



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

CASE NO: LCC 32R/2023
Magistrates' Court Case No: 329/2021

Date: 15 January 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE YES / NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
(2) OF INTEREST TO OTHER JUDGES YES / NO	<input checked="" type="radio"/> YES <input type="radio"/> NO
(3) REVISED YES / NO	<input type="radio"/> YES <input checked="" type="radio"/> NO
15/01/2025 DATE	<i>Majzi</i> SIGNATURE

In the matter between:

EFB FARM (PTY) LIMITED t/a GLENBOYD FARM

Applicant

and

STEVEN KOTA

First Respondent

MAKANDA LOCAL MUNICIPALITY

Second Respondent

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

Third Respondent

JUDGMENT

Majozi AJ:

INTRODUCTION

1. This is an automatic review that is before me in terms of section 19(3) of the Extension of Security of Tenure Act, 62 of 1997 ("ESTA"). It is a sequel to the first automatic review that was before my colleague Cowen J (as she then was). On 28 November 2023, Cowen J set aside the Order of Magistrate Naidoo and remitted the eviction application back to the Sarah Baartman Magistrates' Court.
2. The setting aside of Magistrate Naidoo's eviction Order by Cowen J was, at that point, due to a lack of compliance with the procedural requisites of section 9 of ESTA, in particular, the fact that the default eviction Order had been granted without obtaining a probation officer's report from the third respondent.
3. The third respondent produced a probation officer's report dated 22 May 2024 with recommendations for consideration, before a decision is made on the eviction of the first respondent.
4. After the setting aside of the eviction Order and delivery of the probation officer's report, Magistrate Naidoo through a letter dated 19 July 2024, reacted to the probation officer's report. She indicated that:

"the report does not influence the previous decision to convict the parties (sic)". Startlingly, the letter was written in this manner notwithstanding that Magistrate Naidoo's eviction Order had been set aside and was thus no longer extant.

5. It is in accordance with the abovementioned sequence of events and the letter dated 19 July 2024 that the sequel to the eviction application instituted on 18 July 2023, finds itself before me.

THE SALIENT FACTS

6. This automatic review arises from motion proceedings instituted by the applicant before the Magistrates' Court for the District of Sarah Baartman held in Makhanda ("**the Magistrates Court**").
7. In the Magistrates' Court, the applicant under case no. 329/2023 sought an eviction of the first respondent, Mr Steve Kota ("**Mr Kota**") in terms of section 9 of ESTA. It also sought the Sheriff to be authorised to take all necessary and reasonable steps to evict Mr Kota and all those occupying the farm known as Farm 205 Glenboyd in Committee's Drift, Eastern Cape ("**the farm**") through or under him. The latter Order was sought in the event of the first respondent and

those occupying under him failing to vacate the farm within thirty days of the Order.

8. The facts alleged by the applicant are that Mr Kota, was employed by WXL Game Reserve and he, on 8 June 2016, entered into an accommodation agreement with WXL Game Reserve. WXL Game Reserve is the erstwhile owner of the farm, it is also Mr Kota's former employer.
9. The applicant succeeded WXL Game Reserve in both capacities as the owner and employer.
10. The accommodation agreement stipulates that the accommodation would be at a cost of not more than 10% of Mr Kota's salary per week/month with the rent to be deducted from his salary. Mr Kota's immediate family was also granted a right of occupation by the accommodation agreement.
11. The accommodation agreement further records that—
 - 11.1. it originates from a service contract and would expire automatically at the termination of Mr Kota's service relationship with the employer;

- 11.2. any notification of termination of service shall be regarded as a notice of termination of land tenure; and,
 - 11.3. Mr Kota would be granted not less than thirty (30) days to vacate the housing and in the event of Mr Kota failing to vacate the housing an eviction application would, in terms of ESTA be instituted against him.
12. At the time that the applicant acquired the farm, the agreement had been concluded and was valid and extant.
 13. The applicant alleged that in the line of duty an incident arose in or about April 2021 involving another employee of the applicant and Mr Kota. Mr Kota was implicated in this incident and this led the applicant to institute disciplinary proceedings against him. The incident and the disciplinary proceedings led to Mr Kota's contract being terminated on 13 April 2021.
 14. On the same date, 13 April 2021, in the accommodation agreement, Mr Kota's occupation of the farm was purportedly terminated and Mr Kota was given thirty days to vacate the premises. The letter purporting to terminate Mr Kota's occupation of the farm is annexed to the applicant's founding affidavit as ESB5 and states thus:

"As per your disciplinary hearing today, 13 April 2012, your employment has been terminated with immediate effect. To confirm as per your signed valid housing agreement, you have thirty days to vacate the property on termination of employment.

As you are no longer an employee at this farm, it means that you are not permitted on the farm property beyond the staff pedestrian gate at any time. If you are found to be out of the restricted area, it will be seen as trespassing, and we reserve the right to arrest and prosecute.

We have transferred your money due to you, including your overtime, and deducted electricity purchased on account for the past two weeks. Also please find UI 19 form that you can take to U.I.F." [Emphasis added]

15. Pursuant to the disciplinary hearing and the purported termination of Mr Kota's right of residence, Mr Kota referred the matter to the Commission for Conciliation, Mediation and Arbitration ("CCMA"). Mr Kota's referral led to a settlement reached on 1 June 2021 in terms of which there was a monetary settlement in the sum of R7 000,00 which was paid by the applicant in lieu of the reinstatement of Mr Kota's employment.
16. According to the applicant, following the CCMA Settlement Agreement and the termination of Mr Kota's employment, Mr Kota's termination of his rights of residence was confirmed on 1 June 2021.
17. The latter contention was made by the applicant notwithstanding that the CCMA Settlement Agreement reached, was in lieu of not reinstating Mr Kota to his employment.

18. In support of its eviction application the applicant alleged that as a result of the incident, Mr Kota, who is approximately 64 years old, had committed a fundamental breach of the relationship between the applicant and himself as envisaged in section 10(1)(c) of ESTA. As a result of the alleged fundamental breach, the employment relationship cannot be practically or reasonably remedied.
19. The applicant also pleaded that since it had taken over from WXL Game Reserve, it had no knowledge of how long Mr Kota had been in occupation of the farm.
20. It further alleged that Mr Kota has alternative accommodation as envisaged in section 10(2) of the ESTA in the form of an immovable property described as erf 8000 in the Township of Rini under the Somerset West Municipality.
21. Due to essentially these reasons, the applicant claimed that it is just and equitable for Mr Kota, his wife and family to be evicted from the farm.
22. As indicated, the applicant's eviction application proceeded on an unopposed basis. The probation officers report is what has helpfully

illuminated some of the issues in relation to whether the eviction of Mr Kota, his wife and family is just and equitable.

THE MATERIAL PROVISIONS OF ESTA

23. The preamble to ESTA provides that its objective is to provide for measures with State assistance to facilitate long-term security of land tenure. It also was enacted to regulate the conditions of residence on certain land as well as the conditions on and circumstances under which the right of persons to reside on land may be terminated.
24. The preamble further states that ESTA regulates the conditions and circumstances under which persons, whose rights of residence has been terminated, may be evicted from land and to provide for matters connected therewith.
25. In relation to this Court's powers on automatic review, section 19 of ESTA provides as follows:

"19. The Magistrates' Court

- (1) A Magistrates' Court –
 - (a) shall have jurisdiction in respect of –
 - (i) proceedings for eviction or reinstatement; and
 - (ii) criminal proceedings in terms of this Act; and
 - (iii) shall be competent –

- (ii) to grant interdicts in terms of this Act; and
- (ii) to issue declaratory orders as to the rights of a party in terms of this Act.
- (2) Civil appeals from Magistrates' Courts in terms of this Act shall lie to the Land Court.
- (3) Any order for eviction by a Magistrates' 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) set aside such order in whole or in part;
 - (c) substitute such order in whole or in part; or
 - (d) remit the case to the Magistrates' Court with directions to deal with any matter in such manner as the Land Court may think fit.
- (4) ...
- (5) Any order for eviction contemplated in sub-section (3) shall be suspended pending the review thereof by the Land Court."

26. As it relates to the termination of rights, section 8 of ESTA provides that an occupier's right of residence may be terminated on any lawful grounds, subject to the provisions of section 8.

THE APPLICANT'S NON-COMPLIANCE WITH SECTION 8 OF ESTA

27. The facts on the applicant's version are that the purported termination of Mr Kota's employment unfolded in the following manner:

- 27.1. That there was a notice of termination of Mr Kota's employment on 13 April 2021.
- 27.2. That on the same date, 13 April 2021, the applicant issued Mr Kota with a termination of his right of residence. The right of residence was purportedly terminated with immediate effect.
- 27.3. That the notice of termination of Mr Kota's employment refers to a disciplinary hearing.
- 27.4. That Mr Kota thereafter referred the termination of his employment to the CCMA around April/May 2021 and a letter dated 11 May 2021 invited the applicant to a CCMA conciliation scheduled for 1 June 2021.
- 27.5. That the conciliation was held on 1 June 2021 where the dispute was settled by way of a monetary payment of R7 000,00 to the plaintiff (Mr Kota) "*in lieu of reinstatement or re-employment*".¹
28. The foregoing summary establishes that when Mr Kota's right of residence was purportedly terminated —

¹ Applicant's Founding affidavit ("FA"): p 11, para 23.

- 28.1. The dispute pertaining to his employment was still pending or had not been finalised, as it was referred to the CCMA after the disciplinary hearing of 13 June 2021.
 - 28.2. Put differently, Mr Kota's employment was in terms of the of the Labour Relations Act, No. 66 of 1995 ("the LRA") therefore still pending and was only finalised on 1 June 2021 at the CCMA.
 - 28.3. Mr Kota was also not given an opportunity to exhaust his LRA remedies before the termination of his right of residence.
29. The foregoing establishes that the notice of termination of Mr Kota's right of residence was in breach of the fairness procedure required in section 8 (1) (e) of ESTA in that:
- 29.1. On 13 April 2021, when the applicant purported to terminate Mr Kota's right of residence, there was no procedure for him to make representations to the applicant; and
 - 29.2. Mr Kota was a long-term occupier as he had resided on the farm for more than ten years and had at the time of the purported termination of his right of residence reached the age of 60 (he was 64 years old).

30. The Constitutional Court in the matter of *Molusi and Others v Voges N.O and Others*,² dealt with the procedural fairness of the termination of a right of residence and said the following:

"[34] Although the Supreme Court of Appeal was correct that the "reliance on the common law does not exonerate the owners from compliance with the provisions of ... ESTA", it nonetheless said no unfairness was suggested by the applicants. It concluded that the procedure the respondents followed was fair and that, save for section 8(1)(d) which the Supreme Court of Appeal held was irrelevant, section 9(2) was complied with. But, as is evidenced by the circumstances of this case, the unfairness was palpable. The [Land Court] noted that the probation officer's report set out that there was no alternative accommodation. The existence of a reasonable expectation of the renewal of the agreement from which the right of residence arose could not be excluded on the basis of irrelevance. This is so because the applicants asserted that they had not acted in violation of their leases. Although the respondents initially based the termination on non-payment, they did not pursue that course. They changed tack and relied instead on the need to develop the property as the ground for termination.

[36] What's more, had they been given an opportunity to make representations in terms of section 8, the applicants may have explained the unjustness of the cancellation of the

² 2016 (3) SA 370 (CC) at paras [34] and [36]

lease and termination of the right of residence. This did not happen. In these circumstances, given the differing reasons for the termination provided by the respondents, the fact that no opportunity was given to the applicants to make representations is telling. In any event, the applicants said that they did not deal with the fairness of the notice of termination and the hardship they could suffer, because they refuted the case as pleaded against them in the [Land Court]. In the view I take of the matter, it is not necessary to consider the question of onus." [Emphasis added]

30.1. Again in the matter of *Hattingh and Others v Juta*,³ Zondo J, (as he then was), emphasised that Courts need to infuse justice and equity into an ESTA eviction enquiry. He further indicated that the termination of the right of residence and eviction of an occupier must not only be based on a lawful ground. It must be just and equitable.

30.2. In *Snijders and Others v De Jager and Others*,⁴ the Constitutional Court emphasised that the termination of a right of residence must be just and equitable both at a substantive

³ 2013 (3) SA 275 (CC) at para [32]

⁴ 2017 (3) SA 545 (CC) at para [56].

level as well as at a procedural level. Matojane AJ writing for the majority said:

[67] If a person has a right of residence on someone else's land under ESTA, that person may not be evicted from that land before that right has been terminated. In other words, the owner of land must terminate the person's right of residence first before he or she can seek an order to evict the person. However, it must be borne in mind that the termination of a right of residence is required to be just and equitable in terms of section 8(1) of ESTA. Section 8(2) deals with the right of residence of an occupier who is an employee of the owner of the land or of the person in charge and whose right of residence arises solely from an employment agreement. It provides that such a right of residence may be terminated "if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act". [Emphasis added]

30.3. In facts analogous to this case, the Constitutional Court said the following in *Snijders*:

[69] In any event Ms de Jager did not terminate Mr Snyders' right of residence. She assumed that, once she had terminated his contract of employment, that automatically terminated his right of residence as well. She said that the part of the letter of dismissal that told Mr Snyders that he was to vacate the house in a month's time was the part that informed Mr Snyders of the termination of his right of residence. A copy of that letter was

attached to Ms de Jager's founding affidavit in the Magistrate's Court.

[70] There are two difficulties with Ms de Jager's reliance upon the contents of that letter. The first is that Mr Snyders is illiterate and would not have been able to read the letter. In this regard Mr Snyders said that, when Ms de Jager gave him that letter, she told him that he was being dismissed but never told him that his right of residence was also being terminated. Ms de Jager has not said anything different on this aspect. Since Mr Snyders was a respondent in those motion court proceedings, his version is the one that prevails. There was an obligation on Ms de Jager to have either read the letter to Mr Snyders or to have told him specifically that she was terminating his right of residence if that is what she sought to do. Whether or not it would have been proper or just and equitable for Ms de Jager to terminate Mr Snyders' right of residence at that time and in that manner is another question. However, Ms de Jager would have been obliged to comply with the requirements of ESTA before she could terminate Mr Snyders' right of residence.

[71] The second difficulty is that no part of the letter said that Mr Snyders' right of residence was being terminated. The part on which Ms de Jager relies simply said that Mr Snyders was required to vacate the house. The basis for the requirement that Mr Snyders should vacate the house must have been that his right of residence had automatically terminated when his contract of employment was terminated. That was not necessarily the position. The right of residence needed to be terminated on its own in addition to the termination of the contract of employment. Until Mr Snyders' right of residence

had been terminated, he could not be required to vacate the house. In this case Ms de Jager has failed to show that Mr Snyders' right of residence had been terminated. Therefore, Ms de Jager had no right to require Mr Snyders to vacate the house or to seek an eviction order against Mr Snyders. The Magistrate's Court was wrong to find differently. The [Land Court] was equally wrong to confirm the Magistrate's Court eviction order. [Emphasis added]

- 30.4. The notice to vacate that was given to Mr Kota does not meet the threshold set out in Section 8(1) and 8(2) of ESTA. It also falls short of what the Constitutional Court's interpretation of section 8 of ESTA in that the termination of Mr Kota's residence was as provided in the accommodation agreement, an automatic *sequitur* of the termination of employment and thus substantively and procedurally unfair.
- 30.5. The purported termination of residence was an automatic notice to vacate. There was also no opportunity for Mr Kota to make representations nor did the applicant explain to the Magistrates' Court that the 13 June 2021 notice was adequately explained to Mr Kota, taking into account his age and lack of formal education.

- 30.6. The facts outlined hereinabove establish the notice of termination of Mr Kota's right of residence was neither just nor equitable as required by section 8 (1) of ESTA. Mr Kota was not afforded an opportunity to make representations and explain the circumstances that are described in the probation officer's report. It therefore cannot be held that Mr Kota's right of residence was properly terminated and nor can I find that it was substantively and procedurally just and equitable. Consequently, an eviction could not be granted under section 9(2)(d) of ESTA.
- 30.7. The lack of substantive and procedural fairness in the termination of Mr Kota's right of residence establishes that the phased approach to the termination of a right of residence and eviction of occupiers was not adhered to.
31. The two -stage approach to evictions of people who became occupiers pursuant to an employment contract, was also confirmed by the Supreme Court of Appeal in the matter of *Sterklewies t/a Harrismith Feed Lot v Msimang and Others*,⁵ where the SCA said the following:

⁵ 2012 (5) SA 392 (SCA), para [16].

[16] The Act contemplates two stages before an eviction order can be made. First the occupier's right of residence must be terminated in terms of s 8 of the Act. The manner in which this is to be done is not specified. Once the right of residence has been terminated then, before an eviction order can be sought, not less than two months' notice of the intention to seek the occupier's eviction must be given to the occupier, the local municipality and the head of the relevant provincial office of the Department of Land Affairs [Rural Development and Land Reform] in terms of s 9(2)(d) of the Act. That notice is required to be in a form prescribed by regulations made in terms of s 28 of the Act."

32. It is clear that the applicant failed to adhere to the requirements of section 8 (1) and as a corollary section 8 (2) and (3) of ESTA. Mr Kota's right of residence was not terminated in a manner that is compliant with section 8 of ESTA.

Mrs Kota

33. The secondary aspect relates to the eviction of Mr Kota together with his wife, Nobendiba Kota ("**Mrs Kota**").

33.1. Section 1 of ESTA defines an occupier as a person residing on land which belongs to another person and who has, or on 4 February 1977, or thereafter had consent or another right in

law to do so, excluding certain categories of persons which are not applicable to this matter.

33.2. Consent means express or tacit consent of the owner or a person in charge of the land in question and in relation to a proposed termination of the right of residence or eviction by a holder of mineral rights, includes the express or tacit consent of such a holder.

33.3. As indicated in the probation officer's report, both Mr and Mrs Kota earn below the threshold amount published by the Minister of Rural Development and Land Reform in terms of section 1 of ESTA. Mrs Kota has lived with both the knowledge and/or the express or tacit consent of the successive owners of the farm since 1977. At the time of being evicted she was still residing on the farm.

33.4. The Constitutional Court in *Klaase and Another v Van Der Merwe and Others*⁶ said the following:

"Most people who are occupiers of farm land are a vulnerable group in our society. These include female occupiers who are

⁶ 2016 (6) SA 131 (CC) para 2

frequently not joined in eviction proceedings instituted against their spouses or partners. This makes that class of occupiers susceptible to arbitrary evictions as a consequence of the actions of their spouses or partners. As a result, no substantive grounds for their evictions are made and properly considered by a court before they are evicted with their spouses or partners. The upshot of this is hardship, conflict and social instability.”

33.5. Mrs Kota is 66 years of age having arrived on the farm in 1977 with her late parents. She has stayed on the farm since 1977 and entered into a customary marriage with Mr Kota in 1980, this marriage was turned into a civil marriage in 2006.

33.6. The effect of Mrs Kota being on the farm with the full knowledge of the applicant and the applicant's predecessors-in-title from 1978 to when they were evicted, is that she in her own right is an occupier. When she arrived on the farm she was with her maiden family, prior to her marrying Mr Kota. She only later married Mr Kota, around 1980.

34. The matter of *Klaase and Another*,⁷ dealt with definition of an occupier and in particular whether Mrs Klaase who was married to the first applicant in that matter (Mr Klaase), was an occupier as defined under ESTA. The Constitutional Court held that the definition of consent is broad and it encompasses both express and tacit consent. The word tacit means "*understood or implied without being stated*".⁸ It then criticised the findings of this court as follows:

"[54] The [Land Court's] reliance on the narrow construction in *Klaase* for the conclusion that Mrs Klaase is a "resident" and not an "occupier" is, in the circumstances of this case, misconceived. It impermissibly construed the definition of "occupier" narrowly and without regard to the mischief ESTA sought to remedy. The narrow meaning does not take into account instances, like those in this case, where an occupier has lived for more than the prescribed period on the premises with the knowledge of an owner who sits back and does not seek the occupier's eviction. There the ESTA presumption and deeming provision favour the occupier. If the construction of "occupier" adopted by [the Land Court] is – in the circumstance of this case – correct, occupiers like Mrs Klaase will be evicted arbitrarily from farms without being

⁷ 2016 (6) SA 131 (CC)

⁸ *Ibid*, para [53]

afforded their constitutional guarantees and their protection under ESTA.

[55] On the meaning of "consent", [the Land Court] in *Klaase* held that its primary meaning is "voluntary agreement to" and that "the person concerned must be or must have been a party to a consent agreement with the owner of the land". The [Land Court] held that a "person claiming ESTA occupation must be residing on the property without any other right to do so and with the apparent consent of the owner thereof or the person in charge of the land". It restricted, impermissibly, the meaning of "consent" in a manner that ignores the significance of "tacit" consent. The corollary of this limitation would be that many people who would otherwise qualify as occupiers would be excluded from the protection of ESTA."
[Emphasis added]

35. The effect of the foregoing is that the Order granted only sought to evict Mr Kota and did not evict another occupier in the form of Mrs Kota. She has resided on the farm for over four decades. As a result of the foregoing, the eviction of Mr Kota and demolition of his house that he shared with Mrs Kota is unlawful and a contravention of Mrs Kota's ESTA protections as contained in section 8 and 9 of ESTA read with section 26(3) of the Constitution.

36. Consequently, in the enquiry into compliance with section 8 of ESTA, the applicant failed on both considerations explained hereinabove. As a result, the eviction order should be set aside on the applicant's failure to comply with section 8 of ESTA.

THE NON-COMPLIANCE WITH SECTION 9 OF ESTA

37. Section 9 of ESTA provides as follows:

- "(1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.
- (2) A court may make an order for the eviction of an occupier if—
- (a) the occupier's right of residence has been terminated in terms of section 8;
- (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
- (c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and
- (d) the owner or person in charge has, after the termination of the right of residence, given—
- (i) the occupier;
- (ii) the municipality in whose area of jurisdiction the land in question is situated; and
- (iii) the head of the relevant provincial office of the Department of Rural Development Land Reform, for information purposes,

not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.

38. Due to the non-compliance with the termination of the right of residence in terms of section 8 of ESTA, it is clear that the applicant cannot get to the second stage of the eviction. The first stage in relation to the termination of the right of residence has not been complied with. It follows therefore that the eviction order falls to be set aside.

THE EXECUTION OF THE EVICTION ORDER WHILST THE REVIEW WAS PENDING

39. The most disconcerting aspect of this case is that whilst the matter was still pending on review, the applicant executed the Order and evicted Mr Kota, Mrs Kota and their family. Section 19(5) of ESTA is clear that any Order for eviction granted by a Magistrates' Court in terms of

ESTA shall be suspended pending the automatic review before this Court.

40. As contained in the probation officer's report, the eviction order was prematurely executed on 28 November 2023 through the Sheriff, notwithstanding that the automatic review proceedings were still pending.
41. Over two decades ago, Gildenhuys J and Moloto J, in the matter of *Lategan v Koopman and Others*,⁹ criticised the execution of eviction orders whilst automatic review proceedings are still pending in this Court. The Court in *Lategan* indicated that eviction orders could only be executed in exceptional circumstances where the circumstances justify immediate execution. This is an aspect that the Court indicated has to be kept in mind when deciding an equitable date for the execution of the Order.
42. In that case, since the Court had set aside the Magistrates' Court's Orders for the eviction of the occupiers, the matter was remitted to the

⁹ 1998 (3) SA 457 (LCC) at 465F-466A.

Magistrates' Court with an instruction requesting that it considers orders in terms of sections 13 and 14 of ESTA.

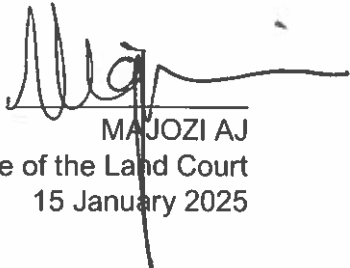
43. I find no reason why this Court should not follow the approach in *Lategan* as it is clear that, notwithstanding the trite authorities of this Court, the eviction order was prematurely executed to the detriment of Mr Kota, Mrs Kota and their family.
44. It is also disconcerting that Magistrate Naidoo, instead of granting a new order since the initial one was set aside by Cowen J, simply drafted a letter that is not intelligible. The Magistrate's letter effectively indicated that she would still reach the same conclusion i.e. grant the eviction order. One would have expected that the Magistrate would demonstrate that she applied her mind to the probation officer's report and the crucial information contained therein relating to Mr Kota and Mrs Kota's rights and current circumstances.
45. ESTA is part of the grid of legislation umbilically linked to section 25 and 26 of the Constitution. Even though it does not grant occupiers eternal tenure on land owners' properties, its objectives are to *inter alia* seek to ensure that the eviction of occupiers is effected in a manner that is just and equitable.

46. The recent amendments to ESTA, however, make it possible for the third respondent in apposite circumstances, trigger provisions of Chapter 2 thereof and embark on measures that seek to facilitate long-term security of tenure for occupiers.
47. It is disheartening to learn that Mr and Mrs Kota were inexplicably denuded of these protections, even though ESTA explicitly insulates occupiers from an eviction whilst an automatic review is pending. I have learnt from the probation officer's report that they were evicted and are currently living in uninhabitable circumstances where the house they occupy has a partially complete roof.
48. They were removed from a place they knew and used as their home since the 1970's to a township life that exposes them to the elements. This has all taken place extra-judicially as the order that authorised their eviction was in terms of section 19 (3) of ESTA suspended pending the automatic review. The applicant's conduct in evicting them whilst the review proceedings are pending, can only be described as one that deprecates on the rule of law. It is for this reason that I make the order contained in paragraph 51.2 of this judgment.

49. In terms of section 16 (4) of the Land Court Act,¹⁰ this Court is also empowered to refer this matter to Legal Aid South Africa for it to be dealt with in terms of section 2 of the Legal Aid South Africa Act, 39 of 2014 as Mr and Mrs Kota were not legally represented before the Magistrate Court.
50. As indicated in the probation officer's report, he is a pensioner with an income that is substantially below the threshold envisaged in section 1 of ESTA. Mr and Mrs Kota's joint income is below R7 000 a month. The purpose of the legal representation is to ensure that the matter is dealt with properly and to ensure that the information contained in the probation officer's report can be corroborated by direct evidence from Mr and Mrs Kota. It will also ensure that an enquiry in terms of sections 13 and 14 of ESTA can be held.
51. I therefore grant the following order:
- 51.1. The order of the Magistrates' Court Grahamstown made by Magistrate Naidoo on 19 July 2024 is wholly set aside and the eviction application is remitted to the Magistrates' Court.

¹⁰ 6 of 2023.

- 51.2. The Magistrates' Court is directed to hold an enquiry on whether or not there should be compensation paid to the first respondent and his family as well as the restoration of residence and use of land and/or payment of damages as envisaged in sections 13 and 14 of ESTA.
- 51.3. The Registrar of the Land Court is directed to bring this judgment to the attention of Legal Aid South Africa in order for it to consider providing legal representation to Mr and Mrs Kota in terms of Section 16 (4) (b) of the Land Court Act No. 6 of 2023.
- 51.4. No order as to costs.



MAJOZI AJ
Acting Judge of the Land Court
15 January 2025