

SOUTH AFRICA / JUDGMENT

Piketberd Sunrise Farm (Pty) Ltd and Another v Menas and Others (LCC18R2024) [2024] ZALCC 34 (7 October 2024) [2024] ZALCC 34

COURT
Land Claims Court

BEFORE
Mabasa

CASE / FILE NUMBER
LCC18R2024

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Source record

IN
THE LAND COURT OF SOUTH AFRICA
HELD
AT RANDBURG
CASE
NO: LCC18R2024
MAGISTRATE
CASE NO:205/2023
(1)
REPORTABLE: NO
(2)
OF INTEREST TO OTHER JUDGES: NO
(3)
REVISED.
7
October 2024
In

the matter between:

PIKETBERG
SUNRISE FARM (PTY) LTD
First
Applicant
DIEDERICK
ARNOLDUS LANDMAN
Second
Applicant
and
NIKLAAS
MENAS
First
Respondent
CAROLINE
MENAS
Second
Respondent
NIKAYLA
MENAS
Third
Respondent
OTHER
PERSONS RESIDING UNDER
THE
FIRST TO THIRD RESPONDENTS IN
THE
PREMISES UNDER KLIPHEUWEL FARM
PIKETBERG
WESTERN CAPE
Fourth
Respondent
BERGRIVIER
MUNICIPALITY
Fifth
Respondent
DEPARTMENT
OF AGRICULTURE, LAND
REFORM
AND RURAL DEVELOPMENT
Sixth
Respondent
ORDER
The case is remitted to

the magistrate's court to:

1.
Reconsider the compliance with the just and equitable requirements of ESTA.
2.
Consider ordering mediation or further settlement discussions between the parties to avoid a harsh outcome such as homelessness

JUDGMENT

MABASA AJ

Introduction

[1] This automatic review concerns whether it was just and equitable for the magistrate to grant an eviction order in terms of section 11 of the Extension of Security of Tenure Act 62 of 1997 (ESTA). The eviction follows the termination of the occupier's employment, which is tied to the family's right of residence. This review is conducted in terms of section 19(3) of ESTA.[1]

The parties

[2] The applicants, Piketberg Sunrise Farms (PTY) LTD (the owner) and the person in charge Diederik Arnoldus Landman (Mr. Landman) seek the eviction of the First to Fourth Respondents, Niklaas Menas (Mr Menas) his wife Caroline Menas, his daughter Nikayla Menas and all other persons residing with or under them from Klipheuwel Farm (the farm) in Piketberg. The Fifth Respondent is the Bergrivier Municipality. The Sixth Respondent is the Department of Agriculture, Land Reform and Rural Development.

Background

[3] It is common cause that the Menas family were ESTA occupiers. They arrived on the farm on 5 September 2011 when Mr Menas commenced

employment as a general worker. Since they became ESTA occupiers after 4 February 1997, the provisions of section 11 in terms of ESTA apply.[2]

[4] It is also common cause that the right to residence on the farm was an employment benefit under the previous owner of the farm.

[5] What is in dispute are the circumstances surrounding the termination of his employment, and whether Mr Menas forfeited his right to residence when he agreed to medical boarding.

The facts

[6] Mr Menas signed an employment agreement on 12 October 2018, seven years after he started working on the farm. His employment was terminated on 1 July 2020 as a result of a shoulder injury sustained whilst on duty. This was accepted by the Piketberg magistrate after applying the test in Plascon- Evans[3]. He alleges that there was an agreement that his contract will terminate because he could no longer do physical labour and that

another position will be secured for him. This new position never materialized.

- [7] Mr Menas contends that he did not enter into any valid housing agreement and was not informed that his residence on the farm was dependent on his employment. He signed the employment contract in 2018, under the mistaken belief that the residence benefit was part of a severance package concluded with the previous owner, in lieu of pension benefits.
- [8] He also argues that the housing agreement signed on 17 March 2020 contains unfair terms and violates section 25 of ESTA.[4] He was not given a copy of the employment contract or housing agreement. He was told to sign the contract, with no questions asked.
- [9] Disputing this, Mr Landman asserts that the housing benefit was explicitly connected to the duration of Mr Menas's employment on the farm. He argues that Mr. Menas's right of residence ended when his employment was terminated, as formalized by notices served under section 8(1) of ESTA.
- [10] A notice to make representations in terms of section 8(1)(e) of ESTA was served on 8 February 2022. This was followed by a notice of termination of right of residence and a demand to vacate the premises on 29 March 2022. A meeting was held on the farm between the legal representatives of the applicants and an unrepresented Mr Menas. It yielded no results. A further meeting was conducted on 14 November
2022. This was followed by a proposal of R7200 to assist the Menas family with voluntary relocation from the dwelling on the farm.
- [11] A final cancellation notice and demand to vacate the property was served on the Menas family on 1 June 2023.
- [12] There are also various allegations of misconduct on the part of Mr Menas which resulted in a deterioration of the trust relationship between the parties. This is disputed.

Issue

- [13] The key issue is whether the termination of Mr. Menas's right of residence was just and equitable under the provisions of section 11 of ESTA, both substantively and procedurally.

Legal Framework

- [14] Our courts, in a long line of cases have confirmed the principle that ESTA envisages a two-stage eviction procedure.[5] The first is a notice terminating the occupier's right to reside in terms of section 8 of ESTA. The second is a notice of

eviction in terms of section 9(2)(d) of ESTA.

- [15] In Timothy Maluleke[6] the Supreme Court of Appeal as per Carelse J stated that:

'Section 9(2)(a) of ESTA requires that the occupier's right of residence must have been terminated in terms of section 8 of ESTA, which in the relevant part 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 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 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.[7] (Emphasis added.)

[16] The fairness of the agreements between the parties in terms of section 11(3) (b) of ESTA is a critical factor which the Piketberg magistrate failed to consider in its entirety. It is telling that the housing agreement was signed in March 2020 and his employment was terminated in July

2020. The circumstances under which Mr. Menas signed the agreements, without full understanding or a copy for his records, suggest a lack of fairness and transparency, raising serious concerns about the substantive justice of the eviction.

[17] In *Snyders v De Jager*[8], the Constitutional Court held that section 8(1) requires that the termination of a right of residence must be just and equitable both at a substantive level and a procedural level.[9]

[18] The question that arises is whether the termination of Mr Menas' rights of residence was just and equitable? In *Timothy Maluleke*[10] the court examined the phrase "just and equitable" and relies on the reasoning by Sachs J in *PE Municipality*[11] which confirms :

"...just and equitable" makes it plain that the criterion to be applied are not purely of a technical kind that flow ordinarily from the provisions of land law. The emphasis on justice and equity underlines the central philosophical and strategic objective of PIE. Rather than envisage the foundational values of the rule of law and the achievement of equality as being distinct from and in tension with each other, PIE treats these values as interactive, complementary and mutually reinforcing. The necessary reconciliation can only be admitted by close analysis of the factual specifics of each case. The court is thus called upon to go beyond its normal functions and to engage in active judicial management according to equitable principles of an ongoing stressful and law-governed social process. This has major implications for the manner in which the court must deal with the issues before it, how it could

approach questions of evidence, the procedure it may adopt, the way in which it exercises its powers and the orders it makes. The Constitution and PIE require that in addition to considering the lawfulness of the occupation the court must have regard to the interests and circumstances of the occupiers and pay due regard to... broader considerations of fairness and other constitutional values, so as to produce a just and equitable result. These remarks apply with equal force to ESTA.[12]

- [19] It is accepted that there was compliance with procedural fairness required by section 8(1)(e) of ESTA. However, more is required. An analysis of all the interests and circumstances of the occupiers through the lens of constitutional values as explained in *Maluleke*.
- [20] Under Section 11(3) of ESTA, a court may grant an eviction order if it is just and equitable, taking into account:
- (a) The period the occupier has lived on the land.
 - (b) The fairness of any agreements between the parties.
 - (c) Whether suitable alternative accommodation is available.
 - (d) The reason for the proposed eviction.
 - (e) The balance of interests between the owner and the occupier.
- [21] The Piketberg magistrate notes that the family have lived on the farm for about 13 years. They are all unemployed and there is a young minor child that lives with them. They have no alternative accommodation. The Bergrivier Municipality confirmed that they do not have any available housing opportunity for the Menas family. A probation officer submitted a report in terms of section 9 (3) of ESTA stating that there is no suitable alternative accommodation available for the family and an eviction will render them homeless. Mediation was recommended.
- [22] The magistrate concludes that the main issue in this matter is the fact that the Menas family do not have alternative accommodation. In his view the municipality can be compelled by means of a court order to provide emergency housing for them. This is the duty of the municipality, not the landowner, and therefore it is just and equitable to grant the eviction. I disagree.
- [23] The issue of substantive fairness is not addressed. Section 11(3)(b) of ESTA is ignored by the Piketberg magistrate in its entirety. The reason provided by Mr. Landman for the eviction is that Mr. Menas' right of residence ended with his employment. However, the context of the dismissal after an injury on duty raises questions about the fairness of this termination. Further, the link between his employment and his right of residence was not clearly communicated or understood.

- [24] The balance of interests must consider not only the landowner's rights but also the significant consequences for the occupiers. Mr Landman claims that his interests in regaining full possession of his property outweigh the Menas family's interests in remaining on the farm. He emphasizes the need for the farm to operate efficiently without the presence of people who are not employed there but residing on the land, which he argues disrupts the farm's operations.
- [25] The fact that the Menas family are unemployed and have no suitable alternative accommodation means that the eviction would result in severe hardship.
- [26] The Menas family is at a profound economic disadvantage and an eviction would likely lead to homelessness. The magistrate's decision did not adequately weigh these considerations, focusing instead on procedural formalities rather than the broader equitable implications.
- [27] The magistrate's argument is overly formalistic and fails to engage with the broader principles of equity and social justice that underlie ESTA. ESTA is designed to protect vulnerable individuals from being unfairly evicted, especially when their residence is linked to historical injustices and socio-economic disadvantages.
- [28] By focusing narrowly on procedural formalities and contractual obligations, the magistrate ignores the requirement that the court must also consider the broader social and economic context. This Court must ensure that any decision to terminate the respondents' right of residence is both substantively and procedurally just and equitable, in line with the overarching principles of ESTA.
- [29] Accordingly, the eviction order is set aside, and the matter is remitted for further consideration, with an emphasis on ensuring substantive fairness and possible mediation.

Order

- [30] The case is remitted to the magistrate's court to;
1. Reconsider compliance with the just and equitable requirements of ESTA.
 2. Consider ordering mediation or further settlement discussions.

MABASA D

Acting Judge of the Land Court

[1]19(3) 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 Claims 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 magistrate's court with directions to deal with any matter in such manner as

the Land Claims Court may think fit.

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- (d) remit the case to the magistrate's court with directions to deal with any matter in such manner as

the Land Claims Court may think fit.

[2] 11. Order for eviction of person who becomes occupier after 4 February 1997 (1) If it was an express, material and fair term of the consent granted to an occupier to reside on land that the consent would terminate upon a fixed or determinable date, the Court may on termination of such consent by the effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so. (2) In circumstances other than those contemplated in subsection (1), the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so. (3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section. the court shall have regard to-

- (a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties; (c) whether suitable alternative accommodation is available to the occupier; (d) the reason for the proposed eviction;
- (e) the balance of the interests of the owner or person in charge. the occupier and the remaining occupiers on the land.

[2] 11. Order for eviction of person who becomes occupier after 4 February 1997

- (1) If it was an express, material and fair term of the consent granted to an occupier to reside on land that the consent would terminate upon a fixed or determinable date, the Court may on termination of such consent by the effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.

- (2) In circumstances other than those contemplated in subsection (1), the Court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.
- (3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to-
- (a) the period that the occupier has resided on the land in question;
 - (b) the fairness of the terms of any agreement between the parties; (c) whether suitable alternative accommodation is available to the occupier; (d) the reason for the proposed eviction;
 - (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.

[3][3] Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd. (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984).

- [4] 25. Legal status of agreement (1) The waiver by an occupier of his or her rights in terms of this Act shall be void, unless it is permitted by this Act or incorporated in an order of the Court. (2) The Court must have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of this Act. (3) Notwithstanding the provisions of subsections (1) and (2), if an occupier vacates the land concerned freely and willingly, while

being aware of his or her rights in terms of this Act, he or she shall not be entitled to institute proceedings for restoration in terms of section 14.

- [4] 25. Legal status of agreement

- (1) The waiver by an occupier of his or her rights in terms of this Act shall be void, unless it is permitted by this Act or incorporated in an order of the Court.
- (2) The Court must have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of this Act.
- (3) Notwithstanding the provisions of subsections (1) and (2), if an occupier vacates the land concerned freely and willingly, while

being aware of his or her rights in terms of this Act, he or she shall not be entitled to institute proceedings for restoration in terms of section 14.

- [5] Aquarius Platinum (SA)(Pty) v Bonene and others [2020] 2 ALL SA 323 (SCA), Maluleke N.O. v Sibanyoni and Others (1012/2020) [2022] ZASCA 40 (4 April

2022) and Snyders and Others v De Jager and Others 2017 (3) SA 545 (CC) (21 December 2016).

- [6] Maluleke N.O. v Sibanyoni and Others (1012/2020) [2022] ZASCA 40 (4 April 2022)
- [7] Ibid para 10.
- [8] Snyders and Others v De Jager and Others 2017 (3) SA 545 (CC) (21 December 2016).
- [9] Ibid para 56.
- [10] Maluleke N.O. supra 5
- [11] Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC).
- [12] Maluleke N.O. supra 5 para 12.
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