

SOUTH AFRICA / JUDGMENT

Spaarveld Boerdery (Edms) Bpk v Sefawa and Others (LCC 195/10) [2011] ZALCC 14 (12 December 2011)

[2011] ZALCC 14

COURT

Land Claims Court

BEFORE

M Mpshe, C Loots

CASE / FILE NUMBER

LCC 195/10

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Source record**IN THE LAND CLAIMS COURT OF SOUTH AFRICA****HELD IN RANDBURG****CASE NUMBER: LCC 195/10****Heard on 17 November 2011 before Loots & Mpshe AJJ****Decided on: 12 December 2011**

In the case of:

SPAARVELD BOERDERY (EDMS) BEPERK

.....Appellant

and

EH SEFAWA

.....First

respondent

SARA SEFAWA

.....Second

respondent

ELIZABETH SEFAWA

.....Third

respondent

LENAH SEFAWA

.....Fourth

respondent

STEFAANS SEFAWA

.....Fifth

respondent

JUDGMENT

Mpshe AJ:

Nature of the application

[1] This is an appeal against the whole judgment of the Honourable ML van Loggerenberg delivered in the Coligny Magistrate's Court on 21 April 2010. This was as a result of the eviction proceedings instituted by the appellant in terms of the Extension of Security of Tenure Act, 62 of 1997('ESTA') for an order evicting the second to the fifth respondents and all persons claiming a right of residence through them on the farm known as the Remaining Extent of farm Leeuwfontein 64 IP in the district of Coligny as well as costs of the application. The respondents resisted the application and were represented throughout the legal proceedings. The Magistrate: Coligny found in favour of the respondents and in addition awarded costs against the appellant. Crisply, the question this Court has to answer is whether the application for leave to appeal against the order of eviction made by the Coligny Magistrate's Court, should succeed and, if so, on what basis. Before we do that, it is important to give a brief background of this matter and this we will do in due course.

Parties

- [2] Before identifying the key issues that fall to be determined, it may be helpful that we give a brief description of the litigants. The first respondent is a major male who is in the employ of the appellant. No remedy is sought against the first respondent. He is cited in the application as a member and head of the household. The second to the fourth respondents are adult females and daughters of the first respondent and are residing on the farm Leeuwfontein, Coligny. The fifth respondent is an adult male, the son of the first respondent, residing on the farm as well. The second respondent is 31 years old and a literate sales person; the third respondent is a literate and unemployed 28 year old. The fourth respondent is an unemployed 25 year old and the fifth respondent is 22 years old, an illiterate and unemployed male.
- [3] The Sefawa family comprises of 15 members: that is the first respondent; his wife; five adult children and eight grandchildren who are said to be attending school at adjacent farms. The papers record that Ruth Sefawa ("Ruth") the mother of the second to the fifth respondents is 62 years of age but is not a party to the proceedings, despite the fact that her name appears a lot in correspondences between the parties. The appellant is Spaarveld Boerdery (EDMS) and this appeal is duly brought by its Director. Throughout the judgment we use the terms respondents or second to the fifth respondents interchangeably to refer to the second to the fifth respondents collectively.

Should condonation be granted?

[4] As stated above the appellant instituted eviction proceedings in the Magistrate's Court; Coligny. Judgment was handed down on 21 April 2010 and written reasons for the judgment dated 23 May 2010 were provided upon request in terms of Magistrates' Courts Rule

51. In its founding affidavit the deponent says that:

"... written reasons did not come to my knowledge on such date. . . I only became aware of the existence of such reasons on the 14th of June 2010. . . an e-mail received from the Honourable Magistrate van Loggenburg with such written reasons as an attachment. Thereafter the appellant caused the Notice of Appeal to be served on the Respondents attorney of record on the 6th July 2010."

The deponent further elaborates that a number of circumstances contributed to the late noting of the appeal. These include quotations regarding digital audio recording transcriptions, which at some point was found to be incomplete and inaudible. As well as the misconception that an appeal in this court has to be lodged within 14 weeks of noting the appeal, which was occasioned by reliance on Government Notice R1459 of September 1995.

[5] The appellant states, in an attempt to explain its lateness, that the prospects of success ought to be taken into account when this court decides whether to grant condonation or not. It in turn attributes the period of the delay to an error occasioned by the misunderstanding of time limits. Furthermore, it contends that the period of the delay is not substantial and will not prejudice the respondents. The Supreme Court of Appeal has pronounced that, when dealing with the issue of condonation from the view point of an appeal court, a court should be mindful of a number of factors. These include the 'extent of non-compliance and the explanation given for it; the prospects of success on the merits; the importance of the case; the respondent's interest in the finality of the judgment; the convenience of the court and the avoidance of unnecessary delay in the administration of justice'.¹ In our view, the delay in lodging this application is not excessive. In addition the respondents do not oppose the application. They will not be prejudiced. In the circumstances, we are satisfied that the condonation should be granted.

Jurisdiction

[6] Before dealing with the merits of this appeal we have to determine whether this Court has jurisdiction to entertain this matter. Counsel for the respondents put it to the court that this court might not be the proper forum to entertain this matter. The latter was premised on the notion that, the second to the fifth respondents might be unlawful occupiers. Counsel invoked the Prevention of Illegal Eviction from and Unlawful Occupation of land Act 19 of 1998 (PIE), which would have the effect that this court would have no jurisdiction to hear the matter. In essence this turns on the question of whether we have the requisite jurisdiction whether to overturn or uphold the Magistrate's decision. There can be no doubt that this Court has jurisdiction to hear this appeal because the Magistrate decided it terms of ESTA. Cases below are examples of instances wherein this Court has assumed jurisdiction where the records have indicated that ESTA is applicable.²

[7] Gildenhuys J in *Skhosana and Others v Roos t/a Rose se Oord and Others*³ observed that:—

“Having regard to ESTA as a whole and taking into account its purpose and scope, I have come to the conclusion that the phrase ‘in terms of’, where used in the sections of ESTA from which this Court derives its jurisdiction, must be interpreted in a manner which will entitle this Court to adjudicate in a case where the provisions of ESTA are at issue . . . That does not mean that this Court will have jurisdiction to decide every issue which might arise in such cases. The issue must have some relationship with ESTA. [Footnote omitted.]”

In view of the fact that the Magistrate decided the matter in terms of ESTA and the second to the fifth respondents appear to occupy in terms of the consent given to the first respondent, we come to the conclusion that this Court is the appropriate forum to decide this appeal.

Background Facts

- [8] In order to put the issues presented into context, we consider it desirable to sketch briefly the factual background. The third respondent in her opposing affidavit⁴ states that she is an unemployed adult female residing at Leeuwfontein farm, Coligny. It is common cause that the respondents commenced residing on the farm in 1990 when the first respondent entered into an employment contract and was required to work in Bonkhorspuit on a permanent basis where he was transferred. The family occupied a ten-roomed house on the farm in Leeuwfontein. It is not disputed that the first respondent acquired the consent of the appellant in order for his family to reside on the farm. The respondents admit that their rights of occupancy were linked to that of the first respondent; however they deny the allegation made by the appellant their parents got divorced on or about 1999. According to them their parents’ marriage still subsists. They say that their mother has not been served with divorce papers, neither did the first respondent produce any decree of divorce.
- [9] They state that they are not aware of the relocation agreement as their mother did not partake in the agreement. They maintain that during the conclusion of the said agreement their right of residence was not linked to that of the first respondent. As a result they are not, so the argument goes, bound by the terms of the aforesaid agreement. The third respondent⁵ concedes that on several times they were approached by the appellant through its director requesting relocation to Tshing in Ventersdorp. They refused to settle for a two roomed RDP house and a shack, because it will not be able to accommodate them all. Therefore, they contend that the proposed accommodation is not adequate for their needs. They deny that the appellant complied with the provisions of ESTA, in particular section 9(2)(d)(i). However they concede that the Sheriff delivered the notices. It is not in dispute that the respondents have not erected any structures or made improvements on the farm which would entitle them to compensation as contemplated by section 13(1)(a) of ESTA, given the fact that they were not in the employ of the appellant, which makes subsection 13(1)(b) inapplicable to them.

[10] Solomon Tolmay⁶ in a deposition made on behalf of the appellant describes himself as the Director of the appellant, states that the first respondent's family was given permission to reside on the farm by virtue of his employment contract with the appellant in 1990. During this period the second to fifth respondents were still minors and as a result their rights to occupy were linked to that of the first respondent, despite the fact that he was not residing on the farm. The affidavit records that the first respondent and Ruth got

divorced during 1999, that the first respondent was not a long-term occupier of the farm in or about 2006 when the appellant decided to sell the farm to the Wertua Family Trust. The deponent further argues that there was a signed agreement between the appellant and the first respondent which led the appellant to buy a four-roomed mobile house, but first respondent noted that the house was not enough for his entire family. As a result, additional structures were erected. The appellant subsequently bought the stand it was renting on behalf of the respondents for approximately R40 000.00. The deponent alleges that there is alternative accommodation and lists five houses, namely two houses in Bronkhorstspuit, one in Leeuwfontein, an RDP house in Ventersdorp, as well as additional structures on that stand and the mobile house on the stand in Ventersdorp. Moreover, it is stated that, the right of the first respondent was terminated upon signing the agreement.⁷ As we understand it, the real complaint of the appellant is that it will be prejudiced in its endeavour to conclude a sale with the Wertua Family Trust if an eviction order is not granted.

Decision of the court below

[11] The magistrate found that the appellant failed to successfully convince the Court on a balance of probabilities that the first respondent's marriage to Ruth was dissolved and that she was not a long term occupier. The Court found that Ruth should have been cited as a party to the application. It was ordered that the application for eviction be dismissed with costs. The magistrate provided reasons for judgment in which it was stated that the appellant could not persuade the Court that the second to the fifth respondents' right to occupation was subordinate to and derived from their mother's right to occupy the farm. The import of the magistrate's reasons was premised on the notion that, in order to consider the application as a whole, Ruth being the primary long-term occupier⁸ had to be added as a party to the proceedings. The Magistrate's Court expressed its difficulty dealing with the position of the other respondents without considering Ruth's position first, in that the position of the other respondents can only be considered in conjunction with and in pursuance to that of Ruth.

[12] In terms of s 9(3) of the ESTA a probation officer filed a report setting out the results of the investigations made into the circumstances of the respondents in respect of whom the eviction was sought. The report was submitted at the instance of the Magistrate's Court: Coligny. The report records that the respondents do not object to vacating the farm provided that there is suitable alternative accommodation. The report also points out that, the appellant bought a site for the first respondent and, in addition to this, there is a four-roomed house that has been built and as well as building materials provided to extend on

existing structures. The report states that the appellant has spent R55 000.00 in an attempt to assist the respondents to secure alternative accommodation. The report further states that the Department of Rural Development and Land Reform does not have a vacant farm that is available for them. The Ditsobotla Local Municipality in Lichtenburg was also contacted in investigating alternative accommodation for the respondents but stated that there are currently no RDP houses readily available and they have a long waiting list. The respondents have eight children

residing on the farm who go to school in neighbouring farms. The probation officer recommends that the issue of suitable alternative

accommodation be addressed and that the appellant consider selling the farm in whole or in part to the Department of Rural Development

and Land Reform at market related prices so that the department can secure the tenure rights of the respondents.

The Appellant's

submissions

[13] The appellant appeals the ruling of the magistrate on the grounds that the magistrate erred in finding that the first respondent's wife, one Ruth Sefawa is a long term occupier and an occupier in her own right. The appellant contends that, the Court a quo misdirected itself in holding that the onus was on it to show that the marriage relationship between the first respondent and Ruth was dissolved and that the marital status of the both of them was relevant to the proceedings. Implicit in its submission is that the Magistrate's Court was incorrect in finding that it failed to discharge its onus on a balance of probabilities that the marriage relationship was dissolved. Moreover, the appellant maintains that the Court below misdirected itself in finding that Ruth ought to have been cited as a party to the proceedings. In the premise, the appellant prays for the eviction of the second to the fifth respondents and in addition requests costs of this appeal.

Proceedings in this Court

[14] In this Court the appellant requests condonation for the late filing of its appeal as well as costs in the appeal. The respondents pray for the dismissal of the application with costs. It is not disputed that it was agreed that the family of the first respondent would remain in occupation of the farm whilst he was employed by the applicant. The second to the fifth respondents say that there are no reasons why the new purchaser cannot take ownership of the farm in their presence. The appellant denies that the second to the fifth respondents as well as Ruth received their right to occupy the farm independently from the first respondent. However, the appellant concedes that there are no divorce papers to confirm that a divorce ever took place. The appellant maintains that all the respondents are bound by the terms of the agreement concluded with the first respondent.⁹ According to it, it has gone

further than it is obliged to since the duty to provide housing rests on the state. In any event, the appellant further maintains that the respondents' right of residency was terminated in accordance with ESTA.

Are the second to the fifth respondents occupiers as defined in section 1 of ESTA?

[15] The issue between the parties before us is regulated by the provisions of ESTA. The underlying basis for the protection of the second to the fifth respondents is that they have acquired their tenancy with the consent of the owner. Legal questions of considerable importance must be answered. This Court has to determine whether the appellant has made out a case for the eviction of the second to the fifth respondents in terms of ESTA. Key to ESTA is the question whether the second to fifth respondents are 'occupiers' within the ambit of section 1 read with 3(2) of ESTA.

[16] In order for this Court to determine this, a convenient starting point would be to evaluate the wording of the statute itself. ESTA defines the term occupier as "a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so . . ." Put otherwise, an occupier is 'a person who occupies with consent of the owner.'¹⁰ In terms of section 1 of ESTA consent means express or tacit consent of the owner or person in charge of the land in question. The definition of occupier must also be read in harmony with section 3(2) of the ESTA which reads:—

"If a person who resided on or used land on 4 February 1997 previously did so with consent, and such consent was lawfully withdrawn prior to that date—

- (a) that person shall be deemed to be an occupier, provided that he or she has resided continuously on that land since consent was withdrawn; and
- (b) the withdrawal of consent shall be deemed to be a valid termination of the right of residence in terms of section 8, provided that it was just and equitable, having regard to the provisions of section 8."

According to Joubert:

'family law rights of family members do not turn them into occupiers unless they can prove that they also meet the requirements of "occupiers". In the usual case the agreement is entered into by the (male) farm worker (the husband), but the house is occupied by the worker and his family and the wife and family members are not parties to the agreement. However, if they occupy with the consent of the land owner, then they occupy under the Act in their own right.' [Emphasis added.]

[17] We find the second to the fifth respondents "occupiers" as contemplated in section 1 of ESTA. The consent of the appellant to their father, the first respondent, was sufficient to give them that status. It is trite that not everyone who claims the status of an occupier will be afforded same for the purposes of ESTA.¹¹ It is clear that ESTA applies to any person residing on land which belongs to another and who has or on 4 February 1997 or thereafter

had consent or another right in law to do so. In the present case, the first respondent obtained the consent of the landowner on behalf of the second to the fifth respondents due to lack of contractual capacity on their part at that time.

- [18] A mere residence on the farm would not qualify a person the status of an occupier, there has to be a legal connection between that person and the owner or the person in charge of the property. This Court's view is in line with the dictum laid down by the Supreme Court of Appeal in *Mkangeli and Others v Joubert and Others*¹² wherein the Court found the appellants in that case were occupiers of Itsoseng due to the consent given to them by the trustees of the land in question. The Court found the consent sufficient to qualify the appellants the status of 'occupiers'

as contemplated by ESTA. We accept that the legislature did not intend that a person could become an occupier by virtue of being a dependant of an occupier as their right to reside on the premises was a derivative of their guardian's occupier status. Therefore, in such an instance there would be no cogent reason in logic or in law to resort to a generous, purposive or otherwise interpretation of the provisions where no uncertainty existed.

- [19] This is a typical case wherein this Court is called upon to balance the constitutional rights of all persons occupying the land affected by the eviction, which includes the right to housing, the right of the occupier's children to education, shelter and the right to dignity and life. Pope correctly so pointed out that:—

*"How to balance these constitutional rights in the situation where an owner wishes to have an occupier removed from her property is not an issue that admits easily of a formula that guarantees satisfaction."*¹³

The property rights of owners must also be considered. Ackermann J in *First National Bank*¹⁴ when dealing with the notion that in terms of the Constitution the protection of property as an individual right was not absolute but subject to societal considerations observed that:—

"The purpose of section 25 has to be seen both as protecting existing private property rights as well as serving the public interest, mainly in the sphere of land reform but not limited thereto, and also as striking a proportionate balance between these two functions."

. . .;

When considering the purpose and content of the property clause it is necessary. . . that property should also serve the public good is an idea by no means foreign to pre-constitutional property concepts." [Footnotes omitted.]

Commentators¹⁵ in this field of law have pronounced that, an occupier's dependants are not accorded any particular status in terms of ESTA. However, should an occupier's dependants prove that they meet the definition of an occupier; they will be entitled to protection in their own right.

[20] Due to the fact that the respondents' rights are founded on the consent of the appellant, such right can accordingly be terminated by the owner's withdrawal of that consent.¹⁶ Be that as it may, the statutory right of the owner to terminate is limited by the provisions of section 8 of ESTA. Section 8(1) provides that an occupier's right of residence may be terminated on any lawful ground only if it is just and equitable to do so. In order for this Court to make a finding on this basis, it has to consider the prerequisites outlined in section 8(1) taking into account all relevant factors. Furthermore, section 9(2) of ESTA requires the Court to be satisfied that there has been compliance with certain requirements before issuing an eviction order. In the first place, the occupier's right of residence must have been properly terminated as contemplated in section 8. Other requirements include, giving the two months' notice of the intended eviction application after the right to reside has been terminated under section 8. To determine whether it is just and equitable for the Court to grant eviction, regard must be had to either sections 10 or 11 of ESTA. In this case section 10(3) is applicable.¹⁷ It requires that the Court must not only be satisfied that suitable accommodation is available; but it to also consider 'efforts

made to secure suitable alternative accommodation and the interests of all parties, including the effects of comparative hardship.'¹⁸

[21] The findings by the Court a quo regarding the question whether Ruth is an occupier or still married to the first respondent do not require consideration by this Court. Ruth is not before us. She is not part of these proceedings and her specific circumstances have not been placed before us¹⁹.

[22] The Constitution²⁰ was enacted to address the issue of evictions and it prohibits evictions without a Court order. It further puts an obligation on Courts to be appraised of all the relevant circumstances before issuing an eviction order and finds application within the housing provision of the Constitution. We are of the view that alternative accommodation is an important factor which a Court must consider for the purposes of section 26(3) of the Constitution. In *Government of the Republic of South Africa and others v Grootboom*²¹ Jacob J writing for the unanimous court stated that:—

"The housing situation is desperate. The problem is compounded by rampant unemployment and poverty. . .

. . . ;

The national government bears the overall responsibility for ensuring that the state complies with the obligations imposed upon it by section 26."

[23] Jacob J²² remarked that "Housing authorities are understandably unable to say when housing will become available to these desperate people. The result is that people in desperate need are left without any form of assistance with no end in sight. Not only are the immediate crises not met. The consequent pressure on existing settlements inevitably results in . . . frustrating the attainment of the medium and long term objectives of the

nationwide housing programme.” (Own emphasis.) We must emphasise that this Court has taken judicial notice of the serious housing crisis in the country including the pressure of the evictions granted on municipal infrastructure. In addition the resultant trauma occasioned by the removal on a family facing an eviction to an informal settlement.

What constitutes suitable alternative accommodation?

[24] It should suffice to add that in order to determine the above question, this Court has to consider whether the alternative accommodation is no less favourable than the previous accommodation, its safety, the reasonable needs of the occupier to live close to economic and employment opportunities including transport facilities, the proximity to schools as well as the joint earnings of the household. It is noteworthy that the Constitutional Court has accorded section 26(3) of the Constitution a scope of a wider import through the adoption of a contextual and purposive interpretation of evictions, taking into account the historical, social and economic contexts of eviction in order to limit the effects of property rights on the weak tenure rights of vulnerable occupiers, to mitigate the harsh consequences of eviction.²³

[25] Sachs J when dealing with suitable alternative accommodation in PE Municipality²⁴ stated that:—

“ . . . a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.” [Own emphasis.]

In line with the dictum in PE Municipality case, when dealing with ‘all the relevant circumstances’ this Court should take in to account the reasonableness of offers made in connection with suitable alternative accommodation or land, the time scales proposed relative to the degree of disruption involved, and the willingness of the occupiers to respond to reasonable alternatives put before them. In the event, this Court is satisfied that the appellant has shown that there is suitable accommodation available to the respondents as required by section 10(2) and that there has been compliance with section 10(3)(c) of ESTA.

Order

[26] For these reasons:—

- (a) The appeal succeeds.
- (b) Condonation is granted.
- (c) The second to the fifth respondents are ordered to vacate farm Leewfontein by 31 January 2012 failing which the Sherriff in the district of Coligny is ordered to evict them on 08 February 2012.
- (d) There is no order as to costs of this appeal.

M. MPSHE

ACTING JUDGE: LAND CLAIMS COURT

I CONCUR

C. LOOTS

APEERANCES:

For the Appellant Van Velden-Duffey Inc

Rustenburg

For the 2nd to 5th Respondents Matshitse Attorneys

Potchefstroom

1Mogorosi v The State (410/10) [2010] ZASCA 147 (29 November 2010) at para

8. Heher JA in Uitenhage Transitional Local Council v South African Revenue Service 2004 (1) SA 292 (SCA) at para 6, pointed out that ‘condonation is not to be had merely for the asking; a full, detailed and accurate account of the causes of the delay and its effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility’.

2De Villiers v Msimango 1999 (4) SA 59 (LCC) at para 9; Atkinson v Van Wyk and Another 1999

- (1) SA 1080 (LCC) at para 9-10; Pitout v Mbolane [2000] 2 All SA 377 at para 6, Theunissen v Chibodu, LCC 70R/99, 18 November 1999, 1999 JOL 5785 (LCC).

3 2000

- (4) SA 561 (LCC) [1999] 2 All SA 652 (LCC) para 18.

4See page 130 of the record.

5Third respondent’s opposing affidavit page 137 para 28.

6See record pages 88-99.

7The agreement marked annexure ‘D’ page 108 of the record. The agreement is in Tswana and Afrikaans languages.

8Joubert distinguishes between two types of occupiers namely short-term and long-term occupiers respectively. The former is a person residing on land which belongs to another person after receiving consent or another right in law to do so. The latter is a person who resided on the land at issue for a period of ten years and has reached the age of sixty or is an employee of former employee of the owner or person in charge and as a result of ill-health, injury or disability is not able to supply the necessary labour to the new owner or person in charge. See in this regard Law

of South Africa, Vol. 14 'Land', 2nd edition para 126-127. A person will be classified as an occupier under ESTA if there was a legal nexus between that person and the owner or person in charge. See also how the Supreme Court of Appeal dealt with the meaning of "occupier"

in *Lebowa Platinum Mines Limited v Viljoen* 2009 (3) SA 511 (SCA); [2009] 2 All SA 231 (SCA).

9Replying affidavit para 8.

10 (2000) 117 SALJ 26 Raylene Keightley "When a home becomes a castle: a constitutional defence against common law eviction proceedings: *Ross v South Peninsula Municipality*" at 31.

11See Pienaar & Brickhill: Constitutional Law of South Africa 'Land', 48 [2nd Edition, Original Service: 03-07] 48-29.

12 2002

(4) SA 36 (SCA); [2002] 2 All SA 473 (SCA) para 10.

13 (2002) 119 SALJ 709. Anne Pope "Eviction and the protection of property rights: A case study of *Ellis v Viljoen*". Pope grappled with the interrelationship of the PIE, ESTA and the common law in circumstances where the eviction is sought of an occupier who is not a tenant but resides on rural land with consent. Such classes of persons Pope describes them as 'falling between the cracks'. The case concerned a woman and her child who live in a house on the farm of her ex-in laws and the farm now been taken by a new owner who wants to evict them.

14First National Bank of SA Limited t/a Westbank v Commissioner for the South African Revenue Services and Another; First National Bank of SA Limited t/a Westbank v Minister of Finance [2002] ZACC 5; 2002 (4) SA 768 (CC); 2002 (7) BCLR 702 (CC).

15Budlender et al, "Juta's New Land Law", 2000 Service Revision 2 (Juta, Cape Town 1998) at 7A-16.

16Id. At 7A-7. See also section 1(1) of ESTA.

17Section 10 applies to persons who were in occupation of the land on 4 February 1997 while section 11 applies to other occupiers.

18Above n 12 at 719.

19Her circumstances do not affect the rights of the second to the fifth respondents, which derive from the first respondent.

20Act 108 of 1996, section 26(3).

21 2000

- (3) BCLR 227 (CC). This case was concerned with section 26 of the Constitution which assures everyone the right to adequate housing as well as section 28 (1)(c) which guarantees every child the right to basic shelter. The Constitutional Court drew assistance from international human rights jurisprudence

22Id. Para 65.

23See Port Elizabeth Municipality v Various Occupiers [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC). At para 19 found that:— “The Constitution recognises that land rights and the right of access to housing and of not being arbitrarily evicted, are closely intertwined. . . Furthermore, sections 25 and 26 create a broad overlap between land rights and socio-economic rights, emphasising the duty on the State to seek to satisfy both, as this Court said in Grootboom.”[Footnote omitted.]

23See Port Elizabeth Municipality v Various Occupiers [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC). At para 19 found that:—

“The Constitution recognises that land rights and the right of access to housing and of not being arbitrarily evicted, are closely intertwined. . . Furthermore, sections 25 and 26 create a broad overlap between land rights and socio-economic rights, emphasising the duty on the State to seek to satisfy both, as this Court said in Grootboom.”[Footnote omitted.]

24Id. Para 28-9.

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Prepared on 11 October 2026 · Esheria