



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

CASE NO: LCC 108/2023

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / **NO**
(2) OF INTEREST TO OTHER JUDGES: YES / **NO**
(3) REVISED: YES / NO

2 September 2024 *[Signature]*
DATE SIGNATURE

In the matter between:

FIHLI JOHANNES LUKHELE

Applicant

and

SEAN MITCHELL

Respondent

In re:

SEAN MITCHELL

Plaintiff

and

FIHLI JOHANNES LUKHELE

First Defendant

MANDLA AMOS LUKHELE

Second Defendant

NELSON MBEKENE LUKHELE

Third Defendant

ELIZABETH NOMVULA LUKHELE

Fourth Defendant

MBONGENI LUKHELE

Fifth Defendant

LIZZIE SBONGILE LUKHELE

Sixth Defendant

THEMBI MARIA LUKHELE

Seventh Defendant

**ALL OTHER PERSONS WHO OCCUPY
THE HOMESTEAD OF THE LATE MR.
ABRAHAM LUKHELE ON PORTION 15,
OF THE FARM REITFONTEIN 395
BASHEWA, DISTRICT TSWANE,
GAUTENG PROVINCE**

Eighth Defendant

**CITY OF TSHWANE LOCAL
MUNICIPALITY**

Ninth Defendant

**MINISTER OF AGRICULTURE,
RURAL DEVELOPMENT &
LAND REFORM**

Tenth Defendant

ORDER

The following order is made:

1. The First to the Eighth Defendants are permitted to participate in the case and to file the necessary notices in accordance with the rules of this court.
2. Condonation for the failure by the First to Eight Defendants to file a plea timeously is granted.
3. There is no order as to costs

JUDGMENT

MABASA AJ

Introduction

[1] The applicants (who are the defendants in the main proceedings) seek an order from this court condoning the failure by the First to Eight Defendants to timeously file a plea in an action for eviction under the Extension of Security of Tenure Act 62 of

1997 (ESTA), and further, that the First to Eight Defendants be permitted to participate in the case (the main proceedings).

Background

[2] There is a history of litigation between the parties. A court order was issued on 15 July 2020 prohibiting the applicants (the Lukhele family) from erecting structures on the property of the Respondent (Mr. Mitchell). This was followed by a contempt of court order on 29 November 2021, along with a costs order and a writ of execution.

[3] On 16 August 2023, Mr. Mitchell who is also the landowner, initiated eviction proceedings under ESTA. The Lukhele family was required to file a Notice of Appearance and a Plea, but failed to do so on time. Consequently, an application for default judgment followed on 23 May 2024, which was set down for hearing on 29 July 2024. The matter was opposed on that day and postponed to 27 August 2024 to decide on the issue of condonation for the late filing of pleadings.

The issue

[4] The primary issue before this Court is whether condonation for the late filing of the plea should be granted, allowing the defendants to participate in the main proceedings.

The facts

[5] The Lukhele family argue that they were “bombarded” by court processes, including 49 annexures and many returns of service. As unsophisticated rural people with limited understanding of legal matters, they found it difficult to navigate the complex legal landscape.

[6] The family faced financial hardship and sought assistance from an NGO, which referred them to their current legal representative. They only became aware of the default judgment application in July 2024 through their attorneys’ intervention. They contend that their financial difficulties and lack of legal knowledge should not preclude them from defending the eviction, which could lead to homelessness.

[7] Counsel for Mr. Mitchell argues that the Lukhele family failed to satisfy the legal requirements for condonation as outlined in Erasmus.¹ He contends that they have not demonstrated a *bona fide* defence to the eviction action and have not provided substantive facts or evidence to support their claim. Their application lacks confirmatory affidavits and is therefore based on hearsay evidence. Mr. Lukhele should satisfy the Court “on oath” that he has a *bona fide* defence which is not unfounded and based on facts.

[8] He further submits that Mr. Lukhele no longer qualifies as an “occupier” under ESTA, as he does not currently reside on the property, and thus lacks *locus standi* to oppose the eviction proceedings. He also argues that they have not adequately explained the 213-day delay in filing their plea, which he suggests indicates a lack of respect for the court process.

[9] In view of the multiple litigious processes between the parties, he contends that the Lukhele family are seasoned litigants. Their application for condonation is baseless since there are no prospects of success in the main action for their eviction.

[10] He maintains that the family’s arguments in this application are essentially a “cry for sympathy” rather than a legal justification for the late filing of their plea.

[11] He relies on *Grootboom*² where the Constitutional Court set the standard for condonation, and concludes that the “Land Court is no different from any other court, and the law is law”. There are legal requirements for condonation that must be satisfied and the court should not deviate from standard legal requirements simply because of the family’s economic situation

The law

[12] The guiding principle for condonation is fundamentally about whether its granting serves the interests of justice. In *Grootboom*³ it was said that:

¹ *Erasmus Superior Court Practice*, RS 22, 2023, D1 Rule 27-4.

² *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC).

³ *Ibid* para 22.

'The concept of "interests of justice" is so elastic that it is not capable of precise definition...It includes: nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; reasonableness of the explanation for the delay; the importance and the prospects of success... The ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors, but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant'.

[13] In considering the nature of the relief sought, the family seeks permission to participate in the case and file a plea in an ESTA eviction action. There are serious implications if the matter continues without them which includes potential homelessness if the eviction order is granted. Considering the history of the matter and the allegations of legal warfare, it is reasonable to assume that the importance of the notice of action may have been overlooked or misunderstood.

[14] The delay of 213 days in filing the plea is attributed to the Lukhele family's inability to understand the importance of the legal notices served upon them as well as their lack of legal representation at the time. Even though the Constitutional Court in *Ferris v FirstRand*⁴ stated that condonation cannot be had for the mere asking, it also confirmed that lateness is not the only consideration in determining whether condonation may be granted. Viewed in proper context, the barrage of legal processes could have caused confusion and may well have caused the delay as the Lukhele family simply did not know which documents required urgent attention.

[15] Their *bona fide* defence is that Mr Mitchell engaged in constructive eviction through legal warfare. While he argues that the family have not demonstrated a *bona fide* defence, this Court must assess whether they have presented a prima facie case that merits consideration. I am satisfied that they have articulated a basic defence that meets the threshold for a *bona fide* defence of a reasonable justification for the delay.

⁴ *Ferris v Firstrand Bank Ltd* 2014 3 SA 39 (CC).

[16] The claim of prejudice by Mr Mitchell in the form of delayed proceedings cannot outweigh the threat of eviction and homelessness. As to whether they are occupiers as defined in ESTA is not an issue for consideration in this application.

[17] The absence of confirmatory affidavits does not preclude this Court from considering the substantive fairness of allowing the defendants to present their case, particularly given the potential consequences of eviction. One of the extraordinary features of the Land Court is that it may allow hearsay evidence.

The unique role of the Land Court.

[18] The contention that the Land Court is no different to any other court merits deeper consideration.

[19] The Land Court is unique. It is a specialised court. A court of law and equity.⁵ It has been described as “*umbilically*” linked to the Constitution.⁶ Its jurisprudence must be in line with the transformative and social justice imperatives outlined in its preamble “*in order to enhance and promote fairness and equity at all stages of the adjudication processes before and during court proceedings*”.⁷

[20] The Land Court must be cognisant of historical injustices and basic human rights like housing, security, and dignity underpinning ESTA. The argument that the Land Court should not deviate from standard legal requirements fails to recognize the unique role of the Land Court, and its position in the broader legal framework that governs land rights. Its deep roots in principles of equity demands a deviation from rigid rules that may lead to unjust outcomes.

[21] The profound economic imbalance between the parties and the dictates of social justice must be taken into account by this Court in determining the interests of justice.

⁵ Section 3 1) of the Land Court Act 6 of 2023.

⁶*Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) (6 June 2007)

⁷ Preamble to the Land Court Act 6 of 2023.

[22] I am persuaded that the Lukhele family provided a reasonable explanation for the delay in filing a plea and that it was not due to wilful neglect but rather a combination of overwhelming legal processes and financial hardship.


[23] It will be in the interests of justice to grant condonation allowing the Lukhele family to participate in the proceedings and to file a plea.

Order

[24] In the result, the following order is made:

1. The First to the Eighth Defendants are permitted to participate in the case and to file the necessary notices in accordance with the rules of this court.
2. Condonation for the failure by the First to Eight Defendants to file a plea timeously is granted.
3. There is no order as to costs.

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MABASA D

Acting Judge of the Land Court

Appearances:

For the Applicants: Adv. R Nkosi.

For the Respondent: Adv. J E Kruger, instructed by Moolman and Pienaar Inc.

Heard: 27 August 2024

Delivered on: 2 September 2024