
SOUTH AFRICA / JUDGMENT

Ewree NO and Others v Jacobs and Others (LCC32R/2018, 03/2016) [2018] ZALCC 16 (3 September 2018) [2018] ZALCC 16

COURT
Land Claims Court

BEFORE
Meer

CASE / FILE NUMBER
LCC32R/2018

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IN THE LAND CLAIMS
COURT OF SOUTH AFRICA
HELD AT RANDBURG
(1)
REPORTABLE
(2)
OF
INTEREST TO OTHER JUDGES
(3)
REVISED

CASE NUMBER: LCC32R/2018
MAGISTRATES COURT CASE
NUMBER: 03/2016

Before: Meer AJP

In the matter between: ANDRIES JOHANNES ERWEE
 NO
 First Applicant
 In his capacity as
 Trustee of
 MONTEITH TRUST
 (IT2470/94)
 CHRISTINA LOUISA ERWEE
 NO
 Second Applicant
 In her capacity as
 Trustee of
 MONTEITH TRUST (IT
 2470/94)
 JACOBUS CORNELIUS
 BADENHORST NO
 Third Applicant
 and
 STEFANUS
 JACOBS
 First
 Respondent
 MERCIA
 WILDSCHUTT
 Second
 Respondent
 DONIQUE
 WILDSCHUTT
 Third
 Respondent
 MICOLENE
 SAULS
 Fourth Respondent
 THEEWATERSKLOOF
 MUNICIPALITY
 Fifth Respondent

JUDGMENT

03 SEPTEMBER 2018

MEER AJP

- [1] This is an automatic review in terms of section (19) (3) of the Extension of Security of Tenure Act 62 of 1997 ("ESTA") of an eviction order granted in the Caledon Magistrates Court. The Respondents, who are occupiers on the farm Krabbe Fonteyn in the District of Caledon ('the farm'), owned by the Monteith Trust of whom the Applicants are trustees, were ordered to vacate the farm on or before 30 June 2018. The order was suspended pending the automatic

review thereof by this Court. It is regrettable that it took all of two months for this matter to be sent to the Court for automatic

review.

[2] The First Respondent was employed by the Monteith Trust on 5 December

2007. In terms of his contract of employment, he was provided free accommodation on the farm for the duration of his employment. He took occupation of the house he resides in, together with the Second Respondent his wife, the Third Respondent his son aged 19, the Fourth Respondent his daughter aged 29, her 6 year old son and another daughter aged 15.

[3] The First Respondent was dismissed on 25 June 2015 and was given notice to vacate the house on 24 July 2015. It is common cause that there are no proceedings pending before the CCM. Whilst the First Respondent disputes that his employment was lawfully terminated, in view of the fact that there are no proceedings pending before the CCMA, it can be accepted that his right of residence was terminated

in accordance with section 8(2) of ESTA.

[4] The founding affidavit alleges that subsequent to the termination of his employment, the First Respondent engaged in aggressive behaviour and that charges of assault were contemplated against him. The First Respondent's answering affidavit denies this allegation. The Second Respondent, who he is alleged to have assaulted, also denies the allegation. There is thus a dispute of fact on the papers pertaining to his aggressive behaviour, which has not been addressed by oral evidence.

[5] The founding affidavit states that the house occupied by the Respondents is urgently needed for other workers. The answering affidavit

counters that there are currently three empty houses on the farm, to which in reply the Applicants state, that it happens from time to time during the year that houses are empty for a short periods for, inter alia, maintenance.

The Status of the Second to Fourth Respondents.

[6] The status of the Second to Fourth Respondents is exactly the same as that of the Respondents in an earlier, as yet unreported case decided by this Court under Appeal Case number LCC63/2018, 27 June 2018. That case too, pertained to the eviction of occupiers from the same farm. In that matter the status of occupiers like the Second to Fourth Respondents, was determined to have been occupiers in terms of section 3(4) and 3(5) of ESTA, and their right to reside on the farm derived from consent in terms of section 3(4) and 3(5) of ESTA. Their rights of residence did not flow from the right of residence of the First Respondent. See *Erwee and Others v Davids and Others* LCC63/2018 paragraphs 14 to 17.

- [7] The Second to Fourth Respondents' rights of residence thus flow from consent, as was found in the earlier Erwee judgment. The termination of their rights of residence thus has to occur in terms of section 8(1) of ESTA, the section applicable to persons whose rights of residence flow from consent.
- [8] The factors set out in section 8(1) of ESTA were simply not considered in relation to the termination of the right of residence of the Second to Fourth Respondents and accordingly their eviction was contrary to section 8 of ESTA, and ought not to have been granted. Nor were any of the other mandatory requirements as specified at section 9 (2) of ESTA complied with in relation to them. For this reason too their eviction cannot be granted.

The Position of the First Respondent.

- [9] The right to family life at Section 6 (2) (d) of ESTA must be considered in relation to the position of the First Respondent. In *Hattingh and Others v Juta* 2013 (3) SA 275 CC, the Constitutional Court gave content to the right to family life recognized in section 6(2) (d) of ESTA. The Constitutional Court stated that the purpose of the conferment of the right was to ensure that despite living on the land of others, vulnerable persons would be able to live a life as close as possible to the life they would lead if they lived on their own land, having regard to the landowners rights. At paragraph 37 the Court said that if an occupier were to live with one or more of their children or

other members of their extended family, and this would not result in any injustice, unfairness and inequity to the owner of the land, the occupier would be entitled to live with those members of his or her family.

- [10] There is no evidence that the Second to Fourth Respondents' continued residence with the First Respondent would result in any injustice,

unfairness or inequity to the appellants. The allegation pertaining to the aggressive nature of the First Respondent is disputed and has not been tested in oral evidence. It would be contrary to the right to family life of the Second to Fourth Respondents if the First Respondent, the spouse of the Second Respondent, father and grandfather of the other respondents, were to be evicted, in the circumstances.

- [11] For the reasons set out above, I am unable to confirm the order for the eviction of the Respondents. I order as follows:

11.1 The order for the eviction of the Respondents is set aside in whole.

Y.S MEER

Acting Judge President

LAND CLAIMS COURT

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Prepared on 11 October 2026 · Esheria