



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

**CASE NO: LCC 24R/2019**

**MAGISTRATES COURT CASE NUMBER: 110/2018**

**In Chambers: Acting Judge President Meer**

**Delivered on: 16 October 2019**

In the review proceedings in the case between:

**IZAK WILHELMUS VAN DER MERWE N.O**

**First Applicant**

In his capacity as trustee of the PRC Trust

**OHNA RENETTE VAN DER MERWE N.O**

**Second Applicant**

In her capacity as trustee of the PRC Trust

**JESSE IRINE VAN DER MERWE N.O**

**Third Applicant**

In her capacity as trustee of the PRC Trust

and

**LUKAS SWART**

**First Respondent**

**FRANSIENA HECTOR**

**Second Respondent**

**CEDERBERG MUNICIPALITY**

Third Respondent

**DEPARTMENT OF RURAL DEVELOPMENT  
AND LAND REFORM**

Fourth Respondent

---

**JUDGMENT**

---

**MEER AJP**

**Introduction**

- [1] This matter comes before me on automatic review in terms of section 19(3) of the Extension of Security of Tenure Act 62 of 1997 (“ESTA”). On 26 August 2019 an order was granted in the Clanwilliam Magistrates Court sitting at Citrusdal evicting the First and Second Respondents from Montana Farm, being Portion 5 of farm 614, Cedarberg Municipality, owned by the PRC Trust of which the Applicants are trustees. One order was in fact granted evicting not only the Respondents in this matter but also those in Case Nos 111 to 114/2018, Clanwilliam Magistrate’s Court. No reasons for the order were provided.
- [2] These matters under review to this Court, being LCC 24R to 28R/2019 are considered by me in five separate judgments. Even though the Applicants are the same in each case, each of the Respondents deserves a separate judgment given their different personal circumstances. It is disquieting that the Court *a quo* did not take the trouble to furnish reasons for the eviction of the Respondents in the five cases before it, especially given that the Respondents in all the cases had lived on the farm for most of their lives and some were born there. I note my displeasure that the Court *a quo* did not give the Respondents the courtesy of reasons for terminating their rights of residence.

- [3] The First Respondent, aged 64, is a long-term occupier in terms of section 8(4) of ESTA. On his version, he has resided on the farm since 1995, whilst the Applicants contend he has lived there since 2001. His answering affidavit dated 12 September 2018 alleges that he is a stroke victim and that the Second Respondent, his wife, is his caregiver. The Applicants in reply state that he was not suffering from any serious medical condition during November 2017 and therefore do not materially dispute this allegation. The Second Respondent was born on the farm.
- [4] The Applicants sought and obtained the eviction of both Respondents on the grounds that the First Respondent had committed a material breach contemplated in section 10(1) of ESTA in *inter alia* failing to pay rental in terms of a lease agreement; aggressive conduct pertaining to water supply leading to criminal complaints with SAPS; trespassing; cutting trees and unruly dogs. The Applicants contended that the termination of the rights of residence was just and equitable in terms of section 8(1) of ESTA and the requirements of section 8(4) were complied with. The Court *a quo* did not give reasons for its order. Implicit in its order however is the disquieting and incorrect acceptance notwithstanding the judgment of the Constitutional Court in *Klaase and Another v Van de Merwe N.O and Others* 2016 (6) SA 131 (CC) to the contrary, as referred to below, that the Second Respondent's right of residence was dependant on that of the First Respondent and that an eviction order against him was competent against her also.
- [5] I cannot confirm the order for the eviction of the Respondents on review. In respect of the First Respondent, I note that there is no evidence on the papers that section 8(1)(e) was complied with, in that a fair procedure was followed when terminating his right of residence, including that he was not given an opportunity to make representations before the decision was made to terminate his right of residence. The section requires the Court to have regard to "*the fairness of the procedure followed by the owner or person in charge, including whether or not the*

*occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.”*

- [6] Commenting on section 8(1)(e), the Constitutional Court in *Snyders and Others v De Jager and Others* [2016] ZACC 55 at paragraph 75 held as follows: “*ESTA requires the termination of the right of residence to also comply with the requirement of procedural fairness to enable this person to make representations why his or her right of residence should not be terminated. This is reflected in section 8(1)(e) of ESTA. A failure to afford a person that right will mean that there was no compliance with this requirement of ESTA. This would render the purported termination of the right of residence unlawful and invalid. It would also mean that there is no compliance with the requirement of ESTA that the eviction must be just and equitable.*”

See also *South African National Roads Agency v Jubber and Others*, LCC 56/2019 (unreported, delivered 2 October 2019).

- [7] Given the allegations concerning the First Respondent’s health as well as the fact that an eviction would render the Respondents homeless and remove them from the farm they had lived on for most of their lives, this was clearly a case where they ought to have been granted an effective opportunity to make representations before the decision was made to terminate their right of residence as envisaged in section 8(1)(e). The allegations of material breaches do not detract from this.

In view of the above, the failure to comply with section 8(1)(e) does not render the termination of the right of residence just and equitable as required by section 8. On this basis alone the Applicants failed to make out a case for eviction. The eviction order ought not to have been granted against the First Respondent and cannot be confirmed on review.

- [8] In respect of the Second Respondent, the Applicant’s stance that the Second Respondent did not have any independent right of residence simply cannot be sustained in light of the Constitutional Court judgment of *Klaase. Klaase*

recognised that the rights of residence of persons like the Second Respondent derive from consent flowing from the combined operation of section 3(4) and 3(5) of ESTA. Discussing these subsections at paragraph 59, the Court acknowledged “*ESTA provides that for the purpose of civil proceedings in terms of ESTA, a person who has continuously and openly resided on land for a period of (a) one year shall be presumed to have consent to do so unless the contrary is proved and (b) three years shall be deemed to have done so with the knowledge of the owner or the person in charge*”.

[9] The Court went on to state that it was demeaning to subordinate the rights of Mrs Klaase, a person who had openly and continuously resided on the farm in that case, to those of her husband. The Court found that she was an occupier in her own right entitled to the protection of ESTA.

[10] So too, in respect of the Second Respondent. Post-*Klaase* she can no longer be regarded as a mere resident who occupies under the household head. She is an occupier in terms of section 3(4) and 3(5) of ESTA whose right of residence stemmed from consent. See also the unreported judgment of *D J Wium and Others* LCC 218/2016 delivered on 27 November 2017 and *Goedverdiend Plase (Pty) Ltd and Others v Andrews and Another* [2018] ZALCC 24.

[11] As the Second Respondent’s right of residence flowed from consent, the termination thereof had to comply with section 8(1) of ESTA. The Court *a quo* failed to consider any of these factors in relation to the Second Respondent independently of the First Respondent. The order for her eviction accordingly cannot be confirmed.

I accordingly order as follows:

1. The order for the eviction of the First and Second Respondents in Case Number 110/2018 by the Clanwilliam Magistrates’ Court is set aside.



---

**Y S MEER**  
Acting Judge President  
Land Claims Court