



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

**CASE NO: LCC16R2024  
MAGISTRATE CASE NO: 145/22**

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED.

*Orabasa*

**25 OCTOBER 2024**

SIGNATURE

DATE

In the matter between:

**LEOPONT 484 PROPERTIES (PTY) LTD  
(REGISTRATION NUMBER 2003/014558/07)**

First Applicant

**WITZENBURG PROPERTIES (PTY) LTD  
(REGISTRATION NUMBER 1954/000760/07)**

Second Applicant

and

**BETRO MERCIA HENDRIKS**

First Respondent

**GERMAINE CHRISTO HENDRIKS**

Second Respondent

**JEFFREY HENDRIKS**

Third Respondent

**RONALDO MICKILE HENDRIKS**

Fourth Respondent

**ABRAHAM WILLEM HENDRIKS**

Fifth Respondent

**MAGDALENA THERON**

Sixth Respondent

**AND ALL OTHER PERSONS RESIDING WITH**

**THE FIRST TO FIFTH RESPONDENTS  
ON THE FARM KNOWN AS  
LEOPONT FARM**

Seventh Respondent

**WITZENBURG MUNICIPALITY, WESTERN CAPE**

Eighth Respondent

**DEPARTMENT OF AGRICULTURE,  
LAND REFORM AND RURAL  
DEVELOPMENT**

Ninth Respondent

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## **ORDER**

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The following order is made:

1. The order of Magistrate F Hendriks of 6 March 2024 is set aside.
2. The application is remitted to Magistrate's Court for reconsideration of the matter with reference to all relevant issues including *inter alia* the issues raised at paragraph 42 of the judgment.

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## **JUDGMENT**

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**MABASA AJ**

### **Introduction**

[1] This automatic review concerns the validity of an eviction order in terms of section 10 of the Extension of Security of Tenure Act 62 of 1997 (ESTA). This review is conducted in terms of section 19(3) of ESTA<sup>1</sup>.

### **The Parties**

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<sup>1</sup> Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the Gazette, shall be subject to automatic review by the Land Court, which may—

- (a) confirm such order in whole or in part
- (b) ; (b) set aside such order in whole or in part;
- (c) (c) substitute such order in whole or in part; or
- (d) (d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Court may think fit

[2] The First Applicant is Leopont 484 Properties (Pty) Ltd, the registered owner of the farm Leopont (the farm). The Second Applicant is Witzenberg Properties (Pty) Ltd, a shareholder of the First Applicant and one of the entities in charge of the farm.

[3] The First Respondent is Betro Mercia Hendriks (Ms. Hendriks). The Second, Third and Fifth Respondents are her biological brothers namely; Germaine Christo Hendriks, Jeffrey Hendriks and Abraham Willem Hendriks. The Fourth Respondent, Ronaldo Mickile Hendriks is the First Respondent's son. The Sixth Respondent, Ms. Magdalena Theron (Ms. Theron) is the common law partner of Mr. Abraham Willem Hendriks (Mr. Willem). The Seventh Respondent is all other persons residing with the First to Fifth Respondents on the farm (the Hendriks family). The Eighth Respondent is the Witzenberg Municipality. The Ninth Respondent is the Department of Agriculture, Land Reform and Rural Development.

### **Factual Background**

[4] On 12 May 2022, the applicants launched eviction proceedings in terms of ESTA against the Hendriks family to vacate the farm dwelling at House No. 4 on Portion 7 (Welgemeen), Twee Fontein Farm, Ceres, Western Cape (the premises). Mr. Willem and Ms. Theron vacated the premises while the rest of the family remained on the farm.

[5] Their father, the late Mr. Hendriks, was employed on the farm from 1977 until his retirement in 2007 and he was given the right of residence on the farm as an employment benefit. Their late mother was also employed on the farm as a domestic worker at first, and later on a seasonal basis. She lived on the farm until her death in October 2021. All the Hendriks children were born on the farm.

[6] Upon the death of her father, the house was allocated to Ms. Hendriks as she was in the permanent employment of the owner. The rest of the family enjoyed express consent to reside with her on the premises. Housing was allocated to her as an employment benefit. She started working on the farm on 30 September 2004 until her resignation on 2 March 2018.

## The Applicants' case

[7] The applicants argue that Ms. Hendriks' resignation ended their relationship and her right to housing. Accordingly, section 10(1)(d)<sup>2</sup> is applicable to an order for her eviction. Since her brothers occupied the premises under her, their rights were cancelled simultaneously. It is common cause that housing was an employment benefit provided to permanent employees and/or protected occupiers and their family members/dependants.<sup>3</sup>

[8] The applicants further allege that the Hendriks family have committed a breach of section 6(3)<sup>4</sup> of ESTA through incidents of alcohol abuse and domestic violence warranting an eviction.

[9] They aver compliance with sections 8(1)-(3) of ESTA. The first Notice to make representations in terms of section 8(1)(e)<sup>5</sup> was served on 26 October 2021. The Hendriks siblings attended oral representations on 27 October 2021. A second Notice to make representations was served on 22 November 2021. On 23 November 2021, they once again attended and were offered R20 000 in relocation costs. This offer was not accepted.

[10] Despite informal discussions and alternative accommodation offers (which only Mr. Willem and Ms. Theron accepted), the rest of the family refused to vacate. A notice

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<sup>2</sup> 10. Order for eviction of person who was occupier on 4 February 1997

- (1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if –
- (d) the occupier-
- (i) is or was an employee whose right of residence arises solely from that employment; and
  - (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.

<sup>3</sup> Applicant's Founding Affidavit at paragraph 62.5

<sup>4</sup> 6. Rights and duties of occupier

- (3) An occupier may not-
- (a) intentionally and unlawfully harm any other person occupying the land;
  - (b) intentionally and unlawfully cause material damage to the property of the owner or person in charge;
  - (c) engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or
  - (d) enable or assist unauthorized persons to establish new dwellings on the land in question

<sup>5</sup> 8. Termination of right of residence

- 1 (e) 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.

of cancellation of their rights of residence and notice to vacate the property in terms of section 8(2)<sup>6</sup> of ESTA followed on 24 January 2022.

[11] The applicants further claim that the premises is needed for other employees, and Ms. Hendriks and her children already have suitable alternative accommodation available. This is disputed by Ms. Hendriks.

### **The Respondents' case**

[12] The central argument of the Hendriks family is that they are dependants of their late father, a long-term occupier under Section 8(4)<sup>7</sup> of ESTA, and not merely occupants by virtue of Ms. Hendriks' employment. Section 8(5)<sup>8</sup> protects the rights of dependants of long-term occupiers, requiring 12 months' written notice before eviction can proceed.

[13] The Hendriks siblings argue that they were born and raised on the farm, having resided there since 1979 with their parents, both of whom were employed by the previous farm owner.

[14] It is undisputed that Ms. Hendriks resigned in 2018. She argues, however that her right of residence did not "solely" arise from her employment. It was derived from her parents' status as long-term occupiers. They find support for this argument by the fact that eviction proceedings were only initiated against the family three years later, after the death of their mother in October 2021.

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<sup>6</sup> **8. Termination of right of residence**

(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.

<sup>7</sup> **8. Termination of right of residence**

(4) The rights of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and –  
(a) has reached the age of 60 years; or  
(b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge,

may not be terminated unless that occupier has committed a breach contemplated in section 10(1)(a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

<sup>8</sup> **8. Termination of right of residence**

(5) On the death of an occupier contemplated in subsection (4), the right of residence of an occupier who was – his or her spouse or dependant may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1).

[15] Ms. Hendriks argues that when she took over the housing agreement after her father's death, the terms of the agreement were not adequately explained to her. She believed the family's right to residence was linked to her family's long-term occupation rather than her employment status.

[16] The Hendriks family assert that the applicants failed to comply with Section 8(5) of ESTA, which requires 12 months' written notice to terminate the rights of a dependent of a long-term occupier. They received insufficient notice (2 months) before the cancellation of their rights.

[17] Further, the alternative accommodation offered was unsuitable and insufficient for their needs. They contend that an eviction would render them homeless, as they have no other housing options and no family or friends willing to assist.

[18] Ms. Hendriks denies the applicants' allegations of alcohol abuse and domestic violence, claiming these incidents were isolated and have not occurred since her father's passing. She disputes the applicants' claim that she has relocated to her boyfriend's residence in Hamlet, arguing that she still occupies the farm property. The applicants, she maintains, have not provided evidence that she vacated the property.

#### **The position of the municipality and the probation officer**

[19] The Witzenberg Municipality confirmed that it lacks available land or housing to provide immediate alternative accommodation for the Hendriks family.

[20] The Probation Officer's report provided in terms of section 9(3) of ESTA concluded that the family would be rendered homeless by an eviction, as they do not have alternative accommodation. Their report recommends that eviction be reconsidered, and the parties engage in further discussions.

#### **Referral to oral evidence**

[21] As a result of the disputes of fact the matter was referred to oral evidence and argued before the Ceres magistrate. In the judgment by the magistrate, it is clear that the argument advanced by the respondents that they are the dependants of a protected occupier was completely overlooked. The result was a finding that there was

a valid employee/housing agreement which terminated the rights of the respondents. An eviction order was granted.

### The issue

[22] In my view, the core issue for determination in this matter is whether the Hendriks family's right of residence ended when Ms. Hendriks resigned, which means they could be evicted under section 10(1)(d) of ESTA, or whether they are dependents of a protected occupier (their late father) under section 8(4) of ESTA, and were given inadequate notice in terms of section 8(5) of ESTA.

### *What type of occupiers are the Hendriks family?*

[23] It is common cause that the Hendriks family are occupiers in terms of section 10 of ESTA.<sup>9</sup> They were all born on the farm prior to 4 February 1997. Their late father

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#### <sup>9</sup> 10. Order for eviction of a person who was an occupier on 4 February 1997

- (1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if –
  - (a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
  - (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar month's notice in writing to do so;
  - (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship;
  - (d) the occupier—
    - (i) is or was an employee whose right of residence arises solely from that employment; and
    - (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act; or
  - (e) the owner or person in charge or the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.
- (2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, the Court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.
- (3) If-
  - (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
  - (b) the owner or person in charge provided the dwelling occupied by the occupier; and
  - (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,the Court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to-
  - (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and

received housing as an employment benefit, and they received consent to initially occupy the property on the farm with or under him and/or developed consent to reside on the farm through the effluxion of time and the operation of the presumptions of sections 3(4) and 3(5) of ESTA.<sup>10</sup>

## The Legal Framework

[24] Considering an eviction under section 10 in *Maluleke v Sibanyoni*<sup>11</sup> the Supreme Court of Appeal reaffirmed the principle established in *Aquarius Platinum vs Bonene*<sup>12</sup> that ESTA envisages a two-stage eviction procedure. The first is a notice terminating the occupier's right to reside in terms of section 8 of ESTA, thereafter a second notice of eviction in terms of section 9(2)(d) should be given to the occupier. Section 9(2)(c) of ESTA states that the Court may make an order for the eviction of an occupier if the conditions for an order of eviction in terms of section 10 or 11 have been complied with.<sup>13</sup>

[25] Further, in *Snyders and Others v De Jager and Others*<sup>14</sup>, the Constitutional Court stated that termination of residence under section 8 must be both procedurally and substantively just and equitable. Procedural fairness includes providing the required notice, while substantive fairness considers the reasons for the termination and the availability of alternative accommodation.

## Was there a proper termination of their rights in terms of section 8?

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- (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

### <sup>10</sup> 3. Consent to reside on land

(4) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of one year shall be presumed to have consent unless the contrary is proved.

(5) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of three years shall be deemed to have done so with the knowledge of the owner or person in charge...

<sup>11</sup> *Maluleke N.O. v Sibanyoni and Others* (1012/2020) [2022] ZASCA 40 (4 April 2022) para 9.

<sup>12</sup> *Aquarius Platinum (South Africa) Pty Ltd v Bonene and Others* [2020] 2 All SA 323 (SCA).

<sup>13</sup> 9(2) The Court may make an order for the eviction of an occupier if-

(c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with.

<sup>14</sup> 2017 (3) SA 545 (CC) (21 December 2016).



[26] In accordance with the principles enunciated in the above cases the starting point for an eviction under ESTA is section 8 which reads as follows:

**‘8. Termination of right of residence**

- (1) Subject to the provisions of this section, an occupier’s right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to:
  - (a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;
  - (b) the conduct of the parties giving rise to the termination;
  - (c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned and any other occupier if the right 25 of residence is or is not terminated;
  - (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
  - (e) 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.
- (2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.
- (3) Any dispute over whether an occupier’s employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act.
- (4) The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and—
  - (a) has reached the age of 60 years; or
  - (b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge.may not be terminated unless that occupier has committed a breach contemplated in section 10( 1)(a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.
- (5) On the death of an occupier contemplated in subsection (4), the right of residence of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months’ written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1).
- (6) Any termination of the right of residence of an occupier to prevent the occupier from acquiring rights in terms of this section, shall be void.
- (7) If an occupier’s right to residence has been terminated in terms of this section, or the occupier is a person who has a right of residence in terms of section 8(5)— (a) the occupier and the owner or person in charge may agree that the terms and conditions under which the occupier resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the occupier; or (b) the owner or person in charge may institute proceedings in a court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.’

**Discussion**

[27] The applicants contend that the requisite notices in terms of sections 8(1)-(3) were delivered and that they complied with the requirements of ESTA.

[28] However, the Hendriks family aver that the heart of the dispute lies in the fact that they were not given the 12 months' notice as required by section 8(5).

***Are they protected occupiers in terms of section 8(4) of ESTA?***

[29] It is undisputed that the Hendriks family are dependents of a long-term occupier, the late Mr. Hendriks, who had rights under section 8(4) of ESTA.

[30] Accordingly, the applicants' argument that Ms. Hendriks's resignation automatically terminated the family's right to reside on the farm is unsustainable. While section 8(2) of ESTA allows termination of residence if the right arises "solely" from an employment contract, the facts demonstrate that Ms. Hendriks's right of residence was not based solely on her employment. The family's residence was historically linked to their father's status as a long-term occupier, protected under Section 8(4) of ESTA. Therefore, the resignation of Ms. Hendriks does not affect the broader rights derived from her father's status, which is where the family's right of residence originated.

[31] The fact that eviction proceedings were only launched after the death of their mother in October 2021 (three years after Ms. Hendriks resigned in 2018) supports the contention that they derived their right of residence from their parents' right of tenure rather than Ms. Hendriks's employment. Accordingly, their rights of residence should have been terminated in accordance with section 8(5).

[32] In *Aquarius Platinum*<sup>15</sup> the Supreme Court of Appeal confirmed that failure to comply with the requirements of section 8 of ESTA is fatal to the applicants. Since the applicants were provided only two months' notice, falling far short of the statutory requirement of 12 months for dependents of a long-term occupier there can be no

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<sup>15</sup> *Aquarius Platinum Supra 12.*

doubt that the termination of residence is procedurally defective. This procedural failure is critical and renders the termination of the family's residence rights invalid.

[33] Section 10(1)(a) of ESTA allows for eviction if the occupiers have committed a material breach of their duties, such as causing harm or property damage, under Section 6(3).

[34] The applicants claim that the Hendriks family committed a material breach of their duties under Section 6(3) of ESTA due to incidents of domestic violence and alcohol abuse. However, these claims are unsubstantiated and do not establish ongoing or severe violations that would justify eviction. The applicants failed to provide clear evidence of ongoing misconduct. Furthermore, Ms. Hendriks has acknowledged past incidents but demonstrated that such behaviour ceased after her father's death. Therefore, the applicants' reliance on past, isolated incidents does not satisfy the threshold for a material breach required under Section 10(1)(a) of ESTA.

[35] In *Molusi and Others v Voges NO*<sup>16</sup> the Constitutional Court held that eviction orders should only be granted where there is clear evidence of material breach. Minor or historical incidents do not meet this threshold, and eviction should only occur where the breach is significant and ongoing.

### **Just and equitable considerations**

[36] Section 10(2) of ESTA requires the court to consider the availability of suitable alternative accommodation when deciding whether eviction is just and equitable. The probation officer's report and statements from the Witzenberg Municipality confirm that no alternative accommodation is available, and eviction would render the family homeless.

[37] In *Port Elizabeth Municipality v Various Occupiers*<sup>17</sup> the Constitutional Court emphasized that the provision of alternative accommodation is a critical factor in

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<sup>16</sup> *Molusi and Others v Voges NO and Others* [2016] (3) SA 370 (CC).

<sup>17</sup> 2005 (1) SA 217 (CC).

eviction proceedings. The court must ensure that an eviction does not result in homelessness, particularly where occupiers have lived on the land for a significant period.

[38] The applicants argue that alternative accommodation is available, but the evidence, including the probation officer's report, confirms that the Hendriks family has no suitable housing options. They have lived on the farm their entire lives, and the offers made by the applicants for relocation were rejected because they were inadequate. The compensation of R20 000 was considered insufficient to secure proper housing.

[39] An eviction order would not only affect the Hendriks siblings but also their minor children, putting them at risk of destitution. Given the lack of alternative accommodation and the applicants' failure to offer reasonable housing solutions, it would be neither just nor equitable to enforce an eviction.

[40] In *Hattingh v Juta*<sup>18</sup>, the court held that the length of occupation is a key factor in balancing the rights of the occupiers and the landowners. Long-term occupiers have heightened protections under ESTA, and evicting such individuals requires compelling reasons and proper consideration of all relevant factors. The applicants have not demonstrated any compelling reason to displace the Hendriks family.

[41] Further, in considering the interests of the owner the court must consider whether the efficient carrying on of any operation of the owner or the person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or the person in charge. The applicants failed to prove that it is being prejudiced by the Hendriks family's occupation of the house on the farm that they have been occupying for their entire lives.

[42] In conclusion, the applicants failed to comply with the procedural requirements for an eviction in terms of section 8(5) of ESTA. Mediation is recommended to explore suitable housing alternatives.

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<sup>18</sup> *Hattingh and Others v Juta* 2013 (3) SA 275 (CC).

## Order

[43] I make the following order:

1. The order of Magistrate F Hendriks of 6 March 2024 is set aside.
2. The application is remitted to the Magistrate's Court for reconsideration of the matter with reference to all relevant issues including *inter alia* the issues raised at paragraph 42 of the judgment.



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**MABASA D**  
**Acting Judge of the Land Court**