] Chapters 2 and 4 of *ESTA* go beyond the provision of suitable alternative accommodation for occupiers facing evictions. Sections 4 and 26 place further obligations on the Minister to provide grants and to ensure that occupiers have secure long-term tenure.

[16] Section 26 of *ESTA* states:

“26. *Expropriation Act*

- (1) *Without derogating from the powers that a Minister may exercise under the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may for the purposes of any development in terms of this Act, exercise equivalent powers to the powers that such other Minister may exercise under the Expropriation Act, 1975.*
- (2) *Notwithstanding the provisions of the Expropriation Act, 1975, the owner of the land in question shall be given a hearing before any land is expropriated for a development in terms of this Act.*
- (3) *In the event of expropriation, compensation shall be paid as prescribed by the Constitution, with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, 1975.*
- (4) *Any right in land which derives from the provisions of this Act will be capable of expropriation in accordance with the provisions of any applicable legislation.”*

[17] The provisions of section 4 of *ESTA* make it clear that the Minister has an obligation to provide subsidies for on-site and off-site developments of land for occupiers. In considering the release of these grants, the Minister has to *inter alia*, consider whether or not the occupiers are facing eviction or have been evicted. Fundamentally, these individuals that apply for grants have to be occupiers.

[18] It is clear that *ESTA* has more than just a protective measure to it. *ESTA* has a restitutionary and/or transformative element to it in that there are obligations for the Minister to, in appropriate conditions, acquire land for occupiers for land reform

purposes, which will in turn provide occupiers with independent tenure. *ESTA* was thus enacted to protect people who live in insecure tenure because of structural reasons which are the result of hundreds of years of land-related discriminatory laws introduced and enforced under colonialism and apartheid.

[19] An 'occupier' is defined in section 1 of *ESTA* as meaning a person residing on land which belongs to another and who has on 4 February 1997 or thereafter had consent or another right in law to do so. Excluded from the definition of 'occupier', and accordingly the protection afforded by *ESTA*, is any person who has an income in excess of the prescribed amount, which amount was R5 000.00 per month until it was increased to R13 625.00 per month as from 23 February 2018.

Is The Impugned Provision Irrational?

[20] The first stage of the inquiry is whether the impugned provision is irrational and if it is rational, the following test is to measure the impugned provision against section 9 of the Constitution. The impugned income threshold provision excludes persons with an income of over R13 625.00 per month. The applicant contends that the exclusion constitutes a violation of the constitutionally guaranteed fundamental rights to tenure, security, housing rights and property rights.

[21] The applicant further contends that the impugned provision is irrational as it constitutes an illegal differentiation that violates section 9(1) of the Constitution as it prohibits the lower middle-class occupiers from the protections and benefits of *ESTA*.

[22] Applicant's counsel submitted that in regard to mere differentiation, the constitutional state is expected to act in a rational manner. It should not regulate in an arbitrary manner or manifest "naked preferences" that serve no legitimate governmental purpose, for that would be inconsistent with the rule of law and the fundamental premise of the constitutional state and relied on *Sarrahwitz v Maritz N.O. and Another*³ in this regard.

[23] I agree with the submission made by counsel for the respondents⁴ that the correct approach to be adopted when legislative measures are challenged, is to determine whether there is a rational connection between the means chosen and the objective sought to be achieved. A mere differentiation does not render a legislation measure irrational. The differentiation must be arbitrary, or must manifest "naked preferences" that serve no legitimate governmental purpose for it to render the measure irrational.⁵

[24] In *Law Society of South Africa and Others v Minister for Transport and Another*⁶, Moseneke DCJ aptly put it as follows:

"[35] It remains to be said that the requirement of rationality is not directed at testing whether legislation is fair or reasonable or appropriate. Nor is it aimed at deciding whether there are other or even better means that could have been used. Its use is restricted to the threshold question whether the measure the lawgiver has chosen is properly related to the public good it seeks to realise. If the measure fails on this count, that is

³ 2015 (4) SA 491 (CC) at paragraph [51]

⁴ Advocate M Majazi

⁵ *Prinsloo v Van Der Linde and Another* 1997 (3) 1012 (CC) at paragraph [24] – [26]

⁶ 2011 (1) SA 400 (CC) paragraph [35]

indeed the end of the enquiry. The measure falls to be struck down as constitutionally bad."

[25] Respondents' counsel submits that the decision by the Legislature to limit access to the protection of *ESTA*, as defining 'occupier' involves a matter of deliberate policy choice. The legitimate government purpose that *ESTA* seeks to achieve is the protection of a class of persons who were in the context of that White paper that led to the enactment of *ESTA*, vulnerable to unfair and extra-judicial evictions as a result of historically discriminatory laws. That category of persons informs the legitimate government purpose behind the pointed relief that *ESTA* seeks to achieve.

[26] In my view, Courts do not review provisions of acts of Parliament on the ground that they are unreasonable. They do so only if they are satisfied that the legislation is not connected to a legitimate government purpose. In such circumstances, a review is competent because legislation is arbitrary.

[27] Arbitrariness is inconsistent with the rule of law which is a core value of the Constitution. It is within the power of Parliament to determine what scheme should be adopted for the protection of occupiers. If the legislation defines the scheme is rational, the act of Parliament cannot be challenged on the ground of unreasonableness. Reasonableness will only become relevant if it is established that the scheme though rational, has the effect of infringing the right to secure tenure.⁷

⁷ *New National Party of South Africa v Government of the Republic of South Africa and Others* 1999 (3) SA 191 (CC) at paragraph [24]

[28] The enquiry is not to determine whether or not there are other means that could have been used, but whether the means selected are rationally related to the objective sought. In my opinion, and as clearly demonstrated hereinabove, there is no basis to impugn the provision on this ground. It is not arbitrary and it is rationally connected to the protection of those that are vulnerable to *inter alia* extra-judicial evictions.

Violation of Section 9 of the Constitution

[29] Section 9 of the Constitution reads:

"Equality

- (1) *Everyone is equal before the law and has the right to equal protection and benefit of the law.*
- (2) *Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.*
- (3) *The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*
- (4) *No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.*
- (5) *Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."*

[30] It is submitted on behalf of the applicant that paragraph 1(c) of the definition of 'occupier' infringes the right to equal protection and benefit of the law under section 9(1) of the Constitution afforded to an occupier whose tenure of land is legally insecure as a result of past discriminatory laws or practices, and who earns an income in excess of the prescribed amount.

[31] In order for the applicant's submission to succeed, it is necessary for me to establish that depriving earners with an income above the threshold as set out in *ESTA* amounts to unjustifiable unfair discrimination. The question is whether the distinction between high income earners and those with income lower than the threshold amounts to discrimination or a mere differentiation.

[32] In determining this issue, there is a two-stage enquiry regarding the categories of discrimination. This test was laid down by the Constitutional Court in *Harksen V Lane*⁸ wherein it was said:

"[53] At the cost of repetition, it may be as well to tabulate the stages of enquiry which become necessary where an attack is made on a provision in reliance on section 8 of the interim Constitution. They are:

(a) Does the provision differentiate between people or categories of people? If so, does the differentiation bear a rational connection to a legitimate government purpose? If it does not then there is a violation of section 8(1). Even if it does bear a rational connection, it might nevertheless amount to discrimination.

⁸ 1998 (1) SA 300 (CC) paragraph [53]

(b) *Does the differentiation amount to unfair discrimination? This requires a two stage analysis:*

(i) *Firstly, does the differentiation amount to "discrimination"? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner;*

(ii) *(ii) If the differentiation amounts to "discrimination", does it amount to unfair discrimination? If it has been found to have been on a specified ground, then unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation. If, at the end of this stage of the enquiry, the differentiation is found not to be unfair, then there will be no violation of section 8(2).*

(iii) *If the discrimination is found to be unfair then a determination will have to be made as to whether the provision can be justified under the limitations clause."*

[33] I agree with the argument by the respondents' counsel that it is unfathomable that farm managers and agriculture economists, who may be employed and reside on rural land, would be able to approach the Court and claim the same protections as general workers, and as demonstrated in the *Census 2011 Agricultural Households* report by Statistics SA, still earn below R5 000.00 determined when *ESTA* was promulgated.⁹

[34] In my view, *ESTA* achieves a legitimate government purpose in protecting a category of vulnerable persons from social plagues that besieged them prior to the enactment of *ESTA*.

[35] In *Pharmaceutical Manufacturers of SA In Re: ex parte President of the RSA*¹⁰ case, the Court said:

"[84]

Similarly, in Prinsloo v van der Linde and another, this Court held that when Parliament enacts legislation that differentiates between groups or individuals, it is required to act in a rational manner:

In regard to mere differentiation the constitutional state is expected to act in a rational manner. It should not regulate in an arbitrary manner or manifest 'naked preferences' that serve no legitimate governmental purpose, for that would be inconsistent with the rule of law and the fundamental premises of the constitutional state.

⁹ Bundle Vol 2 pages 159 – 190.

¹⁰ 2000 (2) SA 674 (CC) at [84] and [85]

[85] *...Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action."*

[36] The prescribed amount in the definition of 'occupier' serves as a yardstick for ensuring that those who are vulnerable and poor are protected and insulated from extra-judicial evictions and have secure tenure, at least up until this Court determines the equitability of the eviction as provided in sections 8 and 9 of *ESTA*.

[37] I am therefore satisfied that the differentiation bears a rational connection to a legitimate government purpose and is, therefore, not unfair and does not violate section 9 of the Constitution. The impugned provision cannot be rendered irrational simply because some educated middle-class earners do not derive the same benefit that most unsophisticated individuals that the statute is meant to protect derive full benefit therefrom.

Does the Impugned Provision discriminate against persons and is the Discrimination Unfair?

[38] In determining the unfairness of the discrimination, the Court has to consider the following:

- “(a) the position of the complainants in society and whether they have suffered in the past from patterns of disadvantage, whether the discrimination in the case under consideration is on a specified ground or not;*
- (b) the nature of the provision or power and the purpose sought to be achieved by it. If its purpose is manifestly not directed. In the first instance, at impairing the complainants in the manner indicated above, but is aimed at achieving a worthy and important societal goal, such as, for example, the furthering of equality for all, this purpose may, depending on the facts of the particular case, have a significant bearing on the question whether complainants have in fact suffered the impairment in question...*
- (c) with due regard to (a) and (b) above, and any other relevant factors, the extent to which the discrimination has affected the rights or interests of complainants and whether it has led to an impairment of their fundamental human dignity or constitute an impairment of a comparably serious nature.”¹¹*

[39] In *casu*, the applicant approached this Court seeking a spoliatory relief relating to electricity. Applicant fits within the impugned provision with a monthly pension of R 9 000.00. In my view, the applicant has failed to demonstrate that the prescribed amount will have the potential to impair his dignity or affect him adversely nor has he established that, he in fact suffered the discrimination and/or unfairness on his own facts.

¹¹ Harksen *supra* at paragraph [51]

Justification in terms of Section 36 of the Constitution

[40] Applicant's counsel submitted that the provisions of paragraph (c) of the definition of 'occupier' infringes on section 25(6) of the Constitution and as such it must comply with the limitation provisions of section 36 of the Constitution. Counsel argues that that if this deprivation is permitted, the perverse incentive will exist for employers to increase employee's income, simply to evict them through the provisions of the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998* ("PIE") Act.

[41] Section 25(6) of the Constitution provides that:

"(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress."

[42] Section 36 of the Constitution provides as follows:

"Limitation of rights

36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including —

- (a) *the nature of the right;*
- (b) *the importance of the purpose of the limitation;*
- (c) *the nature and extent of the limitation;*
- (d) *the relation between the limitation and its purpose; and*
- (e) *less restrictive means to achieve the purpose.*

(2) *Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.*

[43] Section 25 and 26 of the Constitution contain internal limitations which qualify the rights that citizens enjoy. The State's obligation in respect of these rights goes no further than to take "*reasonable legislative and other measures within its available resources to achieve the progressive realisation of the rights*".

[44] As already indicated hereinabove, this Court, when considering the reasonableness of the impugned provision, is not permitted to enquire into whether other or more desirable or favourable measures could have been adopted or whether public resources could have been better spent.

[45] In *casu*, the right to security of tenure, housing and property and the exclusion from *ESTA* of income earners who, but for a higher income, do not qualify for protection provided by *ESTA* is, in the context of the legislation, in my opinion reasonable, especially if I have regard to the purpose served by the impugned provision and the impact it has safeguarding the interests of low-income earners.

[46] The State has an obligation to protect its indigent citizens. Failure to preserve this protection for those citizens is likely to have an unintended consequence of having a total welfare State that will be burdensome on the State and its fiscus. Suitable alternative accommodation as required by Section 9 of *ESTA* and expropriation of land for purposes of establishing independent tenure rights on land that occupiers reside on, will be impacted upon by an undue widening of the class of persons that the Act seeks to protect.

[47] In my view, middle-income earners have no legislative claim for protection under *ESTA* and they are therefore excluded from the impugned provision. This exclusion is rational, reasonable and was not arbitrarily taken.

Amicus Curiae's Case

[48] Counsel¹² for AFRA¹³ made three main submissions namely that:

- 48.1. Paragraph (c) of the definition of 'occupier' in *ESTA* impairs the right to legally secure tenure protected by section 25(6) of the Constitution. AFRA has in this regard emphasized the historical context which underpins the purpose of *ESTA*. That context is one of historical and colonial dispossession of land rights which resulted in occupiers and labour tenants being reduced from owners of land to mere providers of cheap migrant labour with little, if any, security of tenure.

¹² Adv. S Magardie

¹³ AFRA is a non-governmental organization working on land rights and agrarian reform primarily in Kwa-Zulu Natal and has extensive experience in land reform, poverty relief and the realization of socio-economic rights in rural areas. It aims to address past injustices and to improve the quality of life and livelihoods of the rural poor.

48.2. The failure of the second and third respondents to adjust the prescribed amount provided for by paragraph (c) of the definition of 'occupier' is inconsistent with their constitutional obligations to respect, protect and promote the right to legally secure tenure.

It is common cause that the prescribed amount of R5 000.00 provided for in paragraph (c) of the definition of 'occupier' has not been adjusted since the promulgation of *ESTA* Regulations in GNR 1632 GG 19587 of 18 December 1998. However, as aforementioned, the adjustment was effected from 23 February 2018 and the prescribed amount changed to R13 625.00 per month. In my view, there is no merit on this submission as the *amicus curiae* cannot proceed on a relief already abandoned by the applicant.

48.3. By imposing a financial income threshold in the definition of 'occupier' in *ESTA* makes it inconsistent with the right to an adequate standard of living and the right to security of tenure recognized by international law. AFRA's counsel relied on the *International Covenant on Economic, Social and Cultural Rights* ("ICESCR") as the most important international instrument relating to socio-economic rights. South Africa ratified the *ICESCR* on 12 January 2015. Counsel referred the Court to Article 2 of the *ICESCR*, that State Parties are required to undertake steps, individually and through international assistance and co-operation, "*especially economic and technical to the maximum of its available resources, with a view to achieving progressively the full*

realization of the rights recognized in the ICESCR by all appropriate means, including particularly the adoption of legislative measures. "

Counsel argues that the practical consequence of the impugned definition is that the higher the income earned by a person living in conditions of legally insecure tenure, the greater the risk they face of being excluded from the procedural and substantive protections of *ESTA*.

[49] I do not agree with this argument. Social legislation is meant to protect the interests of a vulnerable stratum of society and has a transformable character, has to have a manner of identifying those who are not only in need of protection, but also in need of the aid. This is not peculiarly applicable to *ESTA*. Other social legislation¹⁴ meant to alleviate certain social burdens and protect certain classes of persons from poverty and destitution have similar income thresholds, to the best of the State's ability.

[50] If each and every differentiation made in terms of the law amounted to unequal treatment that had to be justified by means of resort to section 33, or else constituted discrimination which had to be shown not to be unfair, the courts could be called upon to review the justifiability or fairness of just about the whole legislative programme and almost all executive conduct¹⁵.

[51] In the premises, the applicant has failed to make out a case for the impugned provision to be declared unconstitutional. The impugned provision is not only rational


¹⁴ The Social Assistance Act, 13 of 2004 and Unemployment Insurance Act, 63 of 2001

¹⁵ *Prinsloo v van der Linde and Another* 1997 (6) BCLR 759 (CC) at paragraph [17]

but it is targeted at giving reprieve to a particular class or stratum of society. The recently published increment of the prescribed amount has ensured that more persons enjoy the protection of *ESTA*, even those that fall under the description of part of the lower middle-class like the applicant.

[52] In the circumstances, I make the following order:

1. *The application is dismissed.*
2. *There is no order as to costs.*



DS Molefe
Judge, Land Claims Court

APPEARANCES:

For the Applicant: Adv. A Vorster

Adv. A Thompson

Instructed by: Lawyers for Human Rights, Pretoria

For the 2nd and 3rd Respondents: Adv. M Majozi

Adv. MP Moropa

Instructed by: State Attorney, Pretoria

For the *Amicus Curiae*: Adv. S Magardie

Instructed by: Legal Resources Centre, Johannesburg