



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

**CASE NO: LCC 28R/2019**

**MAGISTRATES COURT CASE NUMBER: 114/2018**

**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

**CORNELIUS HECTOR**

First Respondent

**GERTRUIDA HECTOR**

Second Respondent

**CEDERBERG MUNICIPALITY**

Third Respondent

**DEPARTMENT OF RURAL DEVELOPMENT  
AND LAND REFORM**

Fourth Respondent

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**JUDGMENT**

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**MEER AJP**

**Introduction**

[1] This matter together with four others<sup>1</sup> 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 and all those residing through them from Montana Farm, being Portion 5 of farm 614, Cedarberg Municipality, owned by the PRC Trust of which the Applicants are trustees.

[2] The First and Second Respondents are long term occupiers and over the age of 60 years. The First Respondent was born on the farm. The Second Respondent has lived

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<sup>1</sup> The matter was referred in a batch as Case Nos 110 -114/2008, by the Clanwilliam Magistrates Court on review to this Court. See Judgment in LCC 24R/2019 at paragraphs 1 and 2. The latter judgment was handed down simultaneously with this judgment.

on the farm for more than 33 years. The First Respondent's adult son resides on the farm with them.

- [3] As in cases LCC24R/2019 - 28R/2019 the Applicants sought and obtained the eviction of both Respondents on the grounds that the First Respondent had committed a material breach as 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.
- [4] I cannot confirm the order for the eviction of the Respondents on review for the following reasons. Firstly, on the papers before me, notwithstanding the allegations against the Respondents, I am not satisfied that the Applicants have shown breaches on the part of the Respondents complying with the stringent requirements as specified in section 10(1)(a) to (c) of ESTA, being conditions precedent to the eviction of long terms occupiers such as the Respondents. I note that the reasons given for the termination of their right of residence are also exactly the same as those given in respect of the Respondents in LCC24R-28R.

- [5] Moreover, in respect of the First Respondent, I note that there is no evidence on the papers that section 8(1)(e) of ESTA was complied with. The subsection 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] Given the long period of time that the Respondents have resided on the farm and the fact that an eviction would render them homeless and remove them from their home, 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.
- [7] 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.
- [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 supra*. *Klaase* recognized 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 that “*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. For the same reasons the First Respondent’s adult son’s right of residence cannot be said to flow from that of the First Respondent and in order for his eviction to be obtained the requirements of section 8(1) also have to be complied with. I therefore cannot confirm the order for the eviction of the First Respondent’s son or any other persons residing through the First Respondent.

I accordingly order as follows:

1. The order for the eviction of the first and second respondents and all those residing through them in case number 114/18 of the Clanwilliam Magistrate's Court is set aside.



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