



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Nederburg Wines (Pty) Ltd v Nero & others (1084/17) [2018] ZASCA 119 (20 September 2018)

Today, the Supreme Court of Appeal (SCA) upheld an appeal brought by Nederburg Wines (Pty) Ltd against a judgment of the Land Claims Court of South Africa, Randburg.

The issue at the centre of this appeal concerned the question of whether or not a probation officer's report was mandatory in cases where the Extension of Security of Tenure Act 62 of 1997 (ESTA) was applicable and whether the Land Claims Court in dismissing the application for eviction brought by the appellants in terms of section 10(1)(c) of ESTA, correctly interpreted the text of the said provision.

The appellant is a wine producing company which took the first respondent into its employment in July 1993. One of the conditions of employment was that the first respondent may reside on the property together with his family, inclusive of his children. It was a term of the contract of employment, read with the house rules that the first respondent and his family shall vacate the premises upon termination of employment or within one month of a notice to vacate. In terms of the farm rules which form part of the contract of employment, the employer reserved the right to exclude any employee from the premises who is found to be under the influence of alcohol or drugs, as well as removing such employee from the premises.

On 18 December 2011 the first respondent tested positive to an alcohol test which lead to a disciplinary hearing, in which he pleaded guilty and was accordingly found guilty and his employment was terminated. Following an unsuccessful appeal internally and having concluded a settlement agreement incorporating the withdrawal his referral to the Commission for Conciliation, Mediation and Arbitration (CCMA) for unfair dismissal, the first respondent was informed of the termination of his right of residence on 31 July 2013 and was notified to vacate the premises by 30 September 2013. The first respondent failed to vacate the premises. Consequently, the appellant launched an application for eviction at the Land Claims Court (court a quo).

The court a quo dismissed the application on the basis that the appellant failed to demonstrate that the respondent had committed a fundamental breach of the relationship with the owner, which cannot be reasonably and practically restored. The court a quo went on to say 'unsubstantiated averments such as those contained in the founding affidavit cannot possibly justify an eviction based on s 10(3) of ESTA'. On appeal to this Court, the appellant attacked the judgment of the court a quo on the basis that, it failed to properly consider the facts of this case and should have waited for the probation officer's report before deciding the matter. It also argued that the court a quo interpreted ESTA too restrictively.

It is common cause that the appellant requested the court a quo to issue a notice requesting a probation officer's report in terms of s 9(3) read with s 9(2)(e) of ESTA but this report was not before the court a quo when the matter was heard and considered. The report was apparently inadvertently sent to the magistrates' court, instead of the LCC.

This Court, unanimously found that section 9(3) of ESTA makes it mandatory for the court to request a probation officer's report contemplated in s 1 of the Probation Services Act 116 of 1991 to submit a report within a reasonable period. This Court admitted the probation officer's report and found that the report confirmed that the first respondent 'is currently not employed and he is not staying on the farm. Therefore, he would not be rendered homeless upon eviction as he stays with his second wife on a neighbouring farm. Further, his adult, irresponsible and delinquent children have no legal right to occupy the premises – their right existed while their father was still employed on the farm. Accordingly, this Court held, had the court a quo had the benefit of the contents of the probation officer's report it would have decided to grant the eviction order, since the report is decisive.

In light of the factual discrepancy of the LCC of dealing with the matter without considering the probation officer's report and the view taken in this case, the Court found it unnecessary to deal with the interpretation of the legal threshold prescribed in s 10(1)(c) of ESTA.

As a result, the appeal accordingly succeeded with no order as to costs. The order of the court a quo was set aside and replaced with an order granting the eviction against the first to fifth respondents. The execution of the order is suspended for a period of 90 days from date of this order. To the extent necessary, the Drakenstein Municipality (the seventh respondent in the court a quo) was ordered to provide the first to the fifth respondents with temporary emergency accommodation within 60 days of the date of this order. The Drakenstein Municipality was also ordered to file a report, on whether temporary emergency accommodation has been provided to the respondents, to the Registrar of the Land Claims Court within 20 days from the date of the expiry of the 90 days.